

BROWN V. BOARD OF EDUCATION AT 65: A PROMISE UNFULFILLED

HEARING

BEFORE THE
**COMMITTEE ON EDUCATION
AND LABOR**
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, APRIL 30, 2019

Serial No. 116-19

Printed for the use of the Committee on Education and Labor



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BROWN V. BOARD OF EDUCATION AT 65: A PROMISE UNFULFILLED

Tuesday, April 30, 2019
House of Representatives,
Committee on Education and Labor,
Washington, D.C.

The committee met, pursuant to call, at 10:17 a.m., in Room 2175, Rayburn House Office Building. Hon. Robert C. "Bobby" Scott [chairman of the committee] presiding.

Present: Representatives Scott, Davis, Courtney, Fudge, Sablan, Wilson, Bonamici, Takano, Adams, DeSaulnier, Norcross, Jayapal, Wild, Harder, McBath, Schrier, Underwood, Hayes, Omar, Trone, Stevens, Lee, Trahan, Foxx, Roe, Walberg, Guthrie, Grothman, Stefanik, Allen, Smucker, Banks, Walker, Cline, Fulcher, Taylor, Watkins, Wright, Meuser, Timmons, and Johnson.

Staff Present: Nekea Brown, Deputy Clerk; Emma Eatman, Press Aide; Christian Haines, General Counsel ; Ariel Jona, Staff Assistant; Stephanie Lalle, Deputy Communications Director; Andre Lindsay, Staff Assistant; Kota Mitzutani, Staff Writer; Max Moore, Office Aid; Jacque Moseley, Director of Education; Veronique Pluviose, Staff Director; Lakeisha Steele, Professional Staff; Loredana Valtierra, Education Policy Fellow; Banyon Vassar, Deputy Director of Information Technology; Adrienne Rolie Webb, Education Policy Fellow; Cyrus Artz, Minority Parliamentarian, Marty Boughton, Minority Press Secretary; Courtney Butcher, Minority Director of Coalitions and Members Services; Bridget Handy, Minority Legislative Assistant; Blake Johnson, Minority Staff Assistant; Amy Raaf Jones, Minority Director of Education and Human Resources Policy; Hannah Matesic, Minority Director of Operations; Kelley McNabb, Minority Communications Director; Jake Middlebrooks, Minority Professional Staff Member; Brandon Renz, Minority Staff Director; Mandy Schaumburg, Minority Chief Counsel and Deputy Director of Education Policy; Meredith Schellin, Minority Deputy Press Secretary and Digital Advisor; and Brad Thomas, Minority Senior Education Policy Advisor.

Chairman SCOTT. Good morning. The Committee on Education and Labor will come to order. Welcome everyone. I note a quorum is present and the Committee is meeting today in a legislative hearing to hear testimony on "Brown v. Board of Education at 65: A Promise Unfilled".

Today, we are here to discuss our responsibility to fulfill the promise of educational equity, which was ordered 65 years ago in

the Supreme Court's landmark decision in *Brown v. Board of Education*.

On May 17, 1954, the Supreme Court unanimously rejected the doctrine of separate but equal and struck down lawful school segregation in America. In the Court's opinion, Chief Justice Earl Warren wrote the following: "In these days, it is doubtful that any child may reasonably be expected to succeed in life if denied the opportunity of an education. Such an opportunity, where the State has undertaken to provide it, is a right which must be made available to all on equal terms".

He went on to say that "in the field of public education, the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

But the Court's historic ruling was not the end of school segregation, it was the beginning of a long and difficult struggle to unwind centuries of systemic inequality that have influenced every aspect of American life. Today's inequity in education, housing, economic opportunity, criminal justice, and other areas are the legacy of our history. Rather than seeking to forget the wounds of the past, we must confront them. The Federal Government actually contributed to racial segregation and inequity, so the Federal Government must be part of the solution.

Evidence and experience demonstrate that when we accept our responsibility to desegregate schools, we have the power to do so. The passage of the Civil Rights Act and the Elementary and Secondary Education Act, paired with strong Federal enforcement of the Supreme Court's mandate to desegregate schools, produced a period of sustained progress from the late 1960s through the 1980s. The share of Black students attending majority white schools jumped from roughly 0 percent to more than 40 percent.

Segregation does not just isolate people, it isolates opportunity. A recent report found that there is currently a \$23 billion dollar racial funding gap between school districts serving students of color and school districts serving predominantly white students.

The relationship between integration and resources is often overlooked, but cannot be overstated. Court-ordered desegregation not only substantially reduced racial segregation, it also led to a dramatic increase in per-pupil spending, an average increase of more than 20 percent per student. As a result, tests score for Black students improved and the achievement gap narrowed. Integration does not work because children of color are incapable of achieving without peers, integration works because it impacts school spending and school practices.

Even Stanford Professor Dr. Eric Hanushek, a consistent critic of Federal investment as a solution to challenges in education, found that the period of Federal investment, coupled with strong enforcement of desegregation, produced impressive learning gains for children of color without adversely affecting white students. But just as we have demonstrated the power to fix this problem, we have the demonstrated power to make it worse. The election of President Nixon started a steady retreat from Federal enforcement of school desegregation, which was continued by Presidents Reagan and first President Bush. More importantly, conservatives recognized that

the same institution that started the movement toward school desegregation could be used to stop it.

Starting in 1969, Republican Presidents appointed the next 11 Supreme Court justices. In fact, all but 4 of the last 19 Supreme Court judges since 1969 have been appointed by Republicans. They have been able to form a block of conservatives who questioned the constitutionality of desegregation, chipping away at the Federal Government's ability to compel bold and meaningful strategies to fully integrate schools. For example, a few years ago, when districts in Kentucky and Washington State wanted to voluntarily desegregate their schools, the Supreme Court said no.

Rather than standing firmly in support of school diversity, Members of Congress in both parties bowed to political pressure and passed legislation that was intended to undermine school desegregation. One example was the appropriations rider that started in the 1970s that prohibited the use of Federal funds for transportation of students for the purpose of school integration. That rider was just removed last year.

After four decades without Federal support for desegregation, we are right back where we started. A 2016 GAO report found that public schools had grown more segregated by race and class than at any time since 1960. According to the GAO, high-poverty schools where 75–100 percent of the students were low-income and Black or Latino increased from 9 percent of public schools in 2000, to 16 percent in 2013. That's 16 percent of public schools where students were both low-income and Black and or Hispanic. At least 75 percent of those students are Black and Hispanic and low income. And they said it's getting worse. It's not surprising the report also found that segregated schools offered demonstrably worse opportunity for a quality education.

Unfortunately, the key ingredients that combined to unwind our progress towards educational equity are still in place today. We have a conservative Supreme Court that is likely to strike down school diversity policies as to approve them and an Administration that does not promote diversity and equity in education.

One of Secretary DeVos' first actions as Secretary of Education was to eliminate the grant program called Opening Doors, Expanding Opportunities grant program, a voluntary program to support school districts in creating locally driven strategies to increase school diversity and improve student achievement and equity of educational opportunity for disadvantaged students. That program would have helped local jurisdictions develop desegregation plans that could withstand constitutional challenges.

In the two and a half years since, the Department of Education has rescinded an Obama guidance that provided recommendations to schools seeking to boost diversity in classrooms and campuses, tried to delay the implementation of a long-overdue rule designed to address racial disparities in the identification, placement, and discipline of children of color with disabilities—a recent court decision found that attempt to be illegal—dismissed more than 1,200 civil rights investigations that were started under the Obama Administration, produced a final School Safety Report that cited bogus “research” and blamed Federal civil rights enforcement, without evidence, for school shootings, and eliminated a 2014 guid-

ance package that was issued to help schools address the clear evidence that Black boys and students with disabilities received harsher treatments than their classmates in punishments, they received harsher punishments. And the guidance showed how you could reduce those disparities without jeopardizing school safety.

As the White House and the Courts continue to push us in the wrong direction, Congress cannot sit on the sidelines. The stakes are too high. Beneath all of the slogans and sound bites, there is the simple fact that desegregating schools is the most powerful tool we have to improve the lives of children of color and their families. Evidence shows that the racial achievement gap can be virtually eliminated just by exposing Black students to desegregated schooling. One report, considered the most rigorous and comprehensive to date, showed that Black students who attended desegregated schools throughout their K-12 career were more likely to graduate from high school, attend college, attend a more selective school, and complete college.

The benefits are not merely limited to academics. Just five years of attending court-ordered desegregated schools significantly increased Black workers' earnings and significantly reduced their likelihood of experiencing poverty.

Attending desegregated schools starting in elementary school is highly correlated with reduced chances of adult incarceration. These statistics reveal both the incredible value of desegregating schools and the tragic reality that we have failed to do so. Just how many children have been disadvantaged because of our failure to desegregate the schools? How many adults have been incarcerated, how many families have been impoverished just because we have failed to uphold a Supreme Court decision rendered 65 years ago? How many more will we lose until that promise is kept?

As our witnesses today will discuss, the work of desegregating schools and protecting students' civil rights will not be easy. Addressing America's legacy of racial discrimination is uncomfortable and complicated. And, as if we don't have enough to deter members of this institution, it can be unpopular. But the civil rights movement has shown that we can change public opinion rather than just waiting for it to change. Today, 85 percent of Americans say that Martin Luther King made things better for Black Americans. But, in 1966, a Gallup survey showed that two-thirds of Americans had an unfavorable opinion of Dr. King. Two years later, in the immediate aftermath of his assassination, another survey found that 31 percent of Americans felt that he had brought it on himself. If our approach is to wait until it is popular and easy, we will never do what is right, and generations of students and communities will be robbed of the opportunity to reach their full potential.

Today, we can and will discuss the benefits and trade-offs of various proposals for achieving educational equity. But the premise of this discussion is not open to debate. Public education is not a private commodity, it is a public good. The Federal Government is obligated to ensure, just as Justice Warren wrote, that it is made available to all on equal terms.

And I yield to the Ranking Member, Dr. Foxx, for the purpose of an opening statement.

[The statement of Chairman Scott follows:]

Prepared Statement of Hon. Robert C. “Bobby” Scott, Chairman, Committee on Education and Labor

Today, we are here to discuss our responsibility to fulfill the promise of educational equity, which was ordered 65 years ago in the Supreme Court’s landmark decision in *Brown v. Board of Education*.

On May 17, 1954, the Supreme Court unanimously rejected the doctrine of separate but equal and struck down lawful school segregation in America. In the Court’s opinion, Chief Justice Earl Warren wrote the following:

“In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”

He went to say that “in the field of public education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”

But the Court’s historic ruling was not the end of school segregation, it was the beginning of a long and difficult struggle to unwind centuries of systemic inequality that have influenced every aspect of American life.

Today’s inequity in education, housing, economic opportunity, criminal justice, and other policy areas are the legacy of our history. Rather than seeking to forget the wounds in our past, we must confront them. The federal government contributed to racial segregation and inequality, so the federal government must be part of the solution.

Evidence and experience demonstrate that when we accept our responsibility to desegregate schools, we have the power to do so. The passage of the Civil Rights Act and the Elementary and Secondary Education Act – paired with strong federal enforcement of the Supreme Court’s mandate to desegregate schools – produced a period of sustained progress from the late 1960s through the 1980s. The share of Black students attending majority white schools jumped from roughly zero percent to more than 40 percent.

Segregation does not just isolate people, it isolates opportunity. A recent report found that there is currently a \$23 billion racial funding gap between school districts serving students of color and school districts serving predominantly white students.

The relationship between integration and resources is often overlooked, but cannot be overstated. Court-ordered desegregation not only substantially reduced racial segregation, it also led to a dramatic increase in per-pupil spending – an average increase of more than 20 percent per student.

As a result, tests score for Black students improved and the achievement gap narrowed. Integration does not work because children of color are incapable of achieving without white peers. Integration works because it impacts school spending and school practices.

Even Stanford Professor Dr. Eric Hanushek, a consistent critic of federal investment as a solution to challenges in education, found that the period of federal investment coupled with strong enforcement of desegregation produced impressive learning gains for children of color without adversely affecting white students.

But just as we have demonstrated the power to fix this problem, we have the demonstrated power to make it worse.

The election of President Nixon started a steady retreat from federal enforcement of school desegregation, which was continued by Presidents Reagan and first President Bush. More importantly, conservatives recognized that the same institution that started the movement toward school desegregation could be used to stop it.

Starting in 1969, Republican presidents appointed the next 11 Supreme Court justices. In fact, all but four of the last 19 Supreme Court justices since 1969 have been appointed by Republicans. They have been able to form a bloc of conservatives who questioned the constitutionality of desegregation, chipping away at the federal government’s ability to compel bold and meaningful strategies to fully integrate schools.

For example, a few years ago, when districts in Kentucky and Washington State wanted to voluntarily desegregate their schools, the Supreme Court said no.

Rather than standing firm in support of school diversity, Member of Congress in both parties bowed to political pressure and passed legislation that was intended to undermine school desegregation.

One example was the appropriations rider that started in the 1970s that prohibited the use of federal funds for transportation of students for the purpose of school integration. That rider was just removed last year.

After four decades without federal support for desegregation, we are right back where we started. A 2016 GAO report found that public schools had grown more segregated by race and class than at any time since 1960. According to GAO, high-

poverty schools where 75–100 percent of the students were low-income and Black or Latino increased from 9 percent of public schools in 2000, to 16 percent in 2013.

That's 16 percent of public schools where students were both low-income and Black or Hispanic. And they said it's getting worse. It's not surprising the report also found that segregated schools offered demonstrably worse opportunity for a quality education.

Unfortunately, the key ingredients that combined to unwind our progress towards educational equity are once again in place today. We have a conservative Supreme Court that is likely to strike down school diversity policies rather than approve them and an Administration that does not accept its responsibility to promote diversity and equity in education.

One of Secretary DeVos' first actions as Secretary of Education was to eliminate the Opening Doors, Expanding Opportunities grant program, a voluntary program to support school districts in creating locally driven strategies to increase school diversity and improve student achievement and equity of educational opportunity for disadvantaged students. That program would have helped local jurisdiction develop desegregation plans that could withstand constitutional challenges.

In the two-and-a-half years since, the Department of Education has:

- Rescinded an Obama-era guidance that provided recommendations to schools seeking to boost diversity in classrooms and campuses;
- Tried to delay the implementation of a long-overdue rule designed to address racial disparities in the identification, placement, and discipline of children of color with disabilities. A recent court decision found that attempt to be illegal;
- Dismissed more than 1,200 civil rights investigations that were started under the Obama Administration;
- Produced a final School Safety report that cited bogus “research” and blamed federal civil rights enforcement – without evidence – for school shootings; and
- Eliminated a 2014 guidance package that was issued to help schools address the clear evidence that Black boys and students with disabilities receive harsher treatments than their classmates in punishments. The guidance showed how you could reduce those disparities without jeopardizing school safety.

As the White House and the courts continue to push us in the wrong direction, Congress cannot sit on the sidelines. The stakes are too high.

Beneath all of the slogans and soundbites, there is the simple fact that desegregating schools is the most powerful tool we have to improve the lives of children of color and their families.

Evidence shows that the racial achievement gap can be virtually eliminated just by exposing Black students to desegregated schooling.

One report – considered the most rigorous and comprehensive to date – showed that Black students who attended desegregated schools throughout their K-12 career were more likely to graduate from high school, attend college, attend a more selective school, and complete college.

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Attending desegregated schools starting in elementary school is highly correlated with reduced chances of adult incarceration.

These statistics reveal both the incredible value of desegregating schools and the tragic reality that we have failed to do so.

How many children have been disadvantaged because of our failure to desegregate schools? How many adults have been impoverished just because we have failed to uphold a Supreme Court decision rendered 65 years ago?

How many more will we lose until that promise is kept?

As our witnesses today will discuss, the work of desegregating schools and protecting students’ civil rights will not be easy. Addressing America’s legacy of racial discrimination is uncomfortable and complicated. And, as if we don’t have enough to deter Members of this institution, it can be unpopular.

But the civil rights movement has always moved public opinion, rather than just waiting for it change. Today, 85 percent of Americans say Dr. Martin Luther King made things better for Black Americans.

But, in 1966, a Gallup survey found that two-thirds of Americans had an unfavorable opinion of Dr. King. Two years later, in the immediate aftermath of his assassination, another survey found that 31 percent of Americans felt that he brought it on himself.

If our approach is to wait until it is popular and easy, we will never do what is right, and generations students and communities of color will be robbed of the opportunity to reach their potential.

Today, we can and will discuss the benefits and trade-offs of various proposals for achieving educational equity. But the premise of this discussion is not open to debate.

Public education is not a private commodity. It is a public good. The federal government is obligated to ensure – just as Justice Warren wrote – that it is made available to all on equal terms.

Now I will yield to Ranking Member, Dr. Foxx, for the purpose of an opening statement.

Mrs. FOXX. Thank you, Mr. Chairman. I thank you for yielding.

It is clear that in your—as a result of your very long opening statement that you care passionately about this issue, and I will tell you I care passionately about it also.

Thank you for convening today's hearing to talk about the Supreme Court's landmark decision in *Brown v. Board of Education*. The issue of segregation in schools deserves our full attention and I welcome this opportunity to discuss how the turning point of *Brown v. Board* has shaped the last 65 years for students across the United States.

Thanks to the relentless courage of Linda Brown, her parents, and civil rights leaders, the abhorrent segregationist policy of "separate but equal" was recognized for what it was, inherently unequal. With the Supreme Court's decision, the Nation took a first step toward greater equality and opportunity for all people.

Unfortunately, a first step does not equate to overnight change. We know from history that even after *Brown v. Board* the majority of segregated schools did not integrate until many years later. Even with the legal barriers to equal education broken, achieving true equality for all students has followed a steep and arduous path.

My Democrat colleagues have largely been critical of the Department of Education's enforcement of civil rights law, but the reality is Secretary DeVos is following the letter and spirit of the law and regulations. The Secretary is thoroughly investigating discrimination claims and acting swiftly when these claims are found to be true. Not only is discrimination in state-sanctioned segregation repugnant and illegal, it also prevents growth and success for all children. Studies have shown that integrated schools promote greater understanding and tolerance and result in improved educational outcomes, particularly for students of color.

As a former educator and lifelong learner, I believe in my whole heart that an excellent education is the key to lifelong success. It is the path out of poverty for millions and provides students with the tools and skills they need to build a successful life. All students, regardless of zip code, deserve access to greater educational opportunities.

The legacy of *Brown v. Board of Education* should be to empower parents with the ability to choose the right school for their child and eliminate the ability of the State to consign children to low performing schools with no means of escape.

School choice gives parents and families the opportunity to break the cycle of poverty and enroll their child in an institution that challenges them, develops their skills and intellect, and encourages them to reach higher. Studies show that when students are given the freedom to attend school in a learning environment best suited

to their abilities, they graduate from high school and pursue post secondary education at higher rates. We will hear today about the power of choice to transform lives.

In the 65 years since Brown v. Board we have not yet achieved true equality. We continue to strive towards a future where all students, regardless of race or color, have the chance to succeed. But while there is more work to be done, we have seen some encouraging trends.

Between 2010–2011 and 2016–2017 the high school graduation rate for Black students increased by 11 percent, more than any other demographic. Additionally, dropout rates for Black students declined between 2000 and 2016, while Black enrollment and attendance at postsecondary institutions rose over the same period.

Change is slow. Change is too slow. The progress we've made should be understood if it's going to continue.

I thank the witnesses before the Committee today and I look forward to our discussion about how we can keep working to secure greater equality and even greater opportunity for America's students.

I yield back, Mr. Chairman.

[The statement of Mrs. Foxx follows:]

Prepared Statement of Hon. Virginia Foxx, Ranking Member, Committee on Education and Labor

Thank you for yielding.

And thank you for convening today's hearing to talk about the Supreme Court's landmark decision in Brown v. Board of Education. The issue of segregation in schools deserves our full attention, and I welcome this opportunity to discuss how the turning point of Brown v. Board has shaped the last 65 years for students across the United States.

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Change is slow. Change is too slow. The progress we have made should be understood if it's going to continue. I thank the witnesses before the committee today, and I look forward to our discussion about how we can keep working to secure greater equality, and even greater opportunity, for America's students.

Chairman SCOTT. Thank you. Without objection, all other Members who wish to insert written statements in the record may do so by submitting them to the Committee Clerk electronically in Microsoft Word format by 5:00 p.m. on May 14.

I will now introduce our witnesses.

John C. Brittain was appointed Acting Dean of the University of the District of Columbia David A. Clarke Law School on July 2018. He joined the UDC faculty in 2009 as a tenured professor. He has previously served as Dean of the Thurgood Marshall School of Law in Texas Southern University in Houston, is a tenured professor at the University of Connecticut School of Law for 22 years, and Chief Counsel, Senior Deputy Director of the Lawyers' Committee for Civil Rights under the Law in Washington, D.C.

He writes and litigates on issues in civil and human rights, especially educational law.

Linda Darling-Hammond is the Charles E. Ducommun Professor of Education Emeritus at the Stanford University and Founding President of the Learning Policy Institute, created to provide high quality research for policies that enable equitable and empowering education for each and every child.

She is the past President of the American Education Research Association, author of more than 30 books and 600 other publications on education quality and equity, including the award-winning book "The Flat World and Education: How American's Commitment to Equity Will Determine Our Future".

In 2008 she directed the Education Policy Transition Team for President Obama and she was recently appointed President of the California State Board of Education.

Ms. Maritza White has worked at Cornerstone Schools of Washington, D.C. since 2014 as business manager. Before that she served as a facilitator and office manager for the Community family Life Services here in D.C. for 4 years. Prior to that she was field operations supervisor with the U.S. Census Bureau where she managed, recruited, and developed field staff and analyzed special reports.

She also worked for Prince George County's public school system as a program developer and substitute teacher for almost a decade.

She received her BS in organization management from Columbia Union College, now Washington Adventist.

She enrolled her son in a D.C. private school through the D.C. Opportunity Scholarship Program.

Daniel Losen is the Director of the Center for Civil rights Remedies at UCLA's Civil Rights Project, where his work is focused on

racial disproportionality in special education, graduation rates, and school discipline since 1999.

Included among his edited books of scholarly research are “Racial Inequity in Special Education” and “Closing the School Discipline Gap: Equitable Remedies for Excessive Exclusion”.

The organization’s award-winning report, Are We Closing the School Discipline Gap, describes school districts that are making the most progress, as well as those with the most serious and persistent disparities along the lines of race, gender, and disability status.

Mr. Dion Pierre is a researcher with the National Association of Scholars in New York City. He has been a researcher at the National Association of Scholars for 2 years where he researches racial self-segregation on American college campuses.

He was previously a Fellow at the Public Interest Fellowship, and he received his bachelor’s degree in political science in 2016 from Hofstra University. He co-sponsored an article for Minding the Campus, a higher education website that advocates for campus free speech, entitled “What Damore’s Memo Taught Google”, in which he argues that diversity initiatives in STEM field earth hurt Asian students.

Richard A. Carranza is chancellor of New York City Department of Education, the largest school system in the Nation. He is responsible for educating 1.1 million students in over 1,800 schools.

Prior to New York City he was superintendent of the Houston Independent School District, the largest School District in Texas and the seventh largest in the United States. Before that he served the San Francisco Unified School District, first as deputy superintendent, then as superintendent. Before moving to San Francisco he was a Northwest Region Superintendent for Clark County School District in Las Vegas.

He began his career as a high school bilingual social studies and music teacher, then as principal, both in Tucson in Arizona.

He is the son of a sheet metal worker and hairdresser and a grandson of Mexican immigrants. He credits his public school education for putting him on the path to college and a successful career.

We appreciate all of our witnesses for being with us today.

Let me remind you that your written statements will appear in full in the hearing record pursuant to Committee Rule 7d and Committee practice. We ask you to limit your oral presentation to a 5 minute summary.

I also want to remind the witnesses that pursuant to Title 18 U.S. Code, Section 1001, it is illegal to knowingly and willfully falsify any statement, representation, writing document, or material fact presented to Congress or otherwise conceal or cover up a material fact.

Before you begin your testimony, I would ask you to make sure that you press the button on the microphone in front of you so that the Members can hear you. As you begin to speak the light in front of you will turn green, after 4 minutes it will turn yellow signifying 1 minute remaining, and when the light turns red, we ask you to please wrap up.

We will let the entire panel make their presentations before we move to Member's questions. And when answering a question, remember again to press the button to put your microphone on.

We will first recognize Dean Brittain.

**TESTIMONY OF JOHN C. BRITTAINE, PROFESSOR OF LAW,
UNIVERSITY OF THE DISTRICT OF COLUMBIA LAW SCHOOL**

Mr. BRITTAINE. Good morning, Chairman Scott, Ranking Member Dr. Foxx, and other Members of this Committee.

My name is John Brittain, and I am a professor at the David A. Clarke School of Law at the University of the District of Columbia. I appear today as an expert on educational equity with 50 years of experience, in theory and in practice, in the pursuit of educational equity.

In preparation for this testimony and report, I sought the collaboration with the National Conference of School Diversity and the Poverty & Race Action Council, and more.

The social science research clearly demonstrates the benefits of school diversity and integration. Students attending social, economically and racial diverse schools have better test scores and higher college attendance rates than peers in more economically and racially segregated schools. Racial diversity in schools also carries long-term benefits. These include subsequent reduced segregation in neighborhoods, college, and workplaces, higher levels of social cohesion, and reduced likelihood of racial prejudice.

Despite these benefits, 25 percent of public school students attend schools in which there are more than 75 percent of the students eligible for free and reduced price lunch. And in urban areas nearly half of all students attend high poverty schools. These trends have been getting worse over the past decade. The Government Accounting Office recently found that the percentage of K–12 public schools with high poverty and African American and Hispanic students increased, up by 9 percent in 2000–2001, and 16 percent in 2013–2014.

The Stronger Together School Diversity Act of 2016 would empower communities to counter the encroaching re-segregation we are facing. As a result of these research findings, the National Coalition for School Diversity supported the Stronger Together School Diversity Act of 2016.

All policies in pursuit of racial and ethnic equality in education are completely voluntary today. The fact is, school assignment plans designed to promote diversity and integration in education are double voluntary. School authorities voluntarily create plans and parents, with mutual acquiescence by their children, voluntarily participate in these diversity plans. We must confront, in this 21st century, the twin social policy issues of poverty and inequality, especially in education. Segregation in education is harming our future.

Thus I applaud the Committee for remembering the history of Brown in this hearing.

Since President Donald Trump's inauguration in 2017, his Administration has suspended vital gains in civil rights, in education, and housing, to name a few. In the field of education, as you mentioned, the Secretary of Education Betsy DeVos withdrew the policy

on school diversity and integration, developed by the Obama Administration, to the combined efforts of the Justice Department and the U.S. Department of Education Office for Civil Rights.

The preceding Administration of President George W. Bush has erroneously interpreted a Supreme Court case in 2007 named “Parents Involved in Community Schools v. Seattle School Dist. No. 1”.

While the Trump Administration’s termination of the School Diversity Guidance Policy may create a chilling effect on school districts that want to voluntarily diversify and pursue integration, the policy established by the Supreme Court in 2007 remains good law.

As this Nation currently enters the last 6 years to the first quarter of the 21st century with hyper racial segregation in many sectors of society and reductionist school enforcement and educational policies by the Federal Government, the Courts, and the Executive Branch, the question to ask is, is the Nation approaching the end of the Second Reconstruction?

In closing, a majority of the Supreme Court in a 1996 landmark case called *Sheff v. O'Neill*, a majority of the Justices said this, although the Constitutional basis for the plaintiff's claims to the deprivation that they themselves are suffering, that deprivation potentially has impact on the entire State and its economy, not only at social and cultural fabric, but on the material wellbeing, on its jobs, industry, and business.

Economic and business leaders say that our State's economic wellbeing is dependent on more skilled workers, technically proficient workers, literate and well educated citizens. So it is not just that their future depends on the State, the State's future depends on them. Finding a way to cross the racial and ethnic divide has never been more important than it is today.

[The statement of Mr. Brittain follows:]

Testimony of John C. Brittain
Professor
David A. Clarke School of Law
University of the District of Columbia
Before the House Committee on Education and Labor
Full Committee Hearing on:
Brown v. Board of Education at 65: A Promise Unfulfilled
April 30, 2019

Good Morning, Chairman Scott and Ranking Member Foxx. My name is John C. Brittain, and I am a professor at the David A. Clarke School of Law at the University of the District of Columbia. I appear today as an expert on educational equity with 50 years of experience in the law. And, I am a representative of the National Coalition on School Diversity (NCSD), a network of national civil rights organizations, organizations, university-based research centers, and state and local coalitions working to expand support of government policies that promote school diversity and reduce racial and economic isolation in elementary and secondary schools. We also support the work of state and local school districts and practitioners. Our work is informed by an advisory panel of scholars and academic researchers whose work relates to issues of equity, diversity and desegregation/integration.

In preparation for this testimony, I selected excerpts of published materials on the topic, “A Promise Unfulfilled” by *Brown*.

May 17, 2019 marks the 65th anniversary of the Supreme Court’s decision in *Brown*. I begin with remarks by Sherrilyn Ifill, President and Director Counsel of the NAACP Legal Defense Fund, at the 60th anniversary that is still relevant today. She wrote, *Brown* represents “....the constitutional moment that compelled our country to reckon with its history and confront

the unfulfilled promise of equality first articulated in our founding documents. *Brown* literally changed America. It is a mid-20th century course correction that ushered in a modern America that must grapple honestly with the promise of equality and opportunity for all of its citizens. At its core *Brown* marks the beginning of the end of legal apartheid in this country. This would be enough to celebrate. But *Brown* is also a powerful example of how change can happen and the important role that law plays in shaping the very character of our country.

Brown was the culmination of a strategy first conceived of by the brilliant, visionary Howard Law Dean and scholar Charles Hamilton Houston and counsel to the NAACP. With his protégée Thurgood Marshall, who went on to become the first Director-Counsel of NAACP LDF and first African American Supreme Court justice, Houston began challenging Jim Crow in education in 1935 with a successful challenge to racial segregation at the University of Maryland School of Law. They moved through the South, challenging Jim Crow in graduate schools and law schools before ending up where they always wanted to be in the United States Supreme Court with a dream team of lawyers arguing that segregation in K-12 education violates the United States Constitution.

Their argument was clear. The 14th amendment to the Constitution guarantees equal protection of the laws. Racial segregation violates that principle. The lawyers marshalled expert witnesses to prove what most of us take for granted today, that state-enforced racial segregation in education “deprives [black children] of equal status in the school community....destroys their self-respect, denies them full opportunity for democratic social development [and].... stamps [them] with a badge of inferiority.” Although this conclusion never made it into the Supreme Court’s decision, it’s worth noting that *Brown*’s star expert, Dr. Kenneth

Clark had also warned that segregation “twisted the personality development of white children.”

Writing for a unanimous Supreme Court, Chief Justice Earl Warren issued the powerful statement about education that resonates just as poignantly today:

Today education is the most important function of state and local governments....It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him adjust normally to his environment. In these days it is doubtful that any child can be reasonably expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.¹

Next, the NCSD sets forth the clearly persuasive research on the benefits of school diversity and integration.

- Students attending socio-economically, and racially diverse schools have better test scores and higher college attendance rates than peers in more economically and racially segregated schools.
- Racial diversity in schools also carries long-term benefits. These include subsequent reduced segregation in neighborhoods, colleges and workplaces, higher levels of social cohesion, and a reduced likelihood of racial prejudice.

Despite these benefits, 25% of public-school students attend schools in which more than 75% of students are eligible for free and reduced-price lunch; and in urban areas, nearly half of all students attend high-poverty schools. These trends have been getting worse over the past decade. The Government

¹ Sherrilyn Ifill, *A Reflection on the 60th Anniversary of Brown v. Board of Education*, NAACP LEGAL DEFENSE & EDUCATIONAL FUND, [https://www.naacpldf.org/ldf-celebrates-60th-anniversary-brown-v-board-education](https://www.naacpldf.org/ldf-celebrates-60th-anniversary-brown-v-board-education/reflection-60th-anniversary-brown-v-board-education) (last visited Apr. 26, 2019).

Accountability Office (GAO) recently found that the percentage of K-12 public schools with high poverty and African-American or Hispanic students increased from 9% in 2000-01 to 16% in 2013-14. The Stronger Together School Diversity Act of 2016 would empower communities to counter the encroaching re-segregation we are facing.²

As a result of these research findings, the NCSD supported The Stronger Together School Diversity Act of 2016. The bill was first introduced in both the House of Representatives and the Senate in 2016 and reintroduced in 2018 as the Strength in Diversity Act. It authorizes \$120 million for a competitive grant program that promotes racial and socioeconomic diversity within our schools.

- The program is completely voluntary, and diversity plans would be locally developed.
- Applicants for funds would have to demonstrate strong family and community involvement in plan development.
- Grants are available for both planning and implementation.
- Up to \$6 million would be available for National Activities, which would include technical assistance and evaluation.³

To fulfill the promise of *Brown*, the fight for quality school integration must continue. For example, the NCSD policy agenda for 2019 addressed this goal.

“Across the nation, there are numerous examples of states and local communities engaging in thoughtful discussion, planning, design and implementation of policies and programs to reduce racial and poverty concentration and achieve meaningful integration in elementary and

² *The Stronger Together School Diversity Act of 2016: Why Promoting Racial and Socioeconomic Diversity in our Public Schools is Vitally Important*, NATIONAL COALITION ON SCHOOL DIVERSITY, <https://school-diversity.org/pdf/Stronger%20Together%20School%20Diversity%20Act%20of%202016%20two-page.pdf> (last visited Apr. 26, 2019).

³ *Id.* at 1.

secondary schools. Their visions of integration are broad, bold and multi-faceted.

The passage of Every Student Succeeds Act (ESSA) in 2015 gave rise to a policy environment that actively encourage educators to design and implement educations reform strategies that are tailored to their unique context, developed in constructions with parents, students and community leaders. ESSA invited states districts, and school communities to take the time and create the space to tackle some of their most vexing educations challenges.

Alongside this emerging flexibility, we have also witnessed an unfortunate retreat from school integration at the federal lever in the Trump Administration. This has included removing racial and socioeconomic diversity as priorities in Department of Education competitive grant programs, cancelling a school integration grant program after school districts had already applied, and withdrawing guidance to school districts issued during the Obama Administration that provided a roadmap for school districts to lawfully consider race in student assignments.

There are a variety of ways to pursue racial integration in elementary and secondary school, which can be broken down into ... [several] buckets:

Legislative

- Recalibrate the Title I funding formula so it does not penalize school districts or schools that seek to pursue integration.
- Create a federal grant program that provides financial support for districts like the Strength in Diversity Act that was introduced in the 115th Congress).
- Encourage multiparty collaboration and strong eligibility criteria in formulating such grant competitions.

Regulatory

- Reinstate priorities for socioeconomic and racial diversity for competitive grant programs in the Department of Education, which were in place during the Obama Administration.
- Reinstate 2011 guidance letters that explained how school districts could lawfully pursue racial diversity.⁴

And the final source of reference for this important topic about *Brown* at 65 is from the Century Foundation. In an article published in the “Atlantic Magazine,” researchers added their analysis of the post-Brown era, and the proposals to fulfill the promise of *Brown* to achieve equal educational opportunities.

“In the face of white backlash against school desegregation, however, Congress and the courts lost their nerve. In the early 1970s, a bipartisan group of legislators—including then-Senator Joe Biden—voted to prohibit the use of federal funds for transportation to achieve integration. Richard Nixon appointed conservative Supreme Court justices who cut back on the possibility of urban-suburban desegregation plans. Starting in the 1980s, the Reagan administration and its successors put little pressure on schools to desegregate.”

In the years since, efforts to integrate schools have also been hampered by segregation in the housing market. The federal government’s investment in addressing this problem, too, has been exceedingly modest. The 1990s Moving to Opportunity program, which allowed low-income families to move to higher-opportunity neighborhoods, was funded at just \$70 million. It ran into trouble when Senator Barbara Mikulski, a Maryland Democrat, killed an

⁴ *A School Integration Policy Agenda for 2019 and Beyond*, NATIONAL COALITION ON SCHOOL DIVERSITY, https://school-diversity.org/wp-content/uploads/2018/07/Policy-Handout_Draft6.pdf (last visited Apr. 26, 2019).

expansion of the program due to resistance from suburban-Baltimore constituents.

Again and again, federal efforts to promote integration have been whittled down almost to nothing. The result for children has been predictable: increasing school segregation by race and class. According to a 2016 Government Accountability Office [report](#), the percentage of schools in which more than three-quarters of students were low-income and black or Hispanic grew from 9 percent in 2000–01 to 16 percent in 2013–14. This is bad for our democracy, which is fractured along the fault lines of race, ethnicity, and religion. It is bad for social mobility, which used to be a defining feature of American life. And it is bad for middle-class and white students, who are deprived of the deeper learning that occurs when students bring different life experiences to classroom discussion.

Washington is still capable of doing much more. In a newly released Century Foundation report, we outline several ideas for reinvigorating the federal role in school integration in 2020 and beyond. As a first step, Congress could pass the Strength in Diversity Act, introduced by Representative Marcia Fudge of Ohio and Senator Chris Murphy of Connecticut, which would provide \$120 million in new competitive grants to districts to support voluntary local efforts to reduce school segregation. Even bolder, Congress could make money available—perhaps \$500 million or more—to all districts that wish to take more steps toward integration.

Because 75 percent of students attend neighborhood public schools, housing policy can also play a critical role in integrating schools. The United States needs an [Economic Fair Housing Act](#)—as a supplement to the 1968 Fair Housing Act. The new legislation would reduce discriminatory zoning policies that effectively exclude low-income and minority families from certain schools

by banning apartment buildings and other multifamily units in nearby neighborhoods.

There are many other steps Washington could take: mandating a federal review of efforts by wealthy and predominantly white school jurisdictions to secede from integrated school districts; ending the federal prohibition on using funds to transport students for integration; and making diversity a priority in charter-school programs.

A generation ago, the federal government briefly took the lead on promoting school diversity, and the nation greatly benefited. Restoring that commitment has proved exceedingly difficult.

Congress after Congress has decided that integration isn't worth the fight. But especially at a moment of profound political division and growing inequality, the United States should be working harder than ever to bring children of different backgrounds together in high-quality integrated schools.⁵

I end with this quote by Nelson Mandela, "Education is the most powerful weapon which you can use to change the world.

⁵ Richard Kahlenberg, Halley Potter & Kimberly Quick, *Segregation Is Preventable. Congress Just Isn't Trying*, ATLANTIC MAGAZINE (April 18, 2019), <https://www.theatlantic.com/ideas/archive/2019/04/school-integration-over-compensatory-education/587407/>.

Chairman SCOTT. Thank you.
Dr. Hammond.

**TESTIMONY OF LINDA DARLING-HAMMOND, ED.D.,
PRESIDENT AND CEO, LEARNING POLICY INSTITUTE**

Ms. DARLING-HAMMOND. Chairman Scott, Ranking Member Foxx, Members of the Committee, thank you for your invitation to participate in this hearing. I am honored to be here today to discuss the Federal role in fulfilling the promise of *Brown v. Board of Education*.

I will make three points in my brief comments and offer recommendations about what the Federal Government can do to fulfill the promise of *Brown*.

First, a large body of research has found that diverse schools make a positive difference in a wide range of student outcomes. I am one of more than 550 scholars who signed onto a social science report filed in the Parents Involved lawsuit that demonstrated the benefits of integrated schools include gains in math, science, and reading achievement and graduation rates. It also included greater cross-cultural understanding, reduced prejudice, improved critical thinking skills, and increased likelihood that students will live and work in integrated settings as adults.

In a recent study looking at the effective court-ordered desegregation, economist Rucker Johnson found that Black students' graduation rates climbed by 2 percentage points for every year the student attended an integrated school, and they also experienced an increase in wages and a decrease in poverty as adults. Meanwhile, White students experienced no declines in outcomes. These gains were tied to the fact that integrated schools had higher per person spending and smaller student-teacher ratios, among other resources.

Second, the Federal role in this domain has made a positive difference when it is well used and a negative difference when it is poorly used. During the 1960s and '70s Federal support for desegregation led to a dramatic decline in segregation. This, combined with Federal efforts to equalize educational opportunity, cut the achievement gap between Whites and Blacks by more than half in reading and a third in math between 1971 and 1988.

Had we stayed on course with these initiatives there would have been no Black-White achievement gap by the year 2000. Unfortunately, nearly all of these policies were eliminated during the 1980s and have not been reinstated. The achievement gap today is 30 percent larger in reading and math than it was 30 years ago.

In addition, as some administrations sought to get desegregation orders lifted, resegregation occurred—as you can see in the chart that is about to go up—desegregation orders produced a sharp decline in segregation, but typically an even sharper increase in resegregation when they were lifted. Today, about half as many Black students experience desegregated schools, as was true 30 years ago.

To address these trends, as well as confusion about appropriate policy strategies for advancing integration, the Obama Administration's voluntary guidance for states and districts, consistent with the Court's decision, assisted many districts I described, some of

them in my written testimony, that have demonstrated how integration can be successfully pursued in ways that honor parent and student choice and expand opportunities.

These include choice based plans in San Antonio, Texas, Hartford, Connecticut—which John Brittain had a lot to do with bringing about—and Omaha, Nebraska, among others.

The Federal Government can work to advance these efforts by first of all reestablishing Federal grant programs that support voluntary efforts to create more diverse schools, expanding innovative programs to attract diverse students, revising boundaries, training diverse educators. Many of these types of policies are described in the Strength in Diversity Act.

Second, the Federal Government can eliminate the legislative prohibition against district use of Federal funds for bussing that remains in the General Education Provisions Act, so that funds can be used for transportation.

Third, we could increase funding under ESSA in support of school diversity, including funding for magnet schools, which has been flat for many years. Those schools have been shown to increase both integration and student achievement—as well as Title I funds for school improvement.

Fourth, we can encourage greater diversity in charter schools, which are in general more segregated than other public schools, by setting expectations for fair and open admissions and recruitment, like those laid out by the Century Foundation in a recent publication.

Fifth, we can ensure that states enforce ESSA's Integrative Student Assignment policies, which required districts to minimize segregation and assign these students to schools and classrooms.

Sixth, we can encourage states, districts, and schools to report on opportunity indicators required by ESSA, including the degree of integration, school funding, and teacher qualifications.

And, finally, we could reestablish the Department of Education's guidance on school diversity to inform state and local efforts to create more diverse schools.

Sixty-five years after the highest Court declared that separate but equal has no place in our Nation's public school system, we still have considerable work to do.

Thank you for your focus on this issue.

I am happy to answer any questions the Members may have.

[The statement of Ms. Darling-Hammond follows:]

**Written Statement of Dr. Linda Darling-Hammond
President and CEO, Learning Policy Institute**

**Before the Committee on Education and Labor
United States House of Representatives
Full Committee Hearing:
Brown v. Board of Education at 65: A Promise Unfulfilled
April 30, 2019**

Chairman Scott, Ranking Member Foxx, and Members of the Committee, thank you for your invitation to participate in this hearing. My name is Linda Darling-Hammond. I am the Charles E. Ducommun Professor of Education Emeritus at Stanford University and the President and CEO of the Learning Policy Institute (LPI). The Institute conducts and communicates independent, high-quality research to improve education policy and practice. Working with policymakers, researchers, educators, community groups, and others, we seek to advance evidence-based policies that support empowering and equitable learning for each and every child.

I am honored to be here today to discuss the federal role in fulfilling the promise of *Brown v. Board of Education* to ensure that all children have access to quality educational opportunities regardless of race, ethnicity, class, or status.

The systematic denial of educational opportunities to African Americans and other students of color has long subjected many students to an inferior education. Rooted in the history of slavery, followed by the “separate but equal” doctrine upheld in *Plessy v. Ferguson*, and coupled with the unequal allocations of resources to segregated schools, unequal access to education is a long-standing fact of American life.

The Supreme Court’s validation in *Brown v. Board of Education* that separate cannot be equal promised to expand access to quality educational opportunities to all students, regardless of race or ethnicity. Although progress has been made, especially in the quarter century after *Brown*, this promise has not yet been fulfilled. The greatest strides were made when the federal government took an assertive role in promoting access to equal educational opportunities and protecting students’ civil rights. When the federal government stepped back from this role, many gains were lost and resegregation emerged, along with growing inequalities in access to resources for education in communities of color. Recent decisions by the Trump Administration to rescind civil rights guidance in many areas—including the area of school integration—are likely to result in another step backward, an outcome I explain in this testimony.

The federal role includes ensuring state and local compliance with desegregation orders following *Brown* and federal enforcement, oversight, litigation, and funding following the passage of the Civil Rights Act of 1964 and the Elementary and Secondary Education Act of 1965. Through such enforcement, oversight, funding, and other support, the federal government helps to expand access to equal educational opportunities and support districts in dismantling all vestiges of segregated education “root and branch.”

Today, I will discuss the federal role in supporting state and district efforts to advance school diversity and the many tools, resources, and obligations it has to do so. I will share evidence-based state and local efforts to create more diverse educational opportunities for students and ways the federal government can support these efforts, including through increased financial investments.

The Benefits of Diverse Schools

Much of the k-12 research on the impact of school racial and socioeconomic composition on academic outcomes shows that racially segregated, high-poverty schools have a strong negative association with students' academic achievement (often measured through grade-level reading and math test scores), whereas racially diverse schools often report stronger results for historically underserved groups and positive or neutral results for other groups.¹

In a case challenging school desegregation efforts in Jefferson County, Kentucky, and Seattle, Washington, more than 550 scholars signed onto a social science report filed as an amicus brief, which summarized extensive research showing the persisting inequalities of segregated minority schools. The scholars concluded that:

... [M]ore often than not, segregated minority schools offer profoundly unequal educational opportunities. This inequality is manifested in many ways, including fewer qualified, experienced teachers, greater instability caused by rapid turnover of faculty, fewer educational resources, and limited exposure to peers who can positively influence academic learning. No doubt as a result of these disparities, measures of educational outcomes, such as scores on standardized achievement tests and high school graduation rates, are lower in schools with high percentages of nonwhite students.²

Meanwhile, the evidence demonstrating academic, cognitive, and social benefits for students attending racially and socioeconomically integrated schools is well established.³ Although diverse schools alone are not a panacea, and diversity by itself does not remedy all educational inequities, a large body of research pre- and post-*Brown* has shown the benefits of racially, economically, and linguistically diverse learning environments on student outcomes.⁴

In a study of the effects of court-ordered desegregation on students born between 1945 and 1970, economist Rucker Johnson found that graduation rates climbed by 2 percentage points for every year a Black student attended an integrated school. A Black student exposed to court-ordered desegregation for 5 years experiences a 15% increase in wages and an 11 percentage point decline in annual poverty rates. The difference is tied to the fact that schools under court supervision benefit from higher per-pupil spending and smaller student-teacher ratios, among other resources. While there were positive outcomes for Blacks, court-ordered desegregation caused no harm for Whites.

Other studies also show an association between school diversity and a range of short- and long-term benefits for all students, including gains in math, science, reading, and improvement in graduation rates.⁵ Studies show that, beyond student achievement, integrated education also contributes to:

- Promoting tolerance;
- Developing cross-cultural understanding;
- Eliminating bias and prejudice;
- Increasing the likelihood that students will live in integrated neighborhoods and hold jobs in integrated workplaces as adults;
- Improving critical thinking skills;
- Improving educational attainment; and
- Promoting civic participation in a diverse global economy.⁶

It is also worth noting that school diversity and interracial contact should extend beyond students to include the educator workforce. A growing body of research shows that teachers of color bring benefits to all students, and especially to students of color, including by improving academic performance and attainment.⁷ Recent research has found a positive impact of having a same-race teacher on the long-run achievement and attainment of students of color, particularly for African American students.⁸

For example, a 2017 study in North Carolina and Tennessee found that Black students who were assigned to a class with a Black teacher at least once in 3rd, 4th, or 5th grade were less likely to drop out of high school and more likely to aspire to go to college.⁹ The North Carolina study showed that having at least one Black teacher in grades 3 to 5 cut the high school dropout rate in half for Black boys. For Black students identified as “persistently low-income,” having a Black teacher increased their intentions of going to college by 19%, and by 29% for Black boys specifically. Notably, Black teachers tended to have similar, though somewhat smaller, effects on non-Black students.

Scholars suggest a variety of reasons for these positive educational experiences, ranging from role-model effects, higher expectations, the ability to offset stereotype threat for students of color, cultural awareness, instructional supports, and advocacy for students.

Unfortunately, the current educator workforce is not reflective of the demographic makeup of our students. Although the percentage of teachers of color in the workforce has grown from 12% to 20% over the past 30 years, the teacher workforce still does not reflect the growing diversity of the nation, where people of color represent about 40% of the population and 50% of students.¹⁰ And the share of Native American and Black teachers in the workforce is not growing like the populations of Latino/a and Asian American teachers but is actually in decline.¹¹ Therefore, increasing educator diversity should also be part of overall federal, state, and local efforts.

The Role of the Federal Government in Supporting School Diversity

While the administration and oversight of education largely falls under state and local purview as articulated in most state constitutions, the federal government plays a limited, but important oversight and enforcement role, particularly in the area of civil rights. Further, the Federal government has a significant number of tools, resources and obligations at its disposal to support state and local efforts to increase school diversity. These include investigative and oversight

responsibilities. Specifically, the Office for Civil Rights (OCR) within the U.S. Department of Education can use its investigative, litigation, and regulatory powers, as well as the provision of technical assistance and guidance to states, districts, and schools, to help ensure compliance with desegregation orders and to help states and districts implement and sustain efforts to promote diverse schools. OCR can also respond to requests for information and updates and administers the Civil Rights Data Collection (CRDC), featuring key measures of educational equity. This critical data can be used to target interventions to support school diversity.

Further, the Department of Justice's Civil Rights Division's Educational Opportunities Section has enforcement power—particularly to enforce Titles IV and VI of the Civil Rights Act of 1964 as well as other significant federal civil rights and education laws, including the Equal Educational Opportunities Act of 1974, the Americans with Disabilities Act of 1972, section 504 of the Rehabilitation Act, and Title IX of the Education Amendments Act of 1972.¹² The Section manages a docket of more than 150 desegregation cases to which it remains a party.¹³

Administrations can also issue nonbinding federal guidance. Guidance can include research-based strategies, activities, and approaches and other resources for states and districts to use when implementing federal law.

In addition to actions by federal agencies, Congress has a number of tools and resources that it can use to support state and local efforts. Historically Congress has enacted laws creating federal enforcement measures to ensure access to educational opportunities, including the Civil Rights Act of 1964 (its sections IV and VI focus on specific levers to advance school desegregation efforts), the 1965 Elementary and Secondary Education Act (ESEA) passed as part of President Johnson's "War on Poverty," and the Emergency School Aid Act that funded desegregation efforts. The Federal government has also promoted the development of magnet schools and other strategies to improve urban and poor rural schools.

Since the passage of *Brown*, the extent to which different administrations and Congress have taken advantage of these opportunities has varied dramatically. Whereas considerable progress was made in the decades following *Brown*, decades of gradual federal retreat from support of school desegregation efforts has resulted in a return to racially segregated schools. A 2016 report published by the Government Accountability Office (GAO) found that a growing percentage of k–12 public schools in the nation are hypersegregated, with student populations that are largely African American or Latino/a and have large numbers of students from low-income families.¹⁴ About half as many African American students are in integrated schools as was true in the late 1980s.¹⁵ There is much to be learned from the 65 years since *Brown*, and if its promise is to be fulfilled, we must recommit to the actions and investment that have been shown to increase school diversity and improve outcomes for all students.

Learning from History

The Passage of Brown and Initial Resistance

As this hearing’s title recognizes, this year marks the sixty-fifth commemoration of the U.S. Supreme Court’s ruling in the case of *Brown v. Board of Education*, in which the Court concluded, “In the field of public education, the doctrine of ‘separate but equal’ has no place.”¹⁶

While *Brown* signaled the end of *de jure* (legal) segregation, it has been much harder to eliminate the insidious *de facto* segregation that still characterizes too many of our nation’s public schools—a reality fueled by discriminatory practices that have resulted in segregated housing patterns, inequitable distribution of school resources, and the tacit acceptance of educational inequality.

Ten years of massive resistance followed the *Brown* ruling, resulting in little to no progress in desegregating public schools.¹⁷ The following year’s *Brown II* decision, which urged states to desegregate public schools with “all deliberate speed,” did little to advance desegregation in the ensuing years. In 1956, “101 Southern congressmen and senators signed a ‘Southern Manifesto,’ decrying the Supreme Court’s decision and pledging ‘to use all lawful means to bring about [its] reversal.’”¹⁸

In response, Congress’s passage of the Civil Rights Act of 1957, which created the U.S. Commission on Civil Rights and granted it investigatory and advisory functions, and its creation of the Civil Rights Division within the Department of Justice, helped to lay the foundation for a federal infrastructure that would provide support, oversight, aid, and accountability in efforts to dismantle the Jim Crow education system.

In Virginia, the Prince Edward County School District opted to shutter its public schools for 5 years after the state’s school-closing law—a pushback to desegregation orders—was ruled unconstitutional in 1959. In response, the Virginia General Assembly repealed the compulsory school attendance law and made operation of the public schools a local option rather than comply with orders to desegregate, devastating the educational futures of many children.

Federal Investment and Support in Response to Ongoing Integration Resistance

It was not until 1964, when the U.S. Supreme Court outlawed Virginia’s tuition grants to private education, that the Prince Edward County public schools opened on an integrated basis.¹⁹ By then, federal mechanisms were in place to ensure oversight and compliance with federal desegregation orders.

During that same year, Congress’s passage of the 1964 Civil Rights Act created key mechanisms for securing state compliance with desegregation efforts. The law’s Title IV authorized the Attorney General to initiate litigation against noncompliant school districts and states to enforce orders to desegregate and its Title VI prohibited discrimination based on race, color, and national origin in federally assisted programs.²⁰ The law’s mechanism for withholding federal funds from noncompliant school districts added an economic incentive for districts to comply with

desegregation orders. Equipped with these legislative levers, the federal government brought over 600 administrative proceedings against noncomplying school districts and ordered more than 200 fund terminations against noncompliant districts under Title VI.²¹

Building on these efforts, during the 1960s and 1970s, many desegregation and school finance reform efforts were launched, and the Great Society's War on Poverty increased investments in urban and poor rural schools. At that time, the country made substantial gains in equalizing both educational inputs and outcomes.

Congress enacted the Elementary and Secondary Assistance Act of 1965, which supported desegregation, the development of magnet schools, and other strategies to improve urban and poor rural schools. The law targeted resources to communities with the most need, recognizing that where a child grows up should not determine where he or she ends up. Employment and welfare supports reduced childhood poverty to levels about 60% of what they are today²² and greatly improved children's access to health care.

These efforts to level the playing field for children were supported by intensive investments in bringing and keeping talented individuals in teaching, improving teacher education, and investing in research and development.

In the early 1970s, the Emergency School Assistance Program (ESAP) was established and initiated with funds administered by the then Commissioner of Education, receiving about \$171 million over its two year existence.²³ Although the ESAP was then dismantled, in 1972, Congress passed the Emergency School Aid Act, which targeted federal aid to "encourage the voluntary reduction, elimination, or prevention of minority-group isolation."²⁴ To participate, districts had to prove that they had eliminated segregation, including having no racially identifiable school facilities, no discrimination in teacher or student assignment, no segregated extracurricular activities, and no "second generation" segregation, such as in-school tracking of students of color in lower-level courses.²⁵ In 1974, the overall program made \$250 million available, with about 250 districts receiving funds.²⁶

In 1976, the law was amended to include grants to support the planning and implementation of magnet programs as a school desegregation strategy. The law also provided grants to nonprofit organizations to support school desegregation programs and reduce racial isolation.

These investments paid off in measurable ways. By the mid-1970s, urban schools spent as much as suburban schools and paid their teachers as well; perennial teacher shortages had nearly ended; and gaps in educational attainment had closed substantially. Federally funded curriculum investments transformed teaching in many schools. Innovative schools flourished in many cities. Financial aid for higher education was sharply increased, especially for need-based scholarships and loans. For a brief period in the mid-1970s, Black and Latino/a students attended college at the same rate as Whites, the only time this has occurred before or since.

Improvements in educational achievement for students of color followed. In reading, large gains in Black students' performance in the 1970s and early 1980s reduced the achievement gap considerably, cutting it by more than half for 13-year-olds (from 39 points to 18 points on the

National Assessment of Educational Progress) between 1971 and 1988. (See Figure 1.) The achievement gap in mathematics also narrowed by 20 points (about one third) over the same general period. (See Figure 2.)

Figure 1

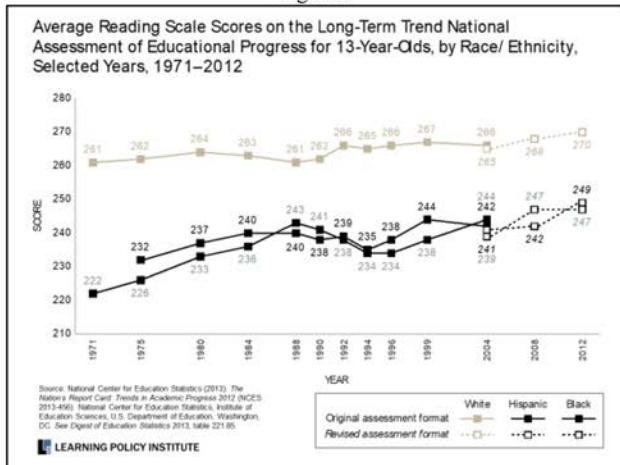
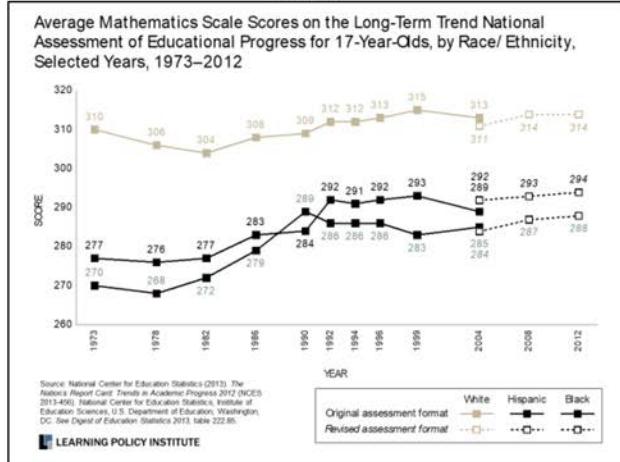


Figure 2



Despite these benefits, and after significant progress during the 1960s and 1970s tied to federal legal action and investments in desegregation, the Reagan Administration discontinued most investments in school desegregation as well as the Great Society investments of that era, which have never been fully reestablished in the years since.

Federal Retrenchment and Its Impact on School Diversity

The Nixon Administration shifted the position of the Department of Justice from proactive enforcement of desegregation orders to a more passive acceptance of noncompliance and even attack of desegregation rulings. The Administration ended the federal government's cooperation with private advocacy groups, like the NAACP Legal Defense and Educational Fund, and Nixon's judicial appointments produced the first divided desegregation decisions since *Brown*. The Nixon Administration also supported passage of the Equal Educational Opportunities Act of 1974, which advanced a federal policy favoring neighborhood schools and "rejecting racial balance as the goal of school desegregation."²⁷

Congress included language in the ESAA reauthorization that banned the use of federal funds for busing. In addition, between 1973 and 1976, funding for the program declined to only \$7.5 million in 1977.²⁸

However, the Carter Administration increased the program funding by \$36.3 million in 1980,²⁹ and by 1981, ESAA provided school systems with \$149.2 million to support desegregation efforts.³⁰ Overall, between fiscal years 1973 and 1981, \$2.2 billion was provided to desegregating schools under ESAA, including for staff training, additional staff, curriculum development, community relations activities, and the financing of magnet schools.³¹

The ESAA program ended in 1981 when President Reagan signed the Omnibus Budget Reconciliation Act of 1981, which cut federal funding of desegregation and other federal programs, including the Emergency School Aid Act of 1972.³² However, in 1984, the Elementary and Secondary Education Act provided funding to support school diversity under the Magnet Schools Assistance Program. The Reagan administration provided support in 1985 to provide grants to eligible local educational agencies to establish and operate magnet schools under court-ordered or federally approved voluntary desegregation plans.³³ The law noted that "Magnet schools are a significant part of the nation's effort to achieve voluntary desegregation in our nation's schools."³⁴

Reductions in funding accompanied the consolidation of federal education programs into block grants to state education agencies under Chapter 2 of the Education Consolidation and Improvement Act. During the 1980s, the Administration and Congress cut federal aid to schools from 12% to 6% of a shrinking total. Meanwhile, childhood poverty rates, homelessness, and lack of access to health care grew alongside cuts in other federal programs that had supported housing subsidies, health care, and child welfare.

The impact of the cuts was immediate. A *New York Times* article noted that federal aid for desegregation in Buffalo, New York, for example, had been cut from \$7 million to \$1 million between 1981 and 1982, and that the city was laying off 325 of the 385 employees who

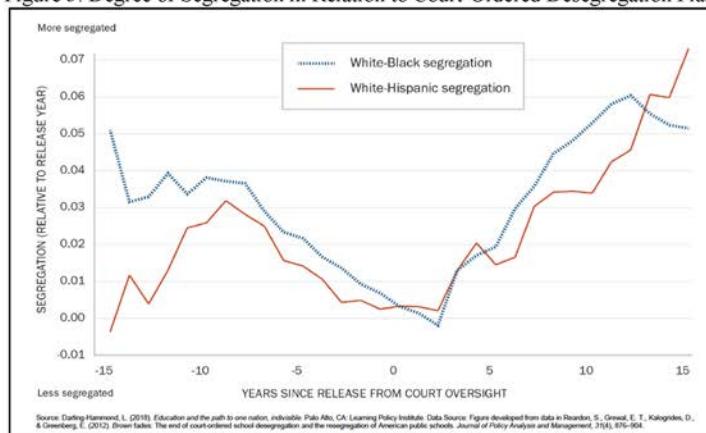
worked exclusively on desegregation.³⁵ According to one report, the ambiguity of the block grants undermined school desegregation efforts, with a school official noting, “The brevity of the statute, the limited scope of the regulations, the nonbinding characteristics of federal guidance, the extension of rule-making authority to state education agencies have resulted in confusion, contradiction, and a general lack of clarity at the district level.”³⁶ Confusion and ambiguity about how to spend the aid resulted in some districts using funds for books, computers, and other materials instead of desegregation efforts.³⁷

The Reagan Administration also ushered in a new era in which the Department of Justice reversed its position in many school desegregation cases, siding with school districts who wanted to lift desegregation orders and against community advocacy groups who wanted the orders to remain in place. Although federal court oversight has been helpful in ensuring systemwide compliance with desegregation efforts – including adoption of nondiscriminatory discipline codes and access to more advanced courses for students of color – in recent decades many federal courts have terminated oversight of desegregation orders. This has often occurred not because districts have achieved successful desegregation but because continuing efforts to desegregate schools would require resources and will that are in short supply.³⁸

These shifts in Department of Justice and judicial oversight in the decades following *Brown* reversed progress in school desegregation efforts. Although some federal administrations have encouraged and funded voluntary state and local action to desegregate public schools, others have eliminated funds and stepped back from enforcing court desegregation orders or pushing for resolution in open desegregation cases.³⁹

The degree of segregation declined significantly in districts under court oversight, but it rapidly climbed to even higher levels when court oversight was terminated.⁴⁰ This has resulted in increasing trends of resegregation in schools. (See Figure 3.)

Figure 3: Degree of Segregation in Relation to Court-Ordered Desegregation Plans



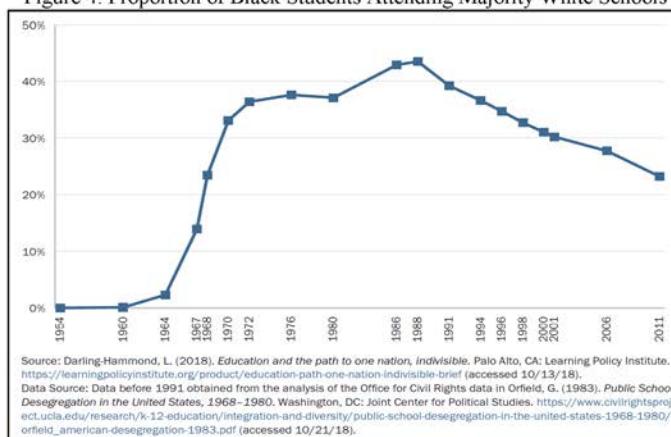
By 1991, stark differences had reemerged between segregated urban schools and their suburban counterparts, which generally spent twice as much. Achievement gaps began to grow once again, and while there have been small gains in the 30 years since, the gaps in achievement between Black and White students are larger today than they were then. (See previous Figures 1 and 2.) For example, Black 13-year-olds have gained only 4 points in reading since 1988, whereas White students have gained 9 points, leaving a gap that is nearly 30% larger today than it was 30 years ago. In mathematics, Black 13-year-olds actually score a point lower than they did when the gap was smallest in 1990, while White same-age students now score 5 points higher, increasing the gap in that subject by 30% as well.

The consequences of these diverging trends are that students are attending increasingly segregated schools and losing the benefits of school diversity while achievement gaps have grown. Ironically, had the rate of progress achieved in the 1970s and early 1980s continued, the achievement gap would have been fully closed by the beginning of the 21st century. That did not occur. Further, despite a single-minded focus on raising achievement and closing gaps during the No Child Left Behind era (from 2002 until 2015), many states focused on testing without investing in the resources needed to close the opportunity gap and achieve higher standards.

Federal Efforts to Address Growing Segregation

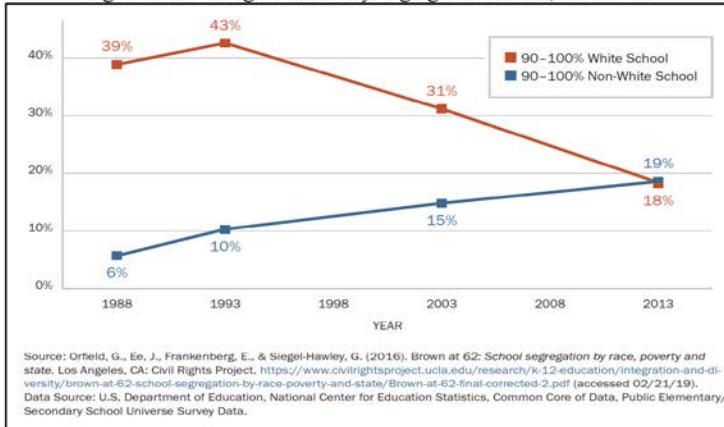
By the beginning of the Obama Administration, the gains made in the 1960s and 1970s had reversed course and schools were becoming increasingly segregated. In 2011, approximately 40% of African American students nationwide—and more than 50% in the Northeast—attended intensely segregated schools (in which students of color constitute 90% or more of the total). Meanwhile, only about 20% of African American students attended majority-White schools—less than half as many as in 1988, when about 44% did so, as illustrated in Figure 4.⁴¹ In 2014, 79% of Black students were in majority minority schools.⁴²

Figure 4: Proportion of Black Students Attending Majority White Schools



Further, since 1988, the share of intensely segregated non-White schools (defined as those schools with only 0–10% White students) had more than tripled, increasing from 6% to 19% of all public schools. (See Figure 5.) At the same time, even as resegregation was taking hold, there was also a sharp decline in the percentage of segregated White schools with 10% or fewer non-White students, dropping from 39% to 18%.

Figure 5. Percentage of Intensely Segregated Schools, 1988-2013



Recognizing the pushback desegregation efforts were facing, the Obama Administration took a number of steps to support state and local efforts to create more diverse schools. For example, when the Supreme Court issued its decision in *Parents Involved in Community Schools v. Seattle School District No. 1*, there was confusion about what districts could legally do to promote racial diversity in schools. As a result, the Departments of Justice and Education issued voluntary guidance to help districts achieve diversity and avoid racial isolation in ways consistent with existing law.⁴³ In line with the Court's ruling, the diversity guidance outlined approaches that do not rely on the race of individual students (also called race-neutral approaches) and approaches that rely on individual racial classification only when narrowly tailored to meet a compelling interest.⁴⁴ Instead, it offered specific, evidence-based approaches that school districts can use:

- *Making changes to school and program siting decisions.* This approach includes making decisions about the siting of schools and special programs, such as noncompetitive magnet schools or specialized academic, athletic, or extracurricular programs, to help achieve diversity or avoid racial isolation.⁴⁵
- *Making changes to grade realignment and feeder patterns.* Under this race-neutral approach, school districts examine available data to identify disparities and design school grade alignment or feeder patterns to help mitigate disparities.
- *Making changes to school zoning decisions.* Under this approach, school districts assign students to schools and make changes to school attendance zones which are composed of

students from geographically defined areas.⁴⁶ This approach is one of the most commonly used to promote socioeconomic integration.⁴⁷

- *Allowing for open enrollment decisions.* Under open enrollment programs, parents are allowed to choose or rank by preference schools within or across school districts.⁴⁸ Currently, 22 states allow students to attend a non-assigned school within their district (intradistrict choice), and 25 states allow students to attend schools outside of their neighborhood district (interdistrict choice).⁴⁹
- *Increasing admission to competitive schools and programs.* Schools seeking to promote racial diversity can design admissions processes with that goal in mind. One proposed example is a district giving special consideration in admissions to students from neighborhoods selected specifically because of their racial composition and other factors.
- *Supporting inter- and intradistrict transfers.* This allows students to move between schools with the goals of achieving racial diversity and reduction of racial isolation.⁵⁰ Due to racially segregated residential patterns, interdistrict programs are typically more likely to reduce racially isolated schools because “more than 80% of racial/ethnic segregation in U.S. public schools occurs between rather than within school districts, and income groups are also increasingly geographically divided.”⁵¹

In addition, although never funded, the Obama Administration proposed the Stronger Together Grants program. Funding under this program would have been used to encourage the development of innovative, ambitious plans to increase socioeconomic diversity through voluntary, community-supported strategies and expand existing efforts in states and communities. The Administration requested \$120 million in federal funds to support state and local efforts.

Current Retrenchment in Integration Efforts

The Trump administration rescinded the Obama Administration guidance on school diversity in July 2018. Although this action does not change existing civil rights laws, it can serve to hinder the speed and effectiveness of implementation of these laws. Without this guidance, states and districts do not have a readily available set of resources grounded in research and may be uncertain about whether their actions, practices, and policies are compliant with federal law as interpreted by the courts.

The Administration’s efforts to roll back civil rights protections extend beyond school integration efforts and are likely to result in further challenges to realizing the promise of *Brown*.

In December 2018, the Trump Administration rescinded nonbinding guidance on civil rights and school discipline issued by the U.S. Department of Education and the U.S. Department of Justice that described how schools can meet their legal obligations under federal law to administer student discipline without discriminating against students on the basis of race, color, or national origin. This action was taken despite the well-documented disparities in the application of school discipline policies and overuse of exclusionary disciplinary practices with historically underserved students.⁵²

Guidance on the treatment of transgender students issued by the U.S. Department of Education and the U.S. Department of Justice was also rescinded by the Trump Administration in February 2017, one month after the President took office. This nonbinding guidance asked schools to treat transgender students according to their gender identity, including with respect to names and pronouns, restrooms, and dress codes. Research shows that transgender students experience high rates of bullying by peers and adults, and the stress of harassment and discrimination, including implementation of policies that do not treat students according to their gender identity, can lead to lower attendance and grades as well as depression, anxiety, and suicidality.⁵³

The Administration attempted to delay implementation of Individuals with Disabilities Act regulations issued by the U.S. Department of Education “aimed at promoting equity by targeting widespread disparities in the treatment of students of color with disabilities” and at addressing numerous issues related to significant disproportionality in the “identification, placement, and discipline of students with disabilities based on race or ethnicity.” This effort to delay implementation of the regulations was recently struck down by the courts.

The Trump administration is also considering directing the Department of Education and senior civil rights officials to examine how decades-old “disparate impact” regulations might be changed or removed, such that only cases that are proven to be motivated by discriminatory intent, regardless of discriminatory impact, will need to be addressed.⁵⁴ Such a change would impact the standards used in investigations of claims of discrimination, reducing the likelihood that even egregious cases will be investigated further.

This Administration, and other previous administrations, has failed to address the increasing residential segregation intentionally imposed upon African Americans through discriminatory housing practices, including redlining that relegated African American families to specific communities or geographic regions. The role of the Federal Housing Agency and other related agencies is critically important in these efforts.

Each of these actions makes the promise of *Brown* that much harder to fulfill. Efforts to create diverse, inclusive, and high-quality schools require a coordinated and comprehensive set of protections, strategies, activities, and resources across federal agencies

States and Districts Leading the Way to Increasing School Diversity

Despite a federal retreat from supporting state and local school diversity efforts, a number of school districts are still implementing and advancing innovative desegregation programs, often using the practices outlined in the Obama-era guidance.

Diversity by Design in San Antonio, Texas

In the deeply segregated city of San Antonio, Texas, the San Antonio Independent School District is leading the way in promoting school integration. The district is one of 14 in the city, and most of its students (90%) are categorized as economically disadvantaged. The district has implemented a controlled choice program—also known as Diversity by Design. The program is designed to ensure that parents learn about education options that they might not be aware of,

from among a range of instructional models such as Montessori, college preparatory, and expeditionary learning. Administrators then consider parental choice and combine parental preference with data to ensure school diversity is achieved. The program further fosters diversity with two other approaches: (1) half the seats for in-district charter schools are reserved for students from economically disadvantaged backgrounds and the other half are open to all income levels, and (2) the “priority radii” approach prioritizes seats for students from specific geographic areas to ensure socioeconomic diversity. Essential components of school diversity that the programs considers include location; school design; and transportation.

Magnet Schools in Hartford, Connecticut

In 1989, litigation was filed on behalf of Elizabeth Horton Sheff, her son Milo, and other families alleging that Connecticut had failed to provide students in the majority–African American Hartford area with racially integrated education. Hartford not only was a racially isolated, majority–African American area, but also was characterized by concentrated poverty. The Connecticut Supreme Court ruled that the racial, ethnic, and economic isolation in Hartford schools violated the state’s constitutional obligation to provide all children with racially integrated and substantially equal educational opportunities. In response to the court’s ruling, Connecticut established a voluntary integration Open Choice program and designed desegregated educational opportunities, including a magnet school program open to students across districts in the Hartford area.

A 2013 analysis of the program found that students participating in the Magnet and Open Choice programs were outperforming Hartford students attending other public schools and performed well in comparison with the state’s averages for all students. The analysis also found that, as a result of the program, more than 45% of Hartford’s African American and Latino/a k–12 students attended schools in reduced-isolation settings. Hartford’s desegregation efforts have faced considerable challenges, including ongoing waiting lists to attend area magnet schools, reluctance from some legislators to continue to fund the magnet program, legal challenges and rising housing costs and zoning laws that hinder efforts to provide students from low-income families and students of color access to high-performing, high-quality schools. However, the program continues with state and local funds, and there is still a commitment to find and maintain effective strategies that promote integration and reduce racial isolation.

Interdistrict Funding and Desegregation Programs in Omaha, Nebraska

The experiment with interdistrict student assignment plans in Omaha, Nebraska, represents another community’s concerted effort to provide all students in a metropolitan region with a quality education. The metropolitan area’s roughly 110,000 students are served by a jigsaw of 11 school districts across two counties.⁵⁵ Before 2007 legislative action that created a “learning community” between the Omaha Public Schools and 10 of its surrounding school districts, there was a resource discrepancy between the city of Omaha and its largest school district. The “Raikes Plan” established a regional governance system—the Learning Community Coordinating Council (LCCC)—for the 11 Omaha metro-area districts and granted it authority to distribute a common levy.⁵⁶ The legislation also included a two-part economic “diversity plan” for the Learning Community: The LCCC was tasked with creating Elementary Learning Centers

to support high-poverty districts and establishing a choice-based mobility program to deconcentrate high-poverty schools. The initial Open Enrollment plan funded districts to establish “focus” or magnet schools along with transportation to increase diversity, enrolling thousands of students each year and demonstrating wide appeal for many parents.

Three years of LCCC evaluations compared the performance of Open Enrollment students on 3rd- to 8th-grade reading and mathematics assessments to their resident counterparts.⁵⁷ In low-poverty schools, free and reduced-price lunch-eligible Open Enrollment students scored dramatically higher than peers in high-poverty schools in both reading and mathematics in all tested grades.⁵⁸

Choice Plans in Louisville-Jefferson County, Kentucky

In Louisville–Jefferson County, Kentucky, early court orders mandated busing between the mostly African American city district and the mostly White suburban areas of the county. By the 1990s, Louisville–Jefferson County was the most integrated school district in the nation. The plan has evolved into a choice program in which parents rank their school preferences, and the district weighs factors such as socioeconomic status and educational level when determining school assignment to achieve diversity across schools. Parents can also choose special programs such as magnet programs or language immersion programs. The county’s actions represent sustained voluntary integration efforts using many of the tools detailed in the guidance.

Recommendations for Federal Support of Integration

The federal government can support and expand these types of state and local efforts to increase school diversity in many ways. Among the actions it could take are the following:

1. *Establish and provide funding for federal grant programs that support state and local efforts to create more diverse schools.*

The federal government can promote school diversity efforts like those described above through a number of policies. For example, it could provide funding to educational agencies to support voluntary, community-driven and designed efforts to improve diversity or eliminate racial or socioeconomic isolation in schools and close opportunity and achievement gaps. The federal government could also fund state efforts to increase diversity, including through studying current policies related to school diversity, revising school boundaries, expanding innovative programs to attract diverse students from outside a local area, and hiring and training diverse educators. Many of these types of policies are included in the Strength in Diversity Act, which would create a \$120 million federal grant program to support state and local efforts.

2. *Eliminate the legislative prohibition against the use of federal funds for busing.*

Another legislative opportunity for supporting states and school districts to facilitate diversity programs is to clear the way for use of federal funds to support transportation, such as interdistrict magnet school or transfer programs, that attract students from outside the local area. Last year, successful advocacy efforts resulted in the removal of language prohibiting federal

funds for busing in sections 301 and 302 of annual federal appropriations bills.⁵⁹ However language remains in Section 426 of the General Education Provisions Act prohibiting federal funding for busing, effectively undermining district efforts to implement innovative voluntary programs to promote school diversity. Eliminating this legislative prohibition on federal funding for busing would remove a constraint on districts so that they can access federal funds for transportation to support school diversity efforts.

3. Increase funding under ESSA in support of integration and school diversity, including for magnet schools.

Funding under Title I of the Every Student Succeeds Act (ESSA), which is focused on funding programs for schools serving students living in concentrated poverty, can support desegregation efforts.⁶⁰ The law requires states to set aside 7% of Title I funds to implement evidence-based interventions for low-performing schools. These schools can use some of the funding under the 7% set-aside to support integration and school diversity via magnet schools. The benefits of integrated education, described above, are well established and meet the evidence-based criteria for support under ESSA.⁶¹ Local districts are advancing school integration strategies: in 2016, 83 districts plus 9 charter schools or networks were advancing programs to create more diverse classrooms for up to a total of 4 million students.⁶² Significant investments in Title I, which would also thereby increase funding available under the 7% set-aside, could support state and local efforts, particularly for low-performing schools, to increase student diversity.

In addition, Title IV of ESSA provides for magnet schools assistance. Magnet schools provide options for students to select school environments that meet their needs and have been explicitly designed to bring about voluntary desegregation while fostering innovative school models. The “magnets” that draw students are programs that appeal to various academic and career interests. They focus on specific subjects, follow specific themes, or operate according to certain models. Magnets are found at the elementary, middle, and high school levels and are designed to attract students from diverse social, economic, ethnic, and racial backgrounds.⁶³

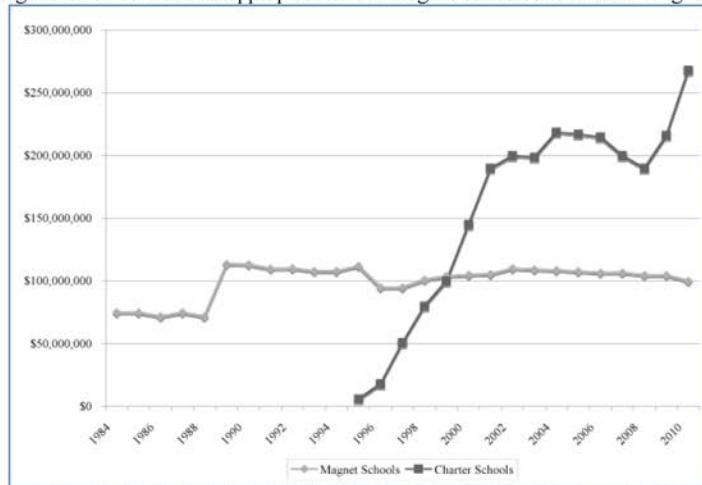
The U.S. Department of Education has provided federal support for magnet schools since 1976. First as grants under ESAA and then, starting in 1984, under the Magnet Schools Assistance Program (MSAP), these grants assist in the desegregation of public schools by supporting the elimination, reduction, and prevention of racial isolation. The MSAP supports innovative educational methods and practices that expose students to challenging curriculum while increasing diversity.⁶⁴ Today, there are roughly 3,400 magnet schools nationwide across more than 600 school districts, enrolling 2.6 million students.⁶⁵

Most magnet schools are established by school districts, while others are founded on a statewide basis. Syntheses of the research on magnet schools have found positive effects on achievement, graduation rates, student motivation and satisfaction with school, teacher motivation and morale, parent satisfaction, intergroup relationships, and integration.⁶⁶ These findings cut across large-scale national studies,⁶⁷ studies of statewide programs,⁶⁸ and rigorous local analyses.⁶⁹

Despite this success, funding for magnet schools has not kept pace with inflation or the growth in magnet schools, nor has it kept pace with other federal investments in education. In 1984, the

MSAP was funded at \$75 million, and in fiscal year 2019, the federal government appropriated just \$107 million for magnet schools, compared with \$440 million for charter schools.⁷⁰ Further, although federal investments in charter schools have significantly increased over the last several decades, investments in magnets schools have remained flat. (See Figure 6.)

Figure 6: Annual Federal Appropriations for Magnet Schools and Charter Programs



Source: Frankenberg, E., & Siegel-Hawley, G. (2011). Choosing Diversity: School Choice and Racial Integration in the Age of Obama. *Stanford Journal on Civil Rights and Civil Liberties*, 6(2), 219-252.

To support more diverse learning environments and reverse the trend toward resegregation, the federal government could significantly increase investment in magnet schools, at a minimum to the same level as funding for charter schools, while encouraging more diversity in other schools, as described below.

4. Encourage greater diversity in charter schools.

While there is a group of charter schools working to enhance diversity, as a sector, charters have been more segregated than other public schools in their communities. Data from the UCLA Civil Rights Project show that:

Charter school enrollment patterns display high levels of minority segregation, trends that are particularly severe for black students. While segregation for blacks among all public schools has been increasing for nearly two decades, black students in charter schools are far more likely than their traditional public school counterparts to be educated in intensely segregated settings.... Patterns in the West and in a few areas in the South, the two most racially diverse regions of the country, also suggest that charters serve as havens for white flight from public schools.⁷¹

Given that charter schools in most states are even more segregated than district-run public schools—and that some have been established to enable white flight and prevent the admission of students of color—the federal government has a duty, at least with respect to the allocation of federal charter school funds, to look to states as well as schools to create expectations regarding fair, unbiased approaches to recruitment and retention of students. The Century Foundation has identified a set of policies that states could adopt to discourage racial segregation and encourage diversity in charter schools.⁷²

The use of federal funds to support schools that result in more segregated learning environments should be a concern. Federal grant program requirements should be structured in ways that target resources to efforts and policies that further the goal of integration. For example, to receive federal funds, states might be required to follow the lead of states like Massachusetts that prevent charter schools from imposing admissions requirements, requiring that they admit students by lottery and that they serve special education students and English learners. In Massachusetts, charter school recruitment and retention plans are reviewed and approved, as are enrollment and attrition data, and other steps are taken to verify that students with high levels of need are provided with “equal and unfettered access to each school’s application and enrollment process.”⁷³

5. Ensure that states enforce ESSA’s integrative student assignment policies and comparability provisions for ensuring equally qualified teachers to schools serving different populations of students.

ESSA requires that districts minimize segregation by race/ethnicity, language, economic disadvantage, and disability status in assigning students to schools and classrooms. States are expected to monitor these practices and ascertain if they are in fact minimizing segregation. The law also requires that states develop policies to balance the qualifications of teachers across schools serving more and less advantaged students, but this aspect of the law has been weakly enforced, and wide disparities continue. If the federal government were to take these requirements seriously and include oversight of these provisions in their monitoring of states, greater attention and progress would likely occur.

6. Encourage states to report on opportunity indicators in district and school report cards.

In addition to monitoring the requirement that districts minimize segregation in student assignment, indicators of diversity could join other equity indicators in State Report Cards. ESSA includes expectations for reporting of these indicators, but it does not currently articulate an expectation that these indicators should be in a readily accessible location, such as a State Report Card, where both the public and state officials can monitor local progress. These indicators should include, in addition to school academic progress, information that reflects the dollars spent; degree of diversity in student assignment (relative to the population in the district); availability of well-qualified teachers; strong curriculum opportunities; books, materials, and equipment (such as science labs and computers); and adequate facilities available to students. Evaluating school diversity efforts should be within efforts to evaluate progress on opportunity measures in state plans and evaluations under the law, including those that require states to meet a set of opportunity-to-learn standards for schools identified as failing.

7. *Re-establish the Department of Education's guidance on school diversity to inform voluntary desegregation efforts.*

A straightforward means to support integration would be to re-establish the evidence-based strategies and resources included in the Obama diversity guidance, which provided ideas, clarifications, and support for state and local efforts to create more diverse schools.

Conclusion

In order to reverse the trends of resegregation in our nation's public schools, we must reinvigorate the federal commitment to school diversity. This can include legislative support for state and local diversity efforts—using existing federal legislative mechanisms and support for new legislation—as well as strong federal oversight, enforcement, and action.

Sixty-five years after the highest court declared that “separate but equal” has no place in our nation’s public school system, we still have considerable work to do to. Although public school enrollment today is “more racially and ethnically diverse than ever,” this diversity has yet to be reflected in our schools and classrooms.⁷⁴

Realizing *Brown*’s promise does not have to remain elusive. Tremendous progress was made when the federal government focused on supporting gains in states and localities. We can once again make progress collectively with cooperation and collaboration between the federal government, states, school districts, and education stakeholders. That requires that all actors—including the federal government—persevere and remain faithful to fulfilling *Brown*’s promise.

Thank you for your focus on this issue and for the opportunity to discuss and share ideas for a path forward. I am happy to answer any questions that members of the Committee may have.

Endnotes

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Chairman SCOTT. Thank you.
Ms. White.

TESTIMONY OF MARITZA WHITE, PARENT ADVOCATE

Ms. WHITE. It is most fitting that I would be charged with examining the fulfillment of Brown v. Board of Education, now on its 65th anniversary, as this is also the year of my 65th birthday.

I was born 3 months after the Brown v. Board Supreme Court decision, which stated that separate educational facilities are inherently unequal. The decision, however, did not stipulate or suggest how this interracial segregation would be implemented. States were only ordered to desegregate with all deliberate speed.

This is the era in which I was born. Inherent in the Court's decision was the intention that all children through desegregation would have equal opportunity to quality education. Was the mandate fulfilled or was this a platitude of well meaning words? Did desegregation produce the achievements that were inherently promised? Through my own life experience I would soon find out.

I speak to you today not as a learned scientist regarding the accumulated data on this subject, but instead I speak to you from the heart and experiences of a parent who has had the opportunity and sometimes distress of finding ways to accomplish the major responsibility of my life, which is to assist my son, Michael, to succeed in the world. I didn't have all the data, nor did I have preconceived ideas about what was best for Michael. I, as a parent, had to be empowered to make the best decision for my son.

Although the initial step to desegregate schools may have seemed successful, the desired outcomes were not obtained. Although Black schools achieved some tangible improvements, they were not to the extent of their White counterparts. And with the Blacks being marginalized into all Black neighborhoods, Black students didn't have the real educational opportunities that their White counterparts had.

Two years after Michael was born we were in a tragic car accident that left my husband unable to work. With a constrained budget we had to look for alternative for schooling for Michael. We recognized that education was one of the ways, if not the only way, to escape the ravages of the inner city. Brown v. Board intended to empower parents to make the best educational choice for their children. This intended parental empowerment was not real if my child had no opportunity to attend the best or better school. For our family, that changed 50 years after the Brown v. Board decision in 2004 with a proactive program. The D.C. Opportunity Scholarship Program, was implemented. It allowed our family to choose among public, charter, and private schools for our son to attend. We were open to exploring all options.

My research indicated that school choice had led to improving all three types of school through competition that required all three school types to increase innovative programming, increase school accountability, increases in parental engagement, and providing options for low income students of color.

Michael attended public school from Head Start through first grade. We applied for that D.C. Opportunity Scholarship and re-

ceived it. This opened our options, so Michael transferred to NHB, which was a private school, for the second grade.

Michael was not able to return to NHB for the third grade because the class was full. And although I was sad, we had no problem with Michael returning to public school. Michael was re-enrolled in a public school, but several weeks into the school year Michael was bullied at school and was in a fight with three other boys, resulting with him having a bloody lip and other lacerations.

I was less concerned about Michael's bloody lip than I was concerned about the school's poor handling of the situation. I was never advised about the fight by the school. The school's excuses were not good enough for me. Michael needed to be in a safe place and this public school was not it. So I vowed that he would never return to an unsafe school. I called D.C. OSP and they advised that the scholarship was still available to Michael.

After a few days of researching our alternatives we found Cornerstone Schools of Washington, D.C. I walked in and it was a totally different environment than the public school that he had attended. The class size was half the size of that of the public school, the students appeared eager and ready to learn, the academic training was rigorous, and oh yes, he felt safe, and I felt safe for him.

Michael was a student at Cornerstone from third to seventh grade. We continually evaluated our educational choices and in the eighth grade Michael transferred to a charter school. He returned to Cornerstone in the 9th grade and graduated as salutatorian in 2016. He received several scholarships and matriculated at the University of Maryland, College Park.

Our family is able to speak to the effectiveness of school choice because we have been privileged to have experienced public, private, and charter schools.

Through our varied educational experiences we can truly say that education is not a one size fits all experience. We can truly say that our family has, and other families have the right to decide throughout their child's education what is best for their child to succeed. But without school choice many families do not have the option for their child to receive the equal education promise.

I shudder to think of where our son, Michael, would be if he did not have school choice available to him. No, indeed, Brown v. Board of Education mandate has not been fulfilled. But school choice is a step in the right direction in reaching the mandated outcome.

Today, Michael White is a successful example of how school choice in all three arenas of public, private, and charter school can be utilized for the successful education of low income statements.

To close, middle and upper income students have choice already by virtue of their income and social status. School choice allows low income families to participate in the American dream afforded by equal education.

Thank you.

[The statement of Ms. White follows:]

Testimony of Loisa Maritza White, B.S., Organizational Management

Parent Advocate

Submitted for the Record

United States House Committee on Education and Labor

Hearing: "Brown v. Board of Education at 65: A Promise Unfulfilled"

April 30, 2019

It is most fitting that I would be charged with examining the fulfillment of The Brown v. Board of Education at age 65, as this is also the year of my 65th birthday. I was born three months after the Brown v. Board decision was handed down. The plaintiffs in *Brown* asserted that the system of *racial separation*, while masquerading as providing separate but equal treatment of both white and black Americans, instead perpetuated inferior accommodations, services, and treatment for black Americans.¹ The District court had already found that segregation in public education has a detrimental effect on negro children, but denied relief on the ground that the negro and white schools in Topeka were substantially equal with respect to buildings, transportation, curricula, and qualifications of teachers.² In the Delaware case the district court judge in *Gebhart* ordered that the black students be admitted to the white high school due to the substantial harm of segregation and the differences that made the separate schools unequal.³ The landmark Brown v. Board of Education decision of the U.S. Supreme Court ruled unanimously that American state laws "establishing racial segregation in public schools are unconstitutional, even if the segregated schools are otherwise equal in quality". The Brown v. Board of Education Supreme Court decision stated that "separate educational facilities are inherently unequal" and therefore violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.⁴ The decision, however, did not stipulate or suggest how this end to racial segregation would be implemented. States were only ordered to desegregate "with all deliberate speed".

This is the era in which I was born. The court's conclusion was thus, "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."⁵

Was this mandate fulfilled or was this a platitude of well-meaning words? Did desegregation produce the achievements that were inherently promised? Through my own life experience, I would soon find out.

I speak to you today, not as a learned scientist regarding the accumulated data on this subject, but instead I speak to you from the heart and experiences of a parent who has

had the opportunity and sometimes distress of finding the way to accomplish the major responsibility of my life which is to do all possible to assist my son, Michael, to succeed in the world. I didn't have all the data, nor did I have preconceived ideas about what was best for Michael. I, as a parent, had to be empowered to make the best decision for my son.

Although initial steps to desegregate schools may have seemed successful, the desired outcomes were not obtained. Although black schools received some tangible improvements, they were not to the extent of their peer white counterparts. And with blacks being marginalized into all black neighborhoods, black students didn't have the real educational opportunities that their white counterparts had.

I have two older children. They were born at a time in my life when I was better equipped financially to make choices for them. They attended both private and public schools, one of whom graduated from a DC public high school (by choice).

Two years after Michael was born, we were in a tragic vehicular accident that left my husband unable to work for extended periods. With a constrained budget, we had to look for available alternatives for schooling for Michael. We recognized that education was one of the ways (if not the only way) to escape the "ravages of the inner city".

Brown v. Board of Education intended to empower parents to make the best educational choice for their child(ren). But that empowerment was not real if my child had no opportunity to attend the "best or better school". For our family, that changed 50 years, yes 50 years, after the Brown v. Board decision in 2004 when a proactive program, the DC Opportunity Program, was implemented. It allowed our family to choose among public, charter, and private schools for our son Michael to attend.

We were open to exploring all options. It appeared that public school, charter school, and a new DC Opportunity Scholarship Program (DC OSP) were the available options. My research indicated that school choice had led to improving all three types of school through 1) competition that required all three school types to increase innovative programming, 2) increased school accountability, 3) increases in parental engagement, and 4) providing options for low income students of color.

Michael's education started with HeadStart through first grade at public schools. We applied for the DC Opportunity Scholarship and received it. This opened up our options. So, we decided to explore the option presented by the DC OSP and Michael transferred to NHB, which was a private school for the second grade.

Through an unfortunate set of administrative circumstances, Michael was not able to return to NHB for the third grade. The class was full before we were able to re-enroll. Although saddened, we had no problem with Michael returning to public school. Michael was re-enrolled in a public school. But, several weeks into the school year, Michael was bullied at the school and was in an altercation with three other boys, resulting with him having a bloody lip and other lacerations. Although I was concerned

about Michael having a bloody lip, I was not as concerned about that fact, as I was about how the school handled the situation.

Unfortunately, the school did not handle the situation properly. I was never advised about the fight by the school, but instead was advised by his caretaker who picked him up at the end of that school day. The school's excuses were not good enough for me. Michael needed to be in a safe place, and this public school was NOT it. So, I vowed that he would never return to an unsafe school. I called the Washington Scholarship Fund and they advised me that the OSP was still available to Michael. After a few days of researching our alternatives, we found Cornerstone Schools of Washington, DC. I walked in and it was a totally different environment than the public school that he had attended. The class size was half the size of that at the public school. The students appeared eager and ready to learn. The academic training was rigorous. And, oh yes, he felt safe and I felt safe for him.

I am happy to say that after Michael matriculated at Cornerstone in 2007, he stayed there until the seventh grade. We continually evaluated our educational choices and in the eighth grade, Michael transferred to HU MS², a charter school. He returned to Cornerstone in the ninth grade and continued at Cornerstone until the twelfth grade, graduating as Salutatorian in 2016. He received four full rides to HBCUs but decided to attend the University of Maryland, College Park.

Our family is able to speak to the effectiveness of School Choice because we have been privileged, yes privileged, to have experienced public, charter, **and** private schools. Through our varied educational experiences in public, charter, and private schools, we can truly say that education is NOT a one size fits all proposition. Each family has the right to decide what education works best for their individual child(ren). They must decide throughout their child's education what is best for their child to succeed. But without school choice, many families do not have the option for their child to receive the equal education promised.

I shudder to think of where our son, Michael, would be if he did not have School Choice available to him. No, indeed, *Brown v. Board of Education* mandate has NOT been fulfilled in the last 65 years. But school choice is a step in the right direction in reaching the mandated outcome. Today, Michael Reginald White is a successful example of how School Choice in all three arenas of public, charter, and private school can be utilized for the successful education of low-income students. Middle- and upper-income students have choice already by virtue of their income and social status. School choice allows low income families to participate in the American dream afforded by equal education.

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4. *Brown v. Board of Education*, 347 U.S. 483 (1954) pp.486-497
5. *Brown v. Board of Education*, 397 U.S. 495 (1954)

Chairman SCOTT. Thank you.
 Mr. Losen.

TESTIMONY OF DANIEL J. LOSEN, M.ED, J.D., DIRECTOR, CENTER FOR CIVIL RIGHTS REMEDIES, THE CIVIL RIGHTS PROJECT AT UCLA

Mr. LOSEN. I would like to thank Chairman Scott and the Members of the House Committee on Education and Labor for inviting me to testify on this important topic.

I am Dan Losen, the Director of the Center for Civil Rights Remedies at UCLA's Civil Rights Project, which is dedicated to highlighting concerns about racial inequity in our public schools and to bringing the best research to bear on remedies.

I consider Brown's promise to be the equitable opportunity to learn. The focus of my presentation is how the disparate impact of unjustified school discipline policies contributes to racial differences in the days of lost instruction, and thereby to inequities in the opportunity to learn. Stopping the disparate impact from unjustified discipline is critically important, therefore, to fulfilling Brown's promise.

The first slide shows data from 2015–16 and the racial gap for secondary students in terms of days of lost instruction for 100 enrolled due to out of school suspensions. While the gaps within the districts are disturbing, so too are the differences between the districts. Compare Richmond City, Virginia, where Black students lost nearly 500 days per 100 Black students enrolled. The Black-White gap there of 446 days is 12 times larger than the Black-White gap in Virginia Beach. These districts have different discipline policies. The racial discipline gap is greatest in Grand Rapids, Michigan, but both Blacks and Whites are losing too many days from out of school suspensions.

If I were elected to the Grand Rapids School Board I would call for a review of their discipline policies. And if I found that most of the lost instruction and racial disparities were due to suspensions for dress code violations or getting tough on tardy students or truancy, or some no excuses policy, I would insist on replacing those harsh punitive responses with educationally justified ones.

Unfortunately, the Trump Administration recently eliminated the Federal Title VI guidance on school discipline. Its disparate impact section prompted school districts to review justification of discipline policies that produced the kind of impact we see in Grand Rapids, Richmond City, and Anson County, North Carolina, all where Blacks lost over 300 days of instruction more than Whites due to out of school suspensions.

This next slide is from our California report, and it is about a particular policy of suspending students for minor behaviors, lumped together under the category of disruption or defiance. It shows how the share of days of lost instruction caused by that one policy from causing 49 percent of all lost instruction in 2011–12 to only 20 percent in 2015–16. In other words, as districts found better ways of responding to minor behaviors than simply kicking kids out of school, not only was there a decline in the total days lost, there was no major uptick in suspensions for more serious misbehaviors.

The next slide shows what happened to the days of instruction per 100 for each racial group due to suspensions for all reasons during the same period. Many districts, like Los Angeles, ban suspensions for disruption or defiance for K–12. And there was a statewide ban for grades K–3. Black students experienced the largest drop in days of lost instruction due to discipline, from 64 days to 39 days. And the Black-White gap narrowed from a difference of 47 to a difference of 29.

The evidence suggests that the policy of suspension for minor offenses contributed to the large racial gap in California, and eliminating that policy has helped reduce the disparity.

This final slide, I will conclude by summarizing, is from the research of Dr. Russell Rumberger, one of the Nation's leading experts on why students drop out of school. After controlling for the main reasons that students drop out, his analysis determined that getting suspended predicted a decrease in the graduation rate by as much as 15 percentage points. He then estimated the economic costs from the lowering of the graduation rate that was due to suspension and found that suspensions cost our Nation \$35 billion just from 1 year's cohort. These economic losses hurt all members of our society, but undoubtedly harm communities of color more than others.

I argue that it makes good economic sense to invest in alternatives designed to reduce suspensions and keep more kids in school. Keeping kids safe is of course of paramount importance, but safety includes protecting our children from injustice. Unfortunately, the Trump Administration has signaled that it will no longer protect children of color from the disparate harm that is caused by unjustified policies.

Therefore, I encourage Congress to act by passing Chairman Scott's Equity and Inclusion Enforcement Act, which would restore a private right of action so parents and civil rights advocates could bring disparate impact claims to court.

Thank you.

[The statement of Mr. Losen follows:]



The Center for Civil Rights Remedies

at The Civil Rights Project | *Proyecto Derechos Civiles*

**Written Testimony of Daniel J. Losen
Before the U.S. Congress
House of Representatives, Full Committee on Education and Labor**

Hearing: “Brown v. Board of Education at 65: A Promise Unfulfilled”

April 30, 2019

I would like to thank Chairman Bobby Scott and the members of the House Committee on Education and Labor for inviting me to testify on this important topic.

I first began working as a law and policy researcher with the Civil Rights Project in 1999, when it was part of both Harvard Law School and the Harvard Graduate School of Education. I now direct the Center for Civil Rights Remedies (CCRR), an initiative of the Civil Rights Project, which is located at UCLA. The CCRR is dedicated to highlighting concerns about inequities in our public education system, and to bringing the best research together to inform efforts to solve these problems. All of my testimony and recommendations are research-based and intended to improve the educational outcomes and lives of children, especially the historically disadvantaged.

With these goals in mind, I’m particularly thankful for this opportunity to express my concerns about excessive and disparate discipline in schools, particularly in terms of the educational impact the research suggests is resulting from unsound and unjustifiable policies and practices. The more we learn about the negative impact discipline disparities are having on the educational outcomes of students of color, the more likely it is that the national debate on school discipline reform will return to sound and reasoned discussion of what works best, and of how to replace counterproductive discipline policies with more effective ones.

Despite the Trump administration’s ongoing efforts to undermine longstanding civil rights protections, I am hopeful that Congress will review the significance of the current disparate impact regulations and take action to strengthen civil rights protections through resolution and legislation. While there are many actions members of Congress can take, restoring what was once a private right of action regarding use of the disparate impact regulations under Title VI of the Civil Rights Act of 1964 would be an important step toward fulfilling the promise of *Brown v. Board of Education*. For this reason and based

on the research I present in my testimony indicating that there are many discipline policies and practices that would likely be deemed racially discriminatory pursuant to disparate impact doctrine, I endorse the Equity and Inclusion Enforcement Act (EIEA).

In my opinion, *Brown* held the promise of remedying racial inequity in educational opportunity in a complete and comprehensive manner. Unfortunately, we need look no farther than the levels of racial and socioeconomic isolation in our schools today to know that the promise of *Brown* remains unfulfilled. By reversing the doctrine of separate but equal embodied in *Plessy v. Ferguson*, *Brown* acknowledged that a policy claiming to support equality but born out of White supremacy would never be just.

Today, we bear witness to a president who makes racist statements about sitting federal judges and nominates numerous others who refuse to indicate that they support the *Brown* decision. Even worse, the appointed Deputy Attorney general charged with enforcing the law, refused to say he supported this landmark decision. It is in this context that the Trump administration has sought to strip children of their federal civil rights protections. One example is the ongoing effort to dismantle disparate impact regulations that have been part of our legal framework since shortly after Congress passed the Civil Rights Act of 1964.

Until 2001, the Title VI disparate impact regulations were regularly used by litigants exercising their private right of action to go to court to challenge the legality of unsound or inadequately justified policies and practices by school districts and other recipients of federal funds where those policies had a disparate impact on children of color. Well aware of this use, in 2001, in an act of judicial activism, 5 justices of the Supreme Court concurred that individuals could no longer challenge the disparate impact of a policy or practice pursuant to the Title VI disparate impact regulations in court. (*Alexander v. Sandoval* (2001))

Despite the fact that the *Sandoval* decision cast doubt about whether the regulations reflected the will of Congress when they passed the Civil Rights Act of 1964, the majority in *Sandoval* stated that it assumed for the purposes of deciding the case that “regulations promulgated under Sec. 602 of the statute may validly proscribe activities that have a disparate impact on racial groups” even though the first section, 601, only prohibits intentional discrimination. Although the disparate impact regulations remain the law, after *Sandoval*, the only recourse for challenging the unlawful disparate impact of a policy was limited to filing administrative complaints with federal enforcement agencies. During the post-*Sandoval* period, many agencies, including the U.S. Department of Education’s Office for Civil Rights, have handled thousands of disparate impact complaints, including challenges to unjustified discipline policies.

Unfortunately, the Trump administration is now engaging in efforts to dismantle the Title VI disparate impact regulations. One of its first actions was to withdraw the nonregulatory and nonbinding letter of guidance on school discipline issued by the Obama administration in 2014. Part II of the guidance provided useful instructions on how to review policies and practices pursuant to the Title VI disparate impact regulations.

The Trump administration based its decision to remove the nonregulatory discipline guidance on an unsubstantiated fear of quotas, along with a discredited study (see the appendix to this written testimony).

Early this year, in an effort to undermine a similar education law that (among several important provisions) calls for interventions to remedy racial disproportionality in discipline among students with disabilities¹ the Trump administration also resorted to raising fear of racial quotas as the basis for rescinding regulations promulgated in 2016 about disproportionality. The IDEA regulations were intended to ensure that states were flagging districts with very large racial disparities. The law requires the identified districts to use part of their federal grant to identify the root cause of those disparities and provide a remedy.

Last month, a federal judge ruled that the education department's rescinding of the special education racial disproportionality regulations was arbitrary and capricious. It is noteworthy that when the Trump administration rescinded the 2014 school discipline guidance, it offered justifications that were nearly identical to the justifications the court found arbitrary and capricious.

Putting legal arguments to the side, I think most policymakers who read Part II of the discipline guidance would agree that the guidance is a good, commonsense approach to reviewing policies.² The guidance makes it abundantly clear that racial disparities alone do not constitute discrimination. In fact, despite the misleading statements of the Trump administration and a small handful of vocal polemicists, anyone following Part II's clearly outlined steps for policy review would find that a disparate impact review does not lead to any conclusions based on data alone, nor does disparate impact theory assume that teachers are to blame.³

To the contrary, disparate impact looks only at whether a policy or practice caused the racial disparity in question. Therefore, disparate impact assumes that the disparities were not caused by individual bigotry. That may be an issue as well, but intentional racial bias is what a different treatment analysis is designed to surface. Once it can be established that a neutral policy or practice is the cause (i.e., that the policy of meting out suspensions for truancy is contributing to the racial disparity), the disparate impact analysis asks whether the policy causing the disparity is educationally justified in light of the educational goal it is meant to serve. For example, does suspending truant students deter future truancy? If the goal is to encourage truant students to attend school more often, does a policy of suspending truant students serve that goal?

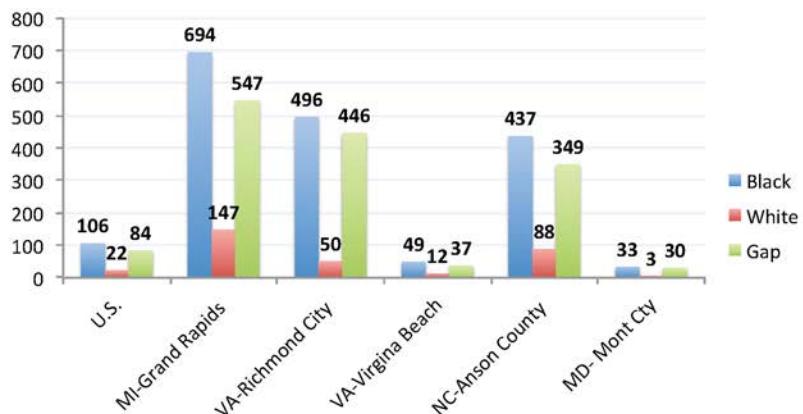
The first principle behind the discipline disparate impact review is that any policy that denies children access to a school the law otherwise mandates them to attend (or otherwise seeks to inflict a punishment) is associated with a harm, and therefore should serve an educational necessity. The second principle is that if the policy of disciplinary removal does not help achieve the goal, the practice should either be eliminated or replaced with an alternative approach that is effective. The third principle is that, once policymakers realize that an ineffective policy is causing a racially disparate harm, their

subsequent failure to eliminate, modify, or replace the problem policy is a form of unlawful discrimination.

As described in the guidance, the review of policies for problematic disparate impact is distinct from concerns that may also be present about how racial bias influences perceptions of behavior or responses to behavior by teachers and administrators in a school. Disparate impact review strictly concerns the justification of a policy responsible for a disparate impact. For this reason, the remedies under disparate impact are to end, replace, or modify the policy or practice in question. Given that the remedy for a disparate impact claim is limited to this type of injunctive relief, if a violation of Title VI is found, the district must either agree to change the policy or practice causing the disparate harm or risk losing its federal education funding.⁴

The focus of my oral testimony was first and foremost to raise awareness of how important disparate impact regulations are to fostering equitable educational opportunity. Therefore, it is critically important to review the actual racial disparities in the number of days of lost instruction due to out-of-school suspensions. The extreme size of the racial gap and profound differences from one district to the next suggest that some portion of these disparities is likely driven by district-level policies and practices.

**Large Racial Gaps in Amount of Lost Instruction
Per 100 Enrolled
In the Nation and For Selected Districts at Secondary Level (2015-16)**



3

This graph captures the disparate impact of discipline in terms of days of lost instruction due to out-of-school suspensions reported to OCR by every school and district in the nation in 2015-16. To enable comparisons of districts of different enrollment sizes, the number of days lost are divided by the enrollment and then multiplied by 100 to arrive at

a comparable metric. The metric (or rate) is described as days lost per 100 students enrolled. For example, 100 days lost per 100 students is the same as 1 day lost per student. Therefore, it is entirely possible to have rates in excess of 400 days lost per 100 students enrolled. That is the same as 4 days per student. Of course, in most districts most students are not suspended and don't lose any days of instruction. A district where there are 20 suspensions per 100 enrolled is the equivalent of 1/5th of one day lost due to suspension per student.

In our report, "11 Million Days of Lost Instruction," we found that, across all grades (K-12) nationwide, Black students lost 66 days per 100 enrolled, which was 52 more days lost (per 100) than Whites⁵ (Losen & Whitaker, 2018). The graph above is from our preliminary analysis and describes the days of lost instruction at the secondary level (only middle and high schools). Notably, in comparison to the days lost across K-12, the national average for secondary school students was much higher: Black secondary students lost 106 days per 100 enrolled, compared to 22 for Whites, which means that Blacks lost 84 more days (per 100) than Whites.

In some states, the secondary rate was nearly twice as high as the national average. Among the worst was Missouri, where Blacks lost 200 days per 100 enrolled, compared to 36 for Whites, resulting in a gap between Blacks and Whites of 164 days of lost instruction per 100 enrolled.⁶

The use of out-of-school suspensions and the impact on lost instruction varies even more dramatically for secondary students at the district level. As shown in the graph, in Grand Rapids, MI, Blacks in middle and high schools lost 694 days per 100 enrolled, compared to 147 days lost (per 100) for Whites. This racially disparate impact on instruction can be described as out-of-school suspensions causing Black students to lose 547 more days per 100 enrolled than Whites. Similarly large Black-White gaps were found as follows: Blacks lost 446 more days in Richmond City, VA, and 349 more days in Anson County, NC. These differences are much larger than one might imagine when looking at the national average of 84 more days lost for Blacks than for Whites per 100 enrolled. Still large but relatively much smaller racial gaps are observed in Virginia Beach, VA, and Maryland's Montgomery County. It is worth reiterating that these racial differences in lost instruction due to discipline are pervasive. Although they have many causes, given the disparate impact on instructional time, it is important that districts review whether their local discipline policies and practices are really justified.

Every teacher and principal knows that missing school hurts student achievement. Research on absenteeism has further documented what logic suggests is most likely true. One study found, for example, that missing three or more days of school before taking the NAEP reading test was associated with a score the equivalent of a full grade level lower. (Ginsburg & Chang 2014).

One often overlooked aspect of school discipline policy is that in many cases the length of the suspension is set according to the code of conduct. For example, in one district a fight with injury might yield an automatic 10-day suspension. Given the harm from

missing days of instruction, a disparate impact review should include a review of the justifications for policies that pre-determine the duration.

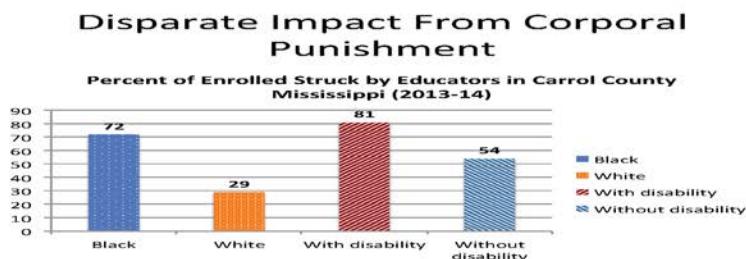
By highlighting the degree to which suspensions contribute to large racial differences in lost instruction time, we hope to make members of Congress aware that the size of the discipline gap varies greatly from one district to the next. This suggests that local context matters a great deal and that differences in policies and practices at the school and district level are probably at least partially to blame. In fact, one of the most rigorous studies of school discipline, in which every middle student in Texas was tracked for six years, found that factors the schools controlled—not poverty—had the greatest influence on the likelihood that a student would be suspended (Fabelo, 2011).

The Importance of Local Policies and Practices

A high degree of variation is often found between schools within the same district. Although districts typically have a districtwide student code of conduct, in many districts the individual school leaders have the autonomy to respond to student behavior according to their own beliefs and attitudes. A study by Dr. Russ Skiba that surveyed principals from every school in Indiana found that the principal's attitude on school discipline was not only the most powerful predictor of whether suspension rates were high or low, it was also the strongest predictor of whether racial disparities were large or small (after controlling for poverty and several other factors)(Skiba et al., 2015).

A similar finding in our soon-to-be-released study of corporal punishment was that, within most districts in the 19 states that still allow it, the decision to use corporal punishment is left to the discretion of individual school leaders. Often, we found that fewer than half the schools within a given district still paddled children. In many of the districts we reviewed, there was undeniable evidence that the policy of allowing corporal punishment had a disparate impact by race and by disability status.⁷

The following graph, which depicts just one district, shows that 72% of Black students attending schools that practiced corporal punishment were struck by educators at least once in 2013-14, compared to 29% of the White students. Students with disabilities were also struck by educators at a much higher rate than were their nondisabled peers.



Corporal punishment is a classic example of a locally determined policy that often causes disparate harm along the lines of race and disability, yet lacks educational justification. Corporal punishment is also one of the examples used by the federal guidance of a policy that might be vulnerable to a legal challenge if it resulted in large racial disparities.

An even larger concern regarding the disparate impact of policies and practices are policies that call for the excessive use of suspension for every minor behavior. For a variety of reasons, harsher policies and practices, such as “broken windows,” “no excuses,” and “zero tolerance,” seem to be more common in schools with high concentrations of Black students.

Therefore, if harsh, counterproductive policies are more likely to be put in place in schools serving higher percentages of students of color, then the differences in policies between schools may be at least partially responsible for the racial disparities observed at the district level, even if punishments are meted out in an evenhanded manner within a school.

Considering the huge impact on instructional time, discipline policy differences that drive the use of suspension up or down may also be contributing to the racial achievement gap. Several rigorous studies in which additional factors that contribute to lower achievement were controlled for, including poverty, suggest that fewer suspensions would predict higher achievement. One such study found that school suspensions account for approximately one-fifth of Black-White racial differences in school performance (Morris & Perry, 2016). Meta-analyses have revealed a significant inverse relationship between suspensions and achievement, along with a significant positive relationship between suspensions and dropout (Noltmeyer, Ward, & McLoughlin, 2015). While exploring school discipline and academic performance in the state, the West Virginia Department of Education found that “students with one or more discipline referrals were 2.4 times more likely to score below proficiency in math than those with no discipline referrals” (Whisman & Hammer, 2014).

Although no national data have been collected on the reasons for suspension disaggregated by race, the CCRR has examined data from every school and district in California and Massachusetts, two of several states that do collect it. Massachusetts provides a breakdown of the days of lost instruction for each code-of-conduct violation. Perhaps the most disturbing finding in our Massachusetts study is that the majority of suspensions (and resulting loss of instruction) come from the catchall category 18, which includes all nonviolent, non-drug, and noncriminal behaviors not already covered by the 17 other categories (Losen, Sun & Keith, 2017). In other words, this vague area covers a wide range of minor behaviors that do not have their own distinct code, from disruption to skipping class. Our report, “Suspended Education in Massachusetts,” found that nearly all the highest suspending districts in the state also had large racial gaps. Moreover, in nearly all of the high-suspending districts, 50% or more of the days of missed instruction were due to category 18 offenses. This begs the question of whether policies that remove students from school for such minor misbehaviors are justifiable. Notably, at least 3

states, Ohio, Texas and California, prohibit suspensions for minor misbehaviors for students in the early grades.

Proof That Policy Change Works

Our graphic display of trend analysis for the state of California⁸ demonstrates that significant progress can be made in a similar catch-all category. The subjective category, “disruption or defiance” had been the most frequent reason students were suspended.

As Figure 7 from our recent report, *The Unequal Impact of Suspension on the Opportunity to Learn in California: What the 2016-17 Rates Tell Us about Progress*, illustrates, suspension for disruption comprised 49% of all suspensions in 2011-12 and just 20% in 2016-17. During this period of declining use of suspensions many districts, including Los Angeles, changed their local policy to completely prohibit suspensions for this category across all grades. And For both the Black/White and Latino/White gaps, the districts with the largest racial gaps in California in 2016-17 tended to have a rate of suspension for disruption or defiance that was higher than the state average.

Figure 7: Estimated Number of Days of Lost Instruction by Disruption/Defiance and “All Other” 2011-12 to 2016-17

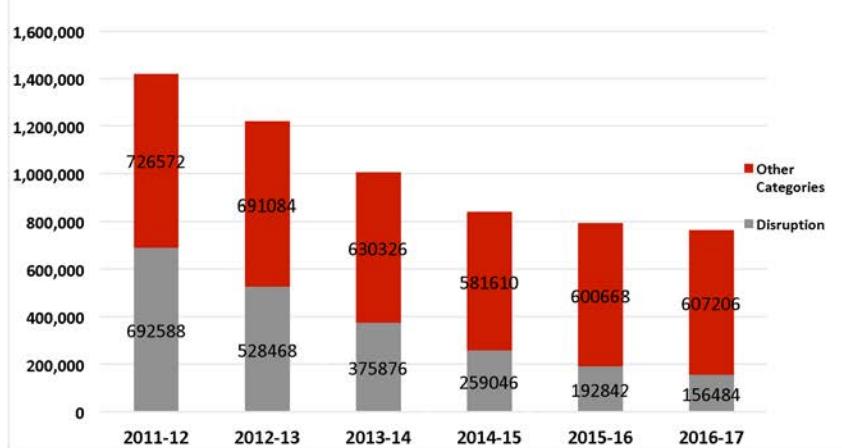
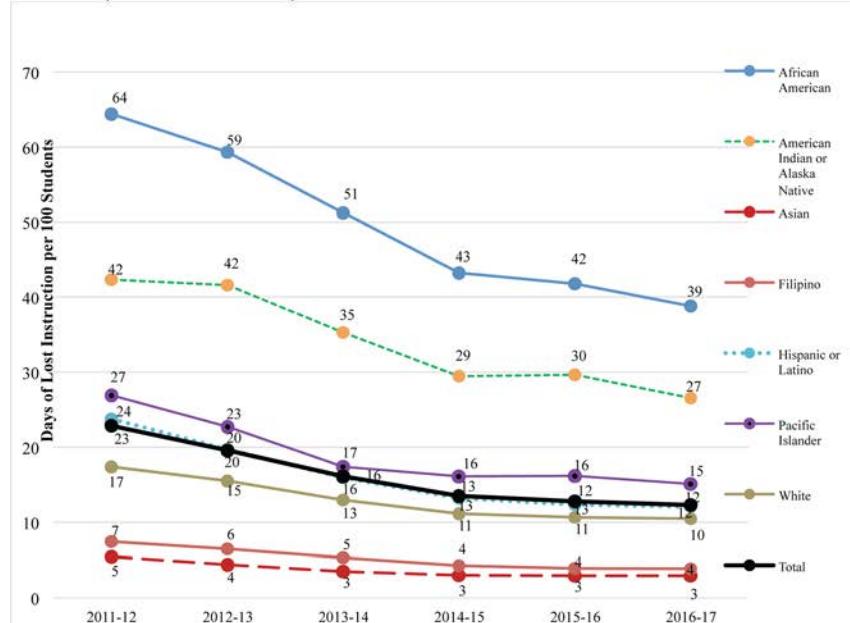


Figure 7 makes clear that the decline in lost days of instruction for disruption or defiance has contributed much more to the total decline than the category “all other” offenses. In the context of a changing culture and new legislation related to discipline in California, it appears that educators increasingly respond to minor misbehaviors in ways other than to exclude students from instruction time.

Most important, as depicted in the next excerpt from our report (Figure 1), during this period of decline in the use of suspensions for disruption or defiance, the largest decline in estimated days of lost instruction from all suspensions was experienced by Black

students. Despite this progress and evidence suggesting that changes to the code of conduct have likely helped address racial disparities in suspension and caused a narrowing of the racial discipline gap, Black students remain the most frequently suspended.

Figure 1: Six-Year Narrowing of the Racial Gap in Days of Lost Instruction per 100 Students (2011-12 to 2016-17)



California has been engaged increasingly in discipline reform efforts at the state and local level for well over six years. The subgroup trend lines describing the rates of lost instruction per 100 students make it clear that the racial gap has indeed narrowed. This conclusion may appear to contradict recent media coverage suggesting that, despite a reduction in overall suspensions, the disparities remain unchanged.⁹ The six-year trend lines in Figure 1 indicate that Blacks had the highest rate of lost instruction per 100 in 2011-12, and that they have experienced the steepest decline in rates of lost instruction of all racial groups.

Equally important is that there is no evidence of an offsetting statewide increase in serious unlawful or dangerous behavior among students. Of course, if there were such an offset, it would be inappropriate to assume the policy change was the cause. The lack of any large increase in dangerous behavior that offsets the sizeable decrease in suspensions for disruption or defiance casts doubts on the validity of the assertion that frequent suspensions for minor behaviors are necessary to prevent school-based violence or

essential to student safety. The California trends run counter to predictions that reducing suspensions would bring chaos to California's schools.¹⁰

A related concern is that the damage from frequently suspending students is not fully comprehended by most engaged in the debate about discipline reform. As our research has demonstrated, suspensions have a devastating economic impact that is often hidden from view.

The Harm to Our Society from Excessive Suspension

High Cost of Harsh Discipline and Its Disparate Impact: The Need for a Private Right of Action

	U.S.	Florida	California
Fiscal Impact	11 Billion	1.9 Billion	518 Million
Social Impact	35.7 Billion	6.2 Billion	1.6 Billion

6

The table above is an excerpt from the CCRR's 2016 report, "The High Cost of Harsh Discipline and Its Disparate Impact,"(Rumberger & Losen 2016).¹¹ Dr. Rumberger's causal analysis relied on individual student data and tracked similarly situated students while controlling for other factors that also predicted low graduation rates. Across the selected cohorts, suspensions contributed to the lowering of graduation rates by between 5 and 15 percentage points.

Dr. Rumberger and I worked with economist Clive Belfield to calculate the estimated fiscal impact over the lifetime of the cohort members. These costs are to the society at large and include items like lower tax revenues, higher crime rates and higher expenditures due to higher rates of incarceration. They also calculated an estimate of the social costs. The social costs are the fiscal costs plus the costs incurred by the individual that failed to graduate. These include lower employment, lower earnings, and costs associated with poorer health. Both fiscal and the broader social costs could be averted by reducing suspensions. The following excerpt from the report (Rumberger & Losen, 2016) describes the racially disparate impact of these findings:

It is important to point out that these estimated costs are [based on] the “average” student. But, as shown earlier, suspension rates and thus the economic impact of suspensions are disproportionate among students by race, particularly among Black students. In the U.S., for example, Black suspension rates were 30 percent while overall suspension rates were 16 percent [], which means that while Blacks made up

13 percent of all tenth graders, they made up 25 percent of all suspended students. Blacks thus represented 25 percent or \$2.8 billion out of \$11 billion in fiscal losses and \$8.9 billion out of \$35.6 billion in social losses to the U.S. In California, Blacks represented 6 percent of tenth-grade students but 11 percent of suspended students, and therefore they represented 11 percent of the fiscal and social losses to the state. Finally, in Florida, Blacks represented 16 percent of the tenth-grade students but 31 percent of suspended students, and thus 31 percent of the fiscal and social losses to the state.

Two inferences may be drawn from the disparate impact of suspensions. One is that the economic burden of suspensions is currently harming Black children more than others. The second is that greater economic benefits may be realized if efforts to reduce suspensions for all students purposefully include efforts to reduce the racial school discipline gap between Black and White students. Although how to reduce the racial discipline gap is not the focus of this report, numerous studies point to interventions that have helped school districts reduce disciplinary exclusion generally, and in particular to narrow this gap (Losen, 2015).

I encourage readers to read the entire study, as well as the follow-up study, *The Hidden Cost of California's Harsh School Discipline* (Rumberger & Losen, 2017). The more recent study used a similar method to estimate of economic costs from suspensions at the district level. That report drew from a much more robust sample of longitudinal data that enabled nearly every tenth-grade student in the state to be tracked for three years. The economic analysis was also updated with more recent state specific data. It is worth noting that the more recent statewide results predicted substantially larger costs than the estimate for California described in the first study. Specifically, Dr. Rumberger's analysis predicted 4.9 Billion in fiscal losses over the lifetime of one cohort, and 16 Billion in social costs caused by estimated increase in dropouts due to suspensions.¹²

If parents and policymakers in every state knew the true cost to taxpayers of harsh discipline policies and practices, they might be more willing to review the justification for policies like zero tolerance, no excuses, or broken windows. One reason that some well-intended policymakers may be reluctant to make changes to their harsh discipline policies may be an entrenched belief that without harsh measures the alternative is chaos.

Calm, Not Chaos:

In the latest Institute of Education Sciences (IES) report on school crime and safety, which includes data as far back as 1992 and as recent as 2017, all indicators of student victimization at school for 2015-16 were at or equal to an all-time low, far below the rates IES reported for 1994. Similarly, the percentage of teachers threatened with an injury were at the same level as in 1999-2000. (Musu, Zhang, Wang, Zhang, & Oudekerk, 2019).

To further counter the unsubstantiated fear-mongering claim that discipline reform efforts, inspired by the guidance on disparate impact, have caused chaos, I offer the

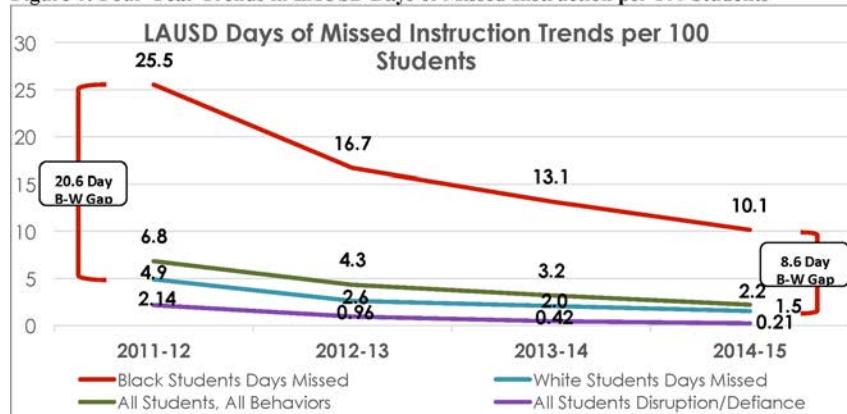
following excerpt from my written testimony before the U.S. Commission on Civil Rights in November 2017, which also contains segments of our California reports.

Discussion and Conclusion Regarding the Need for Civil Rights Enforcement and District-Level Review of Disparities

There is no question that discipline reform remedies can help a great deal, whether inspired by research on sound policy, or by state or federal intervenors seeking to help districts end an impermissible racially disparate impact. Most important is the example of what LAUSD has done, which provides important evidence that districts can take the initiative and eliminate disruption and defiance as grounds for suspension at every grade level. Although our analysis did not entail a full study of LAUSD, and while we acknowledge that more improvements need to be made in LAUSD, the data on school climate and suspension rates suggest that real progress was made in reducing suspensions without creating chaos.

Figure 6 from our report *Lost Instruction: The Disparate Impact of the School Discipline Gap in California*, (Losen & Whitaker, 2018) shows our estimate of the overall decrease in lost instruction time in LAUSD. The policy to eliminate disruption/defiance as grounds for suspension was adopted in the 2012-13 school year, but the sharpest decline in the overall use of suspension began at least a year earlier.

Figure 6: Four-Year Trends in LAUSD Days of Missed Instruction per 100 Students



In our report, (Losen & Whitaker, 2017), we noted that LAUSD adopted a plan in 2013 to eliminate the use of suspension as a response to disruption or defiance. As Figure 6 demonstrates, the number of suspensions overall and for disruption/defiance declined four years in a row; during the first two years, the only years for which API scores were available, the scores showed a rise in achievement in LAUSD (Losen et al, 2015). We

also noted that the purpose of the plan to eliminate suspension for all disruption/defiance offenses was not simply to reduce the number of suspensions but to improve academic achievement. It should be noted that discipline reform efforts were prompted by local advocates and an OCR investigation and settlement agreement, thus reform efforts to address racial disparities were underway in LAUSD well before the aforementioned federal discipline guidance was issued.

Based on the most recent data we estimate that, by eliminating suspensions for disruption or defiance, LAUSD has avoided the loss of thousands of days of instruction and more than ten thousand hours of instruction time.¹³ LAUSD also has experienced what could be the largest increase in graduation rates in its history since the policy to eliminate suspensions for disruption and defiance began four years ago. In 2017, 80% of the district's high school cohort graduated, a full ten percentage-point jump from the 70% rate in 2013-14 (Kohli, 2017).

The use of data out of context to suggest that discipline reform is causing chaos has not been substantiated, but the suggestion has been made in numerous discussions about discipline reform and the 2014 disparate impact guidance. One such noteworthy and relevant reference relates to how the comprehensive Brookings Institution report on suspensions in California's schools conflates research about disruption in general to implicate discipline reform, raising the concern that reform may put orderly classrooms and well-behaved children at risk (Loveless, 2017).

Assumption That Reducing Suspensions Necessarily Increases Exposure to Disruptive Students Lacks Evidentiary Basis and Assumes That Suspensions Mitigate Rather Than Exacerbate the Potential Harm from Exposure to Disruptive Students

The Brookings study, which explored California's school-level discipline data, found extraordinary racial differences. However, the report referenced a study of students in Alachua County, FL, to make the point that being educated with disruptive students puts a burden on nondisruptive peers, a fact that Brookings asserts is often overlooked by discipline reform proponents. The study's relevance to the discussion builds on a tacit assumption that discipline reform will cause greater exposure to disruptive students. Yet, the cited research is not a study of discipline reform but of the broad societal impact of domestic violence. Specifically, the oft-cited Alachua County study examined how children exposed to domestic violence in their home impacted their peers in school. The study treated students from these violent homes as a proxy for disruptive students. The study authors estimated that such exposure had serious economic costs for their nondisruptive peers.

Not mentioned is the fact that Alachua County was among Florida's highest suspending districts. The costs associated with being in a class with disruptive peers in Alachua County might better be described (in context) as the costs incurred in a district that frequently suspended youth for disruptive behavior. Given that youth exposed to domestic violence are probably subjected to a greater risk for re-exposure when they are sent home from school it is more likely that frequent suspensions exacerbate the harm to

these children and thereby also increase the likelihood that they will exhibit problematic behavior when they return. Considering the data showing high rates of suspensions, the study begs the question of whether non-punitive interventions to support traumatized youth displaying problem behavior might have reduced their disruptive behavior and mitigated the costs to peers documented in the Alachua County study.

The Brookings report instead suggests that we take it as a given that high-suspending schools are helping make the learning environment more productive for nondisruptive students by instilling order. Missing is any research demonstrating that frequently suspending children produces the kind of order that improves the learning environment. The author of the Brookings report does point to a working paper by researchers from the University of Arkansas, but in response to published peer-reviewed criticism of their work, the authors issued a statement that their findings should not be used to suggest that suspensions are beneficial or that they boost test scores.¹⁴ To the contrary, the best research available suggests that suspensions generally fail to deter misbehavior and may in fact reinforce the behavior it is intended to deter; neither the suspended students nor their peers appear to improve their behavior in harsh disciplinary environments (Mendez, 2003).

Moreover, the assumption that kicking out the “disruptive” students is likely beneficial is based on a false dichotomy that students are either disruptive or nondisruptive, and that this is some immutable characteristic or deficit within the student. Findings from the Texas study (Fabelo, 2011) referenced earlier suggest that the distinction is false, as more than 60% of Texas middle school students were suspended at least once by the time they left school. This hard data on who gets suspended at some point during their schooling indicates that the majority of secondary students have, at one point or another, been counted among the “bad” or “disruptive.” Most important, as mentioned at the outset, the Texas study concluded that school factors, not students’ characteristics, explained most of the differences in suspension rates among schools. The contribution of school factors is exactly what a disparate impact review would examine.

Schools Make a Difference

Nobody benefits if an educationally unsound response to student misbehavior causes students to miss instruction. Moreover, if even one racial or ethnic group is observed to engage in minor disruptive or defiant behavior more often than others, it would never justify their receiving unsound punishment or a counterproductive response. Nor should one accept the unsupported assumption that the alternatives necessarily increase exposure of peers to disruptive youth. The heart of the civil rights concern about suspensions is that, once it is clear that an unsound policy or practice harms one group more than others, it becomes both a moral and legal imperative to replace the harmful policy with one that is sound and educationally justifiable.

Faced with data showing the deep racial divide in instruction time lost due to discipline, even assuming that most teachers and administrators try to treat students fairly and to avoid the influence of negative stereotypes, we should *not* assume that they succeed in doing so. Our previous report summarized recent research demonstrating that teachers

likely would treat Black students more harshly than similarly situated Whites for the same offenses (Okonofua & Eberhardt, 2015). It is worth noting that they found no significant difference in how teachers of different races responded.

The most recent study examining teacher bias in discipline shows how implicit bias can influence not just our responses but our perceptions as well. The study, conducted by researchers at the Yale University Child Study Center (Gilliam et al., 2016), prompted preschool teachers to look for signs of pending bad behavior, then tracked the eye movements of both Black and White teachers as they watched a screen playing four videos of individual Black and White preschoolers, separated by race with gender, with one video in each of the four corners of a large screen. In the study, no students were misbehaving or about to misbehave, yet all the teachers watched the Black boys far more than the other children. Most teachers and administrators do try to treat students equally, but this study indicates that the negative racial stereotypes about behavior can corrupt our expectations and influence whom we pay attention to and whom we ignore.¹⁵

These findings suggest that, in light of the deep racial differences in the amount of lost instruction time, another good reason to stop suspending students for disruption or defiance is that doing so involves highly subjective perceptions. It should come as no surprise that, in the highest suspending districts, the most subjective category contributed to more than 40% of the racial gap in lost instruction.

We do not argue that other categories are immune from these concerns or that implicit racial bias is the only kind of injustice reflected in the different outcomes, nor do we know or assert that the reason for observed racial difference in any given district is not some other factor that has nothing to do with bias. However, we do suggest that, when observing the alignment between the largest racial divides and the most subjective category, as documented in this report and many others, there is a legitimate concern that bias may be contributing to the vastly disparate impact on lost instruction. If so, certain discipline policies, such as those permitting suspensions for vaguely defined minor misbehaviors, deserve review to examine their justification in light of alternatives.

There Are No Quick Fixes

I have framed my testimony to align with one of our core research-informed recommendations: that districts should not regard implementing changes in discipline policy or practice as being isolated or distinct from their academic mission (Balfanz, Byrnes, & Fox, 2015). Consistent with what research suggests is most effective, we do not argue here that simply eliminating disruption/defiance as grounds for suspension in all grades will quickly or entirely fix the disparate impact on days of missed instruction. Although we suggest that no single policy change alone would satisfy the need for effective discipline reform, we also argue that the disparate impact from unsound educational policies and practices should compel additional efforts in many districts across the country.

We argue that, given the economic and civil rights implications of inaction, the federal government has an obligation to help states pursue more effective ways of preventing minor misbehaviors, as well as more effective responses to the same.

The belief that remedies inspired by the guidance on disparate impact will beget unlawful quotas, an argument raised by the Trump administration when it removed the federal guidance on school discipline, is also not supported by the evidence. Our book, *Closing the School Discipline Gap*, published by Teachers College Press, provides many potentially effective alternatives, not one of which involved a racial quota. The book compiled studies by researchers across the country who examined the impact of programs and initiatives that address excessive school discipline. These include restorative justice, positive behavioral supports and interventions, improvements to academic engagement, threat assessments, professional development, and more. One randomly controlled study found that teachers who participated in a specific training program used less exclusionary discipline than teachers not receiving the training (Gregory, Allen, Mikami, Hafen, & Pianta, 2014). The racial disparities were all but eliminated. Other studies have found that even brief interventions that encourage empathic discipline cut suspension rates in half (Okonofua, Paunesku, & Walton, 2016).

Conclusion

There is more to learn about which policies and practices are the most effective replacement for suspending students for minor misbehavior. Although there is no definitive, proven best practice or policy that researchers can guarantee will work, there are some discipline policies like suspensions for truancy, automatic suspensions for minor misbehaviors, vague codes of conduct, and suspensions for dress codes violations that schools exhibiting racial disparities in discipline should review and consider eliminating entirely. I would also encourage the numerous state attorney generals who wrote a letter opposing the removal of the guidance¹⁶ to explore ways they might provide avenues for redressing the harmful impact of unsound policies and practices. Although the disparate impact regulations are still good law, and although I am confident that most state and local policymakers will continue to attend to disparities caused by unjustified policies, the data reveal that there are many districts with huge disparities that show no inclination toward change.

We Need a Private Right of Action

In some situations district policymakers may be reluctant to review or change policies if they are not aware of the disparate and harmful impact or if they hold unsubstantiated beliefs that harsh punitive discipline is necessary to maintaining order. It is unlikely that parents of children of color in such districts have a viable avenue to protect their children from harmful policies and practices considering that the current administration has signaled that it is opposed to enforcing the disparate impact regulations. Ultimately, the nation must rely on Congress to restore the private right of action that the Court eliminated in *Alexander v. Sandoval*.

Even if the current administration had not signaled its disdain for enforcing the disparate impact regulations, based on the available research and for the reasons stated in this

testimony, I would recommend that this Congress develop legislation to reverse the *Sandoval* decision by explicitly amending Title VI to establish a private right of action to enforce disparate impact regulations. The Equity and Inclusion Enforcement Act would accomplish this goal.

Thank you for this opportunity to testify. I look forward to answering any questions members of Congress may have, and to providing additional and new information with the upcoming release of two new national reports. One, on disparities in the use of corporal punishment in the schools and districts that still practice it, is co-authored with the Southern Poverty Law Center and was the source of the data presented. The other we are co-authoring with the Learning Policy Institute that covers both in- and out-of-school suspensions and days of lost instruction at the state and national levels. Preliminary finding from that report were also presented in this testimony. I look forward to providing further assistance to Chairman Scott and to any other members of the House Education and Labor Committee if they are interested in my help reviewing research regarding related problems or to explore possible solutions in greater detail.

Sincerely,

Daniel J. Losen
 Director, The Center for Civil Rights Remedies
 The Civil Rights Project at UCLA

Appendix:

Refuting the U.S. Department of Education's reference to research (Wright, 2014) which concluded that there was no evidence of racially discriminatory school discipline:

It is hard to fathom the reasoning behind the U.S. Department of Education's disturbing reference to the study that concluded that "long-standing behavioral differences" likely explain the observed racial disparities in suspensions (Wright, 2014). Putting aside expressed concerns that the conclusion drawn embraces a harmful racial stereotype and that the author may have been influenced by racial bias, it is important to note that in January, when it was referenced, the specific findings had already been invalidated.¹⁷ Specifically, the Wright findings were refuted by another conservative researcher whose work, ironically, was cited by the Department of Education as part of its justification for rescinding the guidance on racial disproportionality in special education (Morgan, 2017). Although Morgan's research has been criticized on many grounds, it is important to note that Morgan produced a study nearly identical to Wright's, and Morgan's findings (page 8) directly contradict Wright's.¹⁸ Specifically, Morgan corrected just one of the many flaws in Wright's research design. Namely, Wright's study failed to consider the available data on the number of suspensions. Morgan repeated Wright's study in nearly every way, except that Morgan added the responses to the question, "How many times

was your child suspended?" Ultimately Morgan reported that Blacks were 1.6 times (60%) more likely as similarly situated Whites to be suspended after controlling for behavioral ratings, poverty, low test scores and all the other variables that Wright controlled for.¹⁹

Moreover, it is surprising that the Department of Education would use Wright's research to criticize the disparate impact guidelines in the 2014 Obama administration discipline guidance, given that Wright's study did not examine whether a policy or practice was contributing to the racial disparity in the national sample he studied. Wright's study only looked for evidence of different treatment of otherwise similarly situated Black and White students. As I've pointed out in my testimony, the disparate impact regulations, as applied to discipline disparities, calls for the examination of disparities that can be linked to particular policies or practices. Wright admits that he does not consider the effects of different discipline policies and acknowledges that other forms of responding, besides suspensions "may be more effective in controlling the behavior of difficult children."

The data we have reviewed in this testimony show that there are large racial disparities that vary dramatically from school to school and between districts. This suggests that they are likely caused in part by locally controlled policies and practices. Any examination of a national sample, lacking information on district policies and district disparities, could not possibly rule out the possibility that unjustified policies were at least partially responsible for the disparities observed in aggregate at the national level. Therefore, even if Morgan's findings had not refuted Wright's, neither study would be relevant to the guidance on disparate impact, as neither included a test for the racially disparate impact of an identified policy or practice.

Readers should also note that both the Morgan and Wright studies were severely limited in scope, such that both relied on parental recall of suspensions. Neither study had any actual administrative data from the schools on the number or duration of suspensions. Just as Morgan's addition of the number of suspensions that parents could recall altered the findings dramatically, so could consideration of duration, the actual days of lost instruction, further change the findings. Unfortunately, the database Morgan and Wright relied on had no information about the duration of suspensions. As the latest OCR data collected from every school in the nation demonstrates, duration matters! There are profound Black-White gaps in the days lost due to suspension per 100 enrolled students.

Another flaw shared by Morgan and Wright is that, while looking for evidence of racial bias among teachers and principals who suspended students, both relied on the kindergarten teacher's behavioral ratings as a control. This means that, while testing for evidence of racially different treatment by educators, both studies assumed, without justification or validation, that the recorded behavioral ratings of their colleagues were bias free.

We need to be able to challenge the disparate impact of discipline policies because we know that locally determined discipline policies and practices can drive differences in educational opportunity. In a given locality there could be evidence of both unlawful

different treatment and evidence that an unjustified policy or practice was contributing to the observed racial differences. What neither Morgan nor Wright seem to understand is that there is more than one kind of discrimination and a test for different treatment cannot possibly rule out the presence of disparate impact.

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About the UCLA Civil Rights Project's Center for Civil Rights Remedies

The UCLA Civil Rights Project's Center for Civil Rights Remedies (CCRR) is dedicated to improving educational opportunities and outcomes for children who have been discriminated against historically due to their race or ethnicity and who are frequently subjected to exclusionary practices such as disciplinary removal, over-representation in special education, and reduced access to a college-prep curriculum. CCRR has issued numerous reports about the use of disciplinary exclusion in California's schools, including the 2015 report, "Closing the School Discipline Gap in California: Signs of Progress." CCRR is an initiative of the UCLA Civil Rights Project /Proyecto Derechos Civiles (CRP), co-directed by Gary Orfield and [Patricia Gándara](#), researcher professors at UCLA. Founded at Harvard in 1996, its mission is to create a new generation of research in social science and law on the critical issues of civil rights and equal opportunity for racial and ethnic groups in the United States. It has monitored the success of American schools in equalizing opportunity and has been the authoritative source of segregation statistics. CRP has commissioned more than [400 studies](#), published more than [15 books](#) and issued numerous reports from authors at universities and research centers across the country.

Acknowledgments: I would like to thank Paul Martinez and Cheri Hodson, research associates at CCRR, for their assistance in preparing this testimony. I'm also grateful to Dody Riggs for her editing assistance.

¹ See 20 U.S.C. Sec. 1418(d).

² For a comprehensive discussion of the value of disparate impact and succinct rebuttal of some of the most common justifications for harsh discipline policies please read, Discipline Policies, Successful Schools and Racial Justice, (2011) <https://nepc.colorado.edu/sites/default/files/NEPC-SchoolDiscipline.pdf>. For an extensive review of the contributing factors, harmful disparate impact and studies of several promising remedies please read the edited book containing studies by leading scholars across the nation, *Closing the School Discipline Gap*, Teachers College Press (2015).

³ As surprising as it may seem, articles published by the National Review and the Wall Street Journal have contained unsubstantiated claims that the school discipline guidance and the disparate impact section in particular was driven by policymakers who believed that all racial discipline disparities are caused by racist teachers. See e.g., Max Eden, *On School Discipline, Fix the Problem, Not the Statistics: Are America's teachers a bunch of racists? Democrats seem to think so*, National Review (November 13, 2017), Available at <https://www.nationalreview.com/2017/11/school-discipline-federal-rules-not-helping/>

⁴ Although beyond the scope of this testimony, one possibility not considered by the federal disparate impact guidance is that, once policymakers become aware of the disparate harm caused by an unjustified policy, their decision against taking protective action to mitigate the anticipated disparate harm indirectly satisfies the intent element, assuming that the policymakers have the power to change the policy in question.

⁵ Daniel J. Losen and Amir Whitaker, *11 Million Days of Lost Instruction*, (2018)

⁶ This analysis should be regarded as preliminary. A new report, to be jointly released with the Learning Policy Institute will provide this information for every district in the nation broken down by race and race with disability and provide at the elementary and secondary levels.

⁷ See Daniel Losen, Amir Whitaker, Jamie Kizzire, Zoe Savitsky and Katherine Dunn.

The Striking Outlier, (forthcoming 2019).

⁸ This analysis, the text, and graphs are all excerpts from our report on California.

⁹ Our reports have repeatedly warned against misleading statements, such as “data show that even while suspension rates fell across the board, the rate for black students dropped the least. In fact, in 2017, black students were still being suspended at four times the rate as whites—and that gap had widened slightly from 2013.” See <https://www.the74million.org/article/even-as-californias-student-suspension-fell-46-over-the-past-6-years-the-racial-discipline-gap-remains-as-wide-as-ever/>. The underlying suspension rates are not at issue, but in absolute terms the rates dropped more for Black students and the racial gap narrowed. The author made the error of relying solely on a purely relative disparity measure and overlooking how the reductions, in absolute terms, were greater for Black students than others. It is plain to see that the racial differences have narrowed over time. Mathematically, the relative ratios will only decline if the ratio of the reductions exceeds the starting ratio. For example, for the new ratio to become lower than the starting ratio, with a starting ratio of 5 to 1, the amount of reduction to the rate of the higher group must be greater than five times the reduction of the rate to the lower group. Consider, for example, an elementary school where, in a prior year, 5% of Black students are suspended and just 1% of Whites. Fast-forward to today, a few years after discipline reform. If the new rates indicate that 1% of Black students were suspended and 1/10 of 1% of White students were suspended, one could say that, in the more recent year, Blacks were suspended at 10 times the rate of White students, where it had once been five times the rate. The actual difference between the rates in absolute terms would be less than one percentage point, whereas it had once been a full four percentage point difference. Indeed, the Black rate dropped by four points and the White rate dropped by less than one point. Readers should be wary when the media or researchers describe trends using relative ratios, because they can be very high when the absolute racial differences in rates are very low, and where these differences have gotten a great deal smaller.

¹⁰ Over time, as unnecessary suspensions for minor misbehaviors are reduced further or eliminated, we should expect to see higher and higher shares of total suspensions meted out for the most serious behaviors, such as violence with injury, weapons, or illicit drugs because the new pattern would reflect that suspensions were being used as measures of last resort and that suspensions for minor misbehaviors had been replaced by more effective responses. However, we would also expect to see suspension rates for the most serious behaviors remain within a very low range.

¹¹ Russell Rumberger & Daniel J. Losen, *The High Cost of Harsh Discipline and Its Disparate Impact*, National Report, The Center for Civil Rights Remedies, UCLA Civil Rights Project (2016).

¹² Russell Rumberger and Daniel J. Losen, *The Hidden Cost of California’s Harsh School Discipline* (2017). Available at www.schooldisciplinedata.org

¹³ LAUSD students lost 8,841 days of instructions from suspensions in the 2013-14 school year, compared to 5,160 in the 2016-17 school year. Data available online at <http://schoolinfosheet.lausd.net/budgetreports/disciplinereports.jsp>.

¹⁴ National Education Policy Center commentary and author Gary Ritter’s response and an additional rejoinder are all available at <http://nepc.colorado.edu/thinktank/review-discipline>.

¹⁵ If all the teachers watched the Black boys most when not one was misbehaving, one can imagine their conclusion about how the experiment would turn out if all the students had misbehaved in equal degrees. If the teachers accurately reported what they saw if all were misbehaving, they would have seen Black boys exhibit more misbehavior simply because they predominantly watched the Black boys. None would realize that the students were all misbehaving in equal amounts. None would report that White girls misbehaved more, which they might have done if they had watched the White girls most of the time. By directing our attention in this manner, our initial racial biases can wind up reinforced with real data without us even knowing that our data collection was skewed. This example is offered not as proof of intentional different treatment but to suggest that implicit racial bias can influence how differently we observe children’s behavior. In turn, our biased observations can reinforce negative perceptions, making it more likely they will be triggered again.

¹⁶ See Letter from Xavier Becerra, Attorney General for the State of California, August 24, 2018 joined by ten other state AGs available at: https://nj.gov/oag/newsreleases18/Federal-School-Discipline-Guidance_Multistate-AG-Letter.pdf

¹⁷ Most important, instead of the zero evidence of discrimination, Morgan’s nearly identical study concluded that, compared to otherwise similarly situated White students, Black students were significantly more likely to be suspended. Morgan presented his preliminary findings in December 2017, while testifying before the U.S. Commission on Civil Rights. His report findings were available on line as of December 21, 2018. Therefore, this is an additional reason to be deeply concerned that the Department of Education, which has relied on Morgan’s research for other purposes, would still decide to rely on Wright’s directly repudiated research findings.

¹⁸ See, Paul L. Morgana, George Farkas, Marianne M. Hillemeier, Yangyang Wang,

Zoe Mandela, Christopher DeJarnetta, Steve Maczuga, *Are students with disabilities suspended more frequently than otherwise similar students without disabilities?* Journal of School Psychology 72 (2019) 1–13 at p. 8.

¹⁹ See *Id.*, at p 9.

Chairman SCOTT. Thank you.
Mr. Pierre.

**TESTIMONY OF DION J. PIERRE, RESEARCH ASSOCIATE,
NATIONAL ASSOCIATION OF SCHOLARS**

Mr. PIERRE. I grew up in New York City, where I attended public schools between 2000–2012, interrupted by brief periods in other cities as my parents moved around. The brief sojourns in schools outside New York City opened my eyes. Schools in America are by no means equal, but the sources of inequality differ from what most people think.

I learned from schools in Binghamton, New York and Winston-Salem, North Carolina that parents and teachers can work together to help students behave properly and succeed academically.

Most of the time, however, I attended schools beset by disciplinary problems. When I acted out in schools in Binghamton and Winston-Salem the teachers called my parents and I settled down. Nothing like that happened in the other schools. But by grade nine I had my own ideas about what school was good for. I wanted to learn and learning was always more difficult when disruption ruled.

In September 2008, I arrived with my stepfather at John Adams High School in South Ozone Park, Queens to complete my registration for fall classes. Several hours later I watched from a table at the perimeter of the cafeteria as members of the Crip Gang pounced a young man sporting the colors of the rival Blood Gang. I had just received my lunch.

Incidents like these were common at John Adams where, according to the New York State Education Department, only 64 percent of students graduate in 4 years, just 2 percent more graduate in 6 years. Violence, gang activity, and classroom disruptions were the John Adams experience. The high school was something like a poorly run prison where the inmates intimidate the guards. Every morning we walked through metal detectors, at the end of which stood a New York City public safety officer, wand in hand, waiting to scan us again. It was annoying, but plainly necessary.

Classes could be disrupted at any moment by late arriving students who paid no price for tardiness. Students dipped into classes into which they weren't registered to escape our Vice Principal's infamous hall sweeps. Hall sweeps collected late students, quarantining them in a lecture room on the third floor to avoid more classroom disruptions. Class clowns heckled instructors incessantly and others laced their jeering with threats of physical harm and racial epithets. When the situation got seriously out of control, the teachers called public safety officers and school administrators, but their arrival escalated the situation, usually by giving the student occasion to put on a show for his friends. By the time the student was hauled off and the flipped desks set right, the bell signaling the end of class rang. So much for instruction.

I recall these anecdotes every time I hear people decry Black and Latino students' alarmingly high suspension and expulsion rates. In 2015 New York City Mayor Bill de Blasio issued rules requiring school officials to receive permission from the New York City Education Department to suspend students. Recently, the California

Senate passed a measure forbidding public schools from suspending students in grades four through eight who willfully defy school staff. The bill was supported by legislators, alarmed that although Black students account for 5 1/2 percent of California students, they receive 20 percent of all suspensions in the State. Similar measures trailed the Obama Administration's 2014 guidelines seeking to curb racial disparities in school disciplinary proceedings. Proponents of these measures argued that because Black students are disproportionately impacted by school suspension, our Nation's school systems are hotbeds of racial discrimination.

But this disparate impact theory is a fantasy. Violence and lack of order in underserved schools deprives all students of their rightful educational opportunities. Catering to the disruptors by keeping them in classrooms or halls, cafeterias, or wherever they choose to hang out, is a terrible idea.

The Obama era guidelines aren't social justice, it is state-mandated foolishness. Keeping teen predators in schools so that they can continue preying on vulnerable students doesn't bring educational opportunity to anyone, but that is what the campaign to undermine school discipline in minority communities has come to.

Why do urban schools tend to have more disciplinary problems than other schools? I don't have all the answers, but I know that the problem feeds on itself. In many cases students are influenced by mainstream culture, which often encourages minority youth towards transgressive behavior, lets students feel they can get away with anything, and some will try to find out just how far they can go. And when nothing happens to them, other students will misbehave as well.

These problems are aggravated, of course, in communities with high rates of family dysfunction and other social problems. The root problem here is not racism.

But even in the most afflicted communities, schools can still be beacons of hope, the fertile fields of potential from which the leaders of tomorrow will sprout and grow into the next generation of great Americans. Turning them into sanctuaries for bullies, early career criminals, and gangs is unwise public policy and will stymie progress.

[The statement of Mr. Pierre follows:]

Dion J. Pierre

Research Associate

National Association of Scholars

Testimony before the House Committee on Education and Labor

Brown v. Board of Education at 65: A Promise Unfulfilled

I grew up in New York City, where I attended public schools between 2000 and 2012, interrupted by brief periods in other cities as my parents moved around. The brief sojourns in schools outside New York City opened my eyes. Schools in America are by no means equal, but the sources of inequality differ from what most people think. I learned from schools in Binghamton, New York and Winston-Salem, North Carolina, that parents and teachers can work together to help students behave properly and succeed academically.

Most of the time, however, I attended schools beset by disciplinary problems. When I acted out in the schools in Binghamton and Winston-Salem, the teachers called my parents, and I settled down. Nothing like that happened in the other schools. But by grade 9, I had my own ideas about what school was good for. I wanted to learn, and learning was always more difficult when disruption ruled.

In September 2008, I arrived with my stepfather at John Adams High School in South Ozone Park, Queens to complete my registration for fall classes. Several hours later, I watched from a table at the perimeter of the cafeteria as members of the "Crip" gang pounced a young man sporting the colors of the rival "Blood" gang. I had just received my lunch.

Incidents like these were common at John Adams, where according to the New York State Education Department, only 64% of students graduate in four years. Just two percent more (66%) graduate in six years. Violence, gang activity, and classroom disruptions were the John Adams experience. The high school was something like a poorly run prison, where the inmates intimidate the guards. Every morning, we walked through metal detectors, at the end of which stood a New York City Public Safety officer, wand in hand, waiting to scan us again. It was annoying but plainly necessary.

Classes could be disrupted at any moment by late arriving students who paid no price for tardiness. Students dipped into classes in which they weren't registered to escape our Vice Principal's infamous "Hall Sweeps." Hall Sweeps collected late students, quarantining them in a lecture room on the third floor to avoid classroom disruptions.

Class clowns heckled instructors incessantly, but others laced their jeering with threats of physical harm and racial epithets. When the situation got seriously out of control, teachers called the unarmed police officers assigned to the school and the school administrators. Their arrival usually escalated the situation by giving the student occasion to put on a show for his friends. By the time the student was hauled off and the flipped desks set right, the bell signaling the end of class rang. So much for instruction.

I recall these anecdotes every time I hear people decry black and Latino students' alarmingly high suspension and expulsion rates. In 2015, New York City Mayor Bill de Blasio issued rules requiring school officials to receive permission from the New York City Education Department to suspend students. Recently, the California Senate passed a measure (SB 419; 30-8) forbidding public schools from suspending students in grades four through eight who willfully defy school staff. The bill was supported by legislators alarmed that although black students account for 5.6% of California's students, they receive twenty percent of all suspensions in the state. Similar measures trailed the Obama administration's 2014 guidelines seeking to curb "racial disparities" in school disciplinary proceedings. Proponents of these measures argued that, because black students are "disparately impacted" by school suspensions, our nation's school systems are hotbeds of racial discrimination.

This disparate impact theory is a fantasy. Violence and lack of order in underserved schools deprives all students of their rightful educational opportunities. Catering to the disruptors by keeping them in the classrooms—or halls, cafeterias, or wherever they choose to hang out—is a terrible idea. I don’t know whether suspending such students will teach them the value of education, but leaving them in the school to disrupt everyone else’s education is a travesty. I know. I’ve attended such schools, and I’ve also attended schools that maintain reasonable order. The difference has nothing to do with race, except in the sense that some people believe that it is a benefit to minority communities to allow their schools to become ungovernable.

At John Adams High School, Obama-era policies restricting school discipline unleashed a torrent of new problems. When I visited weeks after I graduated college in 2016, I saw how students’ behavior had worsened. Students strutted the hallways cocooned in noise-cancelling headphones and texting. The staircases reeked of marijuana. Teachers and staff were like ants trying to manage traffic in Times Square.

The impression I formed in 2016 was reinforced when, just weeks after my visit, the *New York Post* reported that a new “hands-off attitude” was allowing John Adams’ students to “run wild.” According to the article, “they curse and threaten teachers, refuse to put away their cellphones, roam the halls, and openly deal drugs.” That students cursed at and threatened teachers wasn’t new to me, but cellphones in class and drug dealing in the stairwells was new. Also new was a principal’s refusal to suspend a senior who made a sex tape with a freshman and passed it around to his friends. The principal, we were told, wanted to keep the numbers of suspensions down—as per the new rules.

This isn’t “social justice.” It is state-mandated foolishness. Keeping teen predators in school so that they can continue preying on vulnerable students doesn’t bring educational opportunity to anyone. But that’s what the campaign to undermine school discipline in minority communities has come to.

Why do urban schools tend to have more disciplinary problems than other schools? I don’t have all the answers, but I know that the problem feeds on itself. In many cases, students are influenced by mainstream culture, which often encourages minority youth towards transgressive behavior. Let students feel they can get away with anything and some will try to find out just how far they can go. And when nothing happens to them, other students will misbehave as well. These problems are aggravated of course in communities with high rates of family dysfunction and other social problems. The root problem here is not racism. But even in the most afflicted communities, schools can be beacons of hope; fertile fields of potential from which the leaders of tomorrow will sprout and grow into the next generation of great Americans. Turning them into sanctuaries for bullies, early-career criminals, and gangs is unwise public policy and will stymie progress.

Our collective greatness has always come from Americans’ willingness to ask more of ourselves and our communities; and from our shared optimism, which fuels our conviction that the mistakes of today won’t decide our future. The Obama-era guidelines demand less of us. It’s time we changed course.

Chairman SCOTT. Thank you.
Mr. Carranza.

TESTIMONY OF RICHARD A. CARRANZA, NEW YORK CITY SCHOOLS CHANCELLOR, NEW YORK CITY DEPARTMENT OF EDUCATION

Mr. CARRANZA. Good morning, Chairman Scott, Ranking Member Dr. Foxx, and all the Members of the Committee here today. On behalf of Mayor de Blasio and the New York City Department of Education, I am honored to be here today.

Thank you for the opportunity to testify at this important hearing and thank you for your support for our 1.1 million New York City public school students.

Now, I know, just as the Mayor knows, just as everyone in this chamber knows, that public education is an investment in the future. From my own experience as a student, a teacher, a principal, and now Chancellor of the largest school system in the Nation, I can tell you that a public school education can change lives. Unfortunately, this scourge of school segregation robs many students of color and those living in poverty of the high quality education they deserve.

Sixty-five years after the decision, I humbly say to you schools systems nationwide have not fulfilled the mandate of the United States Supreme Court in *Brown v. Board of Education*. Decades of history have taught us that segregation is inherently unequal. For too long we have been afraid to confront this reality, but we can no longer allow such a system to persist just because the problem is hard to fix.

As Chancellor it is my overarching goal to advance equity—not yesterday, not maybe in the future, but advance equity now. So we are confronting this problem head on by increasing diversity in some of our most segregated school districts. After a community-driven process, we have approved diversity plans put forward in three school districts in New York, Districts 1 and 3 in Manhattan and District 15 in Brooklyn.

In District 15, due in part to a long-standing academic screens for admissions, many middle schools have long served very low numbers of low income Black and Latino students. Others basically served only low income Black and Latino students. District 15's diversity planning process brought everyone to the table, community members, parents, and students, advocates, and school staff from across the District. And they had tough but necessary conversations, conversations grounded in data and occurring in different languages. The result was a grassroots driven comprehensive plan that eliminated all academic screens in favor of a lottery. District 15 middle schools will now prioritize approximately half of their seats for students from low income families, English language learners, and students in temporary housing.

These efforts to increased diversity in District 15 inspired our \$2 million grant program to support school districts to develop locally driven diversity plans in communities across New York City. This program is supported by Federal Title IV funding.

Now, I wanted to turn to the well-known issue of our most selective schools in the City, the specialized high schools. New York

State law mandates that admission be based solely on results from a single test. No other institution in the country uses such a process with one single test. What outcomes has this led to? This year, Black and Latino students received only 10 percent of admission offers in a school system that is nearly 70 percent Black and Latino students. This is unfair, it is unacceptable. Unfortunately it is the status quo.

As the Mayor has put forward a proposal to change New York State law to eliminate the single test and expand admissions criteria to include a proven combination of grades and state test scores. If we are to advance equity, now we must eliminate the single test for specialized high schools now.

However, integration is not just about giving Black and Latino students access to predominantly White schools, it is much more complicated than that. It is also about priming our school communities for this change by creating classroom cultures that respect and celebrate diversity, it is about implementing our sweeping equity and excellence for all agenda based upon the premise that whether students attend a school with mostly White peers or mostly Black and Brown peers, they all deserve an excellent education, the opportunity to develop invaluable life skills and the social capital that helps to open doors.

And meaningful integration is about ensuring that all 125,000 people who work with our students in the New York City system address their implicit biases that may create different expectations for different students. We are delivering important anti-bias training to each and every one as a central part of our advancing equity now.

Now, briefly, I would like to turn to some ways in which the Federal Government can support the work that is elaborated on further in my written testimony. Number one, reinstate Federal guidance to support diversity in schools. The prior guidance on racial diversity in K-12 schools provided that support by explaining how school systems can voluntarily consider race to achieve diversity and avoid social racial isolation in schools. The current Administration has rescinded that guidance and has failed to issue any alternative policies.

Number two, reinstate Federal guidance to support equity in discipline. Prior school discipline guidance supported school systems by describing how those systems can administer student discipline without discriminating against students on the basis of race, color, or national origin.

Number three, increase and protect Title IV resources. The Administration's proposed budget includes elimination of Title IV, an important resource, that as I noted, we are currently using to fund our \$2 million diversity grant program.

And, number four, pass Strength in Diversity Act. This Act authorizes \$120 million to provide planning implementation grants to support voluntary local efforts to increase social economic diversity in our schools.

The goal of New York City's diversity agenda is to build a future that is not bound by history, by demographics, or by income. We believe we can create a system that reflects the best of our diverse, inspiring, and innovative city. We must continue to engage in the

additional hard work necessary to disrupt the status quo, to desegregate our schools, and advance equity now.

We are grateful to this Committee's Focus on integration and the advancement of equity, and I thank you for your time, and would be happy to answer questions from the Committee.

[The statement of Mr. Carranza follows:]



**Testimony of Richard A. Carranza
Chancellor, New York City Department of Education
House Committee on Education and Labor**

"Brown v. Board of Education at 65: A Promise Unfulfilled"
April 30, 2019

Good morning Chairman Scott, Ranking Member Foxx and all the members of the Committee here today. On behalf of Mayor de Blasio and the New York City Department of Education, I am honored to be here today.

Thank you for the opportunity to testify at this important hearing, and thank for your support for our 1.1 million New York City public school students.

Now, I know—just as the Mayor knows, just as everyone in this chamber knows—that public education is an investment in the future. From my own experience as a student, a teacher, a principal, and, now, Chancellor of the largest school system in the nation, I can tell you that—beyond a shadow of a doubt—a public school education can change a life. Unfortunately, the scourge of school segregation robs many students of color and those living in poverty of the high-quality education they deserve.

Next month marks 65 years since the U.S. Supreme Court issued the landmark *Brown v. Board of Education decision*. Notably, in that decision, Chief Justice Earl Warren found: “in the field of public education the doctrine of ‘separate but equal’ has no place”—and segregated schools are “inherently unequal.”

And I ask you, nearly 65 years later, what do we have to show for *Brown v. Board of Education*?

65 years later, I humbly say to you, school systems nationwide have not fulfilled the mandate of the U.S. Supreme Court in *Brown v. Board of Education*.

What have we learned during this time? Decades of history have taught us that segregation is inherently unequal. For too long, we’ve been afraid to confront this reality. We closed our eyes and hoped the problem would fix itself—or simply go away. No more. We can no longer allow such a system to persist... just because the problem is hard to fix.

The bottom line: a public—and I underline public—school system should represent the entire city it serves.

So, today, it is my honor to share New York City’s efforts to increase diversity in our public schools, and to request the federal government’s support for these endeavors where appropriate.

I opened my testimony by talking about equality, which is terribly important. But my overarching goal as Chancellor is to advance equity. More precisely, to *advance equity now*. Why? Because advancing equity is the only way to disrupt the entrenched systems that



throughout our history have kept underserved students from achieving their potential. Consider that 70 percent of New York City's public school students are black or Latino. Yet, if you are a black or Latino student, you are statistically less likely to be in an accelerated program or in specialized high schools compared with your peers. You have less access to Advanced Placement courses, and a lower likelihood of graduating, and of graduating college-ready.

Only an equity approach can right these wrongs. In New York City, equity means that we have the same high expectations for all of our students, whatever their race, ethnicity, or zip code. Equity means that we acknowledge that some students need more support than others—and we give them the resources they need to succeed. Equity means that we accelerate our work to reverse historic injustices, empower communities, and intervene throughout a child's journey through our system. Equity means that all of our students are on a path to high school graduation, college, and meaningful employment. These are the pillars of our aptly named Equity and Excellence agenda: a series of specific academic and student support initiatives that we are implementing to ensure that every single student gets the quality education he or she deserves.

Integration advances equity, as our children are given the opportunity to learn from one another's diverse perspectives, backgrounds and experience. Significant research demonstrates that integrated classrooms lead to improved test scores, improved critical thinking and problem-solving skills, lower dropout rates, reduction of racial bias, enhanced leadership skills, and better preparedness for success in the global economy. Integration doesn't lower academic achievement for any student; it improves it for all.

Segregation, on the other hand, *does* shrink opportunity. So, we are confronting this problem head-on. We have started to increase diversity within schools in some of our most diverse but racially isolated school districts. After a community-driven process, we have approved diversity plans put forward in three of our school districts: Districts 1 and 3 in Manhattan and District 15 in Brooklyn.

While each of these plans warrants distinction, I want to take a little while to discuss the work in Brooklyn's District 15. This is a beautifully diverse district that represents New York City in many ways.

Unfortunately, due in part to long-standing academic screens for admissions, many District 15 middle schools have long served very low numbers of low-income black and Latino students; others basically served *only* low-income black and Latino students.

To address the racial isolation in these schools, the District 15 diversity planning process brought everyone to the table: community members, parents and students, advocates and school staff from across the district, and they had tough but necessary conversations—conversations grounded in data, and occurring in different languages.

The District 15 committee looked at a huge amount of data and research, including middle school enrollment demographics, patterns of racial housing segregation, and academic outcomes. Following their consideration of a variety of potential solutions, they put forward a



comprehensive plan to change the middle school admissions process. The Mayor and I were proud to approve this plan.

Now, all the academic screens are gone, and are replaced by a lottery where students are matched to the schools they want to attend. District 15 middle schools prioritize approximately half of their seats for students from low-income families, English language learners, and students in temporary housing. Earlier this month, we released admission offers for middle schools and I am proud to say that almost all of the D15 middle schools met their diversity targets.

This is real action. With real buy-in. With real ownership of this plan and its success. It's not just in District 15—87 schools across New York City now have a “Diversity in Admissions” plan in place. That's up from just seven schools when the Diversity in Admissions program started three years ago.

Based upon our efforts to increase diversity in District 15, we have launched a \$2 million grant program to support school districts to develop locally driven diversity plans in communities across New York City. This program is supported by federal Title IV funding, which I will discuss later in my testimony.

Slowly but surely, we are disrupting the status quo. We are advancing equity now.

Much of this work has come from a grassroots, “bottom up,” approach. These plans are *owned* by principals and superintendents, PTAs and parent-led Community Education Councils. They are ready to put in the elbow grease to make them successful.

At the same time, we cannot punt the imperative of improving the level of diversity to individual schools and communities. We have to pair grassroots “bottom-up” approaches with “top-down” vision, resources, and action.

New York City is taking initiatives to further support school diversity like never before. In 2017, we established the School Diversity Advisory Group (SDAG) to make formal policy recommendations to ensure that New York City schools become integrated and equitable. The SDAG includes over 40 members, including city government stakeholders, local and national experts on school diversity, parents, teachers, advocates, students, and other community leaders. The SDAG has released an initial report which the Mayor and I have been reviewing, and will be responding to in the weeks ahead.

We are taking a hard look at some of our enrollment practices from 3-K through twelfth grade. In fact, our recently released Birth-to-Five early childhood RFP aims to make early education classrooms more socio-economically and racially integrated by bringing together programs that have traditionally served low-income families with our universal 3-K and Pre-K programs. This is because we believe all students benefit from diverse and inclusive classrooms. We are committed to creating and supporting learning environments that reflect the diversity of New York City.



Now I want to turn to an issue that has garnered significant attention in New York City and even nationally: admissions to our Specialized High Schools. New York State law mandates that admissions to eight of our best high schools are based solely on results from a single test, the Specialized High School Admissions Test (SHSAT). No other institution in the country uses such an admissions process. What outcomes has this process led to? This year, black and Latino students received only 10 percent of the admission offers to New York City's eight specialized high schools—in a school system that is nearly 70 percent black and Latino. This is unacceptable and must change.

The Mayor has put forward a proposal to change New York State law to eliminate the SHSAT and expand the admissions criteria to include a proven combination of grades and state test scores. We are working with our state delegation to move that proposal forward.

The single admissions test is unfair and the status quo is unacceptable. If we are to advance equity now, we must eliminate the single test for specialized high schools now.

With that said, we have no illusions. Increasing diversity in a system of 1,800 schools is tough work, and we know it will not happen overnight. What is more, integration means different things to different communities. It is not just about the movement of bodies, or giving black and Latino students access to predominantly white schools. Achieving meaningful integration is far more complicated, and far more important.

Meaningful integration is about giving all students equitable access, opportunity, and the chance to succeed. It is also about priming school communities for this change—by creating classroom cultures that respect and celebrate diversity. That is why this is not the job of one mayor or one chancellor. It is the responsibility of everyone who cares about the future of our public school students.

So, let me share another way we are coming at this problem. It involves 125,000 people who are employed by the New York City Department of Education. Not just teachers and principals and superintendents, but junior and senior staff members working in every capacity throughout our system. And here is what we've done: Starting school year, we've made a historic investment in implicit bias training for each of these 125,000 staff members. Now, this term may seem abstract, but it's not. When we examine our implicit biases, we understand why we may have different expectations for different students. We understand why certain strategies or practices may affect different students in different ways. Implicit bias training is foundational to everything we do – it allows us to raise expectations for all students and build more inclusive school environments. It is central to advancing equity now.

We are also expanding culturally responsive education through teaching materials that are culturally relevant and include a diverse range of communities and topics. This includes the *Passport to Social Studies* curriculum, which has lesson plans about African, Latino, Asian,



Middle Eastern, and Native heritage people as well as about gender, LGBTQ, and religious history. Across our vast system, we are working to show our students, through the literature we read, in the language we use, and in the way we invest our resources, that we are a deeply connected society made up of different voices and perspectives. Like implicit bias, this is not an abstract concept; it is central to creating schools that engage and motivate students, and advancing equity now.

As we talk about equity here today, about truly reaching and serving our students, I urge you all to keep one other question in mind: how do we truly reach and serve our parents? We must truly empower them, not just pay lip service to parent engagement. Do parents know about the school options available to them? Do parents know what they should be talking to teachers about during parent-teacher conference night? Do parents know that their child should be able to take Algebra in eighth grade, or college-prep courses in high school? You see, knowledge is power. With this in mind, I have established a new division at the DOE for Community Empowerment, Partnerships, and Communications to specifically focus on how we communicate to and with our parents and communities. This is just one example of the infrastructure we need for our parents to be empowered and active—and we need more of it in historically underserved communities.

All of our work to increase diversity and dismantle the status quo directly supports the Mayor's Equity and Excellence for All vision and agenda. Through 3-K and Pre-K for All and initiatives like Universal Literacy, Computer Science for All, and College Access for All, we are changing the odds for all of our students. The basic premise is this: whether our students attend a school with mostly white peers, or mostly black and brown peers, they all deserve excellence. Every student needs the opportunity to develop invaluable life skills, and the social capital that helps to open doors.

Now I want to turn to some ways in which the Federal government can support this work.

1. Reinstate Federal guidance to support diversity in schools.

The prior U.S. Department of Education (USDOE) guidance on racial diversity in K-12 schools and higher education provided that support by explaining how, consistent with existing law, school systems can voluntarily consider race to achieve diversity and avoid racial isolation in schools. Although the current administration rescinded that guidance, it has failed to issue any alternative policies. This lapse in support from the Federal agency responsible for enforcing Federal laws governing education institutions and ensuring equal access in education leaves school systems such as DOE without the Federal leadership to fulfill the promise of the *Brown v. Board of Education* decision.

2. Reinstate Federal guidance to support to equity in discipline.



The prior USDOE school discipline guidance supported school systems by describing how those systems can administer student discipline without discriminating against students on the basis of race, color or national origin. Since the current Administration rescinded that guidance, it has not been replaced with any alternative policies.

The rescinded school discipline guidance recognized that substantial racial disparities in student discipline could be due to bias, implicit or otherwise, by staff or an adverse discriminatory impact resulting from a school policy or practice. Consequently, the guidance encouraged school systems to consider uniformly applied disciplinary rules and alternatives to exclusionary discipline, to both reduce student misconduct and maintain a safe learning environment. These proposed programs included conflict resolution, restorative justice practices, a structured system of positive behavior interventions, and providing wraparound social service supports to address the root causes of student misbehavior through school based counselors, social workers, nurses, psychologists, and mental health and other supportive service providers.

Ensuring equity in education includes the utilization of equitable discipline policies and practices, particularly because there is a link between exclusionary discipline and school avoidance, decreased academic achievement and engagement, and the increased likelihood of students dropping out.

Under the leadership of the Mayor, the City has changed its approach towards school discipline—instead of leaning towards punitive approaches like suspensions, our schools are helping students and staff address conflict while keeping students in the classroom. Through this change in approach and a \$47 million investment in strategies to strengthen school climate, we've seen suspensions decrease by 31.5 percent over the last five years, and major crime decrease 29 percent in the same time frame. At the same time, we continue to have significant racial disparities and have much work ahead.

3. Increase and protect Title IV resources.

The Administration's proposed budget includes the elimination of Title IV, an important resource that we are currently using to fund our \$2 million diversity grant program. Title IV also encourages diversity conversations at the local district level. We ask that Title IV is fully funded and expanded.

4. Pass the Strength in Diversity Act:

This Act authorizes \$120 million to provide planning and implementation grants to support voluntary local efforts to increase socioeconomic diversity in schools. Similar grants funded the District 1 diversity plan—New York City's first-ever district-wide diversity plan—and integration work currently ongoing in 11 New York City districts. New York City could use these funds to further this and other community-driven work that I have discussed today.

5. Increase and protect the Magnet Schools Assistance grants (MSAP)



A magnet school is a public school that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds. The Administration's proposed budget includes a reduction in funding for these grants. We ask that the MSAP grants are fully funded and expanded.

Thank you for considering these ways in which the Federal government can support diversity work at the local level.

The goal of New York City's diversity agenda is to build a future that is not bound by history, by demographics, or by income. That is what equity and excellence are about. We believe we can create a school system that reflects the best of our diverse, inspiring, and innovative city. We believe that integration and equity can unleash our students' innate brilliance, unlock their creativity, and put them on a path to their dreams. As a result, we must continue to engage in the hard work necessary to disrupt the status quo, desegregate our schools, and advance equity now.

We are grateful for this Committee's focus and support on fulfilling the promise of the *Brown v Board of Education* decision through meaningful integration and the advancement of equity in school systems nationwide. I thank you for your time, and I will be happy to answer any questions you may have.

Chairman SCOTT. Thank you.

We will begin with Member questions. I will first call on the gentlelady from California, Ms. Davis.

Ms. DAVIS. Thank you very much, Mr. Chairman. And thank you to all of you for being here and for being really helpful to us today.

I want to turn first to Dr. Darling-Hammond. And thank you for your in depth work and focus over the years. I wanted you to just answer for us, so what is the importance of resource equity in combating segregation?

Ms. DARLING-HAMMOND. Well, the original theory of action in *Brown v. Board of Education*, the cases that were consolidated into it, was both one about resources and one about desegregation, because there has been historically very disparate resources allocated to schools were experiencing de jure segregation. And even today, there are disparities in funding that are associated with segregation. Segregation and poverty and inadequate resources typically go hand in hand.

There was a recent study by the Education Trust which found that nationally districts serving the most students of color receive about \$1,800 per pupil less than districts that serve the fewest students of color. In many states there is a much bigger divide. You will see that in, you know, Lower Marion, Pennsylvania will spend twice as much as Philadelphia, New Trier spends twice as much as Chicago, Scarsdale used to spend twice as much as New York City, and it is probably still close to that; considerable differential. One study from EdBuild found that predominantly non-White districts receive about \$23 billion less than predominantly White districts. So these two things go hand in hand and it is very hard to adjust the resource needs and also meet the resource needs in high poverty districts without also tackling desegregation.

Ms. DAVIS. Mm-hmm. We see that some school districts, despite their best intentions really at trying to get at some of these issues, it is not sufficient. So what is it additionally—and I think you have all talked about some of the harmful policies as well as beneficial policies at the Federal level. How do we help the school districts who are trying to do this, good intentions, but not sufficient?

And if I might, turn to the Chancellor in a minute to ask about San Francisco, because that is one example where I think again, good intentions, but not sufficient. How would you respond?

Ms. DARLING-HAMMOND. Well, in my written testimony, I talk about several districts that have inter district desegregation plans and intra district desegregation plans that require investing in schools, so that you have equitable funding, so you can build high quality choices in every community. I was very sympathetic to Ms. White's testimony about the lack of such schools in some communities, but it takes an investment. You need transportation funds to allow kids to get to the schools that will meet their needs and choices, as is going on in Hartford and San Antonio and you need fair and open admissions policies. So there are a number of things that the guidance on diversity in the Obama Administration offered as strategies that actually have worked in a number of districts, but they do require, you know, investment, and they require opportunity to leverage the choice for equity. Because without that

set of bumper guards, it will sometimes produce inequity and more segregation.

Ms. DAVIS. Thank you.

And turning to the Chancellor, if you could—obviously as one of the recent articles in the New York Times stated, the program in San Francisco did not live up to the expectations. Some would call it a failure perhaps. You may feel differently that there were some strengths. But so what is it with best intentions, not sufficient? What happened?

Mr. CARRANZA. Well, as Professor Darling-Hammond has stated, you can't have choice if you don't really fund the choice. So if you don't have transportation, if you are not creating programs that are geographically distributed in the city—and this is a phenomenon that I saw not only as superintendent in San Francisco, but as superintendent in Houston, same thing. If you have choice without the appropriate undergirding of programmatic opportunities, of distributed opportunities across a city, and a mechanism for informing parents and students of what those choices are, you really don't have choice. And I think that was one of the issues that plagued us in San Francisco, was how do you create those kinds of programs with the appropriate funding streams in geographically distributed areas across the city.

Ms. DAVIS. Thank you very much. And my time is up. I return my time. Thank you.

Chairman SCOTT. Thank you.

Dr. Foxx.

Mrs. FOXX. Thank you, Mr. Chairman.

Mr. Pierre, you reached out to us asking to testify today, is that correct?

Mr. PIERRE. Yes, ma'am.

Mrs. FOXX. Okay. Why was it so important for you to have the chance to share your perspective?

Mr. PIERRE. I think it is important to talk about these issues honestly and in a way that actually takes minority communities seriously. I think the Obama era guidelines are an abdication rather than an assertive effort to cure the ills in minority communities.

Mrs. FOXX. Thank you.

Ms. White, what does the promise of *Brown v. Board of Education* mean to you and how do you think that decision helped your son reach his potential?

Ms. WHITE. That decision helped my son reach his potential in that he now had choices. He had a choice to either go to the local school, local neighborhood school, and he had the option then to attend either a private school or a charter. So he had the ability to choose among three different types of learning environments.

Mrs. FOXX. Thank you. Ms. White, you talked about this in your testimony, but I want to follow up on it. Your son attended a traditional public school, a public charter school, and a private school throughout his education. Why did you change schools and was it easy to do so?

Ms. WHITE. I changed schools initially because of—I explained earlier that there was an altercation at the school and the school did not utilize the—in the inner city we know that some schools have issues with behavior. And so this was an obvious behavior

problem that was not addressed, and so I felt that it was necessary then to move him. And we continually looked at the options and decided that we needed to move further. And we continued to evaluate it. It was not a one time, you know, he attends one school. We evaluated it continually.

And, no, the transition was not easy, but I as a parent made it easier for my son, explaining the transition, and giving him any additional support he needed to do that.

Mrs. FOXX. Thank you very much.

Mr. Pierre, did you see other students at your high school become discouraged in the way that you did? What was the impact on those students?

Mr. PIERRE. Oh, absolutely. At John Adams High School, if you cooperated with teachers and did your lessons, the students would make fun of you, they would say that you are acting White. And that of course puts tons of pressure on minority students who are just trying to get by. The idea that disruptive behavior and failing is somehow tied to Black identity is one of the most destructive ideas in our country today. President Obama probably never had any experience with that because he went to high school in Hawaii, I went to high school in New York City.

Mrs. FOXX. Mr. Pierre, do you think having greater freedom to choose the right educational option would have benefitted you or changed the dynamics you observed?

Mr. PIERRE. Hmm, well, I guess I ended up here, so I think that I had a family that was able to instill good values and work ethic in me. And I survived. But for other students, for whom languishing in a New York City public school was detrimental, I would absolutely support their right to seek out school districts where they will have a better education and a better learning environment. It is just cruel to keep well performing minority students in classes with disruptive students.

Mrs. FOXX. Mr. Pierre, when you visited your old school in 2016, did you have the chance to talk to any teachers or other staff?

Mr. PIERRE. Yeah, absolutely. And they were demoralized. They can't do anything. When I was in high school we weren't allowed to have cell phones in class. Students were bringing their cell phones to staircases, reeked of marijuana, which would have never happened with the Vice Principal that was there when I was there, and I said well, what happened. They said well, we can't suspend anyone. Shortly after that visit I read a New York Post article about the John Adams High School Principal refusing to suspend a student who—a senior student who made a sex tape with a freshman, and the word around school was that he wanted to keep the numbers down.

Mrs. FOXX. Thank you very much. I want to thank our witnesses again for being here today.

And I yield back, Mr. Chairman.

Chairman SCOTT. Thank you.

The gentleman from Connecticut, Mr. Courtney.

Mr. COURTNEY. Thank you, Mr. Chairman. And thank you for taking the time to focus on Brown v. Board of Education in terms of again the period that we have experienced in terms of ups and downs.

One place where I would argue there was some progress was referred to by Professor Brittain in his remarks when he read from the holding of *Sheff v. O'Neill*, a case that those of us from Connecticut are very familiar with. He was the lead counsel for the plaintiff in that case. It took almost 8 years to get from filing the lawsuit to the final judgment in 1996, which ruled again that segregation under the State constitution in fact was a violation of State law. And that triggered a whole other process in terms of trying to find the resources to implement a system of breaking down those barriers.

Again, I just think that Professor Brittain's leadership and advocacy—again, persisting to go back to the courts, to force the State legislature to come up with the resources for a segregation plan, has resulted in some positive outcomes.

Mr. Chairman, I have an article from *The American Prospect*, "Desegregated Differently", which describes again the *Sheff v. O'Neill* case, which I would like to ask that to be admitted to the record.

Chairman SCOTT. Without objection

Mr. COURTNEY. And it states very clearly in the first paragraph that nearly half of the public school students in the City of Hartford now attend desegregated schools. Included in that sort of plan is a Sheff school, as it is called, in East Hartford, Connecticut, the IB Academy, which my daughter, Elizabeth, attended and graduated in 2013. Again, it was rated by the U.S. News & World Report as the fifth best high school in the State of Connecticut. Again, totally diverse student body where students from Hartford, Connecticut are transported every day, along with kids from other suburban areas. And again, it has shown that in fact diversity and quality are just not incompatible, but in fact work together to produce great outcomes for students.

So, again, Professor Brittain, based on your experience in, you know, dealing with again the resource issue in the wake of the court's decision, I mean to some degree that is really the mission that we should really be focused on in terms of trying to get the benefits that you described in your testimony. Is that correct?

Mr. BRITTAINE. That is correct.

Mr. COURTNEY. And the Strength in Diversity Act, which my friend Congresswoman Fudge—would open the door to expanding those resources, as well as the magnet school grants, which the Chancellor referred to, which have really kind of not been out there for communities. That would help, don't you think, based on your experience, in terms of breaking down resistance to really enhancing these types of program?

Mr. BRITTAINE. Absolutely, I agree with both the Chancellor and my colleague, Dr. Linda Darling-Hammond.

Mr. COURTNEY. Because, you know, what we are seeing is that again you hit that about 50 percent mark in terms of kids attending desegregated schools, but it has somewhat stalled because of budget issues in Connecticut, and also some resistance in terms of local communities funding issues like transportation. If the Federal Government were to step in and really provide a new infusion of resources, I mean that would really turbo charge and jump start,

you know, these models that we know are actually working, isn't that correct?

Mr. BRITTAIN. That is correct.

Mr. COURTNEY. And, Chancellor, I don't know if you want to just sort of chime in, but you know that would get to the heart of some of the other criticisms that we have heard here. I mean I don't want to speak ill of the New York City school system, but frankly it is highly segregated. And if we had programs which, again, we are able to diversify student bodies, I think frankly you would see improvement all across the board.

And I was wondering if you could comment on that.

Mr. CARRANZA. Yes, sir. So it would be a game changer. And, again, resources—as public school systems we don't have the ability to charge more for our product. We don't sell products, we educate souls. So we are dependent upon the funding that we get to be good public stewards of that funding.

So additional resources gives us the opportunity to create programs, to distribute those programs through an equity lens in communities that have historically been underfunded. It also allows us to provide mechanisms for parents in the traditional public schools to access those programs and students to access those programs.

As you mentioned, a culinary arts programs, we know that students have lots of varying interests. So as we work to modernize what that curriculum looks like and give students a portfolio of options, the funding becomes central to that.

Mr. COURTNEY. Thank you. And, again, that really should be our focus in terms of next steps.

Again, I just want to publicly thank Professor Britain for his amazing work in the State of Connecticut. My family got a first-hand view of the benefits and it was just—you are a giant in the history of our State.

Mr. BRITTAIN. Thank you, sir. You are much too kind.

Chairman SCOTT. The gentleman yields back.

Dr. Roe.

Mr. ROE. Thank you, Mr. Chairman. And I thank all the panel for being here. It is an extremely important topic.

And I may be the only person sitting up here that graduated from high school in the segregated school system in the rural South. And the first African American student I went to school with was college and then medical school, and then on. And I certainly know that was wrong and certainly had a very detrimental effect.

I want a couple of questions—I would like a couple of questions answered.

Ms. White, I live a block from a charter school here in D.C. I go by it every single day. We just had a huge debate in Tennessee on charter schools, should tuitions be used—and you made a very eloquent case for that. And I don't see how you can ask a parent in a failing school to keep their—that is the only chance that child has. And we know if you go through one or two grades in a failing school, your child gets way behind.

And so I would like for you to answer a couple of questions. One, what would you say to someone who suggests that you should only have a public school choice, that the charter schools or private

schools reduce resources to public ones? That is a common denominator that we hear.

Ms. WHITE. What I found was that is contrary to the truth in that competition allows schools to work better together. Not just to work better together, but competition allows them to work to do the best work possible that they can. When you are in any competitive arena, you do better when you have competition. And so we have found that instead of it taking resources away from the public school, it increases the public schools' ability to do better work as they are competing with the charter and then private schools.

Mr. ROE. Well, one of the things I wanted to—thank you. And one of the things I want to do is the basically the discipline part. Discipline was not a problem in my public high school because my principal was a Marine, a World War II Marine, so it was not a problem obeying him, let me tell you. Mr. Thompson—I will never forget him as long as I live.

And, to Mr. Pierre, I want you to talk and I want Mr. Losen or the Chancellor to—and, Chancellor, you have a huge chore in front of you, over a million students, but how do you answer what he said? I know in my community at home we have an alternative school. You don't get lucky and get kicked out and don't go to school. You then go to alternative school where you can continue your education. You don't get to stop, but you get the disruptive student out of the class.

What do you say to this good student sitting here when his education is disrupted by disruptive students? Either one of you.

Mr. CARRANZA. So it is the job of every teacher, every principal, every Chancellor to ensure that there are environments in schools that are supportive, that are academically rigorous. That should be happening in every school.

What has been described here is not what anybody wants, however, it has been my experience in almost 30 years as an educator, that when you build capacity for teachers, for administrators to be able to work with students in a different way, to be able to apply different strategies to work with students, you get better results. And, you know, a surgeon doesn't just go for the scalpel, there are different things that you diagnose and different treatments that you apply based on what the circumstances are. The end result is you want the patient to be well.

So what we are doing in New York City is building capacity for teachers and principals to use different types of strategies to meet the needs of students. In some cases we have to connect students with resources and services that have to do with some of the personal challenges that they are facing. That makes a big difference.

Mr. ROE. Let me interrupt you.

Mr. CARRANZA. Sure.

Mr. ROE. Because my time is going to expire. I want Mr. Pierre to respond to that.

Mr. PIERRE. I mean we would hear this kind of stuff from the many Chancellors I had when I was in high school. There was a brief period of lots of overturn. You know, a lot of it just sounds academic and, you know, tons of abstract nouns thrown together, equities, strategies. We never saw any strategies, we saw disruptive students, we saw teachers encouraging us to lie on surveys

when state or city inspectors came. It was just a disaster, the idea that any Chancellor in New York City has made things better in minority serving schools the past 5 years, 10 years, 20 years, is just not speaking to the reality that is on the ground.

Mr. ROE. Do you recommend that—and he has a tough job—but do you recommend that maybe he do the sort of the boss that is hiding out that day and they don't know who he is and he goes and talks to the students there?

Mr. PIERRE. Absolutely. If the administrators don't know the State is coming, the students will be really honest I think. We were told to lie.

Mr. ROE. Mr. Chairman, thank you, sir. I yield back.

Mr. LOSEN. Yes, if I could also respond. I think it is important on page 12 of our written testimony to note that in Los Angeles, where they eliminated the policy of suspending kids for this catch all category of disruption or willful defiance, there was a dramatic, dramatic decrease in the loss of instruction. And during that same period, Los Angeles had the largest increase in improvement in graduation rates that it has ever experienced. And at the same time, in a two year period, where they were tracking test scores, the achievement went up not down. And other studies have found the same thing. But it makes sense, if you reduce the amount of the loss of instruction for these kind of minor offenses—I am not talking about kids committing serious crimes or anything like that, there was just massive numbers of kids losing instructional time because of these minor offenses due to these sort of policies that kick kids out right and left.

So I think it is really important to keep that in perspective.

Thank you.

Chairman SCOTT. Thank you.

The young lady from Ohio, Ms. Fudge.

Ms. FUDGE. Thank you very much, Mr. Chairman. And thank you all so much for being here.

Just for somebody watching from not in this room, so we won't be confused, we are not talking about a choice bill here today. Brown v. Board is a civil rights bill that speaks to equity, equality, and desegregation. It has absolutely nothing to do with choice. I just wanted to make that clear up front.

But I do believe that 65 years after Brown, that a quality education, one that is equitable, is still the civil rights issue of our time, as only those who are wealthy are guaranteed to have a good education. And we also know that it is obvious that racism is not just going to die here, so we have to continue to be sure that we enforce things like Brown v. Board.

And I am really impressed that a Ranking Member talks about the Secretary, who she believed believes in the letter and the spirit of the law, but I promise you it was not the law that had her dismiss 1,200 civil rights actions that she didn't even read. And it really wasn't the law that instructed her to start to dismantle the division of civil rights within her Department. So I don't know what law she is following. And it doesn't sound like she cares very much either.

Let me just ask a question of Mr. Carranza. Mr. Superintendent, tell me how funneling of public dollars to private and religious schools impacts your ability to serve your students.

Mr. CARRANZA. It siphons the lifeblood of programming, it siphons the opportunities. We know that students that have opportunities for enrichment. For example—one of many examples—students who get to go to the opera, they get to go to a museum, they get to go on a trip and experience new things, we know that students in economically depressed communities don't have those kinds of opportunities. We use every penny of our funding to keep the lights on and to keep the water running. So additional resources that we could have that then get siphoned elsewhere detract from the ability to provide those kinds of opportunities, which many people would say is the definition of a well-rounded education.

So it is critically important to us.

Ms. FUDGE. Thank you.

Dr. Darling-Hammond, you participated in a funding formula in your State, am I right? Can you just tell me how that formula really just counters the disparate impact of resegregation in our schools today?

Ms. DARLING-HAMMOND. Well, we have just redesigned the funding formula in California so that it actually is associated with attending to pupil needs. So districts get an equal amount of money to start and then they get more money for each child in poverty who is an English learner or who is in foster care or homeless. And those concentrations of funding are giving the districts that serve students with the greatest needs the opportunity to provide the stronger programming, which ultimately will also support desegregation and integration in some of the cities where you have got a population that will stay in the schools when they improve. So that is already beginning to happen.

Ms. FUDGE. So it has nothing to do with property taxes?

Ms. DARLING-HAMMOND. Well, the money now goes to the—there is property tax money, there is other money, it all goes to—

Ms. FUDGE. But there is money on top of that, right?

Ms. DARLING-HAMMOND. Yeah. And the State adds to that—

Ms. FUDGE. So the people who live in poor communities won't always be poor in their education?

Ms. DARLING-HAMMOND. Exactly. So now we are redistributing that money in a way that is attendant to pupil's needs. And that is a critical part of the process.

We have had a lot of conversation here about what kinds of investments are needed. One is to get states to be equitable in their funding. And there have been efforts to encourage states in that regard in past administrations.

Another is to then make those investments in things like magnet schools. Right now we are spending \$107 million and \$440 million on charters. We should try to spend as much on schools that are high quality magnets as we do on schools that are—

Ms. FUDGE. Thank you. And we all know that charters are not—have yet to be proven better than any other school.

Professor Brittain, if you would like to make some comment. I know you were trying to get in before, and since you are a law pro-

fessor and I am a lawyer, I yield the balance of my time to you, sir.

Mr. BRITTAIN. Thank you very much, Congresswoman Fudge.

I just wanted to say that the question we face is where will we be 50 years from now in terms of looking at Brown. We have come 65 years so far. Ups and downs, peaks and valleys, and we have about 35 more years to go for the 100th anniversary of Brown. Unless we come together to look at the question of race, particularly in education, but in housing, in criminal justice, in all fields, we will never reach the equality that was set forth in Brown.

Ms. FUDGE. Thank you so much.

I yield back, Mr. Chairman.

Chairman SCOTT. Thank you.

The gentleman from Michigan, Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman. And thanks to the panel for being here.

So I thank you for being part of the panel, too. It is great to have one who is identified—I know others are—but identified specifically as a parent. I think in *Brown v. Board of Education*, in seeing that worked out to the best of its capabilities, I think it mandates that parents are returned to their proper responsibility with their children—their children—their children. And parents who understand that and truly care—which I think are the majority of parents—not all, but the majority—are integral and most important in making sure that the *Brown v.* and other attempts at making sure that we have quality education for all is there.

So thank you.

Ms. White, I imagine you and your family have become resources for other families facing similar challenges for educating their own kids. What advice do you give to other families looking for educational options for their children?

Ms. WHITE. I always share with parents that life is a situation where you are going to either pay now or pay later. And so it is a lot less—it is a lot easier when we pay now and taking the time out to be very intentional about checking into what the options are for our children's education. And so I ask them to invest as much time, and I help them invest as much time as possible to check into all of the possibilities available to them.

Mr. WALBERG. And you checked into, for your children, as I understand it, traditional public schools, public charter schools, as well as private schools?

Ms. WHITE. Correct.

Mr. WALBERG. Did you find common traits in the schools that you felt were effective in educating your children? And, second, were those traits exclusive to any single type of school?

Ms. WHITE. One of the major traits that I saw was in the area of parental engagement. So where there was parental engagement in the school, the students performed better. And that was across the line, whether they were in a public school, private school, or a charter school. And the amount of dollars—I don't know all of the data in that regard, but I know that if you give parents enough information and you get them engaged and understanding what their responsibility is, the students will do better.

Mr. WALBERG. Was this engagement by parents at a specific economic strata?

Ms. WHITE. No.

Mr. WALBERG. Specific communities?

Ms. WHITE. No. There had to be intentional parental engagement. So where the parental engagement was found, whether it was a higher socioeconomic group or lower, students performed better.

Mr. WALBERG. Were the schools helpful in bringing about that engagement?

Ms. WHITE. I have worked with a public school in the District and five in Prince George's County public schools where there was substantial parental engagement and they did excellently.

Mr. WALBERG. Okay. You talked in your testimony about needing to be empowered as a parent. What is the effect on families when parents feel disempowered with respect to their children's education?

Ms. WHITE. The effect on the families?

Mr. WALBERG. The effect specifically on families when parents feel disempowered.

Ms. WHITE. When parents feel disempowered, they are just not motivated to make the changes that need to be made. So we have to empower them and make them understand that they have a right and a responsibility to make decisions for their children.

Mr. WALBERG. Mr. Pierre, could you comment on that as well, in your studies and involvement about parents being empowered or disempowered, what the impact is?

Mr. PIERRE. I agree, but I caution against putting so much emphasis on, you know, which programs are available for parents. Much of this starts when people have children for the first time. At my high school most students who were South Asian or Latino had two parent households, married, sort of decided to have kids, were invested in them. This is often not the case in Black American communities and it creates an environment where a lot of children don't have responsible parents around them.

And I am sure a lot of people if they knew that school choice was available would jump on it, but many people don't. They have kids too young, when they are 17 or 18, and they aren't aware of these things and life just goes on.

Mr. WALBERG. Thank you.

I yield back.

Chairman SCOTT. Thank you.

The gentleman from the Northern Mariana Islands, Mr. Sablan.

Mr. SABLAM. Thank you very much, Mr. Chairman, for holding today's hearing. And I welcome to all the panelists. Thank you for joining us.

Let me start, Mr. Losen, with you. Mr. Losen, I got that right? Thank you.

So on December 21, 2018, Secretary DeVos rescinded the school discipline guidance created by the Obama Administration to ensure that students of color aren't disciplined more harshly than their peers. Now, according to the Data Quality Campaign, only 26 states are collecting data on school discipline in their State plans.

Can you explain the effects of rescinding the guidance and the importance of school districts having support from the Federal Government to reform discipline policies to reduce disparities while keeping schools safe? Something that Mr. Pierre would understand.

Mr. LOSEN. Yes. I think there are a number of—first of all when Secretary DeVos and the Trump Administration withdrew the guidance, it sent a signal to all the districts across the Nation that they no longer had to concern themselves when they were suspending kids right and left and even if it had profound disparate impact on one group or another. And I have pointed out that this is good, common sense policy because of the impact on graduation rates. Because of the impact on loss instruction.

In general, moreover, her justification I want to point out cited a study that has been discredited and was discredited at the time. So there was a study that claimed that Black students were not discriminated against when you compared Black and White students who were similarly situated.

In fact, another very conservative researcher with the same data set totally debunked that study and found that in fact Black students compared to similarly situated White students were 60 percent more likely to be suspended.

So it just boggles the mind that they would rely on such discredited research when there is study after study after study that shows that Black students are treated differently. So they are punished more harshly.

Mr. SABLÁN. Okay. Thank you for and on two occasions that we had the Secretary here, it was just impossible, worse than pulling molar teeth than getting an answer from her. Chancellor Carranza, the student population of New York City public schools is majority minority like my district in the Northern Marianas.

So could you speak to why diversifying the teaching profession is critical to the success of students of color and what more should we at the Federal level do to better recruit and retain highly qualified minority teachers?

Mr. CARRANZA. So it's important that students see their education and their educational environment reflect who they are; not only in the curriculum and what they study, and how they study, and what they celebrate, but also in the people that are in front of them. And for many students, particularly students of color, and I'm a student of color myself. I'm an English language learner. It was important for me to see role models that were my teachers, that were my principals, that were a superintendent. So that becomes very, very important on that perspective.

But it's also important in that students that have teachers of color, especially teachers that come from their background—

Mr. SABLÁN. Yes.

Mr. CARRANZA.—there's a cultural competence that comes with that. When you walk into a classroom and you're an English language learner, a Latino student and the teacher says (speaking Spanish) hey, have a seat or I'm going to call your grandma or (speaking Spanish), there is a certain cultural competence that connects that student with their culture.

Mr. SABLÁN. I got a lot of that in school. Thank you. And Dr. Linda Darling-Hammond, I know you were pointing at the Chair-

man probably trying to add on to Mr. Losen's but in your testimony and report, the Federal role on school integration rounds promise and present challenges.

You discussed the importance of the Federal role in promoting school diversity and access to opportunity. Again, in July 2018, Secretary DeVos rescinded the voluntary diversity guidance to help school districts improve diversity in K-12.

What effect has the rescinding had on school districts seeking to improve diversity and what message does this send from the Federal Government? You have 25 seconds.

Ms. DARLING-HAMMOND. Well, it sends the message that the Federal Government is not forward looking about helping districts, you know, create more diversity and it also raises confusion.

In the wake of the Parents Involved case about what are the legitimate ways to support diversity and the ways that Chancellor Carranza is doing in New York City. There are guidance about specific strategies that districts have taken up that have been successful that is now not easily accessible to districts across the country.

Mr. SABLAR. Yes. I see my time is up. Thank you, Mr. Chairman. I yield back.

Chairman SCOTT. Thank you. Gentleman from Georgia, Mr. Allen.

Mr. ALLEN. Thank you, Mr. Chairman, and I thank the panel for your input today on this critical subject in our country as the professor said. The—we have been at this a long time and we need to figure this out.

Because just a couple things that I would remind my colleagues and the panel is that the U.S. currently spends the most on education of any country in the world. It's about \$160,000 to educate students publically and 1 in 5 of our graduates is functionally illiterate.

We are also although we spend the most in education, we are currently ranked 34th in science and I believe—no, 34th in math and 24th in science out of 72 developed nations. So obviously the—whatever model we are using is not working. Our students are challenged.

I know that to get in college today it is very, very difficult, certain colleges in my district. But at the same time, we have some examples of some schools in my district that are making tremendous progress. We have a school system, inner city school system in the largest city in my district that has the number one high school in the country. Davidson Fine Arts is the magnet school.

We also have in that county, a school that is supported by a Presbyterian Church and this school is for those students who are basically told they're losers in the public education system. And these parents have no other place to turn. And they have to pay a little something, but it is largely supported by the business community and others. It is a faith-based school, and it is amazing the results that they're getting. I mean, these kids are stars. In fact, they're pretty much offered full rides to any private school they want to go to when they get out of that school.

And then I have an example of an inner city school in Dublin, Georgia where they, I mean, they finally just took the three schools and they made them theme schools. One is an arts, one is a STEM

and the other one is a leadership. Parents got up at five o'clock in the morning to start signing up their children at eight o'clock in the morning for which school they were going to go to. We have a 95 percent graduation rate in that city school system right now.

So, I'm saying that we are getting the job done locally, but somehow the Federal Government is messing all this up. It is really, I mean, this one size fits all—like you said, LA, there's some good things happening out there. Meaning that LA, New York, obviously very, very different. And so that's where we are missing it on the Federal level. In other words, the Federal Government says you should—you have to do this. They throw a lot of money at it, it doesn't work for each school district.

Mr. Pierre, the thing that I, that occurred to me when you were speaking, and we have it at home is the gang problem. What in your mind is causing these young people to migrate to these gangs and creating like I said disruptions in not only educational systems, but in society as a whole?

Mr. PIERRE. Well, it's interesting. This is something a lot of rappers talk about as they get older. The absence of fathers in the Black community leads a lot of young men to turn to other male figures in the community who seem to have authority. And gangs can be a source of protection, friendship, fraternity, so that happens a lot.

Mr. ALLEN. Yes. Well, we know the family has been under attack in this country for a long time. I know my family was largely responsible for my success as far as education goes.

Mr. Pierre, I mean, Ms. White, thank you for being here today and one of the criticisms we hear about school choice is the—and the public charter schools or private schools lack of accountability. But it seems to me that a system where you have real options the accountability rests with parents. And what reaction do you have when you hear arguments that parents can't be trusted to make the right decision for their children?

Ms. WHITE. I slightly laugh like I just did because we are all of—many of us in this room are parents and we are intelligent and we want the best for our children and families. So what parents are you saying can't be trusted? That's the question.

Mr. ALLEN. Yes, exactly. Mr. Pierre, in your testimony you said you—oops, I am out of time. I'm sorry. Okay. I yield back.

Chairman SCOTT. Thank you. Thank you. Gentleman's time has expired. Gentlelady from Florida, Ms. Wilson.

Ms. WILSON. Thank you, Mr. Chair and Ranking Member Foxx for holding this hearing. The importance of today's hearing cannot be overstated. There has not been one single education Committee hearing focused on the issue of school denigration in 30 years since 1989 so welcome to this hearing. The landmark Brown v. Board decision led to gains for African American students in the academic achievement gap by more than half in two decades of public school integration.

During the time of integration, I was the principal in Miami Dade County at a school called Skyway Elementary. It was known as the Little United Nations. It was one third White and one third Hispanic and one third African American.

It was so successful both academically and socially that former President Bush sent Education Secretary Lamar Alexander to the school to award the school the American 2000 award for elementary schools. He visited to witness the spectacular results first-hand.

My students flourished and learned so much from each other which benefitted the entire community. The school is now named Dr. Frederica S. Wilson Elementary School. Unfortunately, many parents failed to understand that attending public schools with diverse enrollment greatly broadens the horizons of all students irrespective of race. Yet since the 1990's, the number of segregated schools has more than tripled reaching levels not seen since the Jim Crow Era.

One of the chief factors in the movement toward resegregation is the increased use of private school vouchers. The concept of school vouchers arose in the 1950's as a way for White families to resegregate schools and avoid sending their children to racially integrated schools while still receiving tax payer funding.

The first and perhaps most famous example of voucher usage was a tuition grant program in Prince Edward County Virginia in the 50's when this rural community chose to provide White students with vouchers rather than comply with civil rights laws.

In 1999, my home State of Florida established the Florida Opportunity Scholarship Program. It is no coincidence that since then, that the same year in 1999 Governor Bush also ended affirmative action in education admissions. Higher education admissions.

The expansion of vouchers in Florida and other locations across the Nation further increases socioeconomic and racial segregation. It is evident that the current Administrations complete disregard for civil rights and this glaring education budget which contains 5 billion per year in funding for school choice programs is another giant step toward resegregating America's schools. And I'm certain that Congress will step in again and deny appropriating this funding.

My first question goes to Ms. Darling-Hammond. Ms. Darling-Hammond, how do you think the proliferation of school choice throughout the Nation has affected diversity in our public schools?

Ms. DARLING-HAMMOND. Well, there are a variety of kinds of school choice but in the charter element, charters are more segregated than other public schools both predominately Black and Latino charters in some places but also White charters which are being used in the way that segregation academies were once used in some states. So we see that increasing segregation.

That may also be the case with the tuition vouchers and so on. I don't think that has been studied as well as the charter experience.

So choice also exists however within traditional district run public schools and is typically managed to increase integration in those cases as in the Hartford case, as in the work that's going on in San Antonio and elsewhere.

So for choice to—within the public school system to end up creating an opportunity for integration it has to be managed and the investments have to be available everywhere. Congresswoman Fudge made the important comment which you are reinforcing that

equality is not about choice, it's a requirement for every school. Every school in every neighborhood has to be worth choosing and that's about investment in the quality of the education.

And then given our segregated housing patterns, both we have to address those. There's the delay in the regulations on the affirmatively addressing fair housing rule as well to worry about but we need them, the transportation and other mechanisms that allow kids to get to the schools that allow them to have the experience that you had.

If I might, could I also address the comment about the discipline guidance that was made earlier? The, you know, as I was listening to Mr. Pierre's testimony and that of Ms. White, it occurred to me that it really demonstrates how important it is actually to restore the discipline guidance which offered resources for evidence-based practices to replace suspensions.

You can still suspend students under that guidance as is needed but what was valuable about it was that it gave schools a whole variety of ways through restorative practices, through social emotional learning which have been supported as making schools safer in many, many studies in reducing the bullying that Ms. White's child experienced and the kind of disorder that Mr. Pierre experienced.

And we have evidence about that. There are of course other schools in New York City, one of which I just did a study on in Bronx, in the Bronx, Bronx Dale high school which had all of the characteristics that Mr. Pierre described of being, you know, very unmanaged at a moment in time but that wasn't because of the discipline era guidance.

They in fact put in place the restorative practices, the social emotional learning, the wrap around services that the Obama era guidance suggested and became a much safer school and now a higher achieving school. We see this nationwide as that guidance was in effect.

All across the country, the Federal data show that the percentage of public schools recording one or more incidents of violence, theft or crimes was lower in 2015, '16, the most recent year, than ever before. And we have seen it in California where we have had a very assertive approach to reducing unnecessary suspensions and replacing them with guidance around social emotional learning, anti-bullying practices, restorative practices and we are now a much safer State.

We used to be way above the national average in weapons, fighting, bullying, and now we are way below the national average as we have replaced a tool that was not very successful with tools that are much more successful.

When kids are suspended, they often become more badly behaved when they return because they have gotten behind in their academics, they're resentful, they're out of sync and then you get more disruption in the school.

So I just want to make it clear that the evidence is very strong that you can address these needs in a way that is safer for kids.

Ms. WILSON. Thank you so much.

Chairman SCOTT. Thank you. Gentleman from Pennsylvania, Mr. Smucker.

Mr. SMUCKER. Thank you, Mr. Chairman. I have been listening carefully to the testimony. I find interesting the discussion in regards to integration talking about that alongside school choice options.

I first want to talk about school funding. Dr. Darling-Hammond, you have mentioned being from Pennsylvania. You specifically mentioned a situation that I have talked about in Pennsylvania regards to how we fund our schools and that is Lower Marion which is a wealthy suburban school. They're spending about \$28,000 per student as compared to the school district of Philadelphia spending about 14,000 so you are absolutely correct.

It's about a two to one ratio or at least it was a few years ago when I was Chair of the education Committee in Pennsylvania State Senate. We did a lot of work because that is inequitable and every child should have the opportunity for a world class education regardless of the zip code that they happen to have been born in or reside in.

We spent a lot of time with the basic education funding commission looking at the factors of need that create the need for additional funding, not less and we ended up with a new formula distributing the State portion of the dollars based on needs such as poverty, such as the number of English language learners and so on and added factors to our funding that directed more money to those schools rather than less. And there are some, they are traditionally sometimes are urban schools that have the highest need.

We have applied that funding to all new dollars going into the system so it's a change that will take place over a long period of time but every year in Pennsylvania right now, we are seeing more equitable funding as a result of a new formula that's put in place. There are folks including myself who would like to see that happen faster but it is very difficult to take funding from one school to another.

And another big problem we have in Pennsylvania is there is a heavy reliance on local tax dollars and so you have the ability with the Lower Marion school district, you have that tax base and you don't as much in Philadelphia. That, you know, can generate those local dollars that is needed so it is one of the problems that we are addressing.

We have an actual formula or a criteria within the formula that allows for that and helps it be more equitable. So I agree with that. We should ensure that the resources—resources is a big portion of this issue. We also know that segregation helps to improve outcomes.

So policies in place that not only provide for the right resources are important but the policies that ensure that segregation or the—yes, the segregation is occurring is also important.

Now, here is where I differ from some of the discussion that is going on. All of that exists and is not affected by honest discussions around school choice. And, Ms. White, I have talked to so many parents like yourself who felt trapped in a school, much as we are trying to improve and ensure that our public school system is working effectively for every student, sometimes additional options, additional choices in that system can improve everything and I understand there is a funding component of this that can be talked

about but I think it is important that we have choices available for parents and for students who today cannot access a great education.

You know, we have schools, charter schools in Philadelphia area where there are thousands of parents waiting for an opportunity for their student. And I have spoken to some of those parents who were just overjoyed when they came out on the right side of that lottery and had an opportunity for their kid. So the two are not principles that need to compete with one another and in fact, when we are talking to parents, its, they don't really care about the political debate around school choice.

And speaking of, maybe I'll do it in the form of a question. In speaking to other parents who made similar decisions in regards to the decisions that you did around your son's schooling, I mean, do you think any of them do care about the political debates surrounding school choice or did they just want to have options to make the best decision for their kids?

Ms. WHITE. Parents just want to have the options available. But they also recognize that if they don't advocate for their children, then their choice will be nil. So they need to advocate and they also are looking that they might have grandchildren coming up who they want to have better educations so they need to advocate on another level and it will often mean that we have to get involved politically.

Mr. SMUCKER. Thank you. I see my time has run out.

Chairman SCOTT. Thank you. The gentlelady from Oregon, Ms. Bonamici.

Ms. BONAMICI. Thank you. We know about the Federal role in education and we know that's equity and on this 65th anniversary of the historic Brown v. Board of Education Decision we have to acknowledge that we have not as a country fulfilled the promise of this landmark case.

We saw of course progress in the 70's and 80's through strong Federal support to integrate schools, but today we are seeing the resegregation of schools, a rise in racially and socioeconomically isolated schools. This is all in that 2016 GAO report, thank you now Chairman Scott, for requesting that. Now the Obama Administration was taking steps to address school segregation and forced civil rights protections, but unfortunately the Trump Administration is showing hostility towards those efforts seeking to remove the use of disparate impact regulations. They have rolled back critical guidance that's protected student's civil rights.

I'm extremely concerned about the proposal for what they're calling education freedom scholarships which are essentially vouchers that would exacerbate inequality and drain important public resources. We must reaffirm our commitment to Brown by holding the administration accountable and enforcing the civil rights laws.

I wanted, Dr. Darling-Hammond, to follow up on Representative to Davis's question. A recent report by Ed Build found that there is a \$23 billion racial funding gap between school districts serving students of color and school districts serving predominantly White students. That's a pretty serious gap and we know that funding is one piece of the challenge here. And my colleague from Pennsylvania was talking about changes at the State level.

What are the best ways to address that funding gap and how would addressing it begin to solve the goals of inequality and I thank you.

Ms. DARLING-HAMMOND. First of all, I want to say how pleased I was to hear Congressman Smucker talk about what is going on in Pennsylvania. I did my dissertation in 1978 on school finance in Pennsylvania so we have been waiting a long time and I'm glad that's underway.

I think that only about a dozen states in the country right now are organizing their financing of schools so that there's an equal playing field and some consideration of a little bit more for kids living in higher need situations.

The other states are all—have not yet redesigned their school finance systems to allow for that. It strikes me that in the ESSA and in the ESEA over the years, we now ask states to demonstrate how they're going to make progress in academic achievement and outcomes for students across districts in schools. I think we ought to ask them as well as they receive Federal funding to make progress in equal educational opportunity also.

Ms. BONAMICI. That's great. And I do want to get in a couple more questions. I appreciate that. Chancellor Carranza, you stated in your district that you leverage Federal Title IV funding under Every Student Succeeds Act. For diversity grant program, thank you for bringing that up, Dr. Darling-Hammond.

And when Secretary DeVos recently testified before this Committee I expressed serious concern about the proposed elimination of Title IV grant funding. Fortunately just yesterday, the House Appropriations Committee announced it's included \$1.3 billion for this program in this proposed bill which I will fight to pass into law.

Can you say more about how these funds support integration efforts in your district and what a reduced Federal investment in Title IV would mean to this work adding to what Dr. Darling-Hammond said?

Mr. CARRANZA. Absolutely. So they're critical funds that we use to support the efforts that are at the ground level. So District 15 is a great example of that. This is a community driven, parent-led, parent-voice level. We don't only want to engage our parents, we want to empower parents. And when you empower parents with a voice, and then you give them a mechanism through which they can not only have a process, but what comes from that process gets funded and gets implemented, you have now empowered parents to actually be able to advocate for their children which is what we all want. These funds allow us to be able to do that, to seed the funding, to have facilitation, to bring people together, have childcare, have food for parents that have worked all day. So they really are what we would call the equity innovation funding in our system.

Ms. BONAMICI. Terrific, thank you. and, Mr. Losen, last year I wrote to Secretary DeVos opposing the department's decision to delay the equity and IDEA regulation which aimed to address widespread disparities between White students and students of color with disabilities. And I was glad to see that the district court in the District of Columbia vacated the department's delay of the rule.

Unfortunately during her testimony before this Committee, the Secretary refused to commit to implementing the rule. Can you describe how enforcement of this regulation would encourage equity in education?

Mr. LOSEN. Yes. So, the regulation requires that every state look at districts for racial disparities and identification for kids with special education as well as placement as well as discipline.

And in fact, the leading reason why states currently identify their districts is for racial disparities and discipline. But that rescinding those regulations that they have since been restored because a Federal court said the reasoning was arbitrary and capricious. And it was all based on this fear of quotas that had no there, there.

There is no evidence that they were able to cite to support that argument and I would point out they raise the same kinds of fear of quotas as well as the discredited research in reaching the—in removing the discipline guidance.

Ms. BONAMICI. Okay. I—

Mr. LOSEN. So it's really very disturbing.

Ms. BONAMICI.—see my time has expired. I yield back, thank you.

Chairman SCOTT. Thank you. I understand the gentleman from Virginia wants to go next. Is that because you have a conflict?

Mr. CLINE. It is, Mr. Chairman.

Chairman SCOTT. If you could send my regrets because I don't think I'm going to be able to make it.

Mr. CLINE. Yes, Mr. Chairman.

Chairman SCOTT. Thank you. Gentleman from Virginia.

Mr. CLINE. Thank you, Mr. Chairman. I appreciate your leadership on this issue and I am thankful that as a Committee we are remembering the 65th anniversary of Brown v. Board.

This court case holds significance for me because of the heroics of a young lady and fellow Virginian named Barbara Rose Johns. At the age of 16, Ms. Johns led a walk out of Moten High School, located in Prince Edward County, and she embodies the leadership and bravery that we should instill in current and future students.

Her walk out was one of the five cases, the Davis v. County Board of Prince Edward County that was rolled into Brown v. Board but it held the distinction of being the only student initiated case and it's significant because her attorney, one of her attorneys, Oliver Hill, his childhood home was in Roanoke in my district.

She is a shining example of the importance of ensuring that all students have access to a quality education and the very significance of that fight. And for her contributions and many others, I will continue to fight to protect opportunities for all students.

So given that, Ms. White, you talked in your testimony about the need to be empowered as a parent who is trying to give the best opportunities to your children. What is the effect on parents when they feel disempowered and left with no choices with respect to their children's education?

Ms. WHITE. When one feels disempowered, there, the motivations to go on sometimes is lacking and so that's why it is extremely important for parents to feel empowered.

At the school where I work currently, one of the things that we say is that old adage that children who are loved at home come to school to learn, and children who aren't come to school to be loved. And so we are creating environments or need to create environments for families not only to feel empowered in their educational choices, but to feel empowered as human beings so that they treat their families better so that their children when they come to school are better able to learn.

Mr. CLINE. You mentioned that *Brown v. Board* was intended to empower parents. How can we as legislators fight to protect what others like Barbara Rose Johns have fought for and continue to expand opportunities for all families?

Ms. WHITE. I'm sorry, I don't want to take away your time but I need to hear that again.

Mr. CLINE. How can we as legislators help fight to protect what others like Barbara Rose Johns have fought for and continue to expand those opportunities for all families?

Ms. WHITE. I have heard several examples of things that have been working in various forms in order to desegregate schools and legislators need to know that it hasn't worked thus—some of the things haven't worked thus far and the only reason that I mentioned school choice is that it seems to like be a transition or something to use in the interim until we get to that ideal place where there, regardless of where a student goes that they receive that excellent education.

Mr. CLINE. Thank you very much. Mr. Chairman, I yield back the balance of my time.

Chairman SCOTT. Thank you. Gentleman from California, Mr. Takano.

Mr. TAKANO. Thank you, Chairman Scott, for this very important and timely hearing of this landmark case. *Brown v. Board of Education* is very important to me as a person of color and as a former teacher. My goal every day that I was in the classroom was to prepare my students for success. Immediately following the *Brown* decision we saw immediate results in the shrinking of the achievement gap as integration continued. Unfortunately, we are getting further away from that goal because of intentional attacks on civil rights by various administrations.

Chancellor Carranza, New York City was—is one of the largest school systems in the country. It is also one of the most segregated systems and I say that not as a criticism, it is just a statement of fact and it is reflective of what we are seeing across the country. So I'm not singling out New York City.

How do you suggest that we reverse the trend of resegregation that we are currently seeing in the schools across the country? Specifically what roles should the Federal Government take?

Mr. CARRANZA. Thank you, sir. No offense taken. Yes, it is true so we are taking it on head on. The role of the Federal Government as I have mentioned in my testimony is we have to have the guidance in place, the guidance and the rules by which we are looking at who we serve is critically important. In a system like New York City where 70 percent of the students are Black and Latino students, the systems, the structures, the policies that tend to either uplift students, those particular students, all students, but the sys-

tems policies and protocols that we have in place that tend to not support those students we need to look at.

And we know that in admissions policies, we know that in disciplinary policies, we know that when you have a propensity to suspend certain types of students disproportionately or to identify a disproportionate numbers of students for specialized programs like students with disabilities, et cetera, you have to look at the protocols and systems that generate those kinds of results.

The role of the Federal Government is critical in keeping us accountable, keeping states accountable. This can't be a one by one effort. It has to be a systemic effort and the role of the Federal Government is critically important in my opinion.

Mr. TAKANO. Well, we also know that as the Federal Government has stopped enforcing civil rights, the progress that was made to shrink the achievement gap stalled. In California, high achievement gaps still remain between African American and White students as well as Latino and White students.

Chancellor, what do you think—do you think it is possible to make progress on the achievement gap without addressing school segregation?

Mr. CARRANZA. I think they are inextricably linked because schools are microcosms of society and students walk through the threshold of our schools and they bring with them their experiences that are learned and lived experiences where they come from so they are inextricably linked.

What we do have in the school system is the ability to create empowering environments, uplifting environments. So you can't separate the two.

Mr. TAKANO. What does it mean for children of color who suffer the repercussions of widening achievement and opportunity gaps?

Mr. CARRANZA. We are robbing the very future of this country of future talent. So the implications are literally a matter of life and death and as the research has shown that when you exclude a student from an educational environment when the first option is to kick them out of school, you set them on a path that many have referred to as a school to prison pipeline.

Instead of funneling kids into the school to prison pipeline, why don't we keep students in school and continue to educate? That's really the genesis of what we are talking about.

Mr. TAKANO. I recently saw some statistics put forward by Professor Chetti of Harvard and he—his data would seem to imply. He uses data and seemed to imply that this was—that segregation, the segregated neighborhoods also means a reduction of income mobility. It's not just the school to prison pipeline but income mobility is also ample. Would you agree with that?

Mr. CARRANZA. I would.

Mr. TAKANO. Mr. Brittain, in your testimony you stated that housing policy can also play a role in integrating schools. We noticed high rent prices across this country ultimately forcing low income students and families into concentrated poverty. We also see in that concentrated poverty segregated schools. What can the Federal Government do to reduce discriminatory practices that consequently lead to segregated schools?

Mr. BRITTAINE. The Federal Government can first reinstate those new regulations that would affirmatively further integration in fair housing that was developed coincidentally related though to the Obama Administration.

It took 50 years from the 1968 Fair Housing Act to 2018 to pass those regulations.

Housing is the number one cause of racial segregation in schools. Because most schools are designed to create student assignment plans base upon neighborhood lines. That's why among other things, we who seek to pursue greater integration in quality education move those lines to choice, the kind of choice that Dr. Linda Darling-Hammond mentioned such as in magnet schools. And the kind of choice such as I mentioned in creating voluntary integrated school assignment plans for quality education and reduced racial isolation. So yes, we must link housing integration inextricably with educational integration.

Mr. TAKANO. Mr. Chairman, I'm sorry I went over, I yield back. Chairman SCOTT. From Kansas, Mr. Watkins.

Mr. WATKINS. Thank you, Mr. Chairman. I am honored to be here today to remember, recognize, and celebrate the 65th anniversary of the landmark Brown v. Board of Education decision.

May 17, 1954, the Supreme Court decision ruled legal segregation unconstitutional on the grounds that separating—separate educational facilities based on race are anything but equal.

Mr. Chairman, I am honored today specifically because by this hearing's own title, we are remembering icons of the civil rights in the United States who call Topeka, Kansas home, just as my family and I do.

Linda Brown was just 9 years old in 1950 when her father Oliver Brown enrolled her into the all-White Sumner Elementary School which afterwards she was denied access. This bold and defying action as well as the actions of many others from around the country are why Linda Brown and her family because the namesake of a ruling so instrumental to the tearing down of barriers of state-sanctioned segregation.

In place of repugnant and blatantly immoral segregation laws, this ruling would seek to usher in a new atmosphere of opinions, integration in communities of understanding. Linda Brown's legacy as well as the legacies of those courageous individuals who joined the Browns, families and students from Delaware, South Carolina, Virginia, and the District of Columbia represent the very best that our Nation has to offer. It is therefore with great reverence and respect that we should also remember Linda Brown today, as nearly one year ago on March 27, 2018, she passed away in my hometown of Topeka, Kansas. She will be loved, she will be most assuredly missed. However, her legacy should not be in vain and continuing to build on her work of equal education options for all is an honor I'm proud to work towards.

So Ms. White, in your testimony you stated that Brown v. Board of Education, the decision was meant to empower parents like Oliver Brown sought to be in 1950 by enrolling Linda into the Sumner Elementary Schools. Could you elaborate on your points more please, ma'am?

Ms. WHITE. Certainly. As we think about Brown v. Board of Education, we—many of us recognize that it is the most important civil rights issue of this era. And there are various ways to come to this. I mentioned that there was not a one size fits all for all jurisdictions, for all districts but empowering parents to make the choices that they have available at that time goes a long way to having equality in education.

Mr. WATKINS. Thank you so much and thank you, Mr. Chairman, I yield back.

Chairman SCOTT. Thank you. The gentlelady from North Carolina, Ms. Adams.

Ms. ADAMS. Thank you, Mr. Chairman, and thank you to the Ranking Member as well for holding this hearing and to the witnesses for your testimony. Thank you for being here today. I do want to acknowledge the 65th anniversary of Brown v. Board of Education, not a happy birthday I think but I do want to acknowledge it and to speak to the frustration that I feel due to its unfulfilled promise.

Many of you may know I am from Greensboro, North Carolina and I lived there for a number of years. Taught as a professor at Bennett College, raised my children there. They all went to public schools, did quite well.

It's also the home of the Greensboro Four and the Nation's first sit-ins. I'm a product of that movement and of Brown v. Board and myself and our Nation I believe are better off for it.

The problem I see is that policy makers have lost what Brown v. Board means, it's emphasis on data-driven research, its recognition that separate can never be equal. Its challenge to policy makers to ensure that all Americans regardless of race have equal access to one of our greatest civil rights, education. A right that W.E.B. Dubois talked about when he said of all the civil rights for which the world has struggled and fought for 500 years, the right to learn is undoubtedly the most fundamental.

After the Board v.—the Brown v. the Board of Education of 1954, there was massive resistance to school desegregation in the South including county base school districts breaking off from their larger school districts to resist integration.

We currently see this happening across the country including unfortunately in my own Congressional district in Charlotte Mecklenburg, a district that were pioneers in school integration efforts.

Ms. Darling-Hammond, can you describe for us the racial and the economic impact of school secession?

Ms. DARLING-HAMMOND. I was thinking about that before you said it because it is occurring in North Carolina and other places where in a county school district, a little enclave will seek to secede, usually a small White enclave resegregating the schools and taking greater wealth which accrues to the property taxes in that arena with them. So it is a problem both for economic equality for the quality of schools in that county and for integration.

Ms. ADAMS. Okay. Yes, I heard the word choice used and I wonder if you would just comment briefly about that in terms of Brown v. Board of Education and its intent.

Ms. DARLING-HAMMOND. Well, I think I just made the comment a few moments ago that reinforced Congresswoman Fudge's

point that quality is not about choice. It's about a requirement for every single school so the goal has to be that every school is worth choosing.

That is to say every neighborhood school which is the most popular choice for parents is invested in a way that the question is perhaps if you have a different philosophy or something, you might in New York City among the district run public schools go to the arts magnet or something like that but that, there is a good neighborhood school in every neighborhood, that is the plot promise—

Ms. ADAMS. Right, thank you.

Ms. DARLING-HAMMOND.—of Brown.

Ms. ADAMS. Let me move on, I'm running out of time. To Chancellor Carranza, thank you for what you do to address the issue in our Nation's largest public school system. A major contributor to racial segregation in public schools has been decades of White flight. The movement of White families from urban centers to suburbs where the schools are better.

So can you—can local and State leaders or how can we overcome this challenge to achieve more racially diverse schools and can you tell us a little bit about what you are doing in New York?

Mr. CARRANZA. Thank you, yes. So the issue of parents wanting a good school, I want to emphasize what Professor Darling-Hammond has just said about every school in every neighborhood should be a school worth choosing.

By that we mean there is programming that is not only supported but desired by the community. We are investing in that kind of programming in our school system.

In the New York City Department of Education where we have over 1800 school choices, talk about choice. There is choice for pretty much anything you want to do. The issue then becomes how do students and parents know what those choices are? How do we provide them with the ability to avail themselves of the choices as they make those particular choices.

For policy makers both at the local, State and Federal level, it's incredibly important that in the spirit of Brown v. Board of Education we are tackling the issue of segregation. And unfortunately there are policies that are promulgated and lack of guidance that is not put forth that contribute to that resegregation of schools.

Ms. ADAMS. Right, okay. Well, thank you very much. I'm about to run out of time so, Mr. Chairman, I will yield back.

Chairman SCOTT. Thank you. The gentleman from Wisconsin, Mr. Grothman.

Mr. GROTHMAN. Thank you. Mr. Pierre, thanks for being here. You got some kind of guts in here, you are mentioning things that aren't mentioned by some of the other witnesses. And I will comment on a couple of them here.

In your testimony, you say these problems are aggravated of course in communities with high rates of family dysfunction. Could you elaborate on that a little bit?

Mr. PIERRE. If you were to visit predominantly—some predominantly minority communities in New York City, certainly not all, you would find I think that there is a correlation between students—there is a correlation between behavioral problems and broken families.

Someone here I think it was Ms. White who said that if students who don't have love at home they come to school in a very bad mood and I think that's likely true.

Mr. GROTHMAN. We have a lot of people, other people here who are experts. Has anybody—Mr. Pierre thinks that maybe some of the problems for some of these kids at school are due to the families they are from, the family structure. Are there any studies on that to show if that's a big—if that could be a cause of gap between test scores or graduation or whatever?

Mr. PIERRE. If I can just say many studies have shown for years that students who come from two parent households do better with the social of the—agenda of the Democratic Party forbids them from promoting two parent households.

Mr. GROTHMAN. I know we have a lot of programs out there kind of discouraging forming a two parent families. Why do you think with all the people asking questions here that topic never comes up?

Mr. PIERRE. I have no clue. I'll be 25 in July. I have spent my entire life wondering why progressives, Democrats, don't speak more about the dissolution of the Black family.

This is something that has been going on since 1963, it's something that is now happening in many White families. It just doesn't make sense to me that you could tell an entire community that 70 percent of births out of wedlock is acceptable. It's not.

Mr. GROTHMAN. And you think that can result in the children then not doing as well in school.

Mr. PIERRE. Absolutely. And I think that as a country we take, we don't take Black Americans seriously if we allow some of these cultural problems to persist.

As I said earlier, I mean, someone like Barack Obama went to a private school in Hawaii. His Black experience is totally different than mine. My mother gave birth to me just months after her 18th birthday and she did an okay job but she didn't always have all the answers.

Mr. GROTHMAN. Okay. Well, it is interesting. You have been in a variety of New York schools, a variety of schools in North Carolina so you are certainly qualified and I, like I say it is a mystery to me not only on this topic but other topics why that's not brought up by people who purport to claim that they want to solve some problems here.

You say something else. In many cases, students are influenced by mainstream culture which often encourages minority youth towards transgressive behavior. Do you want to elaborate on that a little bit?

Mr. PIERRE. Yes. Henry Gates Lewis Jr., a prominent African American studies scholar from Harvard University once observed that at some point in the 60's it became fashionable for members of the Black and upper class and middle class to aspire to a more authentic idea of Blackness which in the 60's became urban, rebellious against the 1960's.

Gates saw how terrible this was for the Black community and he said, you know, by the 1990's you have Tommy Hilfiger pushing the thug life and the gangster life. Rap music of course for years is starting to be a bit more female friendly but for years it encour-

aged poor treatment of women, it encouraged secular values, not going to church, an emphasis on material things. I mean, yes.

Mr. GROTHMAN. Wow.

Mr. PIERRE. If—

Mr. GROTHMAN. I wonder why these artists are promoted then in the popular culture like some geniuses who should be followed around? Can you guess why the popular culture, the people who decide who is going to be on the cover of the big magazines keep promoting these people? I mean, is there?

Mr. PIERRE. It's what sells. I don't think they take Black Americans seriously. It's embarrassing to me when I hear people say that Black students can only get a good education in a White school.

It seems to me that Black Americans who have a noble history in this country should have some role in making our communities attractive so that people want to come to us.

Mr. GROTHMAN. One more question. I am sorry they only give me 5 minutes. Just playing around looking at the numbers, it appears as though the District of Columbia if it were a State, would have I think the fourth or fifth highest spending per pupil in the country. Their test scores are the lowest in the country.

If money is the answer to education, how do you explain the Washington, D.C. schools? And we will give it to, I don't know, Dr. Darling?

Ms. DARLING-HAMMOND. It's what happens when Congress tries to run a school system.

Mr. PIERRE. We agree.

Mr. LOSEN. If I could also respond to your earlier question?

Mr. GROTHMAN. That is okay, I am out of time.

Chairman SCOTT. Go ahead.

Mr. LOSEN. Yes. So I think it's—we do see a pattern that racially isolated schools tend to adopt much harsher discipline policies, including some charter schools that have embraced this broken windows philosophy that's very—it's racially oppressive.

We know about it from Ferguson and the problem with that is it—you're just kicking kids out of school right and left for all of these minor offenses. And treating kids as if you believe they are your future criminals.

And there have been charter schools like Achievement First that have been investigated by OCR and settled and have changed their policies. They've said themselves that was a misguided approach.

Mr. GROTHMAN. Mr. Losen, you are not talking about what Mr. Pierre talked about at all.

Mr. LOSEN. So on—

Mr. GROTHMAN. You are trying to change—

Mr. LOSEN. So on dysfunctional families though, there are—their children will come from who have been exposed to domestic abuse. We need to take all comers. Schools need to have trauma-informed responses.

I don't see how it makes any sense if you think that the problems in the home either because of domestic abuse or kids who are in dysfunctional homes how is sending more kids home out of school going to solve that problem?

Mr. PIERRE. I guess my only response to that is that it starts with a cultural change at the bottom and not just through institutions and government.

Mr. GROTHMAN. Keep swinging, Mr. Pierre. Thanks.

Chairman SCOTT. Gentlelady from Pennsylvania, Ms. Wild.

Ms. WILD. Thank you, Mr. Chairman. I would just note that the testimony of Mr. Pierre at age 25 fails to note that a better education has been closely correlated to increased stability in families.

Having said that, I am also from Pennsylvania as was one of my colleagues on the other side of the aisle, who asked two questions. And this is for Professor Brittain.

Ed Build a nonprofit organization that you are undoubtedly familiar with, focuses on common sense and fairness in the way states fund public schools. And it has produced a report finding a \$23 billion dollar racial funding gap between school districts serving students of color and school districts serving predominantly White students.

In my district is the city of Allentown. It is the third largest city in Pennsylvania, and it is surrounded by school—suburban school districts—the Allentown school district is surrounded by suburban school districts that are predominantly Caucasian and have a robust property tax base. Allentown, on the other hand, the fourth largest school district in Pennsylvania is 71 percent Hispanic, 15 percent Black, 10 percent White. It is currently facing a \$28 million dollar deficit for 2019/20.

It has stated, the school board has stated that it may not be able to meet payroll. And they have a \$60 million charter school bill and of course rising costs of English language learning predominantly because of an influx of students from Puerto Rico following the hurricane and of course special education.

So with that as the backdrop, I would ask you, Professor Brittain, if you could describe some of the disparities that we see between the experiences of students attending schools that are primarily White compared to the experiences of students attending school, that are primarily comprised of minority students.

And if you could in your answer, address the differences in outcomes for these students after they leave school. Thank you.

Mr. BRITTAINE. Congresswoman Wild, I would say that what you articulated is the 21st century form of what Brown v. Board of Education was 65 years ago. Brown dealt with the question of race and it was primarily White and Black.

Today in the 21st century, we are dealing with concentrated poverty and class and just as de jure segregation, that is by law for Whites to attend White schools, non-Whites to attend non-White schools, today that barrier is the district boundary line.

And what you described in Allentown and its surrounding districts is what Connecticut through its supreme court case in the 1996 Sheff v. O'Neill said was the boundary line between urban and suburban between some integrated and affluent and achieving and some poor and some highly racially isolated school districts and that was the cause of the inequality education. Therefore that must be the remedy. And that is where we are today.

Linda, did you have a few more statistics on those disparities? By the way, I have always said I know where my legal expertise

on educational equality ends and my ignorance on sound basic educational policy begins. And therefore I've always surrounded myself in my pursuit for legal equality in education with intellectual scholars like Linda Darling-Hammond.

Ms. DARLING-HAMMOND. That's very kind. Just in a word, the outcomes of that segregated experience are that we know that children who have been to integrated schools which typically also do have greater resources have much better graduation rates, much better achievement and higher wages later in life and lower poverty rates. So we have a lot of evidence about that.

My colleague, Dr. Rucker Johnson, just did a book, *Children of the Dream*, I recommend it to you and it really lays out that whole set of—

Ms. WILD. And can we assume that during their in school experience, that students in these school districts that are suffering financially and have become de facto segregated are having fewer elective courses, lower rates of teacher satisfaction?

I mean, I just mentioned that the city of Allentown may not be able to meet payroll. One can only imagine how that affects the ability of teachers to teach.

Ms. DARLING-HAMMOND. Cancelled courses, larger class sizes, greater number of unqualified teachers which gets back to the D.C. question that was asked earlier. High, high proportions in D.C. of teachers who are not trained. Same thing in schools like the ones that you are describing in Pennsylvania.

Ms. WILD. Older text books, fewer field trips.

Ms. DARLING-HAMMOND. All of that.

Ms. WILD. All of those kind of things.

Ms. DARLING-HAMMOND. And that's been documented over and over again.

Ms. WILD. Thank you. I yield back. Thank you, Mr. Chairman.

Chairman SCOTT. Thank you. Gentlelady from Washington, Dr. Schrier.

Ms. SCHRIER. Thank you, Mr. Chairman, and thank you to all of our witnesses today. Thank you for coming.

I am a child in the 1970's and it was during my elementary school years that this great experiment in busing began and so my elementary school leader became a magnet school in some of the ways that we talked about all in hopes of integrating our schools, in giving every child a shot at their best possible life.

You know, I also saw some of the backlash to this. The so-called White flight, many of my fellow students left to go to private schools and so I saw both sides of this.

And one of the reasons that I joined this Committee on education and labor is that kids don't get to pick their parents, they don't get to pick the number of parents they have, they don't get to pick the color of their skin, or their zip code, or their income level.

And as a pediatrician, I take care of kids from all walks of life, and we all know that giftedness does not know economics. Giftedness does not know the color of your skin but what does make a difference in your ultimate outcome is whether you can use that giftedness and whether you get the education that will really launch you into success.

And so I consider it my job here to make sure that every child gets his or her best chance and early childhood education is part of that, but integrating our schools is also part of that, and your testimonies were incredibly compelling in laying out what a difference that makes and how it lifts all ships.

And so, Chancellor Carranza, I wanted to ask if you could discuss why school integration is the appropriate strategy but also what you see as today's modern day barriers to achieving real school diversity.

Mr. CARRANZA. Thank you. I would also just say I agree with you that high quality early childhood education is a game changer in many, many communities. In New York we have universal pre-K. We've added 3-K. And it's, and we are seeing how that is changing the game.

You know, it's interesting because many folks that I will talk to will say I am all about integrating our schools. I want integrated schools but they stop when it means that their children go to school with other kids of color. So the political will that I've talked about is incredibly important. We can't just say we are for it and yet we won't go to that diverse school, we won't go to that school in that quote unquote neighborhood.

So this is critically important. And as we look from an equity perspective in investing our resources in developing programs and good options in neighborhood schools, we are looking at historically underinvested neighborhoods that we're making those investments in because it is critically important that local school becomes a hub for that community that is a good choice in that community.

So they're inextricably linked but they are incredibly, incredibly tied to the notion that you can't just say you want to have integrated schools, you have to also make that a reality.

Ms. SCHRIER. Thank you. I also wanted to ask Dr. Darling-Hammond about the segregation that we see now based on economics that some say that segregation persists today because of individual choice, people choose where to live, people self-segregate and that people of color will choose not to live or learn alongside White neighbors. Could you please comment about this being a so-called choice?

Ms. DARLING-HAMMOND. There is a lot to say about this as well, but the history of segregation and housing policy is very extensive. It still goes on today. And in fact we are waiting still on rules to correct some of the lack of fair housing building as well as segregation in sales processes of housing and so on. So I don't think that's a choice. People live where they can live and then they go to the schools that are available to them.

And one of the things that will encourage greater integration within that context in addition to housing policy, is building and investing in good schools in every neighborhood so that it will be easy for those people that Chancellor talked about that to want to go to a school that is going to be a high quality school perhaps in a neighborhood other than the one that they live in.

Ms. SCHRIER. And I, it looks like I have just a few seconds left so I thought I would comment just for a moment about blaming education on social ills, looking for an excuse to not integrate class-

rooms by looking at social ills or the number of parents in a household.

We all want stable households. We all want parents who support and love their children. There is no question there. But what we do know is the kids don't get to pick their background, and that the best thing that we can do for them is put them in a school where they can have positive peers, positive role models, and teachers.

One adult in a child's life who loves them and guides them is the remedy and that will then parlay them into the future that they really need to break the cycle.

Chairman SCOTT. Thank you. The gentlelady from Connecticut, Ms. Hayes.

Ms. HAYES. Thank you, Mr. Chair, and I would like to thank all the witnesses for being here today. In my Congressional office, I have a Norman Rockwell painting hanging and it's the problems we all live with. We all live with. And it is a portrait of Ruby Bridges walking to school just six years after the Brown v. Board of Education decision. I look at this painting every day to remember why I'm here. I remember that while this painting depicts something that happened 60 years ago, it could truly talk about what we are going through today.

Inequity in education still exists.

And we further promote division with comments like keep swinging in a hearing where we are looking for solutions to the problems that we all live with.

Today, this Department of Education is openly hostile to civil rights enforcement and school integration and actively advancing policy that will continue to push some students forward while leaving so many behind.

In a hearing before this Committee, Secretary DeVos hailed school choice as the silver bullet, ignoring the fact that choice often leads to more disparity, more segregation, more inequity.

We heard the Secretary speak of the one million students who are on wait lists for charter and choice schools. I remind everyone that we have a responsibility to educate 50 million plus students, not just one million. What happens to the rest of those kids?

Ms. White, I hear you, and I agree with you. My challenge is that the opportunities that you speak about for your son Michael, I want that for all students whether they have a parent at home or not. So we have to make sure that every public school works, that every student has access to those opportunities.

As an educator, as a mother, I always ask myself one question, a guiding question. Is this the education I would want for my child? If I couldn't answer yes to that every single time, then I had to figure out something different to do. And I would challenge everyone here today to ask yourself that same question. Is this the education you would want for your child? Don't worry about my child, for your child.

I challenge my colleagues on the other side of the aisle to ask themselves that question. Because what we are talking about is pockets of excellence. People talk about one school or one district or one community or one place where it worked. Is that what you

would want for your child to be educated in all of those other places?

So my question today is for Mr. Losen. In the final report of the Federal commission on school safety that was prepared by Secretary DeVos, it recommended a rescission of the 2014 discipline guidances. In its justification for this recommendation, the report cited research that seemingly suggested that there are innate behavioral differences between White students and students of color.

Can you comment on these claims, the research supporting them and what it means for the Federal Government to include them in official documents?

Mr. LOSEN. Yes. I think it's disgraceful that research was cited. That study was refuted by another very conservative researcher as I mentioned earlier who did the identical study with the same database but instead of just looking at whether students were suspended or not, they looked at how many times students had been suspended.

Now there were all kinds of other problems with that study that should have raised red flags but that discredited the—discreditation of the study happened before it was cited as a reason to rescind the guidance.

So reliance on that kind of flimsy information is the same kind of way of decision-making that was determined to be arbitrary and capricious when they tried to rescind the special education regulations on racial disproportionality.

Ms. HAYES. Thank you so much. And that's not partisan. That's just if we all seek to improve outcomes for kids then we should be finding good information and conducting ourselves accordingly.

I'm going to jump ahead to Professor Brittain who hails from my home State of Connecticut where I saw the Sheff v. O'Neill case play out and I have actually seen the results of it. What can we learn as a Nation from the lessons of the Sheff case? I mean, I know we still have some challenges and some things that we have to do on the ground level, but what can we learn to move forward so that almost as a model to improve outcomes?

Mr. BRITTAIN. Good morning.

Ms. HAYES. Good morning.

Mr. BRITTAIN. Member Hayes and former National Teacher of the Year.

Ms. HAYES. I know a little something about education.

Mr. BRITTAIN. I say that all of the people who have been involved in the Sheff movement all these many years, many lawyers, many activists, many educators, certainly many parents, many students, all of which deserve far more credit than is given to many, we have learned as Rodney King said, can't we get along?

We have learned from the beginning that we had a multi-racial coalition seeking education. Somewhat jokingly, we had the first San Juan, Puerto Rico school district on the mainland of the United States. So we had to convince Puerto Ricans that it was their interest, not only pursue forms of bilingual education but also integration. We had urban and suburban and therefore, that is what I have learned in the 60 plus years since then.

Ms. HAYES. Thank you so much. I am embarrassed that we are even having this hearing today, that we even have still continuing this discussion. I am sorry for going over, Mr. Chair, I yield back.

Chairman SCOTT. Thank you. Gentleman from Maryland, Mr. Trone.

Mr. TRONE. Thank you, Mr. Chairman. Earlier this month I had the opportunity to ask Secretary DeVos about her department; was addressing the issues that we are discussing today.

I was concerned and disappointed when the Secretary dodged my questions twice about whether she believes racial segregation poses a threat to the educational opportunities for children of color.

Dr. Darling-Hammond, I would like to pose the same question to you. Do you believe racial segregation in public schools poses a threat to the educational opportunity for children of color?

Ms. DARLING-HAMMOND. Well, we have a lot of evidence that it does because segregation by race is typically in this country now also associated with concentrated poverty and under-resourcing of schools. So the combination places young people at risk in ways that are unnecessary since we know what we could alternatively be doing.

And we have a few States that have made the investments that are necessary for equitable and paritable parity funding with the kind of strategies that Professor Brittain just described with early childhood education and qualified teachers and you see the achievement gap reduce and achievement for all students move forward.

Mr. TRONE. The Secretary also responded then that every—she is concerned about every student no matter where they are, or where they go to school. How does segregation negatively impact students of all races?

Ms. DARLING-HAMMOND. Well, we can see in our society the desperate need for people to be able to work and live together productively and we are experiencing so many events that show that the segregation we have experienced is flaring up in adult life in very sometimes violent and unfortunate ways.

Everyone benefits from being in an integrated setting and the studies show that not only is there better inter-group relations but more critical thinking, more problem solving, more capacity that people develop in the settings.

Mr. TRONE. No question about it. In 2016, GAO found public schools have actually become more segregated by race in class anytime since 1960.

Professor Brittain, in your opinion what's the biggest reason behind this persistent racial segregation in education?

Mr. BRITTAINE. As my dear colleague Gary Orfield of the UCLA civil rights project has traced, it's a combination of the abandonment of school integration, some of which we heard today by the executive branch of the Federal Government at times.

Certainly in the abandonment of school integration and restrictions by the Supreme Court Justices, and further by various educational executives in the higher level of the Department of Education.

Further, the segregation in housing is still the number one cause to the segregation in education and programs such as housing vouchers and programs to extend opportunities for advantage in

living are all a factor in the continuing segregation 65 years after Brown v. Board of Education.

Mr. TRONE. Mind boggling. 65 years we are still here. It's embarrassing. One issue we discussed today is the fact that the Department of Education is making it harder, not easier for schools to voluntarily address segregation issues. Chancellor, what do you see as the potential benefits for New York City students if the Federal Government were to increase its support for efforts diversified schools?

Mr. CARRANZA. It would be symbiotic with the efforts that we are undertaking at a local level to increase the engagement process, to engage in the development of programming, to engage in the development of integrated integration plans in our city. What you need to have is an alignment of both Federal, State and local laws and policies. We are taking care of it locally. We need to have that continuum at a Federal level as well.

Mr. TRONE. In closing, when I asked Secretary DeVos about the rescission of diversity guidance, I was shocked to hear she was not familiar with the guidance that her own Agency had rescinded. Her own Agency.

Even with the Administration's apparent hostility toward increasing student diversity, I am hopeful when I see students, students themselves across the country including those in my home area of Montgomery County, Maryland, organizing and taking bold efforts to achieve educational equity.

I hope Secretary DeVos can learn a few things from you folks on this panel today and thank you for your leadership. Mr. Chairman, I yield.

Chairman SCOTT. Thank you. We have a couple other Members on the way but I'll recognize myself at this time beginning with Dean Brittain.

Dean Brittain, after the Kentucky and Washington State cases where the voluntary desegregation plans were thrown out, how difficult is it to actually voluntarily desegregate the case and how much of a disappointment was it that the opening—opened doors expanding opportunities grants which gave professional technical assistance. How disappointing was the loss of those grants?

Mr. BRITTAINE. As your fellow Congressman said in relationship to the Voting Rights Act, as John Lewis said it was a dagger in the heart of enforcing civil rights. It was a big, big loss.

The 2007 Parents Involved in Community Schools was the biggest hit on school integration since Brown v. Board of Education in 1954. Nevertheless, though wounded, it continued.

And when people turned to the Obama Administration, creation of guidance that it took them two years to create, from the time of the inauguration until 2011, all the civil rights communities participated with the government. Parents, children, civil rights advocates, policy makers.

Chairman SCOTT. The money would have been used for technical assistance to develop voluntary plans that could withstand constitutional challenge is that right?

Mr. BRITTAINE. That's correct.

Chairman SCOTT. Now we have heard the charter schools actually make matters worse in terms of integration, is that right?

Mr. BRITTAIN. That is correct.

Chairman SCOTT. Now how have freedom of choice cases, freedom of choice plans faired in litigation over school integration?

Mr. BRITTAIN. When we go back to the immediate post Brown era, 1955, '56, '57, it was that freedom of choice that was the first page of the decision after Brown where the Supreme Court struck down freedom of choice.

It was freedom in theory but it was not freedom in practicality because 99 percent of all the Whites stayed at the White school. Only a few percent of the Black students transferred from the all Black school to the White school.

So this is a modern day form of freedom of choice to say that by creating these charter schools and having no guidelines around where the schools are placed or the relationship to the student's assignments being taken in the public schools is like creating a new modern 21st century freedom of choice to perpetuate segregation in education.

Chairman SCOTT. Thank you. Ms. Darling-Hammond, you had indicated that one of the reasons that African Americans do better in integrated schools systems, the schools are actually better. Have you seen—how often do you see low income schools, predominantly Black actually funded better than the nearby White schools?

Ms. DARLING-HAMMOND. That's a very rare occurrence. Typically in at least 30 states you will see disparities going the other direction where concentrations of Black and Latino students in high poverty schools are funded at much lower levels than other schools around them.

Chairman SCOTT. And what is wrong with dealing with problems in schools by letting a handful of students go somewhere else and not dealing with the underlying problems? What is wrong with that strategy?

Ms. DARLING-HAMMOND. Obviously, the obligation is to every child and, you know, competition if it's a winners and losers game is not actually dealing with the promise of Brown which is high quality education for everyone.

Chairman SCOTT. Thank you. And, Chancellor, you indicated when you integrated the schools, what happened to achievement?

Mr. CARRANZA. The evidence is achievement raises for all students.

Chairman SCOTT. Thank you. And, Mr. Losen, exactly what is defiance as a violation and why is what happened when you allowed people to be suspended for defiance and what happened after the, that policy was abolished?

Mr. LOSEN. One of the problems defiance its really even broader category. Its disruption or defiance and in California well, one of the problems is that this allows for a great deal of perception and subjectivity.

And where we have the kind of vague minor offenses that are very subjectively determined, we tend to see things like implicit racial bias play a much larger role in whose behavior is identified as being problems in the first place, and then who gets the response of an out of school suspension and there have been quite a few studies to show that Black students are actually treated more harshly for the same kinds of offenses. So when they eliminated

that particular policy in Los Angeles, we saw a dramatic, and that was K-12, we saw a dramatic reduction in the use of suspension and an increase in days of instruction for the kids who are no longer suspended obviously, but an increase in graduation rates as a result.

So this idea that, you know, to have—basically the idea is you have to close the discipline gap, if you want to close the achievement gap.

Chairman SCOTT. Thank you. My time has expired. The gentlelady from Illinois, Ms. Underwood is recognized.

Ms. UNDERWOOD. Thank you Mr. Chairman. 65 years ago the Brown v. Board of Education decision ruled that segregation in public education is unconstitutional. But as we know it takes real work to translate that equality in theory into equity and practice.

And our responsibility in Congress is to ensure our amazing teachers and educators have the resources that they need to fully and equally invest in all of our kids.

When I talked to Keith—when I talk to teachers at home in Illinois' 14th District, one of their top priorities on this issue is fixing the underfunding of Title I schools.

So Dr. Darling-Hammond, how could adequately-funding Title I help advance equity in public education?

Ms. DARLING-HAMMOND. Well, in many ways, that would include equitably funding by State as well as more adequate funding within States. And in those high poverty settings, if you can put the resources as is allowed under Title I into stronger, more qualified, more continuous teaching force, into better instructional programs, into the wrap around services and supports that are needed, you get much better outcomes and we have a lot of evidence about that.

Ms. UNDERWOOD. Excellent. And so can you talk about some of the resources that students in these schools would have if Title I was adequately funded? And could it improve their access to mental health services or academic counseling in schools for example?

Ms. DARLING-HAMMOND. Yes, I think particularly in schools that are identified for improvement, all of those uses of the funds are useful. Title IV also is the place where you can fund some of those comprehensive services.

And again we have evidence that when you create the wrap around services with the instructional supports that are needed, achievement goes up for students pretty much across the board.

Ms. UNDERWOOD. Thank you. Teachers in Illinois also need the Federal government to fully fund the Individuals with Disabilities Educational Act or IDEA. The Illinois Federation of Teachers estimates that public education for students with disabilities has been underfunded by \$233 billion since 2005. Dr. Darling-Hammond, how could fully funding IDEA help address current inequities in public education?

Ms. DARLING-HAMMOND. Well, students with disabilities are among those who are disproportionately failing in schools and also disproportionately disciplined and so on so clearly we need that.

One of the key things is that we have a massive shortage of special education teachers across the country right now which means

we have people in those classrooms who do not know how to teach in the extraordinary way that is needed for the students.

So part of that investment should really be to return to the investments we once made in teacher education, teacher residency programs, investments in service scholarships and forgivable loans to get teachers prepared and really ready to do the work in those classrooms.

Ms. UNDERWOOD. Workforce development remains incredibly important. Thank you. Public education is so important to our community. People in our community have consistently voted to raise their own taxes to fund our public education and because of the resources that our schools have in Illinois 14th, and their amazing students, parents, and employees, our public schools are the pride of our district. I am so proud and impressed by the efforts that parents and school board members in our school districts have made to improve diversity and inclusion and so I want to help ensure that school districts all across our county have the ability to make those same types of improvements.

Dr. Darling-Hammond, what are the challenges that educators face in designing and implementing district-wide plans to reduce inequity in public education?

Ms. DARLING-HAMMOND. Well, inequities in this country sort of spiral down from the top. We have inequity in the distribution of Federal funding, state funding, and sometimes district funding as well as the provision of quality programs. So as educators are working to really address those inequalities, they need access to reasonably small class sizes, to the materials that they need to teach which many of them lack and pay for out of their own pocketbooks, as well as to the opportunity for schools to be equitably available to kids across their districts.

Ms. UNDERWOOD. And how can we help alleviate those challenges so that issues of inequity can be addressed broadly throughout our public education system?

Ms. DARLING-HAMMOND. I think there are three major things. One is equitable funding both at the State level and the district level. We have a lot of work to do on that. Another is investments in early childhood education for all kids so that they come in without an achievement gap at kindergarten. A third is investments in the training and equality of teachers of themselves and this ongoing support for their work so that they can do their best work in that setting.

When you put those together and you create equitable systems, I think we will also see the kind of desegregation that we are talking about here because parents will want to choose the schools that provide all of these resources.

Ms. UNDERWOOD. Well, thank you for raising those points. You know, investment is incredibly important as is thoughtful, intentional leadership at all levels in our education system from that school board all the way up to the Federal Department of Education.

I am really grateful and appreciative that our local school district where I live, District 204 in Illinois has an administration that has created a parent diversity council to surface up these kinds of challenges that are happening locally. If they are willing to make the

investment of money, right, there is still opportunities for improvements. And so they're furthering those actions but we don't overlook on this Committee the need for those types of investments and I thank you for offering your expertise to the Committee today. Thank you. I yield back.

Chairman SCOTT. Thank you. Before we close I ask unanimous consent that a report 2016 GAO report that's been referred to frequently today entitled The Better Use of Information Could Help Agencies Identify Disparities and Address Racial Discrimination.

A 2018 GAO report entitled Discipline Disparities for Black Students, Boys and Students with Disabilities.

A report, Long Run Impacts of School Desegregation and School Equality on Adult Attainments by Rucker C. Johnson.

The Federal Role in School—the Federal Role in School Integration, Brown's Promise and Present Challenges by the Learning Policy Institute, Dr. Darling-Hammond's organization. A Bold Agenda for School Integration by the Century Foundation 23 billion by Ed Build. Fractured the Accelerating Breakdown of Americas School Districts by Ed Build and Lost Instruction to Disparate Impact of the School Discipline Gap in California the UCLA Civil Rights Project, Mr. Losen's organization.

At this point, do the Ranking Member have closing statements?

Mr. ALLEN. Yes, Mr. Chairman. Thank you and thank you to the witnesses for being here today. This is a very serious topic. It is clear we have a lot of work to do at every level of educational governance to ensure the promise of Brown is fulfilled for every child.

I request unanimous consent to submit a letter from Virginia Walden Ford for the record. Mrs. Ford is a parent advocate who has spent more than 20 years fighting to empower parents to pursue educational opportunities for their children. In her letter, Mrs. Ford writes the same schools that we fought hard to get into in the 1960's after the Brown v. Board of Education decision have become the schools we most diligently find a way to get minority children out of.

Those are her words and I couldn't agree more than any effort to fulfill the promise of Brown has to include a commitment to parent empowerment.

I also have two observations to share about some of the criticism of the Department of Education that we have heard here today. Accusations have been made that the department is not enforcing Title VI regulations.

First, the regulations in question are still in effect. They still have the force of the law. The department is still committed to enforcing them.

Second, and perhaps more importantly, this department continues to investigate claims under those regulations consistent with past practices.

The case processing manual for the Office for Civil Rights is available online. Here is how that manual describes the approach that should be taken when statistical disparities exist.

Generally statistical data alone are not sufficient to warrant opening an investigation, but can serve to support the opening of

an investigation when presented in conjunction with other facts and circumstances.

Now let's compare that language with the language from a version of the case processing manual from the previous administration.

The February 2016 version of the manual states: generally statistical data alone are not sufficient to warrant opening an investigation but can serve to support the opening of an investigation when presented in conjunction with other facts and circumstances.

To be clear, the language is identical. As I said, there is more work to be done. And I am encouraged to hear about efforts in New York City and around the country to respond to challenge raised by this hearing.

Committee Republicans welcome any genuine effort by the majority to engage in bipartisan conversations about how to address that, these many issues that have been raised today. and, Mr. Chairman, I submit this letter and ask that you—

Chairman SCOTT. Without objection.

Mr. ALLEN.—present it to the record. I want to again thank all of you. We are in an unprecedented time. We have the greatest economy in the world. We have more jobs than we have people seeking jobs. This is going to be a tremendous challenge to our educators.

We don't want any American to fall through the cracks. There is so much opportunity—I tell our young people there is so much opportunity out there today I wish I had it to do over again to be honest with you.

But we want to make that available to every American and education is the way to do that and we need to figure that out. Thank you so much.

Chairman SCOTT. Thank you. And I thank you for pointing out the language on disparate impact cases. What is in the language and what is in actual practice I think is what the actual practice is what needs to be evaluated.

As my colleague from Virginia noted, Virginia was one of the four cases decided in Brown and one of the five cases decided that day. Unfortunately Virginia has a disappointing—had a disappointing response to Brown v. Board of Education because as I indicated in my opening remarks, it is doubtful that any child may reasonably be expected to succeed in life or denied the opportunity of an education such an opportunity where the State is undertaken to provide it is a right which would remain available to all on equal terms.

Apparently the part of that statement that Virginia noticed was where the State has undertaken to provide it when ordered to integrate what they did in Prince Edward County in several other locations in Virginia was just stop providing education to anybody. That was equal.

But it's obviously made no sense and for several years, four years in Prince Edward, at least four years in Prince Edward County, there is no education at all except for the private academies. So we have a disappointing history, but I think we are making progress and we have to still pursue every avenue we can to make sure that

people have that right which must be made available to all on equal terms.

Today's hearing was long overdue. A conversation about inequity in education 65 years after the landmark decision we are still fighting to end racial discrimination and systemic inequalities that continue to undermine the opportunities for students of color.

As discussed today, we have a critical role in closing the achievement gap and we need to make sure as our witnesses have reminded us, that working to desegregate schools and protect student civil rights can be difficult and uncomfortable. But the stakes are too high to ignore.

So the government, Federal Government has a moral and legal obligation to ensure that all children have access to a quality public education to reach their full potential. If there is no further business to come before the Committee, the Committee stands adjourned.

[Additional submission by Mr. Courtney follows:]

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Desegregated, Differently

Desegregated, Differently

Half of Hartford's schoolkids attend integrated schools, thanks to a legal strategy that might work elsewhere.

By Rachel M. Cohen

October 18, 2017

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Hartford, Connecticut, is struggling. Teetering on the brink of bankruptcy, the state's tiny capital wrestles with many of the same economic challenges as other predominantly poor post-industrial cities along the East Coast. Yet Hartford boasts one remarkably unique feature: Nearly half of its public school students attend desegregated schools.

In most places, desegregation was a 20th-century phenomenon that was pulled apart by a skeptical Supreme Court and political backlash from white families. But in Hartford, it's still happening, thanks to *Sheff v. O'Neill*, a 1996 state Supreme Court decision in which the court ruled that the region's racially segregated schools denied Hartford children their constitutional right to an equal education. By suing the state rather than the federal government, the plaintiffs did not need to prove the state's intent to discriminate (a high legal bar to reach), and instead focused on Connecticut's obligation to provide all students with equal opportunity. It was a novel legal strategy at the time, and remains so today.

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Over the past two decades, Connecticut has slowly but surely funded the creation of integrated magnet schools both within Hartford and in the surrounding suburbs, and paid for Hartford students to attend predominately white schools outside their city's borders. The magnets—which have proved popular and academically distinguished—come with some rules: No more than 75 percent of a school's student body can be black or Latino, and, correspondingly, no less than 25 percent can be white or Asian.

But some Hartford leaders have tired of *Sheff*, which reduces their authority over city schools, and encourages students to look beyond Hartford for public education. A number of Hartford parents have also grown frustrated that their children who can't land spots in the coveted magnets are falling behind (52 percent of Hartford students are still enrolled in segregated neighborhood schools). Connecticut's worsening fiscal crisis has also ramped up *Sheff* resistance from state officials, who have signaled—implicitly and explicitly—their desire to scale back the legal remedy.

The fight is being closely watched by civil rights advocates across the country, who want to know if Hartford and Sheff are a viable new model for school integration—or a dead end.

So nearly three decades after they first filed suit, the plaintiffs are headed back to court—and longtime observers say they've never seen the two parties so far from an agreement. The state wants not only to be freed from court oversight, but also to reduce the number of white students the existing magnet schools must accept, a proposal supporters say will open up more opportunities for marginalized students, and critics say will cripple the goal of integration. The fight is being closely watched by civil rights advocates across the country, who want to know if Hartford and *Sheff* are a viable new model for school integration—or a dead end.

"I figured this would be a long-haul effort," says Elizabeth Horton Sheff, an African American community activist, and the lead plaintiff for *Sheff* since the late 1980s. "But I did not expect this kind of resistance to a constitutional question that's been asked and answered."

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CONNECTICUT IS AFFLUENT, predominantly white, and largely suburban. Like other New England states, Connecticut largely missed the migration of African Americans from the South, and Latinos from Mexico and the Caribbean. For decades, the state's relatively few African Americans mostly clustered in Hartford, Bridgeport, and New Haven—a pattern born out of the state's racist housing laws, which had barred black residents from owning land, forcing them into ghettos where renting was cheaper.

The *Sheff* lawsuit began with John Brittain, an African American civil rights attorney who arrived to teach at the University of Connecticut School of Law in 1977. Before then, Brittain had litigated school desegregation cases in Mississippi, and soon after his arrival he began studying the demographics of Connecticut's schools and neighborhoods, to see if similar legal action might be necessary.

By 1983, Brittain had plans to move forward with a federal school desegregation case. Yet one challenge was a rapidly changing legal landscape following a 1974 U.S. Supreme Court decision, which said that unless it could be shown that a district deliberately sought to discriminate by race, it could not be held responsible for school segregation. Still, Brittain and his team felt they could prove intent.

At the last minute however, they pulled the plug. "Like a NASA shuttle launching, we aborted," he tells me. One factor motivating the decision, Brittain says, was a sense that the community was not ready, that Northerners viewed desegregation as something only necessary for Southerners reckoning with Jim Crow.

But five years later, in 1988, everything changed. The state's then-education commissioner, Gerald Tirozzi, published a report concluding that school segregation was a growing trend in Connecticut, with 80 percent of the state's minority students concentrated within 14 of its 165 school districts. Following the release of the explosive report, the education commissioner emphasized the state's collective responsibility for the problem and proposed financial incentives for school districts to voluntarily reduce segregation, but stressed that if this proved ineffectual, the state education board should consider a mandatory desegregation plan. It was—and still is—very unusual to have state officials propose strong desegregation initiatives rather than have those initiatives designed by courts.

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Leaked to the *Hartford Courant*, the Tirozzi Report was featured as the paper's front-page scoop just before Christmas in 1987. It generated massive amounts of community and political attention, and within four months of its release, Brittain and his colleagues drafted their school segregation complaint against the state.

"We strategically solicited just about every social, educational, religious, and community organization to sign on to a pledge to support our case," Brittain says. "The enthusiasm was overwhelming." Unlike the ditched federal suit from a few years earlier, this time Brittain felt community members were ready.

Filed in 1989, the suit was tried in the early 1990s. At the time, minority students comprised more than 92 percent of Hartford's public school enrollment, and of the 21 surrounding suburban towns, only seven had school districts with minority enrollments that exceeded 10 percent.

Sheff was named for Milo Sheff, a black fourth-grade student in Hartford, and his mother, Elizabeth. Sixteen other children were named as plaintiffs—four more black children, six Latino, and six white. It was brought not only for Hartford students stuck in impoverished schools, but also for suburban students "deprived of the opportunity to associate with, and learn from, the minority children" in Hartford, as the complaint read. *Sheff* lawyers argued that inequality by both race and poverty denied the plaintiffs their constitutional right to an equal education.

Connecticut's Supreme Court issued its landmark 5–4 ruling in the spring of 1996, holding that "racial and ethnic segregation has a pervasive and invidious impact on schools"—and violated the state's constitution. (The court ignored the plaintiffs' poverty argument.) Instead of outlining a remedy, however, the court ordered the governor and the legislature to develop a solution.

Perhaps unsurprisingly, the state's initial response to *Sheff* was feeble. In 1997, Connecticut's legislature authorized new investments in early childhood education, a state takeover of Hartford's schools, and the creation of integrated magnets coupled with an expanded interdistrict school choice program. But the amount of money allocated to the remedies was insufficient, and weak financial incentives led to minimal suburban school participation in

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interdistrict choice. (The amount of money the state offered receiving districts to take in students was generally not enough to offset the cost of educating them.) The voluntary nature of the *Sheff* remedy helped it avoid political backlash, but also severely watered down its impact.

Many blamed the court for not ordering its own, stronger remedy. “One of my signature criticisms is that after the courts find liability against an educational authority for violating the Constitution … they remand the remedy phase back to the perpetrators of the wrongdoing,” says Brittain. “I call this asking the fox to guard the hen’s coop.”

But the plaintiffs kept up pressure, and by 2003, the state finally negotiated its first settlement agreement, committing to have 30 percent of Hartford students enrolled in integrated schools by 2007. Though progress felt sluggish at times—not enough suburban schools were reserving seats for Hartford students, magnet construction was slow, and by 2006 still fewer than one in ten Hartford students were enrolled in integrated schools—observers remained optimistic, saying things were at least plugging along in the right direction. Even when leaders may have grumbled behind closed doors about costs or the strategy, publicly they embraced their legal obligations.

But over time, some Hartford leaders began openly criticizing *Sheff* and questioning its value. As the four-year settlement agreement neared its end in 2007, Hartford’s new school superintendent went before the state legislature to testify that magnets were not achieving their goals and “there is no research to suggest that minority students will do better by sitting next to a white student.”

Elizabeth Horton Sheff, the lead plaintiff, and Eugene Leach, another plaintiff, wrote an op-ed condemning the superintendent’s remarks, noting that he cherry-picked struggling magnets, misrepresented the social science research, and tried to relitigate a matter the Supreme Court had already settled. “The question for Connecticut officials is how, not whether, to achieve desegregation,” they wrote.

Though state officials do not need Hartford’s approval to allocate funds for the *Sheff* remedy, Connecticut’s legislature was ambivalent about distributing more money without Hartford’s explicit support. Some also waffled on committing more funds, given the slow progress made since 2003. So, faced

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with a political impasse, the plaintiffs again went to court, demanding better and faster compliance with *Sheff*.

They were successful, and the new settlement negotiated in 2008 was one both parties agreed was far more likely to facilitate desegregation than its predecessor. “Under the first stipulated agreement, everyone saw their roles differently. ... Now we expect there to be better coordination,” said a state Department of Education spokesperson at the time. The agreement called for expanding magnets and interdistrict choice, and for the first time, Connecticut committed to a detailed road map to end racial segregation faced by all Hartford’s children.

Between 2008 and 2013, the number of Hartford students enrolled in integrated schools jumped from 19 percent to 41 percent.

By April 2009, two decades after the suit was initially filed, a state official who worked on *Sheff* remarked that there had been more progress toward integration in the preceding year than in the past decade. The University of Connecticut also released a report in 2009 finding that attending an interdistrict magnet school had positive effects for students in reading and math, and that magnet students reported more positive intergroup relations than non-magnet students in the region. Between 2008 and 2013, the number of Hartford students enrolled in integrated schools jumped from 19 percent to 41 percent.

For a while, the state supported integration efforts not only in Hartford but also in the highly segregated metropolitan areas of Bridgeport and New Haven. The magnet schools were extremely popular everywhere, yet at the same time, state legislators were growing wary about all the money they were spending. By September 2009, lawmakers issued a moratorium on constructing new magnets outside the Hartford region, which they said they were obligated to continue building because of *Sheff*.

EVEN AS STATE LEADERS ostensibly kept up their commitment to Hartford desegregation, some city officials were proposing to move in a different

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direction by doubling down on efforts to elevate the so-called education reform movement. Since 2006, Hartford's then-superintendent, Steve Adamowski, had pushed a plan to transform Hartford Public Schools into an all-choice "portfolio" district, a national strategy backed by the Seattle-based Center on Reinventing Public Education. In 2011, Hartford school officials launched a campaign to dissuade families from choosing suburban magnets. One press release said parents should "avoid the temptation to gamble with their children's future" and enroll their student in a Hartford public school instead. Another district-sponsored TV ad featured a Hartford teacher saying, "Your child's education is a right and not a game. Why risk their future on a [Sheff] lottery and then a waiting list?" When the plaintiffs criticized the district's "Choose Hartford" campaign, Adamowski defended it, saying the dragged-out Sheff remedy was harming Hartford schools.

Hartford's school board has also had an uneasy relationship with *Sheff*. (It's not a formal party to the case, yet is generally expected to greenlight plans the plaintiffs and state negotiate.) "*Sheff* is an abrogation of democratic governance because it transfers [decisions] to confidential negotiations that many, if not most, people don't know exist, decisions that are the responsibility of state and local government," says Richard Wareing, a Hartford school board member who recently served a three-year stint as board chair. "There is no transparency. There is no accountability."

Connecticut, a state with 169 small towns, has an entrenched culture of parochialism that is unlikely to change without pressure from a court.

ONE PROBLEM DOGGING Hartford desegregation has been a lack of clear regional coordination. When federal judges ordered school districts to desegregate in the South, many formed new city-countywide school districts, such as Charlotte-Mecklenburg Schools in North Carolina, and Metropolitan Nashville Public Schools in Tennessee. Yet Connecticut, a state with 169 small towns, has an entrenched culture of parochialism that is unlikely to change without pressure from a court. While the Hartford metropolitan area has been

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willing to agree to some regional cooperation for services like hazardous waste collection and firefighting, on most everything else the small towns remain fiercely autonomous.

Accommodating this tradition of “local control” has led to disjointed, kludgy efforts to desegregate the region, especially since the most serious segregation exists among districts, not within them.

Between 1998 and 2016, Bruce Douglas led the Capitol Region Education Council, or CREC, a quasi-public agency that manages the interdistrict program and 17 *Sheff* magnet schools. When I asked him to reflect on *Sheff*, he praised Connecticut’s Supreme Court for pushing a voluntary plan, and thereby avoiding the problems of so-called “forced busing.” That said, Douglas, who also believes there needs to be more regional cooperation, admits that the court could have played a larger role pushing that along.

Absent such court mandates, he says, “you would need legislators who have the courage to say, ‘I’m willing to lose my job by voting in favor of regionalizing school districts,’ because there is no doubt they’d be voted out the next cycle.”

Sheff plaintiffs have pushed for more regional coordination at the negotiating table, though they too have stopped short of calling to revamp district lines.

“We’ve never pushed for redrawing school district lines for political reasons, but short of that we’ve pushed for regional solutions ad nauseam, and they’ve never gone anywhere,” says Martha Stone, the lead attorney for the *Sheff* plaintiffs. “We’ve pushed for regional preschool, for more mandatory participation from the suburban districts [in interdistrict choice], for more carrots for suburban districts that participate at greater rates, for housing mobility certifications that are tied to education options.”

The state, wary of costs and of political blowback, has consistently rejected these proposals, resulting in a series of year-to-year goals, with the prospect of long-term, regional planning feeling at times more elusive than ever.

Andy Fleischmann, a Democratic state legislator from the affluent suburb of West Hartford who chairs the Education Committee, is quick to note that many people have strongly differing views on the lawsuit. “Where you stand, depends on where you sit,” he says. In his community, he admits no one has

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seriously pushed for redrawing district boundaries. "You'd be hard-pressed to find anyone in my town who would say, 'Oh sure, let's erase the school district's boundaries,'" he says. "My town has worked hard to make sure that we've maintained great schools and there's just a huge number of people who wouldn't want to go ahead and take our great school system, change its boundaries, and potentially throw off what's been working well for as long as it has. That's true of folks who are sitting in Wethersfield, or East Hartford, or Windsor and Bloomsfield. That's just not something that's been discussed very seriously by many parties."

Rather than redrawing district lines, Fleischmann supports expanding financial incentives to induce more suburban schools to voluntarily participate in the interdistrict program. When I asked about empowering the education commissioner to mandate greater suburban participation, he quickly dismissed the idea. "That's been brought up a few times over the years, but that's never gotten far. Superintendents and school boards of local districts say, 'Wait a minute, why would that be a good thing from where we sit?'"

Still, calls for greater regional cooperation have grown more pronounced in recent years, in part because the state's fiscal crisis has ramped up pressure on leaders to identify economic inefficiencies. And longtime observers say there's a greater recognition now that Hartford Public Schools and CREC must work together to desegregate the region, rather than position themselves as competitors for students, as has been the case at times in the past.

What's needed now, CREC's new executive director, Greg Florio, told me, is a comprehensive plan. When asked what's stopping that from becoming a reality he cited the continual leadership turnover within Hartford and a lack of clear direction from the state.

But it's not just *Sheff*'s implementation that's in flux. The demographic patterns within the state of Connecticut have also been changing over the past 15 years, with suburbs growing more diverse, and in some cases, more poor. Twenty-four percent of school-age children in the towns surrounding Hartford this past school year were black or Hispanic. The population shifts have prompted some to wonder if the *Sheff* remedy should be revised to reflect these not-so-black-and-white realities.

SHEFF POLITICAL TENSIONS have come to a head over the past two years.

One key factor is Connecticut's worsening fiscal crisis, which threatens a \$5 billion budget deficit. Despite the state's affluence and Democratic control, lawmakers have been resistant to hiking taxes on its wealthiest residents.

Connecticut's population is also shrinking. Since 1994, the state's 35- to 44-year-old demographic has declined by 20 percent, and fewer prime-age adults means fewer school-age children. All of these issues combine to make school funding particularly contentious, especially since Connecticut relies heavily on local property tax to fund public education.

Although Connecticut has poured in funds to construct new magnets, it has not increased the per-pupil spending for those magnet students since 2010—despite increasing per-pupil spending at traditional schools every year. As a result, suburban districts have had to pick up a greater portion of the tab to send students to magnet schools, and some are growing increasingly unhappy about it. "I think the state tried very hard to do right, especially at the beginning, but people got tired," says Sandra Cruz-Serrano, CREC's deputy executive director. "The political environment started to change, especially as CREC was building these beautiful new schools while suburban schools from the 1950s struggle to renovate."

Many leaders, families, and educators have concrete ideas of how to improve *Sheff*—to make it more user-friendly, more cost-effective, and more equitable—but it's nearly impossible to make headway on these adjustments without leadership from the state, and many state officials remain cool to the program. "The state has never seen *Sheff* as a real benefit to them; they've only treated it as something that was onerous," Douglas says.

Not all Hartford leaders believe Sheff can be sufficiently improved.

Not all Hartford leaders believe *Sheff* can be sufficiently improved. Craig Stallings, the Hartford school board chair, doesn't think there can be any real

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tweaks to the remedy, and even if adjustments were possible, the city would still be unfairly deprived of local control.

Stallings, an African American man born and raised in Hartford before *Sheff* was litigated, speaks highly of his education, which he says was rigorous and culturally responsive, despite being segregated. “Quality is more paramount than integration,” he tells me. “I’m the anti-*Sheff* guy around here.” Another vocal *Sheff* critic is Thirman Milner, an 83-year-old Hartford resident and the city’s first African American mayor, elected in 1981. Milner, who originally supported *Sheff*, now says it would be better if the lawsuit were abandoned, and the state just gave money to the city to do what it sees fit. “I think the Hartford board would have a much better idea of how to spend the money, and I think we need to get rid of *Sheff* if we really want to stabilize the schools,” Milner says.

John Brittain laughs hard when I ask him if he thinks the state would distribute the same kinds of resources to Hartford without *Sheff* mandates. “No, and I believe that’s just a smokescreen for opposition to school integration, just like ‘busing’ was always a smokescreen,” he says. “It’s not the bus,’ as we used to say. ‘It’s us.’”

Brittain’s skepticism seems justified: The state funds other segregated regions of the state far less, and is already attempting to shift more *Sheff* costs onto local suburban districts. In 2015, the state signed a one-year agreement to expand seats in existing magnet schools, but Connecticut officials said they would refuse to open new magnets in the future, and refused to increase magnet per-pupil funding. Even today, the existing magnet schools are operating only at 93 percent capacity, in part because the state has capped the number of seats it will fund.

Julie Goldstein, the principal of Breakthrough, an award-winning magnet run by Hartford Public Schools, says the last few years of budget cuts have been very painful. “One of the misconceptions of magnet schools is that because we have nice buildings we must be oozing with funds,” she tells me as we sit together in her office. Breakthrough recently had to shorten its school day and eliminate two certified positions, including its assistant principal. Continually reducing their resources, supplies, and field trips, Goldstein says, makes recruiting students much harder.

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Desegregation efforts came under even more fire this year, as the *Hartford Courant* ran a series of articles highlighting problems with the school-choice lottery and frustrated Hartford students who struggle to land spots in magnet schools. The fact that some magnets have to leave seats empty in cases where they aren't able to attract enough white or Asian children has added insult to injury to those who already feel like they are being left behind. "One lesson we've learned from all this is that stopping midway, and not meeting the full public demand, creates serious political blowback," says Phil Tegeler, the executive director of the Poverty & Race Research Action Council, and a former *Sheff* attorney.

In response to Hartford residents' palpable frustration, this year the state announced plans to revamp the *Sheff* legal mandates, saying the current 75 percent cap on black or Latino students is ultimately harmful. The state proposed changing the ratio to 80 to 20.

Many I spoke with, however, say they felt this state action amounted to *Sheff* sabotage, even if it came from a well-intentioned place. Plus, they say, it's a slippery slope to allow the state to change desegregation standards when it's politically convenient to do so.

"It was an embarrassing idea to drop the percentage down; the 75 percent standard is bad enough, and 80 percent is even worse," says Bruce Douglas, CREC's former executive director. "That's not desegregation—and this came from a Democratic administration!"

Sheff critics correctly note that there is no real social science justification behind the 75-to-25 standard, but practically speaking, ensuring there are enough white students in a school matters for integration. And for better or for worse, magnet operators have to attract white parents.

"Our schools are in the suburbs, and one of our charges is to bring white children into those schools," says Florio, CREC's executive director. "There's a tipping point, and once it gets below the 25 percent mark, it becomes a much greater struggle to make it a racially diverse school."

"I'm not saying the state was consciously trying to make *Sheff* fail, but anyone who would come up with this [80-to-20 ratio] would have to realize this would make the magnet schools fail," adds Douglas.

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A representative from the Connecticut Department of Education declined to comment for this story, citing pending litigation.

THIS PAST JUNE, FOLLOWING a three-day hearing, a Connecticut Superior Court judge blocked the state's efforts to change the *Sheff* desegregation standards to 80 to 20. But with the latest *Sheff* settlement agreement now expired, plaintiffs are expected to head back to court, and the debate will surely be revived again soon.

The Sheff Movement, a coalition of parents, teachers, students, and local residents in Greater Hartford, know the politics of desegregation remain daunting, but they are committed and insist the law is on their side. They have been working to organize and educate community members around integration, but raising money for their efforts has been difficult.

As time passes, the degree to which parents and community members can even speak to the history of the *Sheff* lawsuit is also quickly fading. When perusing the various magnet school websites, one can find little to no mention of the consequential civil rights lawsuit, including why the *Sheff* ruling has made these schools a reality. The magnets operated by Hartford Public Schools and CREC aren't even referred to as "Sheff schools," but rather as "Hartford magnets" and "CREC magnets." Some magnet school leaders may also prefer de-emphasizing their school's connection to *Sheff*, finding it can be helpful when convincing skeptical white parents who otherwise might be deterred by the desegregation element.

"I understand that schools may not want to be racially identifiable, but it's important to understand the history," says Robert Cotto Jr., a pro-*Sheff* Hartford school board member. "If you're talking about branding, and this is a school that is created as a result of maybe the most important civil rights case in Connecticut, why isn't that being demonstrated? If people have no idea, then that right there undermines the case in the long run. Maybe it's intentional."

Elizabeth Horton Sheff doesn't care if the magnets are named for the lawsuit so long as the desegregation initiative moves forward. But she does think there is a deliberate effort to obfuscate the history, so people "won't have to

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worry about things like constitutional rights" and can frame the conversation solely around school choice.

And indeed, though integration advocates think the basic framework of *Sheff* can still work—involving a voluntary, choice-based model—there is a genuine concern about what would happen if the state abandoned *Sheff* in favor of a more free-market-based choice system.

In 2014, Cotto published "Choice Watch," a report that found Connecticut charters and technical schools to be highly racially segregated, despite both having statutory requirements to reduce racial and ethnic isolation. Connecticut *Sheff* magnet schools were the only choice-based option Cotto found that significantly reduced segregation. The state's limited resources and enforcement with regard to charter and technical schools, Cotto says, clearly suggest how the state would treat magnets if *Sheff* were to end.

IN 2015, FOR THE FIRST time since *Sheff v. O'Neill*, lawyers in a different state filed a state-level school desegregation lawsuit. Twin Cities attorneys filed a case against the state of Minnesota, saying that the state's segregated schools violate Minnesota's constitutional obligation to provide all students with an adequate education. The suit will be heard by the state Supreme Court later this fall, but regardless of what happens, desegregation advocates are saying we should expect to see more affirmative, state-level litigation in the years to come.

In 2016, President Obama's Education Secretary John King traveled to Hartford and proclaimed that the region's desegregation work could serve as a model for the country. He touted the state's hefty investments in magnet schools that attract suburban kids, and praised Hartford's voluntary busing and interdistrict school choice program.

With conservatives now controlling the federal government, liberal organizations have been focusing much more heavily on how school choice policies, specifically private school vouchers, can exacerbate segregation. But Hartford's magnet and interdistrict program demonstrates how choice can be used (sometimes awkwardly and imperfectly) to promote school desegregation. *Sheff* proves that with clear desegregationist goals, ample

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resources, and dedicated enforcement, a choice-based system need not lack high-quality, integrated options.

The challenge, it turns out, isn't finding a system that works. *Sheff* is working: 48 percent of Hartford students are already in integrated schools, a massive improvement without parallel almost anywhere else in the nation. Instead, the challenge has been securing the long-term political commitment to sustain that system—and the financial support to ensure it runs well, which is often the same thing. Integration is possible, but no one would deny it's been a long, hard road, with more yet to go.

Still, the original activists who stood up to segregated schools decades ago never thought otherwise. They just believed it would be worth it in the end. "I knew this lawsuit would never directly benefit my son," Elizabeth Horton Sheff told me this past summer. "I didn't do it for my child. I do it for our children."

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[Additional submissions by Chairman Scott follow:]



The Federal Role and School Integration

Brown's Promise and Present Challenges

Janel George and Linda Darling-Hammond



FEBRUARY 2019

The Federal Role and School Integration: *Brown's* Promise and Present Challenges

Janel George and Linda Darling-Hammond

Acknowledgments

In 1951, a 16-year-old sophomore at Robert Russa Moton High School in Farmville, VA—Barbara Rose Johns—staged a student protest of the segregated school’s deplorable conditions and set in motion events that would change the course of history. Those events would culminate in the U.S. Supreme Court decision of *Brown v. Board of Education*, which signaled the death knell for Jim Crow education and the “separate but equal” doctrine. We thank her and the countless other students who demanded—and continue to demand—quality educational opportunities. We would like to acknowledge the educators, parents, families, and students who courageously stood—and continue to stand—on the front lines of integration efforts in service of securing access to quality educational opportunities for all children.

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Executive Summary

Rooted in the “separate but equal” doctrine upheld in *Plessy v. Ferguson*, the systematic denial of educational opportunities to African Americans and other students of color has marred the education landscape in the United States and subjected many students to an inferior education. The Supreme Court’s invalidation of separate but equal in *Brown v. Board of Education* (1954)—the cumulative legal effort to dismantle Jim Crow education—promised to expand access to quality educational opportunities to all students, regardless of race or ethnicity.

The federal role has frequently been significant in promoting equitable access to quality educational opportunities, although that role appears threatened today given recent rescission of federal guidance supporting voluntary integration in schools across the country. This report reviews that guidance, along with the educational inequities of segregated schools, the benefits of diverse schools, and examples of current district actions and strategies for voluntary integration that point to possibilities for creating diverse schools that serve all students well.

The Federal Government’s Role in School Integration

The federal government has a limited, but significant, role in promoting access to equal educational opportunities. Ensuring state and local compliance with desegregation orders following *Brown* required decades of federal enforcement, oversight, and litigation, including passage of the Civil Rights Act of 1964 and the Elementary and Secondary Education Act of 1965. Through such enforcement and oversight the federal government helped to expand access to equal educational opportunities and support districts in dismantling all vestiges of segregated education “root and branch.”

Some presidential administrations have played a key role in enforcing *Brown* and promoting school diversity using both the bully pulpit and enforcement powers. These powers include implementation and enforcement of federal civil rights law; use of investigative and oversight powers; data collection and dissemination; budgetary requests; and issuance of guidance, regulations, and statements of administration policy. These actions are consistent with evidence about the school conditions that are necessary for students to learn and thrive.

The Benefits of Diverse Schools

Although integrated education is not a panacea, the research of psychologists Kenneth and Mamie Clark, presented in a *Brown* amicus brief supported by more than 30 social scientists, is compelling and consistent: Integrated education can benefit all students. Over half a century later, in 2007, more than 550 social scientists submitted a similar amicus brief to the Supreme Court as it considered integration efforts advanced in Seattle and Louisville in the case of *Parents Involved in Community Schools v. Seattle School District No. 1*. That brief and other recent research reviews show that integrated schools contribute to

- promoting tolerance;
- developing cross-cultural understanding;
- eliminating bias and prejudice;
- increasing the likelihood of students living in integrated neighborhoods as adults and holding jobs in integrated workplaces later in life;

- improving academic achievement and critical thinking skills;
- improving educational attainment; and
- promoting civic participation in a diverse global economy.

As an example, one study of the effects of court-ordered desegregation on students born between 1945 and 1970 found that African American students' graduation rates climbed by 2 percentage points for every year students attended an integrated school, and exposure to court-ordered desegregation for 5 years was associated with a 15% increase in wages and an 11 percentage point decline in annual poverty rates, with no negative impact on White student outcomes.

The Dangers of Racial Isolation and Alternatives to Promote Integration

Despite well-established evidence demonstrating these benefits, public schools are today increasingly segregated along both racial and socioeconomic lines. Many racially isolated schools are also characterized by high percentages of students living in concentrated poverty and are known as institutions of "concentrated disadvantage." Research underscores that racial isolation is often accompanied by other educational disparities that undermine educational experiences and outcomes, including inexperienced educators, lack of access to quality curriculum, and lack of quality facilities or access to technology.

These schools of concentrated disadvantage are reminiscent of the racially isolated schools established during the regime of the separate but equal doctrine and Jim Crow, which the *Brown* case sought to eradicate.

The Supreme Court's decision in *Parents Involved* slowed progress toward advancing racial diversity of elementary and secondary schools. The ruling struck down as unconstitutional programs adopted by the Seattle and Louisville public school systems that relied in part on student race in determining school assignments. This decision came despite the Court's holding that seeking diversity and avoiding racial isolation are compelling interests for school districts and that race can be a factor used for school assignments. However, misinterpretations of *Parents Involved* have led some districts to believe that race cannot be a factor in plans to promote school diversity, leading to a chilling effect on voluntary integration programs, with many school districts abandoning their desegregation efforts.

To address the confusion surrounding the decision in *Parents Involved* and to support voluntary and proactive school district efforts to advance racial diversity in schools, the Departments of Justice and Education under the Obama administration issued voluntary guidance to help districts achieve diversity and avoid racial isolation in ways consistent with existing law. The guidance suggests approaches that do not rely on the race of individual students (also called "race-neutral" approaches) and approaches that rely on individual racial classification only when narrowly tailored to meet a compelling interest. These include:

- **School and program siting decisions** that locate schools, such as magnet schools, and special programs in ways that help achieve diversity or avoid racial isolation.
- **Decisions about grade realignment and feeder patterns** based on examinations of available data to identify disparities and design school grade alignment or feeder patterns that help mitigate disparities.

- **School zoning decisions** that assign students to schools based on attendance zones in ways that promote diversity, rather than assigning students based solely on their geographic proximity to schools.
- **Choice and open enrollment decisions** that allow parents to choose (or rank by preference) schools within or across school districts. The district then assigns students based in part on parental choice in ways that help achieve diversity or avoid racial or economic isolation.
- **Admission to competitive schools and programs** that may give special consideration in admissions to students from neighborhoods selected specifically because of their racial composition and other factors (i.e., treating all students who live in the same neighborhood alike, regardless of their race).
- **Inter- and intradistrict transfers** that allow students to transfer among schools in ways that promote racial diversity and reduce racial isolation.

The diversity guidance also noted that if a school district finds any of these approaches unworkable or ineffective in achieving diversity or reducing racial isolation, it may consider a student's race as one factor among others in considering how an individual student's school assignment may help achieve diversity or avoid racial isolation consistent with the law.

Despite historic federal support for integration efforts, the Trump administration has rescinded this voluntary guidance, thereby reducing the resources districts have available to find strategies for effective voluntary integration.

Evidence-Based Strategies for Creating Diverse Schools

Several districts provide examples of how the Obama-era guidance can work in practice.
For example:

In **Louisville–Jefferson County, KY**, early court orders mandated busing between the mostly African American city district and the mostly White suburban areas of the county. By the 1990s, Louisville–Jefferson County was the most integrated school district in the nation. The plan has evolved into a choice program in which parents rank their school preferences, and the district weighs factors such as socioeconomic status and educational level when determining school assignment to achieve diversity across schools. Parents can also choose special programs such as magnet programs or language immersion programs. The county's actions represent sustained voluntary integration efforts using many of the tools detailed in the guidance.

The **San Antonio Independent School District** in Texas has also implemented a controlled choice program—known as Diversity by Design—that provides a wide range of education options, such as Montessori, college preparatory, and Expeditionary Learning schools, combining parental preference with data to ensure school diversity is achieved. It (1) reserves half the seats in in-district charter schools for students from economically disadvantaged backgrounds and leaves the other half open to all income levels, and (2) prioritizes seats for students from specific geographic areas (within “priority radii”) to ensure socioeconomic diversity. It also chooses school locations from which middle-class and historically disadvantaged families can be drawn, designs schools to meet the interests of diverse families, and ensures that families from disadvantaged communities can secure transportation to their chosen school.

In Hartford, CT, desegregation litigation in the 1990s led to a voluntary interdistrict Open Choice program featuring magnet schools that designed desegregated educational opportunities and supported transfers with both state and local funds. A 2013 analysis of the program found that students participating in the Magnet and Open Choice programs were outperforming Hartford students attending other public schools and performed well in comparison with the state's averages for all students. The analysis also found that more than 45% of Hartford's African American and Latino/a k–12 students attended schools in reduced-isolation settings.

These district strategies demonstrate that there are multiple pathways to promote school diversity in fulfillment of *Brown's* promise of access to quality educational opportunities for all students. Continued efforts to promote school integration show that realizing that aim is possible, even in light of current challenges and despite the current lack of federal guidance to assist districts in shaping solutions. The evidence is strong: Our children's civic engagement, educational experiences, and outcomes as well as our nation's future global competitiveness all stand to benefit from diverse schools and our continued commitment to integrating schools.

Introduction

Today's education landscape is marred by pervasive and often deepening educational inequalities. The kind of public school system the U.S. Supreme Court sought to eradicate in *Brown v. Board of Education*—one stratified along racial lines—persists. Today's educational landscape too often features “double segregation” along both racial and socioeconomic lines¹ and exclusionary discipline practices that disproportionately impact students of color and push them further away from educational opportunity.

The federal government plays a limited—yet significant—role in promoting students' access to educational opportunity. Although the U.S. Supreme Court has held that there is no federal right to education specified in the U.S. Constitution,² the federal government has helped ensure access to equitable educational opportunities through enforcement of federal civil rights law. For example, the Civil Rights Act of 1964, particularly its Titles IV and VI,³ gives the federal government a mechanism to require recipients of federal funds to comply with civil rights laws. This also enables the Department of Justice to address violations of the law through investigation and litigation.⁴ Furthermore, the Equal Protection Clause of the Fourteenth Amendment, upon which the *Brown* ruling is predicated, has been interpreted to prohibit legal segregation of public schools, effectively ending *de jure* school segregation.⁵

The federal government has worked to implement the law related to school desegregation, including by promoting racial integration of public schools and actively ensuring that districts and school boards comply with federal orders to desegregate public schools. As one scholar has observed, “In the first two decades following *Brown*, the Court seemed to want to ensure that the decision functioned to integrate schools. Although school boards attempted to avoid the requirements of the Constitution sometimes openly and defiantly—the Court issued decision after decision that sought to make them comply.... Further, the executive branch was also on board, vigorously enforcing desegregation requirements.”⁶

Past federal administrations have recognized the importance of the federal platform and bully pulpit and often acted to address persistent educational inequities and ongoing violations of students' civil rights that states and districts left unresolved. After the *Brown* ruling, President Eisenhower dispatched troops from the 101st Airborne Division to accompany African American students integrating Central High School in Little Rock, AR, when local authorities defied desegregation orders.⁷ And the Elementary and Secondary Education Act (ESEA) of 1965 significantly expanded federal funding of education, accompanied by requirements for recipients of those funds to comply with federal civil rights law.

Past federal administrations have recognized the importance of the federal platform and bully pulpit and often acted to address persistent educational inequities and ongoing violations of students' civil rights that states and districts left unresolved.

In addition to working with Congress on legislation, presidential administrations have a number of other tools at their disposal for playing a significant role in ameliorating educational inequalities. These include issuing federal guidance, regulations, and statements of administration policy, as well as use of investigative powers, data collection and dissemination, and budgetary requests. The Obama administration took advantage of these tools by issuing guidance on racial diversity, transgender students' rights, resource equity, and the nondiscriminatory administration of school discipline, among others.⁸ These nonbinding guidance documents were based on extensive research on what works in closing educational opportunity gaps and for improving student outcomes.

However, in contravention of this limited but significant federal role in education, the Trump administration has begun to rescind much of this guidance, potentially stalling, and perhaps even reversing, progress toward achieving educational equity.

These actions began with an executive order by the administration directing Secretary of Education Betsy DeVos to conduct a review of the federal role in education, including addressing “whether and how the federal government has overstepped its legal authority in k–12 schools.”⁹ Since taking office, the Trump administration has withdrawn nearly 600 policy documents regarding k–12 and higher education¹⁰ and has rescinded, is considering rescinding, or has delayed implementation of the following federal guidance or regulations issued under the Obama administration.¹¹

The rescinded guidance described in the first bullet below is the subject of this report.

- **Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools** issued by the Civil Rights Division of the U.S. Department of Justice and the Office for Civil Rights, U.S. Department of Education. This guidance was issued to “explain how, consistent with existing law, elementary and secondary schools can voluntarily consider race to further compelling interests in achieving diversity and avoiding racial isolation.”¹² Social science research has demonstrated that diverse learning environments benefit both White students and students of color—including by preparing them for global citizenship and social interactions with diverse peers.¹³ The administration rescinded this guidance on July 3, 2018.
- **Guidance on civil rights and school discipline** issued by the U.S. Department of Education and the U.S. Department of Justice describing how schools can meet their legal obligations under federal law to administer student discipline without discriminating against students on the basis of race, color, or national origin.¹⁴ Research shows that discriminatory discipline practices have a significant negative impact on students of color, including compromised educational outcomes due to lost instruction time and higher likelihood of involvement with the juvenile justice system.¹⁵ The administration rescinded this guidance and all supporting resources on December 21, 2018.

- **Guidance on the treatment of transgender students** issued by the U.S. Department of Education and the U.S. Department of Justice asking schools to treat transgender students according to their gender identity, including with respect to names and pronouns, restrooms, and dress codes. Research shows that transgender students experience high rates of bullying by peers and adults, and the stress of harassment and discrimination, including implementation of policies that do not treat students according to their gender identity, can lead to lower attendance and grades as well as depression, anxiety, and suicidality.¹⁶ This guidance was rescinded by the current administration in February 2017, one month after the president took office.
- **Individuals with Disabilities Act regulations** issued by the U.S. Department of Education “aimed at promoting equity by targeting widespread disparities in the treatment of students of color with disabilities” and at addressing a number of issues related to significant disproportionality in the “identification, placement, and discipline of students with disabilities based on race or ethnicity.”¹⁷ Research has shown how misidentification of African American children for certain special education categories obscures their real educational needs and compromises their educational outcomes.¹⁸ The administration has delayed the implementation of this regulation until July 2020.¹⁹ Recently, the administration has indicated that it might replace these regulations in 2019.

While these executive actions do not change the law governing students’ equal protection rights as articulated in the U.S. Constitution, they may hinder the speed and effectiveness of implementation and signal to states and districts a lack of federal commitment to upholding students’ civil rights and increasing access to equal educational opportunity.

This paper examines how this shift in the federal support for voluntary school integration efforts could impact students’ rights to access equal educational opportunities. We discuss the underlying research that has been used to inform and identify best practices for protecting students’ civil rights, the progress that has been made using research-based best practices, and the consequences of rolling back these protections for historically underserved students.

The Federal Role and School Diversity

The federal government has played a key role in advancing racial diversity in public education, including by issuing federal guidance to clarify how states and localities can promote racial diversity and reduce racial isolation in compliance with federal law. Although guidance does not impact existing law, it does signal an administration's position on important issues, such as racial diversity in schools, and it helps advance administration policy in that area by offering tools to local agencies to help them achieve the goals of the law, offering technical assistance as localities implement new strategies, and enforcing the law.

The federal government—including the courts and the executive branch—plays a significant role in encouraging states to act to ensure that all students have access to equal educational opportunities. The issuance of federal guidance has been a tool utilized to clarify federal laws protecting students and to promote evidence-based best practices that states can use consistent with federal law. Like prior administrations, the Obama administration used this tool to clarify federal law.

The Obama administration issued guidance to districts on how to promote racial diversity in k-12 schools and in colleges and universities. In particular, following key U.S. Supreme Court cases that left districts unclear about how to promote racial diversity in k-12 schools without running afoul of federal law, the administration's guidance clarified how districts could design and implement policies and practices to foster racial diversity and avoid racial isolation without negative legal implications. After announcing its intent to withdraw a number of the Obama-era guidance documents, in July 2018 the Trump administration rescinded key Obama guidance documents that address racial diversity in education, including:

- December 2, 2011, Guidance on the Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools;
- December 2, 2011, Dear Colleague Letter Regarding the Use of Race by Educational Institutions;
- December 2, 2011, Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education;
- September 27, 2013, Dear Colleague Letter on the Voluntary Use of Race to Achieve Diversity in Higher Education After *Fisher v. University of Texas at Austin* [*Fisher I*];
- September 27, 2013, Questions and Answers About *Fisher v. University of Texas at Austin* [*Fisher I*];
- May 6, 2014, Dear Colleague Letter on the Supreme Court Ruling in *Schuette v. Coalition to Defend Affirmative Action*; and
- September 30, 2016, Questions and Answers About *Fisher v. University of Texas at Austin* [*Fisher II*].²⁰

The Trump administration has also threatened to withdraw guidance and regulations that could have significant repercussions for students of color, including regulations related to the misidentification of African American students for certain categories for special education.²¹ And although neither the guidance on racial diversity nor its rescission modifies or diminishes existing federal civil rights law, the Trump administration's rescission of the guidance, along with threats

to rescind additional guidance and regulations, leaves states without clarity and direction—or confidence in the executive's support—for crafting and implementing policies and practices to advance racial diversity and reduce racial isolation in public schools.

Historical Context

The *Brown v. Board of Education* (1954) case and its aftermath demonstrate the importance of the federal role in education and the significance of social science research in exposing the harms of segregation and inequity in education. In reaching its ruling invalidating the separate but equal doctrine upon which racial segregation in public spaces was predicated, the U.S. Supreme Court carefully considered the research of the husband-wife psychologist team of Drs. Kenneth and Mamie Clark. The Clarks began their research more than a decade before the *Brown* ruling, using four dolls, identical except for color, to test young African American children's racial perceptions²² and to "communicate ... the influence of race and color and status on the self-esteem of children."²³ The Clarks' research proved instrumental in demonstrating to the justices the psychic injury that racially segregated education inflicted upon African American children.²⁴ They also testified in other cases that were consolidated to become the *Brown* case,²⁵ and they co-authored a summary of research for the Court supporting racial integration and demonstrating the harm of racially segregated schools, which was endorsed by 35 leading social scientists.²⁶

However, the *Brown* ruling striking down de jure racial segregation did not end it. One scholar notes:

Other progressive race scholars have asserted that *Brown* was a flawed decision not simply because subsequent iterations of the Court retreated from it, but rather because it reflected a limited vision of racial justice. The critique is that *Brown* did not endeavor to end white dominance and black subordination; it simply sought to dismantle racial hierarchy in the form that it took at the time of the decision. As a result, the case left open the door for racial inequality to be reconfigured in different form.²⁷

In the wake of the *Brown* ruling, de facto segregation persisted, and endured. An era of massive resistance followed the ruling, during which segregation proponents defied court orders, closed public schools, established publicly funded "white 'Christian' academies," or fled to the suburbs to circumvent school integration mandates. Prince Edward County Public Schools in Virginia closed its public schools for 5 years rather than comply with federal desegregation orders.²⁸ As a result, many African American families sent their children to live with relatives in other states or covertly sent their children to schools in nearby counties, often separating and devastating families.²⁹

Such defiance of court desegregation orders—often accompanied by racial terrorism—forced the federal government to act. For example, federal troops accompanied nine African American students as they integrated Central High School in Little Rock, AR, under threats of racial violence.³⁰ Although subsequent litigation—including *Brown II*,³¹ *Cooper v. Aaron*,³² *Green v. County School Board*,³³ and *Swann v. Charlotte Mecklenberg*³⁴—along with mandates to localities to eliminate all vestiges of segregation "root and branch," helped finally end Jim Crow education and advance public school integration, the federal government played an extremely consequential role in efforts to implement the Court's ruling in *Brown*, desegregate schools, and advance racially integrated education. Federal support and intervention ensured that states complied with desegregation orders and that integration strategies were implemented safely.

History has shown that many states are less inclined to promote students' educational rights proactively when the federal government fails to do so—as demonstrated by the step back on enforcement of desegregation orders in the decades after *Brown*. It is unlikely that progress toward integration would have occurred in some Southern states had the federal government not acted to enforce compliance. The federal government's oversight role has been vital to ensuring equal educational opportunity for all students.

History has shown that many states are less inclined to promote students' educational rights proactively when the federal government fails to do so—as demonstrated by the step back on enforcement of desegregation orders in the decades after *Brown*.

The Federal Influence on School Diversity Efforts

The federal government's actions to implement *Brown* helped to advance racially integrated schools through its protection of students seeking to integrate schools; its use of its litigation, investigative, and regulatory powers to ensure compliance with desegregation mandates; and its ongoing technical assistance and supports to states and districts seeking to promote racial diversity.

The U.S. Department of Education and its divisions are charged with protecting student civil rights, including supporting racially diverse schools and the goal of integration. The mission of the department's Office for Civil Rights is to “ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights in our nation’s schools.”³⁵ Historically, it has done this by responding to and investigating civil rights complaints filed by the public, monitoring educational institutions’ compliance with prior agreements, issuing policy guidance to clarify responsibilities under relevant civil rights laws, responding to requests for information, providing technical assistance to states and districts, and updating and administering the Civil Rights Data Collection featuring key aspects of educational quality throughout the nation.

The Educational Opportunities Section of the Department of Justice’s Civil Rights Division has also played a pivotal role in overseeing and ensuring efforts to promote racially diverse learning environments. The Educational Opportunities Section enforces Titles IV and VI of the Civil Rights Act of 1964 as well as other significant federal civil rights and education laws, including the Equal Educational Opportunities Act of 1974, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and Title IX of the Education Amendments Act of 1972.³⁶ In addition, the Section manages a docket of over 150 open desegregation cases to which it remains a party.³⁷

Federal efforts were critical in advancing integrated schools, starting in the 1960s. Whereas only 1% of African American children in the South attended schools with White children in 1963, approximately 90% of African American children attended desegregated schools in the early 1970s.³⁸ This number peaked in the late 1980s—when not only did most African American students attend desegregated schools, but 44% attended majority-White schools (where 90% to 100% of students were White).³⁹

However, just as it has played a pivotal role in advancing racially integrated schools, the federal government has also at times undermined that progress. Various administrations have worked to promote or to limit interdistrict remedies for integrating unconstitutionally segregated schools,⁴⁰ just as they have invested and disinvested in the Civil Rights Divisions of the Departments of Education and Justice.⁴¹ For example, Richard Nixon turned the tide of vigorous federal support for desegregation efforts when he assumed the presidency in 1968 and “stopped ‘administrative enforcement of desegregation requirements, shifted the position of the Justice Department from proactive enforcement to passive acceptance, appointed four conservative Justices to the Supreme Court and attacked desegregation rulings. Nixon’s judicial appointments produced the first divided desegregation decisions since *Brown*.’”⁴² Nixon’s administration also “ended the federal government’s cooperation with private advocacy groups like LDF [the NAACP Legal Defense and Educational Fund] and brought a swift end to many of the initiatives of the prior administration.”⁴³

Likewise, following the Supreme Court’s ruling in *Parents Involved in Community Schools v. Seattle School District* (2007) and on the eve of leaving office, the Bush administration issued a “Dear Colleague” letter narrowly interpreting the case; the letter resulted in confusion and affected district efforts in pursuing race-conscious student assignment programs.⁴⁴

Several factors have stalled or even reversed desegregation in many places. Some federal administrations have been reluctant to encourage voluntary state action to desegregate public schools. There have also been periodic step backs on enforcement of court desegregation orders, federal inaction in open desegregation cases, federal budget cuts—including an end to direct federal payments to districts to support desegregation efforts⁴⁵—and confusion or apathy at the state and district levels regarding advancing racial integration in schools.⁴⁶

The situation has been made worse by district requests to terminate court oversight of desegregation orders,⁴⁷ which are critical mechanisms for plaintiffs to ensure that school districts do not act in ways that lead to greater segregation or inequality. Courts have acceded to many of these requests and ended judicial oversight of desegregation efforts—not because districts had achieved school diversity but because districts no longer wished to respond to court guidance aimed at maintaining efforts to desegregate schools.⁴⁸

By reducing court oversight of desegregation orders, the federal government has furthered resegregation of public schools. As one journalist noted:

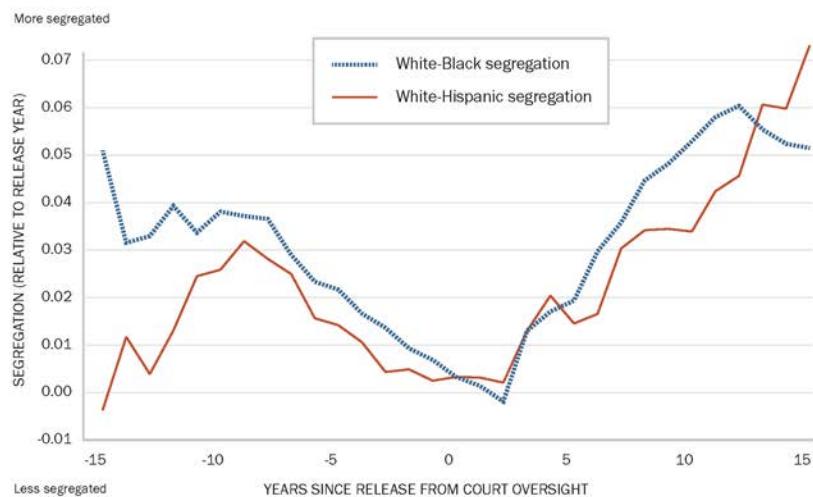
The federal government’s retreat is the main factor in the return of segregated schooling in the South. In 2000, there were 430 school districts under federal court order to desegregate, compared with 176 today. Without the feds watching, local school boards are prone to make decisions that end up separating kids by race.⁴⁹

For example,

During George W. Bush’s administration, almost 200 districts shed their court orders. With just 176 districts left, Trump’s Justice Department could bring an end to the 63-year-old effort to erase the legacy of Jim Crow in the American education system, at a time when nearly 8.4 million black and Latino children are learning in segregated and high-poverty schools.⁵⁰

As noted: “In essence, courts began ending judicial oversight of school boards on the finding that continuing efforts to desegregate schools would be tough—not on the finding that school boards actually had successfully desegregated their schools.”⁵¹ Data show that the degree of segregation declined significantly in districts under court oversight, but it rapidly climbed to even higher levels when court oversight was terminated.⁵² (See Figure 1.)

Figure 1
Degree of Segregation in Relation to Court-Ordered Desegregation Plans



Source: Darling-Hammond, L. (2018). *Education and the path to one nation, indivisible*. Palo Alto, CA: Learning Policy Institute. Data Source: Figure developed from data in Reardon, S., Grewal, E. T., Kalogrides, D., & Greenberg, E. (2012). Brown fades: The end of court-ordered school desegregation and the resegregation of American public schools. *Journal of Policy Analysis and Management*, 31(4), 876–904.

A 2016 report by the Government Accountability Office (GAO) underscores the importance of continuing federal vigilance to enforce and promote students' civil rights. In fact, more than 550 social scientists joined an amicus brief supporting defendants' student assignment policies designed to further racial integration and reduce racial isolation in the *Parents Involved* case.⁵³ The scientists noted:

Research has shown that without the enforced regulation of desegregation court orders or guidelines designed to attain racial desegregation, the implementation of uncontrolled school choice plans tends to foster racially homogeneous schools and lead to even greater segregation.⁵⁴

And, if the trends of increasing resegregation are any indication,⁵⁵ without the federal government actively exercising its oversight and accountability role to promote racially diverse learning environments, resegregation and its accompanying educational inequities will likely deepen, with potential negative consequences for all students who will be deprived of the benefits of learning in diverse schools, including building intercultural understanding and likelihood of civic participation.⁵⁶

Current Context

Today, data show that racial resegregation in public education is worsening, with many students attending racially isolated schools that serve disproportionate numbers of students living in poverty and offer inferior educational opportunities,⁵⁷ “including fewer qualified, experienced teachers, greater instability caused by rapid turnover of faculty, fewer educational resources, and limited exposure to peers who can positively influence academic learning.”⁵⁸ As one scholar notes:

The retreat from *Brown* continued ... with the Court creating precedent that released school boards that had committed constitutional violations from judicial oversight—relieving them of the obligation to continue attempts to achieve integrated schools *even when their schools remained incredibly segregated.*⁵⁹

In addition, as they were pre-*Brown*, race and class are often proxies for access to quality educational opportunities.

A 2016 report published by the GAO found a growing percentage of k–12 public schools in the nation that are hypersegregated, with student populations that are largely African American or Latino/a and have large numbers of students from low-income families. The report showed that these schools are plagued by challenges, such as resource inequities that undermine educational outcomes.⁶⁰ One scholar has concluded that

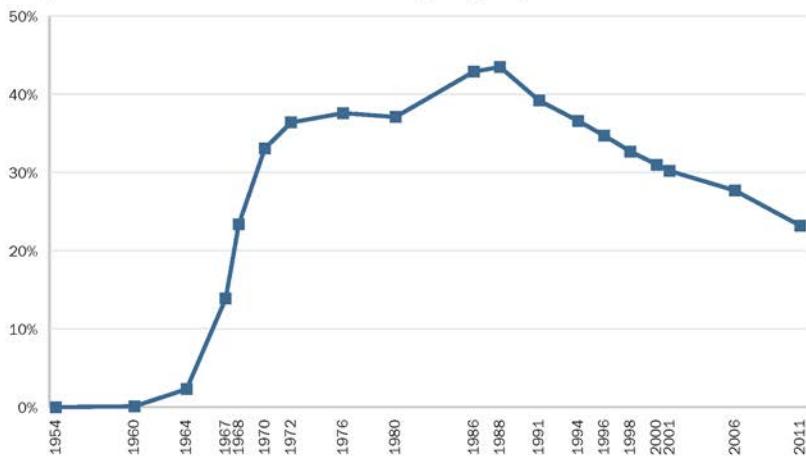
racially segregated schools tend to mean class segregated schools, and schools where racial minorities predominate tend to be sites of concentrated poverty.... This would not be so bad if schools attended by large proportions of poor kids still managed to provide decent educations to their students. Typically, they do not. “[T]he resources that are consistently linked to predominantly white and/or wealthy schools help foster real and serious educational advantages over minority segregated settings.”⁶¹

A national study found that “the typical black student is now in a school where almost two out of every three classmates (64%) are low-income, nearly double the level in schools of the typical white or Asian student (37% and 39%, respectively).”⁶² Another study found an example in Chicago and New York City schools, with more than 95% of African American and Latino/a students attending majority-poverty schools, most of which were also majority-minority.⁶³ Yet another national study of districts and charters pursuing socioeconomic diversity found that a large proportion of White students attended overwhelmingly racially isolated schools, with more than a third attending schools that are 90 to 100% White.⁶⁴

Resegregation was sparked by the discontinuation of desegregation assistance and court orders in many districts; by increasing residential segregation intentionally imposed upon African Americans through discriminatory housing practices, including redlining that relegated African American families to specific communities or geographic regions;⁶⁵ and by the loss of affordable

housing subsidies. As a result, about 40% of African American students nationwide—and more than 50% in the Northeast—attended intensely segregated schools (in which students of color constitute 90% or more of the total) in 2010. Meanwhile, only about 20% of African American students attended majority-White schools—less than half as many as in 1988, when about 44% did so, as illustrated in Figure 2.⁶⁶

Figure 2
Proportion of Black Students Attending Majority-White Schools



Source: Darling-Hammond, L. (2018). *Education and the path to one nation, indivisible*. Palo Alto, CA: Learning Policy Institute. <https://learningpolicyinstitute.org/product/education-path-one-nation-indivisible-brief> (accessed 10/13/18).

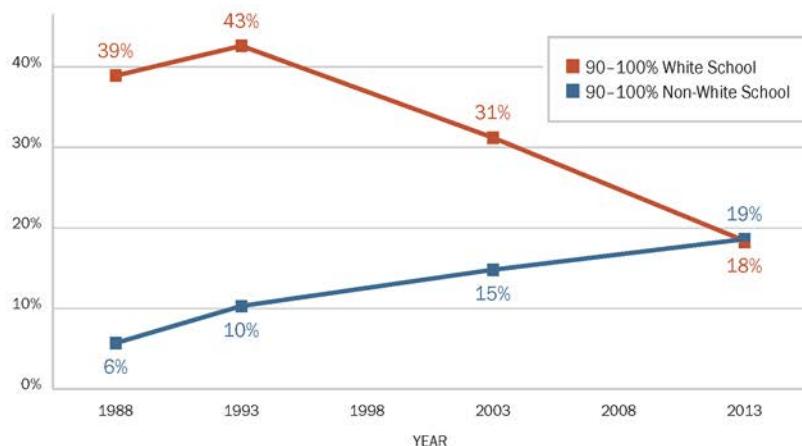
Data Source: Data before 1991 obtained from the analysis of the Office for Civil Rights data in Orfield, G. (1983). *Public School Desegregation in the United States, 1968–1980*. Washington, DC: Joint Center for Political Studies. https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/public-school-desegregation-in-the-united-states-1968-1980/orfield_american-desegregation-1983.pdf (accessed 10/21/18).

Furthermore, during the quarter century since the high point in 1988, the share of intensely segregated non-White schools (defined as those schools with only 0–10% White students) more than tripled, increasing from 6% to 19% of all public schools (Figure 3). Even as the resegregation was taking hold, there was a sharp decline in the percentage of segregated White U.S. schools that have a 10th or fewer non-White students, dropping from 39% to 18%. The result of these diverging trends is that Whites can perceive an increase in interracial contact even as African American and Latino/a students are increasingly isolated, often severely so.⁶⁷

Federal action is vital to reversing the trend of resegregation in public schools. In fact, the 2016 GAO report also found that the departments could do more, even though the Departments of Education and Justice employed a range of actions to identify and address racial discrimination against students, including analyzing data by student groups protected by federal civil rights law and investigating schools in which discriminatory outcomes were apparent.⁶⁸

The GAO report recommended that the Department of Education take further steps to leverage data, including analyzing it by type of school and by percentage of racial minorities, to obtain a better picture of educational disparities, such as access to advanced coursework.⁶⁹ It also recommended that the Department of Justice actively investigate its open desegregation cases, many of which had lain dormant for years, and monitor data, such as test scores, for the states and districts involved in the desegregation cases. According to the report, such action would help ensure that all students have access to the lifelong benefits that racially diverse learning environments offer.

Figure 3
Percentage of Intensely Segregated Schools, 1988–2013



Source: Orfield, G., Ee, J., Frankenberg, E., & Siegel-Hawley, G. (2016). *Brown at 62: School segregation by race, poverty and state*. Los Angeles, CA: Civil Rights Project. <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/brown-at-62-school-segregation-by-race-poverty-and-state/Brown-at-62-final-corrected-2.pdf> (accessed 02/21/19).

Data Source: U.S. Department of Education, National Center for Education Statistics, Common Core of Data, Public Elementary/Secondary School Universe Survey Data.

Benefits of School Desegregation

Although diverse schools alone are not a panacea, and diversity by itself does not remedy all educational inequities,⁷⁰ a large body of research shows the benefits of racially, economically, and linguistically diverse learning environments on student outcomes. Dating back to the research the Court relied on in *Brown*, social science research has been particularly important in shaping federal strategy for advancing racially diverse schools. A substantial body of research summarized in an amicus curiae brief submitted by more than 500 social scientists in the *Parents Involved* case⁷¹ shows that integrated schools contribute to

- promoting tolerance;
- developing cross-cultural understanding;

- eliminating bias and prejudice;⁷²
- increasing the likelihood of students living in integrated neighborhoods as adults and holding jobs in integrated workplaces later in life;⁷³
- improving academic achievement and critical thinking skills;
- improving educational attainment; and
- promoting civic participation in a diverse global economy.

In a study of the effects of court-ordered desegregation on students born between 1945 and 1970, economist Rucker Johnson found that African American students' graduation rates climbed by 2 percentage points for every year students attended an integrated school, and exposure to court-ordered desegregation for 5 years was associated with a 15% increase in wages and an 11 percentage point decline in annual poverty rates.⁷⁴ There was no negative impact on White student outcomes.

Another review of 59 rigorous studies on the relationship between schools' socioeconomic and racial makeup and student outcomes showed that integrated education is associated with higher achievement in mathematics.⁷⁵ A more recent review concluded that the evidence about the positive academic benefits of diverse schools is "consistent and unambiguous"⁷⁶ and, further, that "students in racially diverse schools have improved critical thinking skills and reduced prejudice, and they are more likely to live in integrated neighborhoods and hold jobs in integrated workplaces later in life."⁷⁷

This is not to posit that school integration efforts were immune to negative experiences or repercussions—some of which caused the very proponents of integration to question the goals of integration. For example:

For black children, desegregation meant being plucked out of all-black environments that, while underfunded relative to their white counterparts, were supportive and nurturing. Instead of learning in friendly and warm black schools, black children were being placed into unfriendly and unwelcoming white spaces [and] ... when black students were sent to white schools, the predominantly black schools that they previously had attended usually were closed. Black teachers, administrators, and principals—folks who had dedicated their lives to educating black children—lost their jobs and their livelihoods.⁷⁸

However, for many civil rights proponents, to advocate for equalization of resources within segregated schools was to cede to *Plessy v. Ferguson*'s separate but equal doctrine that relegated students of color to second-class citizenship and substandard resources.⁷⁹ Desegregation aimed to equalize access and resources while also asserting a common, equal humanity.

Federal Guidance Promoting Integration

The Supreme Court's decision in *Parents Involved* slowed progress toward advancing racial diversity of elementary and secondary schools.⁸⁰ The ruling struck down as unconstitutional programs adopted by the Seattle and Louisville public school systems that relied in part on student race in determining school assignments.⁸¹ This decision came despite the Court's holding that seeking diversity and avoiding racial isolation are compelling interests for school districts and that race can be a factor used for school assignments.⁸² However, misinterpretations of *Parents Involved* have led some districts to believe that race cannot be a factor in plans to promote school diversity.⁸³

Although the Court held that individualized racial classification could not be used in student assignments, it concluded that districts can adopt "race-neutral" school assignment plans that do not rely on individual student race to promote racial diversity in schools.⁸⁴ Despite the Court's finding that race could be a factor in school assignments, misinterpretation of the ruling has had a chilling effect on voluntary integration programs, with many school districts abandoning their desegregation efforts.⁸⁵

To address the confusion surrounding the decision in *Parents Involved* and to support voluntary and proactive school district efforts to advance racial diversity in schools, the Departments of Justice and Education under the Obama administration issued voluntary guidance to help districts achieve diversity and avoid racial isolation in ways consistent with existing law.⁸⁶ The diversity guidance includes suggested approaches (although not an exhaustive list) and examples of strategies school districts can use to promote racial diversity and reduce racial isolation.⁸⁷ The diversity guidance also describes the harm of racial isolation—similar to that in the social scientists' amicus brief—including

- failure to provide the full array of resources and benefits that k-12 schools can offer;
- lower academic achievement compared with students at more diverse schools;
- fewer effective teachers and higher teacher turnover rates; and
- less rigorous curriculum offerings.⁸⁸

Finally, consistent with the Court's ruling, the diversity guidance outlines approaches that do not rely on the race of individual students (also called race-neutral approaches)⁸⁹ and approaches that rely on individual racial classification only when narrowly tailored to meet a compelling interest. The diversity guidance provides school districts with a range of approaches for maximum flexibility in choosing what works best in their particular contexts, including:

- **School and program siting decisions.** This approach includes making decisions about the siting of schools and special programs, such as noncompetitive magnet schools or specialized academic, athletic, or extracurricular programs, to help achieve diversity or avoid racial isolation.⁹⁰ It also recognizes the importance of considering racial demographics when promoting racial diversity and allows districts to make site decisions based on the racial characteristics of a geographic region and not on the race of an individual student. Districts may then consider the socioeconomic makeup of groups of students whom the school site may attract.

- **Decisions about grade realignment and feeder patterns.** This race-neutral approach suggests that school districts can examine available data to identify disparities and design school grade alignment or feeder patterns to help mitigate disparities. The diversity guidance provides examples, including feeding lower performing elementary schools into higher performing middle schools or mixing students along socioeconomic lines to ensure that different grade levels have a mix of students from different socioeconomic groups. Because students of color from low-income families are more likely to attend racially isolated schools, this approach may help promote racial diversity and reduce racial isolation.⁹¹ However, research shows that consideration of socioeconomic status alone does not always ensure racial diversity or mitigate racial isolation.⁹² In fact, “while race and class are often strongly correlated, they are not perfectly correlated. Class-based solutions typically do not consider patterns of white resistance to living in minority neighborhoods, regardless of income level, and are therefore unable to address the residential segregation that often fuels school segregation.”⁹³ However, research indicates that ensuring diverse socioeconomic makeup of schools may help to mitigate concentrated poverty within schools,⁹⁴ and “the policy implication of intertwined racial and economic segregation of public schools is that school integration strategies moving forward should address both racial and socioeconomic aspects of segregation.”⁹⁵
- **School zoning decisions.** Under this approach, school districts assign students to schools based on attendance zones, which are composed of students from geographically defined areas.⁹⁶ This approach is one of the most commonly used to promote socioeconomic integration.⁹⁷ One consideration with this approach is that assigning students based solely on their geographic proximity to schools can pose a risk of perpetuating racially isolated schools because of historically discriminatory housing policies that isolated people of color in certain geographic areas, establishing neighborhoods that remain largely segregated.⁹⁸ But some districts have successfully achieved socioeconomic diversity with this approach. One example highlighted in a recent study is the McKinney Independent School District (MISD), in McKinney, TX, which implemented a policy in 1995 requiring socioeconomic diversity to be a consideration in school zoning decisions.⁹⁹ Decades later, MISD schools remain relatively economically balanced.
- **Choice and open enrollment decisions.** Under open enrollment or school choice programs, parents are allowed to choose (or rank by preference) schools within or across school districts.¹⁰⁰ Currently, 22 states allow students to attend a non-assigned school within their district (intradistrict choice), and 25 states allow students to attend schools outside of their neighborhood district (interdistrict choice).¹⁰¹ The district then assigns students based in part on parental choice. Schools can design or modify such programs to achieve diversity or avoid racial isolation. In fact, under so-called controlled choice plans, the choice process is centrally managed to support racial and economic integration.¹⁰² For example, as the diversity guidance illustrated, a school district in which students of different races are concentrated in different attendance zones could implement a districtwide lottery system that allows parents to identify and rank a certain number of schools and then randomly assigns students based on parents’ choices.¹⁰³ However, research has found that, even under choice programs, parents are often inclined to choose schools within their geographic areas—which are often racially isolated—thereby leading to even more segregated schools.¹⁰⁴ Therefore, as research indicates, the design of the choice

program is vital in determining the likelihood of whether or not it may help to achieve diversity or reduce racial isolation. For example, a study of Jefferson County, KY, schools found that students were less segregated under the district's managed-choice policy—which allows students to attend schools outside their neighborhoods—than under alternative assignment approaches.¹⁰⁵

- **Admission to competitive schools and programs.** The diversity guidance proposed that schools seeking to promote racial diversity could design admissions processes with that goal in mind. One proposed example is a district giving special consideration in admissions to students from neighborhoods selected specifically because of their racial composition and other factors (i.e., treating all students who live in the same neighborhood alike, regardless of their race). This race-conscious approach reflects the research showing that considering student racial composition is important to ensuring that integration approaches are effective.
- **Inter- and intradistrict transfers.** The diversity guidance highlighted the use of inter- and intradistrict transfers—allowing students to move between schools—as another approach used by many school districts to achieve diversity and avoid racial isolation. The diversity guidance provided the example of a transfer program that expressly relies upon the overall racial composition of geographic areas within the district to determine priorities for student transfers—with the goals of achieving racial diversity and reduction of racial isolation.¹⁰⁶ Due to racially segregated residential patterns, interdistrict programs are typically more likely to reduce racially isolated schools because “more than 80% of racial/ethnic segregation in U.S. public schools occurs between rather than within school districts, and income groups are also increasingly geographically divided.”¹⁰⁷

The diversity guidance also noted that if a school district finds any of these approaches unworkable or ineffective in achieving diversity or reducing racial isolation, it may consider a student's race as one factor among others in considering how an individual student's school assignment may help achieve diversity or avoid racial isolation consistent with the law.¹⁰⁸

Local Strategies to Promote Racial Diversity in Schools

Some school districts have worked to use the strategies noted above in ways that have promoted the compelling interests of seeking diversity and avoiding racial isolation. We review three of these below.

Jefferson County, KY

Jefferson County, KY, is one example of the legal progeny of *Brown v. Board of Education*, in which a local region acted to promote integration pursuant to court desegregation orders. The county illustrates the persistence of a voluntary desegregation program, which has continued even after withdrawal of court oversight. Jefferson County's policy—along with that of Seattle School District No. 1—were the subjects of litigation in *Parents Involved in Community Schools v. Seattle School District No. 1* and were highlighted in the diversity guidance issued by the Obama administration addressing the Court's 2007 ruling in the case. The diversity guidance clarified the Court's ruling on

the program, specifically detailing the case's holding that "to survive strict scrutiny, a school district that considers race in making individual student assignment decisions must show that the use of race is narrowly tailored to achieve a compelling governmental interest."¹⁰⁹

The origins of the program began with litigation shortly before integration efforts were implemented per a court order in the Louisville–Jefferson County area.¹¹⁰ At the time, most students in the Louisville area who attended urban schools were African American, whereas the majority of students in the county's suburban district were White.¹¹¹ Pursuant to the court's order, the Jefferson County and Louisville districts began merging the two racially divergent districts by busing African American and White students to schools outside their neighborhoods.¹¹² Although desegregation efforts were undertaken reluctantly—with violent opposition to busing¹¹³—they continue today on a voluntary basis.

By the 1990s, Louisville–Jefferson County was the most integrated school district in the nation.¹¹⁴ The plan has evolved into a choice program in which parents rank their school preferences, and the district weighs factors such as socioeconomic status and educational level when determining school assignment to achieve diversity across schools. Parents can also choose special programs such as magnet programs or language immersion programs.¹¹⁵ Though not perfect, the county's actions represent sustained voluntary integration efforts using many of the tools detailed in the guidance.

While there have been repeated legal challenges to the program, it has advanced.¹¹⁶ Explaining why the district continued its integration efforts following those court decisions, the superintendent said, "This community really values an integrated school system. It is a core value within Jefferson County."¹¹⁷ In addition to Jefferson County, other districts, including in Cambridge, MA, and New York City, have implemented controlled choice programs to foster school diversity.¹¹⁸

Explaining why the district continued its integration efforts following those court decisions, the superintendent said, "This community really values an integrated school system. It is a core value within Jefferson County."

San Antonio, TX

In the deeply segregated city of San Antonio, TX, the San Antonio Independent School District (SAISD) is leading the way in promoting school integration. The district is one of 14 districts in the city of San Antonio, and most of its students (90%) are categorized as economically disadvantaged.¹¹⁹ The district has implemented a controlled choice program—also known as Diversity by Design—to avoid creating what the district's Chief Innovation Officer Mohammed Choudhury calls "islands of affluence."¹²⁰ As Choudhury notes, "We can't let housing dictate the educational opportunities for all students. If our children can't go to school together, they're not going to learn to live together."¹²¹

The program is designed to ensure that parents learn about education options that they might not be aware of, from among a range of instructional models such as Montessori, college preparatory, and expeditionary learning.¹²² Administrators then consider parental choice and combine parental preference with data to ensure school diversity is achieved.¹²³ The program further fosters diversity with two other approaches: (1) half the seats for in-district charter schools are reserved for students from economically disadvantaged backgrounds and the other half are open to all income levels,¹²⁴ and (2) the "priority radii" approach prioritizes seats for students from specific geographic areas to ensure socioeconomic diversity.¹²⁵

As Choudhury notes, “You can see from how other cities’ school choice systems played out, especially with specialized schools, that choice will exacerbate segregation if it’s unregulated.”¹²⁶ Choudhury underscores essential components needed to ensure racial and socioeconomic diversity in controlled choice programs, including:

- **Location:** Specifically, a location from which middle-class and historically disadvantaged families can be drawn, such as near the city. As Choudhury notes, “Campuses located within the most economically segregated areas of the city have a more difficult time fulfilling a diversity by design school model. Unfortunately, one of the reasons for this is that families can succumb to false stereotypes and perceptions about schools within high-poverty communities.”¹²⁷
- **School design:** Intentionally following an assignment system that ensures diversity. Choudhury notes that a free market approach risks deepening segregation and inequities.¹²⁸
- **Transportation:** Particularly ensuring that families from disadvantaged communities can secure transportation to their chosen school.¹²⁹

Choudhury is committed to implementing these components, and the result is playing out in the form of racially diverse schools in SAISD. As Choudhury notes: “[T]his notion that we should keep recreating high poverty schools given the decades of research around the benefits of integrated environments is absurd. Integration isn’t everything, but it has effects. When’s the only time we cut the achievement gap almost in half in this country on the National Assessment of Educational Progress? At the height of desegregation.”¹³⁰

Hartford, CT

In 1989, litigation was filed on behalf of Elizabeth Horton Sheff, her son Milo, and other families alleging that Connecticut had failed to provide students in the majority-African American Hartford area with racially integrated education.¹³¹ Hartford not only was a racially isolated, majority-African American area, but also was characterized by concentrated poverty.¹³² The case made its way to the Connecticut Supreme Court, which in 1996 ruled that the racial, ethnic, and economic isolation in Hartford schools violated the state’s constitutional obligation to provide all children with racially integrated and substantially equal educational opportunities.¹³³

In response to the court’s ruling, Connecticut established a voluntary integration Open Choice program and designed desegregated educational opportunities, including a magnet school program.¹³⁴ A 2013 analysis of the program found that students participating in the Magnet and Open Choice programs were outperforming Hartford students attending other public schools and performed well in comparison with the state’s averages for all students.¹³⁵ The analysis also found that more than 45% of Hartford’s African American and Latino/a k-12 students attended schools in reduced-isolation settings.¹³⁶

Hartford’s desegregation efforts have faced considerable challenges, including ongoing waiting lists to attend area magnet schools, reluctance from some legislators to continue to fund the magnet program, legal challenges,¹³⁷ and rising housing costs and zoning laws that hinder efforts to provide students from low-income families and students of color access to high-performing, high-quality schools. However, the program continues with state and local funds, and there is still a commitment to find and maintain effective strategies that promote integration and reduce racial isolation.¹³⁸

Likely Effects of Rescinding the Guidance

Rescission of the diversity guidance could be interpreted as signaling federal apathy about racial diversity in public schools. This could reinforce or be used as a justification for district inaction, which could further reverse the progress made in reducing educational inequities that followed federal enforcement of desegregation. For example, educational inequities began to decrease once desegregation efforts took hold. As we have noted in other research, there was a noticeable reduction in educational inequity during the 1960s and 1970s when desegregation and school finance reform efforts were launched. At that time, substantial gains were made in equalizing both educational inputs and outcomes.¹³⁹ Further, as the Century Foundation has noted:

[T]he racial achievement gap in K-12 education closed more rapidly during the peak years of school desegregation in the 1970s and 1980s than it has overall in the decades that followed—when many desegregation policies were dismantled.¹⁴⁰

Rescission of the diversity guidance is a retreat from the vital role that the federal government can play in encouraging and clarifying permissible state action to advance racially diverse schools. It ultimately constitutes an endorsement of the educational inequities that research shows accompany racially segregated learning environments.

When court decisions create confusion about how to interpret federal civil rights law, absence of federal guidance can leave many states uncertain about whether their actions, practices, and policies are compliant with federal law as interpreted by the courts and whether they are vulnerable to litigation. As one scholar notes:

The decision has most obviously affected the desegregation efforts of the school districts pursuing existing integration plans fatally similar to those of Louisville and Jefferson County that were struck down by *Parents Involved*. While estimates on the actual number of such districts vary considerably (from “more than 1,000” to “possibly less than ten”), they still undoubtedly exist, and “the efforts of the … school districts that presently pursue racial integration will undoubtedly impact the lives of a significant number of school children, even if only some of those districts continue their efforts after *Parents Involved*.¹⁴¹

Particularly when there is confusion surrounding decisions in cases such as *Parents Involved*—confusion that can create a chilling effect on many existing voluntary desegregation plans, can discourage other districts from implementing such plans,¹⁴² and can leave districts fearful of legal challenges—federal guidance is vital for encouraging districts to promote racial diversity voluntarily and proactively.¹⁴³

Rescission of the diversity guidance is a retreat from the vital role that the federal government can play in encouraging and clarifying permissible state action to advance racially diverse schools.

Rescinding the diversity guidance can discourage proactive state and local efforts to diversify public schools, perpetuating the separate and unequal education system that *Brown* sought to eradicate. The result is that educational disparities associated with racial isolation can deepen, and educational disparities that result in negative educational outcomes, such as decreased employment opportunities, can persist and undermine our nation's future. In fact, as the UCLA Civil Rights Project notes:

Research and industry spokespersons suggest that a diverse education is essential for “career readiness” ... and federal support for successful, stably integrated schools would pay large dividends in terms of social and economic success of communities.¹⁴⁴

Thus, rescinding the guidance can have repercussions that perpetuate educational inequities that undermine our nation's current and future global competitiveness.

The Trump administration's rescission of the Obama administration's guidance returns districts to a state of uncertainty regarding whether their policies will be consistent with changing legal interpretations of federal law. The repercussions for many students in districts that fail to promote school diversity as a result of fear of litigation could be significant. Students in these districts could lose out on opportunities to attend diverse schools because of their district's reluctance to act. Lack of these opportunities means they are also denied the benefits that evidence shows a diverse education bestows, including enhanced critical thinking skills, the ability to interact with others in a globally diverse economy, and stronger cross-cultural understanding.¹⁴⁵

As one scholar notes, “Districts are left with two choices: risk future litigation ... [and] craft desegregation plans that are centered around factors other than race or that consider race as only one of many factors, or simply abandon previous desegregation plans.”¹⁴⁶ Unfortunately, some districts have opted for the latter option.¹⁴⁷

Given this nation's history of racial discrimination and the infusion of that discrimination into our institutions and systems, including the public school system, it is imperative—particularly in the face of confusion about court rulings—that the federal government continue to play an active and vigilant role in encouraging proactive local efforts to promote racial diversity and reduce racial isolation. This helps ensure that all students can access the benefits of racially diverse learning environments. History and evidence indicate that without an active federal role, our localities are likely to revert to racially isolated learning environments that undermine efforts to provide quality educational opportunities for all students.

Conclusion

Any administration's policy positions, actions, and interventions should be informed by evidence and the law. Failing to use such evidence in the case of voluntary integration is likely to perpetuate negative consequences for students of color and other historically underserved students. Rescission of the federal diversity guidance may have a chilling effect on proactive state and local efforts to promote racial diversity, reduce racial isolation in public schools, and create more inclusive and equitable learning environments for all students. It contravenes the well-established legal precedent and research, compiled over more than half a century, documenting the benefits of diverse and inclusive learning environments for all students. Continuation of such guidance—and the efforts of districts it supports—would strengthen the nation's ability to produce engaged citizens who can effectively compete in a diverse global workforce and recognize the dignity and potential in every student.

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A Bold Agenda for School Integration

APRIL 8, 2019 — RICHARD D. KAHLENBERG, HALLEY POTTER AND KIMBERLY QUICK



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At a time when our democracy is fractured along the fault lines of race, ethnicity, and religion, and when social mobility has stalled, high-quality integrated public schools could take us on a better path forward. Racial and socioeconomic school integration has proven to be one of the most powerful strategies known to educators to improve the lives of students and reduce national division.

Yet, in the face of growing school segregation, the federal government currently commits only a paltry amount of resources to support integration. To close the gap between the dire need for action and the absence of federal leadership, this report proposes a number of policy ideas for members of Congress to consider.

The first part of this report reviews the research on the powerful academic, cognitive, civic, socioemotional, and economic benefits of school integration. The second part outlines the evidence showing rising school segregation, and the relatively weak medicine the federal government currently brings to the problem; this section, however, also details some pockets of hope: a growing number of school districts that are taking steps to reduce segregation, as well as a few emerging federal and state proposals. The third and

final part lays out long-term, medium-term, and short-term sets of policy initiatives that could make school integration a true federal priority, and, ultimately, a cornerstone in the renewal of the federal Elementary and Secondary Education Act, known as the Every Student Succeeds Act (ESSA).

The Benefits of School Integration

School integration, by race and socioeconomic status, goes to the very purpose of public education in the United States: to promote social mobility in the economy and social cohesion in our democracy. At the same time, school integration offers a third benefit: it is among the most cost-effective ways of promoting better outcomes for students. This report takes each of these benefits in turn.¹

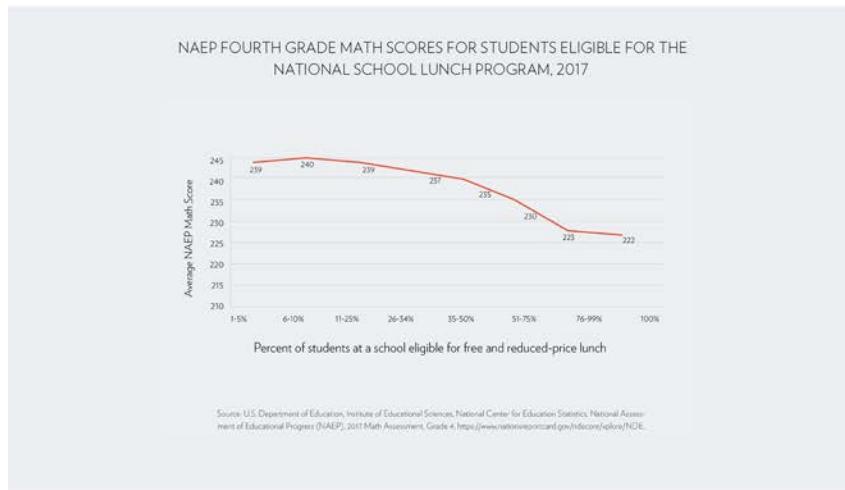
Social Mobility and Social Justice: How School Integration Promotes Academic and Cognitive Benefits, Particularly for Disadvantaged Students

Students in socioeconomically and racially diverse schools have stronger academic outcomes, on average, than students in schools with concentrated poverty. This is true even after students' individual socioeconomic status is taken into account.

This report can be found online at: <https://tcf.org/content/report/bold-agenda-school-integration/>

- **Students in integrated schools have higher average test scores.** On the 2017 National Assessment of Educational Progress (NAEP) given to fourth-graders in math, for example, low-income students attending schools that are more affluent scored roughly two years of learning ahead of low-income students in high-poverty schools.³ (See Figure 1.) Controlling carefully for students' family background, another study found that students in mixed-income schools showed 30 percent more growth in test scores over their four years in high school than peers with similar socioeconomic backgrounds in schools with concentrated poverty.⁴
 - **Students in integrated schools are more likely to enroll in college.** When comparing students with similar socioeconomic backgrounds, students at schools with high average socioeconomic status are 68 percent more likely to enroll at four-year colleges than their peers at schools with low average socioeconomic status.⁵
 - **Students in integrated schools are less likely to drop out.** Dropout rates are significantly higher for students in segregated, high-poverty schools than for students in integrated schools.⁶ During the height of desegregation in the 1970s and 1980s, dropout rates decreased for minority students, and the greatest decline in dropout rates occurred in districts with the greatest reductions in school segregation.⁷
 - **Integrated schools help to reduce racial achievement gaps.** The racial achievement gap in K-12 education closed more rapidly during the peak years of school desegregation in the 1970s and 1980s than they have overall during the more recent era in which desegregation policies were dismantled. More recently, black and Latinx students had smaller achievement gaps when compared with white students on the 2007 and 2009 National Assessment of Educational Progress when they were less likely to be stuck in high-poverty school environments.⁸ The gap in SAT scores between black and white students is also larger in segregated districts: one study showed that changing from an environment of complete segregation in a school district to one of complete integration would reduce the SAT score disparity by as much as one quarter.⁹
 - **Integrated classrooms encourage critical thinking, problem solving, and creativity.** Diverse classrooms, in which students learn cooperatively alongside those whose perspectives and backgrounds are different from their own, are beneficial to all students, including middle-class white students, because they promote creativity, motivation, deeper learning, critical thinking, and problem-solving skills.¹⁰
- Social Cohesion and Combating Racism:
How School Integration Produces Civic and
Socioemotional Benefits for All Students*
- Racially and socioeconomically diverse schools offer students of all racial and socioeconomic backgrounds important socioemotional benefits by exposing them to peers of different backgrounds. The increased tolerance and cross-cultural dialogue that result are beneficial for civil society.
- **Attending a diverse school can help reduce racial bias and counter stereotypes.** Children are at risk of developing stereotypes about racial groups if they live in and are educated in racially isolated settings. By contrast, when school settings include students from multiple racial groups, students become more comfortable with people of other races, which leads to a dramatic decrease in discriminatory attitudes and prejudices.¹¹
 - **Students who attend integrated schools are more likely to seek out integrated settings later in life.** Integrated schools encourage relationships and friendships across group lines.¹² According

FIGURE 1



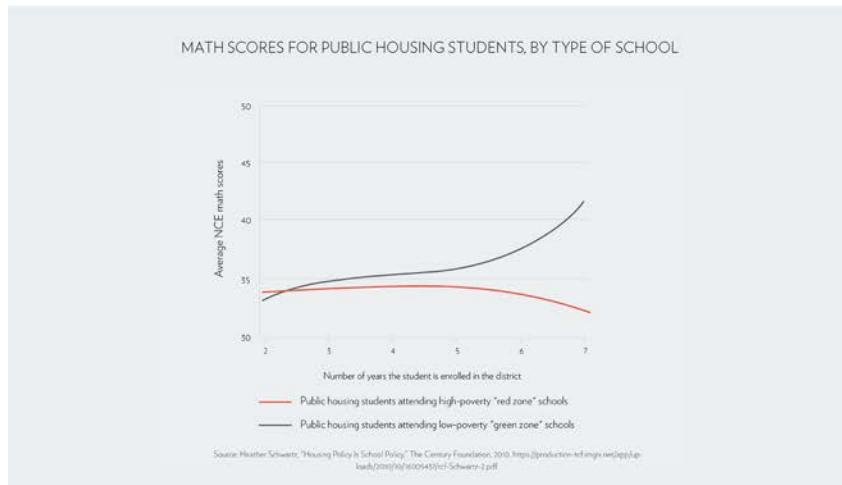
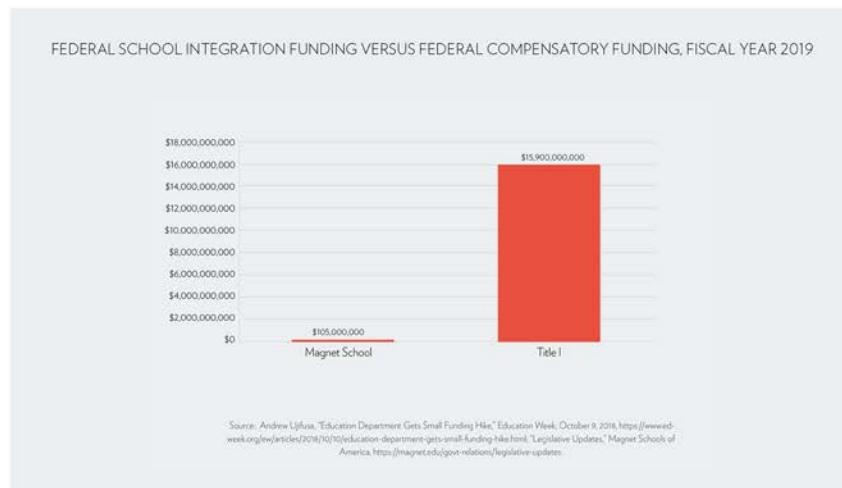
to one study, students who attend racially diverse high schools are more likely to live in diverse neighborhoods five years after graduation.¹⁵

- **Integrated classrooms can improve students' satisfaction and intellectual self-confidence.** Research on diversity at the college level shows that when students have positive experiences interacting with students of other backgrounds and view the campus racial and cultural climate as affirming, they emerge with greater confidence in their own academic abilities.¹⁶
- **Learning in integrated settings can enhance students' leadership skills.** A longitudinal study of college students found that the more often first-year students were exposed to diverse educational settings, the more their leadership skills improved.¹⁷

Cost-Effectiveness: How School Integration Produces Economic Benefits

Providing more students with integrated school environments is a cost-effective strategy for boosting student achievement and preparing students for work in a diverse global economy.

- **School integration efforts produce a high return on investment.** According to one recent estimate, reducing socioeconomic segregation in our schools by half would produce a return on investment of three to five times the cost of the programs.¹⁸
- **Attending an integrated school can be a more effective academic intervention than receiving extra funding in a higher-poverty school.** A 2010 study of students in Montgomery County, Maryland, found that students living in public housing randomly assigned to lower-poverty "green

FIGURE 2**FIGURE 3**

“zone” neighborhoods and schools outperformed those assigned to higher-poverty “red zone” neighborhoods and schools in math and reading, even though the higher-poverty schools received \$2,000 extra funding per pupil.¹⁹ (See Figure 2.)

- **School integration promotes more equitable access to resources.** Integrating schools can help to reduce the disparities in access to well-maintained facilities, highly qualified teachers, challenging courses, and private and public funding.²⁰
- **Diverse classrooms prepare students to succeed in a global economy.** In higher education, university officials and business leaders argue that diverse college campuses and classrooms prepare students for life, work, and leadership in a more global economy by fostering leaders who are creative, collaborative, and able to navigate deftly in dynamic, multicultural environments.²¹

The Current State of School Integration

Even though there is a strong social science consensus among educators and researchers that school integration is better for children than school segregation, legislators and other policymakers have not taken sufficient action to promote school diversity. The absence of strong federal efforts in the face of a decades-long trend of rising school segregation is particularly troublesome. Thankfully, a number of courageous local leaders have taken steps to embrace diversity, pursuing efforts that are deserving of federal support.

Anemic Federal Efforts

There was a time when the federal government played a powerful role in desegregating schools, particularly in the South. Following the 1954 U.S. Supreme Court decision in *Brown v. Board of Education*, Southern states resisted integration for more than a decade. But districts began to integrate after Congress passed key provisions in a pair

of laws in the mid-1960s: Title VI of the 1964 Civil Rights Act, which made it illegal for districts receiving federal funding to discriminate based on race; and Title I of the 1965 Elementary and Secondary Education Act, which for the first time provided substantial federal aid to education. Federal administrators used the threat of withholding Title I funds to make Southern schools the most desegregated in the nation.

However, this political will began to fade in the 1970s, as whites resisted desegregation efforts, often violently. Congress passed an anti-busing rider on appropriations legislation, forbidding the use of federal funds for transportation to desegregate.²² Efforts to desegregate shifted to a more politically palatable approach: federal funding for magnet schools, which used special themes (such as arts or sciences) or teaching approaches (such as Montessori) to voluntarily attract white, middle-class families into schools in minority and high-poverty neighborhoods.²³

When properly structured, these magnet school programs can be effective in promoting diversity and improving outcomes for students. But federal support for magnet schools remains very modest. In fiscal year 2019, the federal government appropriated just \$105 million for magnet schools compared with \$15.9 billion for the Title I program of compensatory education for high-poverty schools.²⁴ (See Figure 3.)

This lack of any serious federal legislative commitment to desegregation has been accompanied by a judicial pullback: beginning in the late 1980s and early 1990s, judges began making it easier for school districts to be declared “unitary,” meaning they have done enough to desegregate and are released from judicial desegregation orders. On top of that, the U.S. Supreme Court under Chief Justice John Roberts struck down two voluntary racial integration programs in Louisville and Seattle in 2007, further chilling efforts to integrate by race.²⁵

Rising School Segregation

Given the federal legislative and judicial pullback on school diversity, it was highly predictable that schools would resegregate. According to a 2016 report from the Government Accountability Office, the percentage of schools in which 75–100 percent of students were low-income and black or Hispanic grew from 9 percent in 2000–01 to 16 percent in 2013–14.²⁴ (See Figure 4.)

Pockets of Hope: Grass-Roots Efforts to Promote School Diversity

In the face of a federal retreat from desegregation and rising levels of segregation, a small but growing number of school districts are fighting back to create high-quality integrated schools for their students. Although the Supreme Court's decision in 2007 curtailed the ability of school districts to use the race of individual students to pursue voluntary integration efforts, it left open the door to considering the racial makeup of neighborhoods, or the socioeconomic status of individual students.

Local Efforts

Since 1996, socioeconomic diversity plans have been something of a growth industry among school integration efforts. In 1996, The Century Foundation identified just two school districts educating 30,000 students; today, the number exceeds 100 districts and charter school networks, educating more than 4 million students. (See Figure 5.) Although charter schools are often more segregated than traditional public schools, there has been growing interest in creating “diverse-by-design” charter schools, whose growth The Century Foundation has also documented.²⁵

These districts and charter schools pursuing socioeconomic diversity plans are located in thirty-two states—both red and blue—throughout the country. (See Figure 6.) The Century Foundation recently profiled nine of these districts: New York, NY; Chicago, IL; Hartford, CT; Dallas, TX; Jefferson County (Louisville), KY; Stamford, CT; Eden Prairie, MN; Champaign, IL; and Cambridge, MA.²⁶

Seeking to support these local efforts for school diversity, some state and federal policymakers have begun to generate proposals for voluntary integration.

State Efforts

Among the most promising state-level efforts are proposals in Maryland and New York.

- **Maryland Proposals for School Diversity.**

In Maryland, former teacher and state senator Bill Ferguson, a Baltimore Democrat, has long sounded the alarm about the opportunity gap created and sustained by school segregation. In 2015, Ferguson introduced SB 683, legislation that would establish Next Generation Schools, which would be run with the explicit intent of creating socioeconomically integrated, multi-jurisdictional schools.²⁷ The following year, Ferguson proposed legislation to create the Maryland Education Development Collaborative (EDCo), which would make recommendations to the State Board of Education, the General Assembly, and local school systems about ways to diversify schools.²⁸ Currently, the state’s Kirwan Commission on Innovation and Excellence in Education recognizes the value of student and educator diversity when considering how to strengthen Maryland’s public schools.

- **New York State Integration Project—Professional Learning Community.**

To tackle school segregation and chronic school underperformance simultaneously, in 2015, then-New York State education commissioner John King (who later served as U.S. secretary of education) established the Socioeconomic Integration Pilot Program. Research suggests that school integration and magnet schools can be among the most effective school turnaround efforts.²⁹ The program, which is still in existence but now called the New York State Integration Project, uses school-improvement funding from the federal government to turn around struggling schools by creating innovative

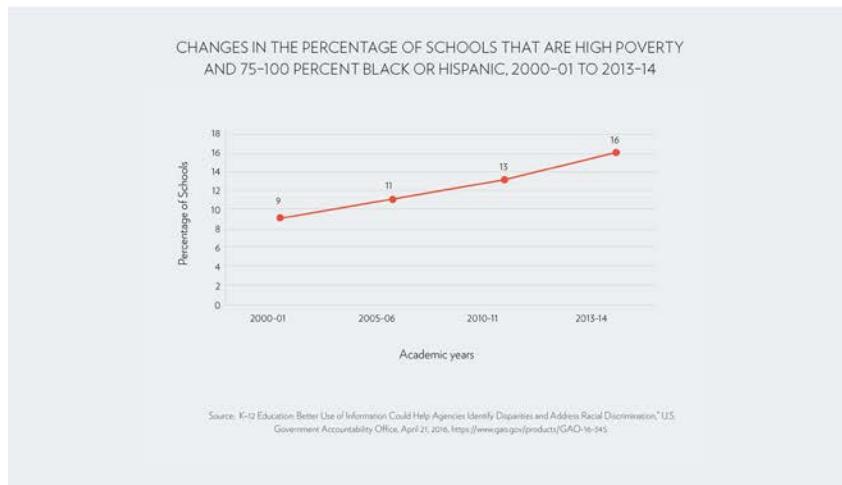
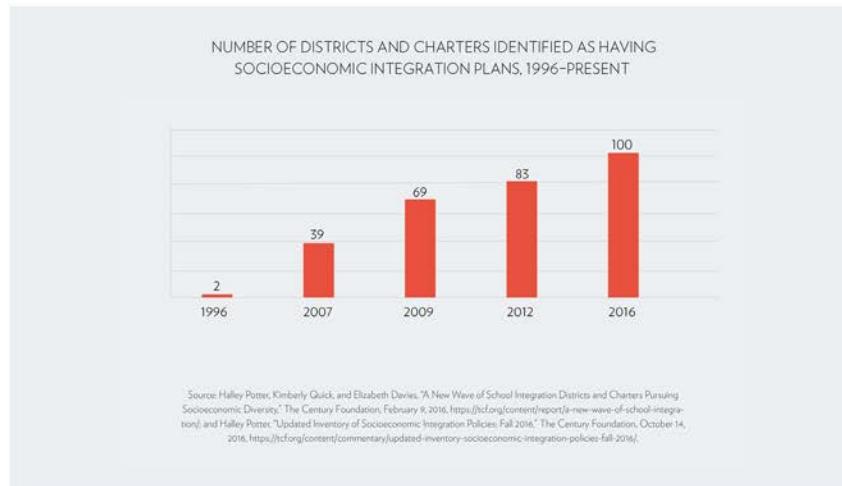
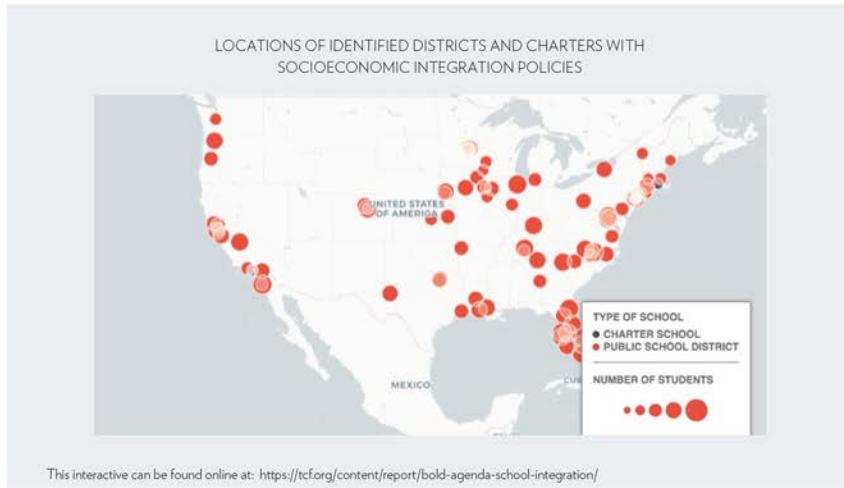
FIGURE 4**FIGURE 5**

FIGURE 6



and attractive magnet programs. According to Assistant Commissioner Ira Schwartz, the grant program aims to increase socioeconomic, racial, and ethnic diversity in schools, as well as encourage a better mix of students who have disabilities or are learning English. A portion of the funding, roughly \$50,000 to \$70,000 per district, is used to provide district leaders with education, training, and support as part of what the state describes as a “professional learning community” to pursue the best policies and practices for school integration.³³ The first phase of grants are noncompetitive, with funds available for each of the eligible districts (which were selected based on criteria including having high levels of within-district or between-district segregation), if they choose to participate. The grants have proven popular.³⁴ After this first phase of grants, interested districts can enter a competitive process to apply for more funding for implementation.

Federal Efforts

In recent years, a few federal policymakers have made important suggestions to reduce school and housing segregation. Among the leading federal proposals are:

- the Strength in Diversity Act, a proposal for \$120 million in grants to voluntary efforts to integrate by race and socioeconomic status;
- congressional efforts to eliminate anti-integration riders on appropriations prohibiting spending on transportation; and
- proposals from Senator Warren and Senator Booker to reduce housing segregation.

We discuss each of these proposals further below in the context of several ideas we propose for beefing up federal integration efforts.

A Federal Agenda for School Integration

Building on existing local, state, and federal proposals to integrate, what sorts of proposals should Congress consider in order to meaningfully move forward on school diversity? Below, we outline eight ideas that fall into three buckets: big and bold ideas for long-term reform; meaningful and important ideas for the near future; and low-hanging fruit that policymakers should pluck immediately. These proposals are meant to supplement the excellent set of legislative and regulatory proposals recently outlined by the National Coalition on School Diversity.⁵²

Three Big and Bold Ideas for the Long Term

1. Increase Title I Funding and Authorize \$500 Million of that Funding for School Integration

Title I of the 1965 Elementary and Secondary Education Act is the primary means by which the federal government provides aid to school districts, with a focus on those educating low-income students. Title I does not provide aid directly for the education of individual poor students but rather provides “funds to areas with concentrations of poverty.”⁵³ Research finds that money can have an important impact on raising student achievement.⁵⁴ The case for expanding Title I is strong, and we advocate increased funding. Having said that, there is a compelling case that some portion of new Title I funds should be allocated specifically for school integration. Research suggests that school integration efforts can be a highly effective way of producing educational gains for students—sometimes even more cost-effective than compensatory spending, as Heather Schwartz’s study of Montgomery County, Maryland public schools suggested. (See Figure 2 above.)

Current levels and allocations of federal government spending on Title I do not comport with the research on the effectiveness of school integration efforts. As noted above, Title I allocates \$15.9 billion in fiscal year 2019 for compensatory education in high-poverty schools, meant to mitigate the effects of poverty and school poverty

concentrations, while the federal government allocated only \$105 million for school integration efforts in the form of the Magnet Schools Assistance Program. (See Figure 3, above.) Does it really make sense for the federal government to allocate 151 times as much money to addressing the effects of poverty and concentrated poverty as it does to supporting initiatives that prevent or undo concentrations of poverty in the first place?

Integration programs—including magnet schools, school rezoning to promote diversity, districtwide “controlled choice” plans that combine choice with civil rights protections, and interdistrict integration efforts such as transfer programs—deserve more federal support. Although they are cost-effective in improving the public good, the launching of well-designed integration programs still requires the expenditure of funds. Money is needed, for example, to help voluntarily transport children from different neighborhoods to attend school together. Likewise, because integration is most effective when families have an affirmative incentive to attend an integrated school (because of a special magnet theme, or teaching approach), funds are needed for equipment and professional development around particular themes (such as STEM or the performing arts) or pedagogical approaches. On average, specialized magnet programs cost about 10 percent more to deliver than general education in a traditional public school setting.⁵⁵

Because we support increases—rather than decreases—in Title I funding, we recommend that Title I funding be increased by *more than \$500 million*, with *up to \$500 million* of the increase allocated to districts that wish to employ Title I funds for school integration. In this way, the traditional compensatory education function of Title I is held harmless. Allocating funds through Title I would avoid having districts compete against each other in order to participate, as they do under some other integration proposals. The allocation of Title I funding for school integration is analogous to what John King did in directing School Improvement Grant (SIG) funds toward the creation of the Socioeconomic Integration Pilot Program in New York.

The proposed \$500 million allocation of Title I funds is modest enough in size to allow the U.S. Department of Education to quickly develop appropriate oversight protocols, but it is large enough to have a meaningful impact on school diversity. If successful, the allocation amount could be increased over time. Because most segregation in the United States is between school districts rather than within them,⁵⁰ we recommend that the U.S. Department of Education prioritize requests to allocate funds for inter-district integration programs.

2. An Economic Housing Act to Integrate Neighborhood Schools

To address growing economic and racial segregation of schools, we also recommend that the Congress enact an Economic Fair Housing Act, which would seek to curtail exclusionary zoning policies that ban apartment buildings and other multi-dwelling units. Today, roughly three-quarters of American schoolchildren attend neighborhood public schools, that is, one to which they were zoned. Changes in housing policy that eliminate exclusionary zoning practices thus can help integrate the schools that serve these neighborhoods.⁵¹

The idea behind an Economic Fair Housing Act, which is outlined more fully in a 2017 Century Foundation report, is straightforward.⁵² After the U.S. Supreme Court struck down racial zoning laws designed to promote racial segregation in 1917, jurisdictions rapidly adopted economically exclusionary zoning policies that banned apartment buildings and other multifamily units, in order to achieve much the same result. Today, exclusionary zoning is pervasive in the United States and has been found to exacerbate both economic and racial segregation. Jonathan Rothwell of Gallup and Douglas Massey of Princeton have found that “a change in permitted zoning from the most restrictive to the least would close 50 percent of the observed gap between the most unequal metropolitan area and the least, in terms of neighborhood inequality.”⁵³

Just as it is illegal to discriminate in housing based on race, it should be illegal for municipalities to employ exclusionary zoning policies (such as banning apartment

buildings, townhouses, or houses on modest-sized lots) that discriminate based on income and exclude the non-rich from many neighborhoods—and thus from their associated schools. At the individual housing unit level, free market forces would continue to discriminate by income, because some apartments and houses will inevitably retain their expensive price tags—that simply is what markets do. But government zoning policies should not artificially inflate prices further and abet this economic exclusion by rendering off limits entire communities by making it impossible to rent an apartment, live in a townhouse, or purchase a home on even a modest plot of land. Congress passed a similar federal law prohibiting zoning that discriminates against religious organizations in 2000.⁵⁴

One alternative to a complete ban on exclusionary zoning would be a federal policy to reduce the amount of mortgage interest that a family can deduct in jurisdictions that practice exclusionary zoning, as the University of North Carolina’s John Boger has suggested.⁵⁵ While this wouldn’t eliminate them, it would make them less desirable. Another variation would bar federal funding for infrastructure to municipalities that insist on exclusionary zoning policies. Congress should also strengthen the 1968 federal Fair Housing Act’s racial anti-discrimination policies.⁵⁶

Although zoning is traditionally thought of as a local prerogative, versions of legislation attacking exclusionary zoning have become an important part of the federal dialogue on segregation. Last year, Senator Cory Booker (D-N.J.) introduced the Housing, Opportunity, Mobility and Equity (HOME) Act to curtail exclusionary zoning. Under Booker’s proposal, states, cities, and counties receiving funding under the \$3.3 billion federal Community Development Block Grant program for public infrastructure and housing would be required to develop strategies to reduce barriers to housing development and increase the supply of housing. Plans could include authorizing more high-density and multifamily zoning and relaxing lot size restrictions. The goal is for affordable housing units to comprise no less than 20 percent of new housing stock.⁵⁷

Likewise, Senator Elizabeth Warren (D-MA) has proposed a comprehensive housing plan that includes a new \$10 billion infrastructure program with powerful incentives to reduce exclusionary zoning rules, such as “minimum lot sizes or mandatory parking requirements.” As she explained in March 2019, “to even apply for these grants,” localities “must reform land-use rules to allow for the construction of additional well-located affordable housing units.”⁴⁴ Warren has also called for making it illegal for landlords to discriminate against renters with federal housing vouchers.⁴⁵

State-level legislative proposals have also questioned the once-dominant view that zoning is strictly a local matter. Californians have recently debated legislation to reduce exclusionary zoning, particularly near mass transit hubs.⁴⁶ Spurred in part by affordability concerns, policymakers in Massachusetts and Seattle have also considered proposals to curtail exclusionary zoning.⁴⁷ Significantly, Minneapolis recently became the first major city to adopt a proposal to end single-family zoning restrictions entirely.⁴⁸

3. Federal Pre-Clearance of Efforts of School Districts to Secede

School district boundaries and school zones within districts both too often perpetuate racial and socioeconomic segregation. Recently, a growing number of communities—at least seventy-one since 2000, according to research from EdBuild—have attempted to split from their parent school districts, often yielding massive funding inequities and allowing wealthier and whiter districts to isolate themselves and their resources from students with greater need.⁴⁹ In Ohio, for example, the Monroe Local School District was created in 2000 after breaking away from Middletown City School District. In 2015, the median price for an owner-occupied home in Monroe was \$159,200, or 73 percent higher than it would be in Middletown; at the same time, the median household income in Monroe was 95 percent higher than that of the neighboring city it had left behind.⁵⁰ The exclusionary intent behind many of these school district secession movements is only thinly veiled: in Gardendale, Alabama, for example, a pro-secession organizer openly complained that the school population looked “different” from those that attend the sporting or religious gatherings

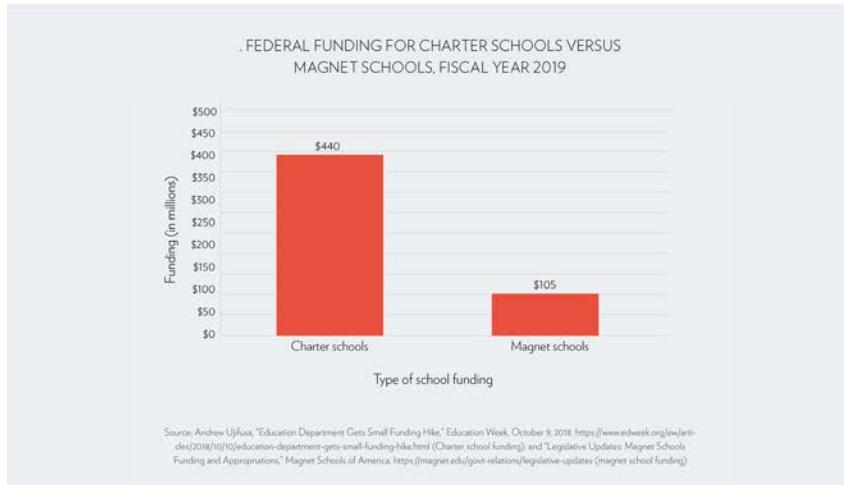
in her more insular neighborhoods.⁵¹ Currently, of the thirty states that have secession laws on the books, only nine require a study of the funding impact of such an action, and just six require consideration of a succession’s effects on racial or socioeconomic segregation or student equity.⁵² We recommend that Congress adopt a requirement for federal preclearance of major district boundary changes secessions in order to better protect low-income children and children of color from further disinvestment due to discriminatory intent or effect. This system could operate similarly to Section 5 of the Voting Rights Act, but would be designed to be a “bail-in” system, thus following the Supreme Court’s holding in *Shelby County v. Holder*.⁵³ Under the Voting Rights Act, preclearance applied where a “test or device” was used to screen would-be voters and where fewer than half of the eligible voters exercised that right or registered. Though the Supreme Court struck down Section 5’s coverage formula, federal courts can legally order that some jurisdictions with a proven history of discrimination are subject to additional oversight and approval. Jurisdictions covered by preclearance may not pursue plans that alter or eliminate voting procedures—including redistricting—without prior approval of a federal court or the U.S. Department of Justice. Plans are approved only if (1) there is no indicated intention to dilute minority voting power and (2) it does not have the effect of doing so, intended or not.⁵⁴

Two Meaningful and Important Ideas for the Near Future

1. Strength in Diversity Act

In September 2018, Congresswoman Marcia Fudge (D-OH) and Senator Chris Murphy (D-CT) introduced the Strength in Diversity Act. The bill would authorize \$120 million in grants to districts for “voluntary community-driven strategies” to reduce school segregation.⁵⁵ Fudge and Murphy introduced an earlier version of the bill in July 2016 under the name the Stronger Together School Diversity Act, with support from major nonprofit, labor, and advocacy organizations, including the American Federation of Teachers, the National Education Association, the Education Law Center, and the NAACP.⁵⁶

FIGURE 7



The bill allows grantees to adopt creative, tailored, evidence-based solutions to segregation. If passed, the bill would allow grantees to use funds for a variety of purposes: to study segregation within their region; evaluate current policies and develop evidence-based plans; revise school boundaries or establish equitable public school choice zones; create and expand innovative and magnetic school programs that would appeal to a diverse group of families; and recruit and train teachers that could support these schools and work with a diverse student population.

Adoption of the Strength in Diversity Act—the most prominent legislative effort to support school integration—would represent an enormous step forward for the country.

2. Double Federal Magnet School Funding from \$105 Million to \$210 Million

The federal Magnet Schools Assistance Program—the primary existing vehicle of federal support for school integration—was allocated a modest \$105 million in fiscal year 2019.⁵⁴ By contrast, charter schools, which research suggests

has even higher levels of segregation than traditional public schools, receive four times as much federal support (\$440 million in fiscal year 2019).⁵⁵ (See Figure 7.) This disparity exists despite the fact that magnet schools and charter schools educate comparable numbers of students. (Magnet schools educate 3.5 million students, while charters educate 3.1 million.)⁵⁶

We are by no means opposed to charter schools; indeed, we believe that, with the proper incentives, charter schools can be a vehicle for school integration (see discussion below). But magnet schools deserve much stronger federal support than they currently receive. Researchers have found that integrated magnet schools can improve outcomes for students: one high-quality study comparing magnet school lottery winners and losers in Connecticut, for example, found that attending a socioeconomically and racially integrated magnet school boosted achievement among middle school and high school students alike.⁵⁷ Evidence also suggests many families want what magnet schools have to offer. A 2017 national survey found that 67 percent of magnet schools report having waiting lists.⁵⁸ Currently, federal magnet school

funding applies only to schools that avoid selecting students through tests. We support that current federal policy.

To advance school integration efforts—and meet parental demand—we recommend that Congress double magnet school funding, from \$105 million to \$210 million. The funding increase should be coupled to strengthen accountability to ensure that magnet schools reduce racial and economic isolation.

Three Pieces of Low Hanging Fruit that Should Be Plucked Immediately (with No New Funding Required)

1. Remove Section 426 of General Education Provision Act (GEPA) which Prohibits Federal Funding for Transportation to Promote Integration

Since at least 1974, Congress has consistently included riders on appropriations bills that prohibited federal funding from going toward transportation for school integration purposes, undermining local control and flexibility. The anti-integration riders mean, for example, that the districts participating in the New York School Integration Project, which uses Title I funds, may not spend those federal funds to support transportation as part of a school improvement strategy designed to desegregate schools. A bipartisan coalition of elected officials has regularly sought to appease white constituents uneasy about their children being bused into predominantly black neighborhoods.⁶² Efforts to strike these provisions failed as recently as 2017, when Congressman Bobby Scott (D-VA) unsuccessfully championed their removal.

Finally, in September 2018, after advocacy from civil rights and education groups, Congress reached a funding agreement that included removal of Sections 301 and 302 anti-busing riders from the budget. Despite this positive movement, however, Section 426 of the General Education Provisions Act remains, essentially echoing the provisions in the now eliminated appropriations riders. We believe Congress should remove this stain.

2. Remove Title I Funding Penalty for School Integration

As the National Coalition on School Diversity has noted, today, Title I's funding priority for high-poverty schools can have the unintended consequence of discouraging integration in districts where an effort to reduce segregation could put a school below the Title I threshold for eligibility. We join the National Coalition's call to "recalibrate the Title I funding formula so it does not penalize school districts or schools that seek to pursue integration."⁶³ It is critical to eliminate the perverse incentive to segregate, by creating a safe harbor for schools where integration efforts could risk the loss of Title I funds.

3. Make Diversity and Teacher Voice Priorities in the Charter Schools Program

The original idea for charter schools, as articulated by teacher union leader Albert Shanker in the late 1980s, was to create new public schools where teachers would be able to take on leadership roles and try out different teaching methods; students of diverse backgrounds would come together without rigid neighborhood attendance zones, and lessons would be shared to improve public education more generally.⁶⁴ In practice, however, few charter schools today live up to this vision. Charter schools are more likely than traditional public schools to have either high-poverty or low-poverty enrollment (more than 75 percent or less than 25 percent of students eligible for free or reduced-price lunch, respectively), and less likely to be economically integrated.⁶⁵ Charter schools also have higher rates of racial isolation than traditional public schools, with 17 percent of charter schools enrolling student bodies that are at least 99 percent students of color, compared to 4 percent of traditional public schools.⁶⁶ And only 11 percent of charter schools are unionized.⁶⁷

Lawmakers can reclaim the original intended power of charters to be laboratory schools for a diverse democracy, by adding priorities for diversity and teacher voice into the federal Charter Schools Program (CSP), which was reauthorized in 2015 under Title IV of the Every Student Succeeds Act (ESSA). In the 2019 appropriations, Congress allotted \$440 million in funding for charter schools, a 10

percent increase over the previous year, even as overall education funding saw a decline.¹³ CSP is a large pot of money that could be better put to use to increase the number of seats available in racially and socioeconomically integrated schools that promote democracy. There are a number of ways that policymakers can amend CSP to help achieve this goal:

- Make enrolling diverse student bodies an explicit part of the purpose of CSP, alongside its current priorities, which include increasing the number of high-quality schools, evaluating the impact of charter schools and communities, and expanding opportunities for underserved students.
- Expand priorities for diversity. CSP currently includes a priority in the grants to charter management organizations (CMOs) that “plan to operate or manage high-quality charter schools with racially and socioeconomically diverse student bodies” as one of four priorities named in the law.¹⁴ However, there is no comparable priority for the grants to state entities (which make up the bulk of CSP funding) that would encourage states to include a similar priority in their sub-grants to charter schools, nor is there a priority in the federal grants to individual charter school developers in states without state entity grants.
- Require submission of data on charter school demographics and analysis of impact on surrounding schools in both the state entity and CMO grants, and require the U.S. Department of Education to analyze charter schools’ impact on school integration as one of the outcomes of CSP.
- Give priority in the grants to state entities that uphold the right of charter school teachers to bargain collectively, including the option to participate in existing bargaining units or form a separate unit.¹⁵

Conclusion

At a time when American democratic values and public education are threatened, it is important to lift up and strengthen public schools that are serving our democracy well. A number of localities have stepped up to adopt policies to promote school diversity. But significant political and legal impediments stand in the way of achieving integrated schooling. The federal government has abdicated its commitment to civil rights. It is time to make school integration a cornerstone of the next iteration of the Elementary and Secondary Education Act.

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- ⁶⁰ See e.g. Robert Bifulco, Casey D. Cobb, and Courtney Bell, "Can Interdistrict Choice Boost Student Achievement? The Case of Connecticut's Interdistrict 61 Magnet Program," *Education Evaluation and Policy Analysis* 31 (2009): 323–45.
- ⁶¹ Magnet Schools of America, "Fast Facts," https://magnet.edu/files/Magnet.Schools.Fast_Factsv2Web.pdf.
- ⁶² Mel Leonor, "Inside the Spending Deal That Will Fund the Educational Department," *Politico*, September 14, 2018, <https://www.politico.com/newsletters/morning-education/2018/09/14/inside-the-spending-deal-that-will-fund-the-education-department-340453>; National Coalition on School Diversity to The Honorable Tom Cole and The Honorable Rosa DeLauro of the House Appropriations Committee, May 31, 2018, <https://school-diversity.org/wp-content/uploads/2018/05/NCSDF-Letter-on-Anti-Integration-Appropriation-Riders-5-31-18-House.pdf>.
- ⁶³ "Crafting a Policy Agenda for 2019 and Beyond," National Coalition on School Diversity, https://school-diversity.org/wp-content/uploads/2018/07/Policy-Handout_Draft6.pdf.
- ⁶⁴ Richard D. Kahlenberg and Halley Potter, *A Smarter Charter: Finding What Works for Charter Schools and Public Education* (New York: Teachers College Press, 2014).
- ⁶⁵ "Characteristics of Traditional Public Schools and Public Charter Schools," National Center for Education Statistics, April 2018, https://nces.ed.gov/programs/coe/indicator_cl.asp.
- ⁶⁶ Ivan Moreno, "US Charter Schools Put Growing Numbers in Racial Isolation," Associated Press, December 3, 2017, <https://apnews.com/e9c25534df44851a5e56bd57454b4f5>.
- ⁶⁷ "Unionized Charter Schools, 2016–17," National Alliance for Public Charter Schools, 2018, https://www.publiccharter.org/sites/default/files/documents/2018-02/Unionized%20Charter%20Schools%202016-17_0.pdf.
- ⁶⁸ Department of Education, Fiscal Year 2018 Congressional Action, <https://www2.ed.gov/about/overview/budget/budget18/baction.pdf>.
- ⁶⁹ Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, 20 U.S.C. § 4805(b)(5)(A) (2018), <https://legcounsel.house.gov/Comps/Elementary%20And%20Secondary%20Education%20Act%20Of%201965.pdf>.
- ⁷⁰ Some states (Illinois, Maine, New Hampshire, Pennsylvania, and Washington) allow charter school teachers to bargain collectively but bar them from participating in the district union or other existing units. Other states currently ban all teachers from engaging in collective bargaining. See "Automatic Collective Bargaining Exemption" in *Measuring Up to the Model: A Ranking of State Public Charter School Laws*, 2019, National Alliance for Public Charter Schools, January 2019, <https://www.publiccharter.org/our-work/charter-law-database/components/14>.



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**Written Testimony of Advancement Project's National Office
Submitted to the U.S. House of Representatives, Committee on
Education and Workforce, “*Brown v. Board of Education* at 65: A
Promise Unfulfilled.”**

April 30, 2019

Submitted via email – fjmenez@advancementproject.org



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Introduction

Advancement Project is a next-generation, multi-racial civil rights organization that has operated since 1999. With an explicit racial justice framework, Advancement Project seeks to eradicate structural racism in the United States through four primary project areas: Immigrant Justice, Opportunity to Learn, Power & Democracy, and the Justice Project. We use a blended model of legal, communications, and organizing support to uplift community organizations and leaders that are most impacted by the draconian policies that we seek to dismantle. We submit this testimony to document the progression of our work to the House Committee on Education and Labor and to urge Congress to pass laws that will, once and for all, end the school-to-prison pipeline.

Soon after Advancement Project opened its doors, we co-authored a report with the Civil Rights Project at Harvard University entitled *Opportunities Suspended*. In this groundbreaking piece, we identified and named, for one of the first times in U.S. history, the school-to-prison pipeline – policies and practices that push students out of school and on a pathway to prison. The school-to-prison pipeline emerged partly as a result of harsh bipartisan zero tolerance laws that were passed in the latter half of the 20th century. This led to criminalization and classroom removal for age-appropriate behaviors, especially for Black and Latinx children, students with disabilities, and Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) young people. Racial and ethnic disparities in discipline exist, despite research pointing to the fact that Black and Latinx children do not “misbehave” at higher rates than their white peers.¹ In 2019, this problem persists nationally and within schools and school districts across the country.

During our first decade of existence, we worked in partnership with community organizations to advocate for changes in school codes of conduct. We achieved victories on this front in cities like Denver, CO and Buffalo, NY. Alternative and progressive forms of discipline and restorative justice replaced harsh zero-tolerance policies. In a parallel effort, we worked alongside our community partners to develop memoranda of understanding (MOUs) between local police departments and school districts to clearly define the roles and responsibilities of police officers in school settings. Both strategies, paired together, seemingly paved the way toward the more equitable treatment of young Black and Latinx children in America’s schools.

The School-to-Prison Pipeline Continues to Disproportionately Impact Students of Color

Even as Advancement Project secured these victories with our community partners, it became immediately evident that school districts were reluctant to dedicate resources toward the proper implementation of these new codes of conduct. Over the next several years, we noticed a trend – the overall number of suspensions and expulsions may have dropped under these new codes of conduct, but the disproportionate impact on Black and Latinx children either remained or increased. It has been over a decade since our first successful effort to reform a school district’s code of conduct, and Black and Latinx children are still being pushed out and funneled into the criminal legal system at disproportionate rates.

While we achieved some success in securing policy language that more clearly defined the roles and responsibilities of school police officers and developed model language that school districts could adopt, we observed increases in school-based arrests and frequently responded to instances of police officers becoming

¹ See, e.g., <https://www.brookings.edu/research/disproportionality-in-student-discipline-connecting-policy-to-research/>



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involved in routine school discipline matters – leading to the criminalization of Black and Latinx students. Moreover, the terms of these MOUs could translate into multi-year contracts – further complicating efforts to expeditiously diminish the presence of police officers in schools and end the school-to-prison pipeline.

School Policing and Militarization Fuels the School-to-Prison Pipeline

As Advancement Project strengthened its school-to-prison pipeline work, we also noticed a proliferation of school policing across the country. Particularly after the tragedy at Sandy Hook Elementary School in Newtown, CT, we witnessed bipartisan calls for more police officers in schools to neutralize the threat of mass shootings. In response to this, we collaborated with the national Dignity in Schools Campaign, the Alliance for Educational Justice, and the NAACP Legal Defense and Educational Fund to release a white paper, entitled *Police in Schools Are Not the Answer to School Shootings*, which pushed back on the notion that police officers make school environments safer. No definitive research exists to support the proposition that students are safer with more police officers in their schools. On the contrary, police officers assigned to schools that experience active shootings are frequently ineffective in preventing these tragedies.

Throughout 2019, each passing week has demonstrated the need for the explicit call to end school policing. Since January 1, 2019, we have already seen 12 video recordings of school police officers assaulting students of color—half of whom were Black girls. Aside from the flagrant disregard of students' constitutional rights, these experiences undoubtedly have a detrimental psychological impact that will last far beyond their K-12 experience. In schools across the country, the combined effect of school police officers and security equipment, like metal detectors, yields militarized learning zones that regularly criminalized young people for age-appropriate behavior.

As our awareness of the massive problem of school policing grew, our advocacy shifted. While working with the Alliance for Educational Justice to document the regular occurrence of students physically harmed by school police officers, we chose to chronicle the racist origins of school policing, highlight effective and cost-efficient alternatives to school policing, and call for an explicit end to the practice. This all culminated in the release of a report in August 2018, co-authored with the Alliance for Educational Justice, entitled *We Came to Learn*. The report calls for the end of school policing and an investment in mental health support services for young people. It also includes an action kit for young people, parents, and community members to use as they seek to dismantle school policing practices across the country. We are exceptionally proud of this report and its recommendations, particularly given the evolving efforts to dismantle the school-to-prison pipeline over the past 20 years.

Padres & Jovenes Unidos' and Advancement Project Fighting the School-to-prison Pipeline (Denver, CO)

Advancement Project has a long and storied partnership with Padres & Jovenes Unidos (Padres), a community-based, racial justice organization in Denver, CO. In 2008, following a six-year collaborative campaign, Padres won a monumental victory in the fight against the school-to-prison pipeline. This achievement entailed the adoption of a new code of conduct in Denver Public Schools (DPS). The new code of conduct moved away from harsh zero tolerance policies in favor of practices informed by the philosophy of restorative justice. Padres' victory resulted from the tireless work of students, parents, community organizers, and lawyers, and it signified one of the first achievements of its kind in the nation.

Although DPS has seen a consistent reduction in exclusionary discipline since adopting the new code, racial disparities persist. These persistent disparities indicate that a revised code of conduct that lacks proper implementation can only go so far. In the case of Denver Public Schools, Padres often sees the ongoing presence of exclusionary discipline and the selective use of restorative justice – usually to the detriment



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of Black and Latinx children. As such, Padres remains committed in its fight to end the school-to-prison pipeline and is now calling for the removal of police officers from schools across DPS.

Fort Lauderdale/Broward Branch of the NAACP and Advancement Project in Broward County

The nation reeled from the murders of 17 people at Marjory Stoneman Douglas High School in Parkland, FL on February 14, 2018. It particularly resonated with us at Advancement Project because we partner with the Fort Lauderdale/Broward Branch of the NAACP to advocate for system wide supports for students to address behaviors that would typically lead to arrest and entrance into the juvenile legal system. This mass shooting saw a strong level of civic engagement from young people and communities across the country. A report commissioned by the state government found that the presence of law enforcement officers on campus did not prevent the perpetrator from executing the tragedy in Parkland.²

In a troubling intersection of harsh school policing and exclusionary discipline, we witnessed young people from Black and Latinx communities face significant consequences for participating in walk-outs during the March for Our Lives. Particularly in spaces like Chicago, IL, young people faced suspensions and expulsions for their civic engagement and racial justice advocacy. This stood in stark contrast to the response offered to young people, mostly-white, from Marjory Stoneman Douglas and similar high schools.

From Obama to Trump Administrations – Effects Felt Across the Civil Rights Community

A watershed moment in the fight to dismantle the school-to-prison pipeline came in January 2014. The Obama Administration, namely the US Departments of Justice and Education, released guidance calling for the end to racially discriminatory applications of school discipline. This guidance resulted from the incredibly hard work of young people, parents, and communities most directly impacted by the school-to-prison pipeline. The guidance simply clarified existing federal law and emphasized that racial discrimination should not factor into the administration of school discipline.

In a notable shift from the Obama to Trump Administrations – with the latter using the tragedy in Parkland, FL to further its political agenda - the federal government convened the Federal Commission on School Safety in 2018. From the beginning of the Trump Administration, reports circulated that the executive branch was interested in rescinding the 2014 school discipline guidance. The Federal Commission on School Safety created a path to achieving that goal, ignoring years of educational research and hastily assembling field hearings that limited student and parent feedback.

Although the Commission's final report includes some evidence-based recommendations, it called for the rescission of the Obama Administration's guidance and the increased presence of law enforcement officers to fortify school safety. The recommendations of this commission are out of touch with the experiences of education professionals and racial justice advocates. The report calls for the hardening of schools through more law enforcement officers while community members and advocates explicitly demand more counselors, social workers, and school psychologists. Despite the rescission, there are state and local district leaders, school administrators, and educators who publicly support its use and remain committed to discipline reform.³

² <https://www.nytimes.com/2018/12/12/us/parkland-shooting-florida-commission-report.html>

³ Washburn, David. "Educators to Trump School Safety Commission: Don't Repeal Obama Discipline Guidelines." EdSource, 15 July 2018, [edsouce.org/2018/educators-to-trump-school-safety-commission-dont-repeal-obama-discipline-guidelines/600181](http://edsource.org/2018/educators-to-trump-school-safety-commission-dont-repeal-obama-discipline-guidelines/600181).



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Federal Legislation of the 116th Congress Must Restore the Right of Private Right of Action For Disparate Impact Claims Under Title VI

We urge members of Congress to support and stand behind legislation like the *Equity and Inclusion Enforcement Act*. Since 2001, children of color and their parents have dealt with an unjust system what would not allow them to seek a private right of action even in the face of clear discrimination. Advancement Project works with countless partners across the nation that see discriminatory actions, including severe punishment and disciplinary actions that are disparate in nature. We call on Congress to remedy this situation by supporting the EIEA.

Full Implementation of Civil Rights Laws to Protect Students Against Discrimination in School

The Educational Opportunities Section of the US Department of Justice's (DOJ) Civil Rights Division can address complaints of discrimination against students based on race, color, national origin, sex, and religion in public schools.⁴ When wielded correctly, this provision of federal law can be an incredibly effective check on policies and procedures of local school districts that disproportionately and detrimentally impact Black children. Unsurprisingly, since the Trump Administration took power, the DOJ has abdicated its duty to enforce this federal civil rights law.

The Civil Rights Act of 1964 prohibits racial discrimination in the administration of federal funds, and it has been a critical tool for civil rights advocates as we work to secure racial justice. Since the Supreme Court has limited the right of action in cases like *Alexander v. Sandvol*, the federal government is the primary enforcer of this imperative civil rights statute. Specifically, in the past, we have looked to the Office for Civil Rights within the US Department of Education to provide relief to Black and Latinx children across the country through the proper enforcement of this statute.

In the spring of 2014, Advancement Project filed a series of Title VI complaints with the Journey for Justice Alliance in Newark, NJ, Chicago, IL, and New Orleans, LA. The complaint in Newark resulted in a voluntary resolution agreement between Newark Public Schools and the US Department of Education's Office for Civil Rights. The complaints in New Orleans and Chicago are still pending resolution. Even with the semi-favorable resolution of the Newark complaint, we quickly recognized that Title VI complaints filed by community advocates often take years to resolve. Title VI complaints can be a helpful form of advocacy, but they are insufficient to tackle the rampant racial inequities of the school-to-prison pipeline by themselves.

This is particularly true given that the Trump Administration has demonstrated pointed hostility toward claims of discrimination – ranging from those rooted in racial discrimination, to those rooted in sex discrimination and discrimination based on disability status. Many of our sister organizations and grassroots partners have seen old and new Title VI complaints swiftly disposed of by this administration in a wholly unfavorable manner. We call on Congress to demand the full enforcement of Title VI to protect students against discrimination in school and help end the school-to-prison pipeline.

Stop Funding for School Policing and Start Funding Alternatives and Student Supports

The at Marjory Stoneman Douglas High School in Parkland, FL has been used as an excuse to funnel millions of dollars to school districts for increased police presence and student surveillance – ultimately placing Black and Latinx students at greater risk of criminalization and physical harm. Although students of color do not “misbehave” more than white students, they are disproportionately arrested while attending school, leading to a myriad of collateral consequences that negatively affect their academic, social and

⁴ <https://www.justice.gov/crt/educational-opportunities-section>



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economic future. Black and Brown youth are more likely to be arrested by school police and are disproportionately represented within the juvenile justice system. During the 2015-2016 school year, Black students made up 15% of the school population but 31% of the students arrested or referred to law enforcement.

We call on Congress to enact a moratorium on federal funding for initiatives that increase policing, surveillance and criminalization in schools. This includes declining to renew education-related grants under the US Department of Justice's Community-Oriented Policing Services (COPS) program. Rather than invest in hardening schools, we call on Congress to increase federal funding for alternatives to criminalization that improve school climate, such as implementing restorative practices and hiring professionals trained to support students' social and emotional needs (e.g., social workers; mental health professionals; school counselors; and school climate managers).

Conclusion

Advancement Project remains staunchly committed to eradicating the school-to-prison pipeline, abolishing school policing, and holding the Trump Administration accountable. We urge the House Committee on Education and Labor to continually push for transparency from the executive branch, as well as advance bills that will affirmatively further the ability of Black and Latinx children to reach their full potential in schools across the country – without the detrimental barrier of the school-to-prison pipeline.

**Written Testimony of
 Ronn Nozoe
 Interim CEO & Executive Director
 ASCD
 Submitted to the
 Committee on Education and Labor
 April 30, 2019**

Chairman Scott, Ranking Member Foxx, and Honorable Members of the Committee. My name is Ronn Nozoe, Interim Executive Director and CEO of ASCD. I want to thank you for the opportunity to provide this testimony about the progress and unfulfilled promise of the *Brown v. Board of Education* decision on its 65th anniversary.

ASCD is a membership organization that develops programs, products, and services essential to educators who wish to learn, teach, and lead. ASCD empowers educators to achieve excellence in learning, teaching, and leading so that every child is healthy, safe, engaged, supported, and challenged. Comprising 113,000 members—superintendents, principals, teachers, and advocates from more than 129 countries—the ASCD community also includes 71 affiliate organizations.

Sixty-five years ago, the U.S. Supreme Court issued one of the landmark legal rulings in our nation's history and certainly among the most influential decisions in American education. Our association was founded in 1943, more than a decade before the *Brown v. Board* decision. From the start, ASCD welcomed any educator regardless of race, ethnicity, religion, or national background. The organization was also a vocal proponent for civil rights during this crucial time between the mid-1940s and the late 1950s.

Then, as now, ASCD viewed educational equity as a core principle of democracy. Public policies, according to a standing position we adopted in 1959, should entitle all children to "safe, healthy, and comfortable school facilities; well-qualified teachers and other staff members; high-quality curriculum and learning materials; and adequate supplies and equipment."

Despite the tectonic shift in legal support provided by *Brown v. Board*, change on the ground was slow to arrive. More than two decades, additional court rulings, and innumerable political and social changes would occur before America's public schools were fully integrated. ASCD committed to the movement, passing an organizational resolution in 1955 that called for all public schools to be "open and free to children of all people . . . to develop to their fullest potential." Starting in 1959, the association passed the first of several resolutions to "recognize, value, and encourage equity and cultural diversity as major goals of education."

Slow as progress has been, impressive educational gains have been made. Prior to *Brown*, only one in seven African Americans graduated high school, compared to one in three white Americans. According to the U.S. Census Bureau, by 2014, 85 percent of African Americans and 89 percent of white Americans received high school diplomas. The rate of African Americans graduating college also improved. Before *Brown*, only one in 40 African Americans earned a college degree. Now, more than one in five do.

As educators, we celebrate this moment in American history and what the *Brown* decision, as well as the desegregation and integration efforts of the 1960s and 1970s, represented to generations of students and teachers. Nevertheless, we also recognize how many of its promises have gone unfulfilled. We recognize that, 65 years after *Brown vs. Board*, our schools are still separate in many ways. We recognize that our schools are still unequal and do not serve many of our most vulnerable students as best they can and should.

I saw this personally as a young language arts teacher in Hawaii and, later in my career, as deputy superintendent of Hawaii's department of education. Our native Hawaiian students faced systemic hurdles and lagged behind their nonnative classmates on academic and well-being metrics.

The greatest lesson I learned was to drop my preconceived notions and solutions and listen. We need to listen closely so we can truly understand the perspectives of the students we serve.

So, where do we go from here, both as educators and as a nation, to build a better future and avoid the mistakes of the past? We should listen closely to our students, families, teachers, and local communities, who will tell us about our education system's successes and failures and how we can make our education system work for every student.

We must acknowledge the deep-rooted and systemic issues that led us here. We must reexamine the promise and potential of *Brown v. Board*. In recognition of this 65th anniversary of the Supreme Court ruling, ASCD published a special edition of our flagship magazine, *Educational Leadership*, that provided extraordinary coverage and insight into this most profound of educational issues. The issue, "Separate and Still Unequal: Race in America's Schools," includes commentary by acclaimed national experts like Pedro Noguera, Gary Orfield, and Paul Gorski. As Pedro Noguera wrote in the issue, "it's time to regenerate our commitment to the promise of the *Brown* decision and remind all who doubt its importance why it still matters." I would like to submit this report to the committee to be entered into the hearing record.

To supplement and enliven this distinct written report, we hosted a special event last week inviting experts from around the country to Washington, D.C., to examine the factors contributing to segregation in schools and possible solutions. The conversation was led by panelists Greg Hutchings, superintendent of Alexandria City Public Schools; Dawn Williams, dean of Howard University's school of education; Becky Pringle, vice president of the National Education Association; and Deborah Menkart, executive director of Teaching for Change. Anthony Rebora, editor-in-chief of *Educational Leadership*, moderated the panel. I want to share with the committee six takeaways from this important conversation:

1. We must know the real story.

Hutchings noted that knowing our history is crucial to finding solutions. "The simple fact is that when you don't study your history, you will repeat your history."

Many of us, however, learned a simplified version of *Brown v. Board* and segregation in America's school system—one that erases the role of black educators in fighting for integration and minimizes the difficulty black students faced in the decades after *Brown v. Board*. This abridged narrative reduced the complex struggle for desegregation and integration to the basic account that black children in the south were denied an education until a Supreme Court comprised of white men saved them.

"The legacy of that is we don't see those adults in the solution to the problem," Menkart pointed out. We don't see how we got to *Brown v. Board* and the adults that were accompanying children on that journey, and we then sent those children into school without the very allies who had fought for them, believed in them."

Not understanding the true story of *Brown v. Board* and the integration efforts that followed the decision has led to mistakes.

2. We must be continuously learning.

If we don't talk about modern-day segregation and how it affects students, we won't find solutions. Educators and policymakers must learn from these honest and difficult conversations, and then act to solve our education system's deep-rooted issues.

"It is so fundamental, especially for us as educators, because if we don't learn, if we are not in a state of continuous learning, we will do what we've always done," Pringle said.

Hutchings encourages teachers in Alexandria's school system to learn from the local story of segregation, including the history of the integration of the city's high schools into the then brand new T.C. Williams in 1971. "Remember the Titans--there's a whole lot more to that story than Denzel Washington," Hutchings said, referring to the 2000 film that recounted the story of the 1971 T.C. Williams football team.

3. We must check our biases at the door.

Bias affects education on every level, from funding to teaching. According to a 2019 report from nonprofit EdBuild, nonwhite school districts receive \$23 billion less than white districts, despite serving the same number of students.

"We have the dollars, we have the money. We're just not using it wisely and not making an intentional effort," Hutchings noted.

Similar bias also manifests in the classroom: "It prevents us from allowing kids to be all they can possibly be," Hutchings said. "Who can tell what level a kid can reach by looking at them?"

4. We must retain and recruit diverse teachers.

As the dean of prestigious HBCU Howard University's College of Education, Williams is preparing the next generation of teachers to lead America's school system. Many of Howard's students have jobs lined up well ahead of graduation.

Williams reported Howard's relationships with schools across the nation have created a pipeline for African American teachers to enter the job force. Employers know that Howard's graduates are credentialed and well prepared.

But recruitment is only one side of the issue. Retaining teachers of color is a larger hurdle, especially as black and brown teachers face an unequal and racist system that impedes their ability to progress. Pringle disclosed that the NEA's surveys with former teachers found that many of them left the profession because of inadequate pay and lack of advancement.

There are few black superintendents and even fewer black women superintendents. Hutchings recalled being the only black superintendent among more than 600 superintendents in Ohio. Nationally, the percentage of black superintendents remains in the low single digits.

"I think [our school system] has come to this point because we haven't been able to have a seat at the table and it is still so difficult for African American superintendents to have a seat at the table," Hutchings said.

5. We must affirm all cultures.

There's a big difference between being culturally relevant and culturally *affirming* as we teach students, Williams noted.

Teaching in a culturally affirming way means teaching students from various backgrounds their history. For black students, this includes the rich history of black leaders, black educators, and black scholars, and about the heroes in their own community, including their family members.

"It's one thing to be relevant, but to affirm students is a more progressive standpoint," Williams said. "It must be from a nondeficit perspective, making sure you're bringing up the assets of that child and that child's family."

"When you start learning real history, it helps you make sense of the world you're living in today," Menkart said.

6. Finally, we must act.

Discussion, while valuable, isn't enough. It takes a community to effect change and it takes time. Williams argued that educators must build coalitions and speak up to people in power, particularly our elected representatives.

"It's going to take being in their face often and early," Williams cautioned. "We have to keep this fight going and make sure it's not just you, but pulling from allies that are bringing together this progression."

White educators and education advocates must be allies in this fight. "The role of white allies in this work cannot be underestimated. They need to step up, they need to check their fragility, they need to push, they need to speak up in places where we are not," Pringle said.

In conclusion, I want to thank you for conducting this hearing on such an important issue at this moment in time. While advances have been made in the past 65 years, there is still much work ahead in order to realize true equality in our schools in terms of race, resources, and achievement. Educators can and must lead this multifaceted approach to addressing these persistent inequities.

ASCD is committed to helping address these intractable challenges and stands ready to support our members, the profession, families, communities, and policymakers willing to be positive agents of change. We stand together so that each child, in each school, in each district throughout the country, is safe, healthy, engaged, supported, and challenged and graduates high school college, career, and citizenship ready.

Thank you.



\$23 BILLION

"Clearly, we are failing to solve this problem. It is the problem of bringing this important and increasingly isolated class into the life of America..."

There is progress, and there are some successes in education, but the central truth is that the poor remain plunged in poverty and severe educational deprivation..."

Our large black and hispanic population is more concentrated in poor urban areas and will remain isolated from the rest of society unless this educational deficiency in poorer urban districts is addressed."

-- Abbott v Burke, 119 N.J. 287 (June 1990)

In 1971, the California Supreme Court ruled that the state's education funding system—which relied largely on property wealth—was violating the rights of low-income students to access a quality education. It demanded that the legislature create a new funding formula that would make up for the extreme differences in income and wealth across school district borders.

In 1990, the New Jersey Supreme Court held that the state's mechanism for funding schools was creating chasms that would disadvantage poor urban children for the rest of their lives if not immediately addressed.

In 2003, the New York Legislature was ordered by the courts to devise a new funding system that would guarantee the prospect of an adequate education for all children, most specifically the poor urban children of New York City—the country's largest school system.

These three lawsuits, *Serrano v Priest*, *Abbott v Burke*, and *Campaign for Fiscal Equity v the State of New York*, are all seen as landmark decisions in school finance equity. Though these cases were argued on the basis of wealth, all three drew inherent links between class and race inequities in the United States—in the hope that solving the former may solve the latter.

By and large, in these and other cases across the country, the courts did not make a distinction between *local taxes* and *local governance* of schools. In so doing, these decisions further entrenched the idea that spending on school districts is an entitlement of local governance. They linked the ability to self-fund schools with the ability to self-govern, two separate concepts that have become entwined under the concept of "local control".

But while self-governance relies solely on the existence of people within a given area, "local control" of funding works far better for some communities than it does for others. Wealthy communities can use existing laws and political power to draw borders around themselves, keeping deep pockets of money in while leaving less-privileged children out. As a result, school districts in high-poverty areas have fewer resources to pay for education and are forced to rely on the state to make up the difference. Hypothetically this arrangement could balance out, but states have *largely failed* to keep up with the growing wealth disparities across their communities, a trend that is almost inevitable given our current system, and further intensified by the issue of race.

The inherent links between race and class in our country haven't been remedied by school-funding lawsuits nor the passage of time. They remain ever present, and while we have made some progress on the issue of economic inequality in our schools, we still have a terribly inequitable system. For students of color, the problem is even worse. The concentration of low-wealth communities described above is even more pronounced due to the history of racial segregation in our country, both formal and informal. The ability of local districts to raise revenue for their schools is thus undermined. And political power in the state capitol is



diffused and diminished, because there are six times more white districts representing their interests in state capitols than nonwhite districts. The result being fewer local resources and less state aid to compensate for it.

And so, fifty years after *Serrano*, and despite decades of lawsuits throughout the country, there remains a \$23 billion gap between white and nonwhite school districts, even though they serve the same number of children. Among the worst offenders are California, New York and New Jersey—the three states made famous by aggressive school funding lawsuits.

Nonwhite vs. White
California -\$2,390 • New Jersey -\$3,446 • New York -\$2,222
Poor Nonwhite vs. Poor White
California -\$3,974 • New Jersey -\$7,347 • New York -\$4,094

The remedy in these cases (state-dependent funding) placed a feather over a fissure and was somehow expected to bridge the yawning gaps of opportunity that our school district borders exacerbate.

"Disparate impact" is the adverse effect of a practice or policy that is neutral and non-discriminatory in its intention but, nonetheless, disproportionately affects individuals belonging to a particular race or ethnicity. There are two questions that we must ask when endeavoring to fix a societal problem that systemically disadvantages a certain race or class of people: what created that system, and what keeps it going? Failure to honestly examine both often leads to a series of fixes that may treat the branches, but ultimately miss the root.

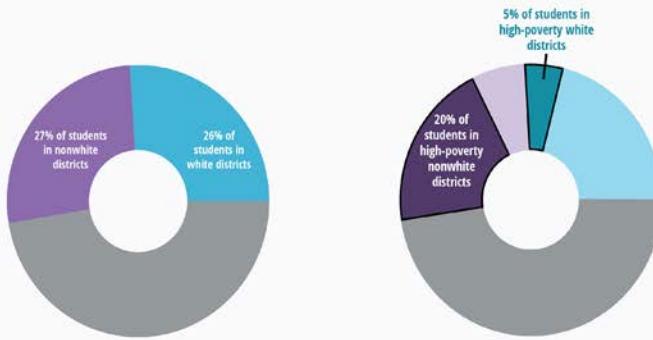
The Root of "Local Control" That Grew the System

The history of our education system is grounded in the idea of localism. At its earliest stages, nearby adults taught students in small communities. The neighborhood built their schoolhouses themselves. They jointly hired teachers and came together to make decisions about what their children would learn. As a result, the concept of "local control" has a stronghold in policy—officials from the community govern neighborhood schools and are held accountable to the public through election. A tradition that also includes funding schools through local property taxes.

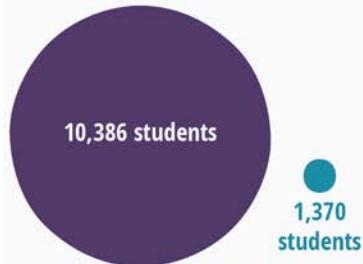
This is largely the same organization that is in place today. Local funding of schools has been inextricably tied, in the public's mind, to the privilege that communities receive to run and fund neighborhood-based schools. But the financial reality is that a geographically arranged set of school districts creates uneven distribution of wealth, and the inherent interest of keeping the control of schools close to the community creates an inequitable tax base from which schools can be funded.

Geographically divided school districts also exacerbate the place-based racial divide that we have created and maintained in America. There are a similar number of students attending racially concentrated school districts as there are in more diverse systems. Of those students in racially concentrated systems, about half attend school in a district that is more than 75% nonwhite ("nonwhite districts"), and half are enrolled in districts that are more than 75% white ("white districts").

Our racial divide becomes even more concerning when you narrow the comparison to just racially concentrated high-poverty districts. Of all the students in the U.S., 20% are enrolled in high-poverty nonwhite districts, but only 5% live in white districts with similar financial challenges. This alone creates a significant and obvious inequity in the taxing ability of nonwhite districts compared to predominantly white school systems. Because our solution to funding inequities is to depend on states to fix the problem, the wealth divide makes school districts in nonwhite areas far more reliant on the state to establish adequate funding than those that serve a mostly white student population.



Even still, this system might work if there was a balance of power across school districts. If all things were equal, students would be represented by a roughly equivalent number of adults and elected school board members. Unsurprisingly, this is not the case. There are over 13,000 traditional public school systems in the United States, serving an average of 3,500 students. However, the average high-poverty nonwhite district serves almost 10,500 students—a student body that is three times larger than the national average. Primarily white districts, on the other hand, enroll only 1,500 students on average—and high-poverty white districts are even smaller.



If we imagine that school districts are a congress, designed to hold the state accountable for the fair treatment of all students, then where the borders are drawn to influence the size and makeup of each jurisdiction is incredibly important. In the U.S., there are more than six times as many predominantly white districts as those that serve primarily nonwhite populations. The power of advocacy, then, is amplified or muted by the sheer size of districts at each end of the size spectrum. When there are six times more members of a special interest, that special interest is likely to be more effective in the state capitol.

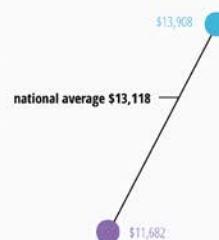
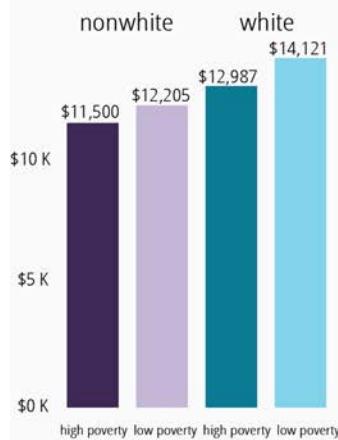
Taken together, our nonwhite school systems are more dependent on the state to give their students a fair chance at an equal education, but their voices have been limited by the geography of our system. This scheme of school district organization—where locally run schools remain needlessly tied to local control of taxes—is working for wealthy white communities that have the independent ability to raise more money, and have a stronger voice in the decisions we make related to funding policies. This same scheme is fundamentally failing our districts serving a concentrated high-poverty, nonwhite population of children.

The Funding Chasms Between the Branches

Nationally, predominantly white school districts get \$23 billion more than their nonwhite peers, despite serving a similar number of children. White school districts average revenue receipts of almost \$14,000 per student, but nonwhite districts receive only \$11,682. That's a divide of over \$2,200, on average, per student.

(See Appendix 1 for a detailed list of all states and their white/nonwhite funding gaps.)

Only thirty-five states in the country have enough racial diversity to analyze their funding in a meaningful way. Of those, over half have a system that works against nonwhite districts. Making matters worse, of the 12 million students living in concentrated nonwhite school districts, over 10 million are enrolled in states where their districts are funded at lower levels than their white counterparts.



Because our system of funding schools is a complicated patchwork of policies, created to both uphold and mitigate the runaway nature of “local control,” these gaps cannot be explained in generalities. For instance:

- [almost all states](#) rely on property taxes as a driver of school funding,
- but fifteen also include locally raised sales taxes,
- six permit locally governed income taxes,
- many have state lotteries, and
- just over half of all states employ a solely student-based formula—while the rest fund schools based on some other system.

Because our school district borders determine who gets to keep this money, how the boundaries are drawn has a significant impact. Maryland, for instance, sorts 880,000 students into just twenty-four districts, whereas New Jersey divides 1.3 million students into 540 districts.

But the fact remains that, on the whole, a student living within the geographic boundaries of a primarily white school district in the United States has a resource advantage over those enrolled in a heavily nonwhite system, regardless of geographic location or wealth.

Courts, over time, have had the opportunity to consider the impact of a locally controlled funding system on students of color, and time and again they have upheld the link between local governance and local taxes—expecting that by focusing on the wealth gap, supplemental funding from the state would eliminate the inequities created. But it has been consistently demonstrated that state funding alone doesn't fix the problem for low-income communities. In fact, it may even exacerbate a racial divide between these struggling communities, due to imbalances in political power and tax bases.

Although our patchwork of complicated funding policies are supposed to level the playing field for all low-income students, they leave high-poverty nonwhite communities even further behind their high-poverty white peers.

At the national level, there is a \$1,500 per student gap between white districts, who receive \$12,987 per student, and equally disadvantaged nonwhite districts with just \$11,500 per student. When we look at how this plays out on a state-by-state basis, 7 million kids are enrolled in high-poverty nonwhite districts in states that provide less funding, on average, to those systems than their high-poverty white counterparts. That is 78% of the students in racially concentrated, high-poverty districts across the states in our analysis.

(See Appendix 2 for a detailed list of all states and their high-poverty white/nonwhite funding gaps.)

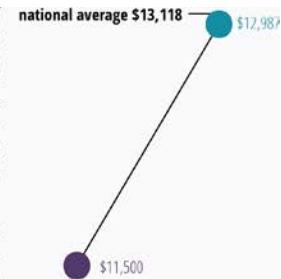
Neither the courts nor legislatures have fixed the fundamental school-funding problem for low-income students. But they're even further from a fix for students in concentrated nonwhite districts, regardless of wealth. The economic differences between our communities mean that the very base of our school funding system will always be inequitable, and the imbalance of both economic and political capital across races means that inequitable funding will bias even further against heavily nonwhite student populations.

Conclusion

When people settle somewhere, intending to invest in their home and community, they say that they're "putting down roots". They get to know their neighbors. They pay taxes. They shop in their community and take part in local elections. And through all of these activities, school districts are grown and maintained.

The idea that education is rooted in local control, therefore, isn't a surprise. Local residents understandably want a say in the education of their children, and they likewise hold tight and defend the ability to make local decisions. But, protecting the ability to locally manage schools does not require funding education in a way that reinforces harmful vestiges of our past.

Our economically and racially divided school districts have grown up out of the root of local funding. But for decades we've been solving for the inequities at the end of its branches. The co-mingling of the way districts are governed with the way that they are funded has led to an endlessly unfair system that is stacked against our most vulnerable children. We now have a system where wealth is preserved for the lucky—disproportionately fractured and locked away in racially concentrated white school districts. This is unlikely to change unless we finally commit to challenging the funding aspect of local control.



Appendix A: Difference in Funding Between White and Nonwhite Districts		
Nonwhite districts receive less than white districts in 21 states		
State	Difference in funding	Students in poor nonwhite districts
Arizona	-\$7,613	291,158
Nebraska	-\$3,961	9,116
Oklahoma	-\$3,618	57,863
New Jersey	-\$3,446	432,377
Connecticut	-\$2,931	107,790
Montana	-\$2,711	6,273
Washington	-\$2,590	93,872
Rhode Island	-\$2,450	26,524
California	-\$2,390	3,860,192
National	-\$2,226	-
New York	-\$2,222	1,249,988
Colorado	-\$2,218	154,058
Massachusetts	-\$1,644	140,698
South Dakota	-\$1,580	2,950
Wisconsin	-\$1,473	75,749
Kansas	-\$1,462	42,140
Texas	-\$830	2,441,928
Florida	-\$423	702,388
Missouri	-\$238	103,411
Michigan	-\$181	126,309
Indiana	-\$43	75,432
Tennessee	-\$39	125,934
Total		10,126,150
Nonwhite districts receive more than white districts in 14 states		
Alabama	\$146	97,853
Virginia	\$255	119,782
Ohio	\$394	179,101
Illinois	\$490	612,436
Maryland	\$501	212,602
North Carolina	\$634	82,393
Georgia	\$695	360,605
Mississippi	\$1,074	127,119
Minnesota	\$1,077	45,837
Arkansas	\$1,498	54,550
Louisiana	\$1,774	78,043
Pennsylvania	\$1,923	215,251
South Carolina	\$2,128	56,868
Alaska	\$3,077	17,929
Total		2,260,369

*Nonwhite districts are those that educate more than 75% nonwhite students. White districts are those that educate more than 75% white students.



Appendix B: Difference in Funding Between Poor White and Poor Nonwhite Districts		
Poor nonwhite districts receive less than poor white districts in 17 states		
State	Difference in funding	Students in poor nonwhite districts
Arizona	-\$10,964	290,100
Washington	-\$8,222	53,010
New Jersey	-\$7,347	309,165
New York	-\$4,094	1,116,339
California	-\$3,974	2,317,047
Montana	-\$3,565	5,689
South Dakota	-\$2,781	2,851
Colorado	-\$2,770	102,305
Wisconsin	-\$2,638	75,749
Oklahoma	-\$2,496	54,207
Kansas	-\$1,998	22,052
National	-\$1,487	-
Minnesota	-\$509	45,837
Florida	-\$435	433,290
Rhode Island	-\$418	26,524
Texas	-\$296	1,938,173
Missouri	-\$134	71,324
Michigan	-\$25	119,636
Total		6,983,298
Poor nonwhite districts receive more than poor white districts in 12 states		
Tennessee	\$156	115,612
Alabama	\$240	97,853
Ohio	\$244	175,570
Indiana	\$371	75,432
North Carolina	\$469	82,393
Georgia	\$513	360,605
Virginia	\$898	108,734
Mississippi	\$1,052	120,647
Arkansas	\$1,271	54,550
Illinois	\$1,626	552,916
Pennsylvania	\$2,198	208,155
South Carolina	\$2,555	56,868
Total		2,009,335

* Poor nonwhite districts are those with more than 20% student poverty rate which educate more than 75% nonwhite students. Poor white districts are those with more than 20% student poverty rate which educate more than 75% white students.



METHODOLOGY

Purpose

The purpose of this data product is to examine school district revenues based on racial and socioeconomic characteristics at the national and state level.

Data Sources

- School district revenues from state and local sources: revenues from state and local sources for the 2015-16 school year come from the Census, [Annual Survey of School System Finances \(F33\)](#).
- School district enrollment and percent nonwhite: school district enrollment characteristics from the 2015-16 school year come from the US Department of Education, [National Center for Education Statistics, Common Core of Data \(CCD\)](#).
- District-level, school-age poverty rates: school district-level data on poverty rates among relevant school-age children in 2016 come from the Census, [Small Area Income and Poverty Estimates \(SAIPE\)](#).
- School district median owner-occupied property value and median household income for the 2015-16 school year come from the US Department of Education, National Center for Education Statistics, [Education Demographic and Geographic Estimates \(EDGE\)](#).
- Cost of living index: county-level cost-of-living index for 2016 comes from the [Council for Community and Economic Research \(C2ER\)](#).
- Native American reservations: American Indian Areas/Alaska Native Areas/Hawaiian Home Lands Boundary File from the [Census Bureau's MAF/TIGER geographic database](#).

Methods

Figures in the report and website come from the data sources described above. Further details about these figures are presented below.

Percent nonwhite calculations. The proportion of students enrolled in a district that are nonwhite was calculated by dividing the number of nonwhite students by the total enrollment within a given school district.

Revenue calculations. All of the revenue figures presented are cost-adjusted to convert per-pupil revenues into figures that account for variation in the purchasing power of a dollar across different regions. We applied a cost-adjusting conversion by applying 2016 county-level cost of living index (COLI) values from C2ER to each district's revenues (each district's county was identified using National Center for Education Statistics, CCD data).

Per-pupil state and local revenues were calculated by dividing state and local revenues (adjusted to exclude the monies described below) by fall enrollment counts as reported in the F33 survey. Per-pupil state and local revenues for school districts are from the 2015-16 school year. We exclude federal dollars from all analysis because they are largely intended to supplement state and local dollars.

Prior to computing per-pupil revenue amounts, the following subtractions were made from total state and local revenues for each school district:

1. Because it can contribute to large fluctuations in district revenues from year to year, we exclude revenue for capital from the calculation of state revenues.



1. Similarly, we exclude money generated from the sale of property from local revenues, because it too can contribute to large fluctuations in revenues.
2. In just under 2,000 districts, revenues received by local school districts include monies that are passed through to charter schools that are not a part of the local school district but are instead operated by charter local education agencies (charter LEAs). This artificially inflates the revenues in these local school districts because they include money for students educated outside of the district who are not counted in enrollment totals. To address this, we subtract from state and local revenues a proportional share (based on the percent of each districts' revenues that come from local, state and federal sources) of the total amount of money sent to outside charter LEAs—an expenditure category included in the F33 survey.

School district exclusions. Our analysis includes all school districts in the country that meet our standard requirements for a finance-based analysis:

- Excludes districts that are of types 5 (vocational or special education), 6 (nonoperating) or 7 (educational service agency) in the F33 data
- If F33 school type is missing, excludes districts that are of types 4 (regional education service agency), 5 (state agency), 6 (federal agency), 7 (charter agency) or 8 (other education agency) based on Common Core of Data
- Excludes districts with missing or zero total enrollments
- Excludes districts that have missing or zero operational schools
- Excludes districts that have missing revenues
- Excludes districts that have very low revenues (<\$500)
- Excludes districts that have very high revenues (>\$100,000 in inflation-adjusted 2016 dollars)
- Excludes districts from the US territories

We additionally exclude school districts that intersect with Native American Reservations because federal dollars are a much larger proportion of revenue for Bureau of Indian Affairs (BIA) schools and the federal dollars are not always intended to supplement funds from BIA.

Analysis

Each school district was categorized by 1) the proportion of nonwhite students enrolled in the district and 2) the poverty rate for student-age children estimated to live within the district. Using these rates, we created six categories for analysis:

- Racially concentrated nonwhite school districts
Proportion of students that are nonwhite > 75%
- Racially concentrated white school districts
Proportion of students that are white > 75%
- Racially concentrated nonwhite, low-poverty school districts
Proportion of students that are nonwhite > 75%
Student poverty rate ≤ 20%
- Racially concentrated nonwhite, high-poverty school districts
Proportion of students that are nonwhite > 75%
Student poverty rate > 20%

Racially concentrated white, low-poverty school districts
 Proportion of students that are white > 75%
 Student poverty rate ≤ 20%

Racially concentrated white, high-poverty school districts
 Proportion of students that are white > 75%
 Student poverty rate > 20%

National analysis. In the national analysis, we summarized cost-adjusted state and local revenue within each of the six categories listed above. We then conducted the following analyses:

1. Compare the average, cost-adjusted total revenue between:
 - a. Racially concentrated nonwhite school districts
 - b. Racially concentrated white school districts
2. Compare the average, cost-adjusted total revenue between:
 - a. Racially concentrated nonwhite, high-poverty school districts
 - b. Racially concentrated white, low-poverty school districts
3. Compare the average, cost-adjusted total revenue between
 - a. Racially concentrated nonwhite, high-poverty school districts
 - b. Racially concentrated white, high-poverty school districts

State analysis. Not every state has a school district in each of the six categories. We performed these analyses at the state level for each state that meets the following requirements:

To be included in the state-level analysis, a state must have at least five school districts in each category for analysis OR at least 2% of its total enrollment in each category for analysis. For example, racially isolated white, high-poverty districts in Massachusetts include only three districts and less than 1% of the state's enrollment. Massachusetts, therefore, is not included in the analysis which compares racially concentrated white, high-poverty school districts to racially concentrated nonwhite, high-poverty school districts.

Other variables included in analysis

Enrollment variables:

- Districts—Number of districts in the category
- Students—number of students enrolled in the districts included in the category
- Percent districts:
 - National—proportion of all school districts in the country that are included in the category
 - State—proportion of all school districts in the state that are included in the category
- Average enrollment: average number of students enrolled in the districts included in the category
- Percent enrollment:
 - National—proportion of all students in the country that are enrolled in the districts included in the category
 - State—proportion of all students in the state that are enrolled in the districts included in the category
- Average poverty rate—average poverty rate of the districts included in the category

Revenue variables:

- State and local revenue, per pupil, col1—average total revenue, per pupil for the districts included in the category, cost-adjusted



- Local revenue, per pupil, col—average local revenue, per pupil for the districts included in the category, cost adjusted
- State revenue, per pupil, col—average state revenue, per pupil for the districts included in the category, cost adjusted
- State and local revenue, col—sum of total revenue for all districts included in the category, cost adjusted
- Local revenue, col—sum of local revenue for all districts included in the category, cost adjusted
- State revenue, col—sum of state revenue for all districts included in the category, cost adjusted
- Average MHI—average median household income for the districts included in the category
- Average MPV—average median property value for the districts included in the category

Note of Unit of Analysis

In this report, we compare the *average revenue of school districts* that have high concentrations of white and nonwhite students. This contrasts with *average revenue of students* living in those areas (i.e., the analysis is not weighted for district size, all districts are treated as equal). The chosen unit of analysis is the school district in order to approach the question of how geography and school district borders affect school resources. Since every state provides funding through school districts, which act as independent administrative units, the pattern of resource distribution among those units is important. This distribution indicates whether a state funding formula is working. Providing additional weight to larger districts may under or overstate systemic bias in the provision of funding to smaller districts, and is not in line with what we are attempting to discern. While we've been consistent with this focus and methodology across publications it is especially relevant to this report because of the historic and widespread housing segregation experienced by certain communities of color. If school-district boundaries are specifically acting as partitions of wealth and resources, we are interested in identifying that mechanism of systemic inequity.

FRACTURED: THE ACCELERATING BREAKDOWN
OF AMERICA'S SCHOOL DISTRICTS



2019 UPDATE

School district borders are among the most critical lines in our society. They determine the racial composition of our classrooms; the resources teachers have to guide our children; and how well prepared our young adults are for a life after graduation. There are over 13,000 school districts in America, of all shapes and sizes, often drawn in an arbitrary manner that does not align with any other boundary.

One reason for this is the way we fund our public schools. Nearly half of all education funding comes from local sources, primarily property taxes drawn from within school district borders. Communities with higher-value properties and wealthier residents have more local resources available for their schools than their less-fortunate neighbors. A change in any given border, therefore, affects the pools of money available to schools on either side of the line, exacerbating the disparities in wealth and opportunity that are only growing in America. In some states, the boundaries outlining a school district are rigidly defined by the constitution. In others, a neighborhood referendum is all that's required to redraw the lines. Since most states still rely heavily on local taxes to run schools, one might assume that state laws would make it difficult for a wealthy community to wall itself off and withhold resources. But that often isn't the case.

The majority of the districts left behind have a higher number of nonwhite students and students living in poverty than their secession districts.

In 2017, EdBuild released *Fractured: The Breakdown of America's School Districts* to shine a light on the issue of school district secessions and the state laws that allow (or even encourage) them. There have been at least 128 secession attempts in the United States since 2000; 73 have been successful. And thirty states have a process established in law to allow for these secessions.

Now we can confirm that this wave of secessions is accelerating. While sixty-three communities were successful in creating their own school districts in the seventeen-year span between 2000 and 2016, ten have done so in just the two years since (see Appendix 1). The majority of the districts left behind have a higher number of nonwhite students and students living in poverty than their secession districts. They also have lower property values and lower household incomes than their breakaway neighbors.

In addition, there are proposals for another seventeen breakaway districts making their way through legal requirements that are growing more permissive each year. These proposed secessions are scattered across the country – from Louisiana to Indiana, New Jersey to California. The secessions-in-progress follow the same demographic trends as those that have already seceded: compared to the districts they would leave behind, they have higher property values, higher incomes, and a lower numbers of nonwhite students and those living below the poverty line.

There are proposals for another seventeen breakaway districts making their way through legal requirements that are growing more permissive each year.

In addition, since 2017, at least two states have taken steps to ease the process of local self-segregation: Indiana, through reinterpretation of existing law, and North Carolina, through the passage of new, controversial legislation.

Indiana

Until recently, Indiana state law technically allowed for school-district secessions, but in practice, the procedure was so cumbersome and vague as to be next to impossible. To begin the process, a county committee had to be established to explore the issue of district reorganization and ultimately make a recommendation on how to proceed. That committee was to be formed by a judge, through a mechanism undefined in statute. After the committee finalized its work and was dissolved, the local governing body or state superintendent could submit a plan to the state board for consideration.

In response to a district secession request, the Indiana State Board of Education released a memo in December 2018 clarifying that—per the state's interpretation—it was not necessary to create a county committee before submitting a request to the State Board. A school board or town may now begin the effort by going directly to the state, removing a major hurdle in the process. The State Board must still support the request, and following its approval, a petition drive or special election must be conducted to get consent from the local community. The procedure is still by no means quick, but by reinterpreting the existing statute to streamline the process, the State Board has greatly increased the likelihood of new community divisions.

North Carolina

In 2017, when EdBuild first released the Fractured report, North Carolina had formed a commission to explore the possibility of allowing county school districts to break apart. The commission was largely at the instigation of a group of wealthy, white communities outside of Charlotte, which all sit within the countywide district of Charlotte-Mecklenburg Schools. The idea was ultimately rejected; however, legislators manipulated laws related to public charter schools to appease the Charlotte-area communities of Matthews, Mint Hill, Huntersville, and Cornelius. Now, these four towns can create new neighborhood schools that, unlike normal public charter schools, may deny enrollment to students outside the town lines, even if they live in the same school district.

In the same session, the legislature quietly slipped a provision into the state budget allowing municipalities to allocate certain property tax revenues explicitly to the schools in their individual neighborhoods. Instead of being allocated to the district to be distributed fairly across all schools in the county, these additional dollars can be steered to specific local campuses.

Taken together, these two provisions provide all the benefits of a secession (town-only schools, funded with town-only dollars), without an otherwise required constitutional amendment, while avoiding the risks of allowing other municipalities to break from their county districts. Only those four communities—where the average median household income is over \$80,000 (compared to a state median of \$53,000) and more than three-quarters of residents are white—were cherry-picked for this privilege, when a commission had just decided against recommending that all municipalities be allowed to secede.

There are a number of legitimate reasons for school district reorganization, related to factors like shifting enrollments and geography, for example. But when these laws aren't crafted carefully, they will almost inevitably be taken advantage of—usually in ways that benefit the privileged and powerful. In a state like Alabama, where there have been ten secessions since 2000, it has seemingly become a standard solution to disagreements, and only serves to intensify the socioeconomic and racial divides plaguing the state's communities.

A few years ago, after a flurry of legislative efforts and legal challenges, the Tennessee legislature overturned a ban on new school districts, allowing six wealthy suburbs to break away from Memphis. While the change was intended specifically for these communities, it also opened the door to secessions by other towns across the state. Since 2017, three more towns have formally proposed breaking off from their cities, and others are beginning conversations.

What we've learned from Tennessee's example is that the creation of permissive laws intended for only one set of communities can open a Pandora's box of secession attempts. That's why new, permissive state laws are so problematic, even if they're intended to placate a handful of neighborhoods. These policies have a tendency to become slippery slopes: It's difficult to defend against a new, segregating school district border when even a single town has been allowed to set a precedent.

What we've learned from Tennessee's example is that the creation of permissive laws intended for only one set of communities can open a Pandora's box of secession attempts.

There are a number of steps that states can take to prevent communities from using secession to segregate students or to undermine equity and efficiency. They can disallow secessions entirely, as Georgia and Florida have. Failing that, they can set a high bar for the creation of any new school district. Processes should include provisions like Wisconsin's, where those approving new districts must consider the impact on finances and socioeconomic and racial diversity, and Texas's, where new districts must be separately approved by voters in both the proposed district and the area to be left behind. But beyond any policy measures specific to secession, states must reimagine their education funding systems in a manner that diminishes the incentive to secede in the first place, and gives all students a chance at success.

The notion of allowing small enclaves to withdraw a portion of their taxes to serve only themselves is unique to education. Imagine allowing citizens to withhold taxes for libraries that they don't use or sidewalks they don't walk on. Envision providing exemptions from federal taxes for people who don't have family members receiving Medicare. Surely, there is a legitimate argument to be made for each, but that argument never outweighs the case for the public good.

Incentivizing communities to opt out of the public good . . . will only further the economic divide in our country and segregate America's next generation.

Our school funding structure means that, whatever the express motivation for a proposed school district split, "local control" through secession will always be tied to money. Incentivizing communities to opt out of the public good, create inefficiencies, and keep their money for themselves will only further the economic divide in our country and segregate America's next generation.

We have a unique opportunity during our children's earliest years to teach them what our country could and should be. It's in our grade school years that we learn what it means to be a thoughtful member of society. There is little doubt that subjecting students to a splintered school system of haves and have-nots today only lays the groundwork for a fractured society of tomorrow.

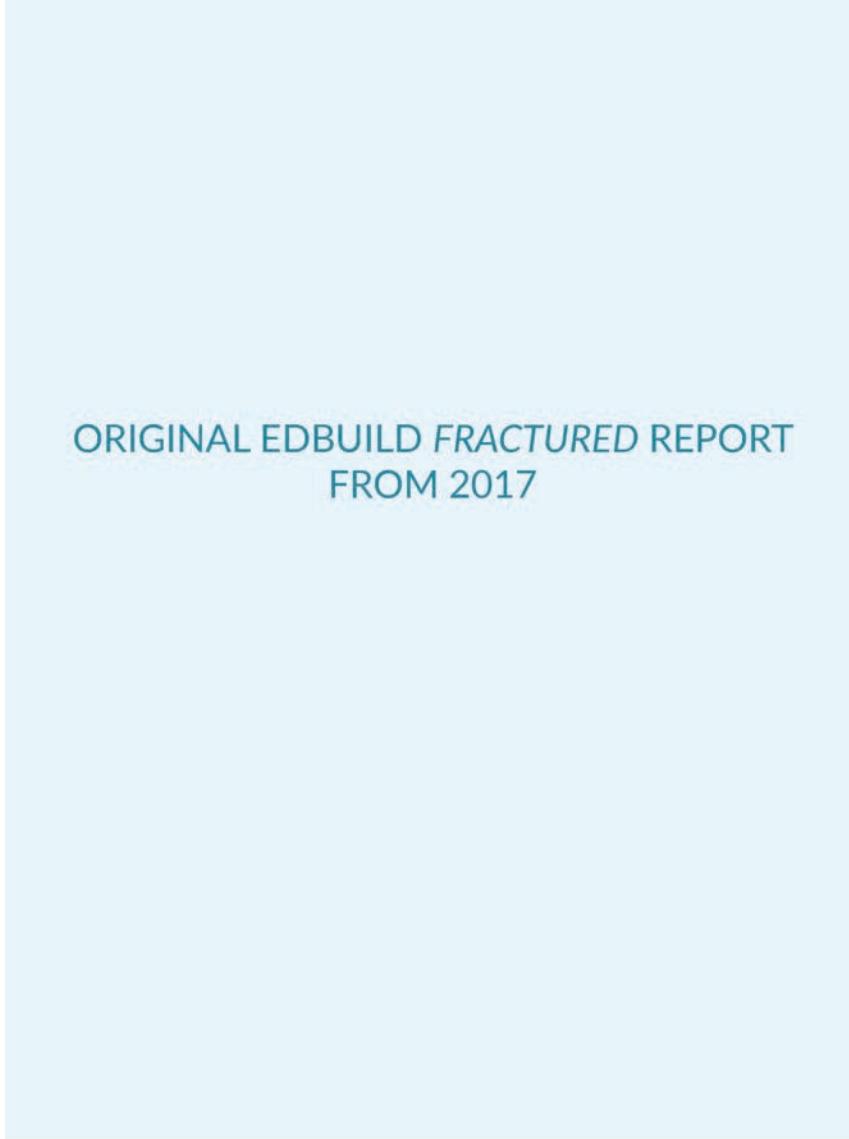


APPENDIX 1

Successful and Ongoing Secessions Since 2017

State	Secession Status	Left Behind District	Seceding Area
Alabama	Seceded (2019)	Baldwin County School District	Gulf Shores
Maine	Seceded (2019)	RSU 39	Limestone
Maine	Seceded (2018)	MSAD 27	Eagle Lake
Maine	Seceded (2018)	RSU 50	Moro Plantation
Maine	Seceded (2018)	RSU 50	RSU 89
Maine	Seceded (2018)	SAD 61	Sebago
Maine	Seceded (2017)	RSU 10	RSU 56
Maine	Seceded (2017)	RSU 31	Burlington
Maine	Seceded (2017)	RSU10	Byron
New Jersey	Seceded (2017)	Ocean Township School District	Loch Arbour
Alabama	Ongoing	Escambia County	Atmore
California	Ongoing	Mt. Diablo Unified School District	Northgate
California	Ongoing	Santa Monica-Malibu Unified School District	Malibu Unified School District
Indiana	Ongoing	West Clark	Silver Creek
Iowa	Ongoing	Davenport School District	West Scott
Louisiana	Ongoing	East Baton Rouge Parish School District	St. George
Maine	Ongoing	RSU 14	Raymond
Montana	Ongoing	Billings School District	Lockwood
Montana	Ongoing	Helena School District	East Helena
New Jersey	Ongoing	Pascack Valley Regional High School District	Woodcliff Lake
North Carolina	Ongoing	Charlotte-Mecklenburg	Cornelius
North Carolina	Ongoing	Charlotte-Mecklenburg	Huntersville
North Carolina	Ongoing	Charlotte-Mecklenburg	Mint Hill
North Carolina	Ongoing	Charlotte-Mecklenburg	Matthews
Texas	Ongoing	Austin Independent School District	East Austin
Wisconsin	Ongoing	Delavan-Darien	Darien
Wisconsin	Ongoing	Racine Unified School District	Caledonia

***Please note, since the release of this update on April 16, 2019, we have changed the status of one secession from seceded to ongoing. As a result, we have updated our numbers throughout the report.



ORIGINAL EDBUILD FRACTURED REPORT
FROM 2017



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EXECUTIVE SUMMARY

"In the short run, it may seem to be the easier course to allow our great metropolitan areas to be divided up each into two cities—one white, the other black—but it is a course, I predict, our people will ultimately regret." - Justice Thurgood Marshall

The United States District Court for the Northern District of Alabama recently issued a ruling—currently under stay until appeals are resolved—that would allow a primarily white, middle-class section of Jefferson County to secede from its larger school district. The action would further fracture the Birmingham area, where seven other towns have withdrawn to form their own districts since the 1950s,¹ leaving Jefferson County School District both poorer and less racially diverse. The secessions have created some of the most socioeconomically segregating school district borders in the country,² and five of these have occurred despite a federal desegregation order that has been in place since 1971.³

The ruling would give provisional approval to the town of Gardendale to create a new school system for its 2,134 students, of whom 7% are poor and 22% are nonwhite⁴ (to put this into perspective, the new school district of Gardendale will have a lower poverty rate than Beverly Hills School District in California⁵). If the ruling stands, the secession will leave behind a district that already has a majority of nonwhite students (55%) and a poverty rate nearly three times that of Gardendale (20%).⁶

The mayor of Gardendale told the press that the proposal to locally govern schools in the area was about "keeping our tax dollars here with our kids, rather than sharing them with kids all over Jefferson County." This tightfisted attitude toward the wider Jefferson County community is just the latest example in a long tradition of divisive thinking. The county's desegregation order is now 46 years old, and factions of Jefferson County have been trying to separate themselves from their neighbors for even longer, making these splits a tragic local tradition.

Alabama makes it particularly easy for small towns to secede from larger school districts, but it is certainly not the only state to allow this kind of change. Thirty states have processes in place that allow for secession, some more permissive than others. At least 71 communities have attempted to secede from their school districts since 2000—a number that continues to grow. Of these, 47 communities have been successful at splitting from their districts, and another nine secessions are still pending.

In some cases, there may be legitimate logistical grounds for school districts to separate. For instance, California's San Fernando Valley is geographically distinct from the city of Los Angeles, but the two areas are currently part of the same unified school district. A reasonable, geographically based detachment petition from this community was ultimately denied in the state's rigorous review process.⁸ In other cases, however, secessions create substantial funding inequities, perpetuate inefficiency, and fracture districts along racial or socioeconomic lines—and in many states, they can go forward without examination or challenge.

Today, school district secessions are explicitly allowed in most states. The method for splitting school districts is usually codified in state law, though procedures vary; they range from only a majority vote in a small, breakaway neighborhood in some states to a multistep process involving state agency or legislative approval in others.

Of the 30 states with explicit secession policies on the books, only nine require a study of the funding impact of a proposed split. Just six states require consideration of the effects on racial and socioeconomic diversity and equality of opportunity for groups of students. As a consequence, in 21 states, the law makes no effort to prevent communities from pulling away from their districts for the express purpose of cordoning off local wealth. Similarly, in 24 states, the path is completely clear for communities to separate for racial or class-based reasons. And when it comes to the question of whose voice counts, just four states consistently require a majority vote of approval

specifically from the members of the community being left behind.

The immediate effect of this kind of segregation on today's classrooms is clear. Beyond that short-run impact, though, states must recognize that when children don't get to know their neighbors during their formative years, they will be less likely to associate with or care for them when they're adults. We have a unique opportunity during children's earliest years to teach them what our country could and should be. There is no doubt that a splintered school system of haves and have-nots today lays the groundwork for a fractured society in the future. We are deluding ourselves if we believe that we can maintain a fair and inclusive culture without putting in the collective effort to support the education of our most vulnerable students—and if we don't unify around that goal, we will surely fail to realize a society in which all children may reach their full potential.

In addition to cementing segregation along socioeconomic and racial lines, breakaway school districts often exacerbate the resource inequities in our public education system. For instance, in 2015 (the most recent year for which data are available), the median property value in Ohio secession district Monroe Local was \$159,200, over 70% higher than that of Middletown City School District, from which Monroe withdrew in 2000.⁷ Because school districts are still highly reliant on local property taxes, when communities with higher property values leave behind less wealthy neighborhoods, they take a disproportionate amount of funding with them. As a result, Monroe is able to raise over \$1,700 more per student from local sources.¹⁰ With more property tax money per pupil, these new districts can vie for the best teachers, provide better facilities, and offer additional enrichment to their students. In this way, these better-off neighborhoods transform public education from the public good it's meant to be—providing the same opportunities to all of America's children—to something far less accessible.

“... when permissive school district secession policies are combined with funding systems rooted in local property taxes, states create a structure in which communities are incentivized to close themselves off...”

This kind of secession isn't only harmful to school finances on equity grounds, though; it's also bad financial management. Creating new, duplicative bureaucracies to educate a small number of students in a secession district is inefficient, and it's wasteful of the state tax dollars paid by all citizens. Looking at the pair of districts involved in each of the 47 successful secessions, the average new district formed serves almost 2,600 students, compared to an average enrollment of over 30,000 in the districts they left behind.¹¹ From all sources, our country spends over \$3,200 more on students enrolled in small school districts (fewer than 3,000 students) than those on the scale of those left behind (25,000–49,999). And with higher overhead costs, small districts tend to spend about 60% more per-pupil on administrative costs.¹²

Though there have been dozens of secessions since 2000, it wasn't always so easy for communities to cordon themselves off—especially when doing so would divide districts along socioeconomic or racial lines. In the late 1960s and early 1970s, lower federal courts held communities responsible for delivering on the promise of *Brown v. Board of Education*. In 1971, the U.S. Court of Appeals for the Fifth Circuit ruled in *Lee v. Macon City Board of Education* that “[a] city cannot secede from the county where the effect—to say nothing of the purpose—of secession has a substantial adverse effect on desegregation of the county school district.” Similarly, in *Stout v. Jefferson County* in 1972, the Court ruled, “[W]here the formulation of splinter school districts, albeit validly created under state law, have the effect of thwarting the implementation of a unitary school system, the district court may not... recognize their creation.” In other words, in most places, secession would have been considered a segregating—and, therefore, impermissible—act.

But a landmark 1974 ruling by the United States Supreme Court in *Milliken v. Bradley* significantly weakened the power of the lower courts to maintain desegregation efforts. The ruling specifically barred states from imposing

deregulation plans across school district boundaries, thereby limiting mandatory integration efforts to one district at a time. The opinion gave school district boundaries near-sacred status, declaring:

[T]he notion that school district lines may be casually ignored or treated as a mere administrative convenience is contrary to the history of public education in our country. No single tradition in public education is more deeply rooted than local control over the operation of schools.

Taking the other side, Justice Thurgood Marshall, who had argued for the plaintiffs in *Brown* before joining the Court, argued in his dissent, "In the short run, it may seem to be the easier course to allow our great metropolitan areas to be divided up each into two cities—one white, the other black—but it is a course, I predict, our people will ultimately regret."

Public education is guaranteed in the constitutions of all 50 states. Ultimately, the responsibility for public schooling rests with state governments. But when permissive school district secession policies are combined with funding systems rooted in local property taxes, states create a structure in which communities are incentivized to close themselves off—one in which the better off are rewarded for lesser participation, often without consideration of the effect of their actions on the children left behind. As a result, this is not just a story of neighbors divided in a self-interested society; rather, it could be better characterized as a story of a broken system of laws that fracture and of policies that have failed to protect the most vulnerable.

In a world in which states abdicate their responsibility for ensuring equal opportunity and fail to exercise proper oversight over school systems, parents and communities will inevitably take it upon themselves to provide for their own children. However, secession is a counterproductive means of obtaining more local authority. It often deprives the school districts left behind of critical resources needed to educate vulnerable children. It is inefficient, requiring duplication of administrative costs, which also pulls money from the classroom. And it splits students along racial and class lines, cementing social divisions in a way that can only beget further segregation attempts in the future. For these reasons, it's time to reevaluate our laws and the financial incentives in our school systems to ensure that all students can get ahead and that no districts—and no children—are left behind.



INTRODUCTION

In 2011, most students in the small town of Creola, Alabama, would travel three miles each morning to attend Robert E. Lee Elementary School in Satsuma. However, in 2012, Satsuma residents voted to form their own school district—unilaterally, with no input from those in the area left behind.¹³ They took with them two school buildings and the tax base that fell within the newly drawn borders, which formed an island within the larger Mobile County School District (MCSD).¹⁴

The island school district of Satsuma has a median household income that is nearly \$16,000 a year higher than MCSD, and their schools receive about \$1,000 more in state and local revenue per student.¹⁵ The poverty rate of the 1,294 students enrolled in Satsuma's two schools is 16%, compared to a poverty rate of 25% among the students left behind.¹⁶

Satsuma wasn't the first district to choose to leave MCSD. In 2007, the city of Saraland created its own island, defecting from MCSD with three schools that served only 2,862 students in 2015.¹⁷ In 2011, Chickasaw City also formed its own school district, which in 2015 served a mere 950 students in two schools.¹⁸

Today, students in the town of Creola have a choice: they can ride a bus for between nine and 25 miles to attend the closest school in what remains of Mobile County's balkanized school district or they can pay \$850 per year in interdistrict tuition to attend what used to be their school of right.¹⁹

THE CONCEPT OF “SECESSION”

North of Creola, another secession has recently garnered significant attention. The City of Gardendale's proposal to leave Alabama's Jefferson County School District, which is currently under an active desegregation order, drew widespread public notoriety. After reviewing the plan, a federal circuit court provisionally approved the secession (currently under stay until appeals are resolved), despite finding that the move was racially motivated.²⁰ If Gardendale moves forward with its split from Jefferson County, it will create a new school system open to its 2,134 school-age children, of whom 7% are poor—a lower proportion than that of Beverly Hills School District in California²¹—and 22% are nonwhite.²² The district will leave behind, Jefferson County, which currently serves a community where 20% of school-age children live in poverty²³ and a majority of enrolled students (55%) are nonwhite²⁴—levels that will only increase with Gardendale's withdrawal.

Although the path to secession is especially easy in Alabama, this isn't just a southern phenomenon. According to available data, EdBuild has found at least 71 communities across the country that have attempted to withdraw from their school district since 2000, and that number continues to grow. Of these, 47 communities have succeeded in separating from their districts, six communities proposed potential secessions without moving into formal proceedings, and nine secessions are ongoing—being actively discussed and/or moving through the necessary secession processes. Only nine were prevented from finalizing the split.

It wasn't always so easy for communities to cordon their schools off from their neighbors. In the years immediately following the United States Supreme Court's decision in *Brown v. Board of Education*, states, including Alabama, were particularly stringent about political geographies that would further splinter communities along race and class lines. But a series of subsequent court rulings and the lifting of desegregation orders have enabled more permissive state laws that, together, are leading to a new, twenty-first-century approach to segregation.

LEGAL AND POLITICAL BACKDROP

Following the *Brown* decision, federal courts held local communities responsible for delivering on the promise of the ruling. Throughout the 1960s and early 1970s, lower federal courts ruled consistently against secession in instances where race or resources would become concentrated in one of the districts.

In 1971, the Fifth Circuit ruled in *Lee v. Macon City Board of Education* that:

The city cannot secede from the county where the effect—to say nothing of the purpose—of secession has a substantial adverse effect on desegregation of the county school district. *If this were legally permissible, there could be incorporated towns for every white neighborhood in every city.*

In many cases, a school system's socioeconomic and racial zoning is a product of where people choose to live; where school systems are as small as towns and neighborhoods, residential segregation begets school district segregation. However, the court's ruling in *Lee* denied neighborhoods the ability to use smaller municipal borders within a broader school district as an excuse to create a smaller, homogenous subsystem including only hyperlocal schools. In other words, communities could not establish new school districts at the expense of racial and socioeconomic diversity. As the court noted in its decision, if localities were allowed to incorporate as municipalities and then become their own school systems, secession would become a ubiquitous tool for segregation throughout the state and even the country.

Similarly, in 1972, in a case related to the creation of "Pleasant Grove," a proposed school district just outside of Birmingham and very near to Gardendale, the court ruled, "[W]here the formulation of splinter school districts, albeit validly created under state law, have the effect of thwarting the implementation of a unitary [integrated] school system, the district court may not...recognize their creation." The case reaffirmed the 1971 desegregation order for the Jefferson County area (the very same order that would be cited decades later by the NAACP Legal Defense Fund in its filing opposing the creation of the Gardendale School District).

But a landmark 1974 ruling by the United States Supreme Court reversed this trend. In *Milliken v. Bradley*, the Court significantly weakened the power vested in the lower courts to maintain desegregation efforts. The ruling specifically barred states from imposing desegregation plans across school district boundaries, thereby limiting mandatory integration efforts to one district at a time. The opinion gave school district boundaries near-sacred status, declaring:

[T]he notion that school district lines may be casually ignored or treated as a mere administrative convenience is contrary to the history of public education in our country. No single tradition in public education is more deeply rooted than local control over the operation of schools.

Taking the other side, Justice Thurgood Marshall, who had argued for the plaintiffs in *Brown* before joining the court, argued in his dissent, "In the short run, it may seem to be the easier course to allow our great metropolitan areas to be divided up each into two cities—one white, the other black—but it is a course, I predict, our people will ultimately regret."

Today, most states do, indeed, allow school systems to be divided up. Thirty states have explicit procedures specified in statute for school district secession. These laws range in permissiveness from requiring only a majority vote in a small, breakaway neighborhood in some states to a multistep process involving approval from a state agency or the legislature in others. However, the path to secession rarely considers the kind of impact that worried Justice Marshall: of the 30 states with explicit procedures, only six require consideration of how the split will affect racial and socioeconomic diversity or equality of opportunity for groups of students (see the appendix for a summary of each state's laws regarding school district secession).

INCENTIVES IN THE SYSTEM

Allowing children the opportunity to learn in racially diverse classrooms has proven to be academically and socially beneficial to all students involved.²⁵ Research clearly shows that African American students in segregated schools suffer academically,²⁶ while school integration raises minority achievement levels and narrows the racial achievement gap,²⁷ and nonminority students benefit in the form of improved problem-solving and critical-thinking skills.²⁸ Meanwhile, longer-term analyses have traced the positive impacts of diverse schools on students' eventual educational and professional attainment, civic engagement, and ability to live and work in integrated environments.²⁹

It is only natural that when students experience integration as children, they will be prepared to better engage with and contribute to a diverse civil society.³⁰ In the academic sphere, though, the promise of racial integration isn't that minority students will benefit from mere proximity to white students. Rather, because we live in a socioeconomically fractured society, racial segregation overlaps heavily with economic segregation.³¹ Students from high-income families benefit from the support of more educated parents, enrichment opportunities, and other outside-school resources.³² And within the school system, because school funding in the United States is rooted in local property tax collections, which vary with local wealth, racial and economic segregation can serve to separate students from adequate education funding. As a result, the benefits of integration do not result entirely from racial diversity in and of itself. Instead, they arise from bringing students from historically oppressed communities to schools that have significantly more resources—assets ranging from more-qualified teachers and better-developed curricula to educated and involved local parents.³³

If racially integrated school systems lead underserved children to greater resources in new schools, though, then the converse is also true: when communities splinter along racial and socioeconomic lines, resources are pulled from the classrooms that most need the additional help. And if better-off communities would rather not share the wealth, the best way to avoid having to do so is to secede, breaking away from larger school districts and taking their local dollars with them. As the mayor of Gardendale recently admitted to the press, the town's proposal to separate from the county district was really about "keeping our tax dollars here with our kids rather than sharing them with kids all over Jefferson County."³⁴ Another case in point is a current proposed split between Malibu and Santa Monica, California. This secession wouldn't split a school district along racial lines, the way those in Jefferson County, Alabama, have. Rather, Malibu parents are on record saying that they don't want to share certain locally raised supplemental funds with their slightly worse-off neighbors, as required by state law.³⁵

Parents and communities are understandably anxious to provide effectively for their own children. Our current school funding system brings the worst out of that impulse: when school resources are driven in part by housing values, neighborhoods will always have the incentive to wall themselves off in order to keep hold of their wealth, providing for their own and leaving others behind. And as long as housing patterns are driven by race and class, those separations will make communities, and the schools within them, more insular and segregated, with disastrous consequences for children and for society.

• • •

When permissive school district secession policies are combined with funding systems rooted in local property taxes, states create a structure in which communities are incentivized to close themselves off—one in which the better-off are rewarded for lesser participation. In the wake of *Milliken*, no federal oversight exists to halt this kind of segregation. As a result, this is not just a story of neighbors divided in a self-interested society; rather, it could be better characterized as a story of a broken system of laws that fracture and of policies that have failed to protect the most vulnerable.

In a world in which states abdicate their responsibility for ensuring equal opportunity and fail to exercise proper oversight over school systems, parents and communities will inevitably take it upon themselves to provide for their own children. But as John Dewey wrote over one hundred years ago, "What the best and wisest parent wants for his own child, that must the community want for all of its children."³⁶ We need laws that bolster public education as a public good, supporting all students in common and discouraging rather than promoting social and economic division. When states allow and even incentivize school district secession, students are split along racial and class lines, and the school districts left behind are deprived of critical resources needed to educate vulnerable children.

CASE STUDY: MEMPHIS, TENNESSEE



The case of Memphis and Shelby County is an extreme example of how imbalanced political power, our local school-funding model, and the allowance of secession can be disastrous for children. In 2014, six largely white and wealthy Tennessee suburbs broke off from the impoverished Shelby County school district after nearly a decade's struggle. The county's suburbs had long sought to keep their tax dollars from benefitting the more needy student population in Memphis, the Shelby County seat. After a flurry of legislative efforts and legal challenges, the Tennessee state legislature, led by legislators from Shelby County suburbs, reversed a ban on new school districts—allowing these districts to break away and opening the door to future secession efforts.

After busing for desegregation began in 1973, Memphis' white and wealthier families fled to the surrounding suburbs of Shelby County, leaving the city disproportionately poor and nonwhite.¹¹³ Eventually, Memphis City Schools served a student population that was almost 93% nonwhite.¹¹⁴ It was surrounded by Shelby County Schools, a separate district where the student population was just over half white¹¹⁵ and where the median family income was more than double that of Memphis.¹¹⁶

Though the county and city school systems were separate, the suburbs sought another kind of self-segregation: financial.¹¹⁷ The residents of both the Shelby County and Memphis City districts paid a countywide property tax, and the districts shared the proceeds.¹¹⁸ By 2008, the Shelby County School Board had found a way to avoid sharing funds with Memphis. If the district could gain special school district status, it would have the authority to raise funds that would stay in just the suburban schools and potentially do away with the shared countywide property tax entirely.¹¹⁹ Because the suburbs enjoy higher property values, they could, as a special school district, levy a tax rate lower than what they paid in county property taxes and still cover their expenses.¹²⁰ Meanwhile, the move could have forced Memphis City Schools to levy a tax rate more than double that of Shelby County to make up for the lost revenue.¹²¹

There was just one problem: Tennessee had long since banned new special school districts and municipal school districts.¹²² The suburbs would need the state legislature to both authorize the creation of new special school districts in general and to pass a law specifically creating the Shelby County Special School District.¹²³

When Republicans solidified control of the state legislature in the 2010 elections, its seemed inevitable that lawmakers would move to allow a Shelby County Special School District. Faced with impending financial peril, Memphis City Schools acted fast: that December, before the newly elected legislators could be sworn in, the school board voted to dissolve the district entirely, placing the city's schools in the control—and taxing jurisdiction—of Shelby County.¹²⁴

Before the dissolution was finalized, though, the suburbs began pursuing another change in school district boundaries, this time to separate themselves from the county district, now composed largely of Memphis.¹²⁵ Even with the support of the state legislature, the suburbs faced an uphill battle. After their first legislative attempt to carve out an exception to the state's ban on new districts was stymied by the Attorney General,¹²⁶ a federal judge struck it down, calling it "a wink and a nod" to Shelby County suburbs.¹²⁷

The legislature changed tack. Instead of adding an exception, it did away with the ban altogether, putting in place a relatively easy path to school district secession.¹²⁸ Now, in order to create a new city school district, a municipality need only have a student population of 1,500 and the support of a majority of municipal voters.¹²⁹ This process is especially lax; unlike the majority of the states that allow secession, newly created school districts in Tennessee do not require approval from any county or state authority.¹³⁰

The way cleared, each of the six wealthier communities began the 2014–15 school year with their own, separate districts. These new districts have an average student poverty rate of 11%, lower than that of Beverly Hills.¹³¹ By comparison, one-third of students in the shrunken Shelby County district live below the poverty line—a rate higher even than that of Compton, California.¹³²

CASE STUDY: MEMPHIS, TENNESSEE

The financial impacts of the secessions were immediate. In just one year, Shelby County's budget was slashed by 20%.¹³² Declining enrollment has forced drastic measures: Seven Memphis-area schools have closed since the 2014–15 school year alone,¹³⁴ and the district laid off about 500 teachers in both 2015 and 2016.¹³⁵

The repeal of the ban on new districts cleared the way for almost any Tennessee community seeking to segregate itself from its poorer neighbors. Hamilton County School District, which includes Chattanooga, is facing its own breakdown. Last year, Signal Mountain (a suburb where the United States Census estimates from 2015 suggest no school-age children live in poverty¹³⁶), began studying the feasibility of seceding from Hamilton County,¹³⁷ which has a 21% student poverty rate.¹³⁸ A local committee estimated that the new district would have an additional \$1.8 million should it secede and take its tax base with it.¹³⁹ Three other communities in Hamilton County are now also considering secession from the district.¹⁴⁰



THE CURRENT LANDSCAPE

Though countless court rulings have established that the responsibility for ensuring an equitable and inclusive system of public schools lies with state governments,³⁷ states largely delegate decision-making to individual school districts. As a result, our entire system—from funding to governance—is rooted in local control.

School districts are local governments in themselves, with political and financial significance. Districts decide which children will learn together, at what level their schools will be funded, and who gets to vote on specific school governance and financial issues. Of the more than 14,000 school districts recognized by the United States Census,³⁸ 12,880 are independent governmental units.³⁹ The boundaries that define these jurisdictions are therefore critically important.

Moreover, school district lines are often not aligned with other electoral or municipal borders—almost 80% of school district borders are noncontiguous with other government boundaries, such as towns, cities, and counties.⁴⁰ Today, there are four times as many unique school districts as there are counties.⁴¹ As a result, these decisions are made by and for a polity that exists only for oversight of education. That leaves school districts especially vulnerable to hyperlocal political considerations and distorting financial incentives.

The already-fractured nature of our school district map should prompt careful consideration of the benefits of district consolidation and alignment with other government boundaries. Yet in many states, communities are moving in the opposite direction, splitting from their school districts in pursuit of taxing autonomy, racial and socioeconomic segregation, or financial gain.

POLICIES

A surprising number of states make it possible to create new local education agencies, often at the whim of a small number of people. In fact, there are 30 states that have explicit policies allowing the splintering of school systems and the creation of smaller districts that serve as “spin-offs” from their parent districts. And because state governments delegate to local school systems substantial decision-making power over education policy, once these new districts are created, they enjoy a great deal of authority, weight, and deference.

Of those states with prescribed secession policies, only one, Ohio, has a law that gives any power over the process to the legislature. In all others, secessions can happen through some combination of administrative approval and at the will of the local community through citizen action.

In many states, proposed secessions begin with citizens, with a petition (16 states) and/or a referendum (19 states), but the voter pool and requirements vary widely among these states. In six states, only a simple majority of the voters residing within the borders of the proposed splinter district need approve the proposal. Not surprisingly, these states—Alabama, Maine, and Tennessee among them—tend to have some of the highest numbers of proposed and successful secessions.

In twenty states, approval is needed from a state agency (usually the state school board or state superintendent). In these cases, it is assumed that the state body will review the secession proposal with an eye toward its effects on both the students who will leave and those who will be left behind. However, only six states require a specific review of the potential effects of these separations on racial or socioeconomic factors. And only nine states require a review of the potential funding inequities that may result.

Where there is no explicit policy on the books, we infer that the newly proposed district would require action from the state legislature, creating the district through legislation or putting in place a process for secession that would apply to the proposed district. This has happened in several states. For example, when the tiny town of Canyonville, Oregon (which contains less than a square mile of territory⁴² but is home to a large and lucrative casino⁴³), was considering seceding from the South Umpqua School District, the legislature passed a bill that would have specifically enabled the split.⁴⁴



In three states, a constitutional amendment is required for residents attempting to create their own school districts. Although this is certainly a significant hurdle to overcome, it didn't stop the Louisiana legislature from allowing three wealthy districts to secede from East Baton Rouge and two others from their larger districts by specifically naming each individually in the Constitution.⁴⁵

Figure 1: States that require consideration of the fiscal impact of school district secession



Figure 2: States that require consideration of the racial and socioeconomic impact of school district secession



SECESSION LAWS IN EACH STATE

State	State provision in state code	Requires action by voters in districts left instead	Requires approval by state authority	Requires action from state legislature	Requires voter turnout threshold	Conciliates racial/ socioeconomic factors	Conciliates effect on funding	Conciliates efficiency
Alabama								
Alaska								
Arizona								
Arkansas								
California								
Colorado								
Connecticut								
Delaware								
Florida								
Georgia								
Hawaii								
Idaho								
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CASE STUDY: EAST BATON ROUGE PARISH, LOUISIANA



East Baton Rouge Parish, Louisiana, is not an especially well-to-do area. The median home in the parish costs about \$170,000 and its median household income is just over \$47,000, 12% below that of the US as a whole.⁷² In the southeast corner of the parish, though, sits St. George, a newly named, unincorporated neighborhood that is much better off: many single-family homes in St. George sell for over \$1 million.⁷³

St. George is already set apart from East Baton Rouge economically, but since 2013, the community has been trying to separate in a more formal way. Residents have been pursuing extreme measures—trying to incorporate the neighborhood as a new municipality, win recognition from the state legislature, and secure a bespoke amendment to the state constitution—all to form their own school district.

Communities seeking to secede from their school districts have a much steeper path in Louisiana than in most states. Louisiana is one of 20 states where state law does not outline a process for a new school district to be formed from part of an existing school system, necessitating special action by the legislature to create any new district.⁷⁴ What's more, because of a provision in the state constitution reserving state funding for recognized "parish and city schools," a would-be district like St. George must garner a special constitutional exception in order to receive funding.⁷⁵ That makes Louisiana one of only three states where a constitutional amendment is required for a community to secede.

That difficult process hasn't been the only barrier to the creation of new districts in East Baton Rouge. For decades, the school district, Louisiana's largest, was governed by a desegregation order, limiting how the area could be split up.⁷⁶ But desegregation efforts in the parish were met with resistance, and white families fled East Baton Rouge steadily during the decades the district was under the desegregation order, stymying efforts to achieve racial balance within the district.⁷⁷ In 2001, the district court judge overseeing the order quit the case, citing the school board's unwillingness to cooperate.⁷⁸ Shortly after the case was reassigned, the school board reached a settlement in 2003 and the district was released from oversight.⁷⁹

Since the settlement, three communities have successfully seceded from East Baton Rouge, clearing the hurdles to the creation of new school districts and securing named exceptions in the state constitution.⁸⁰ The secessions have taken a toll. In 2015, 90% of students remaining in parish schools were nonwhite,⁸¹ while the breakaway districts had populations that were 42% white on average.⁸²

St. George hopes to become the next community to secede, but it has failed twice to gather the two-thirds vote in the state legislature necessary to put a constitutional amendment on the ballot.⁸³ State legislators indicated that St. George would have a better chance of securing the amendment if it were a city, so residents redirected their energies toward building the local support necessary to incorporate as a city⁸⁴ (In Louisiana, a community can become a municipality if it gathers the signatures of 25% of its residents and gains the approval of a majority of those within proposed municipal boundaries⁸⁵). Should they succeed, the new city of St. George would immediately become one of the state's wealthiest.⁸⁶

On the other hand, the loss of St. George would drain the East Baton Rouge tax base, leaving a local funding hole that state aid could not fully fill. East Baton Rouge schools would lose \$765 per pupil, an 8% cut for every student left behind.⁸⁷ Moreover, on top of the projected revenue loss, East Baton Rouge would most likely be required to pay legacy costs, such as retiree health care, for the new district, just as it now does for the three previous breakaway districts.⁸⁸ Ultimately, St. George schools would receive nearly \$3,000 more per student than East Baton Rouge.⁸⁹

For the moment, the effort to turn St. George into its own district is paused: in June 2015, after a contentious legal battle over the validity of many of the signatures collected during the petition drive, a state judge ruled that St. George had fallen short of the required number by less than 100 signatures.⁹⁰ Under state law, St. George must wait two years to restart the petition process, but both sides are preparing for a renewed incorporation effort.⁹¹ The leaders of the secession movement have vowed to continue.⁹² Meanwhile, East Baton Rouge's new mayor, who won last December against the state senator who sponsored legislation to allow St. George to secede, named preventing the incorporation one of her major initiatives for 2017.⁹³

THE EFFECTS

EdBuild has been able to identify at least 71 attempts by local communities to withdraw from their school districts since 2000. These attempts occurred in 20 different states.

Of 71 attempts, only 13%, or nine, have been formally defeated. Another nine are still moving through their relevant processes, six were proposed and were never approved or denied through formal proceedings, and 47 have been successful.

There are three clear effects that can be discerned from a review of the successful secessions: in some cases, they widen the resource gap between neighboring districts; in other cases, they create costly inefficiencies; and in many instances, they create socioeconomic and racial disparities so deep they are hard to justify in a post-Brown world.

School funding is still highly dependent on locally raised, locally governed taxes and revenues. This funding source makes up approximately 44.7% of education revenues nationally.⁴⁶ In 2014 (the most recent year for which national data are available), local education funding amounted to \$276.2 billion.⁴⁷ Chief among local funding sources for schools were local property taxes, and revenue from these taxes alone made up 29% of all education revenue—\$180 billion, or slightly more than \$3,700 per pupil nationally.⁴⁸

It is fairly rare for state law to redirect local tax dollars from communities with higher wealth to those with smaller tax bases. Thus, because states allow school districts to raise, collect, and keep their own local taxes, residents are incentivized to become as insular as possible in order to concentrate the impact of their tax dollars in local schools. This is a primary motivating factor in community secessions from larger school districts.

Take, for instance, Monroe Local School District, which seceded from Middletown City District in Ohio in 2000. In 2015, the median owner-occupied home price in Monroe was \$159,200, or 73% higher than that of the district they left behind.⁴⁹ Now serving just 2,500 students, schools in the new district raise over \$1,700 more per student from local taxes.⁵⁰ Unsurprisingly, the median household income in Monroe is almost \$35,000—or a substantial 95%—higher than in Middletown, making tax payments easier as well.⁵¹

Monroe is an extreme example, but it is certainly not alone. The now Tea Area School District in South Dakota was formed by secession from the Lennox School District in 2003. In 2015, the community in Tea Area had median household incomes that were over \$13,500 more per household, and median home property values that were more than \$45,000 higher, than those in the district that was left behind.⁵²

Secessions not only create funding gulfs between the haves and have-nots; they also create small municipalities that are inefficient. Communities that have left their school districts in recent years are reconstituted as districts with an average of 2,600 students, compared to over 30,000 students in the average district that was left behind.⁵³ Smaller districts face a higher administrative-cost burden. Districts that serve fewer than 3,000 students spend 60% more per pupil on administrative costs.⁵⁴

In some cases, this additional spending is simply a product of higher wealth and, therefore, increased resource availability. In other cases, these districts receive additional funds from the state simply because of their size.

As is the case with many other sources of public funding, education aid from the state, such as that provided to small districts, can sometimes incentivize unintended consequences at the local level. Take the school districts in Yuma County, Colorado. Several years ago, two school districts split into four smaller districts in order for some to become eligible for a specific state-aid allocation, called the “size factor,” aimed at supporting districts with lower enrollment.⁵⁵ Liberty, one of the new districts, educates only 80 students⁵⁶ and now receives one of the state’s highest size-factor increases: a 133% boost to the state’s usual per-pupil aid amount.⁵⁷ As a result, the district now receives more state revenue per pupil than 90% of Colorado districts.⁵⁸

Thirteen states provide additional funding to small school districts even if there is no geographic or logistical reason for their small size.⁵⁹ In the cases of districts in these states, as in the case of the Yuma County districts, state policy may



create a financial incentive for secession.

Because of the implications of secession for district funding, at both the state and local levels, there are often disincentives for communities to stay bound to one another, especially for wealthy neighborhoods to remain joined with those that are poorer or more socioeconomically diverse. Although decades of research studies prove that diverse schools lead to greater benefits for all children, our education funding systems work against the goal of integration.

It is therefore no surprise that secession leads to racial and socioeconomic segregation. Consider the Tennessee legislature's recent act to amend state law to allow for the secession of several primarily white, upper-class suburbs from their county school district after it was decided that the district would merge with the predominantly black students of Memphis. While the splinter districts have an average nonwhite proportion of 33%,⁶⁰ and a poverty rate of 11%,⁶¹ their withdrawal has now concentrated minority students in the remaining district to the point that it is 92% nonwhite.⁶² Moreover, 34% of the students in the abandoned district now live below the poverty line—a rate even higher than that of Compton, California.⁶³

Tennessee has some of the most permissive secession laws on the books, due entirely to the legislature's solicitude toward the interests of these wealthy suburban areas. The courts originally struck down the planned secessions,⁶⁴ but lawmakers in the Volunteer State acted the next year to make the law even more permissive.⁶⁵ Now that there are few legal hurdles in the way, several other communities are considering secession in other areas of the state, including Chattanooga.⁶⁶

Calls for "local control" carry a troubling historical resonance, especially in areas like Birmingham, Memphis, and East Baton Rouge. It may no longer be legal to segregate school systems by law, but school district secession allows states to exploit the legal loophole created by *Milliken* to resegregate their schools, and state funding laws provide explicit and numerous incentives to do so.



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SOLUTIONS

Among the range of state policies currently in place regarding school district secession, there are models that would prevent communities from using secession to segregate students or to undermine equity and efficiency.

The most straightforward means of preventing these harmful fractures is to disallow secessions entirely. Georgia (which has a constitutional ban on the creation of new school districts⁶⁷) and Florida (which specifies in its Constitution that counties, and only counties, are to be their own school districts⁶⁸) are useful examples of this approach (even in this fairly absolute framework, though, exceptions could be made in cases where a subdivision is indicated for compelling geographic or logistical reasons, such as when the existing district is made up of two nonadjoining areas; in states that choose to allow the possibility of secession in such instances, approval should be required both from a majority of voters in both proposed districts and from a higher administrative body, such as the State Board of Education).

If states are unwilling to enact blanket rules prohibiting secession, then the processes for creating new school districts must be carefully crafted to ensure that any subdivisions are in the best interests of students. One model for such a procedure is Wisconsin's, where the bodies responsible for approving new districts must consider the fiscal effect of the reorganization, the socioeconomic and racial composition of the new and old district, and the geographic characteristics of the affected district.⁶⁹ After these factors are considered by a higher administrative body, such as a state, county, or regional board of education, the secession plan should be referred for consideration by the voters.

Another important factor is who has a say in the creation of the new district. It is critical that any subdivision serves the interests of all affected communities. Secession proposals should therefore be subject to approval by the voters of both the proposed district and the portion of the existing that would remain, as currently is the case in a handful of states, including Texas⁷⁰ and New York.⁷¹

However, any improvement in a state's school district secession process should be regarded as no more than a stopgap measure. The only way to truly ensure that school district borders are not used as a tool of segregation and inequity is to revisit the Supreme Court case that created this problem: *Milliken v. Bradley*. In granting school district boundaries such exalted status that state governments cannot enforce desegregation plans across them, the Court valued those borders above the fairness and equity of states' education systems. As a result, every new boundary that is drawn—whether for legitimate or discriminatory reasons and whether in the interests of students or not—immediately takes on this near inviolability. This, combined with state funding formulas that allow for inherently inequitable local property taxes ensures that boundaries can be drawn to specifically disadvantage our most vulnerable children.

"If states are unwilling to enact blanket rules prohibiting secession, then the processes for creating new school districts must be carefully crafted to ensure that any subdivisions are in the best interests of students. "

Because local communities are incentivized by our school funding system to cordon off their wealth and are frequently permitted to do so by state law, there will always be reason for the haves to split away from the have-nots. As long as the precedent of *Milliken* remains in force, those divisions will be given the full force of law: the segregation, both racial and socioeconomic, that they bring about will be all but irreversible, and the financial inequities they create will be ever harder to overcome. Ultimately, reconsidering this excessive deference to school district borders and eliminating the financial incentive to secede by reducing the reliance on locally raised and locally governed property taxes, are the only true solutions to the problem of harmful secessions.

CASE STUDY: YUMA COUNTY, COLORADO



In 2000, Yuma County, a sparse, rural area on Colorado's eastern border, had just two school districts: East Yuma, home to 949 students, and West Yuma, with 1,160 school-age children.⁹⁴ The districts dated back to the 1950s, when the county's 26 districts were combined into two as part of a statewide effort to shutter unused schools and to pool resources.⁹⁵ But in 2001, the two districts split into four to take advantage of a state policy that rewards small school districts.⁹⁶

For years, small communities within these districts had felt that their interests were given short shrift compared to those of the relatively more populous areas in their districts.⁹⁷ In the 1990s, Idalia, an East Yuma neighborhood of fewer than 500 people, struggled to gain the funds to build a new school, and its residents took action.⁹⁸ With leadership from the state representative from Yuma County, Colorado passed a law offering extra funding for small and remote schools. Idalia and Liberty, a small community within West Yuma School District, were together able to receive about \$30,000 in aid for individual schools under this provision.⁹⁹

Still, local leaders sought ways to garner additional dollars. Idalia and Liberty hoped that by forming their own school systems, they would be able to secure extra funding through a state policy that benefits small districts.¹⁰⁰ Colorado provides special state aid on a sliding scale to districts smaller than 5,000 students, with funding rising as enrollment drops.¹⁰¹ Ordinarily, the law specifies that the allocation will not increase if districts redraw boundaries to shrink their student populations.¹⁰² In 1999, though, the same Yuma County state representative pushed through a special exception, allowing districts that approved a split in the 2000 election to receive the funds.¹⁰³ Voters in Yuma County approved the plan that year, and in 2001, East Yuma dissolved to form Idalia and Wray school districts, while West Yuma became Liberty and Yuma.¹⁰⁴ Budgetary concerns were the explicit reason for the separation. A member of the East Yuma Board of Education said in the midst of the secession effort, "It would have been nice if [the state] could have provided funding without splitting us, but there was no other way."¹⁰⁵

Today, the students in Idalia and Wray are not that dissimilar from each other—the districts' poverty rates are 22% and 18%, respectively,¹⁰⁶ and both school systems are over 70% white.¹⁰⁷ The West Yuma split divided somewhat more different communities: Liberty is only 13% nonwhite, while Yuma is 53% nonwhite¹⁰⁸ (though the districts have almost identical poverty rates, at around 16%¹⁰⁹). The real difference between the school systems, though, is enrollment: Idalia and Liberty each have fewer than 100 school-age children living within their boundaries, while Wray has over 700 and Yuma has nearly 1,000.¹¹⁰ And the districts succeeded at securing extra state funding by shrinking their enrollment size: by 2014, Idalia had nearly \$8,500 in state funding for each of its students, while Wray had just \$4,700. Similarly, students in Liberty each received \$8,700 for their education from the state, while the district it left behind had just \$4,700. It is clear that Colorado's education funding policy has rewarded the creation of these microdistricts.

The trend across the country, including in Colorado, has been toward fewer and larger school districts, not smaller ones, and for good reason: consolidation can cut costs, especially for very small districts, by helping districts make use of economies of scale. A study of small, rural districts in New York found that consolidation would cut the costs of two 300-student districts by over 20%.¹¹¹ Still, some districts, especially in areas as remote as Yuma County, will inevitably be small, and small districts have unique needs. Colorado already has policies in place to support small schools,¹¹² and these can be applied in a way that provides resources without encouraging the creation of new, inefficient districts. By incentivizing this poor financial management, Colorado is throwing good money after bad and dividing communities along the way.

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CONCLUSION

The notion of allowing small enclaves to withdraw a portion of their taxes to serve only themselves is one that is unique to education. Imagine allowing a citizen to withhold taxes for a library that they don't use or a sidewalk on which they don't walk. Picture a neighborhood attempting to opt out of public works support if they promised to keep only their street patched or if they agreed to never cross the bridge that needs repair. Envision providing exemptions from federal taxes for people who don't have family members receiving Medicare or those who may object to foreign policy. Surely, there is a legitimate argument to be made for each one of these options, but that argument never outweighs the case for the public good.

"Our school funding structure means that, whatever the express motivation for a proposed school district split, "local control" through secession will always be tied to money."

Parents and communities will inevitably take it upon themselves to provide for their own children, seeking more direct input. However, secession is one of the most inefficient and isolating means possible of obtaining greater local authority. It often fractures tax bases, tying funding more closely to community wealth and depriving the school districts left behind of critical resources needed to educate vulnerable children.¹ It is inefficient, requiring duplication of administrative costs, which also pulls money from the classroom. And it splits students along racial and class lines, cementing social divisions in a way that can only beget further segregation attempts in the future.

Our school funding structure means that, whatever the express motivation for a proposed school district split, "local control" through secession will always be tied to money. Incentivizing communities to opt out of the public good, create inefficiencies, and keep their money for themselves will only further the economic divide in our country as it relates to our children. If we are to truly achieve the ideal of *Brown*, we should commit to closing the loopholes enabled by *Milliken* and bolstered by state code. We must reimagine our education funding system in a manner that recognizes that all students deserve a chance at success.

It is during childhood that we teach people how to engage in our society. When children don't get to know their neighbors during their formative years, they will be less likely to associate with or care for them when they're adults. We have a unique opportunity during children's earliest years to teach them what our country could and should be. There is no doubt that a splintered school system of haves and have-nots today lays the groundwork for a fractured society in the future. We are deluding ourselves if we believe that we can maintain a fair and inclusive culture without putting in the collective effort to support the education of our most vulnerable students—and if we don't unify around that goal, we will surely fail to realize a society in which all children may reach their full potential.

APPENDIX: STATE POLICIES ON SCHOOL DISTRICT SECESSION

Alabama

Cities with more than 5,000 residents in Alabama can secede from their county school districts by negotiating an agreement with the county district.

Alabama has county and city school districts.¹⁴¹ A city with a population of more than 5,000 can choose not to enter into an agreement with the county board of education and instead form a city school district.¹⁴²

In Alabama, cities are municipalities with at least 5,000 people. Any "homogenous" community with more than 300 residents can become a municipality with a petition signed by 15% of eligible voters and a referendum in the proposed area.¹⁴³ Municipalities can be identified as having more than 5,000 residents in the next United States Census.¹⁴⁴

When a new city school district is formed, taxes that are already paid in the city will automatically go to the new city school district without a special election.¹⁴⁵ Property in the new school district will be transferred to the city school district.¹⁴⁶

Alaska

Communities in Alaska must become a new city or borough to secede from their school districts. A community can become a city through a petition, approval, and referendum process if it meets population requirements and has the resources and need for city government.

Because school districts in Alaska do not have the power to levy taxes independent of cities and boroughs (equivalent to counties),¹⁴⁷ the only way for a community to secede from its school district is to form its own city or borough.

To become a city, a community must have at least 400 residents, a stable population, the human and financial resources to run a city government, and a "demonstrated need" for city government that cannot be met by attachment to an existing city.¹⁴⁸ The process of becoming a city requires a petition signed by 15% of residents; approval from the Department of Commerce, Community, and Economic Development and the Local Boundary Commission; and majority support in a referendum in the proposed city.¹⁴⁹

New school districts must have at least 250 students, unless the state Commissioner of Education finds that a smaller district would be in the best interest of the state and the proposed district.¹⁵⁰

Arizona

Arizona communities can secede from their school districts with approval from the State Board of Education, consideration of the educational and financial impact of the secession, and majority support in both the seceding and remaining area in a referendum.¹⁵¹

A school district's governing board or voters can request that a district be divided so long as the existing district has more than 600 students. Voters must submit a petition signed by at least 10% of voters or fifty voters from both the proposed district and the remaining area, whichever is more.¹⁵²

The State Board will decide if the proposed district has enough property wealth to support the district and enough students to ensure that programs and services will be of "similar or better quality" after the division.¹⁵³ The district will be divided if a majority in both the proposed district and remaining district vote in favor in a referendum.¹⁵⁴

All school buildings located in the new district will become the property of that district.¹⁵⁵ Any debt will be divided between the two districts based on property value in the new and remaining districts.¹⁵⁶

Arkansas

Communities that meet certain size requirements can break away and form their own school districts. The process requires approval from the State Board of Education, consideration of the impact on desegregation efforts, and a referendum held in the proposed district.

Either the district's board of directors or voters in the seceding area can request that a community be detached from an existing district.¹⁵⁷ Both the seceding area and the remaining area must have at least 2,500 students.¹⁵⁸ The resolution or petition will include a feasibility study examining the cost of operating the new district, the assets to be transferred, and the effect on desegregation.¹⁵⁹

The State Board will consider the petition and seek an opinion from the Attorney General on whether the creation of the new district will "hamper, delay, or in any manner negatively affect" desegregation efforts.¹⁶⁰

The district will be created if a majority of voters in the proposed district vote in favor at the next election.¹⁶¹

Either the new and remaining district or the State Board will agree on how to divide property and debt.¹⁶² The tax rate in the new district will remain the same until a new tax rate is approved at an election.¹⁶³

California

Communities can secede from their school districts with approval from a county committee and the State Board of Education and with the majority vote at a referendum. The approval process will consider the impact of secession on racial segregation, educational quality, cost to the state, and fiscal condition of the affected districts.

School board members or voters can start the process of school district secession. Voters can do so with a petition signed by 25% of voters in the existing district or 8% if the district has more than 200,000 students.¹⁶⁴

A county committee will consider plans for secession, but with the exception of some limited cases, the plan also needs approval from the State Board.¹⁶⁵ The State Board will consider the impact of the plan on educational, financial, and equity factors, including whether the plan will result in an "equitable division" of property, leave districts with an "adequate" number of students, and promote "sound fiscal management." The State Board will also consider if the secession will promote racial segregation, disrupt education programs, come at an increased cost to the state, or negatively affect the fiscal status of a district.¹⁶⁶

If the State Board approves it, the plan will be on the ballot in the next election. The new district will be formed if it gets approval from a majority of voters in an election area, as determined by the State Board.¹⁶⁷

Colorado

A community can secede from its school district with approval from the State Commissioner of Education, consideration of the impact of secession on educational quality and equity, and the majority support of the existing district in a referendum.

The process of secession can start with the district's school board, a petition signed by 15% of voters in the district, or the district's loss of accreditation.¹⁶⁸

The school board and accountability committee will then appoint a planning committee.¹⁶⁹ The committee will draft a plan that considers the educational needs of students, the availability of "diverse educational opportunities," the equalization of educational opportunities, and the fair division of properties and assets.¹⁷⁰ The plan must be approved by the State Commissioner.¹⁷¹

The existing district will vote on the formation of the new district, as well as on any increase in the local school tax rate because of the secession.¹⁷²

Existing debt will be paid as a tax on property that was part of the district that had the debt, unless the new school district assumes all or a part of the debt.¹⁷³

Connecticut

Connecticut towns that are part of a regional school district may secede by withdrawing from the regional district. To do so, they need the action from their town council, approval from the State Board of Education, and the support of voters in each member town. A community that is not already a town would need to become a town to secede.

In Connecticut, each town has its own school district unless it joins a regional school district.¹⁷⁴ A town that is a member of a regional school district can apply to the regional board of education to withdraw from the district with a vote of its town council.¹⁷⁵ The regional board will then appoint a committee to develop a withdrawal plan.¹⁷⁶ The committee will determine the share of assets belonging to each town and develop a plan for dividing property and debt. The town will be able to withdraw from the regional district if the plan is approved by the State Board and by a majority of voters from each member town of the regional school district in an election.¹⁷⁷

A community that is not already a town may be able to form its own district by becoming a new town, but this would require an act of the state legislature.¹⁷⁸ No new town has been created in Connecticut since 1921.¹⁷⁹

Delaware

Delaware residents cannot begin the process of seceding from their school district. In order to secede, a community must have the support of the State Board of Education, meet minimum criteria, and secure majority support in a referendum in the existing district.

All school districts must be able to provide a "complete instructional program" for grades 1–12, with the exception of career and technical education.¹⁸⁰ School districts can be divided in Delaware if the division is proposed by the State Board and receives the support of a majority of voters in a referendum held in the existing district.¹⁸¹

The new district will own any property located within its boundaries.¹⁸² If the district has debt when it is divided, both districts will share the debt and should levy a high enough tax rate to pay it off.¹⁸³

Florida

Florida's state law does not provide a path for school district secession. Each county is its own school district, according to the state constitution.¹⁸⁴ A community hoping to secede from its school district would require action from the state legislature and a constitutional amendment.

Georgia

Georgia's state law does not provide a path for school district secession, and the state constitution prohibits the creation of new independent school districts.¹⁸⁵ A community hoping to secede from its school district would therefore require action from the state legislature and a constitutional amendment.

Hawaii

Hawaii is a single school district.¹⁸⁶ It is therefore impossible to secede.

Idaho

A community in Idaho can secede from its school district with the support of the district's Board of Trustees, approval from the State Board, and voter approval in a referendum.

Only a district's Board of Trustees can begin the process of secession, and it can do so by submitting a proposal to the state Department of Education and the State Board of Education.¹⁸⁷ The proposal must be approved by the State Board. The proposal cannot divide the area of a city between more than one district, or leave a resulting district without a high school, if the existing district was a high school or K-12 district.¹⁸⁸

The proposal will be approved if it garners the support of a majority of voters in both the district as a whole and the smaller of the resulting districts in a referendum.¹⁸⁹

Illinois

State law in Illinois does not provide a path for school district secession. A community within a school district would therefore require action from the state legislature to form its own district.

There is no constitutional prohibition on secession.

Indiana

Indiana residents cannot start the process of school district secession. A community seeking to secede must have the support of a county committee, approval from the State Board of Education, and the support of residents in the proposed district. The county committee and State Board will consider the educational and financial impact of the secession.

In Indiana, a county committee for reorganization, whose members are appointed by a judge of the circuit court,¹⁹⁰ is responsible for proposing and planning the formation of new school districts.¹⁹¹ The county committee drafts a reorganization plan, which will include the educational improvements the secession will make possible, the property wealth per student in the proposed and remaining districts, and the way property and debts will be divided.¹⁹² The plan is then submitted to the State Board for approval.¹⁹³

The proposed district is created by either a petition signed by 55% of voters in the proposed district or by majority support in an election in the proposed district.¹⁹⁴

Iowa

Iowa's state law does not provide a path for school district secession. A community within a school district would therefore require action from the state legislature to form its own district.

There is no constitutional prohibition on secession.

Kansas

State law in Kansas does not provide a path for school district secession. A community within a school district would therefore require action from the state legislature to form its own district.

There is no constitutional prohibition on secession.

Kentucky

Kentucky's state law does not provide a path for school district secession. A community hoping to secede from its school district would therefore require action from the state legislature.

There is no constitutional prohibition on secession.

Louisiana

Louisiana's state law does not provide a path for school district secession, and its constitutional language limits the creation of new school districts. A community seeking to secede from its school district would therefore need both action from the state legislature and the support of voters in a state-wide referendum on a constitutional amendment.

The specific language in Louisiana's state constitution about school funding means that the creation of new districts requires a constitutional amendment.¹⁹⁵ Amendments to the state constitution require approval by a two-thirds vote in each house of the legislature and majority approval in a state-wide election.¹⁹⁶ In order for a community to secede, the legislature must pass one bill creating the school district and another placing a constitutional amendment on the ballot.

Maine

In Maine, a town that is part of a regional school district may secede from its school district by withdrawing from the regional district. The process of withdrawal involves a petition and referendum process, the approval of the Commissioner of Education, and a second referendum. A community that is not already a municipality may form a municipal school district by becoming a municipality.

After an attempt to reorganize many of Maine's city and town school districts into regional districts, the state legislature began allowing municipalities to withdraw from regional districts after they had been in a part of the regional district for a period of time (three years, later reduced to thirty months).¹⁹⁷

In order to pull out of a regional district, residents of the withdrawing town have to submit a petition signed by 10% of the voters who voted in the last gubernatorial election and secure approval from a majority of voters in a special election.¹⁹⁸ Municipal officers will then appoint a withdrawal committee to prepare a plan to provide education services to all students and to divide property and debts.¹⁹⁹

The proposal must then be approved by a majority of voters in the municipality in a special election, where the total number of votes cast must be at least 50% of the votes cast in the last gubernatorial election.²⁰⁰

A community that is not already a municipality may become one in order to become a municipal school district. A community can become its own municipality through a process involving a petition from residents, a referendum, and legislative approval.²⁰¹

Maryland

Maryland has only county school districts, with the exception of Baltimore, which is treated as a county for the purposes of state law.²⁰² Therefore, for another community to secede from its school district, the General Assembly would need to create a similar exception for that community.

There is no constitutional prohibition on secession.

Massachusetts

In Massachusetts, a city or town that is part of a regional school district may secede by withdrawing from its regional district, with approval from the Commissioner of Education. A community that is not its own town may be able to form its own district by becoming a town.

In Massachusetts, each city and town has its own school district, unless it is a member of a regional school district.²⁰³ A town or a city that is a member of a regional school district can withdraw from the regional district with the approval of the state Commissioner of Education.²⁰⁴ The exact procedure will depend on the agreement made when the regional district was formed.²⁰⁵

Theoretically, a community can also form its own school district by forming a new town or city, but no new city or town has been created since 1920.²⁰⁶

Michigan

Michigan's state law does not provide a path for school district secession. School districts can be divided or dissolved, but in both cases, the parts of the divided or dissolved district will be attached to neighboring districts.²⁰⁷ A community within a school district would therefore require action from the state legislature to form its own district.

There is no constitutional prohibition on secession.

Minnesota

Minnesota's state law does not provide a path for school district secession. A community within a school district would therefore require action from the state legislature to form its own district.

There is no constitutional prohibition on secession.

Mississippi

A community in Mississippi can secede from its district with the support of its school board and a majority of voters in the proposed district.

Voters can petition their school board to secede from their district if they gather signatures from a majority of voters in the proposed district.²⁰⁸ The school board may approve the proposal if it decides that the secession will not "seriously interfere with or impair the efficiency" of the district.²⁰⁹

The new district will still be responsible for paying any debts for properties located within its boundaries.²¹⁰

Missouri

Voters in Missouri cannot start the process of secession. A community hoping to secede from its school district must have the support of a county commission, the approval of the State Board of Education, and majority support in an election in the existing district.

School districts can only be divided as part of a plan proposed by a county commission.²¹¹ The plan then must be approved by the State Board and the majority of voters in an election in the existing district.²¹²

If a new district is created, the boards of the new and the remaining districts will decide on a "just and proper" division of property and debt, taking into account the property value in each district and the value of the property to be divided.²¹³ If the school boards cannot agree, the State Board will appoint a board of arbitration to do so.²¹⁴

Montana

Montana does not provide a path for secession. A community hoping to secede from its school district would therefore require action from the state legislature.

Since 1993, Montana statutory code has banned the creation of new high school or elementary school districts.²¹⁵ New K-12 districts can be created from elementary and high school districts,²¹⁶ but there is no provision for the creation of new K-12 districts from parts of existing K-12 districts.

There is no constitutional prohibition on secession.

Nebraska

Nebraska communities can secede from their school districts with approval from the state Committee for Reorganization of School Districts in a process that considers educational, financial, and equity factors.

School districts in Nebraska can be divided in two ways: through a petition and election process or through a school board process. In the first, voters can start the process of petition by submitting a petition signed by at least 60% of voters in the existing district to the State Committee for Reorganization of School Districts.²¹⁷ If the petition is signed by more than 65% of voters, the Committee will automatically approve the petition.²¹⁸ If the proposal is approved by the state Committee, it will be decided by an election in the existing district.²¹⁹

In the school board process, school districts can be divided if the school board of the existing district submits a proposal to the state Committee.²²⁰ This process does not require an election.²²¹

In both cases, the state Committee will consider, among other factors, communities' educational needs, the reduction in property-wealth disparities between districts, equalization of educational opportunities, and economies of scale in transportation and administration in deciding whether to approve the proposal.²²²

With few exceptions, all new districts must be K-12 districts.²²³

Division of properties and debts will be decided in the reorganization proposal,²²⁴ subject to the approval of the Committee,²²⁵ and made public in the election notice.²²⁶

Nevada

Nevada's state law does not provide a path for school district secession. Since 1956, school districts in Nevada have been coterminous with county boundaries, with the Carson City School District considered a county school district.²²⁷ A community within a school district would therefore require action from the state legislature to form its own district.

There is no constitutional prohibition on secession.

New Hampshire

In New Hampshire, a town that is part of a cooperative school district may secede from its district by withdrawing from the cooperative school district. The withdrawal process requires approval from the State Board of Education and a referendum in the district as a whole. A community that is not already a town may form a town school district by becoming a town.

In New Hampshire, each town is a school district.²²⁸ Some towns are also part of a cooperative school district.²²⁹ The school board of a member town of a cooperative school district that is at least ten years old can direct the board of the cooperative district to study the town's withdrawal from the cooperative district.²³⁰ The study committee must submit to the State Board a report that describes how the withdrawing district will pay for its share of debt and how students in the district will continue their education.²³¹

If the State Board approves the plan, a referendum will be held in the whole cooperative district.²³² If the district secedes, buildings and land in the withdrawing district will belong to the new district, once the district has paid its share of the cost of the buildings and improvements.²³³

New Jersey

A municipality that is part of a regional school district may withdraw from the regional district with the approval of the Commissioner of Education, consideration of educational and financial factors, and a special election in both the withdrawing district and the regional district. A new school district may also be formed when a new

municipality is formed.

In the first case, the State Board of Education or the governing body of a municipality must apply to the county superintendent to investigate the educational and financial impact of withdrawal on both the proposed and remaining districts.²³¹ After the report is filed, the municipality can ask the Commissioner of Education to hold a special election.²³² The Commissioner of Education can refuse if the remaining district would have too much debt or if any district would not have the resources or students necessary to have an efficient school system.²³³

If the Commissioner approves and the election is held, the plan must gain the support of a majority of voters in both the withdrawing district and the regional district.²³⁴

New districts can also be formed when a new municipality is formed or subdivided.²³⁵ However, the creation of new municipalities has largely ceased since the 1950s.²³⁶

New Mexico

A community in New Mexico may secede from its school district with the approval of the State Board of Education. The State Board will consider district size and educational impact in deciding whether to approve the secession.

The school board of the existing district, the state superintendent, or voters can request that a new district be formed from part of the existing district.²³⁷ Voters can request the creation of a new district with a petition signed by 60% of voters in the proposed district.²³⁸

The State Board will decide whether to approve the creation of the new district.²³⁹ Both the new and remaining districts must have 500 students.²⁴⁰ The State Board will also determine if both districts can provide a high school program and whether creating the new district is in the best interest of public education in the existing district, the new district, and the state as a whole.²⁴¹

New York

New York's state law outlines several ways in which a municipality may secede from its school district if it meets size requirements and gains sufficient support from both the proposed district and the remaining district. However, the Office of Educational Management Services within the state Department of Education has indicated that these statutes are not currently in use.²⁴²

Almost all school districts in New York belong to a supervisory district, which is led by a superintendent.²⁴³ These superintendents have the authority to create new school districts within their district whenever they determine that it is in the educational interests of the community.²⁴⁴

Some municipalities that are part of other districts can also request that they become their own school district.²⁴⁵

A municipality can secede if it has at least 10,000 residents and its secession would leave the existing district with at least 1,000 students.²⁴⁶ The superintendent of the supervisory district will help to develop a reorganization plan specifying how current programs will continue and how property and debt will be divided.²⁴⁷ The new district will be formed if the proposal has either majority-voter support or two-thirds support in the governing bodies of both the seceding municipality and the remaining area.²⁴⁸

Another law singles out a select group of districts but still requires the support of the board of education of the existing district and the support of residents in both the proposed district and remaining district.²⁴⁹

North Carolina

North Carolina's state law does not provide a path for school district secession. A community within a school district would therefore require action from the state legislature to form its own district.

There is no constitutional prohibition on secession.

North Dakota

North Dakota's state law does not provide a path for school district secession. School districts may reorganize but only to form new school districts from parts or wholes of two or more existing districts. A community within a school district would therefore require action from the state legislature to form its own district.

There is no constitutional prohibition on secession.

Ohio

In Ohio, the State Board of Education has control over the process of secession. The State Board may, with the approval of the state legislature, create new districts, unless residents petition to hold an election in which they can reject the proposal.

The State Board can propose that a new local school district be formed from part of an existing district.²⁵⁵ The district will be created unless 35% of voters in the proposed district who voted in the last general election petition to hold a referendum.²⁵⁶ If the petition is successful, the voters in the proposed new district will vote on the referendum during the next general or primary election.²⁵⁵

Since 2005, the law has stated that formation of new districts must be approved by both houses of the General Assembly.²⁵⁶

The new district will assume a part of the remaining district's debt that is the same as the ratio of the property value in the new district compared to that of the remaining district.²⁵⁷ Buildings located in the new district will be transferred to the new district.²⁵⁸ The State Board will divide funds between the new district and the remaining district.²⁵⁹

Oklahoma

Oklahoma's state law does not provide a path for school district secession. A community within a school district would therefore require action from the state legislature to form its own district.

There is no constitutional prohibition on secession.

Oregon

Oregon's state law does not provide a path for school district secession. A community within a school district would therefore require action from the state legislature to form its own district.

There is no constitutional prohibition on secession.

Pennsylvania

Pennsylvania's state law does not provide a way for a school district to permanently secede, though it does allow independent districts to be temporarily created while the territory is transferred to another district.²⁶⁰ State law also allows municipalities to become school districts, so a community in Pennsylvania could theoretically secede by becoming a new municipality through a petition process and approval by the Council of Basic Education.

A community can theoretically secede from its school district by splitting off from its municipality and becoming

a new municipality.²⁶¹ The simplest way to do this is to incorporate as a borough: a majority of "freeholders" living in a proposed borough with at least 500 residents can file a petition for incorporation.²⁶² However, if a new municipality has a population of less than 5,000, the creation of the new district must be approved by the Council of Basic Education.²⁶³ The Council will consider whether the "welfare of pupils" is promoted by the creation of the new district.²⁶⁴

The boards of school directors of the new and existing districts are responsible for dividing property and debt.²⁶⁵

Rhode Island

A Rhode Island community that is part of a regional school district can secede from its school district by withdrawing from the regional district. A community that is not a part of a regional district may theoretically secede by becoming a municipality.

Most school districts in Rhode Island are municipal school districts, but some are regional school districts made up of two or more municipalities.²⁶⁶ A municipality can withdraw from a regional school district in the way agreed upon when the regional district was formed,²⁶⁷ which usually requires approval from both the withdrawing district and the remaining regional school district.²⁶⁸

A community may theoretically form a school district by becoming its own municipality, but this is only possible through an action of the General Assembly.²⁶⁹ State officials consider this so unlikely as to be impossible.²⁷⁰

South Carolina

South Carolina has county school districts that cannot be divided except by an act of the General Assembly or with the approval of the County Board of Education.²⁷¹

The County Board will approve a division of a county school district if the plan has the support of the entire state legislative delegation from the county; if a petition signed by at least 80% of voters in the county district is submitted; or if both a petition signed by one-third of voters is submitted and the plan is approved by a majority of voters at a countywide referendum.²⁷²

South Dakota

A community in South Dakota can secede from its school district with approval from the Secretary of Education, consideration of the new and remaining districts' wealth and student population, and majority support in a referendum in the existing district.

A community can secede from its school district so long as the new district can offer a K-12 program²⁷³ and if all territory within a municipality that dates back to 1991 or earlier remains in one district.²⁷⁴

The secession process can start with either the school board of the existing district or with a petition signed by 15% of voters in the district.²⁷⁵ The school board develops a reorganization plan, which includes the property value in the new and proposed districts and a description of the educational program the new district will provide.²⁷⁶ The plan then must be approved by the Secretary of Education, who may deny the plan if the proposed district does not have the property wealth or number of students to provide an "adequate educational program."²⁷⁷

If the Secretary approves the plan, an election will be held.²⁷⁸ The district will be divided if a majority of voters in the existing district approve.²⁷⁹

The Board of County Commissioners is responsible for allocating property and debt.²⁸⁰

Tennessee

Since 2013, municipalities in Tennessee that meet certain size requirements have been able to secede so long as

they secure the approval of a majority of voters in the seceding municipality.²⁸¹

Municipalities may form their own school districts if they are authorized by their charter to do so and would have a student population of at least 1,500.²⁸² The municipal district is created if a majority of voters in the seceding municipality approve the creation of the new district and agree to raise local funds to support it.²⁸³

Texas

In Texas, a community that meets certain size requirements can secede from its school districts through a referendum held in both the seceding area and the remaining district.

A community with at least 8,000 students and an area of at least nine square miles can break away and form its own district.²⁸⁴ The process of secession can be started by the district's board of trustees or by a petition signed by 10% of voters in the seceding area.²⁸⁵

The existing district will hold a referendum on the proposal.²⁸⁶ The new district is created if the proposal gets majority support in both the seceding area and the remaining district and if at least 25% of registered voters in the district turn out.²⁸⁷

The new district will own any properties located in its territory, and a county court will decide how much debt each district should assume, depending on the value of the properties involved and the property wealth of each district.²⁸⁸

Utah

In Utah, a community that meets certain size requirements can secede from its school district with the approval of a county legislative body that considers the financial impact of the secession and with the support of a majority of voters in both the proposed district and the remaining area.

Since 2003, the law has stated that a community may break away from its school district so long as both the new and remaining districts would have at least 3,000 students.²⁸⁹ The process can begin by request from the board of the existing district or with a petition signed by 15% of the voters in the proposed school district who voted in the last gubernatorial election.²⁹⁰ The county legislative body will appoint a committee to review data and gather information on the impact of the proposed district, including the district's financial viability, its financial impact on existing districts, and other "positive and negative effects."²⁹¹

The new district will be created if it secures the approval of a majority in the county legislative body and a majority of voters in both the proposed district and the remaining district in the next election.²⁹²

The county legislative body will resolve any disagreements about division of property.²⁹³ Both districts will levy a uniform tax rate that raises enough to pay off bonded debt.²⁹⁴

Cities with more than 50,000 people may secede with a separate but similar process.²⁹⁵

Vermont

A Vermont town that is part of a union or unified union school district may secede by withdrawing from the union district. The process of withdrawal involves approval from the State Board of Education and from voters in each member town. Other types of districts may not divide or secede without action by the state legislature.

Vermont has many types of school districts. The most common types are city or town school districts; union school districts, which are made up of more than one town; and unified union school districts, which are K-12 union school districts.²⁹⁶

A town that has been a part of a union or unified union school district for more than a year may withdraw from the district with the support of a majority of voters in the withdrawing town and in each of the other member towns.²⁹⁷ The State Board will then consider whether the withdrawal is in the best interests of the state, students, and remaining member towns.²⁹⁸

Any other form of school district secession would likely require action from the state legislature.

Virginia

Communities in Virginia have no direct power in the process of school district secession. The State Board of Education is responsible for determining school district boundaries, with the approval of the affected school boards and municipal and county governing bodies.

The state constitution gives the State Board the power to divide the state into school districts so as to promote educational quality.²⁹⁹ When reviewing existing school district boundaries or drawing new ones, the State Board may consider the school-age population of the area and the ability of the proposed district to offer a comprehensive education, to meet quality standards, and to promote efficiency.³⁰⁰

The State Board can only divide districts with the consent of the affected school boards and the governing bodies of the affected municipalities and counties.³⁰¹ In addition, the General Assembly can overrule any change.³⁰²

Washington

Washington's state law does not provide a path for school district secession. The Attorney General has advised that the state laws on school district reorganization do not "authorize or allow a section of a school district to break away from that school district and form a new and separate school district by itself."³⁰³ A community within a school district would therefore require action from the state legislature to form its own district.

There is no constitutional prohibition on secession.

West Virginia

West Virginia's state law does not provide a path for school district secession. A community within a school district would therefore require action from the state legislature to form its own district.

West Virginia's state law requires that school districts include all the territory in a single county.³⁰⁴ The state constitution suggests that "independent free school districts" could potentially be created, but the constitution also states the state's current system of school districts can only be changed through action by the state legislature.³⁰⁵

Wisconsin

In Wisconsin, a community can secede with approval from its local school board, consideration of the secession's impact on district finances and diversity, and voter approval.

Either a resolution by the school board or a petition signed by 20% of voters in the affected district can propose the creation of a new district from part of an existing district.³⁰⁶ The school board will decide the new district's boundaries and how property and debt should be divided between the new and remaining district.³⁰⁷ If the board fails to agree or if voters petition, the proposal may instead be reviewed by a School District Boundary Appeal Board, where members are appointed by the state superintendent.³⁰⁸ Both the school board and appeal panel should consider the impact of the secession on students' educational needs, the financial status of the affected districts, and socioeconomic and racial diversity.³⁰⁹

Once the proposal is approved by the school board, appeal board, or both, the proposal will be decided by a referendum held in the proposed district.³¹⁰ If voters petition, the referendum will be held in the district as a whole.³¹¹

Wyoming

In Wyoming, a community that meets certain criteria may secede from its school district with approval from a county district boundary board and from the State Board of Education. The boundary board and State Board will consider the educational, financial, and equity impact of the secession.

A community with one hundred or more voters can petition to create a new school district within an existing district, so long as the area contains both a high school and an elementary school and has at least 500 students.³¹² Moreover, all territory within a town must remain in one school district.³¹³

A district boundary board composed of county officials will consider the petition.³¹⁴ The board will then submit a proposal to the State Board, which ultimately decides whether the community can secede.³¹⁵ The State Board will consider whether the secession will provide an improved and more equalized educational opportunity for students, enable a "wiser and more efficient" use of funding, improve financial equity between districts, and simplify school district organization.³¹⁶

If the community successfully secedes, the district boundary board will divide property and debt between the new and remaining districts.³¹⁷

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314. Wyo. Stat. Ann. § 21-6-210 (LexisNexis 2017).
315. Ibid.
316. Wyo. Stat. Ann. § 21-6-201 (LexisNexis 2017) and Wyo. Stat. Ann. § 21-6-207 (LexisNexis 2017).
317. Wyo. Stat. Ann. § 21-6-218 (LexisNexis 2017).

*. It should be noted that resource withdrawal does not arise with another form of reconfiguring school systems: charter schools. When individual students transfer to charter schools, their families continue to pay property taxes for education (or rents that cover those taxes), supporting public schooling as a common good.

**. It should be noted, however, that this issue does not arise with another form of reconfiguring school systems: charter schools. When individual students transfer to charter schools, their families remain within the territory of the school district. They continue to pay property taxes for education (or rents that cover those taxes), supporting public schooling as a common good. Similarly, they remain district homeowners and, as such, they are invested in the quality of the local school system. This is a different matter entirely than the withdrawal of entire neighborhoods from school districts.

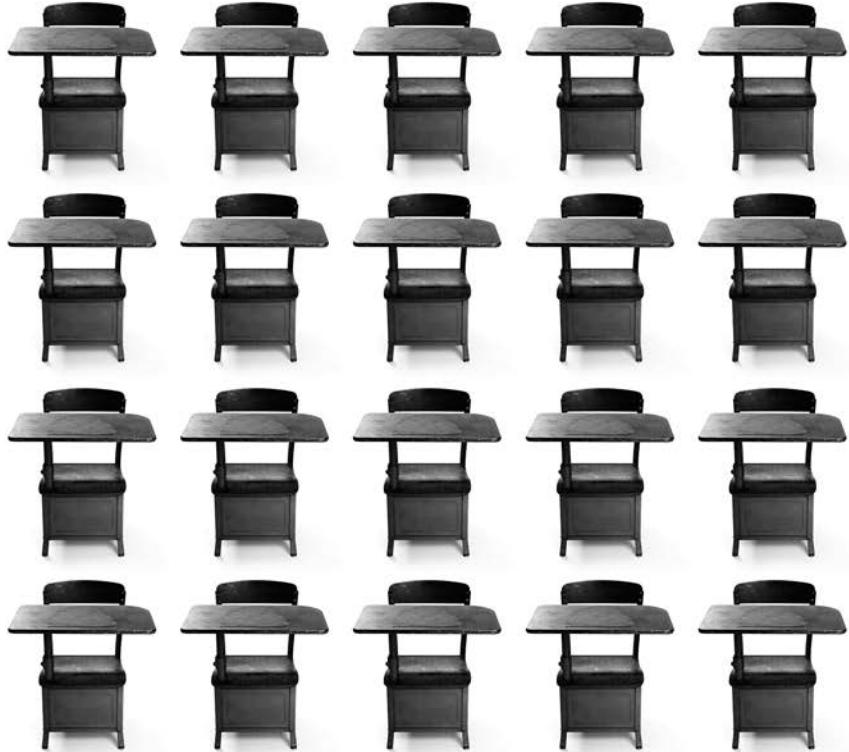
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LOST INSTRUCTION

THE DISPARATE IMPACT OF THE SCHOOL DISCIPLINE GAP IN CALIFORNIA

By Daniel J. Losen and Amir Whitaker



The Center for Civil Rights Remedies

at The Civil Rights Project | *Proyecto Derechos Civiles*

Executive Summary

This report is the first to analyze California's school discipline data as measured by days of missed instruction due to suspension. The state reports the number of suspensions for each district, disaggregated by racial/ethnic groups, but it does not provide any information on how much instructional time was lost. We used information from two large California school districts and several states to estimate conservatively that each suspension causes approximately two days of missed instruction.

One obvious reason suspensions contribute to a decrease in the graduation rate, as demonstrated in our prior report released this spring, *The Hidden Costs of California's Harsh Discipline*, is that getting suspended denies access to instruction, and missing instruction has been shown to contribute to lower achievement. Our previous report examined the economic impact of suspension for every district in the state. To demonstrate the cost of suspensions in more concrete and immediate terms, this report describes the impact suspension has on instruction and analyzes data from every district. The report shows that there is a racially disparate impact, as measured by the amount of lost instruction, and that a great deal of that disparate impact results from suspending students frequently for the most minor violations of the code of conduct—the nonviolent, non-drug-related behaviors that fall under the catchall code of disruptive or defiant behavior. The report's key findings are as follows:

1. Despite a recent decline in the use of suspension in California schools, many students are still losing a great deal of instruction time due to school discipline. We estimate that more than 840,000 days of instruction were lost during the 2014-15 school year alone.
2. Adjusted for enrollment, we found that students lost approximately 13 days of instruction for every 100 enrolled.
3. Our estimate showed that the largest decline in lost instruction was for Black students, yet large racial gaps persist; the largest is between Black and White students. In 2014-15, Blacks still lost approximately 43 days of instruction per 100 enrolled, compared to 11 days lost per 100 White students. That means Blacks lost an average of 32 more days than Whites per 100 enrolled.
4. The frequency of suspension and the impact on lost instruction was greatest in the alternative and specialized schools run by the county offices of education. In these schools, Black students lost 92 days of instruction per 100 enrolled, compared to 18 for White students.
5. All students attending high school districts lost, on average, more than 18 days per 100 students, but Black students in these districts lost an average of 62 days per 100 enrolled.
6. The most minor suspension category, referred to as "disruption or defiance" was shown to be a major contributor to the large racial disparities in the amount of lost instruction. For example, although offenses for this category account for approximately 30% of all suspensions, among the districts with the largest Black/White difference in lost instruction, where Black students on average lost 65 more days of instruction per 100 than White students, the disruption/defiance category contributed to 41% of the racial difference.
7. In districts with the largest Latino/White gaps in terms of lost instruction, Latinos lost 45 more days than Whites, and the disruption/defiance category contributed to 71% of that difference.
8. Similarly, in California's 25 highest suspending districts, the disruption/defiance category contributed to 45% of lost instruction, well above the statewide average of 30%.

Our report does not provide a comprehensive review of the impact of LAUSD's suspension policy; however, in our discussion section we respond to claims that discipline reform will beget chaos in our schools. Contrary to some misleading assertions specific to LAUSD, school climate has mostly improved in the district since the disruption/defiance category was eliminated. In fact, the latest LAUSD survey shows that the district now has the highest "sense of safety" ratings in the last five years, with more than 80% of students agreeing with the statement that they "feel safe at school" in 2016-17.

Recommendations: A few years ago, Governor Brown signed into law a limit on suspending young children for disruption or defiance, which will "sunset" in January 2018. At the very least, these limits should be renewed. The state of California has since made school discipline one of the indicators in the statewide accountability plan that it submitted for approval to the U.S. Department of Education. One noteworthy aspect of California's efforts is that discipline reform is focused on improving the conditions of learning, and on finding effective, educationally sound alternatives to removing students from instruction as punishment in general, and in particular for minor misbehaviors. Moreover, the policy changes made by the state are aligned with the Local Control and Accountability Plan (LCAP) goals, such that each district has some funds to implement initiatives in discipline reform and ensure that they are grounded in improving the state's schools for all children. California's LCAP is a good example for the nation of how to pair state policy directives with local support: what California does well can and should inform what other states do. However, state policy should ensure effective discipline practices in all districts: if a student in one district who breaks a school rule is taught to correct his or her behavior and stays in school with no negative repercussions, why should a similarly misbehaving student in another district or in a charter school be suspended repeatedly, lose instructional time, and be put at risk of dropping out? The following research-based recommendations for improving California's efforts are highly relevant to other states:

- Provide resources and technical assistance to help teachers and school leaders improve school climate, including training focused on improving student engagement; on implementing restorative practices or other systemic approaches designed to prevent misbehavior; and on responding effectively to problematic behavior.
- Expand efforts to reduce suspensions at the state and district levels to include grades K-12, including eliminating the use of in-school and out-of-school suspension for *all* minor behaviors, including but not limited to those covered by the state's catchall disruption/defiance category.
- Reinforce changes to school behavior codes to make them more focused on prevention and less on punishment, and provide enough resources to ensure appropriate support for educators and to implement those changes with integrity.
- Monitor and report to the public disaggregated discipline data by race, gender, and disability status.
- Report to the public the actual days of missed instruction, disaggregated by race/ethnicity and type of offense. Issue a timely report for each school year at the beginning of the next academic year.
- Increase data collection and reporting on discipline by grade level and across subgroup categories, such as race with gender, and pilot the collection of data on LGBTQ youth.
- Provide technical assistance to high-suspending districts.
- Set goals for accountability plans to reduce disciplinary exclusion as part of state and local standards.
- Invest in research to identify what works in order to go beyond lowering suspension rates and close the discipline gaps by race, disability, and gender. Research should include an exploration of the relationship between suspension rates and academic outcomes, such as proficiency in core subject matter and graduation rates.
- Comply with federal law that requires states to report to the public annually on the school discipline of students with disabilities, by race and disability category.

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The Disparate Impact of Suspension on Instruction in California

Introduction

California is one of the leading states engaged in statewide school discipline reform, including its prohibition on suspending young elementary school children for minor misbehaviors, which was signed into law in 2014 and is scheduled for renewal. Although the commitment among legislators and educators to use suspension less often is strong, it should not be taken for granted. Nor should the public consider that the progress made to date is sufficient, given the frequent and disparate use of suspension by some districts documented in this report. For example, this report estimates that California's schoolchildren missed nearly 900,000 days of instruction in 2014-15 due to disciplinary removal alone. That is the equivalent of more than five million hours of lost instruction in just one school year. This report documents these losses and the profound differences in their occurrence by race and ethnicity.

We know from the research on chronic absenteeism that the impact of missing school for any reason can undermine learning. Research shows that missing three or more days of instruction before taking the fourth-grade National Assessment of Educational Progress in reading, after controlling for other variables, lowers achievement by a full grade level (Ginsburg, Jordan, & Chang, 2014). Considering that frequent use of suspension contributes to chronic absenteeism and the research-based consensus that suspension has a harmful impact on graduation rates and juvenile justice (Morgan et al., 2014), we were surprised to find that the state of California does not provide any information to the public or to researchers about days of instruction missed due to discipline.

This report is the first to take a close look at how suspension in California's schools impacts lost instruction in every district in the state. This descriptive study uses the state's reported enrollment numbers and number of suspensions, disaggregated by students' race/ethnicity, to estimate the days of missed instruction in every district for every racial/ethnic group. We further break out the days missed for the state and for each district, based solely on the district's removal of children for all manner of minor behaviors that fall into the catchall code known as "disruption and defiance." According to California Education Code section 48900(k), this includes student behavior that "disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties."

Because the California Department of Education does not currently collect or report the actual data, it is important to note that our estimates of the amount of lost instruction treat every suspension as two days in duration. We based our estimates on the data reported by two large districts, Los Angeles and Oakland, as well as other data from other states. The two districts do provide data on the days missed due to out-of-school suspensions; the results were 1.7 days in Los Angeles and 2.75 days in Oakland. That information—and our findings from research on the state of Massachusetts, where the average suspension was 3.7 days (and little racial difference)—which was based on detailed data from every school in that state, informed our decision to use a conservative estimate of two days per suspension across all schools, with no adjustment for category or racial group. Therefore, we remind readers that the number of suspensions are what the districts actually

reported and that the estimates of days lost are built on those detailed data. Readers can easily find both the suspension rates and the days lost in the spreadsheet that accompanies this report, and covers every district in California.

This report follows another by Russell Rumberger (Rumberger & Losen, 2017), director of the California Dropout Research Center, in which he provides an assessment of the extent to which suspension of older students predicts an increased likelihood that those students will drop out of school. Rumberger's study followed every tenth-grade student in the state for three years and, after controlling for most of the other major dropout factors, conservatively estimated that suspensions in California lowered graduation rates by nearly seven percentage points. For this one cohort, Rumberger used economic estimates specific to California to estimate the long-term cost of suspensions for the state at 2.7 billion dollars. He then provided estimates for each district. In many larger ones, the extra cost to taxpayers and individuals exceeded millions of dollars—costs that stronger reform policy might have averted.

We anticipate that the state will eventually reap some benefits from prohibiting suspensions for disruption and defiance until after third grade. For example, if stronger reforms increase graduation rates, it is estimated that the state will avert 180 million dollars in costs for each one percentage point improvement. Of course, the risk of being suspended for any offense increases dramatically as students get older. Despite the costs, it isn't hard to understand that suspending a student in some cases might be a necessary measure of last resort, yet there is no research that justifies frequent suspensions. Moreover, despite the reforms made in California, the state still explicitly permits schools to suspend students of any age from the instructional setting for a wide range of minor behaviors, including use of vulgar language and possession of cigarettes.

By highlighting the degree to which suspensions contribute to lost instructional time, we hope to make Californians aware that the discipline gap contributes to the achievement gap. Toward the same end, we remind readers that the introduction of our last report, *Closing the School Discipline Gap in California* (Losen, Keith, Hodson, Martinez, & Belway, 2015), stated our finding that suspension and achievement rates were inversely related, based on data from every California district. Specifically, lower suspension rates correlated with higher achievement for every racial group in California schools.¹ Thus, the evidence contradicts the widely held causal assumption that teachers must kick out the bad kids so the good kids can learn.

Studies from other states where additional factors contributing to lower achievement were controlled for, including poverty, suggest that fewer suspensions would predict higher achievement. Research has shown that school suspensions account for approximately one-fifth of Black-White racial differences in school performance (Morris & Perry, 2016). Meta-analyses have revealed a significant inverse relationship between suspensions and achievement, along with a significant positive relationship between suspensions and dropout (Noltemeyer, Ward, McLoughlin, 2015). While exploring school discipline and academic performance in the state, the West Virginia Department of Education found that "students with one or more discipline referrals were 2.4 times more likely to score below proficiency in math than those with no discipline referrals" (Whisman & Hammer, 2014). To better illustrate the disparate educational impact, and to compare districts, this report examines the impact of suspensions in terms of days of missed instruction per 100 enrolled using the aforementioned estimate of two days missed per suspension.²

This report does much more than present statewide results on missed instruction for the state of California; it also shows the degree to which lost instruction varies from one district to the next. The report includes a list of the 25 districts where students lost the most instruction during the 2014-15 school year. We acknowledge that some of these districts may have

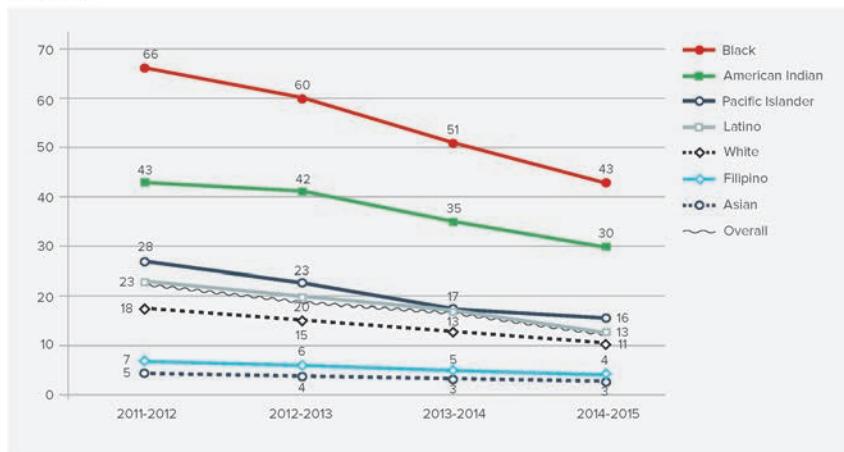
made progress in more recent years, and that for some the rates were even higher in prior years.³ Many districts with high suspension rates also have racial/ethnic disciplinary disparities that are so great as to shock the conscience. The large statewide racial/ethnic gap and even more profound local discipline gaps are of great concern to civil rights advocates.

In addition to reading this report, we urge readers to find the data on lost instruction time for their own district and compare it to others. To facilitate such efforts, we have provided a series of online maps that feature the most notable district-level findings ([online here](#)). We also provide information on every district in a free companion spreadsheet, which provides all the days of missed instruction and underlying suspension rates for each district overall, disaggregated by the major racial and ethnic groups, and with a parallel breakdown for the category of disruption and defiance.

California Shows a Four-Year Downward Trend in Days of Missed Instruction

Given our concern for the impact on educational achievement caused by the disparate and excessive use of suspension, throughout this report we express the underlying suspension rates through conservative estimates of the corresponding days of lost instruction. In every case, the days of missed instruction is estimated by doubling the combined in-school (ISS) and out-of-school (OSS) suspensions per 100 students enrolled. Based on our extensive analysis of days of lost instruction by race in states where these disaggregated data are reported, along with data reported by the Los Angeles Unified and Oakland Unified school districts, we believe that losing an average of two days per suspension is a conservative estimate (Losen, Sun, & Keith 2017; Los Angeles Unified School District, 2015). For the purpose of this analysis, we apply our estimate of two days of lost instruction consistently to arrive at a total of 840,656 days lost. We convert the reported number of suspensions to the rate of lost days per 100 by doubling the number of suspensions to get the number of days, and then dividing that number by the actual enrollment. We provide all the underlying data in the appendices and in the companion spreadsheet that covers every district in California.

Figure 1: Four-Year Trend in Days of Missed Instruction Based on Rates of Total Suspensions per 100 Students in California

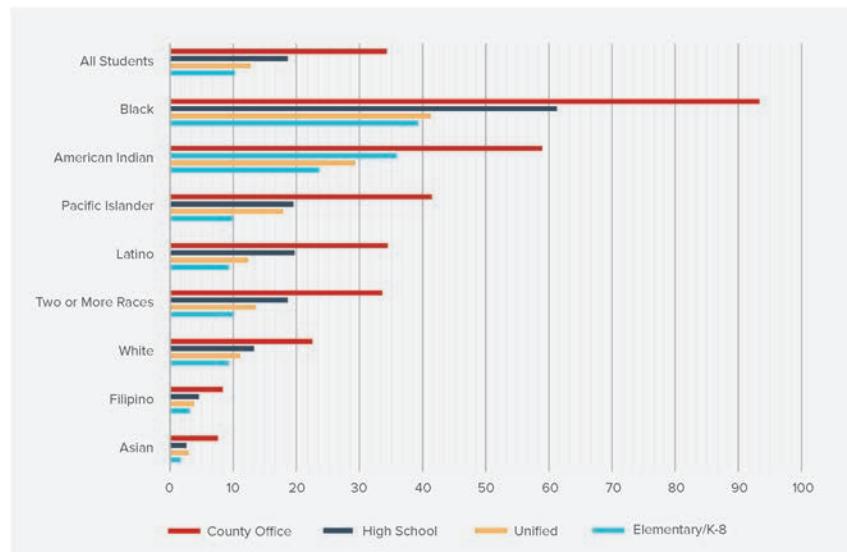


Source: California Department of Education (2015)

We estimate that the days of instruction lost due to suspensions has declined steadily for every racial group in California for four consecutive years. Although large and disturbing racial differences in the amount of lost instruction remain, the days of missed instruction per 100 enrolled declined for every single group.⁴ We estimate, for example, that in the 2014-15 school year, Black students still lost 32 more days of instruction per 100 enrolled than White students. On the other hand, the difference between Blacks and Whites has narrowed by 16 days since 2011-12, a time when we estimate that Blacks lost 48 more days of instruction per 100 than Whites. Moreover, since 2011-12, the difference in days of lost instruction has narrowed between Whites and every other racial/ethnic group.⁵ It is worth noting that, during this period, missed instruction due to OSS for the most serious violations also decreased for every group. To calculate these decreased numbers, we combined OSS for weapons possession, drug possession, and violence with physical injury; the racial gap in lost instruction for these violations also decreased (see appendices for details). This trend is important to note for those concerned that reducing suspensions will make schools chaotic and less safe, a topic we explore in the discussion section.

Research demonstrates that the statewide estimates of lost instruction time do not reveal the extent to which suspension rates and disparities in the use of suspension differ between types of districts. For example, Black and American Indian students appear to have lost the most instruction time in every type of district.

Figure 2: Days of Lost Instruction per 100 Students by Race/District Type



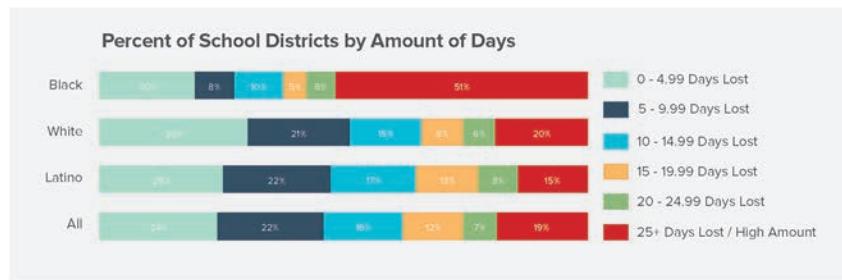
Note: For full details and numbers, see Table 8B in Appendix B.

Suspensions have a detrimental impact at all levels, but are noticeably higher in some types of districts. For example, Figure 2 shows that administrators in districts run by the county office of education tend to deny instruction on disciplinary grounds more than most. Students in these schools missed nearly three times as many days—35 per 100—as students in unified districts (13.4 per 100), and over three times as many as students in elementary districts (10.2 per 100).⁶ Most noticeable is that administrators removed Black students in the “County Office of Education” (COE) districts at the extremely high rate of 94 days per 100 enrolled. Moreover, the majority of students in need of behavioral support and special education are often enrolled in COE districts, which unfortunately also suggests that, among historically disadvantaged youth, those with the greatest need for support are removed from instruction at rates that far exceed the norm for children in California.

Among traditional school districts, high school administrators’ use of suspension is estimated to have the greatest impact on lost instruction. Students in high school districts missed an average of eight more days of instruction than students in elementary districts (18.3 vs. 10.2 days per 100 students). Many elementary districts include middle school students, so this is a less distinct difference than the name implies. Black students in High School districts lost an average of 61.2 days per 100 versus 14.3 for Whites, a difference of nearly 47 days lost per 100 enrolled. It is also noteworthy that the differences in days of missed instruction between White students and Latino and Pacific Islander students turns from slight to stark as the students get older.⁷

Statewide averages also do not capture the vast differences in lost instruction experienced by students of color from one district to the next, regardless of type. The broad distribution in days missed by race across all the districts in California is mapped out in Figure 3.⁸

Figure 3: School District Distribution of Days of Missed Instruction (per 100 enrolled) by Black, White, and Latino Students



We label 25 or more days of missed instruction as “high,” as it approximates the number of days missed when we add one standard deviation to the statewide average of 13 days per 100 enrolled.⁹

Figure 3 compares the district-level distribution of days of missed instruction for all students and for Black, White and Latino students. To determine this, we divided the number of districts where, for example, Black students lost 25 or more days of instruction ($N = 342$) by the total number of districts that enrolled more than five Black students ($N = 665$), arriving at the fact that Black students in 51% of the districts they attend lost at least this much instruction time. This experience contrasts starkly with the amount of instruction lost due to discipline by the vast majority of students

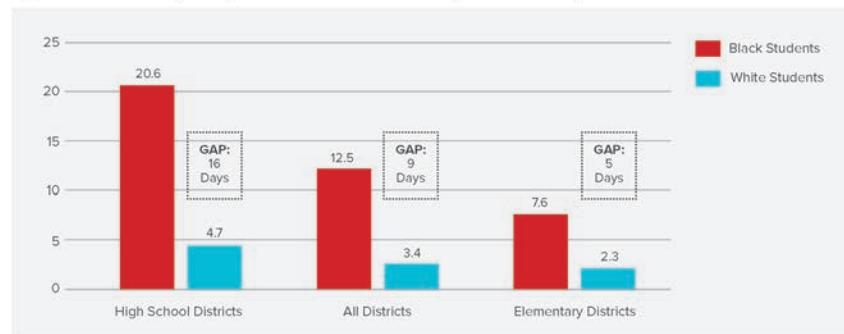
attending school in a California district. Losing 25 or more days of instructional time was the norm in only 166 districts out of a total of 895, or 19%; Whites missed 25 days or more per 100 in only 1 in 5 districts (20%); Latino students experienced high rates in 1 in 7 districts (15%; see appendices and spreadsheet for more details). On the other hand, each subgroup in 20% to 30% of the districts lost very little instruction time (between 0 and 5 days). This means that students in a significant number of California districts experienced a school climate in which a relatively low amount of instruction time was lost for disciplinary reasons. This analysis is consistent with other reports examining differences at the school level using California's 2014-15 dataset (Loveless, 2017).

District Use of Suspension for Minor Behaviors Drives Much of the Racial Divide in Days of Lost Instruction

In California, it is local policymakers and school administrators who decide whether to suspend students in grade 4 and higher for the minor behaviors covered by the state code of conduct in the category often called disruption or defiance. In 2013-14, the Los Angeles Unified School District (LAUSD) eliminated the "disruption/defiance" category as grounds for suspending any student in any grade. Oakland Unified, San Francisco Unified, and a number of other districts have since followed LA's lead. However, from 2014-15 to the present, the majority of schools and districts in California still suspend students in most grades for minor misbehavior.

The average days of instruction lost due to minor misbehavior is greatest in the high school districts. When the number of days missed due to removal for disruptive conduct is broken out by race, we find large differences. These differences are typically largest between Black and White students, which is why we highlight that comparison in Figure 4. Moreover, the size of this racial difference is three times larger at the high school level than in elementary districts.

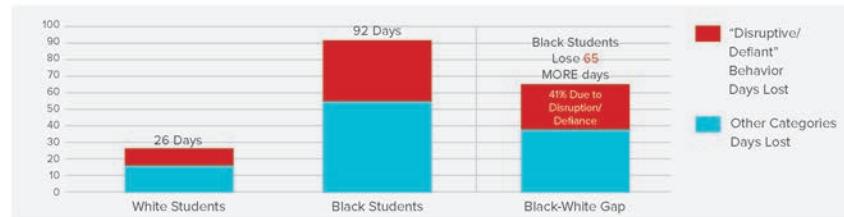
Figure 4: The Racial Gap in Days of Lost Instruction due to Suspensions for Disruption/Defiance in 2014-15¹⁰



California Districts with the Largest Racial Disparities Rely More Frequently on Suspension for Disruption/Defiance

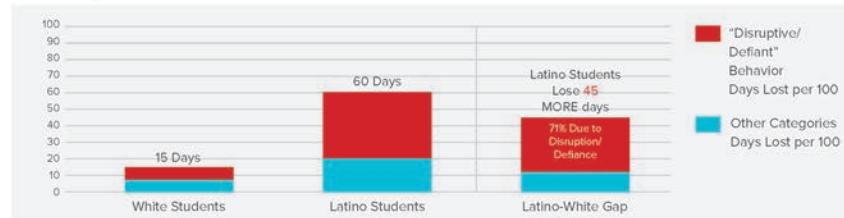
Not every district in California has racial differences of the magnitude we describe in this section. To clarify the extent to which this one category can contribute to racial differences, we reviewed the 50 districts in the state with the largest Black/White racial differences in total days of instruction missed for all offenses combined. We then asked, how much do suspensions for minor disruptive/defiant behaviors contribute to their large divide? To ensure that the differences were not distorted by low enrollment, we only looked at districts that enrolled at least 100 Blacks and 100 Whites. This subset of 50 districts enrolled more than 27% of all the Black students in California, and nearly one million students in all. The per-district average days of instruction lost by Black students in these districts with a large racial gap was 92 per 100 enrolled, compared to 26 lost days per 100 enrolled for White students. Generally, per 100 enrolled, Blacks missed an average of 65 more days of instruction than Whites. More specifically, we found that the catchall disruption/defiance category constituted 41% of the Black-White racial gap across these 50 districts in the aggregate, as shown in Figure 5a.

Figure 5a: Black-White Racial Gap in 50 Districts with the Largest Disparities in Days of Instruction Lost for Minor Disruptive/Defiant Behaviors



While the racial discipline gap between Latinos and Whites is smaller and less common than the Black-White gap, we found a similar pattern in the five districts with the largest Latino-White gap, as shown in Figure 5b.

Figure 5b: Latino-White Racial Gap in 5 Districts with the Largest Disparities in Lost Instruction Is Driven by Removal for Minor Disruptive/Defiant Behaviors



In the districts with the largest gaps, the per-district average was that Latinos lost 45 days more instruction per 100 than Whites, and the minor disruption/defiance category accounted for 32 more days of missed instruction for Latinos than for Whites. This means that suspension for disruption/defiance accounted for more than 71% of the Latino-White gap in these five districts with the largest overall gap. These data parallel the pattern found in many studies, whereby responses to the most minor misbehaviors—those most vulnerable to biased perceptions of behavior—appear to contribute most to the large racial/ethnic differences in punishment (Skiba et al., 2011). In each of the five California districts with the largest Latino-White gap, Latinos lost at least 20 more days of instruction per 100 enrolled than Whites.

The Disparate Impact of Suspension on Instruction Found in the 25 Highest Suspending Districts

In addition to the aggregate picture of disparate impact, we looked at the 25 highest suspending districts that enrolled at least 100 Black, White, and Latino students. When one observes the days of lost instruction in each of the 25 highest suspending districts for all students for reasons that cover the entire code of conduct, it is apparent that students in these districts were losing an extraordinarily high number of days due to discipline—far greater than the statewide average of 13 days per 100 enrolled. We organized the districts on our list (see Table 1) in descending order by total days per 100 lost for all offenses for all students, starting with the district that had the highest amount of lost instruction. For each listed district, we show the days lost per 100 enrolled for Blacks, Latinos, and Whites for all offenses, and then for disruption or defiance. For each racial group in each district, we calculate the percentage of all instruction lost due to this one category of minor misbehavior.

Table 1: California's 25 Districts with Most Days of Lost Instruction per 100 Enrolled in 2014-15

District	All Students	Black Student Days Lost per 100 Students		Latino Student Days Lost per 100 Students		White Student Days Lost per 100 Students	
	All Behavior	All Behavior	Disruption/Defiance	All Behavior	Disruption/Defiance	All Behavior	Disruption/Defiance
Sausalito Marin City	106.0	265.5	194.8	120.3	98.7	4.0	2.7
Mojave USD	82.4	162.2	65.6	45.3	20.1	53.7	21.0
Vallejo City USD	54.9	106.6	41.6	37.8	19.1	49.1	20.1
Weaver Union	53.4	173.8	110.3	49.3	31.9	62.2	42.0
Ceres USD	52.2	119.7	96.2	53.0	40.8	53.2	37.7
Barstow USD	47.5	128.7	38.5	33.0	11.9	29.6	7.0
Woodland Joint	46.9	128.0	67.2	51.5	32.2	32.1	15.8
Manteca USD	46.5	122.0	74.1	44.7	30.6	42.6	25.3
Antioch USD	46.4	105.2	52.6	26.9	13.1	27.4	12.1
Stockton USD	46.4	125.2	33.3	35.5	9.4	63.8	16.2
Victor Valley Union High	46.3	124.4	54.2	30.2	14.2	18.6	7.3
Tracy Joint USD	45.1	91.4	57.7	50.7	33.0	41.0	24.5
Kern High	44.1	119.0	54.7	40.8	18.6	39.9	17.2
Morongo USD	40.9	92.1	55.2	37.4	19.9	38.0	16.9
Antelope Valley Union High	39.1	101.9	31.8	26.7	11.5	19.7	5.4
Palo Verde USD	39.1	79.3	21.1	37.4	16.4	30.5	9.4
John Swett USD	39.0	81.6	21.0	23.8	6.6	27.4	6.9

Madera USD	38.8	107.8	50.1	37.7	19.3	38.2	18.4
Merced City Elementary	38.8	106.3	45.1	36.1	18.2	47.5	24.6
Konocti USD	37.9	64.2	23.9	27.7	6.1	40.8	6.2
Washington USD	36.7	106.9	23.9	30.3	8.1	24.4	4.5
Twin Rivers USD	34.9	79.7	24.2	27.5	9.0	27.6	9.6
Marysville Joint	33.9	84.1	21.8	24.9	8.5	41.4	12.2
Fairfield-Suisun	33.9	73.7	21.9	31.7	13.2	24.5	8.7
Yuba City USD	33.4	108.9	56.1	38.6	17.6	34.7	12.8

Even among these 25 highest suspending districts, the contribution of the disruption/defiance category to the total amount of lost instruction varies a great deal; it also varies significantly within each district by racial/ethnic group. The per-district average was that 45% of all missed instruction was due to disruption/defiance, well above the statewide average of 30%. Moreover, in each of the 25 districts, Black students missed instruction due to disruption/defiance at a rate above the state average, which was also true in most cases for Latino students. For each racial group in each district, we calculate the percentage of all instruction lost due to this one category of minor misbehavior. The individual district information is provided in the companion spreadsheet.

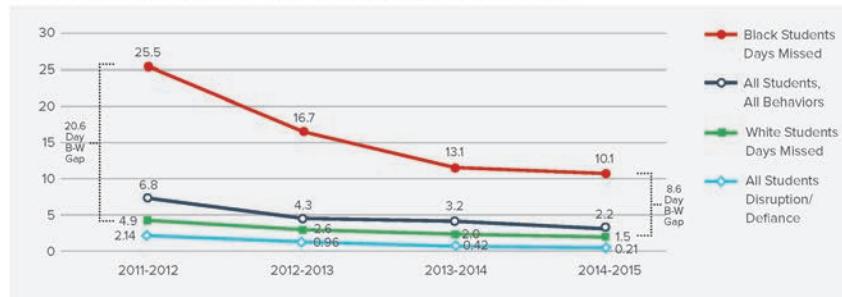
In each of the 25 highest suspending districts, what appears to be an overarching problem of excessive and disparate use of suspensions could be helped by finding alternative responses for the wide array of minor behaviors that constitute disruption or defiance. Readers should note that, given the data lag, it's possible that some of these highest suspending districts have already made great progress in this area since 2014-15. Our next report, which will follow the release of the 2015-16 data, will provide examples of districts that have made substantial progress and highlight those with the highest rates of progress. As we detail in our discussion and recommendations sections, in this report we have used days of missed instruction to highlight severe problems that need educationally sound solutions, and we acknowledge that changes in state and local policy are necessarily meant to help achieve more equitable outcomes by improving the school climate and learning conditions.

Discussion and Conclusion

We consider the highest suspending districts to be examples of excessive reliance on disciplinary removal and note that each of these districts also had large racial differences in the amount of instruction lost due to that removal. Frequent use of suspensions is a persistent problem. Even if local educators and policymakers are taking the initiative to control it, it appears that more could be done. We draw that conclusion from the data we reviewed, along with findings from other state studies that support the idea that local and school-level administrators have a great deal of influence over whether suspensions are used frequently or as a last resort (Fabelo, 2011; Skiba, 2015). One specific study in Texas that tracked every middle school student for over six years, controlling for race, poverty, students' behavioral background, and numerous other external factors, concluded that school-level factors contribute to large differences in the use of suspension (Fabelo, 2011). In a study of school principals in Indiana, where poverty and other factors were controlled for, Skiba (2015) found that both higher suspension rates and larger racial disparities in those rates were predicted for principals who adopted zero-tolerance type approaches to discipline. A recent study on the impact of suspensions for minor misbehavior indicated that they contribute so dramatically to a reduction in both math and English language arts achievement that they can reduce the likelihood that a suspended student will achieve proficiency in these areas (Lacoe & Steinberg, 2017b). Most important is the example of what LAUSD has done, which provides important evidence that districts can take the initiative and eliminate disruption and defiance as grounds for suspension at every grade level. Although our analysis did not entail a full study of LAUSD, and while we acknowledge that more improvements need to be made in LAUSD, the data on school climate and suspension rates suggest that real progress was made in reducing suspensions without creating chaos.

Figure 6 shows our estimate of the overall decrease in lost instruction time in LAUSD. The policy to eliminate disruption/defiance as grounds for suspension was adopted in the 2012-13 school year, but the sharpest decline in the overall use of suspension began at least a year earlier.

Figure 6: Four-Year Trends in LAUSD Days of Missed Instruction per 100 Students



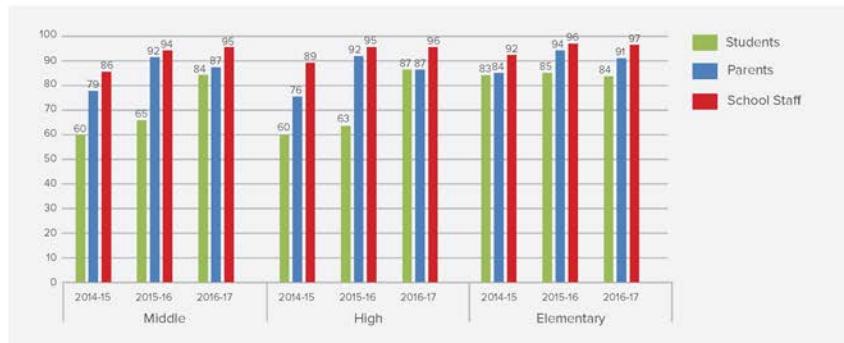
In our previous report, *Closing the School Discipline Gap in California* (Losen, Keith, Hodson, Martinez, & Belway, 2015), we noted that LAUSD adopted a plan in 2013 to eliminate the use of suspension as a response to disruption or defiance. As Figure 6 demonstrates, the number of suspensions overall and for disruption/defiance declined four years in a row; during the first two years, the only years for which API scores were available, the scores showed a rise in achievement in LAUSD. We also noted that the purpose of the plan to eliminate suspension for all disruption/defiance offenses was not simply to reduce the number of suspensions but to improve academic achievement. Although discipline reform efforts had already begun in LAUSD, using the most recent data we estimate that, by eliminating suspensions for disruption or defiance, LAUSD has avoided the loss of thousands of days of instruction and more than ten thousand hours of instruction time.¹¹ LAUSD also has experienced what could be the largest increase in graduation rates in its history since the policy to eliminate suspensions for disruption and defiance began four years ago. In 2017, 80% of the district's high school cohort graduated, a full ten percentage-point jump from the 70% rate in 2013-14 (Kohli, 2017).

One would expect the policy to have an impact on the violation category, but equally important is that days of lost instruction for other violations also declined. Although not depicted, we calculate that the racial gap in days lost in LAUSD narrowed by more than what could be attributed to eliminating disruption and defiance alone. This suggests that the reduction in suspensions for minor offenses was not replaced by increased suspensions in other categories, and that it was a genuine effort to improve school climate and prevent student misbehavior. Although we do not have 2015-16 suspension data for other districts, we do know from LAUSD's website that suspensions in LAUSD have continued to decline.

Some may regard as problematic the fact that the 2014-15 survey showed an initial decrease from 2013-14 in the sense of safety reported at the elementary, middle, and high school levels. The largest decline was at the high school level, which dropped 13 points from 73 to 60, followed closely by a middle school drop from 72 to 60. There are many possible reasons for changes in responses to a given school climate indicator, including an increase in student searches at the secondary level which has generated student complaints, and even students demonstrating at an LAUSD school board meeting.¹²

Most notable is that the survey results on students' sense of safety for the most recent year available, 2016-17, (figure 7) show that safety ratings for middle and high school students are at the highest level in five years, higher than before the new suspension policy was implemented and more than making up the initial decline. Specifically, following the initial dip, LAUSD students' reported sense of safety grew to 88% for the middle school and 84% for the high school—the highest it has been for students in those groups in the last 5 years.

This evidence runs counter to the frequent argument that a policy change intended to lower the use of suspension will cause the learning environment to become chaotic and unsafe. Most recently, in a *Wall Street Journal* opinion piece published in September 2017, Manhattan Institute Senior Fellow Jason Riley argued that LAUSD's climate survey data show that the change in policy caused a decline in safety after they eliminated suspensions for disruption and defiance. Missing from the evidence presented in the WSJ by Riley was the most recent data and numerous other conflicting survey responses.

Figure 7: Student, Staff, and Parent Perceptions of Feeling Safe in LAUSD Schools

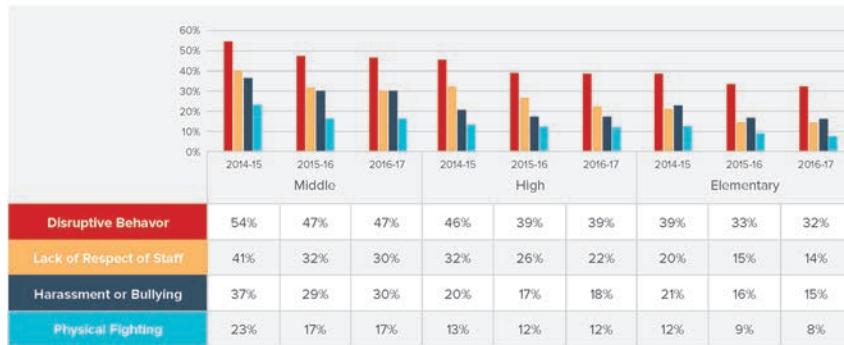
The actual data (see Figures 7 and 8) demonstrate that, in the several years after the policy change, the LAUSD school climate survey responses do not suggest chaos. Students' and teachers' reported sense of safety has improved, and both are currently at high rates, as both are much higher than reported the year before the policy change. Notably, when we look at all the years of data since the policy change, a period in which suspensions have continued to decline, Elementary students sense of safety has remained steady with between 83-85% responding that they felt safe. Even the singular middle school indicator that Jason Riley used to assert his chaos theory (students' sense of safety) started rising back the year after it dipped, and for 2016-17 was reported at 84%, over 10 percentage points higher than the year before the policy change.

We do not assert that there are no issues with the way discipline reform has been implemented in LAUSD. Nor do we argue that any one indicator is proof that a policy is successful. However, one would expect that, if the policy change in 2013-14 truly caused chaos, it would show up in multiple indicators and that nearly all indicators would grow increasingly worse each year, as implementation of the new policy advanced.¹³

As Figure 7 shows, the sense of safety reported by school staff increased each year. Parents' rates rose to 92% or higher at each grade level in 2015-16, an increase over 2014-15 (no comparable data were available in 2013-14). They declined slightly in 2016-17, but all are still at 87% or above which is still much higher than in 2014-15. Readers should also note that the percentage of students who agreed that bullying was a problem at their school showed a consistent decline at the elementary level. Further, while harassment and bullying showed a slight uptick in staff perceptions of these problems in 2016-17 at the middle and high school level, they remain consistently lower at all levels than they were in 2014-15.

Equally important, out of the nearly 50,000 LAUSD school staff members surveyed in 2016-17, more than 80% at all grade levels feel that school discipline problems were handled fairly, and more than 75% felt that discipline was handled effectively. As Figure 8 demonstrates, staff at all levels report that student behavior is less problematic since the abolition of suspension for disruption/defiance.¹⁴

Figure 8: LAUSD Staff Perception of Student Behavioral Problems (Moderate or Severe)



The use of data out of context to raise the spectre of chaos is not limited to the recent op-ed by Jason Riley. A recent report by Tom Loveless, Senior Fellow at the Brown Center on Education at The Brookings Institution cites to several of the same sources.¹⁵ Most noteworthy and relevant to this report's conclusions is how the Loveless report on suspensions in California's schools conflates research about disruption in general to implicate discipline reform, raising the concern that reform may put orderly classrooms and well-behaved children at risk, albeit in far subtler terms (Loveless, 2017).

The Loveless study explores California's school-level discipline data and finds extraordinary racial differences. However, the report references a study of students in Alachua County, Florida, to make the point that being educated with disruptive students puts a burden on non-disruptive peers, which Loveless asserts is often overlooked by discipline reform proponents. The relevance of the study to the discussion builds upon a tacit assumption that discipline reform will cause greater exposure to disruptive students. Yet, the cited research is not a study of discipline reform, but of the broad societal impact of domestic violence. Specifically, the oft-cited study from Alachua County, Florida, examined how children exposed to domestic violence in their home impacted their peers in school. The study treated students from these violent homes as the proxy for disruptive students. The study authors estimated that such exposure had serious economic costs to their non-disruptive peers. Not mentioned is the fact that Alachua County was among Florida's highest suspending districts. The costs that were associated with being in a class with disruptive peers in Alachua County might better be described (in context) as the costs incurred in a district that frequently suspended youth for disruptive behavior. One could argue that non-punitive interventions to support traumatized youth displaying problem behavior might help reduce the disruptive behavior and mitigate the costs to peers such as those documented in the Alachua County study.

Instead, both Riley's op-ed and the Loveless report's discussion suggest that we take it as a given that high-suspending schools are helping make the learning environment more productive for non-disruptive students by instilling order. Missing is any research demonstrating that frequently suspending children produces the kind of order that improves the learning environment. Riley and Loveless do point to a working paper by researchers from the University of Arkansas, but in response to published criticism of their work, the authors issued a statement that their findings should not be used to suggest that suspensions are beneficial or boost test scores.¹⁶ To the contrary, the best research available suggests that

suspensions generally fail to deter misbehavior and may in fact reinforce the behavior it is intended to deter; neither the suspended students nor their peers appear to improve their behavior in harsh disciplinary environments (Mendez, 2003).

Moreover, the assumption that kicking out the “disruptive” students is likely beneficial is based on a false dichotomy that students are either disruptive or non-disruptive, and that this is some immutable characteristic or deficit within the student. Findings from the Texas study (Fabelo, 2011) suggest that the distinction is false, as more than 60% of Texas middle school students were suspended at least once by the time they left school. This hard data on who gets suspended at some point during their schooling indicates that *the majority* of secondary students have, at one point or another, been counted among the “bad” or “disruptive.” Most important, as mentioned at the outset, the Texas study concluded that school factors, *not* students’ characteristics, explained most of the differences in suspension rates among schools.

Schools Make a Difference

Nobody benefits if an educationally unsound response to student misbehavior causes students to miss instruction. Moreover, if even one racial or ethnic group is observed to engage in minor disruptive or defiant behavior more often than others, it would never justify their receiving unsound punishment or a counter-productive response. Nor should one accept the unsupported assumption that the alternatives necessarily increase exposure of peers to disruptive youth. The heart of the civil rights concern about suspensions is that, once it is clear that an unsound policy or practice harms one group more than others, it becomes both a moral and legal imperative to replace the harmful policy with one that is sound and educationally justifiable.

Faced with data showing the deep racial divide in instruction time lost due to discipline, even assuming that most teachers and administrators try to treat students fairly and to avoid the influence of negative stereotypes, we should not assume that they succeed in doing so. Our previous report summarized recent research demonstrating that teachers likely would treat Black students more harshly than similarly situated Whites for the same offenses (Okonofua & Eberhardt, 2015). It is worth noting that they found no significant difference in how teachers of different races responded.

The most recent study examining teacher bias in discipline shows how implicit bias can influence not just our responses but our perceptions as well. The study, conducted by researchers at the Yale University Child Study Center (Gilliam, 2016), prompted preschool teachers to look for signs of pending bad behavior, then tracked the eye movements of both Black and White teachers as they watched a screen playing four videos of individual Black and White preschoolers, separated by race with gender, with one video in each of the four corners of a large screen. In the study, no students were misbehaving or about to misbehave, yet all the teachers watched the Black boys far more than the other children. Most teachers and administrators do try to treat students equally, but this study indicates that the negative racial stereotypes about behavior can corrupt our expectations and influence whom we pay attention to and whom we ignore.¹⁷

These findings suggest that, in light of the deep racial differences in the amount of lost instruction time, another good reason to stop suspending students for disruption or defiance is that doing so involves highly subjective perceptions. It should come as no surprise that, in the highest suspending districts, the most subjective category contributed to more than 40% of the racial gap in lost instruction. We do not argue that other categories are immune from these concerns or that implicit racial bias is the only kind of injustice reflected in the different outcomes, nor do we know or assert that the reason for observed racial difference in any given district is not some other factor that has nothing to do with bias or discrimination. However, we do suggest that, when observing the alignment between the largest racial divides and the most subjective category, as documented in this report, there is a legitimate concern that bias may be contributing to the vastly disparate impact on lost instruction.

There Are No Quick Fixes

We have framed this report in terms of days of lost instruction to align with one of our core research-informed recommendations: that districts should not regard implementing changes in discipline policy or practice as being isolated or distinct from their academic mission (Balfanz, Byrnes, & Fox, 2015). Consistent with what research suggests is most effective, we do not argue here that simply eliminating disruption/defiance as grounds for suspension in all grades will quickly or entirely fix the disparate impact on days of missed instruction. Based on our research in California and across the country, we suggest that no single policy change alone would satisfy the need for effective discipline reform.

Furthermore, we reject as unreasonable any suggestion that ending suspensions for this violation category means that teachers and staff should do nothing in the face of disruptive or defiant behavior. We instead reiterate one of our core recommendations, which is based on our observations of the most successful districts in California and the most recent research on what has worked to lower both suspension rates and racial disparities (Losen, 2015)—namely, that districts should accompany concrete policy change with an investment in training leaders and teachers, and in providing support for students in ways that improve instruction, student engagement, and student behavior. We argue that, given the economic and civil rights implications of inaction, the state has an obligation to support more effective ways of preventing minor misbehaviors, as well as more effective responses to the same.

We believe that discipline reform efforts in California are particularly helpful, and they also provide funds for pursuing reforms. As the chair of California's board of education stated, "The Local Control Funding Formula is driving positive change in California. Graduation rates are up, suspension rates are down and college eligibility rates are at an all-time high."¹⁰ In this report, we present data that raise questions about whether relying on local control is sufficient when it comes to changing discipline policy, including whether the state should ignore major differences between districts. We think that state policy should make it less likely that a student in one district who breaks a school rule is taught to correct his or her behavior and stays in school with no negative repercussions, while a similarly misbehaving student in another district or in a charter school is suspended repeatedly, loses instructional time, and is put at risk of dropping out.

Our book *Closing the School Discipline Gap*, published by Teachers College Press, provides many potentially effective alternatives. The book compiles studies conducted by researchers across the country who examined the impact of programs and initiatives that address excessive school discipline. These include restorative justice, positive behavioral supports and interventions, improvements to academic engagement, threat assessments, professional development, and more. One randomly controlled study found that teachers who participated in a specific training program used less exclusionary discipline than teachers not receiving the training (Gregory, Allen, Mikami, Hafen, & Planta, 2014). Other studies have found that even brief interventions that encourage empathic discipline cut suspension rates in half (Okonofua, Paunesku, & Walton, 2016).

There also is more to learn about which policies and practices are the most effective replacements for suspending students for minor misbehavior. Qualitative and quantitative analyses can help inform which avenue to pursue, but there is no definitive, proven best practice or policy that researchers can guarantee will work. Poor implementation and resource shortages can undermine discipline reform efforts that might otherwise be highly effective. Furthermore, many administrators who pursue substantial change confront the political problem of buy-in. They know they will face resistance to reform efforts from teachers and administrators who don't believe the changes will work, perhaps out of fear that chaos will result or any number of other reasons. Without the buy-in of those who must implement the changes, administrators will be left with a change in policy but not in practice.

In California, the concept that district policy and practice can make a difference is evidenced by the fact that, in a conscious effort to reduce both their use of suspension and the amount of lost instruction time, several large districts serving large numbers of students with lower socioeconomic status have already engaged in focused efforts to address their high suspension rates. The most concrete policy change these districts have in common is the complete elimination of suspension for the disruption/defiance violation in *all* grades.

The data show that several other California unified school districts, including those in San Francisco, Azusa, Pasadena, and Oakland, have also reformed their school discipline policies by eliminating suspension for behaviors in the disruption/defiance category. These districts enrolled over 781,000 of California's 6.2 million students—more than 12% of all students. These school districts, which are in urban areas, overwhelmingly enroll students of color. They are sending the message rooted in the research that students need more support and constructive adult intervention to address minor misbehavior, not denial of instruction. The fact that these districts have undertaken such notable efforts to eliminate lost instruction for minor offenses and that the LAUSD data suggest that achieving lower suspension rates does not mean any loss of safety raises the question of why students in other districts should be deprived of the benefits of such reforms.

This report has focused on the deep racial differences in lost instruction time to inform policymakers, educators, and advocates, and to urge states to act to change educational policy. We remind those who are more focused on questions of efficiency that frequent suspensions are an economic burden to both state and local economies (Rumberger & Losen, 2017). We hope that, when the data and research findings are considered together, policymakers will find sufficient reason to call upon the state to limit ineffective discipline practices in every local jurisdiction.

Report Limitations

The estimated number of days of lost instruction are presented to ensure that the review of discipline data is framed in terms of its potential educational impact. We allotted two days for each suspension and made no assumptions or adjustments by race or ethnicity. There currently is no statewide data on days of lost instruction, and while some districts did report days missed due to OSS, we found no racially disaggregated data. It is possible that different racial groups typically experience more or fewer days of lost instruction; however, it is nearly certain that these differences vary by school and by district. Furthermore, we realized that if Blacks received harsher discipline than Whites for the same misbehavior, it would likely be lengthier suspensions; it also would mean that Black students would get a short suspension while a similarly misbehaving White student would get none. While we make no such assumption, we realize that, when considering all suspensions, harsher treatment might not produce a difference in the average length of suspension. Moreover, our study in Massachusetts on the number of days of instruction missed due to discipline, where we had enough data to realistically estimate differences in the average length of suspension by race, did not reveal a statistically significant difference between Whites and Blacks in the average number of days missed per suspension.

A primary limitation is that these data are from 2014-15. Furthermore, we did not show the trends by district as we did in our last report. As a result, some of the districts on our list of highest suspending may no longer deserve that designation. In other cases, as high as the data are, they could reflect a great deal of improvement. When the 2015-16 data are released, we will produce a far more detailed analysis of the trends for every district and attempt to highlight those achieving large reductions.

Reporting the data on the number of suspensions per 100 students, as in our prior report, has similar limitations in terms of not capturing the full impact of district-level variation that we might see with actual data on the length of suspension

disaggregated by race. It is also possible that a few frequently suspended students could drive up the rate of suspensions per 100, even while their racial group's risk for suspension decreased. This risk is greater for groups with lower enrollments.

This report only used combined suspensions per 100 to generate the days missed per 100. In prior reports, we have separated ISS from OSS. To avoid redundancy and keep this report short, we only used the combined number of suspensions as the basis for days lost due to suspension. That said, some districts may legitimately argue that their ISS includes providing instruction. We believe that too little is known about ISS to assume this, but in our next report we will provide analyses of lost instruction, further broken down by ISS and OSS.

Another major limitation was the lack of cross-sectional data needed to examine race with disability and race with gender. Considering that, when we previously had these data, we found that Black students with disabilities were suspended far more often than any other subgroup in California, we urge the state to report these further disaggregated data to the public. We did not have grade-level data, but we did have data on elementary districts. Many of these districts also serve students in grades above the elementary level, therefore our elementary district-level analysis should not be regarded as a pure representation of days of missed instruction at the elementary level.

Finally, the use of census data in this report is another limitation worth noting. Although inflated rates are a possibility when suspension rates are based on census enrollment data, using the cumulative enrollment increases the potential problem of deflated rates. Cumulative enrollment treats short-term enrollees as the enrollment-count equals of students who attend the full term. This is discussed in more detail in the appendices.

Recommendations

In the time since our previous report, *Closing the School Discipline Gap in California: Signs of Progress*, the state of California and several other states have made important strides. Governor Jerry Brown signed into law the limit on suspending young children, and the state made school discipline one of the indicators in the statewide accountability plan that it is submitting for approval to the U.S. Department of Education. One noteworthy aspect of California's efforts is that discipline reform is focused on improving the conditions of learning and finding effective, educationally sound alternatives to removing students from instruction as punishment generally, and especially for minor misbehavior. Moreover, the policy changes made by the state are aligned with the Local Control and Accountability Plan (LCAP) goals, such that each district has some funds to implement initiatives in discipline reform and ensure that they are grounded in improving the efficacy of the state's schools for all children. California's LCAP is a good example for the nation of how to pair state policy directives with local support. Because what California does well can and should inform what other states do, the following research-based recommendations for improving California's efforts are highly relevant to other states as well:

- Provide resources and technical assistance to help teachers and school leaders improve school climate, including training focused on improving student engagement; on implementing restorative practices or other systemic approaches designed to prevent misbehavior; and on responding effectively to problematic behavior.
- Expand efforts to reduce suspensions at the state and district levels to include grades K-12, including eliminating the use of in-school and out-of-school suspension for *all* minor behaviors, including but not limited to those covered by the state's catchall disruption/defiance category.
- Reinforce changes to school behavior codes to make them more focused on prevention and less on punishment, and provide enough resources to ensure appropriate support for educators and to implement those changes with integrity.

- Monitor and report to the public disaggregated discipline data by race, gender, and disability status.
- Report to the public the actual days of missed instruction, disaggregated by race/ethnicity and type of offense.
Issue a timely report for each school year at the beginning of the next academic year.
- Increase data collection and reporting on discipline by grade level and across subgroup categories, such as race with gender, and pilot the collection of data on LGBTQ youth.
- Provide technical assistance to high-suspending districts.
- Set goals for accountability plans to reduce disciplinary exclusion as part of state and local standards.
- Invest in research to identify what works in order to go beyond lowering suspension rates and close the discipline gaps by race, disability, and gender. Research should include an exploration of the relationship between suspension rates and academic outcomes, such as proficiency in core subject matter and graduation rates.
- Comply with federal law that requires states to report to the public annually on the school discipline of students with disabilities, by race and disability category.

Appendix A: Calculating Suspensions/Days of Missed Instruction per 100 Enrolled Using Cumulative or Census Enrollment

Data

The California Department of Education (CDE) provides downloadable data files with various student outcomes and measures for the state. In our analyses, we utilized discipline and enrollment data from the CDE public repository. Public files containing aggregate student discipline data—that is, the number of suspensions disaggregated by race/ethnicity—for the 2014-15 school year.

Suspension rates were calculated by combining the total number of OSS and ISS for each school district. This aggregate suspension number was then divided by the number of students enrolled on a specific date (census enrollment). For example, if there were 100 total suspensions in a district and 1,000 students enrolled, the overall suspension rate would be 10 suspensions per 100 enrolled students. This “x suspensions per 100 students enrolled” methodology was followed in our 2015 report that utilized the same dataset (Losen, Keith, Hodson, Martinez, & Belway, 2015).

As described in the introduction, based on the limited information available on days of instruction missed due to suspension from the Los Angeles and Oakland school districts, we estimated two days per suspension at every level of analysis. To emphasize the impact on lost instruction, only the data presentations in the appendices to this report list the underlying suspension rates. The suspensions per 100 and raw numbers of suspension are available for every racial group and for every district in our companion spreadsheets; they can be calculated easily by cutting the days of lost instruction in half.

This report is concerned with racial disparities, and racially disaggregated cumulative enrollment data were not available. Therefore, we did not consider using the cumulative enrollment data throughout our report. Using the census data does run the risk of inflating suspension rates for districts whose enrollment may vary dramatically, especially in those whose daily enrollment grows significantly over the course of the year.

Some might assume that, because the suspensions collected are cumulative counts, so too should the enrollment used to derive our suspension rate and corresponding estimates of lost instruction be based on the cumulative. However, both the cumulative and the census enrollment distort the rate of suspensions per 100 enrolled in ways that complicate the accurate reporting of suspension rates and our corresponding estimates.

Although inflated rates are a possibility when suspension rates are based on census enrollment data, using the cumulative enrollment instead increases the potential problem of deflated rates. Cumulative enrollment treats short-term enrollees as the enrollment-count equals of those students who attend the full term. This is problematic for suspension rates because short-term enrollees have fewer opportunities to be suspended. Full-term students have more opportunities to be suspended because of the higher number of days enrolled in the district. The underlying assumption when the census

enrollment is used is that most schools operate on a traditional 180-day calendar and most students are enrolled for the entire year. Furthermore, even schools and districts with high mobility may offset the number of incoming students with a similar number of exiting students. The cumulative enrollment only reflects the total number of students who enrolled *at any point and for any duration* during the year and does not subtract those who left.

Lower suspension rates with cumulative enrollment are especially misleading if there is declining enrollment and/or high dropout numbers. In either situation, a suspension rate that uses the census enrollment from the first quarter of the year may also be lower than a rate that adjusts for enrollment changes. A student that attends for only 60 days and then drops out could not generate as many suspensions, or days lost, as a student attending for a full year. In other words, 300 students attending for 60 days each can generate 18,000 suspensions at most. This is the same maximum number that 100 students attending for 180 days can generate. If the actual suspensions are the same for the two groups, the 300 students' cumulative enrollment will cause the enrollment to be higher than the census enrollment, and the suspension rate per 100 will be much lower than if derived from the census. In fact, the two groups had an equal number of opportunities for suspension. If the rate had been adjusted to reflect the days of actual enrollment, the suspension rate per 100 enrolled would be the same for the two groups.

The most accurate rate. Neither the cumulative nor census enrollment is ideal for reporting suspensions per 100 enrolled. The ideal suspension rate per 100 enrolled would use an enrollment number that counted all enrolled students but also reflected the proportion of the school year for which they were enrolled. For example, a student attending the school for just 60 days would count as one-third of one enrolled student for the purpose of calculating the suspensions per 100 enrolled.

Combined suspensions. This report used combined suspensions for consistency and simplicity. The state of California will also utilize combined suspensions in their Every Student Succeeds Act Indicator. Our analysis found that nearly 80% of all suspensions in California in the 2014-15 school year were actually OSS. However, we understand the combined rates for some districts could be heavily weighted with ISS. Our next report will disaggregate suspensions by in-school and out-of-school. A minimum enrollment of 100 was selected for each subgroup highlighted to limit distortions and call attention to racial gaps in districts where each group's enrollment is substantial. However, our analysis revealed significant racial disparities in districts that enroll fewer than 100 students in a particular subgroup. These can be found in the companion spreadsheet.

Calculating days of lost instruction. In the state of California, a single suspension can last up to five consecutive school days (Cal. Ed. Code § 48911). In this report, we assigned a conservative number of two days per suspension after reviewing the days of lost instruction data in the Oakland and Los Angeles unified school districts. Also, a national review of other studies exploring the number of days missed due to suspension informed our effort. The state of Washington (2015), for instance, found that students were suspended for 3.6 to 4.5 days, depending on the student's race. Massachusetts students missed an average of 3.75 days for each suspension (Losen, Sun, and Keith, 2017). In our days of missed instruction analysis, we included ISS because of its traditional lack of commitment to instruction time. However, we are aware that some districts provide ISS programming that may involve instruction.

Appendix B: Calculating High Suspension Rates with Standard Deviations

We used standard deviations to determine what constituted a high suspension rate in the state of California. The standard deviation tells us how district suspension rates per 100 are distributed across the state. After adding one standard deviation (13.92) to the per-district average for the state (13.56), we generate a rate that tells us that any district with a higher rate is higher than the vast majority of districts in California (around 68% of all districts had lower rates). We used 25 days per 100 students instead of the combined number of 27.48 days per 100 for clearer analysis. Standard deviations are lower when most districts are near the state per-district average. However, with discipline in California we find a wide range (0-124 days lost per 100 students). This statistical tool is often used by researchers to give a sense of high or low values relative to the mean (Johnson, 2000). Moreover, Massachusetts, one of the few states that, like California, has accountability for discipline disparities, has used a standard deviations tool to identify schools and districts that need state intervention because of high disparities in discipline. In this report, we use "high" in connection to days of lost instruction per 100 to alert educators, and to decide which districts to include on our maps. This is a conservative use of the term "high" considering that the standards set forth by the Academy of American Pediatrics (2008) and others is that suspension should be a measure of last resort. It's hard to argue that most districts in California today are taking that approach in the full sense of "last resort." However, if the average reflected a last resort approach, then a full standard deviation above the average is unlikely a last resort. We use suspensions per 100 here to better understand the contribution the category of disruptions/defiance makes to high rates of disciplinary exclusion. We do not use unduplicated counts, even though California uses those rates for accountability, because those rates cannot be disaggregated by code of conduct categories. Furthermore, we use the rate of suspensions for all students as the basis for the distribution analysis and do not adjust for race or poverty to avoid an unjustifiable double standard, and because no research suggests that suspending students is the most effective or educationally sound response to most types of misbehavior.

The dataset was comprised of 842 school districts across the state of California. Only school districts that (1) reported suspension data for the 2014-15 school year, and (2) were not designated as a county office of education district were included in calculating the standard deviation. Most districts designated as county offices include alternative schools for special populations, which is why they were excluded from our final sample. Many of these schools are intended to support youth with behavioral concerns.

Table 1B: Standard Deviations across District Type

	All Schools 'n'	USD 'n'	High School 'n'	Elementary 'n'	All Schools Std. Deviation	USD Std. Deviation	High School Std. Devia- tion	Elementary Std. Deviation
All Student Suspensions per 100 Students	842	339	78	412	6.96	6.51	7.06	6.93
All Student Disruption/ Defiance Suspensions per 100 Students	842	339	78	412	3.46	3.54	4.21	3.08
All Students Days of Lost Instruction per 100	885	341	78	447	13.92	13.05	14.10	13.64

According to the California Department of Education, the following school districts and independently reporting charter schools "did not complete and certify their 2014-15 CALPADS End-of-Year 3-Discipline data submission. Therefore, these districts/charters do not have any 2014-15 certified suspension and expulsion counts" (Link available [here](#)).

Table 2B: List of Districts/Independently Reporting Charters That Did Not Certify Their 2014-15 CALPADS Discipline Data

CDS Code	Lea Name	Lea Type
01100170109835	FAME Public Charter	Independently Reporting Charter
19646260000000	Hughes-Elizabeth Lakes Union Elementary	District
16639410000000	Kings River-Hardwick Union Elementary	District
15636930000000	Norris Elementary	District
50712090000000	Paradise Elementary	District
47104700000000	Siskiyou County Office of Education	County Office of Education

Table 3B: Suspensions per 100 Students by Race/District Type

	All Students	Black	American Indian	Pacific Islander	Latino	Two or More Races	White	Filipino	Asian
County Office	17.5	47.2	29.4	20.8	17.6	17.0	11.4	4.0	3.3
High School District	9.1	30.6	18.2	9.6	9.8	8.9	7.2	2.4	1.4
Unified District	6.7	20.7	14.6	8.4	6.5	6.9	5.5	2.2	1.6
Elementary/K-8 District	5.1	19.5	11.9	5.1	4.9	5.2	4.7	1.7	1.1

Table 4B: Four-Year Trend in Use of OSS, by Serious Violation^{*,19}

School Year	Black	American Indian	Pacific Islander	Latino	White	Filipino	Asian	Overall
2011-12	4.5	3.2	2.4	1.9	1.5	0.7	0.5	1.8
2012-13	4.4	3.4	2.1	1.7	1.3	0.7	0.4	1.7
2013-14	3.9	3.2	1.7	1.6	1.2	0.6	0.4	1.5
2014-15	3.6	2.9	1.7	1.4	1.2	0.6	0.3	1.4
11-12 to 14-15 Trend	-0.3	-0.3	0.0	-0.2	0.0	0.0	-0.1	-0.1

Note: Typically, students do not receive ISS for these serious violations and therefore our reports have only tracked the OSS in these categories. For reporting purposes, suspended students are counted within the Federal Offense Category corresponding to the most severe offense each student committed within a given incident.

Source: California Department of Education

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Table 5B: The Diminishing Race/Ethnicity Gap in Days of Lost Instruction per 100

	2013-14		2014-15	
	American Indian-White Gap	22.2	Black-White Gap	18
Pacific Islander-White Gap	38.2	32.2		
Latino-White Gap	4.4	4.0		
	3.0	2.0		

Despite the decreasing number of days missed and underlying rates, educators in California still suspend Black and American Indian students at much higher rates than those from most other racial/ethnic groups.²⁰ Gaps also exist for Latino and Pacific Islander students. Missing instruction diminishes educational opportunity for all students, but the disparate impact is noticeably different when the differences in missed instruction are calculated.

Table 6B: Number and Percentage Distribution of Days Lost across School Districts

	0-4.99 Days Lost		5-9.99 Days Lost		10-14.99 Days Lost		15-19.99 Days Lost		20-24.99 Days Lost		25+ or High Number of Days Lost		Districts N
All	219	24%	196	22%	142	16%	109	12%	63	7%	166	19%	895
Black	135	20%	51	8%	65	10%	35	5%	37	6%	342	51%	665
Latino	222	25%	194	22%	151	17%	113	13%	70	8%	131	15%	881
White	264	30%	186	21%	131	15%	75	9%	56	8%	174	20%	886

Table 7B: Total Estimate of Days of Lost Instruction by Race

	All Students	Latino	White	Black	Two or More Races	Asian	American Indian	Filipino	Pacific Islander
Number of Days Lost from Disruption/Defiance Suspensions	259,046	141,314	51,940	46,658	7,108	4,070	3,544	1,758	1,490
Number of Days Lost from All Suspensions	840,656	441,144	169,810	161,370	24,242	16,412	10,794	6,772	5,072

Table 8B: Days of Lost Instruction per 100 Students by Race/District Type

District Type	All Students	Black	American Indian	Pacific Islander	Latino	Two or More Races	White	Filipino	Asian
County Office	35.0	94.4	58.9	41.6	35.1	34.0	22.7	8.1	6.5
High School	18.3	61.2	36.4	19.2	19.6	17.8	14.3	4.9	2.9
Unified	13.4	41.4	29.2	16.8	13.0	13.9	11.0	4.4	3.2
Elementary/K-8	10.2	38.9	23.8	10.3	9.7	10.4	9.4	3.4	2.1

Table 9B: The 50 School Districts with the Largest Black-White Gap in Days Lost per 100

District	Black Days of Lost Instruction per 100	White Days of Lost Instruction per 100	Black-White Gap in Days of Lost Instruction per 100	Black Disruption/Defiance Days of Lost Instruction per 100	White Disruption/Defiance Days of Lost Instruction per 100	Black-White Gap in Disruption/Defiance Days of Lost Instruction per 100
Sausalito Marin City	265.5	4.0	261.5	194.8	2.7	192.1
Weaver Union	173.8	62.2	111.6	10.3	42.0	68.4
Mojave Unified	162.2	53.7	108.6	65.6	21.0	44.6
Victor Valley Union High	124.4	18.6	105.8	54.2	7.3	46.9
Barstow Unified	128.7	29.6	99.1	38.5	7.0	31.4
Woodland Joint Unified	128.0	32.1	95.9	67.2	15.8	51.4
Washington Unified	106.9	24.4	82.4	23.9	4.5	19.4
Antelope Valley Union High	101.9	19.7	82.3	31.8	5.4	26.4
Manteca Unified	122.0	42.6	79.4	74.1	25.3	48.8
Kern High	119.0	39.9	79.1	54.7	17.2	37.5
Antioch Unified	105.2	27.4	77.8	52.6	12.1	40.6
Bonita Unified	86.4	11.3	75.1	29.0	4.7	24.3
Yuba City Unified	108.9	34.7	74.3	56.1	12.8	43.3
Folsom-Cordova Unified	83.4	12.3	71.1	26.7	5.5	21.2
Madera Unified	107.8	38.2	69.6	50.1	18.4	31.7
Ceres Unified	119.7	53.2	66.5	96.2	37.7	58.6
Lodi Unified	84.5	18.6	65.9	28.2	5.1	23.1
San Juan Unified	85.8	21.0	64.8	41.6	10.3	31.2
Jefferson Union High	93.4	30.1	63.4	44.3	13.1	31.2
Stockton Unified	125.2	63.8	61.4	33.3	16.2	17.1
Merced City Elementary	106.3	47.5	58.8	45.1	24.6	20.5
Vallejo City Unified	106.6	49.1	57.5	41.6	20.1	21.5
Berryessa Union Elementary	71.1	16.7	54.4	41.5	7.9	33.6
John Swett Unified	81.6	27.4	54.2	21.0	6.9	14.1
Morongo Unified	92.1	38.0	54.2	55.2	16.9	38.3
Sacramento City Unified	68.0	14.1	53.9	22.1	4.1	18.0
Palmdale Elementary	73.4	20.6	52.8	12.7	2.6	10.1
Twin Rivers Unified	79.7	27.6	52.1	24.2	9.6	14.6
Fresno Unified	77.8	25.7	52.1	19.4	5.4	14.0
Central Unified	67.9	17.3	50.6	21.2	5.4	15.8
Greenfield Union	86.1	35.6	50.5	31.6	11.2	20.4
Tracy Joint Unified	91.4	41.0	50.3	57.7	24.5	33.2
Fairfield-Suisun Unified	73.7	24.5	49.2	21.9	8.7	13.2
Palo Verde Unified	79.3	30.5	48.9	21.1	9.4	11.7
Pasadena Unified	55.4	6.7	48.8	5.1	0.7	4.4
Adelanto Elementary	63.6	15.3	48.3	5.7	2.3	3.4

Santa Maria Joint Union High	67.3	19.1	48.2	21.8	3.4	18.4
Keppel Union Elementary	66.7	18.9	47.8	15.2	3.1	12.1
Palm Springs Unified	74.0	26.4	47.5	17.0	4.4	12.6
Monterey Peninsula Unified	59.6	12.1	47.4	14.1	1.1	13.0
Liberty Union High	61.0	13.9	47.1	13.1	3.7	9.5
West Contra Costa Unified	58.4	11.8	46.7	19.5	2.2	17.3
Lancaster Elementary	60.9	14.7	46.2	8.5	2.1	6.5
Apple Valley Unified	64.7	20.1	44.6	11.5	2.7	8.9
Panama-Buena Vista Union	61.8	17.6	44.2	10.5	3.0	7.5
Marysville Joint Unified	84.1	41.4	42.7	21.8	12.2	9.5
Victor Elementary	58.1	15.8	42.3	4.0	0.8	3.2
Elk Grove Unified	54.0	11.9	42.1	13.1	2.6	10.5
Sequoia Union High	45.0	3.0	42.1	12.2	0.8	11.4
Mt. Diablo Unified	51.2	9.1	42.1	9.9	1.6	8.2

Table 10B: The Five School Districts with the Largest Latino-White Gap in Days Lost per 100

District	Latino Days of Lost Instruction per 100	White Days of Lost Instruction per 100	Latino-White Gap in Days of Lost Instruction per 100	Latino Disruption/Defiance Days of Lost Instruction per 100	White Disruption/Defiance Days of Lost Instruction per 100	Latino-White Gap in Disruption/Defiance Days of Lost Instruction per 100
Sausalito Marin City	120.3	4.0	116.2	98.7	2.7	96.0
Colusa Unified	66.2	31.3	34.9	55.2	25.0	30.2
Santa Rosa High	42.9	17.0	25.8	16.0	4.2	11.8
Berryessa Union Elementary	42.0	16.7	25.2	25.4	7.9	17.5
Alpaugh Unified	31.8	7.5	24.3	6.6	0.0	6.6

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Endnotes

¹ In *Closing the School Discipline Gap in California: Signs of Progress*, we specifically examined the relationship between Academic Performance Index (API) scores and Out of School Suspension (OSS) rates for the 2011-12 and 2012-13 school years, respectively, by race/ethnicity, using the data from every district in the state that had reported data for both years. For each of two consecutive years (analyzed separately), a *moderate* inverse relationship between suspension rates and API scores was found overall (-0.48 and -0.52, respectively). Notably, we found *moderate to strong* negative correlations for each racial/ethnic group, especially for Black students, in both 2011-12 and 2012-13 (-0.65 and -0.67, respectively). The full description of the correlational study, the methods, and the limitations are found in Appendix A of that report. We do know from other research that efforts to improve achievement could be consistent with efforts to reduce suspensions. For example, in a randomly controlled study at the district level, a teacher-training program designed to improve student engagement and in which the central goal was to improve achievement outcomes, was shown to reduce suspension rates (Gregory et al., 2014). Moreover, California's inverse relationship between API scores and suspension rates is consistent with findings from other, more robust statewide studies that did control for many contributing factors. For example, a six-year study that tracked every middle school student in Texas and controlled for more than 80 variables found that higher suspension rates predicted no difference in achievement (Fabelo et al., 2011). Another robust study conducted in Indiana found that higher suspension rates predicted lower achievement when controlling for poverty and other factors (Skiba, 2015). Therefore, considered alongside these controlled analyses, the new findings showing that lower suspension rates correlate with higher API scores in California should encourage state policymakers to build on the progress documented in this report.

² We based our review of the report of days of missed instruction in several states where such records are kept, which averaged more than 3 days, and in Los Angeles, where these data are reported and the average is 1.7 days per suspension. We also used Oakland Unified average of 3.9 days per suspension in the 2014-15 school year to inform this decision. We felt that a conservative statewide estimate (rounding 1.7 up) of 2 days was justified, considering the combination of sources and the fact that Los Angeles educators have made a concerted effort to reduce suspensions and their educational impact. We recently published a detailed report on days of missed instruction in Massachusetts (Losen, Sun, and Keith, 2017), where the state reports the amount of missed instruction for in-school and out-of-school suspensions. There we found an average of 3.75 days of missed instruction due to combined suspensions (which we rounded down to 3). In Massachusetts there had been a slight upturn in suspension use, but a downward trend in the days of instruction missed. It is possible that average suspension length is increasing as the rate of suspensions is decreasing, which would mean that the racially disparate impact would be greater than the estimates in this report. This is another reason we consider these estimates to be conservative and why our recommendations call for the state to begin reporting these data in order to assess discipline reform more accurately.

³ This report is based on the data available as of October 2017. We anticipate that the state will release data from both 2015-16 and 2016-17 before another year has passed, and will provide a comprehensive trend analysis when those data are made public.

- ⁴ The steady decline is even more obvious when these rates are provided without rounding off to the nearest decimal place. The actual rates statewide and in every district can be found in the spreadsheet that accompanies this report.
- ⁵ Some may assume, based on research suggesting that Black students are punished more harshly than others, that they would lose more instructional time than others per average suspension. However, Black students may receive more suspensions for minor offenses and they make up a sizeable percentage of all suspensions, but their suspensions would likely be shorter than those for more serious offenses. Further, while we did not have any racially disaggregated California data to inform our estimate, we did conduct an extensive review, by racial group, of days of missed instruction using data published from every school and district in the state of Massachusetts. This far more detailed dataset confirmed that, on average, Black and White students missed the same amount of instruction per suspension, approximately 3.75 days. That estimate was based on the combined number of in- and out-of-school suspensions, and on far more detailed information on the number of days missed by race and infraction type. For this report, we decided to keep the estimates of days missed identical for each racial group.
- ⁶ For an apples-to-apples comparison, the rates of days of instruction missed per 100 enrolled in all district types are based on the census enrollment, which is based on the enrollment on a certain date. Some argue that a higher percentage of students attending the county office of education schools attend on a temporary basis and that using cumulative enrollment would be a fairer measure because a school designed to serve 100 students may serve 300 over the course of the entire year. In theory, 300 students would be expected to generate more suspensions than 100 students. However, that would only be the expectation if all 300 attended for the full year. In prior reports that focused more on these districts, we presented the data on underlying suspensions per 100 enrolled but presented the suspension rates per 100 using both enrollment types. We point out that the most accurate system would treat students who only attend school for a fraction of the year in accordance with their total days of enrollment. For example, a student who was suspended twice but attended just one-third of the school year might be expected to be suspended four more times during the remaining two-thirds of the year if the rate of suspensions remained constant. If a student was suspended a total of six times and attended three districts, that student would produce six total suspensions but count using cumulative enrollment in each district as if he had been in each for a full year and only contributed two suspensions. For this reason, using cumulative enrollment and treating students who are enrolled for only a small fraction of the year as equal contributors to the total enrollment as students who attended for the full year can artificially increase the enrollment baseline, which will depress the number suspensions per 100 enrolled. Therefore, the most accurate rate would be adjusted so that the enrollment of students attending only a fraction of the year were weighted to reflect the portion of the school year they were enrolled for. Doing so was beyond the scope of this analysis.
- ⁷ Readers should note that elementary school districts may include students of middle school age (K-8), and that the unified districts typically include grades K-12.
- ⁸ California does not provide information to make more specific estimates that would capture the even greater differences that likely exist between schools and districts and between racial/ethnic groups.
- ⁹ 26.9 = standard deviation plus statewide average.
- ¹⁰ The grouping of offenses reported uses the categorization made available by the California Department of Education on their website (<http://data1.cde.ca.gov/dataquest>) in the table entitled, "Suspension, Expulsion, and Truancy Report:

Suspension by Federal Offense." The Violent Incident with Injury offense category includes the following California Education Code sections: 48915(c)(4) Sexual Battery/Assault; 48915(a)(1) Caused Physical Injury; 48915(a)(5) Committed Assault or Battery on a School Employee; 48900(a)(2) Used Force or Violence; 48900.3 Committed an act of Hate Violence; 48900(q) Hazing. The Weapons Possession Offense Category includes the following California Education Code sections: 48915(c)(1) Possession, Sale, Furnishing a Firearm; 48900(b) Possession, Sale, Furnishing a Firearm or Knife; 48915(c)(2) Brandishing a Knife; 48915(a)(2) Possession of a Knife or Dangerous Object; 48915(c)(5) Possession of an Explosive. The Illicit Drug Related Offense Category includes the following California Education Code sections: 48915(c)(3) Sale of Controlled Substance; 48915(a)(3) Possession of Controlled Substance; 48900(c) Possession, Use, Sale, or Furnishing a Controlled Substance, Alcohol, Intoxicant; 48900(d) Offering, Arranging, or Negotiating Sale of Controlled Substances, Alcohol, Intoxicants; 48900(j) Offering, Arranging, or Negotiating Sale of Drug Paraphernalia; 48900(p) Offering, Arranging, or Negotiating Sale of Soma. The Disruption/Wilful Defiance Offense Category includes the following California Education Code section: 48900(k) Disruption/Defiance.

¹¹ LAUSD students lost 8,841 days of instructions from suspensions in the 2013-14 school year compared to 5,160 in the 2016-17 school year. Data available online here <http://schoolinfosheet.lausd.net/budgetreports/disciplinereports.jsp>

¹² "Dorsey High School senior and SD member Tayah Hubbard has experienced the searches firsthand and feels that they undermine her pursuit of a quality education. Last spring, Hubbard took part in a demonstration at the LAUSD School Board in which hundreds of students criticized the impact of searches on the climate of their schools." Hutchinson, S. (2017) The LAUSD's Multi-Million Dollar Police State: End Random Searches Now, Huffington Post. Article accessible online here http://www.huffingtonpost.com/entry/the-lausds-multi-million-dollar-police-state-end_us_59ca6ec2e4b0b7022a646dea

¹³ One indicator not depicted, the responses to "do you feel happy at your school", increased the same year the sense of safety dipped, and has subsequently decreased during the same period that the sense of feeling safe increased the most. We present the selected information in the discussion section as a response to a widely publicized misleading claim and not as a comprehensive analysis of school climate in LAUSD. We hope to include a thorough and rigorous analysis of the school climate survey data in future reports. Another concern is that to best comprehend whether there is a current safety or climate issue under current policy, the focus should not overemphasize the change in any particular indicator to the extent that new information is entirely overlooked or purposefully ignored. Although it is possible that new or substitute indicators are less accurate, ideally, new questions are added or the wording changed to improve the quality and accuracy of responses and are valuable to understanding the status of the current climate.

¹⁴ It is worth noting that Max Eden, also of the Manhattan Institute, released a report and set of graphic maps about LAUSD and New York City. The research ignores any question that addresses climate but is not worded in exactly the same way as it was on the survey given four years ago. While this is arguably a justified safeguard to ensure the accuracy of the before and after policy analysis, it means that the researchers ignore a mountain of recent evidence that contradicts the strong assertions that the new policy is *currently* causing chaos. We argue that if one wants to fully and accurately understand how current policies and practices are actually affecting the learning environment readers should avoid drawing conclusions about causality from a correlation with a change in one year from a single survey item, such as the conclusions drawn by Jason Riley.

¹⁵ Riley and Brookings both reference another Manhattan Institute report on New York City, which treated a decline in some of the district's climate survey results as proof that discipline reform caused chaos. However, as the report's author admitted, "Critics of discipline reform might have expected that schools where suspensions were reduced would, on balance, deteriorate more than schools where suspensions stayed roughly similar. But, as Figure 7 shows, this was not the case" [See Max Eden, School Discipline Reform and Disorder: Evidence from New York City Public Schools, 2012-2016, Report by The Manhattan Institute, NY, NY (March 2017)]. What is stunning about the Manhattan Institute report is that, amid all the graphs and charts that are supplied and suggested to be causal evidence of chaos, the author admits that the school-level evidence contradicts his chaos theory. The author goes on to say that, in both Period 1 and Period 2, the distribution of differences between schools with neutral suspension rates and those with declining suspension rates was similar for all questions. The significant shift between the two periods and the lack of a significant differential between schools that saw neutral and lower suspension rates suggests that the number of suspensions "may matter less for school climate than the dynamics fostered by a new set of disciplinary rules" (R-ME-0217v2.pdf, p. 20).

¹⁶ National Education Policy Center commentary and author Gary Ritter's response and an additional rejoinder are all available at <http://nepc.colorado.edu/thinktank/review-discipline>.

¹⁷ If all the teachers watched the Black boys most when none was misbehaving, one can imagine how the experiment would turn out if all the students had misbehaved in equal degrees. If the teachers accurately reported what they saw, they would have seen Black boys exhibit more misbehavior simply because they predominantly watched the Black boys. None would realize that the students were all misbehaving in equal amounts. None would report that White girls misbehaved more, which they might have done if they had watched the White girls most or all of the time. By directing our attention in this manner, our initial racial biases can wind up reinforced with real data without us even knowing that our data collection was skewed. This example is offered not as proof of intentional different treatment but to suggest that implicit racial bias can influence how differently we observe children's behavior. In turn, our biased observations can reinforce negative perceptions, making it more likely they will be triggered again.

¹⁸ See [https://edsource.org/2017/california-s-education-plan-affirms-commitment-to-local-control/587038](https://edssource.org/2017/california-s-education-plan-affirms-commitment-to-local-control/587038).

¹⁹ The grouping of offenses reported uses the categorization made available by the California Department of Education on their website (<http://www.cde.ca.gov/ds/sd/sd/filesesd.asp>) in the table entitled "Discipline15." The Violent Incident with Injury offense category includes the following California Education Code sections: 48915(c)(4) Sexual Battery/Assault; 48915(a)(1) Caused Physical Injury; 48915(a)(5) Committed Assault or Battery on a School Employee; 48900(a)(2) Used Force or Violence; 48900.3 Committed an act of Hate Violence; 48900(q) Hazing. The Weapons Possession Offense Category includes the following California Education Code sections: 48915(c)(1) Possession, Sale, Furnishing a Firearm; 48900(b) Possession, Sale, Furnishing a Firearm or Knife; 48915(c)(2) Brandishing a Knife; 48915(a)(2) Possession of a Knife or Dangerous Object; 48915(c)(5) Possession of an Explosive. The Illicit Drug Related Offense Category Includes the following California Education Code sections: 48915(c)(3) Sale of Controlled Substance; 48915(a)(3) Possession of Controlled Substance; 48900(c) Possession, Use, Sale, or Furnishing a Controlled Substance, Alcohol, Intoxicant; 48900(d) Offering, Arranging, or Negotiating Sale of Controlled Substances, Alcohol, Intoxicants; 48900(j) Offering, Arranging, or Negotiating Sale of Drug Paraphernalia; 48900(p) Offering, Arranging, or Negotiating Sale of Soma. The Disruption/Willful Defiance Offense Category includes the following California Education Code section: 48900(k) Disruption/ Defiance."

²⁰ NOTE: Regarding the measurement of racial disparities: Given the research on the harm caused by suspension, we begin with the absolute rate of suspensions per 100 at the district level and multiply by two to get days of lost instruction. We compare these rates per 100 enrolled so that it is clear whether each racial/ethnic group's exposure to harm from suspension is high or low after adjusting for different levels of each group's enrollment. Our description of the size of the racial gap between any two groups tells readers how many more days of lost instruction per 100 students the group with higher numbers experienced. This use of absolute values and differences allows comparisons to be made from one district to the next and to the state average for all students. We can compare, for example, the Black rate of lost instruction per 100 students across all the districts in the state without having to reference the Black proportion of the district enrollment. Similarly, assuming that there are sufficient numbers of Black and White students enrolled in a given district to calculate valid rates for each, if the racial gap shows that Blacks experienced five more days of lost instruction per 100 enrolled than Whites, that racial difference can be directly compared to the size of the racial gap in any other district. No further adjustments for demographic enrollment differences need to be made because they are already reflected in the rate per 100 enrolled.

United States Government Accountability Office (GAO) Report
April 2016: <https://www.govinfo.gov/app/details/CPRT-116HPRT43624/CPRT-116HPRT43624>

United States Government Accountability Office (GAO) Report
March 2018: <https://www.govinfo.gov/app/details/CHRG-116hhrg43625/CHRG-116hhrg43625>

Long-Run Impacts Of School Desegregation and School Quality
On Adult Attainments: <https://www.govinfo.gov/content/pkg/CPRT-114HPRT43626/pdf/CPRT-114HPRT43626.pdf>

[Questions submitted for the record and their responses follow:]

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May 8, 2019

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Mr. John C. Brittain
 Professor of Law
 University of the District of Columbia Law School
 4340 Connecticut Avenue, NW
 Washington, D.C. 20008

Dear Professor Brittain:

I would like to thank you for testifying at the April 30, 2019, Committee on Education and Labor hearing on "*Brown v. Board of Education at 65: A Promise Unfulfilled*".

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later Wednesday, May 22, 2019, for inclusion in the official hearing record. Your responses should be sent to Lakeisha Steele of the Committee staff. She can be contacted at the main number 202-225-3725 should you have any questions.

We appreciate your time and continued contribution to the work of the Committee.

Sincerely,


ROBERT C. "BOBBY" SCOTT
 Chairman

Enclosure

Committee on Education and Labor
"Brown v. Board of Education at 65: A Promise Unfulfilled"
Tuesday, April 30, 2019
10:15 a.m.

Chairman Robert C. "Bobby" Scott (VA)

1. UC-Berkley Economist Dr. Rucker C. Johnson, who studied the effects of desegregation court orders, recently released a book entitled: "*Children of the Dream. Why School Integration Works.*" I'd like to read for you a quote on page 210-211: "It is that integration has the power to transform communities, and society, in ways we have only begun to realize. We must therefore resist the temptation to settle at halting resegregation...We must ask for more: we must revive the dream..." What does reviving the dream mean to you?
2. During Reconstruction, freedom meant many things to Black people after 250 years of enslavement in the U.S. Access to education was critical to the advancement of Black people as free people. The Freedman's Bureau provided money for creating schools, but most schools were established by Black people. According to research, by 1870, Black people had raised one million dollars to contribute to the education of Black children. After Reconstruction, southern states aggressively rolled back the educational progress Black people had made. What does *Brown* mean in the context of Reconstruction?
3. Can schools promote racial integration solely focusing on socioeconomic status?
4. What is the difference between integration and desegregation?

Rep. Russ Fulcher (ID)

1. Thank you for your courage to persevere in school, amid violence, bullying, and a lot of classroom disruption. Do you see having disruptive students be required to do more activities – perhaps volunteer activities to help others – as a way to deal with some of the problems of students disrupting classrooms?



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May 8, 2019

Mr. Richard A. Carranza
 New York City Schools Chancellor
 New York City Department of Education
 52 Chambers Street, Room 154
 New York, New York 10007

Dear Chancellor Carranza:

I would like to thank you for testifying at the April 30, 2019, Committee on Education and Labor hearing on "*Brown v. Board of Education at 65: A Promise Unfulfilled*".

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later Wednesday, May 22, 2019, for inclusion in the official hearing record. Your responses should be sent to Lakeisha Steele of the Committee staff. She can be contacted at the main number 202-225-3725 should you have any questions.

We appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
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Enclosure

Committee on Education and Labor
"Brown v. Board of Education at 65: A Promise Unfulfilled"
Tuesday, April 30, 2019
10:15 a.m.

Chairman Robert C. "Bobby" Scott (VA)

1. What do you see as the biggest barriers to achieving school diversity?
2. Education Week honored you at one of their “Leaders to Learn” for your focus in bilingual and bicultural language when you superintendent in San Francisco. You have not shied away from tackling inequality in education in your career. Where does your passion for dismantling systemic inequity and promoting school integration come from? Why is it important for leaders and policymakers to make a commitment to school integration to fulfill promise of *Brown*?

Rep. Haley M. Stevens (MI)

1. Chancellor Carranza, one of the arguments we hear about improving school diversity is that it is too challenging. What are the challenges and opportunities in school integration?



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May 8, 2019

Ms. Linda Darling-Hammond, Ed.D.
 President and CEO
 Learning Policy Institute
 1530 Page Mill Road, Suite 200
 Palo Alto, CA 94304

Dear Dr. Darling-Hammond:

I would like to thank you for testifying at the April 30, 2019, Committee on Education and Labor hearing on "*Brown v. Board of Education at 65: A Promise Unfulfilled*".

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later Wednesday, May 22, 2019, for inclusion in the official hearing record. Your responses should be sent to Lakeisha Steele of the Committee staff. She can be contacted at the main number 202-225-3725 should you have any questions.

We appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
 Chairman

Enclosure

Committee on Education and Labor
"Brown v. Board of Education at 65: A Promise Unfulfilled"
Tuesday, April 30, 2019
10:15 a.m.

Rep. Ilhan Omar (MN)

1. Last year a shocking study was released by researchers at Stanford, Harvard, and the Census Bureau showing the far reaching impact of racism for black boys. This study showed that "Black boys raised in America, even in the wealthiest families and living in some of the most well-to-do neighborhoods, still earn less in adulthood than white boys with similar backgrounds." Additionally, the study found that "Black men raised in the top 1 percent – by millionaires – were as likely to be incarcerated as white men raised in households earning about \$36,000."
 - a) This study I mentioned wasn't specifically about education. However, can you make some connections between the findings I described and challenges for students of color in schools?

Rep. Russ Fulcher (ID)

1. Thank you for your courage to persevere in school, amid violence, bullying, and a lot of classroom disruption. Do you see having disruptive students be required to do more activities – perhaps volunteer activities to help others – as a way to deal with some of the problems of students disrupting classrooms?



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Mr. Daniel J. Losen, M.Ed., J.D.
Director, Center for Civil Rights Remedies
The Civil Rights Project at UCLA
20 Hillcrest Avenue
Lexington, MA 02420

Dear Mr. Losen:

I would like to thank you for testifying at the April 30, 2019, Committee on Education and Labor hearing on "*Brown v. Board of Education at 65: A Promise Unfulfilled*".

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We appreciate your time and continued contribution to the work of the Committee.

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Chairman

Enclosure

Committee on Education and Labor
"Brown v. Board of Education at 65: A Promise Unfulfilled"
Tuesday, April 30, 2019
10:15 a.m.

Chairman Robert C. "Bobby" Scott (VA)

1. What are the effects on educators' and administrators' attempts to close the achievement gap when we ignore the discipline gap?
2. Can you explain how policies that adversely and disproportionately affect students of a particular race or national origin can constitute discrimination, even though the policies may not be motivated by racial animus?
3. Conservatives often cite poverty, not race, as the reason for persistent disparities in school discipline. What does the data say? Are conservatives right? Is poverty driving racial discipline disparities?
4. The [Final Report](#) of the Federal Commission on School Safety, prepared by Secretary DeVos, states that the Guidance "*opted* to interpret Title VI's implementing regulation as sufficient to establish a disparate impact theory for certain racial groups in the discipline area." (Emphasis added).
 - a) Is it "optional" for OCR to enforce the disparate impact provisions contained with the Department's regulations?
 - b) What are the obligations of the Office for Civil Rights in enforcing civil rights law?

Rep. Ilhan Omar (MN)

1. Mr. Losen, why is a systemic approach to civil rights in education necessary to fully enforce civil rights laws and remedy unlawful discrimination and harassment?
2. Are there certain types of civil rights claims that should automatically trigger a systemic investigation to resolve whether there is a pattern of discrimination?

Rep. Russ Fulcher (ID)

1. Thank you for your courage to persevere in school, amid violence, bullying, and a lot of classroom disruption. Do you see having disruptive students be required to do more activities – perhaps volunteer activities to help others – as a way to deal with some of the problems of students disrupting classrooms?



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COMMITTEE ON EDUCATION
AND LABOR

U.S. HOUSE OF REPRESENTATIVES
 2176 RAYBURN HOUSE OFFICE BUILDING
 WASHINGTON, DC 20515-6100

May 8, 2019

Mr. Dion J. Pierre
 581 Fairview Avenue
 Apartment 2L
 Ridgewood, New York 11385

Dear Mr. Pierre:

I would like to thank you for testifying at the April 30, 2019, Committee on Education and Labor hearing on "*Brown v. Board of Education at 65: A Promise Unfulfilled*".

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later Wednesday, May 22, 2019, for inclusion in the official hearing record. Your responses should be sent to Lakeisha Steele of the Committee staff. She can be contacted at the main number 202-225-3725 should you have any questions.

We appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
 Chairman

Enclosure

Committee on Education and Labor
"Brown v. Board of Education at 65: A Promise Unfulfilled"
Tuesday, April 30, 2019
10:15 a.m.

Rep. Russ Fulcher (ID)

1. Thank you for your courage to persevere in school, amid violence, bullying, and a lot of classroom disruption. Do you see having disruptive students be required to do more activities – perhaps volunteer activities to help others – as a way to deal with some of the problems of students disrupting classrooms?

Committee on Education and Labor
"Brown v. Board of Education at 65: A Promise Unfulfilled"
 Tuesday, April 30, 2019 10:15 a.m.

Answers to Questions after the Testimony

John C. Brittain,
 Professor

David A. Clarke School of Law
 University of the District of Columbia
 May 22, 2019

Chairman Robert C. "Bobby" Scott (VA)

1. UC-Berkley Economist Dr. Rucker C. Johnson, who studied the effects of desegregation court orders, recently released a book entitled: "*Children of the Dream. Why School Integration Works.*" I'd like to read for you a quote on page 210-211: "It is that integration has the power to transform communities, and society, in ways we have only begun to realize. We must therefore resist the temptation to settle at halting resegregation...We must ask for more: we must revive the dream..." What does reviving the dream mean to you?

Answer

Reviving the dream of *Brown v. Board of Education* means several things to me. First, more than 65 years ago, *Brown v. Board* recognized that "education is perhaps the most important functions of state and local governments. It is the very foundation of good citizenship." Second, I worked with the Obama Administration in developing a guidance policy for school integration and diversity. See policy attached to this reply. The joint policy issued by the Department of Justice and the Department of Education reflects my beliefs in the preamble to the policy:

"As Supreme Court has explained, elementary and secondary schools (also referred to in this guidance as K-12 schools) are "pivotal to sustaining our political and cultural heritage;" they teach "that our strength comes from people of different races, creeds, and cultures uniting in commitment to the freedom of all." Racially diverse schools provide incalculable educational and civic benefits by promoting cross-racial understanding, breaking down racial and other stereotypes, and eliminating bias and prejudice. Our "'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples."

U.S. Department of Justice and Department of Education, GUIDANCE ON THE VOLUNTARY USE OF RACE TO ACHIEVE DIVERSITY AND AVOID RACIAL ISOLATION IN ELEMENTARY AND SECONDARY SCHOOLS (December 11, 2011) (Withdrawn by the Trump Administration in 2018) (Internal citations omitted).

This dream has been deferred in the 21st Century; therefore, I agree with Professor Rucker Johnson, the society must continue the dream of school integration and create a more just democracy.

2. During Reconstruction, freedom meant many things to Black people after 250 years of enslavement in the U.S. Access to education was critical to the advancement of Black people as free people. The Freedman's Bureau provided money for creating schools, but most schools were established by Black people. According to research, by 1870, Black people had raised one million dollars to contribute to the education of Black children. After Reconstruction, southern states aggressively rolled back the educational progress Black people had made. What does *Brown* mean in the context of Reconstruction?

Answer

Reconstruction in the second half of the 18th Century freed African slaves (13th Amendment), gave the Negro full citizenship with equal protection under the law (14th Amendment) and conferred the right to vote for Black men (15th Amendment). African Americans began to enjoy some political, economic and social rights during Reconstruction. Yet, by the beginning of the 19th Century, those rights were nearly erased by "Jim Crow" de jure racial segregation. Nearly a half-century later, *Brown* helped to launch the Second Reconstruction with the Civil Rights Movement of the 1960s. Thus, *Brown* revived the Reconstruction era of equal rights for African Americans.

3. Can schools promote racial integration solely focusing on socioeconomic status?

Answer

Yes, schools can achieve *nearly* as much racial integration in schools with carefully designed student assignment plans based on socioeconomic status and other non-racial criteria. In fact, a Supreme Court case in 2007 entitled, *Parents Involved in Community Schools v. Seattle Schools District No. 1*, all but banned the use of race as a sole criterion to achieve school integration.

4. What is the difference between integration and desegregation?

Answer

Courts have found that school districts that separated students by race were legally segregated. As a result, courts ordered the districts to end segregation by desegregating the schools. The best remedy to achieve desegregation is integration. Therefore, integration is the remedy to desegregate the schools.

Rep. Russ Fulcher (ID)

1. Thank you for your courage to persevere in school, amid violence, bullying, and a lot of classroom disruption. Do you see having disruptive students be required to do more activities – perhaps volunteer activities to help others – as a way to deal with some of the problems of students disrupting classrooms?

Answer

Dear Rep. Russ Fulcher:

Thank you for the generous comments. I am just a "drum major for justice." (Quote from Dr. Martin Luther King) I have a motto as a civil rights lawyer with a specialization in educational equity. I know when my legal expertise in equal educational opportunities under the law ends, and my ignorance of sound education policy begins. Therefore, I surround myself with educational experts for the type of question you asked. I refer you to Dr. Linda Darling Hammond, a witness who testified at the hearing. She possesses an exceptional expertise in educational policy.



U.S. Department of Justice
Civil Rights Division



U.S. Department of Education
Office for Civil Rights

**GUIDANCE ON THE VOLUNTARY USE OF RACE TO ACHIEVE DIVERSITY AND
AVOID RACIAL ISOLATION IN ELEMENTARY AND SECONDARY SCHOOLS**

Introduction

The United States Department of Education (ED) and the United States Department of Justice (DOJ) (collectively, the Departments) are issuing this guidance to explain how, consistent with existing law, elementary and secondary schools can voluntarily consider race to further compelling interests in achieving diversity and avoiding racial isolation. This guidance replaces the August 28, 2008 letter issued by ED's Office for Civil Rights (OCR) entitled "The Use of Race in Assigning Students to Elementary and Secondary Schools."

More than 50 years ago, *Brown v. Board of Education* recognized that "education is perhaps the most important function of state and local governments. . . It is the very foundation of good citizenship."¹ Providing students with diverse, inclusive educational opportunities from an early age is crucial to achieving the nation's educational and civic goals.

As the Supreme Court has explained, elementary and secondary schools (also referred to in this guidance as K-12 schools) are "pivotal to sustaining our political and cultural heritage;"² they teach "that our strength comes from people of different races, creeds, and cultures uniting in commitment to the freedom of all."³ Racially diverse schools provide incalculable educational and civic benefits by promoting cross-racial understanding, breaking down racial and other stereotypes, and eliminating bias and prejudice. Our "nation's future depends upon leaders trained through wide exposure" to the ideas and mores of students as diverse as this Nation of many peoples.⁴

Conversely, where schools lack a diverse student body or are racially isolated (*i.e.*, are composed overwhelmingly of students of one race), they may fail to provide the full panoply of benefits that K-12 schools can offer. The academic achievement of students at racially isolated schools often lags behind that of their peers at more diverse schools. Racially isolated schools often have fewer effective teachers, higher teacher turnover rates, less rigorous curricular resources (*e.g.*, college preparatory courses), and inferior facilities and other educational resources. Reducing racial isolation in schools is also important because students who are not exposed to racial diversity in school often lack other opportunities to interact with students from different racial backgrounds.⁵

¹ 347 U.S. 483, 493 (1954).

² *Grutter v. Bollinger*, 539 U.S. 306, 331 (2003) (quoting *Plyler v. Doe*, 457 U.S. 202, 221 (1982)).

³ *Parents Involved in Cnty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 782 (2007) (Kennedy, J., concurring in part and concurring in the judgment).

⁴ *Grutter*, 539 U.S. at 324 (quoting *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 313 (1978) (opinion of Powell, J.)).

⁵ See *Parents Involved*, 551 U.S. at 798 ("[N]eighborhoods in our communities do not reflect the diversity of our Nation as a whole." (Kennedy, J., concurring in part and concurring in the judgment)).

For all these reasons, the Departments recognize, as has a majority of Justices on the Supreme Court, the compelling interests that K-12 schools have in obtaining the benefits that flow from achieving a diverse student body and avoiding racial isolation.⁶ This guidance addresses the degree of flexibility that school districts have to take proactive steps, in a manner consistent with principles articulated in Supreme Court opinions, to meet these compelling interests.

Section I of this guidance describes the relevant legal framework for considering race to further the compelling interests in achieving diversity and avoiding racial isolation in K-12 schools. Section II sets forth considerations for school districts in their voluntary use of race to achieve their compelling interests. Section III provides a summary of key steps for school districts seeking to achieve diversity or avoid racial isolation. Section IV provides examples of ways that, in light of this guidance, school districts may choose to advance these compelling interests.

I. LEGAL FRAMEWORK

Under the Civil Rights Act of 1964, the Departments are responsible for enforcing federal laws that bar public schools, as well as private institutions that receive federal financial assistance, from discriminating on the basis of race, color, or national origin. *See 42 U.S.C. § 2000(c)-(d)* (Title IV and Title VI).⁷ Racial discrimination by school districts that violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution also violates Titles IV and VI.⁸ Accordingly, the Departments here consider not only federal statutory law, but also case law interpreting the Equal Protection Clause, particularly the Supreme Court's decision in *Parents Involved in Community Schools v. Seattle School District No. 1 (Parents Involved)*.⁹

In *Parents Involved*, the Supreme Court considered challenges to voluntary efforts by the Seattle, Washington, and Jefferson County (Louisville), Kentucky, school districts to use individualized racial classifications to achieve diversity or avoid racial isolation through their student assignment plans. A majority of the Justices recognized that seeking diversity and avoiding racial isolation are compelling interests for school districts. *Id.* at 783, 797 (Kennedy, J., concurring in part and

⁶ The Departments also recognize the compelling interest in remedying the vestiges of past racial discrimination, which is not the focus of this guidance. Numerous school districts are required to consider race pursuant to desegregation orders, compliance plans, or other legal mandates to remedy discrimination. This guidance does not address the remedial use of racial classifications in these or other circumstances; nothing in it should be read to imply any limitations on remedial orders by courts or administrative agencies. In addition, nothing in this guidance addresses other claims of compelling interests justifying the consideration of race, which the Departments will consider on a case-by-case basis. *See Parents Involved*, 551 U.S. at 720 (stating that the Court's opinion was issued "[w]ithout attempting in these cases to set forth all the interests a school district might assert").

⁷ Throughout this guidance, references to "race" includes race, color, and national origin. When evaluating efforts to promote diversity or avoid racial isolation that fall within the scope of Title VI (and Title IV in the case of DOJ), the Departments will apply this guidance.

⁸ *See Alexander v. Sandoval*, 532 U.S. 275, 280-81 (2001) (citing *Bakke*, 438 U.S. at 287 (opinion of Powell, J.)).

⁹ The Court's decisions in *Grutter*, and *Gratz v. Bollinger*, 539 U.S. 244 (2003), are also relevant to the Department's analysis. In *Grutter*, the Court held that student body diversity, including racial diversity, is a compelling interest for higher education institutions, and affirmed the consideration of individual students' race as a factor in the holistic review of applicants to the University of Michigan Law School. *Grutter*, 539 U.S. at 328, 333-37. In *Gratz*, while accepting student body diversity as a compelling interest, the Court held that the University's race-conscious plan was not narrowly tailored to achieve that interest because, among other things, the University used a point system that awarded 20 percent of the total number of points needed for admission based solely on an applicant's race, rather than conducting a more individualized assessment. *Gratz*, 539 U.S. at 268-71, 275.

concurring in the judgment); *id.* at 838-42 (Breyer, J., dissenting). However, the Court struck down both school districts' uses of individualized racial classifications in assigning students to schools. *Id.* at 733-35; *id.* at 782 (Kennedy, J., concurring in part and concurring in the judgment).

Chief Justice Roberts issued the lead opinion, which was joined by three other Justices in its entirety (the plurality opinion), and by Justice Kennedy in part and in the judgment. Justice Kennedy issued a separate concurrence addressing those areas where he disagreed with the Chief Justice's plurality opinion and discussing how schools can pursue the compelling interests in achieving a diverse student population or avoiding racial isolation. Justice Breyer's dissenting opinion was joined by the remaining three Justices.

A. The Opinion of the Court in *Parents Involved*

The portions of the plurality opinion that Justice Kennedy joined constitute the opinion of the Court. The Court affirmed its prior holdings that "when the government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny." *Id.* at 720. To survive strict scrutiny, a school district that considers race in making individual student assignment decisions must show that the use of race is narrowly tailored to achieve a compelling governmental interest. *Id.*

Although the Court declined to rule on whether the interests that were asserted by Seattle and Louisville were compelling, it held that the two school districts in that case had failed to demonstrate that their use of individual students' race was narrowly tailored to meet their goals. *Id.* at 722-25. In making this determination, the Court generally applied the four-prong narrow tailoring test from its 2003 decision in *Grutter v. Bollinger*. That test assesses whether an educational institution has considered workable race-neutral alternatives; whether its plan provides for flexible and individualized review of students; whether it has minimized undue burdens on other students; and whether its plan is limited in time and subject to periodic review. See *Grutter*, 539 U.S. at 334-43.¹⁰

In applying these factors in *Parents Involved*, the Court noted that: Seattle and Louisville had not demonstrated that they seriously considered race-neutral alternatives; the individual racial classifications used had a minimal impact that cast doubt on their necessity; the districts defined diversity in overly limited terms that did not adequately reflect the diversity within the districts; and the districts' plans did not provide for a meaningful, individualized review of student assignments. Consequently, the Court held that Seattle's and Louisville's consideration of the race of individual students in their student assignment plans was impermissible. *Parents Involved*, 551 U.S. at 723-24; 734-35.

B. Justice Kennedy's Concurrence

While Justice Kennedy joined the opinion of the Court that Seattle's and Louisville's uses of individual racial classifications were not narrowly tailored, he wrote separately to emphasize that the Court's decision should not be read as prohibiting state and local authorities from considering

¹⁰ For a more detailed discussion of the narrow tailoring factors that apply to individual racial classifications used to promote diversity in postsecondary educational institutions, see the Departments' "Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education."

the racial makeup of schools and adopting “general policies to encourage a diverse student body.” *Id.* at 788 (Kennedy, J., concurring in part and concurring in the judgment).

Together with the four dissenting Justices, Justice Kennedy recognized that K-12 school districts have compelling interests both in achieving diversity and in avoiding racial isolation, and he concluded that school districts could voluntarily adopt measures to pursue these goals. *Id.* at 797-98; *see also id.* at 838-45 (Breyer, J., dissenting).

Importantly, Justice Kennedy drew a distinction between school district plans that rely on the race of individual students and plans that seek to achieve diversity or avoid racial isolation through more generalized race-conscious measures:

If school authorities are concerned that the student-body compositions of certain schools interfere with the objective of offering an equal educational opportunity to all of their students, they are free to devise race-conscious measures to address the problem in a general way and without treating each student in different fashion solely on the basis of a systematic, individual typing by race.

Id. at 788-89 (Kennedy, J., concurring in part and concurring in the judgment).

Justice Kennedy went on to state that race-conscious approaches that do not rely on individual racial classifications are “unlikely” to “demand strict scrutiny” and are likely to pass constitutional muster. In so doing, he also provided some examples of the sorts of approaches that he had in mind:

School boards may pursue the goal of bringing together students of diverse backgrounds and races through other means, including strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race. These mechanisms are race conscious but do not lead to different treatment based on a classification that tells each student he or she is to be defined by race, so it is unlikely any of them would demand strict scrutiny to be found permissible. Executive and legislative branches, which for generations now have considered these types of policies and procedures, should be permitted to employ them with candor and with confidence that a constitutional violation does not occur whenever a decisionmaker considers the impact a given approach might have on students of different races.

Id. at 789 (citation omitted).

Furthermore, while the Seattle and Louisville school districts failed to show the necessity of classifying individual students by race in their plans, Justice Kennedy refused to rule out approaches that in appropriate circumstances take account of the race of individual students in school assignment. *Id.* at 790. He explained that a school district can employ a “more nuanced individual evaluation of school needs and student characteristics that might include race as a component.” *Id.* Such an individualized approach would be informed by the narrow tailoring analysis set forth in *Grutter*, “though of course the criteria relevant to student placement would differ based on the age of the students, the needs of the parents, and the role of the schools.” *Id.*

Thus, a majority of Justices has concluded that school districts have flexibility in determining how voluntarily to achieve diversity or avoid racial isolation in their schools. Although *Parents Involved* ultimately was decided on other grounds, a majority of the Justices expressed the view that schools must have flexibility in designing policies that endeavor to achieve diversity or avoid racial isolation, and, at least where those policies do not classify individual students by race, can do so without triggering strict scrutiny. *Id.* at 789 (Kennedy, J., concurring in part and concurring in the judgment); *id.* at 837 (Breyer, J., dissenting). Thus, although there was no single majority opinion on this point, *Parents Involved* demonstrates that a majority of the Supreme Court would be “unlikely” to apply strict scrutiny to generalized considerations of race that do not take account of the race of individual students.

Parents Involved also reaffirmed that when a district chooses to take into account the race of individual students in providing benefits or imposing burdens, it must meet the strict scrutiny standard, demonstrating that its plan is narrowly tailored to meet the compelling interest in achieving diversity or avoiding racial isolation in schools. *Id.* at 787. The Court has repeatedly emphasized, however, that the application of strict scrutiny, in and of itself, is “not fatal in fact.” *Grutter*, 539 U.S. at 327 (quoting *Adarand v. Pena*, 515 U.S. 200, 237 (1995)).

The Departments will examine efforts to achieve diversity and avoid racial isolation in K-12 education in light of each of these principles. This guidance seeks to outline, in practical terms, the legal requirements applicable to such efforts, recognizing that whether a particular approach comports with the law depends on the relevant facts and context.

II. APPLICATION TO ELEMENTARY AND SECONDARY EDUCATION

This Section sets out considerations for school districts in their voluntary use of race to achieve diversity or avoid racial isolation. The discussion in this and the following sections assumes that districts are acting to achieve diversity or avoid racial isolation; districts should be prepared to explain how these objectives fit within their overall mission. Nothing in this guidance should be understood to suggest that race, or racial impact, may be considered in furtherance of an invidious purpose.¹¹

Approaches to achieve diversity or avoid racial isolation fall into two broad categories: those that do not rely on the race of individual students, and those that do. School districts should consider approaches that do not rely on the race of individual students before adopting approaches that do.

Approaches that do not rely on the race of individual students include both race-neutral and generalized race-based approaches. Race-neutral approaches can take racial impact into account but do not rely on race as an express criterion. Generalized race-based approaches use race as an express criterion, but do not rely on the race of individual students or treat individual students differently because of their race.

¹¹ See, e.g., *Parents Involved*, 551 U.S. at 788-89 (Kennedy, J., concurring in part and concurring in the judgment) (clarifying that the leeway to “devise race-conscious measures” to achieve diversity or avoid racial isolation extends only to circumstances where school districts “pursue the goal of bringing together students of diverse backgrounds and races”); cf., e.g., *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264-68 (1977); *Washington v. Davis*, 426 U.S. 229, 239-42 (1976).

A. Approaches That Do Not Rely on the Race of Individual Students

School districts should first determine if they can meet their compelling interests by using race-neutral approaches. Race-neutral approaches can be used for decisions about individual students, such as admissions decisions for competitive schools or programs, as well as for decisions made on an aggregate basis, such as the drawing of zone lines that affect a large number of students. A district using race-neutral criteria for the purpose of achieving diversity or avoiding racial isolation may, “with candor . . . consider[] the impact a given approach might have on students of different races.” *Parents Involved*, 551 U.S. at 789 (Kennedy, J., concurring in part and concurring in the judgment). Examples of race-neutral approaches include — but are not limited to — the use of criteria such as: students’ socioeconomic status; parental education (e.g., highest degree attained or years of education); students’ household status (e.g., dual or single-parent household); neighborhood socioeconomic status; geography (e.g., existing neighborhood lines); and composition of area housing (e.g., subsidized housing, single-family home, high-density public housing, or rental housing).

School districts are required to use race-neutral approaches only if they are workable. See *Grutter*, 539 U.S. at 339 (requiring the law school to give “serious, good faith consideration of workable race-neutral alternatives that will achieve the diversity [it] seeks”).¹² School districts are not required to implement such approaches if, in their judgment, the approaches would not be workable. In some cases, race-neutral approaches will be unworkable because they will be ineffective to achieve the diversity that the school district seeks or to address racial isolation in the district’s schools. School districts may also reject race-neutral approaches that would require them to sacrifice a component of their educational mission or priorities (e.g., academic selectivity).¹³

When race-neutral approaches would be unworkable to achieve their compelling interests, school districts may employ generalized race-based approaches. Generalized race-based approaches employ expressly racial criteria, such as the overall racial composition of neighborhoods, but do not involve decision-making on the basis of any individual student’s race. For example, a school district could draw attendance zones based on the racial composition of particular neighborhoods, as well as on race-neutral factors such as the average household income and average parental education level of particular neighborhoods within the school district. All students within those zones would be treated the same regardless of their race.¹⁴

B. Approaches That Rely On Individual Racial Classifications

As authorized by *Grutter* and referenced in Justice Kennedy’s concurrence in *Parents Involved*, a school district may only consider the race of individual students if it does so in a manner that is narrowly tailored to meet a compelling interest. Thus, when schools adopt approaches that consider

¹² In deciding whether a given approach is workable, a school district can consider both its current and projected racial demographics. For example, a district can consider how the rapidly changing population of a neighborhood will affect racial diversity in that neighborhood’s schools.

¹³ See *Grutter*, 539 U.S. at 340.

¹⁴ The fact that the school district did not follow the steps set forth above will not, by itself, cause the Departments to conclude in the course of their enforcement activities that there has been a violation of Title IV or Title VI. However, the district must consider whether non-individualized uses of race are workable before relying on the race of individual students.

the race of individual students, they should do so in a manner that closely fits their goals of achieving diversity or avoiding racial isolation and includes race no more than necessary to meet those ends. *See Grutter*, 539 U.S. at 333-34.

As an initial matter, a district should first determine that race-neutral approaches would be unworkable to achieve its compelling interests before relying on individual racial classifications.

In implementing programs that consider a student's race as a factor, schools should provide each student with an individualized review appropriate to the K-12 context.¹⁵ A district may consider a student's race as a "plus factor" (among other, non-racial considerations) to achieve its compelling interests. But no student applicant to a school or program should be insulated – based on his or her race – from an assessment or comparison to all other student applicants, to ensure that the district minimizes the impact of its program on those other students.

In addition, a school district should not evaluate student applicants in a way that makes a student's race his or her defining feature. School districts should consider how the range of student attributes, including both non-racial characteristics (e.g., a student's socioeconomic status or parental educational background) and racial characteristics, contribute to meeting the district's compelling interest in achieving diversity or avoiding racial isolation.

Based on its particular educational objectives and unique needs, a district should determine how it will achieve the benefits that it is pursuing through its program to promote diversity¹⁶ or avoid racial isolation. Finally, a school district that uses individual racial classifications should periodically review the program to determine whether such racial classifications remain necessary and modify its practices as needed.

It will be helpful for districts to have documents that describe their educational objectives and the process they followed in structuring their programs, including alternatives that they considered and rejected. These documents will assist in answering any questions that arise.

III. KEY STEPS FOR IMPLEMENTING PROGRAMS TO ACHIEVE DIVERSITY OR AVOID RACIAL ISOLATION

Based on the foregoing, here is a checklist of key steps for school districts seeking to achieve diversity or avoid racial isolation:

¹⁵ A school district's use of individual racial classifications may differ based on the type of school or program at issue (e.g., a high school with competitive, merit-based admission as compared to a non-competitive elementary school). Where a program is noncompetitive, the types of individualized criteria described by the Supreme Court in the postsecondary cases (*Bakke*, *Grutter* and *Gratz*) are generally inapplicable.

¹⁶ A school district may permissibly aim to achieve a "critical mass" of underrepresented students. A critical mass is the level of enrollment of underrepresented students that is necessary to realize the educational benefits that a school district is seeking, including "encourag[ing] underrepresented minority students to participate in the classroom and not feel isolated." *Grutter*, 539 U.S. at 318, or dispelling stereotypes about characteristically minority viewpoints on issues. A school district that attempts to obtain a critical mass of underrepresented students to achieve its compelling interests is not engaging in impermissible racial balancing. *Id.* at 329-30. Moreover, while a district should focus on the qualitative benefits of diversity or avoiding racial isolation, it is permissible to pay some attention to numbers. As the Court recognized in *Grutter*, "[s]ome attention to numbers," without more, does not transform a flexible admissions system into a rigid quota." *Id.* at 336 (quoting *Bakke*, 438 U.S. at 323 (opinion of Powell, J.)).

Identifying the Reason for Your Plan

- Determine how these compelling interests relate to your school district's mission and unique circumstances.
- Evaluate how you will know when your compelling interest has been achieved.

Implementing Your Plan

- Consider whether there are race-neutral approaches that you can use, such as looking at socioeconomic status or the educational level attained by parents. In selecting among race-neutral approaches, you may take into account the racial impact of various choices. If you determine that race-neutral measures would be unworkable, consider whether using an approach that relies on the generalized use of racial criteria, such as the racial demographics of feeder schools or neighborhoods, would help to achieve your goals.
- If race-neutral and generalized race-based approaches would be unworkable to achieve your compelling interest(s), you may then consider approaches that take into account the race of individual students. When doing so, evaluate each student as an individual and do not make the student's race his or her defining characteristic. Periodically review your program to determine if you continue to need to consider the race of individual students to achieve your compelling interest. It is important to ensure that race is used to the least extent needed to workably serve your compelling interest.

General Considerations

- Continue to consider factors that you ordinarily weigh in student assignment and other decisions, such as current and projected student enrollment, travel times, and sibling attendance issues. As you review these factors in light of changes, such as increased or decreased demand at school sites, you should also examine your practices to achieve diversity or avoid racial isolation and modify them if needed.
- Your district's process for students or parents to raise concerns about school assignments or other school decisions should be open to students or parents who wish to raise concerns about decisions made pursuant to efforts to achieve diversity or avoid racial isolation.
- It would be helpful to maintain documents that describe your compelling interest, and the process your institution has followed in arriving at your decisions, including alternatives you considered and rejected and the ways in which your chosen approach helps to achieve diversity or avoid racial isolation. These documents will help you answer questions that may arise about the basis for your decisions.

IV. APPROACHES TO ACHIEVING DIVERSITY OR AVOIDING RACIAL ISOLATION

This Section provides practical examples of actions that schools may consider, consistent with prior Supreme Court opinions and the principles set forth in the previous Sections, as necessary to achieve diversity or avoid racial isolation. The examples include race-neutral approaches as well as generalized uses of race, and identify when a school district may consider the race of individual students.

In choosing among options, school districts should keep in mind the framework discussed above. We encourage school districts to contact us for technical assistance in applying this guidance to their particular situations.

These examples are intended to be illustrative, not exhaustive. Districts may choose to pursue more than one of these options (*e.g.*, a combination of school zoning and school choice for some or all of their schools) or may design other options that are consistent with this guidance.¹⁷

In addition to the approaches discussed below, school districts may wish to consider using recruitment to achieve diversity or avoid racial isolation. For instance, if a school district is seeking to increase the diversity in the applicant pool of a competitive magnet school with a predominantly white student body, the district could, as part of its general outreach and recruitment of potential applicants, place flyers or make announcements at schools with a predominantly non-white student population or encourage individual non-white students to apply. Such actions simply enlarge the applicant pool and help to ensure that it is inclusive; they do not determine which students will ultimately be admitted to the program.

A. School and Program Siting Decisions

School districts routinely make decisions about the siting of schools and special programs, such as non-competitive magnet schools or specialized academic, athletic, or extracurricular programs. School districts seeking to achieve diversity or avoid racial isolation may make siting decisions to further those interests. School siting decisions, by their nature, will of course also involve numerous other considerations, such as construction costs, transportation needs, geographic obstacles, and enrollment projections.

A school district's decision to close a school or to discontinue a special program in an effort to achieve diversity or avoid racial isolation is analyzed in the same manner as the decision to site a school or program.

Examples

Example 1: A school district that has two potential locations for the siting of a new school – one that would draw students from varying socioeconomic groups and the other that would draw

¹⁷ In addition to enrolling a diverse student body or reducing racial isolation, school districts will want to preserve those gains. Therefore, districts may employ mentoring, tutoring, retention, and support programs to maintain diversity or reduce racial isolation. The legal considerations regarding such programs are addressed in the Departments' "Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education." These same considerations apply to the use of such programs by school districts.

primarily from one socioeconomic group – might choose the location that would enroll a socioeconomically diverse student population if it also furthers the district's interest in racial diversity or avoiding racial isolation.

Example 2: When a school district is deciding where to site a specialized academic program (*e.g.*, a nursing or computer science program) designed to improve educational attainment and to draw students from across the school district, it might choose to do so at a low-performing school if the program would also help to achieve racial diversity or avoid racial isolation.

Example 3: A school district might determine where to site a new school based on criteria that expressly include the racial characteristics of a particular geographic area. If this school is open to all students within that area, the siting decision would use race only in a general way and would not be based on any individual student's race.

B. Decisions about Grade Realignment and Feeder Patterns

School districts use grade alignments and feeder patterns to assign students to schools and to make decisions about which schools will serve each grade. School districts seeking to achieve diversity or avoid racial isolation may design or redesign such programs to further those interests.

Examples

Example 1: A school district has two K-5 elementary schools, one of which has a large enrollment of students whose households have higher than average annual incomes and the other of which has a student population whose households have lower than average annual incomes. The district could mix students from lower and higher income households in one grade K-2 school and one grade 3-5 school, if doing so also helps to achieve racial diversity or avoid racial isolation.

Example 2: A school district might choose to feed underperforming elementary schools into higher performing middle schools if this also helps to achieve racial diversity or avoid racial isolation.

Example 3: A school district could create feeder patterns for elementary schools that expressly include the racial makeup of the population of the elementary school as a whole as a criterion in determining which elementary schools would feed into which middle schools. All students at a particular elementary school would then be assigned to the same middle school, without regard to the race of any individual student.

C. School Zoning Decisions

School districts often use attendance zones to assign students to schools. An attendance zone is a geographically defined area in which all students who reside in the area are assigned to particular schools. School districts seeking to achieve diversity or avoid racial isolation may draw or re-draw attendance zones to further those interests.

Examples

Example 1: A school district that must zone for two schools in proximity to one another might categorize the geographic area around the schools by socioeconomic status (or some other race-

neutral characteristic). It could then draw attendance zones to achieve socioeconomic diversity, recognizing that it would also help to achieve racial diversity or avoid racial isolation.

Example 2: A school district could develop a variety of race-neutral requirements for possible new attendance zones, including equalizing enrollment, minimizing travel times (including facilitating students' walking to school), and ensuring peer continuity (*e.g.*, assigning elementary school classmates to the same middle school). In choosing among possible assignment plans based on these criteria, the school district could choose the one that best advances its interest in achieving racial diversity or avoiding racial isolation.

Example 3: A school district could create attendance zones that consider the relative racial composition of areas in combination with the average household income and educational levels of parents in those areas (*e.g.*, highest degree attained or years of education). All students in a given area would then, regardless of their individual race, receive the same consideration when applying to a particular school based on how much their zoned area would contribute to the diversity of or reduce the racial isolation in that school.

D. Open and Choice Enrollment Decisions

Some school districts use open enrollment or school choice programs to assign students to schools. These programs allow parents to choose among (or rank by preference) district schools. The district then assigns students based in part on their parents' choices. School districts seeking to achieve diversity or avoid racial isolation may design or redesign such programs to further those interests.

Examples

Example 1: A school district in which students of different races are concentrated in different attendance zones could implement a district-wide lottery system that allows parents to identify and rank a certain number of schools and then randomly assigns students based on the parents' choices.

Example 2: A school district could design a program that clusters existing schools (*i.e.*, create large attendance zone areas that encompass several neighborhoods and multiple schools that serve the same grade levels) based on a race-neutral factor such as the socioeconomic composition of different geographic areas. The district could then provide parents with choices from among the schools within their assigned cluster in a manner that furthers socioeconomic diversity. In some circumstances, clustering schools based on the socioeconomic composition of particular geographic areas may also help to achieve racial diversity or avoid racial isolation.

Example 3: A school district could design a program to cluster existing schools based on their racial composition. The district could then provide parents with choices from among the schools within their assigned cluster that would help to foster diversity or avoid racial isolation.

Example 4: A school district could use a program that assigns a diversity priority to each "planning area" (*i.e.*, a geographic area of a small number of residential blocks) based on the area's racial demographics, economic data, and educational demographics. Students could then be assigned to a school based on a combination of parents' choices and a lottery that gives priority based on the planning area in which they reside.

If a school district determines that these types of approaches would be unworkable, it may consider using an individual student's race as one factor among others in considering how an individual student's school assignment would contribute to achieving diversity or avoiding racial isolation. In so doing, a school district should follow the legal guidelines specifically described in Section II(B) above regarding the consideration of individual students' race.

E. Admission to Competitive Schools and Programs

Some school districts have schools or programs to which students apply and are selected through a competitive admissions process. School districts seeking to achieve diversity or avoid racial isolation may develop admissions procedures for competitive schools or programs to further those interests.

Examples

Example 1: A school district could identify race-neutral criteria for admission to a school (*e.g.*, minimum academic qualifications and talent in art) and then conduct a lottery for all qualified applicants rather than selecting only those students with the highest scores under the admission criteria, if doing so would help to achieve racial diversity or avoid racial isolation.

Example 2: For students who meet the basic admissions criteria, a school district could give greater weight to the applications of students based on their socioeconomic status, whether they attend underperforming feeder schools, their parents' level of education, or the average income level of the neighborhood from which the student comes, if the use of one or more of these additional factors would help to achieve racial diversity or avoid racial isolation.

Example 3: If it would help achieve racial diversity or avoid racial isolation, a school district could decide to admit all applicants with grades that put them within the top quartile of their class at the schools from which the competitive program draws.

Example 4: A school district could give special consideration to students from neighborhoods selected specifically because of their racial composition and other factors. In the selection process, a district would treat all the students who live in the selected neighborhood the same regardless of their race.

If a school district concludes that these types of programs would be unworkable to achieve diversity or avoid racial isolation, the district may then consider using race as one factor among others in the selection of individual students for admission to competitive schools or programs. In so doing, a school district should follow the legal guidelines specifically described in Section II(B) above regarding the consideration of individual students' race.

F. Inter- and Intra-District Transfers

Numerous school districts use transfer programs to allow students to move between schools within and outside the district. School districts seeking to achieve diversity or avoid racial isolation may use transfer programs to further those interests.

Examples

Example 1: A school district might categorize neighborhoods based on average household income and allow a student from a geographic area with a lower than average household income to transfer out of his or her assigned school and into a school that draws from a geographic area with a higher than average household income if it would help to achieve racial diversity or avoid racial isolation.

Example 2: A school district could design a transfer program that expressly relies upon the overall racial composition of geographic areas within the district. For example, in evaluating requests to transfer into a predominantly Asian-American school, a school district could give priority to students who live in a neighborhood comprised predominantly of non-Asian-American households, regardless of the race of the particular student requesting the transfer. All students from this neighborhood would be treated the same in the decision-making process.

Example 3: Two or more adjacent districts (for example, a predominantly African-American urban district and a predominantly white suburban district) could collaborate to facilitate district-to-district student transfers, by which students in each district (regardless of their particular race) could apply to transfer voluntarily to a school in the other district. All students from a district would be treated the same in the decision-making process, without regard to the race of any individual student.

If a school district determines that these types of approaches would be unworkable, it may consider using an individual student's race as one factor among others in considering whether to approve or deny the student's transfer request. In so doing, a school district should follow the legal guidelines specifically described in Section II(B) above regarding the consideration of individual students' race.

Conclusion

This document provides guidance and examples of approaches that school districts can voluntarily use to further their compelling interests in achieving diversity and avoiding racial isolation, consistent with case law under Title IV, Title VI, and the Equal Protection Clause of the Fourteenth Amendment to the Constitution.

The issues discussed herein relate to a complex area of the law, and the Departments encourage school districts to contact us with questions or for further assistance in applying this guidance in a specific district. To contact the OCR regional office for your state or territory, please visit <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>, or contact OCR's Customer Service Team at:

U.S. Department of Education
 Office for Civil Rights, Customer Service Team
 400 Maryland Avenue, SW
 Washington, DC 20202-1100
 Telephone: 800-421-3481
 Fax: 202-453-6012; TDD: 877-521-2172
 Email: OCR@ed.gov

To reach the Department of Justice, please contact:

U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section
950 Pennsylvania Ave., NW
Washington, DC 20530
Telephone: 877-292-3804 or 202-514-4092
Fax: 202-514-8337; TDD: 202-353-3926
Email: education@usdoj.gov



Committee on Education and Labor
"Brown v. Board of Education at 65: A Promise Unfulfilled"
Tuesday, April 30, 2019 10:15 a.m.
Questions for the Record

Chairman Robert C. "Bobby" Scott (VA)

1. What do you see as the biggest barriers to achieving school diversity?

The barriers to achieving school diversity are numerous. They include federal retrenchment on advancing integration; historical housing policy, practices, and patterns; education funding inequities; and more.

I would like to focus on barriers that the federal government has erected, which are a lack of sufficient regulatory and financial support. First, the prior U.S. Department of Education provided guidance to school districts and institutions of higher education on how, consistent with existing law, school systems and institutions of higher education can voluntarily consider race to achieve diversity and avoid racial isolation. The lapse in support from the federal agency responsible for enforcing federal laws governing educational institutions and ensuring equal access in education leaves school systems such as New York City's without the federal leadership to fulfill the promise of the unanimous *Brown v. Board of Education* decision. This guidance should be reinstated immediately.

The federal government also has a research-backed justification to fund efforts that increase school diversity consistent with existing law. We have launched a \$2 million grant program to support our school districts in developing locally driven diversity plans in communities across the City. This grant program was based upon successful, locally driven efforts to increase diversity in Brooklyn's Community School District 15. Our \$2 million program, which seeks to replicate District 15's success across the City, is supported using funds from Title IV of the Elementary and Secondary Education Act. This Title should be fully funded and expanded. Likewise, funding for the Magnet School Assistance Program, which promotes school diversity by offering special curriculum that attracts substantial numbers of student of different racial backgrounds, should be expanded.

Finally, I was proud to see that this Committee recently voted to advance the Strength in Diversity Act (H.R. 2639). I want to again echo the call I made in my testimony for the Congress to pass this bill into law. The grant program that H.R. 2639 creates would support voluntary local efforts to increase socioeconomic and racial diversity.



2. Education Week honored you at one of their “Leaders to Learn From” for your focus on bilingual and bicultural language when you were superintendent in San Francisco. You have not shied away from tackling inequality in education in your career. Where does your passion for dismantling systemic inequity and promoting school integration come from? Why is it important for leaders and policymakers to make a commitment to school integration to fulfill the promise of *Brown*?

I know that this Committee is well aware that public education is an investment in the future. From my own experience as a student, a teacher, a principal, and, now, Chancellor of the largest school system in the nation, I can tell you that—beyond a shadow of a doubt—a public school education can change a life.

I've lived and worked in communities throughout the nation, and I can tell you that in all of those places, there is housing and school segregation. It comes with living in large urban areas and forces going back many decades, including housing policies that perpetuated isolation by race and income. But a public—and I underline public—school system should represent the entire community it serves.

My passion for dismantling systemic inequality and promoting school integration is informed by my experience as a man of color, the son of a sheet-metal worker and hairdresser, and an educator for 30 years. I didn't speak any English when I started school. A public school education was the single greatest gift I ever received, and one I am singularly focused on delivering to every single one of our 1.1 million New York City students. Yet, it is clear that the scourge of school segregation robs many students of color and those living in poverty of the high-quality education they deserve. And the research is clear that integrated learning environments increase academic achievement for all.

Ensuring our learning environments are integrated should be at the top of the agenda of our leaders and policy makers nationwide because we know that integration advances equity, as our children are given the opportunity to learn from one another's diverse perspectives, backgrounds, and experience. Significant research demonstrates that integrated classrooms lead to improved test scores, improved critical thinking and problem-solving skills, lower dropout rates, reduction of racial bias, enhanced leadership skills, and better preparedness for success in the global economy. Integration doesn't lower academic achievement for any student; it improves it for all. Segregation, on the other hand, does shrink opportunity.

Given the research on the positive outcomes of integrated learning environments, the obligation to ensure that every child receives a high-quality education, and the moral imperative to create a more just society, our leaders have all the evidence they need – it is now time for more of them to act. I believe that integration and equity can unleash our students' innate brilliance, unlock their creativity, and put them on a path to their dreams. As a result, we all must continue to engage in the hard work necessary to disrupt the status quo, increase diversity in our schools, and advance equity now.



Representative Haley M. Stevens (MI)

1. Chancellor Carranza, one of the arguments we hear about improving school diversity is that it is too challenging. What are the challenges and opportunities in school integration?

The barriers to achieving school diversity are numerous. They include federal retrenchment on advancing integration; historical housing policy, practices, and patterns; education funding inequities; and more.

In New York City, we are starting to challenge policies that create racially isolated learning environments. I would like to talk about two examples of how we are advancing school integration.

Brooklyn's Community School District 15's boundaries encompass a beautifully diverse community. Due in part to long-standing academic screens for admissions, several District 15 middle schools have long served very low numbers of low-income black and Latino students, while others basically served only low-income black and Latino students.

To diversify these schools, a locally driven diversity planning process in this district brought everyone to the table: community members, parents and students, advocates and school staff, and they had tough but necessary conversations—conversations grounded in data, and occurring in different languages.

The District 15 committee looked at a huge amount of data and research, including middle school enrollment demographics, patterns of racial housing segregation, and academic outcomes. Following their consideration of a variety of potential solutions, they put forward a comprehensive plan to change the District 15 middle school admissions process. The Mayor and I were proud to approve this plan.

Now, all the academic screens are gone, and are replaced by a lottery where students are matched to the schools they want to attend. District 15 middle schools prioritize approximately half of their seats for students from low-income families, English language learners, and students in temporary housing. In April, we released admission offers for middle schools, and I am proud to say that almost all of the District 15 middle schools met their diversity goals.

This is real action. With real buy-in. With real ownership of this plan and its success. It's not just in District 15—87 schools across New York City now have a "Diversity in Admissions" plan in place. That's up from just seven schools when the Diversity in Admissions program started three years ago.

At the state level, the Mayor and I are pushing to eliminate the Specialized High School Admissions Test (SHSAT), which governs admission to eight of our best high schools. The use of a single test has led to black and Latino students receiving only 10 percent of the admission offers to New York City's eight specialized high schools, despite these students comprising nearly 70 percent of our student body.



The Mayor has put forward a proposal to change New York State law to eliminate the use of a single test and base admissions on multiple measures, specifically, a combination of grades and state test scores. We are working to move that proposal forward.

Both of these examples show that there are many opportunities to advance school diversity and integration. These examples show that change comes from “bottom-up” grassroots approaches that are supported by “top-down” vision, resources, and action. Likewise, it shows that leaders must act to dismantle school segregation. In other words we all have an opportunity to act.

Finally, the greatest opportunity of all is the benefit that diverse, integrated learning environments provide for our children and our nation’s future.

To: Chairman Robert C. Scott, Committee on Education and Labor, U.S. House of Representatives
 From: Linda Darling-Hammond, Learning Policy Institute
 Date: May 22, 2019
 Re: Questions for the Record-Committee on Education and Labor hearing "*Brown v. Board of Education at 65: A Promise Unfulfilled*," held April 30, 2019

Question 1: From Rep. Ilhan Omar (MN)

Last year a shocking study was released by researchers at Stanford, Harvard, and the Census Bureau showing the far reaching impact of racism for black boys. This study showed that "Black boys raised in America, even in the wealthiest families and living in some of the most well-to-do neighborhoods, still earn less in adulthood than white boys with similar backgrounds." Additionally, the study found that "Black men raised in the top 1 percent – by millionaires – were as likely to be incarcerated as white men raised in households earning about \$36,000."

- a) *This study I mentioned wasn't specifically about education. However, can you make some connections between the findings I described and challenges for students of color in schools?*

Response

Yes, the study's findings have implications for education and, specifically, support research on the impact of racial bias on the educational experiences and outcomes of black boys and other students of color. The study that you reference, *Race and Economic Opportunity in the United States: An Intergenerational Perspective*,¹ found significant inequalities in life outcomes between black boys and white boys, regardless of family background. The study notes that poverty and the more scarce presence of fathers impact life outcomes of black boys. However, the data also show that racial bias affects the economic opportunities available to virtually all black boys and men, even in dual parent families that are financially comfortable, irrespective of family income or structure.

Likewise, racial bias and its various manifestations have profound implications for educational opportunities and outcomes. As we have noted in our research at the Learning Policy Institute, racial bias manifests in many ways within schools, including through discriminatory discipline practices that disproportionately impact students of color, pushing them out of school, compromising their educational outcomes, and increasing their likelihood of involvement with the criminal justice system.²

Studies have found that these discipline disparities among students of color cannot be attributed to higher rates of misbehavior.³ Instead, these disparities are the result of disciplinary decisions that result in black and Hispanic youth being punished more harshly for the same offense as white youth, typically for minor offenses.⁴ And, according to a recent study, this may be a function of more generalized implicit biases regarding race and criminal or delinquent behavior, including an association between race and perceived threat of aggression.⁵ This also translates to the criminalization and over-policing of black boys outside of school too. In surveying

perceptions of black boys held by some white police officers, scholar Philip Goff and others found that black boys are often viewed as “older and less innocent” than their white peers—a perception that they found influenced police interactions (including probability of using force) with black boys.⁶

Implicit bias can manifest through negative stereotypes of students of color, with black students often being viewed as “irresponsible, dishonest, or dangerous.”⁷ As one researcher notes: “[q]uantifying discrimination is a notoriously difficult empirical task . . .”⁸ But, many scholars have done just that. Data show that black boys are subjected to discriminatory discipline policies and penalized at higher rates than their white peers, even for the same infractions.⁹

For example, New York City’s independent budget office recently released a report confirming that Black students receive more and harsher punishments for committing the same infractions as students from other racial groups.¹⁰ According to one account, of the 10 infractions that account for the largest bulk of student suspensions, black students on average received harsher punishments for eight of them.¹¹ In three of those categories — bullying, reckless behavior, and altercation — black students were suspended for roughly double the number of days as students from at least one other racial group.

Other studies also show that African American students receive longer suspensions for more subjective and less serious behavior than their White peers. For example, research often finds that black students are more often referred for discipline for a vague class of harmless behaviors flagged as “insubordination” or “disrespect” that can include such things as being noisy, “loitering” in the hallway, texting on a cellphone, arriving late or missing class, chewing gum, or writing on a desk.¹²

As a result, national data show that during the 2015-16 school year, African American male students comprised 8% of students enrolled and 25% of students who received an out-of-school suspension in the nation’s schools.¹³ By contrast, white male students comprised 25% of students enrolled and 24% of students who received an out-of-school suspension.¹⁴

These discipline disparities have devastating effects on educational outcomes, as students removed from the classroom lose valuable instruction time, often feel stigmatized when they return to the classroom, and are at increased likelihood for involvement with the criminal justice system due to school-based arrests and referrals to law enforcement.¹⁵ They also experience low achievement and low graduation rates.

Racism appears in other ways as well. A primary goal of the *Brown v. Board of Education* litigation was to ensure that race was no longer a proxy for access to educational opportunity. Yet sixty-five years post-*Brown*, too many children are still deprived of the benefits of integrated schools due in large part to racial bias that has fueled discriminatory practices that have resulted in segregated housing patterns, inequitable distribution of school resources, and the acceptance of *de facto* school segregation and educational inequality. Unfortunately, race is strongly correlated with school quality, with hyper-segregated high minority schools disproportionately offering unequal educational opportunities, such as inexperienced educators and fewer educational resources.¹⁶ This deprives all students—students of color and white students—of the

well-documented benefits of learning in racially integrated schools and results in compromised educational and life outcomes for students of color.

This is why, despite the current Administration's retreat from supporting school diversity, including its rescission of guidance issued by the Obama administration highlighting evidence-based practices for promoting school diversity, it is imperative that states and districts act to promote school diversity.

For example, parents in New York City have acted to implement school desegregation proposals that have been approved by City Hall. In the fall, some of the city's schools in Manhattan and Brooklyn will have increased numbers of students of color and economically disadvantaged students.¹⁷ These efforts, which include new enrollment rules and the elimination of academic screens to sort admission, were met with opposition from some parents ascribing to the discredited idea that more diversity would negatively impact the academic performance of some students.¹⁸ Research refutes this idea,¹⁹ finding no negative impacts on white student academic performance and benefits for students of color.

As I noted in my testimony, in a study of the effects of court-ordered desegregation on students, economist Rucker Johnson found that a black student exposed to court-ordered desegregation for 5 years experiences a 15% increase in wages and an 11 percentage point decline in annual poverty rates. Johnson concludes that, as a result of desegregation efforts: "African Americans experienced dramatic improvements in educational attainment, earnings, and health status—and this improvement that did not come at the expense of whites."²⁰

It is imperative that we address racial bias because it is negatively impacting the educational and life outcomes of students of color. Unfortunately, the Trump Administration also rescinded Obama-era guidance issued by the Departments of Justice and Education that highlighted evidence-based non-discriminatory ways that districts and schools could administer school discipline.²¹ But, schools and districts can still act to implement these evidence-based policies and practices proven effective for promoting positive and inclusive school climate, such as:

- Providing training on implicit bias and asset-based youth development for all teachers and administrators, school resource officers, police, juvenile court judges, and others dealing with youth;
- Replacing zero-tolerance policies that impose automatic sanctions on students and the use of suspensions and expulsions with strategies that teach social-emotional skills;
- Providing targeted supports for educators, such as instruction on proactive classroom management;
- Developing and implementing model school discipline policy and agreements that clarify when educator discipline versus law enforcement discipline is warranted, such as through a memorandum of understanding;
- Considering ways to prevent negative consequences when designing and implementing policies that increase law enforcement presence in schools; and
- Creating relationship-centered schools that support strong family and community engagement.

Unless we act to address racial bias, we will continue to see it manifest in ways that compromise educational opportunity and life outcomes for students of color—as demonstrated in the study’s findings. Given the recent rollbacks on civil rights protections by the current administration, uplifting evidence-based policies and practices that promote positive and inclusive environments where all students can learn and thrive is imperative.

Question 2: Rep. Russ Fulcher (ID)

Do you see having disruptive students be required to do more activities – perhaps volunteer activities to help others – as a way to deal with some of the problems of students disrupting classrooms?

Response

Research shows that zero-tolerance policies—initially implemented to penalize violent offenses by removing students from the classroom by suspension or expulsion and later applied to minor infractions—result in negative consequences for student achievement, attainment, and welfare.²² Students who are removed from the classroom lose valuable instruction time and tend to have lower academic success, higher rates of grade retention, and lower graduation rates, and are more likely to become involved with the juvenile justice system.²³

These policies, rooted in the erroneous belief that so-called “bad” students should be removed from the classroom so that other students can learn, have been proven harmful for students. A substantial body of research also shows that zero-tolerance policies and the use of exclusionary discipline practices for nonviolent behavior are largely ineffective in changing student behavior and in creating safe learning environments in which all students have the opportunity and supports they need to succeed. This approach not only undermines students’ educational outcomes, it stigmatizes students, making it difficult for them to return to the learning environment, and removes responsibility from the school and community to meet these students’ needs or teach them productive strategies.²⁴

A more productive approach is the use of restorative practices, which as Rep. Fulcher notes, can include volunteer activities to help others. Replacing zero tolerance policies with discipline policies focused on explicit teaching of social-emotional strategies and restorative discipline practices that support young people in learning key skills and developing responsibility for themselves and their community helps to ensure developmentally healthy school environments.²⁵ Restorative justice is an approach to dealing with conflict by identifying or naming the wrongdoing, repairing the harm, and restoring relationships.²⁶ Restorative discipline is built on strong relationships and relational trust, with systems for students to reflect on any mistakes, repair damage to the community—including through volunteerism—and get counseling when needed. Relationships and trust are supported through restorative practices, including universal interventions such as daily classroom meetings, community-building circles, or conflict resolution strategies, which are also part of many social and emotional learning programs.²⁷

Effective strategies include various combinations of restorative or peace circles, restorative conferences, peer mediation, and whole-school approaches. These bring together the parties

involved in the conflict, with the support of a facilitator, to talk about what happened, the impact, and how to repair the harm. Syntheses of research suggest that restorative practices result in fewer and less racially disparate suspensions and expulsions, fewer disciplinary referrals, improved school climate, higher quality teacher-student relationships, and improved academic achievement across elementary and secondary classrooms.²⁸

The more comprehensive and well-infused the approach, the stronger the outcomes. For example, a continuum model including proactive restorative exchanges, affirmative statements, informal conference, large-group circles, and restorative conferences substantially changed school outcomes rapidly in one major district, as disparities in school discipline were reduced every year for each racial group and gains were made in academic achievement across all subjects in nearly every grade level.²⁹

These practices are often accompanied in schools by strategies that teach students social-emotional skills that enable positive relationships, help them resolve conflicts peaceably, and prevent bullying. Creating an environment in which students learn to be responsible and are given the opportunity for agency and contribution can transform social, emotional, and academic behavior and outcomes.³⁰ In studies of high schools that specifically organize their efforts to develop socially and emotionally aware and skilled students, infusion of social and emotional learning (SEL) opportunities in every aspect of the schools produced positive outcomes for student engagement, achievement, and behavior (being collaborative and supportive of their peers, resilience, employing a growth mindset, and valuing opportunities to help others).³¹ SEL infusion ranged from curricula focused on perspective-taking and empathy in history and English language arts and on community and social problem solving in social studies, mathematics, and science to community service projects to the teaching of specific conflict resolution strategies and the use of restorative practices. A review of more than 200 studies found, for example, that programs that teach social and emotional skills have yielded significant positive effects on student attitudes about self, others, and school, and have improved school safety, as well as improving student achievement.

The *Every Student Succeeds Act* (ESSA) includes provisions that require states and districts to engage parents in school improvement efforts. This presents an opportunity for schools to build relationships with parents and communities, which can positively contribute to improved school climate and the provision of higher quality learning programs for students. The law also provides funds that states, districts, and schools can invest in school climate and student well-being. Many states have designed ESSA plans to include policies like social-emotional learning and restorative justice practices in lieu of punitive ineffective exclusionary discipline practices.

Investing in and implementing evidence-based policies and practices shown to improve school climate and reduce issues like bullying or disruption—such as restorative practices—will help to ensure that all students can learn and thrive in positive learning environments.

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The Center for Civil Rights Remedies

at The Civil Rights Project | *Proyecto Derechos Civiles*

Responses of Daniel J. Losen, Director of the Center for Civil Rights Remedies at UCLA's Civil Rights Project to questions for the record on May 21, 2019 regarding:

**Hearing: "Brown v. Board of Education at 65: A Promise Unfulfilled"
Before the U.S. Congress
House of Representatives, Full Committee on Education & Labor on April 30, 2019**

I would like to thank Chairman Scott and all the members of the House Committee on Education & Labor for the opportunity to testify, orally and in writing, and for this additional opportunity to provide my responses to questions from the Chairman, and from Representatives Omar (MN) and Fulcher (ID).

Questions from Chairman Robert C. "Bobby" Scott (VA)

1. What are the effects on educators' and administrators' attempts to close the achievement gap when we ignore the discipline gap?

Response: While there are many factors that can help narrow the achievement gap, such as improved instruction and equitable access to effective teachers, none are likely to eliminate the gap without efforts to also close the racial discipline gap. My oral testimony emphasized the impact, by race, in terms of days of lost instruction due to out-of-school suspensions, so that the House members and the public could see how stark differences in the use of suspension directly hinder the opportunity to learn.

Some portion of the observed differences is likely caused by differences due to *unjustified* discipline policies and practices. Part of what makes a policy unjustified is if an alternative policy is available that achieves the goal with equal or greater efficacy, while also eliminating or minimizing the disparate negative impact. The most immediate and unequivocal harm is the loss of instructional time.

An equally concerning form of unjustified discipline is the discriminatory punishment of children of color due to both implicit and explicit racial bias. Together, different treatment by disciplinarians and the unintended disparate impact of unjustified policies produce huge inequities by race in the opportunity to learn.

Investments in improving the quality of instruction should boost achievement and help close the racial gap but not if students miss out on the improved instruction. A student who, due to suspension for breaking some minor rule, misses the improved instruction in

math or science won't learn the substance and the wholesale loss of instruction will show up on tests of academic achievement. Given the well-established research on absenteeism and logical concern that missing instruction will negatively impact learning, the connection between more frequent suspensions and lower achievement is clear. There are better ways to respond to student misbehavior than only use removal from school as a measure of last resort. As I point out in the edited book, *Closing the School Discipline Gap*, the Academy of American Pediatrics concluded that "out-of-school suspension and expulsion are counterproductive the intended goals, rarely if ever are necessary, and should not be considered as appropriate discipline in any but the most extreme and dangerous circumstances, as determined on an individual basis rather than as a blanket policy...." (Council on School Health, 2013, p. 1005).

As a former teacher, I know first-hand that improving classroom management leads to improved instruction. The most effective teachers rarely remove students from their classrooms. Those that argue that suspensions improve the quality of instruction by preventing bad behavior lack research evidence to support this common belief. To the contrary, studies have indicated that suspensions are unlikely the deterrent they were intended to be (Raffaele Mendez, 2003). Similarly, a randomized control study of a rigorous and sustained teacher training program designed to improve teacher-student engagement (Gregory, Allen, Mikami, Hafen, & Pianta, 2015) yielded far fewer office disciplinary referrals and nearly eliminated racial disparities in discipline. Studies of interventions such as restorative justice (González, 2015) and training on developing mutual respect (J. A. Okonofua, Paunesku, & Walton, 2016) and improving the quality of relationships between teachers and parents, also showed a correlation with higher safety ratings (Steinberg, Allensworth, & Johnson, 2015) and improved achievement.

Similarly, after controlling for race and poverty, schools where principals focused on keeping students in school, while seeking less punitive ways to enforce school rules, had higher test scores than similar schools run by principals who expressed a belief in harsher punitive approaches (Skiba et al., 2015). Numerous studies cited in my written testimony are worth repeating to reinforce this point: several, where poverty and other factors were controlled for, suggest that fewer suspensions would predict higher achievement. Research has shown that school suspensions account for approximately one-fifth of Black-White racial differences in school performance (Morris & Perry, 2016). Meta-analyses have revealed a significant inverse relationship between suspensions and achievement, along with a significant positive relationship between suspensions and dropout (Noltemeyer, Ward, & McLoughlin, 2015). While exploring school discipline and academic performance in the state, the West Virginia Department of Education found that "students with one or more discipline referrals were 2.4 times more likely to score below proficiency in math than those with no discipline referrals" (Whisman & Hammer, 2014).

Moreover, as a nation, we now define educational achievement using other academic measures besides test scores. Among the most important achievement indicators is whether students conclude their K-12 public schooling by earning a high school diploma.¹

The research has well established that being suspended, even once, can dramatically decrease a student's likelihood of graduating from high school (Balfanz, Byrnes, & Fox, 2015; Fabelo et al., 2011). Many more recent longitudinal studies have yielded similar results (Abram et al., 2017; Rumberger & Losen, 2016). If longitudinal causal analyses have shown that suspending students increase their risk of dropping out, then decreasing suspensions should help diminish the large racial differences in graduation rates. We must provide alternative strategies and practices that are effective in fostering a productive learning environment, given that removing students from classroom is not effective.

In fact, Baltimore City (Richman, 2019), Los Angeles (Losen & Whitaker, 2017) and Chicago (Friedman, 2018) demonstrate graduation rates did increase after major changes in the reduction of suspensions for minor offenses.² Ultimately, if bona fide efforts to address achievement ignore the impact of harsh and unnecessary reliance on school removal to maintain an orderly learning environment, such efforts are unlikely to succeed. For all of these reasons, I asserted at the hearing, "We need to close the discipline gap to close the achievement gap."

2. Can you explain how policies that adversely and disproportionately affect students of a particular race or national origin can constitute discrimination, even though the policies may not be motivated by racial animus?

Response: Sometimes the best-intended policy can have unintended negative consequences and can even undermine the stated goals. Regarding discipline, I'd suggest that suspensions for truancy and the use of corporal punishment are two policies researchers have suggested disproportionately affect students. Moreover, some research suggests suspension may be acting more like a reinforcer than a deterrent (Tobin, Sugai, & Colvin, 2000). Other policies may work well under one set of circumstances but backfire in others. Take, for example, a policy of locking out students who are chronically late. One can imagine how under the best circumstances, such as where all students live within walking distance of a school, awareness of the rule could conceivably prompt greater punctuality. On the other hand, one can imagine a magnet school where some students walk, and others rely on a school bus or the mass transit system. If this policy is enforced without considering the circumstances, such as transit system breakdowns, or stalled traffic due to bad weather or accidents, students whom are not in walking distance might be harmed disproportionately by such a rigid policy. Many cities have a great deal of segregation within the city limits that are vestiges of de jure segregation or illegal redlining. It is very conceivable, therefore, for a given school, that students relying on a particular kind of transportation or must cross through a frequently congested area are predominantly from one racial or ethnic group. In such a situation, the decision to implement a policy that suspends all tardy students, could have a harmful and unjust disparate impact on the racial groups that disproportionately live further away without any hint of an intent to discriminate.

A similar example (#7) was used in the OCR/DOJ joint guidance as a policy that in some circumstances could be unjustified for achieving the intended goal and also have an

unlawful disparate impact.³ As I referenced in my written testimony, the guidance on disparate impact makes it less likely that members of a school community would jump to conclusions about racist intent, while encouraging them to reflect on the unintended yet unequal burden from ineffective policies.

This second example is an excerpt from my debate about the disparate impact discipline guidance on Harvard's "Education Next" blog:⁴

"Imagine a district where the principals are given autonomy over discipline for minor behaviors. A review reveals that the schools in the district serving majority Black youth have adopted suspensions for truancy and tardiness as a matter of policy, while, principals at the other schools do not suspend for any attendance issues as a matter of their policy. A review establishes that the higher suspension rates for Black youth in the district were mostly due to the harsher attendance rules at the schools serving majority Black youth. Instead of suspension, the other schools invest in parental outreach, count attendance in grading and for eligibility for playing sports, and enlist social workers to visit the homes of chronically absent youth. They also appear to have far less truancy and tardiness than the schools relying on suspensions."

Under this scenario, the district's inconsistent responses to truancy and tardiness could be challenged on the basis of their racially disparate impact. Hopefully, a review of the discipline disparities within the district, coupled with the prompting from the guidance to look at such discipline policies, would encourage the school board to voluntarily eliminate suspensions for attendance violations and instead adopt as district-wide the more effective responses already working well in its less racially isolated schools."

The legal basis for the disparate impact regulations has been well established and is provided for in the text of joint OCR/DOJ discipline guidance and corresponding footnotes. I have written several law review articles about disparate impact challenges such as racial disparities in special education, that would not require proof of intent or different treatment (Losen & Welner, 2001). In my written testimony, and in my response thus far, I have emphasized how there need not be an assumption that some degree of intentional racism informed the creation of a facially neutral discipline policy, if the policy causing the racially discriminatory impact lacks adequate educational justification. This is well-settled law, and, as the ranking Republican member Allen stated for the record, "The Title VI regulations are still in effect and the force of the law."⁵

Yet Secretary DeVos's statements and actions reflect the Trump administration's disapproval. It appears that they don't believe that any action can be considered discriminatory without proof of discriminatory intent. Even though the intent to discriminate is clearly not a required element of disparate impact doctrine, I point out that once a policymaker or practitioner becomes aware of a policy's *unjustified* disparate impact, the failure to try to either eliminate it or replace it with a less discriminatory

policy or practice, is highly problematic. Many would argue that the failure to act in order to prevent the racially disparate harm under such circumstances is not only immoral, but that given the foreseeable and preventable harm to children, continuing to implement a harmful policy qualifies as a form of intentional discrimination.

3. Conservatives often cite poverty, not race, as the reason for persistent disparities in school discipline. What does the data say? Are conservatives right? Is poverty driving racial discipline disparities?

Response: Given our nation's history of slavery and Jim Crow and considering that we live in a world where blatantly racist teachers and leaders have had to resign their posts because of the racist sentiments they have uttered, there are simply too many examples of blatant racism in our schools not to seriously question sweeping assertions that only poverty, and not racial discrimination, contributes to observed disparities in punishment. That said, as I will describe in detail, the vast majority of the research studies on school discipline have found that race is a strong predictor of suspensions, after controlling for poverty, including recent research by a very conservative scholar, Dr. Paul Morgan. His study attributed an approximately 60% greater risk for suspension experienced by Black students as due to discrimination (different treatment) based on race (Morgan et al., 2019). His study controlled for the poverty of the students as well as many other poverty-linked variables. My description of his research and how it discredits a nearly identical study cited by the U.S. Department of Education to justify the archiving of the joint OCR/DOJ discipline guidance can be found in the appendix of my written testimony.

I would like to add that there is extensive research showing that racial disparities are not explained away by poverty. Among the most recent studies is the GAO report from March, 2018 which found: "Regardless of the level of school poverty, Black students, boys, and students with disabilities were suspended from school at disproportionately higher rates than their peers...." (GAO, 2018). Perhaps the two most robust recent studies each found that after controlling for poverty, race remained a strong predictor of discipline. In other words, in numerous studies, including the most rigorous that control for the influence of poverty, have found that Black students are disciplined more often or more severely based on race (Abram et al., 2017).

In several publicized debates I've had, ardent conservatives such as Michael Petrilli and Max Eden, have conceded that racism likely contributes to observed discipline disparities.⁶ The argument usually pivots on how much of the observed disparity can be attributed to intentional racially different treatment discrimination and how much to other factors.⁷ Here, it's important to note that most conservatives do *not* recognize the well-established Title VI regulations whereby the disparate impact of an unjustified policy can be deemed to be unlawful racial discrimination.

For example, conservatives will often point out that between school differences, such as those caused by differences in school policies, account for a large share of the observed racial disparities. Yet because they reject the notion that differences due to policies can

be discriminatory, they falsely claim this evidence supports their broad inference that very little racial discrimination is at work. The obvious problem is that their conclusion suggests an absence of *all* racial discrimination, but it can only be reached by first ruling out any consideration of the well-established disparate impact race discrimination.

Conservative researchers also tend to completely disregard the ways in which implicit racial bias might contribute to racial disparities in discipline. Their failure to acknowledge implicit bias leads them to design studies that control for the behavioral ratings of teachers. By adding such a control, they ignore the likelihood that the same racial bias they are trying to tease out with regard to suspensions is “baked into” the highly subjective teachers’ behavioral ratings of students. Therefore, when they create statistical comparisons of the discipline records of Black and White students who previously received similar behavioral ratings, their findings won’t likely reflect the influence of implicit racial bias. This is a remarkable oversight considering the wealth of research demonstrating that implicit racial bias likely influences how teachers see and respond to student misbehavior (Gilliam, Maupin, Reyes, Accavitti, & Shic, 2016; Okonofua & Eberhardt, 2015).

On the other hand, racial discrimination is not always the cause of the observed disparities. There can be other root causes of disparities in school discipline that deserve attention. As the rescinded discipline guidance makes very clear, statistical disparities alone do not prove a Title VI violation. Policymakers and educators should be concerned about all the likely contributing factors, and especially those the school or district can control. In any given classroom, school, or district, several causes may simultaneously contribute to observed disparities. Race and poverty are closely linked in America, and both can be influential.

Ultimately, we know from research that there are multiple factors that can contribute to the observed racial disparities in discipline, yet racial discrimination consistently surfaces as a likely and major contributing factor.

4. The Final Report of the Federal Commission on School Safety, prepared by Secretary DeVos, states that the Guidance “opted to interpret Title VI’s implementing regulation as sufficient to establish a disparate impact theory for certain racial groups in the discipline area.” (Emphasis added).

a) Is it “optional” for OCR to enforce the disparate impact provisions contained with the Department’s regulations?

Response: If a person were to file a complaint about the disparate impact of school discipline policy, the U.S. Department of Education (DOEd) does not have the option of ignoring the claim. DOEd cannot choose to only examine complaints that are based on the theory of intentional “different treatment.” The guidance provided a useful set of examples and additional resources to help states and districts meet their legal obligations. The fact that states have the obligation to enforce the law is explicit in the first sentence of the “Dear Colleague” letter. The letter begins, “The U.S. Department of Education and

the U.S. Department of Justice (Departments) are issuing this guidance to assist public elementary and secondary schools in meeting *their obligations under Federal law* to administer student discipline without discriminating on the basis of race, color, or national origin” [emphasis added]. Likewise, these enforcement obligations apply to the Office for Civil Rights.

Because the discipline guidance did not alter the Title VI regulations, neither does the decision to rescind the guidance change the law. Neither action altered OCR’s obligation to enforce the Title VI regulations regarding disparate impact as it pertains to discipline. However, the DOE is permitted to rescind the guidance without a procedural review and their decision is not reviewable.

Rescinding the guidance is not the same thing as refusing to apply the Title VI disparate impact regulations when raised in discipline complaints. The Secretary of Education does not have the option of unilaterally deeming a regulation null and void. The Administrative Procedures Act states that “in order to amend or repeal an existing legislative rule, an agency generally must comply with the same notice-and-comment rulemaking procedures, outlined in § 553 of the APA, that governed the original promulgation of the rule.”⁸

In my written testimony I pointed out that in providing justification for archiving the discipline guidance the DOE relied upon an unsubstantiated concern that the guidance would create an incentive for racial quotas. Although the decision is not reviewable in federal court, it is worth reiterating that this same justification was ruled arbitrary and capricious by the recent federal court decision regarding efforts to delay the IDEA’s racial disproportionality regulations. Therefore, if this administration attempts to make similar arguments in the future as part of an attempt to rescind the Title VI disparate impact regulations, such a decision would likely be found arbitrary and capricious as well.

b) What are the obligations of the Office for Civil Rights in enforcing civil rights law?

Response: OCR’s obligations to enforce civil rights law are determined by the jurisdiction of the agency.⁹ OCR is given a degree of discretion to decide what complaints to investigate, and can choose to target resources on problems it considers to be acute.¹⁰ But I think this question is best answered by reviewing OCR’s mission statement and explanation found on the agency’s website. It reads as follows: “*The mission of the Office for Civil Rights is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights. We serve student populations facing discrimination and the advocates and institutions promoting systemic solutions to civil rights problems. An important responsibility is resolving complaints of discrimination.*” Two explicit elements of OCR’s obligation are the *vigorous enforcement of civil rights* and the *important responsibility to resolve complaints of discrimination*.

In recent months, the actions of Secretary of Education DeVos, and her statements in defense of these actions, call into question whether OCR has abrogated its core responsibilities. As reported in the New York Times, Secretary DeVos recently cited

"efficiency" as the main justification for eliminating 500 cases for consideration. Although she expressed concerns for the burden of enforcement, her budget request to congress called for cuts, not increases. Her actions, eliminating cases and seeking a reduced budget, seems disingenuous, given that her statements suggest that an increased budget is needed to improve the capacity of the agency to "vigorously" enforce civil rights.

Moreover, as I will address in more detail in my answer to Rep. Omar's question, I and other civil rights lawyers have argued that the recent changes to the civil rights enforcement manual unjustly narrows the scope of civil rights investigations making systemic remedies less likely.

The Trump administration's Department of Education's OCR major steps have primarily included the elimination of guidance and narrowing of enforcement. As an example, I refer Chairman Scott to a letter submitted to this Committee by the National ACLU last year on the 64th anniversary of *Brown*. The ACLU's letter describes in detail the ways in which the administration has made inequity in education "more acute by the Department of Education's abdication of its responsibility to pursue educational equity for all students....but instead...undermined protections and advancements, while shifting the Office for Civil Rights' (OCR) focus away from systemic violations and allowing investigators to disregard cases ...that they consider burdensome."¹¹ Suggestions that OCR's steps represent *vigorous enforcement* of civil rights are akin to Orwellian newspeak.

The concerns I raise about OCR's failure to meet its obligations to enforce civil rights are echoed by the letters from civil rights advocates across the nation. Although a summary of the numerous letters and issues raised is beyond the scope of my response, the following letter from the Leadership Conference on Civil and Human Rights, responding to the rescinding of the discipline guidance, and representing 119 organizations, summarizes the obligation to enforce civil rights and this administration's enforcement failure:

"The federal government's role in ensuring schools are free from discrimination has been articulated and confirmed by the U.S. Supreme Court in the 1954 *Brown v. Board of Education* decision, by Congress in the Civil Rights Act of 1964, and by ED in regulations implementing that law. ED and DOJ are both civil rights agencies and are responsible for protecting students from discrimination on the bases of race, color, national origin; sex; disability; and age. i Under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975, ED is tasked with enforcing these laws in response to complaints of discrimination and through proactive compliance reviews, data collection, and technical assistance. ii All of the laws that ED and DOJ enforce require regulations, policy guidance, and oversight in order to provide their intended benefits to students. Since its creation, ED has served the important role of protecting children from discrimination and

advocating on their behalf when their civil rights were violated. We reject any effort to undermine the protections and supports these laws provide, through the rescission of guidance used to inform all parties of their rights and obligations under the law. We also oppose any effort to limit resources and practical tools available to help recipients of federal funding proactively comply with the law.

This administration has taken one action after another to make schools less safe for LGBTQ students, sexual assault survivors, immigrant students, students of color, students with disabilities, and any child who experiences systemic discrimination.”¹²

Although the agency’s website asserts, *We serve student populations facing discrimination and the advocates and institutions promoting systemic solutions to civil rights problems*, the voices of civil rights advocates, responding to the actions of Secretary DeVos and the Trump administration, suggest that OCR no longer serves the students facing discrimination and its lax enforcement has exacerbated problems rather than promoted systemic solutions.

Questions From Rep. Ilhan Omar (MN)

1. Mr. Losen, why is a systemic approach to civil rights in education necessary to fully enforce civil rights laws and remedy unlawful discrimination and harassment?

Response: Based on my prior research and based on my experience as an OCR intern, and later as a legal services attorney in Massachusetts, I observed that most race-based complaints filed with OCR are filed by parents and are responses to an incident, and/or decision by a school authority regarding the parent’s child. Invariably, the remedy sought is similarly focused on an attempt to rectify the situation as it pertains to the individual. Usually, there is an expressed concern that the student was subjected to some form of racism on the part of one or more adults. In other words, complainants may feel the impact of systemic discrimination, but the complaint usually focuses on the most immediate problem or exchange. Even in cases involving race-based harassment, which often have a systemic component, and multiple incidents with several staff members, the complainant is usually focused primarily on the most recent or most egregious incident. Rarely does the complainant recognize a pattern of harassment or realize that there is a deeper systemic issue that goes far beyond the individual harm experienced by their child.

As a legal services attorney, I found that my clients often had very similar complaints and the issues arose repeatedly in a small subset of schools and districts within my county of jurisdiction.

Further, in the cases I’ve been involved with regarding school discipline, primarily as a researcher, the complainant often expresses a fear that if the school learns who filed the complaint, that the student, and peers that corroborate or join the complaint, will be retaliated against.

This experience, combined with my more extensive research reviewing discipline data from every school and district across the nation, informs my conclusion that there are far more systemic problems generated by both the disparate impact of facially neutral policies and repeated different treatment or harassment, than one might think by reviewing the types of civil rights complaints that are filed with OCR.

This means that unless OCR reviews complaints with an eye toward possible systemic causes, the investigations will increasingly overlook the cause of the problem expressed in the complaint, and generate narrow remedies if any. Systemic problems need systemic remedies. Failing to reach the systemic problem means the discriminatory policy or practice will persist. Without a systemic remedy, not only will many more individuals be harmed by injustice and possibly file additional complaints, the original complainant, even if she wins, may soon be subjected to the same unlawful policy.

As mentioned in my response to Chairman Scott's question, I am concerned that the changes to the enforcement manual, calling for a narrow review of only what is raised in the complaint is akin to a see no evil approach that will make investigations of systemic racism less likely, and therefore systemic remedies less common. For example, I share the concerns raised by Rachel Kleinman in this excerpt from the New York Times report on the recent changes to OCR's enforcement policy:

[She] said that the new manual was "yet another avenue for O.C.R. to not seriously investigate systemic race discrimination." The group has filed complaints on behalf of large groups of black students it believes were being disproportionately affected by law enforcement policies. Already, one case has been closed by the DeVos administration, and the department declined to conduct a broader analysis. "They seem to be closing all of the pathways for students to have their rights enforced by the federal government," Ms. Kleinman said.

Moreover, because disparate impact challenges focus on changes to policies and practices that affect all students in the school system, the remedies are primarily systemic in nature. The Department of Education's recent actions, including the archiving of guidance on school discipline, suggest that the Trump administration and Secretary DeVos is no longer seeking systemic solutions to civil rights problems in education.

When one combines the changes to the enforcement manual with the archiving of the guidance the net impact is likely a dramatic reduction in the investigation of systemic complaints.

If an otherwise neutral policy or practice is causing an unjustified discriminatory impact it may be triggering many complaints. However, if the complainant does not realize that the unjustified discipline at issue in her individual complaint was primarily caused by an unsound policy and not caused by intentional different treatment on the part of a teacher or administrator, such cases will less likely trigger an inquiry about the policy and could

be closed despite the fact that additional investigation would reveal that the complainant was unfairly burdened as the result of unlawful discriminatory policy.

Another area that I only briefly mentioned in my oral and written testimony is that there is a high correlation between harsh discipline and racial isolation of students of color. This raises a much larger systemic civil rights issue, that our nation's schools are now as segregated as they were in the 1960s. The concern that isolated schooling jeopardizes meaningful reform is well articulated in the Civil Rights Project's recently released report, *Harming our Common Future: America's Segregated Schools 65 Years after Brown*.¹³

Yet in July 2018, the Department of Education rescinded guidance developed by the Obama administration to address confusion about efforts to foster school diversity in the wake of the Supreme Court Ruling in *Parents Involved in Community Schools v. Seattle School District No. 1*. The guidance was meant to help foster diversity and remedy the still-present impact of slavery and Jim Crow.

I think it is commendable that the House is pursuing legislation to bolster diversity in our schools. In addition to the sad reality that separate is never equal, and that children of color have diminished opportunity to learn in the racially isolated schools that are still the norm 65 years after *Brown*, I think it is also important to stress that racial stereotypes and hatred flourish in ignorance and isolation. When White children grow up in apartheid environments, they are more likely to be exposed to racist beliefs. With no direct experiences to belie the myths and bigotry they are exposed to, they are more likely to perpetuate the same when they become adults. While diversity in education is no guarantee that racism will be eliminated it provides an opportunity to break down the culture of White supremacy. The status quo of racially isolated schools are the breeding grounds for future unlawful discrimination and harassment. In the long-term, a systemic approach to civil rights in education must find ways to foster diversity and counter the growing racial segregation in our public schools. Toward this end, I'd also add that a systemic approach must also counter segregation within schools. The data showing racial disparities in enrollment in AP classes and who are identified as gifted, are evidence of second-tier segregation, and denial of equal educational opportunity, including within schools that look diverse from a distance.

2. Are there certain types of civil rights claims that should automatically trigger a systemic investigation to resolve whether there is a pattern of discrimination?
Rep. Ilhan Omar (MN).

Response: I can think of several examples in which a civil rights claim that establishes certain elements should always trigger a systemic investigation. The most obvious would be whenever a complainant asserts that an observed disparity is the product of a policy or practice that is educationally unsound or unjustifiable such complaints should always trigger a review of the systemic policy in question and the decision leading to its creation and implementation. This initial inquiry, however, is not the same as a full-scale systemic investigation. Only once an inquiry establishes that the facts comport with the claim

should an investigation be triggered. In other words, once it is established that a facially neutral policy is the cause of racially disparate impact, similar to what is asserted by the complaint, a *prima facie* case is established. This should trigger a systemic investigation. I also would argue that all disparate impact investigations are systemic in nature.

There are numerous other examples. Whenever a policy that is not formed as part of a remedy to discrimination, is racially discriminating on its face, once that is established it should trigger a systemic investigation.

A similar but less obvious claim would concern key policymakers or leaders in a school or district who are in a position where they can make or influence systemic policies or practices. If any person in such an influential position makes explicitly racist statements during the course of performing their job, or pertaining to their job activities, or are known to be a member of (or have participated in) an organized racial terrorist group like the KKK, then I would hope the impact of their influence would be fully investigated for evidence that a pattern of disparities may have resulted. This kind of claim raises the possibility that the racist intent of a policymaker has had an effect on issues of a systemic nature.

My response is by no means exhaustive. Complaints of a racially hostile environment are invariably systemic as are many sexual harassment complaints. Moreover, many complaints that begin as individual complaints should be expanded to systemic investigations whenever the evidence suggests that there is evidence of discrimination and that it is systemic in nature.

As mentioned, I believe the public has reason to be concerned that the DOE is not fulfilling its legal obligation to investigate complaints that challenge the disparate impact of a policy or practice. Besides the expression of disdain toward the disparate impact theory expressed by polemicists who are frequently cited by the U.S. Department of Education, and relied upon by the DOE when rescinding the guidance, there is some empirical evidence to suggest that fewer complaints generally are being investigated.

Without concrete evidence that OCR is declining to investigate disparate impact complaints, it is hard to establish the full range of reasons why fewer complaints are being investigated. It is difficult to pinpoint the degree to which closing complaints are the direct result of these policy changes versus other unrelated reasons. Unfortunately, the actions and the statements of Secretary DeVos may also lead to fewer new systemic complaints being filed as awareness grows that the DOE is reluctant to investigate systemic complaints and has expressed concerns about the validity of disparate impact complaints.

Question from Rep. Russ Fulcher (ID)

1. *Thank you for your courage to persevere in school, amid violence, bullying, and a lot of classroom disruption. Do you see having disruptive students be required to do more*

activities – perhaps volunteer activities to help others – as a way to deal with some of the problems of students disrupting classrooms?

Response: Dear Representative Fulcher, having worked for ten years as a classroom teacher, I'd agree that perseverance was needed, as teaching was the hardest job I've ever had on a daily basis. It is also one of the most gratifying and I would encourage anyone who enjoys the gifts that children bring to our lives to enter the teaching profession. There are certainly challenging situations, but I found teaching to be extremely rewarding because most days the hard work I put into preparing lessons and improving my instruction really paid dividends for my students and for myself.

Although I would not characterize the schools I worked in as violent places, I did witness some violent acts, and now and then some extremely disruptive behavior. When I first started, I am sure that I sent the highest number of misbehaving children to the office. Part of my problem was that I was afraid of being disrespected.

Once I realized that the student's misbehaviors, even if directed at me, were not really about me, it became much easier to adopt de-escalation techniques, and to stay calm when confronting disrespectful behavior. Fortunately, with a lot of help from my principal and from my fellow teachers, and with resources for me to attend a course on classroom management, I was able to transform my own teaching. Often, the positive results of the approaches I learned were realized very quickly, sometimes within weeks of concentrated implementation. The more I was able to check my ego at the door, the more I understood that all the children were warm souls who wanted to be recognized, and who wanted others to see their goodness. While getting in that mindset did not come naturally to me, with concerted effort, I bought into the benefits of looking for positive attributes of even the most challenging students. There is research by psychologist Dr. Ross Greene that speaks to this point, and his research-based approach is especially useful for addressing students with the most challenging behavioral needs. His research findings stress that public schools are most effective when educators get beyond the problem behavior to see the goodness in all children.¹⁴

Fortunately for me and for my students, there were numerous lessons I learned about classroom management that produced immediate improvements. One was the kind of positive and pro-active engagement that your question mentions. Specifically, when I remembered to try it, I often could get the more disruptive students to volunteer to help make the classroom run more effectively. The kinds of volunteer opportunities I'd present to them depended on the child, but the opportunity to help rather than disrupt was almost always embraced. I would seek out highly active and frequently disruptive students to deliver messages to the office and distribute manipulatives or art supplies. I often invited children who were fighting with each other to join me, together, for lunch, sometimes for several weeks running. During these lunches, I'd keep the conversation positive and upbeat and engage the two in an enjoyable joint activity. If needed I might also develop additional positive incentives for the students to resolve future conflicts peacefully. I also found that my positive out-reach to these students, along with concerted efforts to establish trusting and positive relationships with their families,

helped reduce the problem behavior as well as prevent those problem behaviors that did occur from escalating.

These personal teaching experiences came many years before I became a lawyer and a researcher. Therefore, I should conclude by referencing the book of scholarly research I edited on this topic called *Closing the School Discipline Gap*. In the book's conclusion where I summarize the findings of more than 10 independent studies, I point out that two important elements seem critical to effective remedies: improving student engagement and improving the quality of relationships and trust among all members of the school community. One or both of these factors were present to some degree in all the studies that found an alternative to harsh discipline to be effective (Losen, 2015, p. 243).

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¹ For many years, civil rights advocates have expressed concerns that some districts, responding to accountability systems focused solely on test scores, use excessive school discipline to push out low achieving students, and disproportionate numbers of children of color, to drop out. Fortunately, in 2001, Congress in passing the No Child Left Behind Act, included a provision holding high schools and districts accountable for the cohort graduation rate, for all students and for subgroups. ESSA, passed in 2014, re-authorized the Act and reduced the over-emphasis on test scores, retained and elevated graduation rates as a core accountability measure and required an additional non-academic measure.

² Although there have been a few studies that suggested that a particular discipline reform effort did not have this desired impact (Steinberg and Laoe)(Rand, 2018) in the Philadelphia example, the benefits only failed to accrue in the high schools where the policy was not implemented and suspension rates did not decline. The Rand study was not conclusive because it only looked at the impact of training in restorative justice but failed to observe whether the trained teachers implemented the intervention. One other oft-cited non-peer-reviewed working paper has been strongly discredited by a peer-reviewed critique. (Perry & Losen, 2018)

³Example #7 is part of the "The Dear Colleague Letter" also referred to herein as the Joint OCR/DOJ Guidance on School Discipline. Although archived it is still available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>

⁴ See, Daniel Losen, *Don't Walk Back Needed Discipline Reform*, Education Next (March, 2018) available at <https://www.educationnext.org/dont-walk-back-needed-discipline-reform-losen/>

⁵ See recording hearing: 3:04:46 the statement of Representative Allen: <https://www.youtube.com/watch?v=ZL11exb4FFU>

⁶ See video of testimony before the U.S. Commission on Civil Rights, December, 2017. At https://www.youtube.com/watch?v=vv_GgG-jgBE

⁷ See Id., footnote 3 at 2:38:15 For my debate with Michael Petrilli: <https://www.educationnext.org/supposed-discipline-fix-threatens-school-cultures-forum-petrilli/>

⁸ See Todd Garvey, *A Brief Overview of Rulemaking and Judicial Review*, Congressional Research Service, March 27, 2017, at page 10 (for a review of the APA rules and their application to rescinding regulations) available at <https://fas.org/spp/crs/misc/R41546.pdf>

⁹ The following description of OCR's jurisdiction is an excerpt from their website:

"The Office for Civil Rights enforces several Federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education. Discrimination on the basis of race, color, and national origin is prohibited by [Title VI](#) of the Civil Rights Act of 1964; sex discrimination is prohibited by [Title IX](#) of the Education Amendments of 1972; discrimination on the basis of disability is prohibited by [Section 504](#) of the Rehabilitation Act of 1973; and age discrimination is prohibited by the [Age Discrimination Act](#) of 1975. These civil rights laws enforced by OCR extend to all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive U.S. Department of Education funds. Areas covered may include, but are not limited to admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing, and employment. OCR also has responsibilities under Title II of the [Americans with Disabilities Act](#) of 1990 (prohibiting disability discrimination by public entities, whether or not they receive federal financial assistance)." The complete description is available at <https://www2.ed.gov/about/offices/list/ocr/aboutocr.html>

¹⁰ As stated on OCR's website, "Agency-initiated cases, typically called compliance reviews, permit OCR to target resources on compliance problems that appear particularly acute. OCR also provides technical assistance to help institutions achieve voluntary compliance with the civil rights laws that OCR enforces. An important part of OCR's technical assistance are partnerships designed to develop creative approaches to preventing and addressing discrimination."

¹¹ See Letter from the American Civil Liberties Union to Chairwoman Foxx and Ranking Member Scott, May 17, 2018, available at <https://edlabor.house.gov/imo/media/doc/ACLU%20Letter%20for%20Record%20-%20House%20Fd%20and%20Workforce%20hearing-Brown%20v%20Board%20of%20Fd-%205-17-18-FINAL1.pdf>

¹² See e.g., The Leadership Conference on Civil and Human Rights letter entitled, *Letter to Ed and DOJ: Opposition to Rescission of Joint School Discipline Guidance Package* (joined by 119 organizations) January 10, 2019, available at <https://civilrights.org/resource/letter-to-ed-and-doj-opposition-to-rescission-of-joint-school-discipline-guidance-package/>

¹³ See *Harming our Common Future: America's Segregated Schools 65 Years after Brown*, available at www.civilrightsproject.ucla.edu

¹⁴ See e.g., Dr. Ross W. Greene, *Lost and Found: Helping Behaviorally Challenging Students*, Jossey Bass, 2013

Dear Representative Fulcher,

I can't support this proposal for reasons I explained in my latest publication, "[Separate but Equal, Again: Neo-Segregation in American Higher Education](#)," which examined the modern trend towards "neo-segregation," i.e., segregating black (and minority) students in academic and extramural settings. Neo-segregation emerged at elite universities such as Yale, Brown, and Wesleyan in the 1960s when white administrators attempted to redress black students' social and academic maladjustment by assigning them to separate residences, academic departments, and orientation programs. The solution helped no one. Neither did it 'liberate' blacks socially nor intellectually as was promised.

Inasmuch as I'd like to support requiring students of color to participate in 'volunteer activities,' I know from my research that these programs would likely lose their purpose. What might begin, for example, as an effort to give disruptive students an alternative to staying at home during a suspension, could quickly devolve into a "black power" reading group featuring race hustlers from Huey Newton to [Malcolm X](#) and Ta-Nehisi Coates.

Crafting similar programs for students of color at the K-12 level would entrench this problem, reinforcing the idea that American children learn best in segregated settings. Moreover, appropriating money to fund one more government program that localities might defund in a few years abdicates our true responsibility to black Americans in the 21st century, i.e., to engage them honestly in a discussion about problems (e.g. illiteracy, crime, illegitimacy, consumer spending) within the black community that keep us trapped in a cycle of inequality and diminishing expectations. Black Americans, like all Americans, need a politics in which they exercise agency and in which they can take pride. Black and white politicians alike, however, have shown their inability to propose a political program that meets these criteria.

Cities in which Democrats (many of them black) control the political machine and dole out patronage languish in disrepair; crime rates reduce the quality of life for black taxpayers; black students' reading and math proficiency rates decline annually. Somehow, these politicians have managed to keep the confidence of the majority of black voters. Somehow, they manage to hashtag "Black Lives Matter" on social media even as they refer black mothers to abortion clinics en masse and lobby to take cops off the street. We shouldn't be surprised that the children of parents that have been hustled by these politicians struggle to stay focused at school.

I refuse to partake in the tradition of offering black Americans feel-good solutions to their problems. I won't pretend that placing black students in an alternative setting will prevent disruptive behavior now or twenty years from now. That we do not trust that disruptive students' behavior will be corrected by a network of church, family, and friends tell us that we must think bigger than volunteer programs. Any measure which attempts to deal with the effects of racial disparities in school discipline without acknowledging the spiritual impoverishment of communities like Chicago, Detroit, and [Bushwick](#) (minutes from where I live) will be disingenuous. And it would have us think falsely that we performed a good deed, enabling us to continue to delay difficult conversations that we must have now.

Sincerely,

Dion J. Pierre

[Whereupon at 1:18 p.m., the committee was adjourned.]

