



# A Quality Approach to School Funding

## Lessons Learned From School Finance Litigation

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By Carmel Martin, Ulrich Boser, Meg Benner, and Perpetual Baffour November 2018

Center for American Progress



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# Introduction and summary

In 1968, a sheet metal worker named Demetrio Rodriguez decided to file a lawsuit against the Edgewood Independent School District, a high-poverty district located just outside of San Antonio, Texas, serving a predominately Mexican American population. Rodriguez, the father of four children enrolled in the Edgewood district, was frustrated that the schools were dramatically underfunded and marred by dilapidated facilities and weak instruction.<sup>1</sup>

As part of his suit, Rodriguez joined 15 other parents who sued the state for an inequitable system of financing public schools. The case was filed under Rodriguez's name because he had been a longtime, leading voice in the community for equal rights. The suit, *San Antonio Independent School District v. Rodriguez*, eventually landed in the Supreme Court.<sup>2</sup>

The court's decision, however, did not live up to the dream of equal educational opportunity for which Rodriguez and the other parents had hoped. The court struck down the case, arguing that education was not a guaranteed, fundamental right under the U.S. constitution and that Texas' school finance system did not violate any protected rights.<sup>3</sup>

More than 40 years later, one of Rodriguez's children now teaches in the Edgewood Independent School District—the same district that he sued.<sup>4</sup> The district still gets less than its fair share of funds from the state of Texas. In fact, according to one recent analysis, Edgewood receives about \$5,000 less per pupil in education funding than Alamo Heights, a wealthier, neighboring school district.<sup>5</sup> Just as bad, the district continues to lag behind on academic measures, and many of its students score below grade level.<sup>6</sup>

This is a national problem. Since the 1970s, advocates across the country have filed dozens of school finance lawsuits. That litigation spurred critical conversation and important progress, but many large and pressing problems remain. In nearly half of all states, affluent districts still receive more funding from state and local governments for

their schools and students than poorer districts.<sup>7</sup> In some states, the issue is particularly egregious; for instance, high-poverty districts in Illinois receive 22 percent less in per-pupil funds in state and local dollars than the wealthiest school districts.<sup>8</sup>

Dollars must be at the start of every conversation around equity. Funding is a central component to providing a high-quality education and often leads to improved outcomes. A 2016 study found that, between 1990 and 2011, states that reformed school finance policies in order to allocate more funding to high-poverty school districts narrowed the achievement gap by an average of one-fifth.<sup>9</sup>

But allocating equal funding for every student does not guarantee that all students will have a rigorous educational experience.<sup>10</sup> School finance reform must focus on the quality of every school, from the excellence of the instruction to the rigor of the classes.

This idea is at the heart of this report. The authors argue that the efforts to resolve inequities through the courts or with legislation need to move beyond funding. Furthermore, reforms must focus on both funding levels and equal access to resources shown to be fundamental to a quality education. True educational equity will require two central reforms. First, there needs to be additional resources—not the same resources—in order to meet the needs of at-risk students.<sup>11</sup> Second, there should be accountability frameworks to ensure that the key ingredients to student success—access to early childhood programs, effective teachers, and rigorous curriculum—are available to students irrespective of their race, zip code, or economic status.

The authors came to these conclusions after examining the remedies implemented at the state level in response to a court order or as a result of political pressure created by state litigation. Past cases, which have focused on the equity or adequacy of school funding, have increased resources for low-income students but have not consistently ensured that all students have access to a high-quality education. Moreover, in some instances, remedies implemented under these frameworks have led to unintended consequences, including the leveling out of education funding in cases that focus on equity of dollars alone.

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## Overview of the findings

Based on an analysis of school finance litigation and research on school funding, the authors found the following:

- **Money matters for student achievement.** A growing body of evidence shows that increased spending on education leads to better student outcomes. When states invest in their public schools and create more equitable school finance systems, student achievement levels rise, and the positive effects are even greater among low-income students. States, districts, and schools must spend their money wisely, targeting their funds toward evidence-based interventions, such as high-quality early childhood programs. Overall, efforts to cut funding for education or services that support children are short-sighted and defy current research.
- **Students in high-poverty communities continue to have less access to core academic services that increase student outcomes.** Core services that have a significant influence on instructional quality and student performance are systematically unavailable to students in low-income schools relative to students in higher-income schools. These critical services include early childhood education, quality teachers, and exposure to rigorous curriculum.
- **Districts, states, and the federal government play crucial roles in equity.** States will have the greatest opportunity to guarantee that all students under their purview have access to a high-quality education, but local, state, and federal governments all play important roles in minimizing inequities in education funding.

Historically, the federal government has focused its investment in supporting education and related services on the most at-risk children, and it can uniquely address inequities in per-pupil spending across states. While students within the same school district can receive starkly different levels of funding, the widest variation in per-pupil spending exists across state boundaries. The differences in average state per-pupil spending ranges from around \$5,700 to \$17,000.<sup>12</sup>

- **While state legal cases have been powerful in closing spending gaps, litigation is inadequate.** School funding advocates have won a slew of court cases over the past four decades. Many fiscal equity lawsuits were important and led to additional resources for students; however, some cases had unintended consequences on overall levels of spending, for example, in California.<sup>13</sup> In many cases, a state's political climate and fiscal capacity proved to be just as important—if not more important—than court rulings in deciding fiscal reform.

- **Evaluating school finance policies based on equity or adequacy is insufficient.** The most common frameworks used in state school finance cases—evaluating school funding policies based on their “equity” or “adequacy”—do not acknowledge that students in poverty need more from their schools than their more affluent peers. Moreover, neither framework requires courts and policymakers to consider the quality of education, including teachers, curriculum, programs, and social supports.

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## Next steps

The school funding debate is as important today as it was in 1968 when Rodriguez demanded a better education for his children. Given these findings, the authors recommend principles to guide a new framework for school finance reform: a high-quality finance system. While the past few decades of state litigation focusing on equity or adequacy have increased awareness of the importance of fiscal equity, policymakers must refine the debate in order to achieve a high-quality education for all students.

The authors propose that the following key principles should guide school finance reform at the federal and state levels:

- **School funding systems should ensure equal access to core educational services.** School equity debates must go beyond funding, and states and local actors must support access to robust services. The Supreme Court of New Jersey described this issue well: The focus should shift from “financing [to the issue of] education itself.”<sup>14</sup> In other words, advocates should be focused on the quality of educational opportunities as the driving goal of an equitable education financing system. Using this as a model, advocates should prioritize increased access to high-quality educational opportunities that raise student achievement as part of an equitable education financing system.
- **School funding should provide significant additional resources for low-income students.** It costs more to educate low-income students and provide them with a robust education. To overcome issues of poverty, low-income students need significant additional funds. Research shows that increases in school spending result in greater educational and economic outcomes for all students, but these were “more pronounced for children from low-income families.”<sup>15</sup> Additional funding should help to attract highly qualified teachers, improve curriculum, and fund additional programs such as early childhood education. Weighted student funding—which

differentiates school budgeting based on the demographics that each school serves—can fund quality programs that will have the greatest impact on the student population.

- **Outcomes-based accountability should serve as a check on school funding systems.** Student achievement and outcomes matter. Any approach to supporting school finance reform should ensure that the money supports the resources, programs, and services that all students need to be prepared to fully participate in the workforce and their community. Policymakers must simultaneously refine education standards so they are aligned to the changing society and implement rigorous accountability systems to assess if schools are meeting these goals. States should use these outcomes, rather than dollars or other inputs, to evaluate if schools are providing all students with a high-quality education.
- **Education and child welfare programs should be fully funded.** Research shows that money matters, especially for students in poverty. States should restore, and exceed, funding to pre-Great Recession levels to allocate sufficient funding. In addition, the federal government should maintain or increase funding for necessary programs to support children and working families. Federal funding accounts for 38 percent of states' education budget—and 8.5 percent of overall spending for public education—so significant cuts to federal programs have severe and lasting effects on the services and opportunities that states can offer to all students.<sup>16</sup>

# The argument for a new framework for school finance reform

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A high-quality education is fundamental to our modern economy and democracy

The goals of public education must evolve with the changing world, and today, schools must prepare students for college, career, and civic engagement.

Ensuring educational opportunities is critical to the health of U.S. democracy, especially as the nation becomes more diverse.<sup>17</sup> Most state constitutions include some language indicating that education is the state's responsibility and a critical public service, and federal policymakers have long recognized that education strengthens the nation.<sup>18</sup> For example, Thomas Jefferson once said, "An educated citizenry is a vital requisite for our survival as a free people."<sup>19</sup>

A just K-12 public schooling system should meaningfully prepare all students, including the most disadvantaged, for their roles in public service or democratic governance. This is key to ensuring America's next generation of leaders serve, defend, and represent the various interests of society. Not surprisingly, the nation's military also depends on well-educated students. Without a robust education system, the armed forces would lack qualified recruits.

The strength of the economy is also closely tied to education. Recent studies show that gross domestic product (GDP) has a strong relationship with educational outcomes.<sup>20</sup> Moreover, education's importance to the economy continues to grow. In the 1970s, the majority of jobs were available to individuals with a high school diploma or less.<sup>21</sup> Today, virtually all well-paying jobs require some college.<sup>22</sup> By 2020, only 36 percent of all jobs will require a high school diploma or less. During the recent economic recovery, 95 percent of the jobs created went to workers with postsecondary education or training.<sup>23</sup>

Furthermore, education is one of the best predictors of future income. Over a lifetime, a college graduate earns \$1 million more, on average, than a student with only a high

school diploma.<sup>24</sup> Another study found that a millennial with a college degree earns, on average, \$17,500 more annually than a millennial with only a high school diploma.<sup>25</sup>

*Persistent inequities in education funding: The local, state, and federal role*  
After 50 years of state school finance litigation and school finance reform, some states have minimized inequities in per-pupil education across districts within state lines. However, significant inequities remain. Local, state, and federal governments all contribute to overall education funding and perpetuate some of these inequities. As a result, local, state, and federal actors must all work to revamp school funding systems with a focus on quality. States, specifically, will have a central role. The right to an education rests with the state, as articulated in state constitutions, and local and state governments provide the vast majority of school funding. Meanwhile, the federal government must continue to focus its funding and support on high-poverty schools and address inequities that exist across state lines.

#### *Funding inequities with local and state contributions*

Although state constitutions indicate that the right to education rests with the state, schools have historically been primarily funded at the local level. Specifically, local property taxes had been the main source of funding for public education. Because districts have vastly different property tax bases, the poorest districts raise less money than more affluent districts, creating disparities in per-pupil expenditures.<sup>26</sup> In fiscal year 2012—the most recent year for which data are available—local governments contributed 45 percent of overall education funding; state governments matched local contribution; and the federal government made up for the remaining 10 percent.<sup>27</sup>

New analyses disaggregate the allocations of local, state, and federal governments. Data compiled by the Urban Institute show that local education funding across the country is still highly regressive—although it has become slightly more progressive between 1995 and 2015. Students in poverty continue to receive less funding than their more affluent peers. High-poverty school districts in only four states—Minnesota, Louisiana, Tennessee, and Vermont—receive more local funds per pupil than more affluent districts.<sup>28</sup>

State funding formulas generally compensate for regressive local funding.<sup>29</sup> A 2018 report by The Education Trust found that in 20 states, high-poverty districts receive at least 5 percent more per pupil in combined state and local dollars than affluent districts. In 23 states, high-poverty and affluent districts receive about the same amount per pupil in state and local dollars. In four states, the highest-poverty dis-

districts receive significantly less per pupil in state and local funding than more affluent districts. And in Illinois, high-poverty districts received 22 percent less per pupil in state and local funds than more affluent districts.<sup>30</sup>

*The federal role: Addressing inequities across state lines*

Times have changed dramatically since the *Rodriguez* decision, and there is deepening consensus that federal government has an important role in supporting the education of students with the greatest needs.

The passage of the Elementary and Secondary Education Act (ESEA)—which was reauthorized in 2015 as the Every Student Succeeds Act—highlighted Congress’ recognition of the need for a federal role in ensuring equal educational opportunities. In fact, the ESEA was passed shortly after the Civil Rights Act, and then-President Lyndon B. Johnson, who championed the bill’s passage, saw the legislation as part of the broader movement for equality.<sup>31</sup> In his signing speech, Johnson stated, “By passing this bill, we bridge the gap between helplessness and hope for more than five million educationally deprived children.”<sup>32</sup> The ESEA’s clear purpose was to ensure a level playing field for low-income and minority students.

The federal investment in education increases the share of funding allocated to high-poverty districts.<sup>33</sup> However, the current federal investment does not minimize funding inequities across state lines, which are greater than the inequities among districts within states. These differences are so stark that students in certain states only receive a fraction of funds that students in other states receive. For example, according to a recent study by the Education Law Center, students in Mississippi only receive about 40 percent of the per-pupil funds of New Jersey students, while students in Alabama receive slightly less than 50 percent of the per-pupil funds as students in Connecticut.<sup>34</sup> Not surprisingly, both New Jersey and Connecticut outrank most states in academic performance, whereas Mississippi and Alabama fall toward the bottom of the list.<sup>35</sup>

## The rise of a new equity divide

While some states have made progress in addressing disparities within states, unequal access still exists within states. At the same time, inequities are greatest across states lines, as per-pupil spending across states varies dramatically.

Although school finance advocates and policymakers often compare spending between the poorest and wealthiest districts within a state, the differences in district-level spending across states are far starker. On average, school districts in the United States spend about \$11,885 per pupil—the cost of living adjusted for the 2012-13 school year.<sup>36</sup> However, some districts spend twice as much as districts in other states. For instance, the per-pupil spending among the 100 largest districts ranged from \$6,798 in Texas' Cypress-Fairbanks Independent School District to \$20,331 in New York City Public Schools.<sup>37</sup> These disparities persist even when taking into account districts with similar enrollment sizes and demographics.

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### The research: Money does matter

These extreme spending inequities have an impact, and a large body of research suggests that money does matter in education. When school districts spend money wisely, they have better outcomes, including higher test scores, increased graduation rates, and other improved indicators of student achievement.<sup>38</sup> More money also helps ensure that students have schools with better facilities and more curriculum options. This has clear implications for the public school system, as students who do not get their fair share of dollars do not get an equal chance to compete with their more advantaged peers.

For instance, according to a recent National Bureau of Economic Research (NBER) study, state fiscal reforms have had a positive impact on student outcomes—particularly among low-income students. In fact, the study found that spending increases improved high school graduation rates among low-income students and increased their adulthood earnings by 10 percent.<sup>39</sup> The study also found that, of the various approaches to school spending reform, fiscal initiatives that guaranteed a baseline amount of per-pupil funds—otherwise known as “foundation plans”—were the most effective in increasing overall per-pupil spending and reducing the wealth-based funding disparities between poor and affluent districts. Note that, when it comes to policy approaches, foundation plans are most similar to an adequacy framework—a point explored in greater detail below.<sup>40</sup>

Another recent NBER study confirmed this idea that fiscal reforms in adequacy cases have led to more progressive funding systems and increased student outcomes. In this study, researchers found that over the past 25 years, fiscal reforms—either as a result of a court order or a legislative effort—improved states’ education spending priorities and reduced funding disparities between high- and low-poverty districts. These reforms also contributed to student gains in reading and mathematics, with the largest increases among low-income students.<sup>41</sup>

Relatedly, beginning in 2010, a decline in public spending on education has negatively affected student outcomes. During the Great Recession, state and district funding for public education declined dramatically. As of 2017, 29 states’ funding had yet to rise to prerecession levels.<sup>42</sup> One study found that districts with the largest declines in public education spending during the recession had lower student achievement levels, which worsened throughout the recession.<sup>43</sup> C. Kirabo Jackson, a professor of human development and social policy at Northwestern University, asserts that the decline in National Assessment of Educational Progress (NAEP) scores in 2015 and 2017 is tied to the decline in education spending following the Great Recession.<sup>44</sup>

### There are dramatic gaps in access to core educational services

Inequities go beyond money. Core services, which make a huge difference in instructional quality and student performance, are systematically unavailable to students in low-income schools relative to students in higher-income schools. Put simply, school funding debates must go beyond the raw numbers and evaluate whether students have equitable access to the resources needed for success, including early childhood education, quality teachers, and exposure to challenging curriculum.

Early childhood education is a critical tool to level the playing field for students in poverty who generally start school academically behind their more affluent peers. For example, some studies suggest that, compared with their higher-income peers, low-income students start school with a smaller vocabulary.<sup>45</sup> High-quality early childhood education can lessen the differences and have a lasting impact on student achievement.<sup>46</sup>

Yet students in poverty are less likely to attend preschool programs. In 2013, about 54 percent of children with family incomes below \$50,000 did not attend any preschool, while only 36 percent of children with high-income families did not attend any preschool.<sup>47</sup> Expanding access to high-quality preschool is a focus of many district and state policymakers, but only three states and the District of Columbia have universal preschool.<sup>48</sup>

The effectiveness and experience of teachers also have a pronounced impact on instructional quality. No other in-school factor has as significant an impact on student achievement as the teacher at the front of the room.<sup>49</sup> And yet, high-poverty schools generally employ fewer effective teachers. In Washington, D.C., for instance, a much smaller percentage of highly effective teachers work in high-needs areas versus affluent ones.<sup>50</sup> Another report examined data from Los Angeles Unified School District and found that teachers in the top 25 percent of effectiveness are less likely to instruct lower-income students, as well as students who are Latino or black.<sup>51</sup>

Higher-poverty schools also have fewer experienced teachers and greater teacher turnover.<sup>52</sup> In school year 2012-2013, there was 22 percent teacher turnover in the highest-quartile-poverty schools, whereas there was only 13 percent turnover in schools with less than 34 percent of students in poverty.<sup>53</sup> Teacher experience most significantly increases effectiveness in the first five years in the classroom, but teachers with 20 years or more of experience achieve larger student gains, on average, than teachers with five years or less of experience.<sup>54</sup> Moreover, high teacher turnover creates instability and negatively affects student achievement within schools.<sup>55</sup>

Rigorous curriculum can significantly increase academic outcomes and prepare students for college and the workforce.<sup>56</sup> Unfortunately, again, students in high-poverty schools have inequitable access to rigorous curriculum, which undercuts their long-term academic outcomes and earning potential. For instance, a smaller percentage of high-poverty students have access to high school curriculum that prepares them for college and/or career. Fifty-three percent of low-income students graduate high school without college or career preparatory coursework, compared with 44 percent of their affluent peers.<sup>57</sup>

In some states, such as New York, the issue is particularly pressing. According to a 2018 study from The New York Equity Coalition, “White students had 230 percent more opportunities to earn college credit than their Latino and Black peers, despite representing only 8 percent more high school enrollees.”<sup>58</sup>

Studies by the federal government demonstrate that the unequal access to rigorous courses is a national problem. Data from the 2015-16 school year show that high schools with higher percentages of black and Latino students offer math and science courses at a lower rate relative to all high schools. The difference is greatest in terms of access to advanced mathematics, calculus, and physics.<sup>59</sup>

Research shows that more rigorous courses can have a transformative effect on student outcomes, regardless of a student's previous academic record. A study conducted in New York City examined the performance of students who previously struggled academically but were incorrectly placed on an instructional track intended for students with greater mathematical ability, finding that they performed well when placed in a rigorous instructional setting that held them to higher expectations.<sup>60</sup> For instance, an average student assigned to a low-achieving track had only a 2 percent chance of completing two college preparatory math classes over the course of high school. However, when placed on a high-achieving track, that same student had a 91 percent chance of completing two such classes.<sup>61</sup>

Furthermore, an analysis of the cost of different interventions found that transitioning to higher-quality curriculum provides a higher return on investment than many other reforms—for example, almost 40 times the return of class-size reduction.<sup>62</sup> Adopting rigorous curriculum, however, requires thoughtful selection of instructional materials and additional intensive academic services to students so they can meaningfully access more challenging coursework.

# School finance litigation: Powerful yet inadequate

Litigation has heightened awareness of the importance of fiscal equity in education and spurred necessary change in states across the country. The U.S. Supreme Court struck down *San Antonio Independent School District v. Rodriguez* by arguing that education was not a guaranteed federal right. Some litigants continue to attempt to overturn *Rodriguez* in order to establish a federal right to education, but until then, many advocates turn to the states. Numerous state courts have reinforced meaningful provisions in state constitutions and required legislative action to improve educational opportunities for all students. Advocates in various states have taken different approaches to advance equity—some with success and some with unintended outcomes.

The following section describes the decision in *Rodriguez* and examines examples of the different approaches that advocates have used to advance school finance reform within states. The authors highlight some of the unintended outcomes, as well as the most positive aspects of the remedies, in order to inform a new framework for a potential federal right moving forward.

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## Where it all began: *San Antonio Independent School District v. Rodriguez*

In *Rodriguez*, the plaintiffs argued that education was a fundamental interest under the U.S. Constitution because of its vital importance to both the right to vote and freedom of expression. In other words, the plaintiffs contended that education was a constitutional right because a certain level of education is necessary for the proper exercise of these rights.<sup>63</sup>

Yet the Supreme Court decided that public education was not guaranteed by the federal Constitution. Instead, it found that education was an important but voluntary service provided by the government, arguing that while the Constitution does guarantee its citizens the right to vote, it does not guarantee that individuals should be able to exercise this right to the best of their abilities or at their highest potential.<sup>64</sup> Therefore, according to the court, an education of the highest quality is not necessary for the proper exercise of rights.<sup>65</sup>

The Supreme Court also found that the Texas approach was constitutional because it provided the bare minimum necessary.<sup>66</sup> Texas was not refusing to provide any education to poor students. According to the court, the fact that some students—based on their parents’ income or ZIP code—received better education than others was not enough for the state to be in violation of the Constitution’s Equal Protection Clause.<sup>67</sup>

While the court refused to find a substantive right to education in the Constitution, it did hint at a potential minimum education requirement by emphasizing the adequacy of Texas’ system of providing education for each child.<sup>68</sup> In their dissent, former Justices Thurgood Marshall and William J. Brennan Jr. refuted the substantive right assertion, contending that funding disparities had a negative effect on school quality. Marshall argued that the burden of proof fell on the state to show that funding disparities did not grossly affect the quality of education that students received.<sup>69</sup> Moreover, this notion of a “quality education” also appeared in the majority opinion. The appellant’s brief, for instance, conceded that there were wide variations in education spending; but the document argued that the minimum level of funding provided by the state was still “enough.”<sup>70</sup>

The debate around the federal right to education is ongoing. In recent years, litigants in multiple states have filed suits to overturn *Rodriguez*. In 2016, families with students in Detroit Public Schools filed a suit arguing that Michigan violated the constitutional right to learn by failing to provide many students in underperforming schools “access to literacy.”<sup>71</sup> In July 2018, a federal judge agreed that the conditions in these schools “were nothing short of devastating” but that access to literacy, or a “minimally adequate education,” was not a fundamental right.<sup>72</sup>

Similarly, in 2016, a group of parents and students filed a federal lawsuit in Connecticut arguing that state laws systematically prevent some students from receiving minimally acceptable education.<sup>73</sup> And in 2017, the Southern Poverty Law Center challenged the federal constitutionality of education conditions in Mississippi.<sup>74</sup> A judge has yet to rule in either case.<sup>75</sup>

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## The debate over equity: First generation of school funding reform

Two of the earliest and best-known instances of state equity cases occurred during the mid-1970s. Both cases resulted in victories: one in California (*Serrano v. Priest*) and the other in New Jersey (*Robinson v. Cahill*). In both cases, the respective courts used state constitutional provisions requiring equal protection to strike down local

property tax-based systems and to order states to build new funding systems that did not heavily rely on a district's property wealth.<sup>76</sup>

Following these successes, equity cases were brought in virtually every state. Many states have modified, although not completely eradicated, their property tax-based systems by increasing the state's share in total education spending. As a result, resource differences among districts in some states have declined.<sup>77</sup>

However, in other states, equity cases have had a negative impact on total spending due to the narrow focus on ensuring parity among districts within a state. In California, the *Serrano* cases provide the most notorious example. The frame of equalized funding pitted high- and low-wealth districts against each other. Therefore, rather than lifting up the system as a whole, it drove toward the lowest common denominator.

In 1976, the California court's ruling in *Serrano* declared that the state's school finance system violated the Equal Protection Clause and was unconstitutional. Following *Serrano*, California prioritized a property tax-based solution that would close spending gaps between poor and wealthy districts. The court ordered the state to equalize property tax rates and revenues between districts so that, by 1980, disparities in per-pupil spending levels would be no more than \$100.<sup>78</sup>

In 1978, Proposition 13, a resolution that placed a cap on property tax rates and restricted annual increases on property value, limited the opportunity to use tax cases as a means to equalize school funding.<sup>79</sup> Instead, local districts could only rely on state revenue for funding parity, making it nearly impossible for any district to pay for new policies and initiatives.

California's primary concern was equity of per-pupil funding levels, not the adequacy of funding levels. By 1986, more than 90 percent of California students resided in school districts with a per-pupil funding disparity of less than \$100 between them.<sup>80</sup> But the victory was shortsighted. The state and districts lowered their overall expenditures, and California no longer led the nation in education spending.<sup>81</sup> In fact, in 1965, before the *Serrano* ruling, California ranked fifth in the nation in per-pupil spending, but by 1995, the state fell to 42nd.<sup>82</sup> As a result, student achievement also began to drop. In 2017, California ranked 44th based on NAEP scores, graduation rate, college readiness, and access to preschool.<sup>83</sup> In 2013, California implemented a new policy to tackle school funding and created the Local Control Funding Formula—a formula that is not based on property taxes and provides additional resources for students in need of additional supports, including those from low-income families, English language learners, and students with disabilities.<sup>84</sup>

Similarly, in Texas, the *Edgewood Independent School District v. Kirby* case, which was filed after the *Rodriguez* decision, turned the issue of school finance into a zero-sum game. In 1989, the court ruled the state finance system unconstitutional on grounds of equity.<sup>85</sup> In response, the Texas Legislature attempted to reduce differences in local tax revenues by recapturing a wealthy district's excess revenues and redistributing them to poorer districts—in what some label a “Robin Hood” approach—or by placing a cap on districts' property taxes.<sup>86</sup>

Under this reform, by the early 2000s, Texas successfully reduced funding disparities between wealthier and poorer districts from 700 to 1, as was the case during the first *Edgewood* decision, to 28 to 1.<sup>87</sup> However, the Robin Hood approach in Texas proved problematic, with advocates on both the left and right railing against the provision. The “recapture” approach, in particular, created a disincentive for taxpayers in wealthier districts to support an increase in local property taxes. According to one news report: “While those in economically challenged areas said funding was inadequate, districts in well-to-do locales argued that voters often refuse to approve local tax increases because much of the money would go elsewhere.”<sup>88</sup>

The state legislature also attempted to place a cap on a district's property tax rates as a way to restrict wealthier districts from raising too much in revenue. However, in *Neeley v. West Orange*, the Texas Supreme Court ruled that this was essentially a statewide property tax, which is prohibited in the state constitution.<sup>89</sup>

In 2006, the state legislature passed H.B. 1, a new policy to equalize funding across districts by supplementing district budgets with state funds; but Texas struggled to allocate sufficient funds.<sup>90</sup> The average per-pupil spending declined—except for during 2009 through 2011, when Texas received additional funding from the American Recovery and Reinvestment Act.<sup>91</sup>

Little is likely to change. In 2016, the Texas Supreme Court ruled that the state met its minimal constitutional duty and that the court should not “usurp legislative authority” in deciding how Texas allocates funds to education.<sup>92</sup>

In the end, equity cases spurred policy change to minimize funding inequities. Yet in some states, the focus on equal dollars, rather than the quality of services provided to students, led to a leveling out of public investment in education.<sup>93</sup> In later cases, litigants and courts moved beyond the concept of equal funding levels, instead adopting “adequacy” as the framework.

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## Issues of adequacy: Second generation of school funding reform

Over the past few decades, an increasing number of state fiscal cases have focused on issues of adequacy, or a minimum amount of per-pupil funds. These cases rely on states to articulate clear educational goals for all students, identify programs or resources to meet those expectations, and allocate the funds to support necessary inputs.<sup>94</sup> In some cases, this frame has created a context for weak policy, as courts have interpreted “adequate” to mean a bare minimum defined by the state. However, in several cases, this frame has driven efforts to articulate what level of funding and what types of resources are necessary to ensure equal educational opportunity. Cases in New Jersey and Massachusetts provide examples of the latter.

### Abbott v. Burke: Raising the bar for school funding in New Jersey

*Abbott v. Burke* is often cited as a success story under an adequacy framework. Although the road to advocacy was a long one, which involved a series of compliance suits following the original court decision, the ultimate remedies implemented were substantial.

*Abbott* focused on New Jersey’s poorest urban districts—28 districts at first, later expanded to 31.<sup>95</sup> The plaintiffs argued that the state was failing to provide high-poverty districts with the funds necessary for a “thorough and efficient education,” which was required by the state constitution.<sup>96</sup> While *Abbott* was decided on adequacy grounds, the court orders called for reforms that both equalized funding across districts and provided funds for specific programs—above and beyond equalization.<sup>97</sup>

In the initial rulings, the court explicitly called for “parity,” or equality, in funding.<sup>98</sup> Following the first major *Abbott* ruling in 1990, the New Jersey Legislature responded with the Quality Education Act (QEA).<sup>99</sup> While the QEA did not give the *Abbott* districts full equity, it substantially improved funding for the districts. In 1996, the state legislature made another attempt to equalize funding with the Comprehensive Education Improvement and Financing Act, but the court found this effort insufficient. The court also continued to order parity in foundation funding, and by the 1997-98 school year, state aid increased by \$246 million.<sup>100</sup>

In later rulings, the court began mandating funding for specific programs that could improve student outcomes and close achievement gaps.<sup>101</sup> In the 1998 *Abbott V* decision, the court mandated full-day kindergarten, half-day preschool, whole-school reform for elementary schools, college-transition programs for secondary schools,

and other supplemental programs in Abbott districts. The court also granted districts the right to seek additional funding for on-site social services and other supplemental programs as needed.<sup>102</sup>

In 2000, the court clarified its requirements on the implementation of “high-quality preschool” in the Abbott districts, including clear standards, a qualified teaching staff, and smaller class sizes.<sup>103</sup> A series of later *Abbott* rulings also focused on the provision of state funding to schools for renovations and constructions. In 2008, the legislature earmarked almost \$3 billion to help build schools in the state’s cities.<sup>104</sup>

The court order for whole-school reform in elementary schools also spurred the New Jersey commissioner of education to implement Success for All, a literacy initiative for low-income, at-risk students, statewide.<sup>105</sup> This national program has a long record of increasing reading achievement, closing test score gaps, reducing assignments of students to special education classes, and reducing rates of grade retention.<sup>106</sup>

The *Abbott* decisions have been critical in improving both fiscal equity and school quality in the state. New Jersey’s approach was aggressive and expansive, and the court was actively involved in enforcing parity and providing increased resources to under-resourced districts. The court even asserted its new focus on quality, stating, “The comprehensive whole-school reform and supplemental programs approved by the Court amount to a marked shift in emphasis from financing as such to education itself.”<sup>107</sup>

New Jersey consistently ranks high in education performance and quality, as well as progress in narrowing the achievement gap.<sup>108</sup> Many observers believe that the fiscal remedies established by *Abbott* have helped to increase student outcomes in the state.<sup>109</sup>

#### *McDuffy v. Secretary of the Executive Office of Education: Equitable school funding in Massachusetts*

In Massachusetts, *McDuffy v. Secretary of the Executive Office of Education* propelled education funding reform.<sup>110</sup> In 1993, the Massachusetts Supreme Judicial Court sided with the plaintiff’s argument that the state failed to meet its constitutional duty to provide all students with an adequate education of sufficiently high quality. After the ruling, the Massachusetts Legislature passed one of the most comprehensive reform bills of its time, the Massachusetts Education Reform Act (MERA), which restructured the state’s school finance system and made changes to other areas of education, including new standards, an accountability system, and an authorization of charter schools.<sup>111</sup>

One hallmark of the bill was its introduction of a foundation formula, which aimed to bring all Massachusetts school districts to an adequate level of per-pupil funding by 2020 or over a seven-year phase-in period.<sup>112</sup> By 2000, all districts were at or above their targeted foundation level.<sup>113</sup> By 2002, the total funding doubled to nearly \$3 billion.<sup>114</sup> In 2005, the court ruled in *Hancock v. Commissioner of Education* that the state had established a system that sufficiently addressed inequities and met the constitutional standard.<sup>115</sup>

Student outcomes remain strong. Massachusetts has some of the highest growth rates of any state.<sup>116</sup> Observers have argued that the state’s fiscal reforms are partially behind these gains.<sup>117</sup> Other research supports this view, showing that an adequacy frame does more to improve outcomes for students. For example, a 2016 NBER study showed that of the various approaches to school spending reform, fiscal initiatives that guarantee a baseline amount of per-pupil funds—otherwise known as foundation plans—were the most effective in increasing overall per-pupil spending and reducing funding disparities between poor and affluent districts. Foundation plans are similar to the adequacy framework; compared with equalization plans, they tend to result in increases in spending across all districts over time.<sup>118</sup>

To be sure, adequacy has its limitations as a policy. When defined narrowly, the reforms can serve as a barrier to progress. For instance, the U.S. Supreme Court discussed adequacy in *Rodriguez* but held that “the State’s contribution ... was designed to provide an adequate minimum educational offering in every school in the State.”<sup>119</sup> Similarly, in *Connecticut Coalition for Justice in Education Funding v. Rell*, the Connecticut Supreme Court ruled that the state allocated sufficient funding for minimally adequate facilitations, materials, curricula, and teachers, ultimately determining that decisions about the types of services a district provides were “quintessentially legislative in nature.”<sup>120</sup>

# Recommendations

The nation needs a third way to understand school funding. Drawing from this analysis, the authors recommend that school finance reform emphasize a high-quality education program for all students. To reach this aim, students with greater needs must receive additional funding, and that funding needs to be targeted at the reforms that matter. Finally, accountability systems and academic standards are necessary to measure quality and shine a light on inequities.

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## Putting forth a federal high-quality finance system: The third wave of school finance

The issue of quality has long been a part of the school funding debate. Justice Marshall mentioned the delivery of high-caliber education in his dissenting opinion in the *Rodriguez* case.<sup>121</sup> As Marshall wrote, “The Court today decides, in effect, that a State may constitutionally vary the quality of education which it offers its children in accordance with the amount of taxable wealth located in the school districts within which they reside.”<sup>122</sup> But the issue of quality needs to move front and center and drive school funding debates moving forward. In short, low-income students need more than equity or adequacy; they need sufficient funding to ensure success—which means more funding, not equal funding—as well as equal access to core services with accountability for outcomes.

The following principles should guide school finance reform based on quality at the federal, state, and local levels, but states must drive reform to school funding systems, as local and state dollars account for the vast majority of overall education funding.

- **School funding systems should ensure equal access to core educational services.** School equity debates must go beyond funding, and states must support equal access to robust services. The New Jersey Supreme Court described this issue well in the *Abbott* ruling: The focus should shift from “financing [to the issue of] education

itself.”<sup>123</sup> The New Jersey court minimized educational disparities by requiring the legislature to implement high-quality policies and programs that are linked to improved student outcomes.

Using this as a model, school finance advocates should identify the core components of a high-quality education and ensure equal access to those services as a check on a weighted student funding formula. There are many factors that contribute to a school’s and a student’s success, but research shows that, at a minimum, a next-generation system should have systems to ensure access to a strong teaching workforce,<sup>124</sup> access to high-quality early childhood programs,<sup>125</sup> and a robust curriculum and instructional tools.<sup>126</sup>

Specifically, policymakers should fund critical programs to increase the quality of all teachers. Policymakers and school funding advocates should protect and increase funding for teacher compensation and professional development, targeting low-income schools. Programs designed to reduce the cost of teacher preparation—such as the federal Teacher Education Assistance for College and Higher Education (TEACH) loan forgiveness program—should be enhanced for those willing to teach in high-poverty schools.<sup>127</sup>

The federal government and state policymakers must play a role in ensuring an equitable distribution of skilled and experienced teachers. Under the recently passed Every Student Succeeds Act (ESSA), states are required to describe how they will ensure that low-income students and students of color are not more likely to be taught by teachers who are less effective or experienced. Some states took this requirement seriously and used it as an opportunity for developing clear goals and timelines for reducing these inequities, as well as specific strategies for reaching these goals and reporting requirements that ensure transparency should the state fail to reach their goals.<sup>128</sup> However, many states did not make nearly this effort and have significant room to improve, both on the equitable distribution of teachers and their response to the problem.<sup>129</sup>

Access to rigorous standards, curricula, and courses is also a key ingredient to a high-quality education. At a minimum, states should ensure that all students have access to algebra in eighth grade and to Advanced Placement (AP) or similar rigorous courses in high schools.

Indiana provides one such example. Starting in 2007, the state made a rigorous high school curriculum—named Core 40—aligned to entry coursework in the state’s

public universities the default for all students.<sup>130</sup> Before enrolling in less rigorous coursework, students and their families must meet with a high school counselor and agree that lower academic standards are better suited for the student's need.<sup>131</sup>

Indiana wanted to incentivize and support its low-income students to complete rigorous coursework. Therefore, “students who complete a Core 40 diploma and meet other financial aid and grade requirements can receive up to 90 percent of approved tuition and fees at eligible colleges.”<sup>132</sup> In 2017, 87 percent of Indiana's public school students earn at least a Core 40 diploma, including 78 percent of black students, 83 percent of Hispanic students, 90 percent of white students, and 83 percent of low-income students.<sup>133</sup>

Finally, policymakers and school funding advocates must ensure equitable access to early childhood programs and other programs that offer child care. This would require federal and state governments to increase their investment in early childhood in order to ensure that all families, regardless of income, are able to access high-quality early childhood programs.<sup>134</sup> Moreover, to improve the quality of all early childhood programs, public investment should incentivize programs to adopt rigorous standards and offers teachers in early childhood programs a suitable wage.

- **School funding should provide extra money for low-income students and end cross-state inequities.** In order to overcome issues of poverty, low-income students need additional funds. Some research shows that students in poverty require twice the funding as students from affluent backgrounds.<sup>135</sup> These dollars should attract effective teachers, improve curriculum, and fund programs such as early childhood education.

States with successful remediation efforts have provided more total funds to their low-income students, and in some areas, low-income students receive more than 20 percent more in total funding than their affluent peers.<sup>136</sup> In New Jersey, for instance, students in the poorest districts receive \$3,000 more in per-pupil revenue per year than students in the wealthiest districts.<sup>137</sup> Similarly, in California's new funding system, the state now spends about a third more on low-income students.<sup>138</sup> An innovative and robust funding system should follow these models and heed the research that proves that money matters, especially for low-income students.

Weighted student funding can help navigate the balance between higher-quality and better supports. Under this program, districts give low-income students, students with disabilities, and other at-risk populations extra “weights” so that additional

funding is provided above the base per-pupil level. Funding is allocated to schools based on the number and demographics of students they serve.<sup>139</sup> Weighted student funding models provide principals with discretion over the use of schools' budgets. Principals can build their school budget, staff, and program options to best serve their students.

Several states, including California and Rhode Island, have rolled out comprehensive school funding reforms that include weighted student funding. The impact of these programs is yet to be determined, but early results show at least some promise. California's new policy, it seems, has had a positive impact on high school graduate rates. Specifically, the graduation rate of high-need students who received an additional \$1,000 in per-pupil spending from the state increased by an average of 5 percent.<sup>140</sup>

Weighted student formulas should be tied to accountability frameworks that look at outcomes as well as equal access to core services, including early childhood education, effective teachers, and rigorous college- and career-ready curriculum.

- **Outcomes-based accountability should serve as a check on school funding systems.**

Fiscal reform must include efforts to increase the rigor of academic standards and strengthen accountability provisions. Such reforms make more data available to evaluate the quality of every public school and ensure that students are held to the same high levels of performance—irrespective of their race, income, or ZIP code.

Indeed, research has shown that states that adopt rigorous academic standards are more successful in increasing outcomes of low-income students. For example, a 2016 analysis found that states that fully embrace standards-based reform are more successful at improving the academic outcomes of low-income students, while states that are more resistant to adopting rigorous assessments post poorer results.<sup>141</sup>

In other words, school funding reform is not a replacement for accountability systems. ESSA requires all states to adopt rigorous standards and hold schools accountable for student performance. It also maintains a requirement that every school must disaggregate student performance by student population—such as students from low-income families, English language learners, homeless and foster youth, and more.<sup>142</sup>

Relatedly, weighted student funding also works best in conjunction with other reforms that emphasize quality and outcomes. In the last decade, many districts

have implemented weighted student funding, including Houston, Baltimore, and New York City. The districts that have also included thoughtful indicators on student performance and maximized principal budget autonomy appear to be most successful in narrowing achievement gaps.<sup>143</sup>

Given the level of flexibility afforded to local actors in most weighted student formula frameworks, accountability for outcomes is essential to ensuring that the additional resources reach the students most in need. In addition, there must be a check to ensure that weighted formulas increase access to fundamental core services such as early childhood education.

Accountability systems should also require districts to report transparent school-level outcome data. School report cards should specify students' outcomes as well as the availability and quality of core services that research shows are essential to provide a high-quality education. Such reporting must also be married with efforts to turn around low-performing schools and ensure support for schools that need the most help.

- **Education and child welfare programs should be fully funded.** Both research and successful school finance reform show that money matters. Federal, state, and local policymakers should maintain or increase investments in education and child welfare programs. This is particularly important following the economic downturn in 2008, which negatively affected education funding as most states cut funding for education. As of 2015, 29 states had yet to restore funding to pre-2008 per-pupil funding levels.<sup>144</sup>

The Trump administration has consistently proposed significant cuts to education and child welfare programs that would devastate states' attempts to maintain or restore funding levels.<sup>145</sup> Federal funding accounts for 38 percent of states' education funding—and 8.5 percent of overall public elementary and secondary education—so significant cuts to federal programs would have severe and lasting effects on the services and opportunities that states can offer to all students.<sup>146</sup> If states receive less federal funding, state constitutions' balanced budget provisions would force states to either reduce spending or raise taxes.<sup>147</sup>

Moreover, President Donald Trump has advocated to reduce federal funding for other child welfare programs, including Medicaid.<sup>148</sup> Currently, districts leverage Medicaid funding to provide screening, diagnosis, and treatment services. They also supplement their budgets to provide medical services to students with disabilities.<sup>149</sup>

When students' medical needs are met, schools can focus their limited dollars on students' academic and social development. With less Medicaid funding, however, schools may further struggle to provide a quality education for students who do not have access to vision or hearing screenings or have an undiagnosed chronic condition.

When considering creating equitable services and opportunities for all students, federal, state, and district actors must preserve funding for education and other funding streams that meet children's needs.

# Conclusion

Since *Rodriguez*, state litigation and legislative action have increased awareness of the importance of fiscal equity in education. Much can be learned from these efforts, and it is clear that neither equity nor adequacy alone is enough. Looking forward, federal, state, and local governments should learn from certain states' successes in order to develop funding systems that focus on quality and outcomes. School finance systems should be progressive and student-centered. States must set clear expectations, align funding and programming with these standards, and recognize the extra support that disadvantaged students need in terms of effective programs.

Justice Marshall once argued, “Sometimes history takes things into its own hands,” and no doubt, he was right.<sup>150</sup> Yet at the same time, policymakers—especially those at the state level—must take school finance into their own hands and do right by students.

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