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The Implied Promise of a Guaranteed Education in the United States and How the Failure to Deliver It Equitably Perpetuates Generational Poverty

Anjaleck Flowers

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**THE IMPLIED PROMISE OF A GUARANTEED EDUCATION IN
THE UNITED STATES AND HOW THE FAILURE TO DELIVER
IT EQUITABLY PERPETUATES GENERATIONAL POVERTY**

Anjaleck Flowers[†]

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Any personal views expressed in the article belong to the author and are not to be attributed to the author’s employer.

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I. INTRODUCTION

The United States is known as a country where anything is possible. Immigrants, foreigners, and citizens alike know what it means when someone says, “the American Dream”—that anything is achievable in the United States and that everyone has a chance to achieve their financial goals, regardless of their socioeconomic status. Abraham Lincoln, the sixteenth president of the United States and a former attorney, espoused this belief in his speech on March 6, 1860:

I don’t believe in a law to prevent a man from getting rich; it would do more harm than good. So while we do not propose any war upon capital, we do wish to allow the humblest man an equal chance to get rich with everybody else. When one

starts poor, as most do in the race of life, free society is such that he knows he can better his condition; he knows that there is no fixed condition of labor, for his whole life. I am not ashamed to confess that twenty five [sic] years ago I was a hired laborer, mauling rails, at work on a flat-boat—just what might happen to any poor man's son! I want every man to have the chance—and I believe a black man is entitled to it—in which he can better his condition—when he may look forward and hope to be a hired laborer this year and the next, work for himself afterward, and finally to hire men to work for him! That is the true system.¹

President Lincoln's speech shows that the American dream should be a possibility for every person in the United States. Although this article focuses on impoverished individuals and the hardships in changing their predictable outcomes, one cannot discuss poverty without factoring in the element of race. Unfortunately, poverty and race often go hand in hand. This paper will also touch on how impoverished persons with disabilities—particularly those who are minorities—face challenges in breaking the chains of generational poverty under the United States' current laws and unfunded educational system.² These mostly invisible barriers impact impoverished students as early as preschool, in ways that affect these students' pipelines to college opportunities and overall career earnings.

This article will show that although there is no constitutional right to education at the federal level, all states have mandated compulsory education for children.³ The Fourteenth Amendment and case law further support the notion that the United States has promised and expects states to educate children in an equitable manner.⁴ The United States Supreme Court came very close to

1 Abraham Lincoln, Candidate for President of U.S., Speech at New Haven (Mar. 6, 1860), <http://www.historyplace.com/lincoln/haven.htm> [<https://perma.cc/5JPA-57YA>].

2. See *infra* Part IV.

3. See LOUISA DIFFEY & SARAH STEFFES, AGE REQUIREMENTS FOR FREE AND COMPULSORY EDUCATION 1-3 (2017), https://www.ecs.org/wp-content/uploads/Age_Requirements_for_Free_and_Compulsory_Education-1.pdf [<https://perma.cc/A44C-FK67>] (discussing age requirements for compulsory and free education).

4. See U.S. CONST. amend. XIV, § 1; *Brown v. Bd. of Educ.*, 347 U.S. 483, 489–95 (1954).

declaring that education is a right in *Brown v. Board of Education* by stating that “[s]uch an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”⁵ Unfortunately, United States laws and policy have not financially and explicitly supported mandates under the law.⁶ Opportunity and education gaps for impoverished students exist at astounding rates in comparison to their non-impoverished peers.⁷ Laws, policy, resources—and an inquiry into how U.S. society views the idea of providing a thorough, well-rounded, and equitable education for all—can deliver the necessary changes to reduce the gaps. These factors have the potential to create pathways for every person to realistically have an opportunity to change their financial trajectory in life, regardless of where that person’s financial journey at birth begins.

This article will also examine the history of compulsory education law and share data that reveals educational inequities relating to poverty and inadequate resources necessary to fulfill the educational obligations under the law.⁸ Finally, this article will share the research-based practical solutions shown to help reduce the implications of adverse financial outcomes of impoverished students—solutions that provide alternatives to continuing the status quo of the current U.S. education system.⁹

II. HISTORY OF THE IMPLIED GUARANTEE OF FREE EDUCATION UNDER THE LAW

The Fourteenth Amendment prohibits any state from denying “to any person within its jurisdiction the equal protections of the laws:”¹⁰

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall

5. *Brown*, 347 U.S. at 493.

6. See *infra* Parts V.B., C.

7. See BRUCE BAKER ET AL., IS SCHOOL FUNDING FAIR? A NATIONAL REPORT CARD, 1, 18 (2018) <https://drive.google.com/file/d/1BTAjZuqOs8pEGWW6oUBotb6omVw1hUJI/view> [<https://perma.cc/Z6AY-9WWG>] (describing how higher economic households often enroll their children in non-public school, leading to fewer resources for impoverished students in public schools).

8. See *infra* Parts II.D., E.

9. See *infra* Part VI.

10. U.S. CONST. amend. XIV, § 1.

make or enforce law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, of property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.¹¹

The Fourteenth Amendment of the U.S. Constitution supports the belief that no state can deny public primary or secondary education to any school-age child.¹²

A. *Compulsory State Education Laws*

All fifty states in the United States of America and the District of Columbia have compulsory education laws.¹³ Massachusetts was the first state to enact a compulsory education law in 1852,¹⁴ requiring

11. *Id.*

12. *See* *Goss v. Lopez*, 419 U.S. 565, 574 (1975) (“[T]he State is constrained to recognize a student’s legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause.”); *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (“[E]ducation is perhaps the most important function of state and local governments.”). *But see* *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973) (“Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.”).

13. *DIFFEY & STEFFES*, *supra* note 3, at 4–8 (discussing age requirements for compulsory and free education).

14. *Compulsory Education Laws: Background*, FINDLAW, <https://education.findlaw.com/education-options/compulsory-education-laws-background.html> [<https://perma.cc/6T2T-ST4T>] [hereinafter *Compulsory Education*] (discussing the history of compulsory education laws); *see also* *Massachusetts Compulsory Attendance Statutes from 1852-1913*, MASS. HOME LEARNING ASS’N, <http://www.mhla.org/information/massdocuments/mglhistory.htm> [<https://perma.cc/FW5Y-K6CY>] (citing research from the Massachusetts State Archives of an 1852 statute entitled “An Act Concerning the Attendance of Children at School,” which stated the following: “Section 1. Every person who shall have any child under his control between the ages of eight and fourteen years, shall send such child to some public school within the town or city in which he resides, during at least twelve weeks, if the public schools within such town or city shall be so long kept, in each and every year during which such child shall be under his control, six weeks of which shall be consecutive. Section 2. Describes fine of \$20 for truancy. Section 3. It shall be the duty of the school committee in the several towns or cities to inquire into all cases of violation of the first section of this act, and to ascertain of the persons violating the same, the reasons, if any, for such violation and they shall report such cases, together with such reasons, if any, to the town or city in their annual report; but they shall not report any cases such as are provided for by the fourth section of

children to attend school. According to the Massachusetts law, if children did not attend school, their parents were at risk of being fined.¹⁵ However, school was not free and that meant that some low-income children were unable to attend school.¹⁶ Compulsory education laws stemmed from fear: fear of forced child labor, the Catholic church and parochial schools, private schools, and “‘immigrant’ values.”¹⁷ These laws have evolved beyond fear and now mandate that children of a certain age receive education by either attending a public or private primary and secondary school, or a homeschool.¹⁸ In 1925, the United States Supreme Court found that an Oregon statute that required all children to be taught in public schools was unlawful.¹⁹ Families who could afford private tuition had the choice of sending their children to state-accredited private or parochial schools at the families’ own cost.²⁰

Under state compulsory education laws, public school districts have a duty to begin providing free education to students at a certain

this act. Section 4. If, upon inquiry by the school committee, it shall appear, or if upon the trial of any complaint or indictment under this act it shall appear, that such child has attended some school, not in the town or city in which he resides, for the time required by this act, or has been otherwise furnished with the means of education for a like period of time, or has already acquired those branches of learning which are taught in common schools, [also describes physical incapacity or poverty as being valid excuses for absence from school] shall not be held to have violated the provisions of this act. Section 5. It shall be the duty of the treasurer of the town or city to prosecute all violations of this act.”).

15. *Compulsory Education*, *supra* note 14.

16. *Id.*

17. *Id.*; see also *Historical Timeline of Public Education in the US*, RACE FORWARD, <https://www.raceforward.org/research/reports/historical-timeline-public-education-us> [<https://perma.cc/JP9V-LN96>] (discussing the historical timeline of significant education laws in the United States from 1647 to 1998).

18. *Compulsory Education*, *supra* note 14 (displaying a data table of state attendance law mandates per minimum and maximum ages).

19. *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35 (1925).

20. *Id.*; see also ANTONELLA CORSI-BUNKER, *GUIDE TO THE EDUCATION SYSTEM IN THE UNITED STATES 1–2*, <https://issn.umn.edu/publications/USEducation/2.pdf> [<https://perma.cc/XA89-DMTA>] (describing the U.S. education structure).

age.²¹ Public dollars fund public education.²² On average, 46% of education funding comes from state sources, but this number varies by state.²³ State compulsory education laws also require parents to enroll their children in school by a certain age.²⁴ Whether a family chooses to send its student to public, private, or parochial school, or chooses to homeschool, students are required to attend school for a minimum number of years.²⁵ States vary greatly in the number of compulsory education years that they require for children.²⁶ For instance, seven states require nine years of compulsory attendance, ten states require thirteen years of compulsory attendance, and the other states land somewhere in between nine and thirteen years of mandated education.²⁷ Parents' or guardians' failure to send their child to school violates the law and may result in criminal charges, fines, and other consequences.²⁸ For instance, in Washington, D.C., parents may be guilty of a misdemeanor crime for not sending their child to school as required.²⁹ Although there is no clear federal right to education, the United States has implied through its laws that states must provide an education for children of a certain age, without charging for tuition.³⁰

21. See CORSI-BUNKER, *supra* note 20, at 1; *Compulsory Education*, *supra* note 14 (discussing compulsory education laws and exemptions).

22. *The Federal Role in Education*, U.S. DEPT. OF EDUC., <https://www2.ed.gov/about/overview/fed/role.html> [<https://perma.cc/WKY9-WT6G>] (last modified May 25, 2017).

23. MICHAEL LEACHMAN ET AL., MOST STATES HAVE CUT SCHOOL FUNDING, AND SOME CONTINUE CUTTING 2 (2016), <https://www.cbpp.org/sites/default/files/atoms/files/12-10-15sfp.pdf> [<https://perma.cc/A2AX-K7ZF>]; see also CORSI-BUNKER, *supra* note 20 (stating that 80% of public education funds in Minnesota come from state sources).

24. CORSI-BUNKER, *supra* note 20; see also *Compulsory Education*, *supra* note 14 (noting that children must attend school until they are at least sixteen years old).

25. DIFFEY & STEFFES, *supra* note 3, at 3 (surveying the different compulsory school attendance ages by state).

26. *Id.*

27. *Id.*

28. *Compulsory Education*, *supra* note 14.

29. *District of Columbia Compulsory Education Laws*, FINDLAW, <https://statelaws.findlaw.com/dc-law/district-of-columbia-compulsory-education-laws.html> [<https://perma.cc/QJ2Z-5QNN>] (citing title 5, section 52 of the District of Columbia Code of Municipal Regulations).

30. Chelsea Lauren Chicovsky, *Restructuring the Modern Education System in the United States: A Look at the Value of Compulsory Education Laws*, 5 BYU EDUC. & L. J. 1 (2015),

B. Plyer v. Doe

The United States Supreme Court held that states cannot deny an education to school-age children, including illegal immigrants without proper legal status.³¹ In *Plyer v. Doe*, the Supreme Court ruled against the state of Texas for creating a statute that prohibited immigrant children who were not legal citizens from enrolling in public schools, withheld funds from school districts, and gave schools authorization to deny enrollment to students who were not legally admitted to the United States.³² In the five to four opinion, the Court ruled that the Texas statute violated the Equal Protection Clause of the Fourteenth Amendment.³³ The Court interpreted the word “jurisdiction” in the Equal Protection Clause according to its plain meaning and held that an immigrant without proper documentation could not be distinguished from a U.S. citizen. The Court stated that illegal aliens were ordinary people and had already faced significant disadvantages, including an inability to speak English and racial discrimination, and that to deny an education to the children of illegal aliens—who are in the country due to no fault of their own—would condemn these children to a socioeconomic class of the lowest status.³⁴ Although the Court stated that education was not a fundamental right, the Court made it clear that education was “the very foundation of good citizenship” and should be “available to all [persons] on equal terms.”³⁵ The state of Texas failed to show that the law was necessary to meet a compelling state interest or that the discriminatory law had a rational basis.³⁶

C. Anti-Discrimination Education Laws and Equity Standards

Even with the implied guarantees of public education in U. S. Supreme Court case opinions and the Court’s assertion that education must be equally available—with statutory obligations in each state to provide public education—the United States has yet to affirmatively

<https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1355&context=elj>
[<http://perma.cc/86S5-3k6E>].

31. *Plyer v. Doe*, 457 U.S. 202, 230 (1982).

32. *Id.* at 205.

33. *Id.* at 212–15.

34. *Id.* at 224, 229.

35. *Id.* at 223 (quoting *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954)).

36. *Id.* at 223–24.

make or enforce laws to ensure that states equitably deliver education at a minimum level of adequacy for all primary and secondary school students.³⁷ For instance, there is no federal mandate that the states must educate children equitably or that schools must meet a minimum standard of outcomes.³⁸ This is not to say that there are no laws in existence to support equal treatment. Anti-discrimination laws are in place for various protected classes, including race, color, disability, gender, and national origin.³⁹ For example, Title VI of the Civil Rights Act of 1964 prohibits discrimination in schools based on race, color, and national origin.⁴⁰ This prohibition on discrimination applies to all school programs or activities that receive federal financial support.⁴¹ The Individuals with Disabilities Education Act (IDEA)⁴² requires schools to provide a Free Appropriate Public Education (FAPE) to students with disabilities based on the student's individual needs.⁴³ Section 504 of the Rehabilitation Act of 1973

37. *Id.* at 223 (“[The opportunity of an education], where the state has undertaken to provide it, is a right which must be made available to all on equal terms.” (quoting *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954))).

38. See 20 U.S.C. § 1221-1 (2012) (stating the national policy with respect to equal educational opportunity as “[r]ecognizing that the Nation’s economic, political, and social security require a well-educated citizenry, the Congress (1) reaffirms, as a matter of high priority, the Nation’s goal of equal educational opportunity, and (2) declares it to be the policy of the United States of America that every citizen is entitled to an education to meet his or her full potential without financial barriers”).

39. See, e.g., 20 U.S.C. § 1701(a)(1) (2012) (stating the congressional policy of the United States that “all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin”); Individuals with Disabilities Education Act of 2004, Pub. L. 101-476, § 1418, 104 Stat. 1142 (1970) (codified as amended at 20 U.S.C. § 1400(a) (2010)).

40. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. § 2000e); see *Overview of the Title VI of the Civil Rights Act of 1964*, THE U.S. DEP’T JUST., <https://www.justice.gov/crt/fcs/TitleVI-Overview> [<https://perma.cc/UYA3-WRB6>] (“Title VI . . . was enacted as part of the landmark Civil Rights Act of 1964. It prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. As President John F. Kennedy said in 1963, ‘Simple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination.’”).

41. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. § 2000e).

42. Individuals with Disabilities Education Act, 20 U.S.C. § 1400 (a)–(d) (2010).

43. *Id.*

requires the delivery of FAPE to students who are within the school district, regardless of disability.⁴⁴

Additionally, Title IX prohibits schools from discriminating against students based on gender.⁴⁵ This prohibition includes ensuring that students have the ability to participate in activities and that schools are not denying students benefits.⁴⁶ Title IX also applies to schools receiving federal assistance.⁴⁷ This article contains further discussion about how IDEA and FAPE, although well-intended, have not been financially backed by the financial resources of the government as promised.

None of these anti-discrimination laws hold schools or school districts accountable for ensuring that all students graduate or otherwise reach a certain level of academic knowledge or skill. For example, the Equal Educational Opportunities Act of 1974 (EEOA) prohibits discrimination or unfair treatment of all people regarding a free and guaranteed education.⁴⁸ The EEOA states that, “all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin.”⁴⁹ On its face, the EEOA appears to be a mandate that would hold schools and lawmakers accountable for ensuring equitable education for all students. However, the issue is that equality and equity, although used interchangeably by many, have two very different meanings. Equal is defined as “like for each member of a group, class, or society.”⁵⁰ Equity is defined as “justice according to natural law or right; specifically: freedom from bias or favoritism.”⁵¹

It is equal to give all students the same book, with the same assignment and grading standards. It is equitable to offer more

44. Rehabilitation Act of 1973, Pub. L. No. 93-112, § 504, 87 Stat. 394 (codified as amended at 29 U.S.C. § 794 (1973)).

45. Education Amendments of 1972, Pub. L. No. 92-318, § 901, 86 Stat. 373 (codified as amended at 20 U.S.C. § 1681 (1972)).

46. *Id.*

47. *Id.*

48. Equal Educational Opportunities Act of 1974, Pub. L. No. 93-380, § 202(a)(1), 88 Stat. 514 (codified as amended at 20 U.S.C. § 1701(a)(1) (1974)).

49. *Id.*

50. *Equal*, MERRIAM WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/equal> [<https://perma.cc/D6V8-ZHBA>].

51. *Equity*, MERRIAM WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/equity> [<https://perma.cc/BEY6-3RTC>] (emphasis removed).

academic support to the student who does not speak English as a first language and is struggling to read and comprehend the vocabulary.⁵² A focus on equity helps to reduce unintended bias.⁵³ Not all students have the same needs. Laws centered on delivering education in an equal manner are indeed one mechanism to help reduce discrimination in schools, but these laws are not nearly enough to deliver education on an equitable basis. Without equity mandates and intention, education is inherently susceptible to unintended consequences, including inequities in both the delivery and adequacy of education.

For example, Title VI operates, to an extent, to circumvent these unintentional consequences,⁵⁴ but is not enough without equity and adequacy mandates. There are two ways that plaintiffs can prevail on a Title VI claim: disparate treatment or disparate impact.⁵⁵ Under a disparate treatment claim, a student must be intentionally treated differently based on the student's known or perceived protected class of race, color, or national origin.⁵⁶ It is under the second type of Title VI claim—disparate impact—that equity considerations can make a difference. Discrimination under disparate impact is not intentional—in fact, the school's policies will appear neutral under such a claim—however, there is an adverse impact on students who are members of one of the protected classes of race, color, or national origin.⁵⁷

Without actual equity standards, laws such as Title VI lack the necessary teeth to achieve the ultimate goal of ensuring a quality education for all. For instance, Title VI may be intended to help certain

52. Rusul Alrubail, *Equity for English-Language Learners*, EDUTOPIA (July 7, 2016), <https://www.edutopia.org/blog/equity-for-english-language-learners-rusul-alrubail> [<https://perma.cc/5AW5-ALW7>].

53. See Sarah Yost, *Increasing Equity for All Students*, EDUTOPIA, (Aug. 29, 2018), <https://www.edutopia.org/article/increasing-equity-all-students> [<https://perma.cc/B66T-RHRR>]; see generally Nicole Scialabba, *How Implicit Bias Impacts Children in Education*, A.B.A., (Oct. 2, 2017), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2017/fall2017-how-implicit-bias-impacts-our-children-in-education> [<https://perma.cc/B9YU-AJ54>] (explaining that implicit bias exists in the school system in relation to race and often leads to unfair opportunities for minority non-white students).

54. THE CIV. RIGHTS DIVISION, U.S. DEPT. OF JUST., TITLE VI LEGAL MANUAL §§ VI–VII (updated Apr. 13, 2017) (discussing disparate treatment and disparate impact).

55. *Id.* § VI, at 1; *id.* § VII, at 1.

56. *Id.* § VI, at 2.

57. *Id.* § VI, at 5–6.

students, such as those who speak English as a second language. Yet without requirements to provide additional support and make accommodations to ensure these students get the same level of education as their English-speaking peers, it naturally leads to undesired educational experiences. Furthermore, the lack of requirements perpetuates highly differentiated and adverse outcomes—failing to deliver an adequate education to all students.

D. Minnesota's Compulsory Education Laws

1. Minnesota's Constitutional Provisions Addressing Compulsory Education

Interestingly enough, the argument for adequacy in education is currently unfolding in the state of Minnesota. Minnesota's constitution echoes the sentiment of the Fourteenth Amendment: "No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers."⁵⁸ The first half of the due process clause in the Minnesota Constitution affirms that no one should be deprived of due process of the law. "No person shall be . . . deprived of life, liberty or property without due process of law."⁵⁹ The education clause in the state's constitution provides the following:

The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.⁶⁰

Furthermore, the compulsory education statute in Minnesota requires that the state provide a free education to children beginning at age five.⁶¹

2. Cruz-Guzman v. State

It is clear that there is nothing in Minnesota's statutes or constitution that affirms the delivery of free education. However, the

58. MINN. CONST. art. I, § 2.

59. *Id.* § 7.

60. *Id.* art. VIII, § 1.

61. MINN. STAT. § 120A.20, subdiv. (1)(b) (2018).

Minnesota Supreme Court asserted in *Cruz-Guzman v. State*—a recent 2018 opinion—that the Minnesota Constitution’s focus on the intelligence of the state’s people may indicate a certain level of required adequacy.⁶² “An education that does not equip Minnesotans to discharge their duties as citizens intelligently cannot fulfill the legislature’s duty to provide an adequate education under the state’s education clause.”⁶³ The Minnesota Constitution’s implication of required adequacy may significantly impact how the state delivers education to its students in the future. In *Cruz-Guzman*, the court noted that “[t]he framers could not have intended for the Legislature to create a system of schools that was ‘general and uniform’ and ‘thorough and efficient’ but produced a wholly inadequate education.”⁶⁴ The plaintiffs in *Cruz-Guzman* were seeking declaratory judgment and injunctive relief to desegregate the school districts within the state, and a guarantee of adequate education as a fundamental right of the state’s constitution.⁶⁵

In *Cruz-Guzman*, the plaintiffs argued that school districts in Minnesota were racially segregated, resulting in inequitable resources to students—thus denying students their “fundamental right to an adequate education.”⁶⁶ Under Minnesota’s integration rules for school districts, segregation is defined as:

The intentional act or acts by a school district that has the discriminatory purpose of causing a student to attend or not attend particular programs or schools within the district on the basis of the student’s race and that causes a concentration of protected students at a particular school.⁶⁷

The state argued that the plaintiffs brought a claim for which relief could not be granted because their claim was a matter for the legislature, not the judiciary.⁶⁸ The appellate court agreed with the state and held that an adequate education was not justiciable and was a matter for the legislature because deciding the matter would require the judiciary to define a qualitative standard.⁶⁹ In its decision to

62. *Cruz-Guzman v. State*, 916 N.W.2d 1, 11–12 (Minn. 2018).

63. *Id.* at 12.

64. *Id.* (citing *Skeen v. State*, 505 N.W.2d 299, 315 (Minn. 1993)).

65. *Id.* at 6.

66. *Id.*

67. MINN. R. § 3535.0110, subp. 9 (2018).

68. *Cruz-Guzman*, 916 N.W.2d at 11.

69. *Id.*

reverse the appellate court's decision, the Minnesota Supreme Court ruled that the issue of adequate education under the state was justiciable and appropriate for the courts to review.⁷⁰ Ultimately, the Minnesota Supreme Court determined that the courts should examine the question of whether the legislature has fulfilled its duty.⁷¹

It will be interesting to see what the Hennepin County District Court and the Minnesota Legislature decide in terms of adequacy of education and the racial implications if the court finds that segregation—intentional or not—exists. At this point, it is unknown if the Minnesota courts will introduce and illustrate a qualitative standard of adequacy in education. If the Minnesota courts introduce a qualitative standard, questions will arise concerning the impact the standard may have on other states in defining future adequacy standards. Minnesota is not alone; more than six states have filed lawsuits challenging the quality and adequacy of education while the nation anticipates the outcome of *Cruz-Guzman*.⁷² It remains to be seen how Minnesota will reconcile *Cruz-Guzman*⁷³ with a case such as *Plyer v. Doe*,⁷⁴ which came extremely close to declaring education as a fundamental right.⁷⁵

E. Compulsory Education Cases Before the U.S. Supreme Court

The United States Supreme Court declared that education was not a fundamental right in *San Antonio Independent School District v. Rodriguez*,⁷⁶ almost a decade before *Plyer v. Doe*.⁷⁷ Even after *Brown v. Board of Education*⁷⁸—when the Court made it clear that “separate but equal” had no place in the public education system—there are still no federal laws in existence to provide clear mandates for equitable education.⁷⁹

70. *Id.* at 10.

71. *Id.* at 14.

72. Dana Goldstein, *How Do You Get Better Schools? Take the State to Court, Some Advocates Say*, N.Y. TIMES (Aug. 21, 2018), <https://www.nytimes.com/2018/08/21/us/school-segregation-funding-lawsuits.html> [<https://perma.cc/LMC3-JCDB>] (discussing *Cruz-Guzman v. State*, 916 N.W.2d 1 (Minn. 2018), and similar cases).

73. *See Cruz-Guzman*, 916 N.W.2d at 1.

74. 457 U.S. 202 (1982).

75. *Id.* at 223–24.

76. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 18, 30–39 (1973).

77. *Plyer v. Doe*, 457 U.S. 202, 202 (1982).

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

79. *Id.* at 495.

In light of these precedential U.S. Supreme Court cases—which have the final say on the law of the land—it is not surprising to see a case filed such as *Cruz-Guzman*.⁸⁰ The Supreme Court has declared that no right to education exists. However, both the Court and legislative laws have implied that education is a right, thus leaving U.S. education obligations in a conundrum. Unfortunately, the majority of adverse educational outcomes resulting from inequities in the U.S. education system have a disparate impact on poverty-ridden school districts and impoverished students.⁸¹ Given that the United States is sixty-plus years post-*Brown v. Board of Education*,⁸² it would be reasonable to assume that matters regarding the quality and adequacy of education would have been long settled.

III. CHILDREN WHO LIVE IN POVERTY BY THE NUMBERS

A. *Generational Poverty*

Generational poverty occurs when a family lives in economic need for “at least two generations.”⁸³ One of the strongest tools for breaking generational poverty and having a life of financial success is a quality education.⁸⁴ The more educated a person is, the greater the likelihood of that person earning a higher income.⁸⁵ The poverty threshold for a family of four in the United States is \$23,000.⁸⁶

80. *Cruz-Guzman v. State*, 916 N.W.2d 1, 15 (Minn. 2018).

81. Chris Duncombe, *Unequal Opportunities: Fewer Resources, Worse Outcomes for Students in Schools with Concentrated Poverty*, COMMONWEALTH INST. (Oct. 26, 2017), <http://www.thecommonwealthinstitute.org/2017/10/26/unequal-opportunities-fewer-resources-worse-outcomes-for-students-in-schools-with-concentrated-poverty> [<https://perma.cc/G78G-MSTM>] (discussing the impacts of high poverty schools on students).

82. *See Brown*, 347 U.S. at 493.

83. *Facts About Poverty*, URBAN VENTURES, <https://urbanventures.org/facts-about-poverty> [<https://perma.cc/84FR-ZRUA>].

84. Brian A. Jacob & Jens Ludwig, *Improving Educational Outcomes for Poor Children*, 26 FOCUS 56 (2009), https://www.irp.wisc.edu/publications/focus/pdfs/fo_c262j.pdf [<https://perma.cc/3T2N-WS99>] (discussing educational outcomes for children in poverty).

85. *Id.*

86. Sean F. Reardon, *The Widening Income Achievement Gap*, 70 EDUC. LEADERSHIP 10-16 (2013), <http://www.ascd.org/publications/educational-leadership/may13/vol70/num08/The-widening-income-achievement-gap.aspx> [<https://perma.cc/YG9R-ZZGK>] [hereinafter Reardon, *Widening*] (discussing the growing income and academic achievement gap).

However, the achievement gap reflects that certain students are already starting with a severe disadvantage. The “achievement gap” is the difference in standardized test scores between students of color and their white peers, and between students who are living in poverty and those who are not.⁸⁷ Breaking the constraints of generational poverty requires each parental generation to advance financially because parents’ income levels contribute to the achievement gap.⁸⁸ The National Education Association lists access to higher education and employment as indicators of the achievement gaps that exist.⁸⁹ Children who have been persistently poor are less likely to graduate from high school and college—13% and 43% less likely, respectively.⁹⁰ Students whose parents have not attained a high school diploma or college education are more vulnerable to generational poverty because parents’ education can be a predictor of students’ achievement and their chances for economic independence.⁹¹ In fact, a child who experiences being poor for a short period is 30% more likely to complete high school if the child’s parents completed high school.⁹² Students who come from household incomes of \$100,000 or greater are 57% more likely to earn a

87. *Students Affected by Achievement Gaps*, NAT’L EDUC. ASS’N, <http://www.nea.org/home/20380.htm> [https://perma.cc/43PB-B8AJ] [hereinafter *Students Affected*] (discussing the definition of the achievement gap and the affected students).

88. Troy Markowitz, *The Barriers to Success and Upward Mobilities for First Generation Students and How to Fix the Problems*, FORBES (Aug. 8, 2017, 8:02 AM), <https://www.forbes.com/sites/troymarkowitz/2017/08/08/the-barriers-to-success-and-upward-mobility-for-first-generation-students-and-how-to-fix-the-problem/#ee2f53f1cb3e> [https://perma.cc/CE69-A97T] (discussing barriers to upward mobility for first generation college students).

89. *Id.*

90. CAROLINE RATCLIFFE, CHILD POVERTY AND ADULT SUCCESS 2–3 (2015), <https://www.urban.org/sites/default/files/publication/65766/2000369-Child-Poverty-and-Adult-Success.pdf> [https://perma.cc/3v3s-4396] (discussing tabulated data from children born between 1968 and 1989 from the Panel Study of Income Dynamics, which evaluated ever-poor, never-poor, and persistently poor children). Ever-poor children are those who experienced poverty below the federal poverty line for at least one year but less than half of childhood, never-poor children never experienced poverty below the federal poverty line during childhood, and persistently poor children experienced poverty below the federal poverty line for at least half of their childhood. *Id.* at 2.

91. *Id.* at 2–3.

92. *Id.* at 3.

bachelor's degree within six years.⁹³ Students who come from household incomes of less than \$29,999 were 16.3% likely to earn a bachelor's degree within six years.⁹⁴ Some of these outcomes may be attributable to the inherent effects of parents who were poor and who did not attend college likely due to the lack of information about higher education opportunities and limited access to available resources. For instance, 75% of parents who had a household income of \$25,000 or less were unaware of financial options for their children to attend college, such as scholarships and loans.⁹⁵ Even families with household incomes of \$50,000 needed help identifying available financial resources.⁹⁶ Poor students, particularly African-American and Latino students, were at risk of not availing themselves of important financial resources, including grants that would allow them to get a higher education while incurring less debt. Lack of proper knowledge of what help is available can increase these students' debt loads and increase the chances that they will remain in poverty or stricken with debt.⁹⁷

African-American and Hispanic families have median household incomes of \$42,491 and \$35,398, respectively, according to the 2014 U.S. census.⁹⁸ Asian-American families have the highest median income at \$74,297, and white Americans follow behind Asian Americans at \$60,256.⁹⁹ In 2012, U.S. Education Department data showed that 41% of African-American students were first-generation college students, 61% of Hispanic students were first-generation college students, and 25% of white and Asian-American students were first-generation college students.¹⁰⁰

Research shows that even the neighborhood that children grow up in matters. A jarring 99% of students who grow up in a poor neighborhood are less likely to complete a four-year college degree

93. See Markowitz, *supra* note 88.

94. *Id.*

95. *Id.*

96. *Id.*

97. Crystal Coker & Jennifer Glynn, *Making College Affordable: Providing Low-Income Students with the Knowledge and Resources Needed to Pay for College*, JACK KENT COOKE FOUND., <https://www.jkcf.org/research/making-college-affordable-providing-low-income-students-with-the-knowledge-and-resources-needed-to-pay-for-college> [https://perma.cc/79MC-YWPK].

98. Markowitz, *supra* note 88.

99. *Id.*

100. *Id.*

than students who do not grow up in a disadvantaged neighborhood.¹⁰¹ There is an undeniable connection between experiencing childhood poverty and unsuccessful outcomes in adulthood, including the completion of high school and college.¹⁰²

B. Persistently Poor and Ever Poor

The data is even more dire for persistently poor children when compared to ever-poor children and never-poor children. Persistently poor is defined as living below the federal poverty level for more than half of childhood.¹⁰³ Ever poor is defined as experiencing poverty for at least one year during childhood but less than half of the years from birth through age seventeen.¹⁰⁴ Ninety-three percent of children who never experienced poverty graduated from high school, whereas only 64% of their persistently poor peers graduated from high school.¹⁰⁵ Moreover, children who were persistently poor faced higher unemployment rates.¹⁰⁶ Persistently poor children were 37% less likely to be consistently employed when compared to adults who were never poor and to those who were ever poor.¹⁰⁷ Higher education impacts the ability to make a higher salary as an adult.¹⁰⁸ Children who experience poverty, especially persistent poverty, need equitable support to achieve success in school.¹⁰⁹ Research shows that poor children are less likely to succeed academically, less likely to graduate, less likely to go to college, and thus, less likely to escape generational poverty.¹¹⁰

C. Children in Poverty

Data shows that children experience poverty at a higher level than adults.¹¹¹ Approximately one out of five children experience

101. See RATCLIFFE, *supra* note 90, at 8 (showing that these results occur even when controlling for poverty status and family characteristics).

102. *Id.* at 5.

103. *Id.* at 1.

104. *Id.* at 2.

105. *Id.* at 9.

106. See RATCLIFFE, *supra* note 90, at 4.

107. *Id.*

108. *Id.* at 9.

109. *Id.*

110. *Id.* at 5.

111. *Id.* at 1.

poverty as compared to one out of eight adults; approximately one out of ten children in the United States is persistently poor.¹¹² As with many disparities in racial outcomes, such as the achievement gap, there are also race implications for students of color who have been exposed to poverty.¹¹³ African Americans “experience less upward mobility and more downward mobility than whites.”¹¹⁴ In the United States, 17% of white persons remain in the lowest-income category, whereas 42% of African Americans remain in the lowest-income category.¹¹⁵ Seventy-five percent of African-American children experience poverty for at least one year during childhood—in other words, ever poor—as compared to white children who experience ever-poor poverty at a much lower level of 30%.¹¹⁶ Only one out of ten white children are persistently poor whereas African-American children make up four out of ten persistently poor children.¹¹⁷ “Many of these children struggle academically, do not complete high school, and have spotty employment history as young adults.”¹¹⁸ Children who come from high-income families have the highest likelihood of generating a high-income household and the inverse applies.¹¹⁹ It is not impossible to break out of generational poverty and some people do; however, when a person overcomes generational poverty in adulthood, it does not mean they will have a wealthy household—the research suggests that they will be only slightly less poor than they were in childhood.¹²⁰ It is vitally important to increase high school and college graduation rates for students in poverty and to ensure

112. See RATCLIFFE, *supra* note 90, at 1.

113. ROBERT L. WAGMILLER, JR. & ROBERT M. ADELMAN, CHILDHOOD AND INTERGENERATIONAL POVERTY: THE LONG-TERM CONSEQUENCES OF GROWING UP POOR 2 (2009), http://www.nccp.org/publications/pdf/text_909.pdf [<https://perma.cc/XY5G-WREU>] (“In general, scholars have found that race matters a great deal in intergenerational economic mobility.”).

114. JULIA B. ISAACS, ISABEL V. SAWHILL & RON HASKINS, GETTING AHEAD OR LOSING GROUND: ECONOMIC MOBILITY IN AMERICA 75 (2008), https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2008/pewempgettingaheadfull2pdf.pdf [<http://perma.cc/62AL-6YNM>].

115. WAGMILLER & ADELMAN, *supra* note 113, at 2.

116. See RATCLIFFE, *supra* note 90, at 1.

117. *Id.*

118. *Id.*

119. See WAGMILLER & ADELMAN, *supra* note 113, at 2.

120. See *id.* (“[M]ost adult children eventually have greater incomes than their parents [H]owever . . . that relative income mobility among children is limited.”).

that current and future generations of children in poverty are given access to appropriate education and opportunities.

IV. FAILURE TO DELIVER EQUITABLE OUTCOMES TO CHILDREN DIRECTLY AFFECTED BY POVERTY

A 2013 study showed that a large number of students attending public schools come from low-income households.¹²¹ The National School Lunch Act, passed in 1946, provides free or reduced lunch to qualified students from low-income households who attend nonprofit private schools or public schools.¹²² Under the National School Lunch Act, children in households with an income below 130% of the federal poverty guidelines qualify for free lunch and children in households with an income below 185% of the federal poverty guidelines qualify for reduced lunch.¹²³ The 2013 study showed that an astounding 48% of students qualified for free or reduced lunch.¹²⁴

A. *Poverty Hardships for Students*

Students from low-income households are predisposed to more hardships than their peers, according to statistics. For example, a higher percentage of children in high-poverty schools have less English proficiency than children in average-income schools.¹²⁵ Barriers to accessing proper healthcare are more likely to exist for children coming from low-income households.¹²⁶ Data has repeatedly

121. S. EDUC. FOUND., *A NEW MAJORITY: LOW INCOME STUDENTS IN THE SOUTH AND NATION 2* (2013), <http://www.southerneducation.org/getattachment/817a35f1-abb9-4d6a-8c2e-5514d4a6d7d9/Test-Publication-4.aspx> [<https://perma.cc/54HX-6TZB>] (discussing the percentage of low income students in public schools in various states).

122. *National School Lunch Program*, U.S. DEP'T. AGRIC. FOOD & NUTRITION SERVS. (Oct. 15, 2018), <https://www.fns.usda.gov/nslp/national-school-lunch-program-nslp> [<https://perma.cc/Y443-BX7W>] (discussing federally-assisted lunch programs in public and nonprofit private schools); see also National School Lunch Act, Pub. L. 79-396, 60 Stat. 230 (1946) (codified as amended at 42 U.S.C. § 1758 (2018)).

123. 42 U.S.C. § 1758(b)(1)(a) (2018).

124. See S. EDUC. FOUND., *supra* note 121, at 3.

125. SUSAN AUD ET AL., *THE CONDITION OF EDUCATION 10*, 82 (2010), <https://nces.ed.gov/pubs2010/2010028.pdf> (discussing limited English proficiency in high-poverty schools).

126. See *The Cycle of Educational Failure and Poverty*, STAND TOGETHER (Jan. 24, 2017), <https://www.stand-together.org/cycle-educational-failure> [<https://perma.cc/FHN7-M7G3>] (explaining poverty and the failures of the education system).

shown that students from low-income households do not perform as well on standardized tests or academically.¹²⁷ This does not equate to a reflection of poor parenting or intellectual ability of the students; however, it may be a natural outcome of living in poverty and dealing with the stressors that accompany such financial hardship.¹²⁸ It is difficult for a student to focus on academics when that student is worried about what is happening at home, when access to healthcare and food is limited, or the student is learning an entirely new language.¹²⁹ It is reasonable to believe that parents from low-income households will have to put in more hours at work or work extra jobs to make financial ends meet. Consequently, some parents may not have as much time to focus on what is happening at school or to attend meetings to stay on top of their children's educational needs and progress, even though their commitment to their children's well-being and educational success is no less than parents with higher incomes.

B. High School Graduation Data and Consequences for Low-Income Students

When compared to higher-income families, students from lower-income households are five times more likely to drop out of high school.¹³⁰ Failure to earn a high school diploma can have detrimental effects on a person's income potential. A National Center for Education Statistics report from 2016 asserted that persons aged from twenty-five to thirty-four years old with a college degree made twice the income of persons without a high school diploma.¹³¹ That same report found that the unemployment rate was a disturbing 25% among adults aged twenty to twenty-four without a high school

127. *Id.*

128. *Cf. id.* ("Education and poverty are complexly tangled.")

129. *See id.*

130. *Id.* (citing CHRIS CHAPMAN ET AL., TRENDS IN HIGH SCHOOL DROPOUT AND COMPLETION RATES IN THE UNITED STATES: 1972--2009 6 (2011), <https://nces.ed.gov/pubs2012/2012006.pdf> [<https://perma.cc/TRM6-DSGN>] (discussing high school dropout rates based on race, ethnicity, and family income)).

131. *The Cycle of Educational Failure and Poverty*, *supra* note 126 (citing GRACE KENA ET AL., THE CONDITION OF EDUCATION 2016 25 (2016), <https://nces.ed.gov/pubs2016/2016144.pdf> [<https://perma.cc/FY6L-3AU5>] (discussing annual report of education progress)).

diploma.¹³² It is paramount to give students who come from poverty and low-income households additional resources to ensure their academic success so these students can graduate from high school and college and have the opportunity to be financially independent beyond poverty levels.

C. Statistical Profile of High-Poverty and Low-Poverty Schools

In the 2007–2008 school year, the majority of students who attended high-poverty schools were racial and ethnic minorities.¹³³ A high-poverty school is a school in which 76% to 100% of its student body is eligible for free or reduced-price lunch.¹³⁴ At high-poverty elementary schools, Hispanic students made up the majority of the student population at 46% and African-American students made up the second-largest percentage at 34%; 14% of the students were white, Asian-American students made up 4%, and American-Indian students made up 2% of the student population.¹³⁵ The inverse percentages were reflected at low-poverty schools during that same time period.¹³⁶

Low-poverty schools are characterized by a student body in which 25% or less of the students are eligible for free or reduced-price lunch.¹³⁷ At low-poverty elementary schools, white students represented the highest student population at 75%, followed by Hispanic students at 11%, Asian American students at 7%, African-American students at 6% and American-Indian students at 1%.¹³⁸ The research demonstrated the apparent correlation between poverty and race.¹³⁹ It is evident that this correlation has an adverse impact on student outcomes, especially when the majority of students impacted are minority students of color.¹⁴⁰

A report compiling data for the 2013–2014 school year from over 1800 schools in Virginia noted that African-American and Hispanic

132. *Id.* (citing Aude et al., *supra* note 125).

133. Aude et al., *supra* note 125, at 5 (discussing statistical data of students, teachers and principals in high-poverty schools).

134. *Id.*

135. *Id.* at 8.

136. *Id.* at 9.

137. *Id.*

138. *Id.* at 84.

139. *Id.* at 84.

140. *Id.*

students were overrepresented in high-poverty schools: 22% of African-American students attended high-poverty schools as compared to only 3% of white students.¹⁴¹ Overall, 15% of students of color attended high-poverty schools.¹⁴² The report asserted that this disparity disproportionately deprived students of color, particularly African-American and Hispanic students.¹⁴³

One of the reasons for this disproportionality is that the high-poverty schools—schools with the greatest financial need—are not appropriately funded.¹⁴⁴ The report concluded that in high-poverty schools, spending was lower for instructional material at the state and local levels; there was less access to advanced courses for students, including math and science; teachers were less experienced; and teachers' salaries were about \$11,000 less annually when compared to low-poverty schools.¹⁴⁵ Most disturbingly, only one-third of high-poverty schools were accredited by the state.¹⁴⁶ At the very least, people in the United States should be able to expect a standard requirement of state-level accreditation for public schools. Considering the data, it is not surprising that the United States has such a prevalent achievement gap.¹⁴⁷ Absent any required levels of learning and educational attainment for all students, the disparate impact and adverse outcomes for minorities and students in poverty are easily predictable.

D. Academic Standards for High-Poverty Schools

Student poverty is not the only predictive indicator of adverse educational outcomes. All too often, where a student lives determines the kind of education that the student will receive.¹⁴⁸ Schools have become more residentially segregated over the past four decades.¹⁴⁹ In 2007-2008, 75% of students at high-poverty schools qualified for

141. See Duncombe, *supra* note 81.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. See *2010 Spotlight: High Poverty Public Schools*, NAT'L CTR. FOR EDUC. STATS., <https://nces.ed.gov/programs/coe/analysis/2010-index.asp> [<https://perma.cc/P5SV-S6AR>].

148. Reardon, *Widening*, *supra* note 86.

149. *Id.*

either free or reduced-price lunch.¹⁵⁰ Numerous studies, including those conducted by the U.S. Department of Education, show that overall school poverty has a negative effect on individual student achievement and success.¹⁵¹ In 2001, the U.S. Department of Education released a study of seventy-one high-poverty schools for students in third through fifth grade.¹⁵² The results were disturbing. Students in all grades scored below normal standards.¹⁵³ Students who lived in poverty did even worse.¹⁵⁴ Lastly, schools that had the highest numbers of students who lived in poverty initially scored the worst; however, the gap for these students ultimately closed a bit.¹⁵⁵ Another study revealed that only 13.2% of low-income students met all mandated subject-area assessments.¹⁵⁶ Additionally, 43.5% of low-income students did not meet any of the requirements.¹⁵⁷

1. *Disparate Discipline*

Part of the reason why low-income students are not meeting academic standards may also be related to the disparate discipline that they—particularly students of color—incur in schools. This nationwide issue was highlighted in 2014 with a Dear Colleague letter published by the U.S. Department of Education’s Office for Civil Rights.¹⁵⁸ The Office for Civil Rights found that public schools were

150. 2010 *Spotlight: High Poverty Public Schools*, *supra* note 147; Jeremy Anderson, *State Policies to Overcome the Achievement Gap and Poverty*, ADVANC-ED (2017), <https://www.advanc-ed.org/source/state-policies-overcome-achievement-gap-and-poverty> [<https://perma.cc/G8EL-CL6X>] (discussing the Every Student Succeeds Act and government resources).

151. Misty Lacour & Laura D. Tissington, *The Effects of Poverty on Academic Achievement*, 6 EDUC. RES. & REV. 522, 522--27 (2011), http://www.academicjournals.org/app/webroot/article/article1379765941_Lacour%20and%20Tissington.pdf [<http://perma.cc/2ERL-6R4K>] (compiling data from studies examining the correlation between academic success and poverty).

152. U.S. DEP’T OF EDUC., THE LONGITUDINAL EVALUATION OF SCHOOL CHANGE AND PERFORMANCE (LESCP) IN TITLE I SCHOOLS (2001), https://www2.ed.gov/offices/OUS/PES/esed/lescp_vol2.pdf [<https://perma.cc/VJ5Q-ZR69>].

153. *Id.* at 15–19.

154. *Id.*

155. *Id.*

156. Lacour & Tissington, *supra* note 151, at 522.

157. *Id.*

158. *Joint “Dear Colleague” Letter*, U.S. DEP’T OF EDUC. & U.S. DEP’T OF JUST., <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>

suspending and expelling African-American students at an exceptionally high rate when compared to their peers by race.¹⁵⁹ The suspension rate of African-American students was three times the rate of their white peers.¹⁶⁰ The Brookings Institute reviewed data on out-of-school suspensions throughout the state of California from 2013 to 2015.¹⁶¹ The study revealed that the community's financial condition impacted the rate of out-of-school suspensions for African-American students.¹⁶² Schools with a larger number of students who qualified for free and reduced-price lunch suspended African-American students at a higher rate than those in wealthier communities.¹⁶³ The data revealed that schools in wealthier communities were less likely to suspend African-American students than were high-poverty schools or schools in the middle of the spectrum.¹⁶⁴ In wealthy communities, 64.4% of schools suspended African Americans at a low rate, while only 16.3% suspended at a high rate.¹⁶⁵

Another study noted that students of color and low-income students may behave differently than their peers because of the disproportionate number of life experiences related to poverty and poverty's impact.¹⁶⁶ Another study found that in Arkansas, although there were disparities in school discipline based on income, the disparities in discipline for African-American and white students persisted even when controlling for income.¹⁶⁷

[<https://perma.cc/F3XS-XG2Q>] (discussing legal guidance about disparate school discipline).

159. *Id.*

160. *Id.*

161. TOM LOVELESS, 2017 BROWN CENTER REPORT ON AMERICAN EDUCATION: HOW WELL ARE AMERICAN STUDENTS LEARNING? 4 (2017), <https://www.brookings.edu/wp-content/uploads/2017/03/2017-brown-center-report-on-american-education.pdf> [<https://perma.cc/AJZ3-AS3L>].

162. *Id.* at 23, 33.

163. *Id.* at 29–30.

164. *Id.*

165. *Id.*

166. NATHAN BARRETT ET AL., DISPARITIES IN STUDENT DISCIPLINE BY RACE AND FAMILY INCOME 8--9, 19 (2017), <https://educationresearchalliancenola.org/files/publications/010418-Barrett-McEachin-Mills-Valant-Disparities-in-Student-Discipline-by-Race-and-Family-Income.pdf> [<https://perma.cc/A3S4-D2M8>] (discussing discipline disparities in the nation and particularly throughout the state of Louisiana).

167. Kaitlin P. Anderson & Gary W. Ritter, *Disparate Use of Exclusionary Discipline: Evidence on Inequities in School Discipline for a U.S. State*, EDUC. POL'Y ANALYSIS ARCHIVES

Students with disabilities are also disproportionately disciplined compared to their general education peers.¹⁶⁸ Similar to most states, a disproportionate share of students receiving special education services in Louisiana were African-American students and poor students, based on data collected from 2000 to 2014.¹⁶⁹ The data in Louisiana revealed that based on student eligibility for free and reduced-price lunch, 21% of students were suspended—either inside or outside of the classroom—and only 12% of non-poor students were suspended.¹⁷⁰

Disparities also existed in the cause for suspension between poor and non-poor students.¹⁷¹ Sixteen percent of poor students were suspended for non-violent offenses, whereas 10% of non-poor students were suspended for violent offenses.¹⁷² Disparities in discipline and suspension can have profound effects on the lives of students. These disparities are happening throughout the nation, not just in one isolated state. In Minnesota, the Department of Human Rights reached tentative agreements with at least thirty-nine different school districts in an effort to reduce disparities in suspensions based on race and disability.¹⁷³ A Civil Rights Data Collection (CRDC) report showed that “an increasing number of students are losing important instructional time due to exclusionary discipline.”¹⁷⁴ The CRDC report shared that in- and out-of-school suspensions not only impact students’ socioeconomic status but can lead to other harsh realities,

24–25 (2017), <https://epaa.asu.edu/ojs/article/view/2787/1911> [<https://perma.cc/BJ4N-T7XL>].

168. DANIEL LOSEN ET AL., ARE WE CLOSING THE SCHOOL DISCIPLINE GAP?, 4–6 (2015), https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/are-we-closing-the-school-discipline-gap/AreWeClosingTheSchoolDisciplineGap_FINAL221.pdf [<https://perma.cc/G8JT-MWQH>].

169. BARRETT ET AL., *supra* note 166, at 14.

170. *Id.* at 15.

171. *Id.*

172. *Id.*

173. Press Release, Minn. Dep’t. Human Rights, Minnesota Department of Human Rights Reached Agreements or Tentative Agreements with Most Schools, Districts to Reduce Disparities in Suspensions and Expulsions for Students with Disabilities, Students of Color for Non-Safety Related Incidents (Aug. 2, 2018), <https://mn.gov/mdhr/news-community/news-releases/news-releases.jsp#/detail/appId/1/id/347926> [<https://perma.cc/D99C-7VTS>] (discussing agreements with school districts to reduce disparities in suspensions for non-violent offenses).

174. *Joint “Dear Colleague” Letter*, *supra* note 158.

including the school-to-prison pipeline, increased interaction with the juvenile justice system, decreased academic achievement and engagement, and school avoidance.¹⁷⁵ When students are not in the classroom—and not getting a proper education—students will naturally fall short of academic standards.¹⁷⁶ Students should be in school, learning. Keeping students out of the classroom strips them of valuable education time.

2. *The Achievement Gaps*

An achievement gap is “often defined as the difference[s] between the test scores of minority and/or low-income students and the test scores of their white and Asian peers.”¹⁷⁷ The achievement gap in the United States between white and African-American students saw its greatest reduction from the 1950s through the 1980s, but regrettably, the needle has not moved much since that time.¹⁷⁸ Although the racial achievement gap cannot be ignored and must be addressed with urgency, it is important to note that the racial achievement gap is much smaller than the income-based achievement gap.¹⁷⁹ The adverse educational impact is greater the longer a student lives in poverty.¹⁸⁰ The income-based achievement gap in the United States has only worsened over time.¹⁸¹ The income-based achievement gap is the disparity in academic success and achievement between students who live in poverty and their higher-income peers.¹⁸² The income achievement gap between students from the ninetieth and tenth percentiles is almost twice as large as the racial achievement gap between African-American and white

175. *Id.*

176. *Every School Day Counts: The Forum Guide to Collecting and Using Attendance Data*, NAT'L CTR. FOR EDUC. STAT. (Feb. 2009) <https://nces.ed.gov/pubs2009/attendancedata/chapter1a.asp> [<https://perma.cc/VB4F-3P4N>].

177. *Students Affected*, *supra* note 87.

178. See Reardon, *Widening*, *supra* note 86.

179. *Id.*

180. See Lacour & Tissington, *supra* note 151, at 522–23.

181. See Reardon, *Widening*, *supra* note 86.

182. Vanessa Sacks, *The Other Achievement Gap: Poverty and Academic Success*, CHILD TRENDS (Aug. 22, 2016), <https://www.childtrends.org/the-other-achievement-gap-poverty-and-academic-success> [<https://perma.cc/4S9P-5HBT>] (discussing poverty and academic achievement).

students.¹⁸³ “Family income is now nearly as strong as parental education in predicting children’s achievement.”¹⁸⁴ The income gap is closing so slowly that it may take six more decades to resolve.¹⁸⁵

Low-income students start one academic year behind their more affluent peers, beginning in kindergarten.¹⁸⁶ Studies show kindergartners from low-income households score lower than their peers, regardless of race or ethnicity.¹⁸⁷ An early-childhood longitudinal study that assessed reading levels found that generally, high-income students scored at the seventieth percentile, mid-income students at the forty-fifth percentile, and low-income students at the thirtieth percentile.¹⁸⁸ Although these results are understandably bothersome, some studies suggest that scoring students outside of standardized assessments, such as surveying parent satisfaction, may provide a more holistic picture.¹⁸⁹

V. LACK OF RESOURCES AND FUNDING

Poverty also has a direct impact on student achievement due to the lack of available resources.¹⁹⁰

A. *Poverty and Preschool*

The chance to provide equitable education to financially poor students begins long before they set foot in the schoolhouse doors. Research suggests that three primary factors have an impact on student learning: community and home environment, school

183. Sean F. Reardon, *The Widening Achievement Gap Between the Rich and the Poor: New Evidence and Possible Explanations*, in *WHITHER OPPORTUNITY?: RISING INEQUALITY, SCHOOLS, AND CHILDREN’S LIFE CHANCES* 93 (Greg J. Duncan & Richard J. Murnane, eds., 2011) [hereinafter Reardon, *New Evidence*] (discussing the growing achievement gap between the rich and poor).

184. *Id.*

185. *Id.*

186. April Van Buren, *If You Want to Close the Achievement Gap, You Can’t Ignore Poverty*, ST. OF OPPORTUNITY (Jan. 23, 2017), <http://stateofopportunity.michiganradio.org/post/if-you-want-close-achievement-gap-you-cant-ignore-poverty> [<https://perma.cc/ZB2J-ZR2A>] (discussing poverty and reducing the achievement gap).

187. See Lacour & Tissington, *supra* note 151, at 522.

188. *Id.*

189. *Id.* at 526.

190. Reardon, *New Evidence*, *supra* note 183, at 106

environment, and policy and law.¹⁹¹ Understanding these factors will put the United States in a stronger position to close the achievement gap.¹⁹² Additionally, access to quality preschool may make a significant difference in educational outcomes.¹⁹³ Before starting school, students from low-income households have already heard 30 million fewer words than their higher-income peers.¹⁹⁴ This may be due to a lack of access to books in low-income homes.¹⁹⁵ Approximately 2.5 million children in the United States do not have access to a federally funded preschool, even as government agencies have increased available funding for such programs.¹⁹⁶ With preschool access denied to approximately 2.5 million children, it is no mystery as to why poor students do not perform as well academically. The local, state, and federal governments must do more because millions of children are being left behind by their inability to access preschool.

B. Food Insecurity and Limited Access to Healthcare Services

Three million U.S. households with children experience food insecurity, also known as hunger without enough food in the household.¹⁹⁷ Two hundred seventy-four thousand of those households reported that children skipped a meal, did not eat the entire day, or were simply hungry.¹⁹⁸ Concentration and ability to focus are challenging at best when a person is hungry. A student suffering from hunger cannot be expected to perform at their best. One way the United States Department of Agriculture (USDA) mitigates food insecurity is by making lunch available over the summer months.¹⁹⁹ The USDA began working with the states in 2013 to provide this important service.²⁰⁰ Limited access to healthcare for

191. See Lacour & Tissington, *supra* note 151, at 526.

192. *Id.*

193. See Van Buren, *supra* note 186.

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. See *Summer Food Service Program: Serving Summer Meals*, U.S. DEP'T OF AGRIC. (Apr. 10, 2017), <https://www.fns.usda.gov/sfsp/serving-summer-meals> [<https://perma.cc/P3TP-H6FQ>] (discussing lunch programs available during summer months).

200. See *id.*

hearing, vision, or quality dental care are also issues that will impede a student's ability to perform.²⁰¹ The federal government and the states must acknowledge and address these issues in order to allow students a better chance of receiving an adequate education.

C. *IDEA and ESSA*

The National Education Association's discussion guide points out that unfunded federal mandates, budget deficits at the state level, and inequities in funding school districts have also contributed to the achievement gap.²⁰² There are two mandates in particular that deserve attention: IDEA and Every Student Succeeds Act (ESSA).²⁰³ Poor students and African-American students are generally overrepresented in special education.²⁰⁴ Even Congress expressed concern that poor and minority students are overly enrolled in special education and may not have a qualifying disability.²⁰⁵ Generally, referrals are made in good faith to get students the support they need.²⁰⁶ Nevertheless, evidence reveals that some students have been referred because they are perceived as disruptive rather than having a disability.²⁰⁷ Evidence has also shown that poor students are systemically shortchanged in special education because they lack the available resources to navigate the law and school systems as easily as affluent parents with more resources.²⁰⁸

201. See DELANEY GRACY ET AL., HEALTH BARRIERS TO LEARNING: THE PREVALENCE AND EDUCATIONAL CONSEQUENCES IN DISADVANTAGED CHILDREN 5 (2017), <https://www.childrenshealthfund.org/wp-content/uploads/2017/01/Health-Barriers-to-Learning.pdf> [<https://perma.cc/6JLK-7C2M>].

202. *Identifying Factors that Contribute to Achievement Gaps*, NAT'L EDUC. ASS'N, <http://www.nea.org/home/17413.htm> [<https://perma.cc/R7PM-JYBS>] (discussing how practitioners can reduce the achievement gap).

203. See Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1802 (2015).

204. James E. Ryan, *Poverty as Disability and the Future of Special Education Law*, 101 GEO. L.J. 1455, 1503 (2013), <https://georgetownlawjournal.org/articles/116/poverty-as-disability-future> [<https://perma.cc/TSK8-WZT2>] (discussing the connection between poverty and disabilities).

205. See *id.*

206. *Id.*

207. *Id.*

208. *Id.*

1. IDEA

IDEA, a law with some of the strongest protections at the federal level, is not sufficiently funded by the federal or state government.²⁰⁹ The mandates behind IDEA are necessary to student success. Every student, regardless of ability, should get a free and appropriate education. However, it is evident that education is funded on the premise of an ideology rather than a necessary law when the government does not fund or provide the necessary resources to fulfill its obligations. The law of IDEA and requirements of FAPE are not reconciled.²¹⁰ Special education costs have increased over the years as more students have qualified for services.²¹¹ One of the highest areas of disability that has experienced an increased need for services is the area of learning disabilities. Students who qualified for services for learning disabilities increased by 283% over a twenty-year period, from 1976 to 1996.²¹² As of 2013, it cost twice as much to provide necessary academic support and teaching to students who qualified for any special education services compared to students who do not receive special education services under IDEA.²¹³

In light of such a great need for these services, the costs are understandable. Schools should deliver the services needed to educate all students. However, it is unfair for the government to mandate delivery and not provide the financial support to allow the schools to deliver the services and the ability to do so in a manner that provides the adequate education that the law intended to provide. “The federal government, moreover, has never come close to fully funding the costs or even meeting its initial promise of covering 40% of the costs.”²¹⁴ The federal government pays approximately 16% of special education costs—not even half of the committed amount.²¹⁵ The federal government’s failure to provide has left the states and

209. *Id.* at 1464.

210. *Id.* at 1462.

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. Amanda Litvinov, *How Congress’ Underfunding of Special Education Shortchanges Us All*, NAT’L EDUC. ASS’N (May 19, 2015), <https://educationvotes.nea.org/2015/05/19/how-congress-underfunding-of-special-education-shortchanges-us-all> [<https://perma.cc/6BSK-V69Q>] (discussing the inadequate funding of special education by Congress).

local school districts with the burden of providing for students.²¹⁶ Many times, this burden leaves schools to make hard decisions that impact the success of their students, including increasing caseloads, increasing class sizes, cutting programs and services, and instituting layoffs.²¹⁷ It has also led to taxpayer referendums in an effort for school districts to get necessary funds for their students.²¹⁸

Obviously, the federal government fulfilling its commitment of 40% would go a long way towards meeting students' needs. An increase in federal financial resources and support can help lead to more equitable outcomes for poor students with disabilities.²¹⁹ Instead, school districts must fend for themselves and rely on tax payers to voluntarily pay more dollars out of their own pockets for what the government has failed to do. Helping these students helps all students.

2. ESSA

The ESSA, signed by President Barack Obama on December 20, 2015, reauthorized the Elementary and Secondary Education Act (ESEA) of 1965.²²⁰ The ESSA continues the ESEA's commitment to equal opportunity for all students and offered grants to serve low-income students and funding for students receiving special education.²²¹ The ESSA requires that "all students in America be taught to high

216. *Id.*

217. *Id.*; see also COUNCIL FOR EXCEPTIONAL CHILDREN, CEC CALLS ON CONGRESS TO PRESERVE SPECIAL EDUCATION FUNDING; SURVEY FINDS SPECIAL EDUCATION IMPACTED BY POOR ECONOMY 1--3 (2010), https://www.cec.sped.org/~media/Files/Policy/IDEA/CASECEC_survey_analysis.pdf [<https://perma.cc/9JL9-247Z>].

218. Litvinov, *supra* note 215; see also Andrew D.M. Miller, Note, *Irrelevant Costs and Economic Realities: Funding the IDEA after Cedar Rapids*, 62 OHIO ST. L.J. 1289, 1310 (2001), https://kb.osu.edu/bitstream/handle/1811/70465/OSLJ_V62N3_1289.pdf [<http://perma.cc/J8M9-ZJBJ>].

219. Litvinov, *supra* note 215.

220. *Every Student Succeeds Act (ESSA)*, U.S. DEP'T OF EDUC., <https://www.ed.gov/essa> [<https://perma.cc/V5P8-F3PF>] [hereinafter *Every Student Succeeds Act*].

221. *Id. Compare* 20 U.S.C. § 6301 (2015) ("The purpose of this subchapter is to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps."), *with* 20 U.S.C. § 5802(a)(1) (2004) ("The terms 'all students' and 'all children' mean 'students or children from a broad range of backgrounds and circumstances, including disadvantaged students and children, students or children with diverse racial, ethnic, and cultural backgrounds, American Indians, Alaska Natives, Native Hawaiians,

academic standards” and aims to help “disadvantaged and high-need students.”²²² The ESSA also replaced the controversial No Child Left Behind Act (NCLB) of 2002.²²³ The ESSA expects accountability, especially for underrepresented children,²²⁴ but we have yet to see if it will be enforced. If the ESSA is actively enforced, then the United States may arrive at a place where adequate and sufficient education is a requirement and where students who experience poverty will have equitable opportunities similar to their peers.²²⁵ The ESSA has always required equality, yet the research has shown that students have not experienced equal educational outcomes. If equal and equitable educational outcomes were the case, there would be no “gaps”: achievement, economic, or otherwise. The NCLB, although not perfect and criticized for its stringent requirements and focus on testing, exposed existing gaps and inequities.²²⁶ It is important to note that standardized testing will continue under ESSA but with much more flexibility to the states to determine what is best for their schools.²²⁷

D. Lack of College Pipeline

The lack of a college pipeline for students living in poverty is another unnecessary obstacle that these students must overcome to break out of generational poverty. Research reflects the stark differences between those students affected by poverty with those students who are not.²²⁸ For instance, college graduation rates for

students or children with disabilities, students or children with limited-English proficiency, school-aged students or children who have dropped out of school, migratory students or children, and academically talented students and children.”).

222. *Every Student Succeeds Act*, *supra* note 220.

223. Christopher Magan, *No Child Left Behind Replacement is Clearer, More Flexible, MN Officials Say*, PIONEER PRESS (July 19, 2017, 11:59 PM), <https://www.twincities.com/2017/07/19/no-child-left-behind-replacement-is-clearer-more-flexible-mn-officials-say> [<https://perma.cc/858L-ASZ2>] (discussing the Every Student Succeeds Act and how it differs from the No Child Left Behind Act).

224. *Every Student Succeeds Act*, *supra* note 220.

225. *Id.*

226. *Id.*; see Van Buren, *supra* note 186.

227. *Every Student Succeeds Act*, *supra* note 220 (describing standardized testing as “annual statewide assessments that measure students’ progress toward those high standards” and expressing a commitment to “support and grow local innovations”); see Van Buren, *supra* note 186.

228. See Reardon, *Widening*, *supra* note 86.

low-income students remain relatively unchanged but have drastically increased for high-income students.²²⁹ Higher-income students also make up a disproportionate share of students attending selective and highly sought-after colleges and universities, even when there is comparable academic achievement to their lower-income peers.²³⁰ “The scarcity of low-income students, according to UCLA law professor Richard Sander, rivals the representation of minority students in the pre-civil rights era.”²³¹

Students living in poverty have limited access to financial resources needed to attend college.²³² Grants, such as the federal Pell grant, are available to help students in need of financial assistance.²³³ However, these grants are simply not enough to keep up with the high cost of college.²³⁴ Public universities, which are generally less expensive than private colleges, can also be financially out of reach.²³⁵ For low-income students, the cost to attend a public university may be as high as 47% of their family’s household income.²³⁶ Even greater is the cost to attend a private college, which is likely to be 83% of their

229. *Id.*

230. *Id.*

231. Richard D. Kahlenberg, *How Low-Income Students Are Fitting in at Elite Colleges*, ATLANTIC (Feb. 24, 2016), <https://www.theatlantic.com/education/archive/2016/02/the-rise-of-first-generation-college-students/470664> [https://perma.cc/N4RM-CTBA] (discussing first generation student attendance levels at elite colleges).

232. Kayla Dwyer, *Low-Income Students Face Systemic Barriers to College Access*, ITHACAN, (Apr. 26, 2017), <https://theithacan.org/news/low-income-students-face-systemic-barriers-to-college-access> [https://perma.cc/KLP7-6MUX].

233. Spiros Protosaltis & Sharon Parrott, *Pell Grants—A Key Tool for Expanding College Access and Economic Opportunity—Need Strengthening, Not Cuts*, CTR. ON BUDGET AND POLICY PRIORITIES 1 (2017), <https://www.cbpp.org/sites/default/files/atoms/files/7-27-17bud.pdf> [https://perma.cc/GCN4-RUES] (“For 45 years, the federal Pell Grant program has been the cornerstone of financial assistance for students from low-and moderate-income families, helping millions go to college.”).

234. *Id.* (“Despite their proven success, however, Pell Grants now cover a small and shrinking share of college costs for students who receive them.”).

235. *Id.* (“Today, Pell covers just 29 percent of the average costs of tuition, fees, room, and board at public four-year colleges, its lowest level in more than 40 years and far below the 79 percent it covered in 1975.”).

236. THE INST. FOR COLL. ACCESS & SUCCESS, A STATE-BY-STATE LOOK AT COLLEGE (UN)AFFORDABILITY 1, 4 (2017), https://ticas.org/sites/default/files/pub_files/college_costs_in_context.pdf [https://perma.cc/MHG5-P7LA] (“For families that earn \$30,000 or less, the share of total income required to cover their net price is 77 percent at four-year schools.”).

family's income.²³⁷ Higher education is simply not affordable for students living in poverty and financial aid is not sufficient to meet the financial need.

Generally, low-income students, students of color, and students with disabilities face limited opportunities to attend college.²³⁸ Some of the schools that these students attend do not offer the college preparatory courses they need.²³⁹ Additionally, these students may represent the first generation in their families to attend college—without having someone to pave the way for them—and face heavy financial burdens.²⁴⁰ The education system these students come from should expect them to succeed and attend college.²⁴¹ These expectations drive the way that students are perceived and treated.²⁴² Research supports the idea that students perform better when there is an expectation of high performance.²⁴³

1. *First-Generation College Students*

Everyone benefits from an educated society. One way to achieve an educated society is to support first-generation college students. Generational poverty can best be stopped through educating those generations that come next. This means, however, that someone will be the first to attend college without having the benefit of those in their family who attended before them to provide necessary and

237. *Median Incomes v. Average College Tuition Rates, 1976-2016*, PROCON.ORG (Apr. 20, 2017, 7:20:42 AM PST), <https://college-education.procon.org/view.resource.php?resourceID=005532> [<https://perma.cc/6F7J-6RE6>].

238. Charles Dervarics, *Study: Minority, Low-Income Students Lack Adequate Access to Educational Opportunities*, DIVERSE (Aug. 8, 2011), <https://diverseeducation.com/article/16180> [<https://perma.cc/ND4J-4UPJ>].

239. *Id.* (“The study sample of 7,000 school districts and more than 72,000 schools in the Civil Rights Data Collection says many students have uneven or poor access to rigorous courses at many schools.”).

240. Adrienne Lu, *Encouraging First-Generation College Students*, U.S.A. TODAY (Oct. 31, 2013, 11:45 AM), <https://www.usatoday.com/story/news/nation/2013/10/31/education-college-students-income/3324393> [<https://perma.cc/J8GW-SQGB>].

241. *Id.*

242. JOHN S. KENDALL ET AL., *HIGH SCHOOL STANDARDS AND EXPECTATIONS FOR COLLEGE AND THE WORKPLACE 6* (2007) <https://files.eric.ed.gov/fulltext/ED497793.pdf> [<https://perma.cc/73R6-DMQE>].

243. *Id.*

advantageous insight.²⁴⁴ Students who have highly educated parents and parents who are financially capable of paying for their college tuition and fees have a greater chance of success than those students whose parents are not.²⁴⁵ Additionally, a student working to pay his or her way through school will have more disadvantages to overcome.²⁴⁶ For example, students who are working to pay for college are less likely to have the experience of living on campus, encounter more cultural barriers in transitioning from high school to college, and experience a less endowed high school preparation compared to their affluent peers.²⁴⁷

As a result, low-income students are less likely to have the same academic success—without the additional stressors—as their peers and thus, are less likely to graduate in four years or pursue a graduate or advanced degree.²⁴⁸ Low-income, first-generation students can benefit from communities providing more college preparation in high-poverty schools, putting more financial resources into schools to support families, and providing mentors for students.²⁴⁹

Moreover, research has shown that first-generation students working during college leads to lower grades.²⁵⁰ First-generation students also had less time to engage faculty members and learn from those opportunities.²⁵¹ The impact of these realities is not anecdotal. The outcomes have a direct impact on low-income, first-generation students.²⁵² First-generation and low-income college students can certainly be successful and do as well as their more privileged peers; however, the playing field is not equal, nor are their future financial prospects. Walpole's longitudinal study showed that students who have lower incomes earned less than their higher-income peers nine

244. See Malika Tukibayeva et al., *Maintaining Inequality: An Analysis of College Pathways Among Women At Large Public Institutions 12--13* (Apr. 2016), http://nsse.indiana.edu/pdf/presentations/2016/AERA_2016_Maintaining_paper.pdf [<https://perma.cc/4UT9-T2D9>] ((unpublished manuscript) (discussing challenges of first-generation college and low-income students)).

245. *Id.*

246. *Id.* at 12–13.

247. *Id.* at 12.

248. *Id.*

249. *Id.*

250. *Id.* at 12–13.

251. *Id.* at 11.

252. *Id.*

years after initially entering college.²⁵³ Graduating from college sooner, obtaining a graduate education, and choice of major are some of the factors and challenges that impact the future income of low-income students.²⁵⁴ The odds of escaping generational poverty are stacked against low-income students when their access to college is limited.

2. *Programs for First-Generation College Students*

However, some programs have been helpful to first-generation students and low-income students. The federal government created the Higher Education Act to support the increase of college enrollment and completion.²⁵⁵ The act's focus was to help economically disadvantaged and underrepresented students of color.²⁵⁶ Federal programs provide some missing support for handling college applications, what to expect in college, tutoring, support with the home-to-college transition, applications, and resources.²⁵⁷ Some colleges even provide psychological support to help students realize that they belong in college and deserve to be there.²⁵⁸ These programs are making a difference but more is still needed. The financial potential that having a college degree can provide cannot be ignored. Average annual income for college graduates with a bachelor's degree is \$53,976.00.²⁵⁹ The unemployment rate among these graduates is fairly low at 4.7%.²⁶⁰ College should be attainable for students who have the capability and desire to attend. The American dream should be in reach for all and not merely a dream for the disadvantaged.

253. *Id.* at 12.

254. *Id.* at 12–13.

255. Lauren Falcon, *Breaking Down Barriers: First-Generation College Students and College Success*, LEAGUE FOR INNOVATION COMMUNITY C. (June 2015), <https://www.league.org/innovation-showcase/breaking-down-barriers-first-generation-college-students-and-college-success> [https://perma.cc/5LU3-VVQG]; see also 20 U.S.C. § 1091 (2015) (allowing students to receive grants, loans, or work assistance if certain conditions are met).

256. Falcon, *supra* note 255 (discussing obstacles first generation college students face).

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.*

VI. PROPOSED SOLUTIONS

The United States must confront the profound educational inequities that exist within its borders. Research supports many solutions that can help to mitigate these inequities. The Education Commission noted a 2014 report that shared research to help advance achievement for students who are low-income and receive special education in urban school districts.²⁶¹ The report identified eleven characteristics of successful schools:

- A pervasive emphasis on curriculum alignment with the state framework;
- systems to support curriculum alignment;
- an emphasis on inclusion and access to the general education curriculum;
- culture and practices that support high standards and student achievement;
- well-disciplined academic and social environments;
- the use of student assessment data to inform decision making;
- unified practice supported by targeted professional development;
- access to targeted resources to support key initiatives.
- effective staff recruitment, retention, and deployment.
- flexible leaders and staff working effectively in a dynamic environment;
- and the determination that effective leadership is essential to success.²⁶²

Of course, there will never be a one-size-fits-all answer for a country with such diversity of life and needs as the United States.

261. STEPHANIE ARAGON, RESPONSE TO INFORMATION REQUEST 1 (2016), https://www.ecs.org/wp-content/uploads/Information-Request_Closing-the-Achievement-Gap_August-2016.pdf [<https://perma.cc/B9YX-X7RH>] (discussing policy researcher responses to two data request questions: first, “what states are closing the achievement gap of students with specific learning disabilities, and what state policy changes have been made to close the gap,” and second, “what states were showing the most positive postsecondary reports for students with severe learning disabilities”).

262. *Id.* at 3; see also HANOVER RESEARCH, IMPROVING STUDENT ACHIEVEMENT AND CLOSING THE ACHIEVEMENT GAP 1, 13–14 (2014), https://www.rcoe.us/educational-services/files/2015/12/10c--Hanover_Improving_Student_Achievement_and_Closing_the_Achievement_Gap_12-2014.pdf [<https://perma.cc/TX99-T3FQ>].

Additional potential solutions include law and policy changes, earlier access to education, and additional resources inside and outside of the classroom with a continued focus on closing the achievement and income gaps. There are many good teachers working in public school districts. Educational leaders, along with government officials, must consider how teachers are being supported. One way of support is to offer professional development that includes training and courses that are specific to the schools' needs, especially in high-poverty communities and low-performing schools.²⁶³

A. *Connecticut, Massachusetts, Washington, and Wisconsin—A Case Study*

To make improvements, public school districts must be intentional and focused on the outcomes they wish to achieve. For instance, some states—including Connecticut, Massachusetts, Washington, and Wisconsin—have established task forces.²⁶⁴ These states were intentional about making pathways for all students to succeed and focusing on lessening the achievement gap.²⁶⁵ There were common themes from these states, in addition to professional development. One commonality was making the student environment more relatable to students of color—who make up the majority of high-poverty schools—by employing and retaining more teachers and school leaders of color.²⁶⁶

Addressing the actual issue of poverty was another solution, because these states believed that focusing on the housing and food insecurities, and providing support could help.²⁶⁷ Focusing on students who speak English as a second language and providing more access to early childhood education have also been helpful.²⁶⁸ These states also sought to reduce disparities in student discipline, particularly for students of color.²⁶⁹ Research has shown that students of color make up the majority of students in poverty.²⁷⁰

263. See Anderson, *supra* note 150.

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.*

269. See *id.*

270. See *Students Affected*, *supra* note 87; *The Cycle of Educational Failure and Poverty*, *supra* note 126.

Wisconsin's legislature provides grants for unexpected emergencies to support their students who face the challenges of poverty.²⁷¹ Minnesota, along with other states, now offers childcare grants so that parents may attend college.²⁷² These grants allow parents the opportunity to provide a greater chance for their children to get out of poverty and to increase their children's educational and financial outcomes.²⁷³

B. Integrated Support

Experts also suggest that schools provide more integrated support for students in need.²⁷⁴ These support mechanisms include addressing stresses that may interfere with learning experiences.²⁷⁵ Supporting social-emotional learning and competence can make a difference.²⁷⁶ Studies show that weak social-emotional skills can lead to academic challenges.²⁷⁷ More than 30% of youth living in poverty have social-emotional difficulties, and 9% to 14% of all youth have experienced some level of social-emotional difficulty.²⁷⁸ A mother's level of income can have long-term effects on a child's social-emotional competency level.²⁷⁹ These factors can impact a student's ability to learn math and reading, and have even been known to

271. See Anderson, *supra* note 150.

272. *Id.*

273. *Id.*

274. KRISTIN ANDERSON MOORE & CAROL EMIG, INTEGRATED STUDENT SUPPORTS: A SUMMARY OF THE EVIDENCE BASE FOR POLICYMAKERS 3 (2014), <https://www.childtrend.s.org/wp-content/uploads/2014/02/2014-05ISSWhitePaper1.pdf> [<https://perma.cc/B2KJ-PK5M>].

275. See BARRETT ET AL., *supra* note 166.

276. *What Is Social-Emotional Learning?*, COMMITTEE FOR CHILD., <https://www.cfchildren.org/about-us/what-is-sel> [<https://perma.cc/FND9-CPKX>] (defining social-emotional learning as "the process through which children and adults acquire and effectively apply the knowledge, attitudes, and skills necessary to understand and manage emotions, set and achieve positive goals, feel and show empathy for others, establish and maintain positive relationships, and make responsible decisions" (quoting *What is SEL?*, COLLABORATIVE FOR ACAD., SOC., & EMOTIONAL LEARNING, <https://casel.org/what-is-sel> [<https://perma.cc/D4HP-NQFC>])).

277. RENEE WILSON-SIMMONS, POVERTY AND THE ACHIEVEMENT GAP 10 (2015), <http://www.ecs.org/clearinghouse/01/19/90/11990.pdf> [<https://perma.cc/22H7-JS35>] (discussing statistics regarding the achievement gap and its effects on children in poverty).

278. *Id.*

279. *Id.*

contribute to attention disorders.²⁸⁰ Support systems must go beyond the schools to include parents and communities, but parents must also be supported by the schools.²⁸¹ Schools cannot do it alone, but they are the primary area of support that can make a positive impact for students facing financial adversity. Some experts look to more time in school, such as an extended school day or school during the summer.²⁸²

The financial segregation that has occurred in schools by income cannot be ignored. Although there is a lack of resources, high-poverty schools must do more to prevent segregation in student expectations and support socioeconomic diversity within the schools.²⁸³

VII. CONCLUSION

Closing the achievement and financial gaps ultimately helps students in poverty—including minority students and students with disabilities—to end generational poverty. Providing these students with resources to get a quality education will help them build strong financial futures. Supporting future generations of students helps strengthen the nation in its entirety. As stated in *Brown v. Board of Education*,²⁸⁴ “[i]n 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.” This education must be one of quality, with standards of adequacy and minimum levels of achievement. Without education, the cycle of generational poverty simply repeats and perpetuates. Education must be the disrupter to interrupt and stop the pervasive cycle of financial disparity.

The income and achievement gaps are also signs of a bigger impact on quality of life. Sufficient and equitable education is a tool that can help everyone achieve a better quality of life. The U.S. education system may not be intentionally causing these disparities, but the U.S. education system must be intentional about bringing these disparities to an end.

280. *Id.*

281. See BARRETT ET AL., *supra* note 166.

282. See Reardon, *Widening*, *supra* note 86.

283. See *id.*

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

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