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An Opportunity to Learn: Engaging in the Praxis of School Finance Policy and Civil Rights

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Abstract

School finance disparity continues to pervade the schooling pipeline. Few solutions exist that reduce inequity across the United States, and research has contextualized the historical struggle for equity as existing in large part due to school funding policies that rely heavily on local level tax levies to support public schooling. Furthermore, race-based stratification that divides school districts, and thus divides school district funding, privileges higher income White districts over lower-income BIPOC districts. To address the persistent school finance disparity, in this Article we examine school finance research and litigation epistemology. We posit that resource availability is a civil right and argue that school funding equity is necessary to resolve challenges impacting BIPOC communities. Finally, we explore an opportunity-to-learn framework as a meaningful solution to mitigating disparity.

Introduction

Compulsory education in the United States has developed as one of the most integral parts of the nation's fabric, yet has aided in the creation of dividing lines between the wealthy and marginalized.¹ *Brown v. Board of Education* (1954) challenged the Supreme Court of the United States with re-interpreting the Fourteenth Amendment and revising severe racial tension present in the 1950s United States that separated students by race and provided less opportunity for educational attainment to minoritized

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1. Harry Brighouse & Adam Swift, *Putting Educational Equality in Its Place*, 3 EDUC. FIN. & POL'Y 444, 445–46 (2008).

communities.² In *Brown*, “separate but equal” as a proxy for racial educational equity never reconciled the historical and persistent persecution of Black, Indigenous, and People of Color (BIPOC)³ students, prompting the Supreme Court of the United States to conclude “in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”⁴ Yet, after the Supreme Court’s holding in *San Antonio Independent School District v. Rodriguez*, imbalanced allocation of school resources (e.g., number of teachers per pupil, student per-pupil expenditures, revenue generation through property, and facilities) through state systems of taxation, as well as state and district allocation patterns, would later prove more difficult to challenge in federal courts.⁵ Nevertheless, *Brown* stands as a marker of civil rights resistance against the racial persecution of the United States and is continually relevant as advocates interrogate continued racial disparities in schooling and invoke the ethics of critique in the United States for social change in schooling.

2. Michelle Adams, *Radical Integration*, 94 CAL. L. REV. 261, 276–82 (2006); Michael Heise, *State Constitutions, School Finance Litigation, and the Third Wave: From Equity to Adequacy*, 68 TEMP. L. REV. 1151, 1153–54 (1995); Paul A. Minorini & Stephen D. Sugarman, *School Finance Litigation in the Name of Educational Equity: Its Evolution, Impact, and Future*, in EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES 34, 40–41 (Helen F. Ladd, Rosemary Chalk & Janet S. Hansen eds., 1999); see generally William E. Thro, *Judicial Analysis During the Third Wave of School Finance Litigation: The Massachusetts Decision as a Model*, 35 B.C. L. REV. 597 (1994) (exploring the methodology of judicial decision-making in the most recent wave of school finance litigation); Deborah A. Verstegen, *Judicial Analysis During the New Wave of School Finance Litigation: The New Adequacy in Education*, 24 J. EDUC. FIN. 51 (1998) (analyzing historical school finance litigation to determine a bifurcated theory of adequacy); Michael A. Rebell & Jeffrey Metzler, *Rapid Response, Radical Reform: The Story of School Finance Litigation in Vermont*, 31 J. L. & EDUC. 167 (2002) (analyzing Vermont’s controversial efforts to reform the state’s education finance system).

3. Jazmen Moore & Django Paris, *Singing Counterstories to Imagine an Otherwise*, ENG. J., Mar. 2021, at 21, 22 (“[W]e use the acronym BIPOC . . . to name Black, Indigenous, and People of Color, recognizing the power of the acronym to signal the foundational relationships between Black and Indigenous/Native people within White supremacist, settler colonial constructions of race, enactments of racism, as well as to possible liberation for all people in the United States and other nation-states living out the legacies of land theft, genocide, and enslavement. We also recognize the ways ‘POC’ flattens the distinct, myriad experiences of other communities of color (e.g., Latinx, Asian, Pacific Islander), even as those memberships are not mutually exclusive from Blackness and Indigeneity. As well, we recognize that Blackness and Indigeneity are not mutually exclusive. Finally, BIPOC minimizes the importance of the distinct sovereign nations and Tribal communities collapsed under the terms *Indigenous* or *Native*.”).

4. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

5. See Heise, *supra* note 2, at 1155–56; *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

Now, sixty-seven years after *Brown*, full and unfettered access, participation, and inclusion of BIPOC communities in the P-20 pipeline go unrealized due to continued disparities grounded in socio-demographic conflict, including fiscal capacity and political priorities.⁶ Furthermore, the belief that fair and equitable schooling is arguably not a human nor civil right has continued to lead the epistemic understanding of school finance policy and litigation, including those remedies which attempt to mitigate inequity.

School finance disparity continues to pervade the schooling pipeline, and few cogent solutions exist that reduce inequity across the United States. Law and policy research have both contextualized the historical struggle for equity as existing in large part due to school funding policies that rely heavily on local level tax levies to support public schooling.⁷ Education funding formulae across the United States relies on a combination of three (federal, state, and local) major revenue sources to fund schools. Local sources are often a function of local property wealth and the tax levies assessed on property value.⁸ Due to the reliance on local property values to fund schools, property poor districts are prevented from increasing or equalizing local property-based school revenue to the level of wealthier districts.⁹ Concurrently, low

6. See Adam Gamoran, *American Schooling and Educational Inequality: A Forecast for the 21st Century*, 74 SOCIO. EDUC. 135, 142–45 (2001); Jeanne M. Powers, Gustavo E. Fischman & David C. Berliner, *Making the Visible Invisible: Willful Ignorance of Poverty and Social Inequalities in the Research-Policy Nexus*, 40 REV. RSCH. EDUC. 744, 754–55 (2016); JEAN ANYON, GHETTO SCHOOLING: A POLITICAL ECONOMY OF URBAN EDUCATION REFORM 20–38 (1997); SAMUEL BOWLES & HERBERT GINTIS, SCHOOLING IN CAPITALIST AMERICA: EDUCATIONAL REFORM AND THE CONTRADICTIONS OF ECONOMIC LIFE 35–36 (1976) (“U.S. education is highly unequal, the chances of attaining much or little schooling being substantially dependent on one’s race and parents’ economic level.”).

7. Lauren Nicole Gillespie, *The Fourth Wave of Educational Finance Litigation: Pursuing a Federal Right to an Adequate Education*, 95 CORNELL L. REV. 989, 990 (2009).

8. David G. Martínez, *Interrogating Social Justice Paradigms in School Finance Research and Litigation*, 52 INTERCHANGE 297, 300 (2021).

9. *Id.*; Gillespie, *supra* note 7; NAT’L ACAD. OF SCIS., EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES 1 (Helen F. Ladd, Rosemary Chalk & Janet S. Hansen eds., 1999); see generally LAWRENCE J. MILLER, MARGUERITE ROZA & CLAUDINE SWARTZ, A COST ALLOCATION MODEL FOR SHARED DISTRICT RESOURCES: A MEANS FOR COMPARING SPENDING ACROSS SCHOOLS (2004) (analyzing school district spending on shared resources using a cost allocation method); MARGUERITE ROZA, ALLOCATION ANATOMY: HOW DISTRICT POLICIES THAT DEPLOY RESOURCES CAN SUPPORT (OR UNDERMINE) DISTRICT REFORM STRATEGIES (2008) (discussing how the restrictions attached to public funding have a large impact on how those funds are allocated); MARGUERITE ROZA & PAUL T. HILL, HOW WITHIN-DISTRICT SPENDING INEQUITIES HELP SOME SCHOOLS TO FAIL (2004) (discussing school district differences in per-pupil spending that result in poor children getting less qualified teachers and poorer quality education).

property values mediate noticeable increases in school funding despite property tax increases in property poor districts.¹⁰

Adjudication stemming from how schools are funded through property tax levies have supported the thesis that property wealth leads to school funding inequities. The seminal case, *Serrano v. Priest (I)*, challenged California state school finance policy, problematizing how California met the Equal Protection Clause.¹¹ Arguments in *Serrano* asserted barriers to educational opportunity are exacerbated by local property tax wealth, and thus the program of instruction available to a student is correlated to the wealth inherent within a community and the fiscal capacity available to districts and schools that are a function of tax levies.¹² Similarly, *Rodriguez* plaintiffs claimed the local property tax-based system of funding schools violated the Fourteenth Amendment.¹³ While historically *Serrano* and *Rodriguez* serve as examples of property wealth-based funding inequity, these are less anomalous, and more artifacts of school funding inequity.¹⁴ Newer evidence also suggests

10. Gillespie, *supra* note 7.

11. *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971).

12. *Id.* at 1244; ARTHUR E. WISE, RICH SCHOOLS, POOR SCHOOLS: THE PROMISE OF EQUAL EDUCATIONAL OPPORTUNITY 129–30 (1968) (“[V]ariation in expenditures per pupil or per classroom is systematically related to the wealth of the local community.”); see also Paul D. Carrington, *Financing the American Dream: Equality and School Taxes*, 73 COLUM. L. REV. 1227, 1231 (1973) (“In *Serrano v. Priest* a Chicano citizen complained that his children’s schools were much less abundantly financed than those of the children in neighboring Beverly Hills.”).

13. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 4–6 (1973).

14. See generally Bruce D. Baker, *Balancing Equity for Students and Taxpayers: Evaluating School Finance Reform in Vermont*, 26 J. EDUC. FIN. 437 (2001) (analyzing state legislation implemented to resolve issues of taxpayer equity and disparities in per-pupil spending); Bruce D. Baker, *State Policy Influences on the Internal Allocation of School District Resources: Evidence from the Common Core Data*, 29 J. EDUC. FIN. 1 (2003) (comparing resource allocation patterns across states and school districts); Bruce D. Baker, *Within-District Resource Allocation and the Marginal Costs of Providing Equal Educational Opportunity: Evidence from Texas and Ohio*, EDUC. POL’Y ANALYSIS ARCHIVES, Feb. 2009, at 1 (exploring within-district fiscal resource allocation across Texas and Ohio); BRUCE D. BAKER, AMERICA’S MOST FINANCIALLY DISADVANTAGED SCHOOL DISTRICTS AND HOW THEY GOT THAT WAY: HOW STATE AND LOCAL GOVERNANCE CAUSES SCHOOL FUNDING DISPARITIES (2014) (examining a typology of conditions that have created or reinforced the disadvantages faced by the nation’s poorest school districts); Bruce D. Baker & Robert Cotto Jr., *The Underfunding of Latinx-Serving School Districts*, 101 PHI DELTA KAPPAN 40 (2020) (discussing why school districts with large Latinx enrollments are often underfunded compared to other districts in their region); Robert Berne & Leanne Stiefel, *Measuring Equity at the School Level: The Finance Perspective*, 16 EDUC. EVALUATION & POL’Y ANALYSIS 405 (1994) (exploring conceptual, methodological, and empirical issues in school resource allocation); NAT’L ACAD. OF SCIS., *supra* note 9, at 3 (examining the “history and current status of efforts to foster fairness in educational finance systems,” as well as the barriers these efforts face); Patrice Iatarola & Leanne Stiefel, *Intradistrict Equity of Public*

school funding inequity is racialized, impacting BIPOC communities.¹⁵

A national 2019 report by EdBuild articulated the severity of school funding inequity across the country. The report stated that across the United States, there exists a \$23 billion gap between majority White and majority BIPOC school districts despite serving the same number of students.¹⁶ Furthermore, the report goes on to state that inequity is intensified due to the race-based stratification that divides school districts, and thus divides school district funding, privileging higher income White districts over lower-income BIPOC districts.¹⁷ Baker, Srikanth, Cotto Jr., and Green studied high-percentage LatinX districts and found that 100% LatinX districts were 2.5 times more likely to be financially constrained when compared to districts that are 0% LatinX.¹⁸ Martínez, Begay, and Jiménez-Castellanos found that districts serving higher percentages of Indigenous students had lower local and state revenue than those districts serving lower percentages of Indigenous students.¹⁹ Even when accounting for compensatory funding expenditures, in a study of English learners (EL) in Arizona, Martínez and Spikes discovered that districts serving a higher percentage of ELs had lower EL expenditures than those districts serving lower percentages of ELs.²⁰ Sosina and Weathers established that racial/ethnic segregation is associated with

Education Resources and Performance, 22 ECON. EDUC. REV. 69 (2003) (presenting empirical evidence about input and output equity on resources, expenditures, and performance in New York City schools); David G. Martínez, Oscar Jiménez-Castellanos & Victor H. Begay, *Understanding Navajo K-12 Public School Finance in Arizona Through Tribal Critical Theory*, TCHRS. COLL. REC., May 2019 (implicating policy as preventing improvement of educational outcomes by proxy of the fiscal revenue available to Navajo reservation schools); David G. Martínez & Daniel D. Spikes, *Se Acabaron Las Palabras: A Post-Mortem Flores v. Arizona Disproportional Funding Analysis of Targeted English Learner Expenditures*, 13 EDUC. POL'Y 1 (2020) (discussing Arizona's implementation of policy that inhibits equity of opportunity for the English learner population); Martínez, *supra* note 8 (analyzing the methods used to conduct school finance research within the educational research community).

15. Erika Weathers, *Spending Disparities Between Districts Are Not Race Neutral*, STRATEGICDATAPROJECT (Mar. 18, 2021), <https://sdp.cepr.harvard.edu/blog/spending-disparities-between-districts-are-not-race-neutral> [<https://perma.cc/9TFD-VYV7>].

16. EDBUILD, \$23 BILLION (2019), <https://edbuild.org/content/23-billion> [<https://perma.cc/V3CR-UNJR>].

17. *Id.*

18. Bruce D. Baker, Ajay Srikanth, Robert Cotto Jr. & Preston C. Green III, *School Funding Disparities and the Plight of Latinx Children*, EDUC. POL'Y ANALYSIS ARCHIVES, Sept. 2020, at 1.

19. Martínez et al., *supra* note 14, at 19.

20. Martínez & Spikes, *supra* note 14, at 19.

racial/ethnic disparities in spending, even controlling for disparities in poverty.²¹ As a civil rights challenge, the segregation of funding from minoritized students, implicit or explicit, is as damaging to students and learning as was de facto segregation. Segregation of students from funding and resources in contemporary schooling mimics the segregation of students in the era of *Brown*.

A growing body of empirical evidence also supports the notion that school funding matters not only for the holistic health of the schooling system, but also to provide a high-quality system of formal education that increases students' capacity to learn and achieve within the schooling pipeline.²² Research has also demonstrated that increased funding and targeted resources in majority LatinX urban schools were associated with improvement in reading and math achievement.²³ Funding is necessary for low-income communities to support students through the P-20 pipeline, which includes high school completion and earnings later in life, with the ultimate goal of reducing adult poverty.²⁴ Ultimately, funding increases have a positive impact on children from low-income families and play a role in decreasing student-to-teacher ratios, increasing teacher salaries, and extending academic semesters.²⁵

The "does money matter?" debate is now all but discredited in the extant literature, and the primarily correlational nature of previous school finance research has now evolved methodologically.

21. Victoria E. Sosina & Ericka S. Weathers, *Pathways to Inequality: Between-District Segregation and Racial Disparities in School District Expenditures*, AERA OPEN, July–Sept. 2019, at 1, 11.

22. See BRUCE D. BAKER, EDUCATIONAL INEQUALITY AND SCHOOL FINANCE: WHY MONEY MATTERS FOR AMERICA'S STUDENTS 85 (2018); Christopher A. Candelaria & Kenneth A. Shores, *Court-Ordered Finance Reforms in the Adequacy Era: Heterogeneous Causal Effects and Sensitivity*, 14 EDUC. FIN. & POLY 31, 44–45 (2019); C. Kirabo Jackson, Rucker C. Johnson & Claudia Persico, *The Effect of School Finance Reforms on the Distribution of Spending, Academic Achievement, and Adult Outcomes* 4–5 (Nat'l Bureau of Econ. Rsch., Working Paper No. 20118, 2014); Julien Lafortune, Jesse Rothstein & Diane Whitmore Schanzenbach, *School Finance Reform and the Distribution of Student Achievement*, AM. ECON. J.: APPLIED ECON., Apr. 2018, at 1, 24; Martínez et al., *supra* note 14, at 25–27; Martínez & Spikes, *supra* note 14, at 26–27.

23. Julian Vasquez Heilig & Amy Williams, *Inputs and Student Achievement: An Analysis of Latina/o-Serving Urban Elementary Schools*, 10 ASSOC. MEX. AM. EDUC. J. 48, 54 (2010).

24. BAKER, *supra* note 22; see also C. Kirabo Jackson, Rucker C. Johnson & Claudia Persico, *The Effects of School Spending on Educational and Economic Outcomes: Evidence from School Finance Reforms*, 131 Q. J. ECON. 157, 212–14 (2016) ("For children from low-income families, increasing per-pupil spending yields large improvements in educational attainment, wages, family income, and reductions in the annual incidence of adult poverty.").

25. *Id.* at 211.

The “credibility revolution” expanded research design and data aggregation and has found that investing in education early and often matters in the everyday life of a student.²⁶ Despite the evidence, resistance continues, and fiscal capacity disparities and inequity persist, as do the achievement gaps in the schooling pipeline. Widening achievement gaps, continued school district revenue generation, and student expenditure inequity degrade BIPOC communities, prompting the United States Department of Education Office of Civil Rights (OCR) to issue a “Dear Colleague Letter,” clearly articulating that,

Chronic and widespread racial disparities in access to rigorous courses, academic programs, and extracurricular activities; stable workforces of effective teachers, leaders, and support staff; safe and appropriate school buildings and facilities; and modern technology and high-quality instructional materials further hinder the education of students of color. . . . The allocation of school resources, however, too often exacerbates rather than remedies achievement and opportunity gaps.²⁷

And finally,

Allocation of funding should be designed to ensure the availability of equal educational opportunities for students, which may require more or less funding depending upon the needs at a particular school. Intradistrict and interdistrict funding disparities often mirror differences in the racial and socioeconomic demographics of schools, particularly when adjusted to take into consideration regional wage variations and extra costs often associated with educating low-income children, English language learners, and students with disabilities.²⁸

This statement by the OCR is an attempt to formally acknowledge what most courts and fiscally conservative policymakers will not. School funding inequity persists throughout the country, and despite countless attempts to reform school finance policy, we are historically unable to ameliorate school funding inequity and injustice.

To address the persistent school finance disparity, in this Article we examine school finance research and litigation epistemology. We posit that unfettered and equitable school funding

26. *Id.*; Robert Pianta, Jessica Whittaker, Virginia Vitiello & Arya Ansari, *Invest in Programs That Boost Children’s Learning and Development*, BROOKINGS (Oct. 5, 2021), <https://www.brookings.edu/blog/education-plus-development/2021/10/05/invest-in-programs-that-boost-childrens-learning-and-development/> [<https://perma.cc/U4V8-XZVL>].

27. U.S. DEPT. OF EDUC., OFF. OF CIV. RTS., DEAR COLLEAGUE LETTER: RESOURCE COMPARABILITY 2 (2014) [<https://perma.cc/9RUK-QRTU>].

28. *Id.* at 5.

and resource availability is a civil right and argue that school funding equity is necessary to mitigate political, economic, and social challenges impacting BIPOC communities in modern society. We also discuss opportunities to learn as a function of minimum resource and funding standards, and their embeddedness with Civil Rights.

I. Critical Lenses for Ontologizing School Finance Policy

We begin with two theses drawn from Paulo Freire and Derrick Bell as applied to school finance policy and praxis. In his seminal text, *Pedagogy of the Oppressed* (1970), Paulo Freire stated, “the purely reformist solutions attempted by these societies . . . do not resolve their external and internal contradictions. Almost always the metropolitan society induces these reformist solutions in response to the demands of the historical process, as a new way of preserving its hegemony.”²⁹

Parallel to Freire’s sentiment is Derrick Bell’s essay in *Critical Race Theory: The Key Writings That Formed the Movement* (1995) titled *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation* which proffered:

Providing unequal and inadequate school resources and excluding black parents from meaningful participation in school policymaking are at least as damaging to black children as enforced separation.

Whether based on racial balance precedents or compensatory education theories, remedies that fail to attack all policies of racial subordination almost guarantee that the basic evil of segregated schools will survive and flourish, even in those systems where racially balanced schools can be achieved. Low academic performance and large numbers of disciplinary and expulsion cases are only two of the predictable outcomes in integrated schools where the racial subordination of blacks is reasserted in, if anything, a more damaging form.³⁰

Both Bell and Freire provide a base to problematize the historical efforts to improve school finance inequity that persists in United States schooling despite countless reform efforts. From the perspective of Freire, reform is embedded with contradiction, and in that contradiction arises the ability to reproduce those practices customary to the society. For instance, despite the passing of civil rights policy, the United States continues to exhibit segregation of

29. PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* 162 (Myra Bergman Ramos trans., Continuum Int’l Publ’g Grp. 2000) (1970).

30. Derrick A. Bell Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 *YALE L.J.* 470, 487–88 (1976).

BIPOC communities away from basic necessities such as schooling, housing, and healthcare.³¹ Furthermore, in schooling, the reformist solution of desegregation through *Brown* did not account for how districts would develop and invest in desegregation at the time.³² In contemporary schooling, we now see schools resegregating, and those schools with higher proportions of BIPOC students contending with sparser budgets.³³

Derrick Bell echoed Freire's position of reformist dysconscious as the subordination of Black parents in desegregation failed to address inequity, and instead, the intention to resolve inequity through separation helped to reproduce the already violent hegemony that subjugates Black students, and by extension Black communities. If we extrapolate—through a theory of intersectionality—from Black to BIPOC students, parents, and communities, then Derrick Bell's positions of separation and subordination, and Freire's notion of reproduction through reformist efforts, work to support why the school finance outcomes outlined above (i.e., Baker, EdBuild, Martínez) persist despite seemingly positive change. There is also the intersection of school finance policy and law as supporting these theses, and thus in the next section, we review the historical underpinning of school finance ontology which, implicitly or explicitly, preserves inequity.

II. Historical Underpinnings of School Finance Epistemology

School finance policy, research, and reform efforts have focused on the provision of equal educational opportunities to students. Equal educational opportunity as an ideal is underscored by fifty years of litigation and a growing body of empirical research that developed concurrently. The research base highlights the notion that solutions to fiscal need, and increases in resource availability, often compete with sparser budgets, growing diversity, and expanding populations.³⁴ Simultaneously, districts have used adjudication in an attempt to align policy toward resolution.³⁵ These

31. David G. Martínez, *We Make This Movement Towards Freedom: Policy Failures and the Radical Need for Solidarity*, UCEA REV., Fall 2020, at 13, 13.

32. Gerardo R. López & Rebeca Burciaga, *The Troublesome Legacy of Brown v. Board of Education*, 50 EDUC. ADMIN. Q. 796, 800–02 (2014).

33. *Id.* at 807–08.

34. *See, e.g.*, JASON WILLIS, KELSEY KRAUSEN, RUTHIE CAPARAS & TIA TAYLOR, RESOURCE ALLOCATION STRATEGIES TO SUPPORT THE FOUR DOMAINS FOR RAPID SCHOOL IMPROVEMENT 1–6 (2019) (outlining “strategies for how school districts can maximize the use of existing resources” by improving resource allocation strategies).

35. Margaret Goertz & Gary Natriello, *Court-Mandated School Finance Reform:*

historical policy and litigation relationships attempt to discern what quantities in compulsory education are absolutely necessary to create the greatest opportunities for students, but the characteristics of what constitutes opportunity has evolved, as has the litigation that attempts resolution.

Equality

Equality was often used in inter-district and inter-state research.³⁶ Equality litigation examined school funding mechanisms leading to unequal treatments through interpretation of the Fourteenth Amendment and Equal Protection Clause³⁷ (e.g., *Serrano v. Priest (I)*).³⁸ Local property taxes are a major source of public education funding. Tax levies, property wealth, and other varying amounts of local revenue fund public education, and the value placed on homes in a district determines how much tax revenue is generated. Assessed valuations impact the revenue pipeline, creating variation in the amount of revenue available for education and the resources offered to students (e.g., well-prepared teachers, smaller classrooms, and curriculum).³⁹ Furthermore, since school funding relies so heavily on local property value, this prevents property poor districts from increasing revenue, as a function of how much money tax levies can generate, or from

What Do the New Dollars Buy?, in EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES 99 (Helen F. Ladd et al. eds., 1999); David H. Monk & Samid Hussain, *Structural Influences on the Internal Allocation of School District Resources: Evidence from New York State*, 22 EDUC. EVAL. & POL'Y ANALYSIS 1, 1–26 (2000); Ross Rubenstein, Leanna Stiefel, Amy Ellen Schwartz & Hella Bel Hadj Amor, *Distinguishing Good Schools From Bad in Principle and Practice: A Comparison of Four Methods*, in DEVELOPMENTS IN SCHOOL FINANCE 53 (W.J. Fowler ed., 2007).

36. See Carrington, *supra* note 12; JAMES W. GUTHRIE, GEORGE B. KLEINDORFER, HENRY M. LEVIN & ROBERT T. STOUT, SCHOOLS AND INEQUALITY 137–57 (1971); ERIC A. HANUSHEK & JOHN F. KAIN, ON EQUALITY OF EDUCATIONAL OPPORTUNITY 116–45 (Frederick Mosteller & Daniel P. Moynihan eds., 1972); RUSSEL S. HARRISON, EQUALITY IN PUBLIC SCHOOL FINANCE: VALIDATED POLICIES FOR PUBLIC SCHOOL FINANCE REFORM (1976) (summarizing research on expenditure inequality and identifying some causes and cures for this inequality).

37. In *Brown v. Board of Education*, the Equal Protection Clause was used to determine that school segregation was unconstitutional. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

38. See *Serrano v. Priest*, 487 P.2d 1241 (1971).

39. Gillespie, *supra* note 7, at 990; Robert Berne & Leanna Stiefel, *Concepts of School Finance Equity: 1970 to the Present*, in EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES 7, 8 (Helen F. Ladd, Rosemary Chalk & Janet S. Hansen eds., 1999) [hereinafter *Concepts of School Finance*]; see also Heise, *supra* note 2, at 1151 (“Variations in property values generate many of the disputes surrounding school finance. . . . As property values vary, so do local property tax bases and revenues.”).

equalizing property-based education revenue to that of wealthier districts.⁴⁰ Even in as much as property poor districts can raise property taxes, the low assessed property valuations inhibit tangible increases in school funding.⁴¹

This argument leads to greater discourse about what exactly should be equalized, and as Espinoza summarized, the possibility that justice must work to provide: “(1) ‘equality of opportunity’; (2) ‘equality for all’; and (3) ‘equality on average across social groups.’”⁴² Questions remain, however, regarding what embodies these goals, and consensus among experts is ephemeral. Researchers search for resolution through specific relationships amongst variables including socio-demographic strata, school resources in the form of revenue generation and expenditures per-pupil,⁴³ and variations in facilities and human resources.⁴⁴ With little resolution after *Rodriguez*,⁴⁵ reformers continued the search for resolution through state constitution equal protection clauses.⁴⁶ This shift in strategy ended the era of litigation toward federal constitutionality and burgeoned in an era examining equity through state constitutions.

Equity

The narrative of equity is embedded, as with equality, in history as much as it is in theory. Reports such as *Equality of Educational Opportunity* (1966) and *A Nation at Risk* (1984) increased pressure to obtain empirically driven solutions minimizing barriers to education for low-income and minoritized students.⁴⁷ Equity was built from equality arguments seeking to

40. Gillespie, *supra* note 7, at 990.

41. *Id.*; see also Heise, *supra* note 2, at 1151–52 (“[S]chool districts located in property-poor areas receive lower tax revenues generated by, in certain instances, comparatively higher tax rates.”).

42. Oscar Espinoza, *Solving the Equity–Equality Conceptual Dilemma: A New Model for Analysis of the Educational Process*, 49 EDUC. RSCH. 343, 350 (2007).

43. See Matthew J. Carr, Nathan L. Gray & Marc J. Holley, *Shortchanging Disadvantaged Students: An Analysis of Intra-District Spending Patterns in Ohio*, 7 J. EDUC. RSCH & POL’Y STUD. 36, 36 (2007); THOMAS B. FORDHAM FOUND., *FUND THE CHILD: BRINGING EQUITY, AUTONOMY, AND PORTABILITY TO OHIO SCHOOL FINANCE* 9–10 (2008).

44. See Tom Owens & Jeffrey Maiden, *A Comparison of Interschool and Interdistrict Funding Equity in Florida*, 24 J. EDUC. FIN. 503, 507–09 (1999).

45. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

46. See Heise, *supra* note 2, at 1152; James E. Ryan & Thomas Saunders, *Forward to Symposium on School Finance Litigation: Emerging Trends or New Dead Ends?*, 22 YALE L. & POL’Y REV. 463, 466–67 (2004); Christopher E. Adams, *Is Economic Integration the Fourth Wave in School Finance Litigation?*, 56 EMORY L.J. 1613, 1614–15 (2006).

47. See RUBEN W. ESPINOSA, *FISCAL RESOURCES AND SCHOOL FACILITIES AND*

answer three major questions: (1) For whom do we seek equity? (2) What is to be equitably distributed? (3) How are resources distributed, or how could resources be distributed in a manner that is most advantageous for all students?

The foundation of equity litigation focuses on inputs that have the potential to address student need through state constitutional mandate. This litigation is exemplified by *Serrano v. Priest* (II),⁴⁸ *Horton v. Meskill*,⁴⁹ *Levittown Union Free School District v. Nyquist*,⁵⁰ and *Abbott v. Burke*.⁵¹ These cases highlight how differences in student populations require varied funding allocations. The struggle toward equity was not easy, as the statutory responsibility of states to provide an equitable education system was varied in its interpretation, something echoed through the empirical catalogue.

There are many views of what constitutes equity in education. The most salient definition—the definition most often employed in school finance research and litigation—stems from theories proposed by Drs. Robert Berne and Leanna Stiefel. Their view of equity is generally defined as two separate ideas: horizontal equity (HE), that which leads to an equal treatment of equals, and vertical equity (VE), that which leads to an unequal treatment of unequals.⁵² These definitions presuppose that all students have the ability to equally take advantage of the services provided to them in order to learn the material necessary to participate in a basic level of self-sufficiency. Where HE measures resources so that every student receives an equal amount of funding, truly dictating only equality of inputs, VE delineates by allowing for supplemental funding allocation to those students who require the funds due to unexpected challenges (e.g., language barriers, physical barriers, and learning barriers) in order to obtain an equal level of education.⁵³ Even insofar as equity can provide some form of justice, students are not created equal, and intra-group student level

THEIR RELATIONSHIP TO ETHNICITY AND ACHIEVEMENT IN THE LOS ANGELES UNIFIED SCHOOL DISTRICT (1985); Gloria M. Rodriguez, *Vertical Equity in School Finance and the Potential for Increasing School Responsiveness to Student and Staff Needs*, 79 PEABODY J. EDUC. 7, 8–9 (2004).

48. See *Serrano v. Priest*, 557 P.2d 929 (Cal. 1976) (*Serrano II*).

49. See *Horton v. Meskill*, 376 A.2d 359 (Conn. 1977).

50. See *Levittown Union Free Sch. Dist. v. Nyquist*, 439 N.E.2d 359 (N.Y. 1982).

51. See *Abbot v. Burke*, 495 A.2d 376 (N.J. 1985).

52. Berne & Stiefel, *supra* note 14, at 406; *Concepts of School Finance*, *supra* note 39, at 18, 29.

53. Berne & Stiefel, *supra* note 14, at 406; *Concepts of School Finance*, *supra* note 39, at 18, 29; Iatarola & Stiefel, *supra* note 14, at 70.

variation must be supplemented with nuance for all students to have an opportunity to learn equal amounts of academic material.⁵⁴

Finally, equity and equality differ substantially in their measurement. Where equality is measured as a function of resource distribution so that every student has an equal portion of the revenue available, equity measures what is most desirable and the ways in which resources are distributed so they develop the most desirable student outcomes.⁵⁵ The focus on outcomes began to dominate the discourse as policy makers sought resolution to address new accountability standards.

Adequacy

Achievement gains shape the foundation for examining educational funding and resource allocation through adequacy. Through adequacy, state constitutional education clauses are interpreted as requiring a minimum level of education for students, and to determine the amount of funding necessary to provide a minimum level of education as required by statute.⁵⁶ Adequacy is a response to the standards-based reform movement, characterized in recent educational history by the federal No Child Left Behind Act (NCLB).⁵⁷ As states began enacting educational reform by imposing rigorous academic requirements (i.e., English, math, and history), this increased pressure to meet the demands of the new academic constraints without the substantive resources necessary to implement the new policies into practice. The *Rose v. Council for*

54. Berne & Stiefel, *supra* note 14, at 406; *Concepts of School Finance*, *supra* note 39, at 18, 29.

55. See generally William Duncombe & John Yinger, *School Finance Reform: Aid Formulas and Equity Objectives*, 51 NAT'L TAX J. 239, 239 (1998) (arguing that "states need to refocus their aid formulas toward the achievement of outcome equity objectives" while presenting a method for using "state aid formulas . . . to achieve particular equity goals"); Peter Enrich, *Leaving Equality Behind: New Directions in School Finance Reform*, 48 VAND. L. REV. 100, 100, 103 (1995) (exploring the limitations of "equality arguments" in educational funding and proposing the use of "adequacy arguments" that focus on the "quality of the services provided").

56. See Enrich, *supra* note 55, at 105–06, 108–09 (discussing "education clause[s]" in state constitutions that "impose an express duty on the state government to make provision for a system of public education" and arguing that one approach to education clause interpretation considers "adequacy arguments [that] . . . look directly at the quality of the educational services delivered to children . . .").

57. Kevin G. Welner, *Can Irrational Become Unconstitutional? NCLB's 100% Presuppositions*, 38 EQUITY & EXCELLENCE EDUC. 171, 171 (2005) ("The law holds schools responsible for student achievement, subjecting the schools to escalating penalties if some students fail to make adequate progress toward the hundred-percent target.").

Better Education case illustrates these shifts and outlines specific mandates of minimal education.⁵⁸

The evolution of adequacy from the knowledge previously developed around equity is a result of the need to understand how per-pupil revenue and expenditures impact student learning and outcomes.⁵⁹ Adequacy shifts focus from revenue and expenditures and draws attention to student achievement and outcomes. Adequacy supports opportunity as determined by a measured outcome level (e.g., assessment score and grade level) and by linking revenue, expenditures, and resources to those outcomes.⁶⁰ Adequacy creates a floor, which no student should fall under. Outcomes are based on perceived ability, and the funding to obtain these outcomes is based on perceived need.⁶¹ Student variations, however, will require different floors and funding levels. Specific funding levels that can produce the intended outcomes must in no small way be met for all students of varying abilities, intelligence, sociological, racial, and economic backgrounds. At the core of equality, equity, and adequacy arguments is the question of how districts can provide students with an equal educational opportunity—what model of education, what amounts of resources, and what types of inclusion are necessary to fully participate in our compulsory education system.

III. Perspective on Equal Educational Opportunity

Equality, equity, and adequacy seek an Equal Educational Opportunity (EEO) as one of the most fundamental tenets of education, but will over rely on perceptions of the inputs and outputs by policy makers who seek nothing more than a resolution. The Equal Educational Opportunities Act of 1974 (EEOA) operates within two distinct guidelines as written in 20 U.S.C § 1701 Congressional declaration of policy:

58. *Rose v. Council for Better Educ.* 790 S.W.2d 186 (Ky. 1989).

59. Allan Odden, *Equity and Adequacy in School Finance Today*, 85 PHI DELTA KAPPAN 120, 121–23 (2003).

60. See William H. Clune, *The Shift from Equity to Adequacy in School Finance*, 8 EDUC. POL'Y 376, 376, (1994) (describing the “shift . . . from equity to adequacy in school finance”); Odden, *supra* note 59, at 125 (“The adequacy of education dollars will be measured by the degree to which students learn to the performance standards of the education system.”).

61. See Odden, *supra* note 59, at 121 (“Determining adequate revenue levels entails first identifying the costs of effective programs and strategies, then translating those costs into appropriate school finance structures, and finally ensuring that the resources are used in districts and schools to produce the desired results.”).

1. all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin; and

2. the neighborhood is the appropriate basis for determining public school assignments.⁶²

The policy further states: “In order to carry out this policy, it is the purpose of this subchapter to specify appropriate remedies for the orderly removal of the vestiges of the dual school system.”⁶³

EEOA further specifies the types of indicators that would signify a dual system or a system that is not providing at least an equal opportunity, going so far as to title the section “Dual school systems as denial of equal protection; depletion of financial resources of local educational agencies; transportation of students; inadequacy of guidelines.”⁶⁴ Congress further specifies what types of practices create unlawful barriers to opportunity in 20 U.S.C §§ 1703–1705.⁶⁵ Remedies necessary to overcome these barriers are outlined in 20 U.S.C §§ 1712–1718.⁶⁶ Short of formally drawing out every stipulation, EEOA provides protection so that 1) every student has the ability to equally participate in every facet of education and 2) schools operating within a compulsory system of education make the appropriate adjustments to the learning environment and provide the funding necessary so all students—regardless of perceived deficiencies (e.g., behavioral, cognitive, socio-economic, and racial)—are able to fully participate in compulsory education.⁶⁷

Both researcher and litigation perspectives are not contrasting and recognize that, at some level, compulsory education in the United States fails in its ability to create equal learning opportunities for all. Explicit and implicit barriers have a lasting effect on student learning. Litigation has relied heavily on

62. 20 U.S.C. § 1701(a)(1–2).

63. § 1701(b).

64. § 1702.

65. §§ 1703–1705.

66. §§ 1712–1718.

67. See generally Julian R. Betts & John E. Roemer, *Equalizing Opportunity for Racial and Socioeconomic Groups in the United States through Educational-Finance Reform*, in *SCHOOLS AND THE EQUAL OPPORTUNITY PROBLEM* 209, 209 (Ludger Woessmann & Paul E. Peterson eds., 2007) (“Education is perhaps the main tool that democracies use to attempt to equalize economic opportunities among citizens. It is commonly thought that opportunity equalization, in that dimension, is implemented by the provision of equal educational resources to all students. We argue here that that is not so, and we attempt to compute the distribution of educational spending in public schools in the United States that would equalize opportunities for a measure of economic welfare—namely, earning capacity.”).

contemporary research that has provided sound empirical evidence, concluding that the quality of opportunities present in education (e.g., segregation, teacher training, facilities, school leadership, classroom environment, school demographics, and school size) impact student learning, hinder cognitive growth, and contribute to—and maintain—the socio-demographic achievement gap.⁶⁸

Despite these facts, in our contemporary education system, legislation and policy constrains the generation of revenue and the manner in which it is distributed across communities. Providing students with an equal educational opportunity is not incongruent when juxtaposed against equality, equity, or adequacy. However, policymakers must be willing to attune school finance practices and re-evaluate how they, and their view of the inputs and outputs of schooling, affect student learning.

In summary, the stated goal of equality, equity, adequacy, and equal educational opportunity, work toward remedying insufficiency in compulsory education and to implicate social justice as a function of schooling. However, this goal precludes the fallacy that opportunity for all is a goal of the hegemony or, invoking Freire and Bell, that reform agreed upon by the hegemony seeks to increase opportunity for all communities, including BIPOC communities—something historically inaccurate.⁶⁹ Even throughout the post-*Brown* era of desegregation, once the initial decision of *Brown (I)* was submitted, schools remained largely segregated and largely unequal.⁷⁰ After *Brown (II)*, many southern

68. See Berne & Stiefel, *supra* note 14, at 419 (discussing how poorer districts receive fewer resources in “allocated and direct categories,” leading to substantial burdens in areas of nonclassroom management and oversight); see also Linda Darling-Hammond, *The Right to Learn and the Advancement of Teaching: Research, Policy, and Practice for Democratic Education*, 25 EDUC. RSCH. 5, 10–15 (1996) (discussing the resources necessary for building knowledge around teaching and opportunities in public schools); Linda Darling-Hammond, *Securing the Right to Learn: Policy and Practice for Powerful Teaching and Learning*, 35 EDUC. RSCH. 13, 15–20 (2006) (discussing current inequality in public education based on the resources available to teachers and students, as well as the resources and policies necessary to close current achievement gaps); Linda Darling-Hammond, *Teacher Education and the American Future*, 61 J. TCHR. EDUC. 35, 42–45 (2010) (highlighting the challenges for teacher education and the barriers these challenges pose for equity in access to learning); Minorini & Sugarman, *supra* note 2, at 63–65 (discussing the future of school finance litigation in light of the history of school finance litigation); Thomas J. Labelle, *Book Reviews*, 15 AM. EDUC. RSCH. J. 570, 570–72 (1978) (reviewing JOHN OGBU, MINORITY EDUCATION AND CASTE: THE AMERICAN SYSTEM IN CROSS-CULTURAL PERSPECTIVE (1978)); WISE, *supra* note 12, at 129–30 (“[V]ariation in expenditures per pupil or per classroom is systematically related to the wealth of the local community.”).

69. See Bell, *supra* note 30, at 487–88.

70. López & Burciaga, *supra* note 32, at 800.

states requested desegregation exemptions due to “logistical complications and demographic barriers.”⁷¹ Thus, while equality, equity, adequacy, and opportunity are necessary for addressing school finance disparities, critique is an inevitability, especially with regards to a high-quality education as a civil right for BIPOC communities.

IV. School Finance and Civil Rights

In the 1960s, Civil Rights activists argued schooling was a mechanism to mediate social disparities. School finance policy and litigation, however, were unable to ameliorate pervasive schooling inequities, and in contemporary society, educational policy scholarship illustrates the presence of fiscal disparity as informing the ever-present achievement gap.⁷² School finance inequities are highlighted in a report by the United States Commission on Civil Rights which states, “all across the United States . . . there are many millions of students who are unable to access a quality public education due to inequities in public education finance.”⁷³ The report continues by detailing,

Poorer schools often have less experienced and lower-paid teachers, fewer high-rigor course offerings, substandard facilities, and less access to school materials and resources. School districts that serve the most disadvantaged students often require higher levels of funding to overcome the financial challenges of serving the needs of disadvantaged students, including students with disabilities, and English language learners, particularly those who come from low-income households and who are also students of color.⁷⁴

As a civil right, school funding equity is necessary to mitigate the impact of social challenges. The United States Commission on Civil Rights Report questions how localities address the process of allocating funds toward schools and how these allocations guarantee an equal educational opportunity for all students, despite differences in socio-demography.⁷⁵ To educate all students, the

71. *Id.*

72. See Heise, *supra* note 2, at 1168; Sean F. Reardon, *The Widening Academic Achievement Gap Between the Rich and the Poor: New Evidence and Possible Explanations*, in *WHITHER OPPORTUNITY? RISING INEQUALITY AND THE UNCERTAIN LIFE CHANCES OF LOW-INCOME CHILDREN* 91, 110–11 (Richard J. Murnane & Greg J. Duncan eds., 2011); Versteegen, *supra* note 2, at 67–68.

73. U.S. COMM’N ON CIV. RTS., *PUBLIC EDUCATION FUNDING INEQUITY IN AN ERA OF INCREASING CONCENTRATION OF POVERTY AND RESEGREGATION: BRIEFING BEFORE THE UNITED STATES COMMISSION ON CIVIL RIGHTS HELD IN WASHINGTON, DC 3* (2018) [hereinafter U.S. COMM’N ON CIV. RTS. BRIEFING].

74. *Id.* at 7.

75. *Id.* at 27–56.

United States must confront barriers that devalue equity and school finance as a civil right.

Ontologizing school finance as a civil right matter is crucial because current education reform efforts, such as market-based school choice, seek to ignore the structural inequities that have historically plagued school funding in BIPOC communities and sabotaged the success of their educators and students.⁷⁶ Research continues to highlight a salient and logical artifact of schooling: more schooling revenue and access to better schools are directly related to higher value property.⁷⁷ Recent peer reviewed research has shown that in gentrifying urban communities, as the proportional intensity of White students increases in schools, so do the resulting resources and demands for schools.⁷⁸

Consistently, race is demonstrated as being an important factor in school finance. This indication clearly illustrates that school finance as a function of race is a civil rights matter.⁷⁹ In fact, the NAACP Task Force on Quality Education argued that school finance reform is at the root of civil rights issues in education:

To solve the quality education problems that are at the root of many of the issues . . . school finance reform is essential to ensure that resources are allocated according to student needs. States should undertake the kinds of weighted student formula reforms that Massachusetts and California have pursued, and the federal government should fully enforce the funding-equity provisions in Every Student Succeeds Act (ESSA).⁸⁰

The NAACP Task Force on Quality Education further argued that resource inequities directly impact the provision of high-quality schools due to disparities in teacher salaries and working conditions, such as class sizes and the availability of supplies and materials (i.e., textbooks and technology).⁸¹ To remedy these disparities for BIPOC students, financial resources should be available to provide the opportunity for BIPOC students to learn in

76. See Julian Vasquez Heilig, *Reframing the Refrain: Choice as a Civil Rights Issue*, 1 TEX. EDUC. REV. 83, 89 (2013).

77. See WISE, *supra* note 12, at 129–30.

78. See ALEXANDRA FREIDUS, URB. EDUC., “A GREAT SCHOOL BENEFITS US ALL”: ADVANTAGED PARENTS AND THE GENTRIFICATION OF AN URBAN PUBLIC SCHOOL 1141 (2016), for a discussion of research that shows “as the numbers of free- and reduced-lunch eligible students decreased, the number of middle-class families [at a specific school] markedly increased. . . . [Discussions] about improved school facilities and new programming speak to the school’s material and physical upgrade following the influx of newcomers.”

79. See NAACP TASK FORCE ON QUALITY EDUC., JULY 2017 HEARING REPORT 8 (2017).

80. *Id.* at 27.

81. *Id.* at 26–27.

challenging and supportive learning environments, guided by well-prepared and caring teachers, staff, and administrators. The unfortunate historical circumstance is that schools serving BIPOC students were sabotaged through funding insufficiency early, and still are today.⁸² This history prevented schools from making the classroom investments necessary to raise student achievement and ensure that all students receive high-quality educational opportunities.

The importance of theoretical and conceptual research that helps to inform policy decisions and praxis about civil rights in the school funding process cannot be overstated. The critical perspectives of Bell and Freire discussed above stand as a testament to the overwhelming use of frameworks incapable of informing critically conscious school finance research, adjudication, and policy praxis.⁸³ Of the greatest challenges is how to move forward from the ontology of previous frameworks that are no longer sufficient to address school finance disparity in aggregate, and even less positioned to address the intersectional nuances of race-based inequity.⁸⁴ Furthermore, conceptually, theoretically, and methodologically the field must continue to evolve in order to produce tools which can help support effective school finance policy solutions into the future.⁸⁵ The final section of this Article explores an opportunity-to-learn framework that sets minimum resource access points and minimum standards of funding availability.

V. Civil Rights and an Opportunity to Learn

An opportunity to learn is crucial for supporting individuals across the United States. The challenge, however, is situated in the reality that some school districts have the resources to provide students with educational opportunities, while other districts are encumbered due to minimal resource availability.⁸⁶ School finance

82. See U.S. COMM'N ON CIV. RTS. BRIEFING, *supra* note 73, at 3.

83. See Bell, *supra* note 30, at 487–88; FREIRE, *supra* note 29, at 162.

84. Martínez, *supra* note 8, at 299–304 (acknowledging the failures of previous movements toward school finance equality and how new frameworks have sought to overcome these challenges).

85. *Id.* at 308–10 (discussing how school finance research can “defin[e] justice through novel . . . research”); see also Eric A. Houck, *Intra-District Resource Allocation: Key Findings and Policy Implications*, 43 EDUC. & URB. SOC'Y 271, 289–90 (identifying current issues in surrounding intra-district resource allocation and proposing policy solutions to create more equitable school finance frameworks).

86. Julian Vasquez Heilig, *A New Approach to Remedy Education Inequity?: Opportunity to Learn (OTL) “State Minimums” for School Finance*, CLOAKING INEQUALITY (Apr. 15, 2018), <https://cloakinginequity.com/2018/04/15/a-new-approach-to-remedy-education-inequity-opportunity-to-learn-otl-state-minimums->

resources are imperative to maintaining a high-quality education.⁸⁷ The decades of debate about if money matters have only succeeded in degrading what we have always known—that money matters in the lives of students at all levels and that money is necessary to obtain resources necessary for students to learn.⁸⁸ In this final section we revisit the Opportunity to Learn framework and outline its utility in the school finance debate.

The Opportunity to Learn (OTL) framework measures a student's ability to access resources characteristic of high-quality schools.⁸⁹ OTL is an adequacy centered approach to configure the resource inputs necessary to improve student success and helps to address longstanding school finance inequities in the United States.⁹⁰ Derek W. Black, a prominent law professor at the University of South Carolina, outlined in his seminal text *Education Law: Equality, Fairness, and Reform*, that OTL includes access to high quality early childhood education, access to highly effective teachers, and a broad curriculum designed to prepare all students to matriculate through the P-20 pipeline and to participate in the democratic process.⁹¹ Although OTL may seem implausible for every district, there was language embedded in federal education code.⁹²

President Bill Clinton's reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA), the Improving America's Schools Act of 1994 (IASA), and The Goals 2000: Educate America Act of 1994 all included language supporting OTL standards.⁹³ There were constrictions on how districts would adhere to OTL, however, due to the vagueness of the policy language, states could reject OTL standards and adopt their own, diminishing a national

for-school-finance-era18/ [https://perma.cc/653V-JBFC].

87. See U.S. COMM'N ON CIV. RTS. BRIEFING, *supra* note 73, at 14.

88. See *id.* at 3–10.

89. Heilig, *supra* note 86.

90. *Id.*

91. *Id.* (citing DEREK BLACK, *EDUCATION LAW: EQUALITY, FAIRNESS, AND REFORM* (2d ed. 2016)).

92. H.R. 6, 103d Cong., 108 Stat. 3518 (1994) (listing “opportunity-to-learn standards or strategies” among the factors that a state may include in its education plan under the Improving America's Schools Act of 1994).

93. See *id.* (discussing ESEA); Robert B. Schwartz, Marian A. Robinson, Michael W. Kirst & David L. Kirp, 3 BROOKINGS PAPERS ON EDUC. POL'Y 173, 195 (2000) (discussing OTL and Goals 2000); Derek W. Black, *Abandoning the Federal Role in Education*, 105 CAL. L. REV. 1309, 1323 (2017) (“Congress hoped it could demand equal academic outputs through the IASA and prod equal academic inputs through Goals 2000. However, a new Republican majority revoked the voluntary OTL standards later that year.”).

effort.⁹⁴ There was also resistance to OTL based on what advocates believed were inequitable expectations without proper fiscal support.⁹⁵ Opposition grew through the belief that low-income students were forced to meet the same standards as students in well-resourced districts. Despite critiques, the 1990s saw a rise in educational reform and codified into law reform hyper-focused on academic standards that linked academic success to high-stakes testing and accountability.⁹⁶ High-stakes testing and accountability proponents during the No Child Left Behind (NCLB) era operated under a “prevailing theory of action . . . that schools and students who are held accountable to [high-stakes testing and accountability policies] will automatically increase educational output: Educators will try harder, schools will adopt more effective methods; and students will learn more.”⁹⁷ What testing advocates neglected to recognize, however, was the embedded disparities in schooling that impact achievement and their relationship to race/ethnicity and socio-economic status.

Research has shown the impact of poverty on learning is profound.⁹⁸ Furthermore, poverty is unequally distributed across racial and ethnic backgrounds, with a higher proportion of minoritized communities being affected by poverty.⁹⁹ Centering Freire, however—in the case of OTL—purely reformist testing regimes impeded equity by focusing on the need for increased achievement.¹⁰⁰ The policy dynamics of the time required higher proportions of students to meet specific standards, and, in testing for those standards, neglected to account for how specific communities would align to the standards and testing.¹⁰¹ They also did not address resource insufficiency.¹⁰² Standards and testing

94. Heilig, *supra* note 86.

95. *See, e.g.*, LAURA S. HAMILTON, BRIAN M. STECHER & KUN YUAN, RAND CORP., STANDARDS-BASED REFORM IN THE UNITED STATES: HISTORY, RESEARCH, AND FUTURE DIRECTIONS 31 (2008) (“There were also concerns about excessive state or federal control over what schools do and about the costs of equalizing school and district offerings if OTL information demonstrated inequalities.”).

96. *See* Jennifer Jellison Holme & Julian Vasquez Heilig, *High-Stakes Decisions: The Legal Landscape of High School Exit Exams and the Implications for Schools and Leaders*, 22 J. SCH. LEADERSHIP 1177, 1178–79 (2012).

97. Julian Vasquez Heilig & Linda Darling-Hammond, *Accountability Texas-Style: The Progress and Learning of Urban Minority Students in a High-Stakes Testing Context*, 30 EDUC. EVALUATION & POL’Y ANALYSIS 75, 75 (2008).

98. *See* U.S. COMM’N ON CIV. RTS. BRIEFING, *supra* note 73, at 89–104.

99. *See id.* at 94–96 (examining the presence of wealth disparities and concentrated poverty among different racial and ethnic groups).

100. FREIRE, *supra* note 29; *see* Heilig, *supra* note 86.

101. Heilig, *supra* note 86.

102. *Id.*

served to further degrade community schooling and, with the hindsight of NCLB, students in minoritized communities were ultimately left behind, still struggling to obtain resources necessary to support healthy community schooling and raise the metrics of achievement required by states.¹⁰³

To improve learning opportunities for marginalized students, a proactive national policy agenda should focus on ensuring the coordinated provision of minimal standards of service.¹⁰⁴ Minimal standards of service include access to well-trained and certified teachers and administrators, timely curriculum and texts, up-to-date facilities, and wrap-around services to support neuro-divergent learners and the health, nutrition, housing, and family wellness of students.¹⁰⁵ Students also require time on task and quality of instruction.¹⁰⁶ To ensure Opportunity to Learn standards are met, policy makers must align specific standards for access to certified subject-matter experts with pedagogical knowledge and should work to minimize inadvertent inequities due to years of teaching experience variations across districts. To implement these standards effectively, we also suggest the development of state minimum revenue standards and expenditure per-pupil standards across priorities.

At the legislative level, school funding is input oriented, and yearly governors' budgets and omnibus revenue bills dictate how Opportunities to Learn develop within a district.¹⁰⁷ Having national OTL minimum standards for revenue and expenditures per-pupil to ensure minimal standards of service access would allow policymakers to determine how to raise revenue in order to meet the minimum access standards.¹⁰⁸ Once fiscal minimum standards are established, policymakers can then determine what minimum level of funding is acutely feasible for every district and realign revenue through increases in general fund appropriations.¹⁰⁹ From the standpoint of legal praxis, states would then be held

103. See Jennifer L. Jennings & Douglas Lee Lauen, *Accountability, Inequality, and Achievement: The Effects of the No Child Left Behind Act on Multiple Measures of Student Learning*, 2 RSF J. SOC. SCIS. 220, 222–25 (2016).

104. See Heilig, *supra* note 86.

105. *Id.*

106. Lori Wade, *Time-on-Task: A Teaching Strategy that Accelerates Learning*, FIND COURSES (Mar. 5, 2020), <https://www.findcourses.com/prof-dev/career-development/time-on-task-18285> [<https://perma.cc/7SQG-2R2U>].

107. See Heilig, *supra* note 86 (“School funding should be input oriented, working forward from the ingredients necessary for student success instead of backwards from legislative whims.”).

108. See *id.*

109. *Id.*

accountable for providing the minimum OTL revenue standard while the district is liable for providing the minimum standard level of access to resources.

As a civil right, we argue for access beyond equality, equity, or adequacy. We argue for complete and differentiated levels of service for every student, and funding that allows for the provision of those services. This model deviates from past models in that high-standards are not determined by testing and metrics, but determined by access, availability, and how policymakers are supporting access and availability in every community. School finance reform in the United States has attempted to mediate schooling disparities, but has had little success. OTL allows policy makers to consider omni-directional reforms that promote student learning through differentiation beyond large sub-group categories or minimum achievement levels. Focusing on access of high-quality resources and the funding necessary to obtain those resources helps to establish and promote equitable schooling conditions for all students.

Conclusion

There is limited literature that frames school finance policy as being informed by civil rights. We conclude that as a civil right, sufficient school funding to access quality schooling services is necessary to ameliorate the historical disparities, segregation, and persecution of BIPOC communities in schooling. School finance policy praxis is often grounded in the hegemony and reproduction of White privilege that seeks to continue the status quo while simultaneously highlighting self-serving and passive school finance reform devoid of community participation. Inequity is reified by power brokers who seek to maintain oppressive practices in BIPOC communities. We conclude that by intersecting civil rights dialogue with school finance policy praxis, through the OTL framework, it is possible to minimize the schooling inequity to which BIPOC communities are accustomed. In essence we view OTL as both a liberatory practice and form of educational justice. Power brokers in the school finance policy pipeline must question their own epistemology and interrogate how oppression is embedded in their practices. They must recognize heuristics purposefully and consistently employed to make consequential decisions that have sabotaged public education in BIPOC communities. Individuals at all levels must bind themselves to each other in oppositional resistance against the hegemony and its reproduction of oppression.

BIPOC communities have engaged in oppositional resistance in order to support each other and institutionalize liberation as a community practice. BIPOC communities have had to find support amongst each other and find ways to circumvent those systems that wish to oppress our students within the schooling pipeline. By doing so, we have continued to assert our presence and make known our intentions to continue fighting for liberation, despite the constant violence and resistance to unencumbered BIPOC freedom. Thus, we maintain that sound policy solutions must include intersecting ideologies of civil rights and school finance equity in their strictest form. As a community of scholar-advocates, we maintain a critical hope that we are valuable and will impact, in our own way, school finance discourse. To do so we must continue advocating for alternative school finance approaches for our communities and for our students in order to assert ourselves into education reform and promote alternatives to the historical resource disparity that has oppressed BIPOC students and families.