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Opportunity Gaps: The Injustice Underneath Achievement Gaps in Our Public Schools

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OPPORTUNITY GAPS: THE INJUSTICE UNDERNEATH ACHIEVEMENT GAPS IN OUR PUBLIC SCHOOLS

ROSS WIENER*

Students growing up in poverty face numerous disadvantages in their lives outside of school. Rather than compensating for such disadvantages, systems of public education tend to exacerbate inequality by providing less educational opportunity to students from poverty than to their more affluent peers. Federal, state, and district policies direct less funding to poor states, districts, schools, and children. Similarly, by any measure of teacher quality, schools serving poor students have fewer high-quality teachers. Lastly, poor students are taught with curricula that provide neither the preparation for, nor the expectation of, participation and success in postsecondary education.

A mistaken belief that poor students are destined for academic failure supports the perpetuation of these inequalities. The dramatic variation in achievement among students from poverty, the examples of high-poverty schools whose students achieve above the levels of their middle-income and affluent peers, and the research establishing teacher quality as the most significant determinant of learning disprove this belief. Two initiatives are promising for achieving equity: weighted student funding, which funds schools based on the needs of the children in the school, and the establishment of a default college preparation curriculum for all students. Even taken together, these recommendations will not solve all the problems of unequal educational opportunities, but both would help bring more equity and consistent quality to our public schools. Above all, positive change will require political leadership, accountability for student results, and a belief in the potential of every student.

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INTRODUCTION

Growing up in poverty makes it harder for young people to achieve academic success, and this country tolerates far too much inequality in access to health care, housing, and other necessities. But instead of structuring our systems of public education to ameliorate the effects of poverty, we have designed systems that compound the disadvantages. In essence, even though we know that poor children need extra help in school, we give them less of everything that we know could help them succeed: less money, lower access to challenging curricula, and fewer qualified and effective teachers.

The systematic denial of equitable educational opportunities to students growing up in poverty goes against our egalitarian ideals, undermines our democracy, and increasingly threatens America's global leadership. And while we have a lot of evidence that poor students in our public schools *do not* do well, none of this should make us believe that they *cannot* do well. The truth is that we have never offered these students a chance. What often gets lost in debates about poverty and education is that public education is not merely a victim of the greater disadvantages poor students face outside the schools;¹ for poor students, the education system itself is an independent source of additional disadvantages.

This Article addresses class inequality in public education. Part II explains systemic inequalities to which low-income, public-school students are subjected, Part III explores the evidence that

1. See ETS Policy Info. Ctr., Educ. Testing Serv., *Addressing Achievement Gaps: Progress and Prospects for Minority and Socioeconomically Disadvantaged Students and English-Language Learners*, POL'Y NOTES, Winter 2005, at 1, 3-6 (discussing, in addition to in-school factors, some of the factors outside of schools, such as exposure to violence, de facto segregation, and psychological factors, that contribute to the lower achievement of disadvantaged students).

dramatically different results could be achieved if we changed these patterns, and Part IV proposes some promising policies for ameliorating the effects of poverty on educational outcomes. Taken together, this evidence challenges the notion that the achievement gap is inevitable and indicts the educational system for its role in perpetuating it.

I. BACKGROUND

Americans allow pervasive inequalities to persist at least in part because we have bought into two powerful and mutually reinforcing myths. First among these is the idea that public education already operates about as fairly as it could, teaching all students essentially the same things. Second is the notion that, even if we provided them with more help in school, poor children are too damaged by their poverty or bad parenting to ever achieve at high levels.

Both beliefs are wrong. First, public education is brutally efficient at denying meaningful educational opportunities to children who are growing up in poverty. With relentless effectiveness, it shortchanges such children in everything from the amount of funding their schools receive, to the qualifications of their teachers, to the rigor of their daily assignments.² Second, both research and the existence of high-poverty, high-performing schools confirm that low-income students can and do achieve at the highest levels when we give them the right opportunities and supports.³

The consequences of the status quo are devastating. On the National Assessment of Educational Progress (“NAEP”), less than half of students from low-income families have demonstrated even basic skills in reading by the fourth grade, whereas more than three of every four non-poor students have surpassed this level.⁴ In eighth-grade mathematics, when students need to transition beyond computation into advanced math coursework, half of all low-income students have below-basic skills, compared to just 21% of non-poor students.⁵ These patterns continue—from lower high school graduation rates⁶ all the way through diminished college access and

2. See *infra* Part II.

3. See *infra* Part III.

4. See National Center for Education Statistics, NAEP Data Explorer, <http://nces.ed.gov/nationsreportcard/nde> (last visited Mar. 11, 2007).

5. See *id.*

6. EDUC. WK., DIPLOMAS COUNT: AN ESSENTIAL GUIDE TO GRADUATION POLICY AND RATES 2 (2006), available at <http://www.edweek.org/media/ew/dc/2006/41s->

success.⁷ The final product? While 75% of students from affluent families have graduated from college by the age of twenty-four, the likelihood that a student from a poor family has a bachelor's degree by that age is just 9%.⁸

Indeed, even though Americans pride themselves on creating the land of opportunity, the truth is that America has less social mobility today than in the early nineties,⁹ and less than almost any other industrialized country.¹⁰ A lot of the growing inequality relates to America's inability to educate so many of its young people. While there used to be broad opportunity to enter the middle class with a strong work ethic and a strong back, it now requires higher levels of knowledge and learning.¹¹

II. SYSTEMIC INEQUITY COMPOUNDS THE DISADVANTAGES OF POVERTY

A. *Funding: Less Money Where It Is Needed Most*

Many inputs in the education equation are difficult to quantify, and the simplest to measure are not always the most significant. That said, you can tell a lot about priorities by looking at where money is spent, and the patterns in education funding reveal inequity at every level: federal, state, and local. Last year, the Education Trust issued *Funding Gaps 2006*, a report that used original data analysis to systematically document these inequities at all three levels of government.¹²

dc-patterns.pdf (estimating that 70% of all students, and that only 60% of students in high-poverty school districts, graduate from high school on-time with a regular diploma).

7. KATI HAYCOCK, EDUC. TRUST, PROMISE ABANDONED: HOW POLICY CHOICES AND INSTITUTIONAL PRACTICES RESTRICT COLLEGE OPPORTUNITIES 3 (2006), available at <http://www2.edtrust.org/NR/rdonlyres/B6772F1A-116D-4827-A326-F8CFAD33975A/0/PromiseAbandonedHigherEd.pdf> (showing the college attendance rates of the highest-achieving low-income students to be the same as the rates for the lowest-achieving high-income students).

8. *Id.* at 2 (citing *Family Income and Higher Education Opportunity 1970 to 2003*, POSTSECONDARY EDUC. OPPORTUNITY, June 2005, at 1, 1).

9. TOM HERTZ, CTR. FOR AM. PROGRESS, UNDERSTANDING MOBILITY IN AMERICA, at ii (2006), available at http://www.americanprogress.org/issues/2006/04/Hertz_MobilityAnalysis.pdf.

10. *Id.* at 2.

11. Anthony P. Carnevale, *Discounting Education's Value*, CHRON. HIGHER EDUC., Sept. 9, 2006, at B6 (examining labor market trends and observing that college-educated workers are staying in the middle class or moving into the upper class of wage earners, but that workers without college degrees increasingly are relegated to lower-wage jobs).

12. See EDUC. TRUST, FUNDING GAPS 2006 TECHNICAL APPENDIX (2006), available at <http://www2.edtrust.org/NR/rdonlyres/CFB01BC6-44E5-46B9-A434-F1D89620ED1B/0/>

At the federal level, the desire to achieve equity has not translated into policy that effectively does so. Since the adoption of the Elementary and Secondary Education Act (“ESEA”) in 1965 as part of President Lyndon B. Johnson’s Great Society initiative, the federal government has sought to ensure that students growing up in poverty get *additional* educational opportunities in school.¹³ By far the largest program in ESEA is Title I, which provided approximately \$13 billion to public education in 2006 for the purpose of providing disadvantaged students with the additional resources necessary to attain a high-quality education.¹⁴ Yet, even though the purpose of Title I is to ameliorate the impact of poverty on education, the funding formulas imbedded in the law tend to provide greater per pupil support to school systems in relatively wealthier states, exacerbating very large differences in education funding between states, rather than narrowing them.¹⁵

Unlike other federal education programs, the funding formula in Title I adjusts the federal contribution based on average per pupil public education expenditures within each state.¹⁶ While this appears to reward states that dedicate more of their own resources to education, the formula ignores differences in state capacity (i.e., the amount of wealth in the state that could be taxed to pay for

FundingGap2006TA.pdf (explaining the methodology by which data from the U.S. Census Bureau and the U.S. Department of Education was analyzed to produce the conclusions of the *Funding Gaps 2006* report).

13. See FREDERICK M. HESS & MICHAEL J. PETRILLI, NO CHILD LEFT BEHIND: PRIMER 9 (2006) (detailing the history of the Elementary and Secondary Education Act and its role in the War on Poverty).

14. No Child Left Behind Act of 2001, Pub. L. No. 107-110, § 1002, 115 Stat. 1425, 1440 (2002) (codified as amended at 20 U.S.C. § 6302 (Supp. II 2002)). The U.S. Department of Education reported that \$12.7 billion per year was appropriated for Title I in fiscal years 2005, 2006, and 2007. See U.S. DEP’T OF EDUC., FISCAL YEAR 2001–2008 STATE TABLES FOR THE U.S. DEPARTMENT OF EDUCATION 1 (2006), *available at* <http://www.ed.gov/about/overview/budget/statetables/07stbyprogram.pdf>.

15. Goodwin Liu, *Interstate Inequality in Educational Opportunity*, 81 N.Y.U. L. REV. 2051, 2052 (2006) (analyzing differences across states in education funding and concluding that these differences are more highly correlated with differences in capacity than differences in state effort, and recommending changes to federal policy that would address these disparities). For several discussions that place federal funding inequalities in the context of broader educational funding inequality, see generally EDUC. TRUST, FUNDING GAPS 2006 (2006), *available at* <http://www2.edtrust.org/NR/rdonlyres/CDEF9403-5A75-437E-93FF-EBF1174181FB/0/FundingGap2006.pdf> (containing articles by Goodwin Liu, Ross Wiener, Eli Pristoop, and Marguerite Roza).

16. Goodwin Liu, *How the Federal Government Makes Rich States Richer*, in FUNDING GAPS 2006, *supra* note 15, at 2, 2 (noting that federal programs for “special education, English language instruction, and child nutrition, all . . . assign equal weight to eligible children regardless of the state where they reside”).

education) and state effort (i.e., the rate at which state wealth actually is taxed to pay for education). In reality, higher spending on education is more highly correlated with state wealth than with state effort.¹⁷ The effect is to reward relatively wealthier states with richer federal aid, even though low-wealth states serve disproportionate numbers of students growing up in poverty. For example, in 2004 Massachusetts had fewer students growing up in poverty than Oklahoma, but Massachusetts received more than twice as much money from Title I as Oklahoma.¹⁸

The unequal funding of the states by the federal government is mirrored by the unequal funding of districts by state and local government within the states.¹⁹ Not counting federal Title I money, school districts with the highest concentration of poverty get less state and local money than the districts with the fewest low-income students.²⁰ These gaps add up to significant inequity: a typical elementary school of 400 students in a high-poverty district has \$330,000 less funding than its typical counterpart in an affluent district.²¹ While some states have actually structured their funding systems to direct more state resources to high-poverty school districts (examples include Massachusetts, Minnesota, and New Jersey),²² the majority of states continue to spend more in affluent districts and less in districts with the most low-income students.²³ New York and Illinois are among the worst offenders, with funding gaps around \$2,000 per student, per year.²⁴

This “funding gap” data actually understates the monetary disadvantages imposed on high-poverty schools. The Education Trust’s *Funding Gaps* reports historically have examined differences *between* school districts in the same state.²⁵ But these disparities, which favor affluent school districts over poorer districts, are replicated *within* districts in how they fund individual schools. Schools serving the highest concentrations of poor children get significantly less resources than lower-poverty schools *in the very*

17. *Id.*

18. *Id.* at 3.

19. Ross Wiener & Eli Pristoop, *How States Shortchange the Districts That Need the Most Help*, in *FUNDING GAPS* 2006, *supra* note 15, at 5, 7.

20. *Id.*

21. *Id.* at 6 (calculation based on \$825 more per student in affluent and high-poverty districts times 400 pupils in a typical elementary school).

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* at 5.

*same school district.*²⁶ These intradistrict inequities do not get as much attention and are not as well understood as inter-state and inter-district inequities, but they are every bit as devastating to the prospects of poor students.

The most pernicious aspect of intra-district inequality is the distribution of teacher talent and teacher salaries. There are two common, and mutually reinforcing, practices that lead to these disparities. The first is negotiated agreements that constrain district and school leaders' ability to retain and recruit the most effective teachers in hard-to-staff schools. The second is the system of school budgeting, which creates funding inequities to match the teacher quality inequities.

Teacher contracts often give strong preference to more senior teachers when assigning teachers to schools.²⁷ While seniority-based preferences are used in many contexts, they have at least four very harmful unintended consequences for high-poverty schools. First, principals are often contractually obligated to interview or even hire more senior teachers from other schools within the district, even if they do not feel those teachers are the right fit for their schools' needs.²⁸ In addition, because firing a tenured teacher is difficult and costly, teachers who perform poorly are often encouraged to transfer to other schools rather than being terminated.²⁹ Furthermore, periods of preferential hiring for internal transfers mean that districts often do not start filling vacancies until very late in the hiring season when the best new teachers have already been hired by other districts with earlier hiring seasons.³⁰ Lastly, novice teachers are treated as expendable, being laid off first or having their specific position at a school taken by a more senior teacher who wishes to transfer into it.³¹

26. Marguerite Roza, *How Districts Shortchange Low-Income and Minority Students*, in FUNDING GAPS 2006, *supra* note 15, at 9, 9.

27. See JESSICA LEVIN ET AL., NEW TEACHER PROJECT, UNINTENDED CONSEQUENCES: THE CASE FOR REFORMING THE STAFFING RULES IN URBAN TEACHERS UNION CONTRACTS 8–11 (2005), available at <http://www.tntp.org/files/UnintendedConsequences.pdf> (showing how transfer provisions that favor teachers with greater seniority facilitate the movement of teachers with more experience and higher salaries away from high-poverty, high-minority schools).

28. *Id.* at 5 (showing that in the sample studied, 40% of school-level vacancies were filled by teachers over whom principals had either no choice or limited choice).

29. *Id.* (citing labor relations staff report that only one or two tenured teachers were fired for poor performance in each of the five large school districts studied).

30. *Id.* at 6 (documenting that the districts studied had to fill between 67 and 93% of their new teachers with less than one month before the beginning of the school year).

31. *Id.* (reporting that 23% of principals in one district had at least one newly hired teacher lose their position to a more experienced teacher who wanted to transfer into it during the previous year).

Taken together these provisions prioritize the preferences of senior teachers over the interests of students and leave urban, high-poverty schools with the last pick of teaching applicants.

The impact of these personnel and assignment policies is obscured, and, therefore, shielded from public scrutiny, by arcane school budgeting practices that account for teacher salaries as if every teacher was paid the same salary. The mechanism of this willful ignorance is a common, yet deceptive practice known as salary cost averaging.

Across the country, school districts do not debit actual teacher salaries from individual school budgets.³² Instead, the school district budgeting process pretends that every teacher makes an average salary.³³ Whether a school has all veterans with advanced degrees or all novices in their first two years makes a big difference in actual salaries but makes no difference in a school's actual budget. For example, when researchers from the University of Washington looked at the distribution of highly paid teachers in Baltimore city schools, they found that one high-poverty school had an average teacher salary of \$37,618, while a lower-poverty school had an average teacher salary in excess of \$57,000.³⁴ Yet district budgeting procedures were premised on the fiction that the average teacher salary at both schools, and at every school in the district, was \$45,000.³⁵

This practice means that the highest-poverty schools often have tens and even hundreds of thousands of dollars less in teacher salaries than other schools in the very same district. For example, consider Marvin Elementary School and Jackson Elementary School, both of which are traditional public schools in the San Diego Unified School District. Marvin Elementary has just 32% of students who qualify for free and reduced-price lunch; Jackson has 75%.³⁶ The average teacher salary at Marvin is \$6,806 more than the average teacher

32. *Id.*

33. Roza, *supra* note 26, at 10.

34. Marguerite Roza & Paul T. Hill, *How Within-District Spending Inequities Help Some Schools To Fail*, BROOKINGS INST. PAPERS ON EDUC. POL'Y, 2004, at 201, 206–08, available at <http://www.crpe.org/pubs/pdf/InequitiesRozaHillchapter.pdf> (comparing average teacher salaries at specific schools to district-wide average teacher salary).

35. *Id.*

36. EDUC. TRUST W., CALIFORNIA'S HIDDEN TEACHER SPENDING GAP: HOW STATE AND DISTRICT BUDGETING PRACTICES SHORTCHANGE POOR AND MINORITY STUDENTS AND THEIR SCHOOLS 11–12 (2005), available at <http://www.hiddengap.org/resources/report031105.pdf> (analyzing the distribution of teacher salaries within school districts and the correlation with demographic characteristics of schools' students).

salary at Jackson.³⁷ If Jackson had teachers with the same mix of experience, credentials, and advanced education as Marvin, it would have about \$450,000 more every year in teacher salaries.³⁸ Instead of ensuring that Jackson has extra resources to help its mostly poor population catch-up, the school district runs a system of teacher assignment that actually gives the students in Jackson *less*.

Or consider another example: Granada Hills High School and Locke High School are both in the Los Angeles Unified School District, but they educate very different mixes of students. Granada Hills has only 27% low-income students, while Locke has 66%.³⁹ But that is not the only difference: Granada Hills has teachers who are paid, on average, \$8,034 *more* than the teachers at Locke.⁴⁰ One way of appreciating the magnitude of Locke's financial disadvantage is to project the difference in Locke's school budget if Locke had teachers that were paid, on average, the same as teachers in Grenada Hills; the effect would be to increase Locke's annual budget by almost \$1,000,000 (\$956,056) per year.⁴¹ Nor are these schools anomalous; other California schools have equally disturbing disparities, as do several of the largest school districts across the country (see Table 1).⁴²

37. *Id.*

38. *See id.* (Calculation based on average teacher salary at Marvin Elementary times number of full time equivalent teaching positions at Jackson Elementary). Jackson would have the same average teacher salary as Marvin if its teachers had the same mix of credentials and experience. *See id.*

39. EDUC. TRUST W., HIDDEN TEACHER-SPENDING GAPS IN LOS ANGELES UNIFIED SCHOOL DISTRICT: A TALE OF TWO SCHOOLS 7 (2005), available at <http://www.hiddengap.org/resources/LosAngelesHiddenGapII.pdf>.

40. *Id.*

41. *Id.*

42. For more examples like these, please see the Hidden Gap website, <http://www.hiddengap.org> (last visited Apr. 4, 2007).

Table 1.

District	Salary Gap
Austin	\$3,837
Dallas	\$2,494
Denver	\$3,633
Fort Worth	\$2,222
Houston	\$1,880
Los Angeles	\$1,413
Sacramento	\$4,846
San Diego	\$4,187
San Francisco	\$1,286
San Jose Unified	\$4,008
Source: EDUC. TRUST, <i>supra</i> note 15, at 10 tbl.6.	

It would seem only fair that higher-poverty schools, which get less money for teacher salaries, should be compensated with more money to put toward other parts of their budgets. Such funds could be used to provide tutoring, professional development, or even financial incentives for recruitment of high-quality teachers at the disadvantaged schools. Nonetheless, these schools get no additional funding to offset their lower teacher salary budgets.

To the extent that one set of schools (those serving more-affluent students) receives a higher-than-average proportion of the budget, another set of schools (those serving poorer students) must receive a lower-than-average proportion of the budget. In other words, the money that poor schools are *not spending* on their teacher budgets is not being given to them to spend on compensatory services at their own schools. Instead, it is being used to subsidize higher teacher salaries in the more affluent schools across town.

Administrative ease is the most likely explanation for the budgeting practices that allow these inequities to persist. School districts are the fiscal agents for all the schools within the district, and prior to the advent of standards and accountability policies—and the expectation that students at every school should be taught up to a common benchmark of proficiency—school districts lacked adequate incentives to track how much money was spent at any individual school. Traditional school district budgeting and staff allocation policies are anachronistic holdovers from a time when the profound

impact of individual classroom teachers was not well understood.⁴³ Previously, conventional wisdom has assumed that educational outcomes were connected to the socioeconomic status of the students' families and communities. Given the research on how much teaching matters that is discussed in Part II.B below, it is imperative to develop both funding policies and other policies that contribute to higher teacher salaries and higher teacher quality in schools serving students growing up in poverty.

B. Teacher Quality: Who's Teaching Whom?

Research unequivocally documents that the classroom teacher is the single biggest determinant of how much students learn and that poor students can achieve at high levels when taught by high-quality teachers.⁴⁴ Pioneering research in Tennessee over the last fifteen years has helped to debunk the myth that wealth and community factors inevitably overwhelm the power of schools to educate poor students to high levels.⁴⁵

Yet children growing up in poverty, despite their need for the best teaching, are most likely to be taught by our weakest teachers.⁴⁶

43. See Daniel Fallon, Nat'l Comm'n on Teaching & America's Future, Presentation at the 2003 Education Research Summit: Case Study of a Paradigm Shift: The Value of Focusing on Instruction 3 (Dec. 4, 2003), available at http://www.nctaf.org/resources/events/2004_summit-1/documents/Fallon_Case_Study.doc (describing the state of research on school and teacher effectiveness that existed in the 1960s and 1970s). Fallon explained the then-conventional wisdom in the 1960s and 1970s that "when it comes to student achievement, teaching doesn't matter very much." *Id.* at 3. However, he went on to describe the development of value-added methods of measuring teacher effectiveness and posits that there has been "a paradigm shift in social science" toward "a growing consensus that the single most important factor in determining student performance is the quality of the teacher." *Id.* at 7.

44. See *infra* notes 46–58 and accompanying text.

45. WILLIAM L. SANDERS & JUNE G. RIVERS, VALUE-ADDED RESEARCH & ASSESSMENT CTR., UNIV. OF TENN., CUMULATIVE AND RESIDUAL EFFECTS OF TEACHERS ON FUTURE STUDENT ACADEMIC ACHIEVEMENT 5–6 (1996), available at <http://www.heartland.org/pdf/21803a.pdf> (using value added methodology to show that students of different ethnicities respond equivalently to teachers in the same quintile of effectiveness and that lower achieving students are the first to show improvement with increases in teacher quality).

46. Charles Clotfelter et al., *High Poverty Schools and the Distribution of Teachers and Principals* 10, 29 (Sanford Working Paper Series, Working Paper No. SAN06-08, 2006), available at <http://www.pubpol.duke.edu/research/papers/SAN06-08.pdf> (analyzing a broad array of teacher quality measures and concluding that there is "no doubt that students in high poverty schools are taught by teachers with lower qualifications than those in lower poverty schools" and arguing that "if policymakers are serious about improving high poverty schools, they will have to alter labor markets for teachers and principals in order to make high poverty schools more competitive"); see also Hamilton Lankford et al., *Teacher Sorting and the Plight of Urban Schools: A Descriptive Analysis*,

These children are far more likely to be taught by novice teachers, by teachers without appropriate credentials, and by teachers who are assigned “out of field” (i.e., teaching subjects for which they have not been prepared).⁴⁷

The difference between a strong and weak teacher literally can be the difference between academic excellence and intellectual atrophy. In a Dallas study, students who were at the same level of achievement at the beginning of third grade ended up at opposite ends of the achievement spectrum only three years later.⁴⁸ The study found that the students taught by certain teachers were posting consistently and significantly higher score increases on standardized tests than students taught by other teachers.⁴⁹ This pattern occurred despite controlling for previous student test scores.⁵⁰ In other words, students with similar scores when coming in to a grade scored very differently when coming out of that grade depending on which teacher they had; some teachers were consistently teaching their students more in the course of one year.⁵¹ This difference in teacher effectiveness explained the difference in scores between students who entered the third grade at about the 50th percentile on the achievement spectrum (according to a nationally normed test) but ended up at either at the 76th percentile or the 27th percentile depending on the sequence of teachers to whom the students were assigned over the succeeding three years of school.⁵²

24 EDUC. EVAL. & POL’Y ANALYSIS 37, 45–48 (2002) (showing that low-income, low-achieving, and minority students are taught by many of the least skilled teachers).

47. PHYLLIS MCCLURE ET AL., CITIZENS COMM’N ON CIVIL RIGHTS, DAYS OF RECKONING: ARE STATES AND THE FEDERAL GOVERNMENT UP TO THE CHALLENGE OF ENSURING A QUALIFIED TEACHER FOR EVERY STUDENT? 4 (2006), available at <http://www.cccr.org/DaysOfReckoning.pdf> (documenting shortages of qualified teachers in high-poverty and high-minority schools); Kevin Carey, *The Real Value of Teachers: Using New Information About Teacher Effectiveness To Close the Achievement Gap*, THINKING K-16, Winter 2004, at 3, 8, available at <http://www2.edtrust.org/NR/rdonlyres/5704CBA6-CE12-46D0-A852-D2E2B4638885/0/Spring04.pdf> (cataloging research studies that document inequitable distribution of teachers along several quantifiable metrics of quality).

48. HEATHER R. JORDAN ET AL., DALLAS PUB. SCH., TEACHER EFFECTS ON LONGITUDINAL STUDENT ACHIEVEMENT 9 tbl.3 (1997), available at http://www.dallasisd.org/inside_disd/depts/evalacct/research/articles/Jordan-Teacher-Effects-on-Longitudinal-Student-Achievement-1997.pdf.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* (employing hierarchical linear modeling and concluding that individual teacher effectiveness is strongly related to student learning, as evidenced by scores on norm-referenced exams).

More recent research has confirmed these earlier findings: after controlling for students' prior achievement and background characteristics, it was determined that Los Angeles students with top-quartile teachers gained 5 percentile points, while students assigned to bottom-quartile teachers lost 5 percentile points.⁵³ In a single year, students who had achieved at identical levels in prior years are separated by 10 percentile points *on the basis of their teachers' effectiveness*.⁵⁴ Indeed, the impact of teacher quality is so significant that the difference between having a top-quartile teacher versus a bottom-quartile teacher for four years in a row was estimated to be sufficient to close entirely the black-white achievement gap in Los Angeles and was projected as having twice the impact of reducing class sizes from twenty-two to sixteen.⁵⁵

Researchers in Illinois have created an index to cross reference schools' teacher quality with their demographic profiles and student achievement results.⁵⁶ The bottom line: students who studied all the way through calculus in Illinois schools with the lowest teacher quality learned less math than students who only went through algebra 2 in schools with just average teacher quality.⁵⁷ Even when focusing exclusively on high-poverty, high-minority schools, the impact of teacher quality is profound: students in high-poverty, high-minority schools with above-average teacher quality were almost nine times as likely to demonstrate college readiness as students in demographically similar schools with low teacher quality.⁵⁸

At the same time we are learning more about the importance of teacher quality, we also are learning more about the relative lack of it in our highest-poverty schools. For example, high-poverty schools are almost twice as likely to have novice teachers with less than three years of experience (20% in high-poverty schools compared to 11%

53. ROBERT GORDON ET AL., BROOKINGS INST., IDENTIFYING EFFECTIVE TEACHERS USING PERFORMANCE ON THE JOB 8 (2006), *available at* http://www1.hamiltonproject.org/views/papers/200604hamilton_1.pdf (representing the percentage of students nationally who scored at or below the student's level).

54. *Id.*

55. *Id.*

56. JENNIFER B. PRESLEY & YUQIN GONG, ILL. EDUC. RESEARCH COUNCIL, THE DEMOGRAPHICS AND ACADEMICS OF COLLEGE READINESS IN ILLINOIS 9 (2005), *available at* <http://ierc.siue.edu/documents/College%20Readiness%20-%202005-3.pdf>.

57. *Id.* at 30.

58. *Id.* at 27. In high-poverty, high-minority schools with teacher quality in the 50th–75th percentile, 26% of students demonstrated college readiness; in high-poverty, high-minority schools in Illinois with teacher quality in the bottom quartile for the state, just 3% of students demonstrated college readiness. *Id.*

in lower-poverty schools).⁵⁹ In addition, students in high-poverty schools are less likely to have teachers who are assigned to teach a subject they studied in college (34% of classes in high-poverty secondary schools are taught by out-of-field teachers compared to 19% in low-poverty schools).⁶⁰ Teaching experience and subject matter knowledge are just two of the many ways of estimating teacher quality.⁶¹ Any of these proxy measures can be discounted individually, but when taken together they reveal extreme inequality in access to quality teachers.

Illinois researchers combined several of these proxy measures into a single, school-level index of teacher quality. By assembling a database with information on the qualifications of all 140,000 teachers in the state and analyzing data on five teacher quality measures, researchers assigned a "teacher quality index" ("TQI") rating to each school in Illinois.⁶² Then, TQI rankings were compared to student characteristics.⁶³ Of the schools with the most low-income students, 84% were in the bottom quartile in teacher quality, and more than half of the highest-poverty schools (56%) fell into the very bottom 10% of teacher quality.⁶⁴ Only three high-poverty schools (1%) had teacher quality in the top quartile for the state.⁶⁵ Compare these teacher quality rankings to schools with the fewest low-income students, where almost half (46%) of the schools had a teacher quality index in the top quartile, and only 5% were in the bottom quartile.⁶⁶

59. DANIEL P. MAYER ET AL., U.S. DEP'T OF EDUC., MONITORING QUALITY: AN INDICATORS REPORT 13 (2000), *available at* <http://nces.ed.gov/pubs2001/2001030.pdf>.

60. CRAIG D. JERALD, EDUC. TRUST, ALL TALK, NO ACTION: PUTTING AN END TO OUT-OF-FIELD TEACHING 4 (2002), *available at* <http://www2.edtrust.org/NR/rdonlyres/8DE64524-592E-4C83-A13A-6B1DF1CF8D3E/0/AllTalk.pdf> (analyzing the results of a large-scale, federally administered teacher survey to document the disproportionate assignment of out-of-field teachers in high-poverty, high-minority schools).

61. *See* KAREN J. DEANGELIS ET AL., ILL. EDUC. RESEARCH COUNCIL, THE DISTRIBUTION OF TEACHER QUALITY IN ILLINOIS 5-6 (2005), *available at* http://ierc.siue.edu/documents/Teacher_Quality_IERC_%202005-1.pdf (using emergency/provisional certification status, selectivity of teachers' colleges, years of experience up to four, failure of a basic skills test on a first attempt, and teachers' composite and English ACT scores to create a composite measure of teacher quality).

62. *See id.* at 5-8 (describing the collection and analysis of a massive database of teacher characteristics across the state of Illinois and correlating observable teacher characteristics with school-level student demographic and achievement data).

63. *See id.* at 9.

64. *Id.*

65. *Id.*

66. *Id.*

The pattern is the same no matter what measure of teacher quality is used. Even though we know students from low-income families are the most dependent on schools for their learning, we systematically allow them to be taught by teachers who are the least well prepared and least experienced. Students who are growing up in poverty generally come to school with significant deficits in vocabulary and foundational literacy skills.⁶⁷ Catching these students up to their peers will require that these students learn relatively more in school—if they merely learn as much as other students, they will never close the gap. However, despite the knowledge that nothing has more of an impact on how much students learn than their classroom teachers, there is little in the way of policy or educational practice that seeks to place the most competent teachers in the classrooms of the most vulnerable students. Instead, public education tends to compound the outside-of-school disadvantages of poor children by allowing them to be taught disproportionately by novice teachers, teachers who themselves did poorly in school, and teachers with inadequate training. Though these children need the best teachers, we do not even give them teachers who are as good.

C. Curriculum: Students Won't Learn What They're Not Taught

Students—especially students growing up in poverty—will not learn what they are not taught. Yet students in high-poverty schools are not taught the same content or skills to the same level of depth or rigor as students from more affluent backgrounds; simply put, poor students are given a watered-down curriculum.⁶⁸ There is a long tradition of sorting students into different educational pathways, with some students selected for a rigorous college preparatory curriculum while others are assigned to lower-level “general” or “vocational” tracks.⁶⁹ Socioeconomic status (SES) continues to play a significant

67. For an in-depth study of the differences in vocabulary and pre-literacy skills acquired by children of different socioeconomic status, see generally BETTY HART & TODD RISLEY, *MEANINGFUL DIFFERENCES IN THE EVERYDAY EXPERIENCE OF YOUNG AMERICAN CHILDREN* (1995) (documenting large differences in vocabulary between three-year-old children with professional parents in contrast to children whose parents were receiving welfare).

68. Kati Hancock, Educ. Trust, *A New Core Curriculum for All*, THINKING K-16, Winter 2003, at 1, 1–2, available at http://www2.edtrust.org/NR/rdonlyres/26923A64-4266-444B-99ED-2A6D5F14061F/0/k16_winter2003.pdf (showing differentials in high-level course taking between advantaged and disadvantaged students).

69. See Theodore Lewis & Shih-Yu Change, *Tracking, Expectations, and the Transformation of Vocational Education*, 113 AM. J. EDUC. 67, 71–72 (2006). The authors concluded that principals' disparate expectations of students from different socioeconomic classes had significant impact on students' high school course assignments. *Id.* at 89.

role in the curriculum to which students are assigned: students from low-income communities are more likely to be assigned to the vocational track than high SES students.⁷⁰ This is at least in part because principals more often expect students from low-SES backgrounds to go straight to work, as opposed to high-SES students, who are expected to go to college.⁷¹

Part of the curriculum disparity can be seen even in the availability of courses in high-poverty schools. Students from low-income families know as well as anyone that postsecondary education is essential to good job opportunities—that is why, when they are asked, the overwhelming majority (89%) are clear that they expect to go to college.⁷² But quite often, the courses they need are not even offered in their schools.⁷³ As an example, poor students often attend schools that do not offer high-level math courses: only 64% of students from low socioeconomic status families attend schools where trigonometry is offered, and only 44% attend schools where calculus is an option.⁷⁴ These figures are particularly disturbing when one considers that the highest level of math reached in high school is a very strong predictor of college completion.⁷⁵

Part of the curricular discrimination against economically disadvantaged students, however, is more subtle than the issue of course availability. Even when students from poor families are assigned to courses with the right names, they often are provided with a watered-down version that fails to deliver the content or the intellectual challenge associated with the subject.⁷⁶ One of the most

70. *Id.* at 91.

71. *Id.* at 93.

72. LAURA J. HORN ET AL., U.S. DEP'T OF EDUC., GETTING READY TO PAY FOR COLLEGE: WHAT STUDENTS AND THEIR PARENTS KNOW ABOUT THE COST OF COLLEGE TUITION AND WHAT THEY ARE DOING TO FIND OUT 9 (2003), *available at* <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2003030> (reporting results of student and parent surveys regarding expectations for postsecondary education).

73. See CLIFFORD ADELMAN, U.S. DEP'T OF EDUC., THE TOOLBOX REVISITED: PATHS TO DEGREE COMPLETION FROM HIGH SCHOOL THROUGH COLLEGE 32 (2006), *available at* <http://www.ed.gov/rschstat/research/pubs/toolboxrevisit/toolbox.pdf> (analyzing data from the National Educational Longitudinal Study to assess the availability of specific high school courses by the demographic characteristics of the students enrolled in the school).

74. *Id.* at 32.

75. See *id.* at 30 (documenting that the quality and intensity of a student's high school curriculum is a strong predictor of college success and finding that advanced math courses are particularly significant).

76. CHRYS DOUGHERTY ET AL., NAT'L CTR. FOR EDUC. ACCOUNTABILITY, ORANGE JUICE OR ORANGE DRINK: ENSURING THAT "ADVANCED COURSES" LIVE UP TO THEIR LABELS 8 (2006), *available at* http://www.nc4ea.org/files/NCEA_Report_

common problems is that assignments in high-poverty schools are often pegged at such low-level expectations that students will not learn to high levels *even if they successfully complete everything that is asked of them*.⁷⁷ Evidence of this problem comes from veteran educators at the Education Trust, who conducted an in-depth study of schools that were effective at “catching up” students who entered high schools behind.⁷⁸ This study found that these schools were more likely than others to assign grade-level appropriate work to struggling students and to provide them with additional time and support.⁷⁹ Average schools, on the other hand, tended to expect lower-level work from previously low-performing students.⁸⁰

The effects of these differences are clear in the bottom-line results of students on end-of-course exams. Almost two out of every three low-income students (63%) who graduated from Texas high schools after completing the state’s recommended college-prep curriculum in 2000 still needed remediation in at least one subject before they could enroll in credit-bearing courses at a public college in Texas (making it more expensive and less likely these students would graduate).⁸¹ For students who did not come from low-income families, the remediation rate was 33%.⁸² It is clear that many low-income students are not being prepared for college, even after taking college-prep courses.

III. IT DOES NOT HAVE TO BE THIS WAY

There is evidence in schools all over the country of students who are growing up poor—facing all the same disadvantages and obstacles of other poor children—and yet are learning at the highest levels because their schools are working for them. These schools—and even

Orange_Juice_or_Orange_Drink_02-13-06.pdf (presenting evidence of lower pass rates on end-of-course exams and AP exams as well as a higher need for remediation among poor and minority students who nonetheless received credit for advanced courses in high school).

77. EDUC. TRUST, GAINING TRACTION, GAINING GROUND: HOW SOME HIGH SCHOOLS ACCELERATE LEARNING FOR STRUGGLING STUDENTS 18–19 (2005), *available at* <http://www2.edtrust.org/NR/rdonlyres/6226B581-83C3-4447-9CE7-31C5694B9EF6/0/GainingTractionGainingGround.pdf> (discussing the tendency of some high schools to assign work that was below grade-level expectations).

78. *Id.* at 22–23 (discussing distinctions between high schools that were effective at catching up students who entered high school below grade-level, and contrasting practices at these schools with those of schools who were only average in this regard).

79. *Id.*

80. *Id.*

81. See DOUGHERTY ET AL., *supra* note 76, at 5.

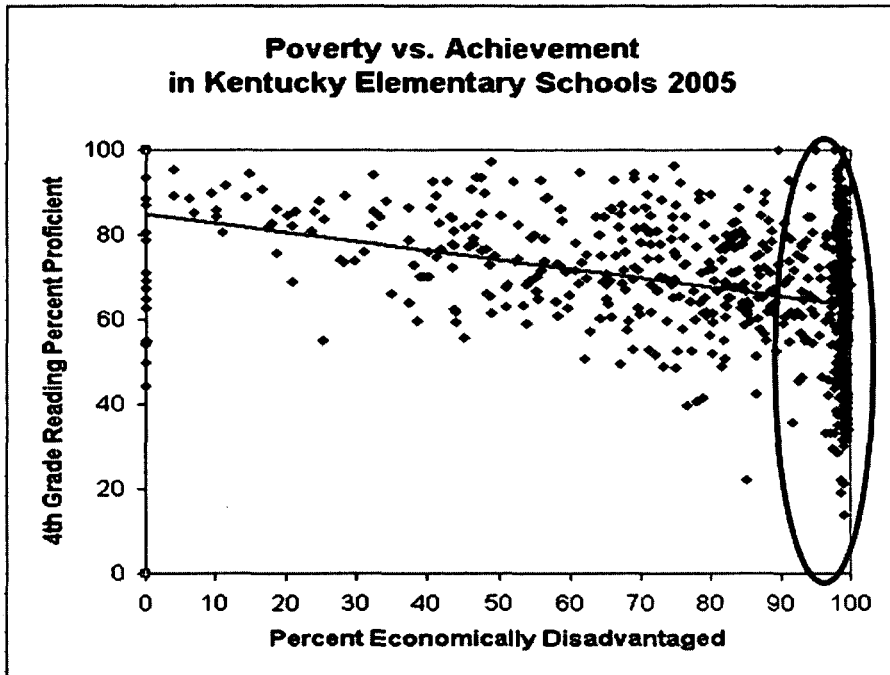
82. *Id.*

some districts and states—are showing us that what we do in public education absolutely can change the life chances of students from low-income families.

A lot of us are familiar with the correlation between poverty and student achievement. Basically, we are taught that as the number of poor students in a school goes up, its achievement goes down and there is nothing that can be done to change that.⁸³ The chart below plots the achievement levels of schools as compared to the percentage of poor students in the school for the State of Kentucky, and the diagonal line in that chart shows that there is, indeed, such a correlation.⁸⁴ But look more closely at where the schools actually fall. Look, in particular, at the wide range in student achievement among schools with high—and exactly equal—poverty levels. The results are anything but equal, ranging from less than 20% of students demonstrating proficiency to virtually 100%.

83. See generally RICHARD ROTHSTEIN, *CLASS AND SCHOOLS: USING SOCIAL, ECONOMIC, AND EDUCATIONAL REFORM TO CLOSE THE BLACK-WHITE ACHIEVEMENT GAP* (2004) (arguing that factors outside of school primarily cause the achievement disparities and that significant progress in closing achievement gaps cannot occur without addressing larger social inequality). For a thoughtful discussion of how social science has advanced and undermined the conventional wisdom that school effects are weak, see generally Fallon, *supra* note 43.

84. See Kentucky Department of Education, 2005 Kentucky Performance Reports and No Child Left Behind Results, http://apps.kde.state.ky.us/secure_cats_reports_05 (last visited Mar. 11, 2007). The analysis for this paper was conducted by The Education Trust.



Source: Kentucky Department of Education, Analysis by The Education Trust

The truth is that not all of these schools are high-performing in every grade and subject over multiple years. But some schools do indeed manage, year after year, to take very poor kids to the highest levels of achievement. One of these schools is Frankford Elementary School in Frankford, Delaware, where 76% of the students receive free or reduced lunch, but they consistently outpace the state on all achievement tests.⁸⁵ This sustained achievement, while the lives of students *outside* of school remained those typical of impoverishment, is a testament to the power of schools to overcome the effects of poverty.⁸⁶

85. See Delaware Department of Education, Delaware School Profile Reports, <http://profiles.doe.k12.de.us/EntitySearch.ASPx> (search by school for "Frankford Elementary").

86. Many similar stories have been published by the Achievement Alliance in an ongoing project, "It's Being Done." See, e.g., ACHIEVEMENT ALLIANCE, IT'S BEING DONE: THE BENWOOD INITIATIVE, <http://www.achievementalliance.org/files/Benwood.pdf>; ACHIEVEMENT ALLIANCE, IT'S BEING DONE: PORT CHESTER MIDDLE SCHOOL, <http://www.achievementalliance.org/files/PortChester.pdf>; THE ACHIEVEMENT ALLIANCE, IT'S BEING DONE: GRANGER HIGH SCHOOL, <http://www.achievementalliance.org/files/Granger.pdf>. For a collection of profiles of successful high-poverty

Additional evidence of the fact that schools have a major impact on student achievement comes from a comparison of the performance of poor students on the National Assessment of Educational Progress across districts and states. Many of our poorest students attend schools in the country's largest urban districts.⁸⁷ While these districts have a lot of challenges in common, NAEP reveals that some of these districts are responding to the needs of their low-income students in much more effective ways. In grade four reading, New York City's low-income African-American students had an average NAEP scale score of 204, while Los Angeles's poor African-American students averaged 182.⁸⁸ For eighth-grade math, New York and Boston are tied in the lead with average scale scores for poor students of 264 while Atlanta's poor students average 240.⁸⁹ To put these differences in context, ten to fifteen points on the NAEP scale is generally considered to represent a grade level of learning.⁹⁰ Thus, low-income fourth-graders in New York are roughly two years ahead of Angelinos, while low-income eighth-graders in Boston and New York are between two- and two-and-a-half years ahead of their peers in Atlanta.⁹¹

Differences between states also underscore that schools matter a lot for how much poor students learn. On the 2005 grade four reading assessment, poor students in Texas had an average scale score of 208, while poor students in Arizona had an average scale score of 192, a difference of sixteen points, or the rough equivalent of a year

schools, see generally KARIN CHENOWETH, *ITS BEING DONE: ACADEMIC SUCCESS IN UNEXPECTED SCHOOLS* (2007).

87. NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., *THE CONDITION OF EDUCATION: PARTICIPATION IN EDUCATION* 119 tbl.6-1 (2006), available at http://nces.ed.gov/pubs2006/2006071_Appl.pdf (showing 54% of fourth-grade students in urban areas eligible for free or reduced lunch, compared to 32% for suburban areas and 41% for rural areas).

88. See National Center for Education Statistics, NAEP Data Explorer, <http://nces.ed.gov/nationsreportcard/nde> (last visited Mar. 11, 2007). The comparison between low-income African-American students was drawn to control for differences in the prevalence of English-language learners between the two districts. Overall scale score differences ranged from 210 in New York to 190 in Los Angeles. *Id.*

89. *Id.*

90. This rule of thumb represents an average increase in scores required for proficiency. For example, eighth-grade math proficiency requires a score of 299, while fourth-grade math requires a score of 249 for proficiency; this difference of fifty points divided by four years yields an average increase of 12.5 points per year. Other comparisons yield similar average increases per grade level. See National Center for Education Statistics, NAEP Item Map: Mathematics, Grade 4, 2005, <http://nces.ed.gov/nationsreportcard/itemmaps/index.asp> and <http://nces.ed.gov/nationsreportcard/itemmaps/?subj=Mathematics> (last visited Mar. 11, 2007).

91. National Center for Education Statistics, *supra* note 88.

to a year-and-a-half worth of learning.⁹² In eighth-grade math, poor students in Massachusetts had an average scale score of 273 compared with 252 in neighboring Rhode Island.⁹³ Massachusetts' low-income students *perform higher in math than the statewide average for student performance in Rhode Island and eleven other states*.⁹⁴

Other states are demonstrating that dramatic improvements in the education of low-income students can be accomplished in relatively short timeframes. Delaware raised the performance of its low-income students in fourth-grade reading by twenty-five points from 1998 to 2005.⁹⁵ In 1998, only two states did worse than Delaware with their low-income students,⁹⁶ but, by 2005, Delaware's low-income fourth-graders beat low-income students in every state but one.⁹⁷ Florida and New York also achieved substantial improvements in teaching reading to low-income students, raising achievement by nineteen and fourteen points, respectively.⁹⁸ The differential levels of achievement and rates of improvement among the states demonstrate that similar students will achieve dramatically different results depending on which schools they attend.

IV. A PATH OUT OF POVERTY FOR OUR PUBLIC SCHOOLS

Law and policy could do much more to address the inequitable and inferior educational opportunities that are currently afforded to students of low socioeconomic status. Even though the Supreme Court declined to extend constitutional protection to this class of students in the *Rodriguez* case in 1973,⁹⁹ there are many avenues open for pursuing justice on their behalf. There is a role and a need for legislation, litigation, and leadership.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 20–38 (1973) (refusing to recognize education as a fundamental right under the United States Constitution and rejecting the argument that discrimination on the basis of wealth in the provision of public education deserved heightened scrutiny because socioeconomic status was not recognized as a suspect classification). The *Rodriguez* decision effectively closed off federal constitutional claims regarding public education funding and equality, determining that these were fundamentally state issues. In the ensuing thirty years, most states have experienced litigation related to the equity and/or adequacy of the state's education funding policies. See Michael A. Rebell, *Adequacy Litigations: A New Path to Equity?*, in *BRINGING EQUITY BACK* (Janice Petrovich & Amy Stuart Wells eds., 2004).

A. *Promising Policies: Weighted Student Funding*

Education funding simply does not reflect equity as a priority. At every level, affluence is rewarded with additional resources while poverty begets poverty.¹⁰⁰ To build systems that effectively serve the full diversity of our students, education budgets must reflect the reality that students from poverty present disproportionate challenges. But right now, school district budgets and state policies actually spend less money in high-poverty schools than in schools with fewer poor children.¹⁰¹

University of Washington Professor Marguerite Roza has opened a whole new world of knowledge by closely examining school and district budgets. In almost every case, school districts allocate more resources to the schools serving students who are most advantaged outside of school.¹⁰² In essence, we allocate resources within public education in ways that reflect and reinforce inequality outside of school.

Weighted student funding (WSF) provides a framework for bringing equity to education budgets. The concept of WSF is straightforward: each student should be assessed for the level of challenge they present, and funding should be allocated proportional to identified needs.¹⁰³ For example, it will take additional resources to educate English-language learners up to a similar level as native-English speakers, to educate disabled students up to the level of non-disabled students, and to educate students from poverty up to the level of their non-poor peers. WSF requires public school systems to quantify the needs of each individual student and provide money to schools proportionate to the challenges their students present.

Recently, WSF has been endorsed by a broad cross-section of education and political leaders, from educators such as Arlene Ackerman (former superintendent of schools in San Francisco, CA

100. See EDUC. TRUST, *supra* note 15, at 1.

101. *Id.*

102. Marguerite Roza et al., *Strengthening Title I To Help High-Poverty Schools: How Title I Funds Fit Into District Allocation Patterns* 8 (Ctr. on Reinventing Pub. Educ., Working Paper, 2005), http://www.crpe.org/workingpapers/pdf/TitleI_reportWeb.pdf. For example, within the Houston Independent School District, affluent schools received 109% of the district average per student, while high-poverty schools got only 93% of the district average per student; in Denver, it was 105% (for schools serving the fewest poor students) to 95% (in highest-poverty schools). *Id.* at 8.

103. THOMAS B. FORDHAM INST., *FUND THE CHILD: TACKLING INEQUALITY & ANTIQUITY IN SCHOOL FINANCE* 21 (2006), available at <http://www.edexcellence.net/fundthechild/FundtheChild062706.pdf> (describing the rationale and framework for student weighted funding).

and Washington, D.C.) and Paul Vallas (superintendent of schools in Philadelphia) to political leaders such as former four-term North Carolina Governor James B. Hunt, Jr. and John Podesta (President Clinton's Chief of Staff) on the left, to Bill Bennett (President Reagan's Secretary of Education) and John Engler (former Michigan governor and current President of the National Association of Manufacturers) on the right.¹⁰⁴

Getting resource allocation and budgeting practices aligned with the policy goal of equity is an important part of ensuring a fairer distribution of teacher talent. As teachers accrue knowledge and skills that make them more effective, budgeting rules and negotiated contracts provide no incentives for the best teachers to go to or stay in more challenging, higher-poverty schools.¹⁰⁵ WSF would level the playing field and allow high-poverty schools to provide substantially better pay and working conditions.

As discussed above, teacher salaries (the largest share of school district budgets) across different schools within the same district are highly uneven, with higher-paid teachers concentrated in low-poverty schools. WSF could address this problem by placing limits on affluent schools' ability to hoard more than their fair share of teacher talent. By establishing school budgets based on student needs, WSF would (1) provide bigger budgets to high-poverty schools and (2) force principals in all kinds of schools to think differently about resources. If a school had a disproportionate share of highly paid teachers, it would need to offset the expense in other areas, and if a school had more novice, lower-paid teachers, it would have additional money to pay higher salaries, offer more coaching or support, or to enhance working conditions.

The federal Title I program, however, actually provides cover for states and districts to shortchange high-poverty Title I schools in terms of teacher salary dollars. Here's how it works: Title I presumes that school districts provide equal educational opportunities to all students before federal funds are applied and that federal Title I money provides "extras" to help enrich opportunities for students from low-income families.¹⁰⁶ To ensure the baseline resources are equal, school districts must assure "comparability" prior to any

104. *Id.* at 5-7.

105. See Roza, *supra* note 26, at 10. In fact, union contracts often facilitate migration away from high-poverty schools. See LEVIN ET AL., *supra* note 27, at 5-6 (exploring how rules regarding transfers undermine the ability of principals at low-income schools to hire and keep the best teachers).

106. See 20 U.S.C. § 6312 (Supp. II 2002).

federal funding.¹⁰⁷ But the law's "comparability" provisions explicitly ignore differences in teacher salaries in different schools, even if that means that teachers in Title I schools actually get paid less than teachers in non-Title I schools.¹⁰⁸

In fact, school districts are undermining the express purpose of Title I. By using average teacher salaries to determine expenses for the Title I program, the districts hide the fact that they are actually paying teachers in Title I schools lower-than-average salaries. Title I funds are in turn used to pay the higher teacher salaries in schools without significant numbers of poor children. Marguerite Roza and her colleagues at the Center for Reinventing Public Education at the University of Washington estimate that in one district this misallocation may account for about \$600,000 being withdrawn from Title I funds intended for high-poverty schools but actually spent in wealthier neighborhoods.¹⁰⁹ To be clear, this result need not be intentional for it to be pernicious. This practice needs to be investigated, and the legal loophole that lets states and districts off the hook for ensuring real comparability should be eliminated. There may also be litigation strategies for challenging current school district budget practices that place high-poverty schools at a disadvantage. The Center for Reinventing Public Education at the University of Washington has posted a working draft of a law review article that explores whether the use of average teacher salaries for school budgets violates state constitution equal protection clauses and/or education provisions.¹¹⁰ Expanding on precedents established in litigation challenging both the equity and adequacy of state education budget policies, the authors posit several plausible strategies for challenging current practices.

Funding equity can help address the gaps in teacher quality, but better funding alone is not adequate to address the problem. To attract and retain the best teachers into the classrooms of the neediest students will require changes on a number of fronts. Everything needs to be on the table: salary bonuses for proven teachers to come to and stay in high-poverty schools, other monetary and workload incentives for teachers to serve as mentors and coaches, investments

107. *Id.* § 6321(c).

108. *Id.* § 6321(c)(2)(B) (excluding "staff salary differentials for years of employment" from determinations of comparability of educational opportunities).

109. See Roza et al., *supra* note 102, at 16.

110. See Kelly Warner-King & Veronica Smith-Casem, *Addressing Funding Inequities Within Districts* (Ctr. on Reinventing Pub. Educ., Working Paper No. 2005_2, 2005), http://www.crpe.org/workingpapers/pdf/SDLegalReview8_05.pdf (cited with permission).

in better working conditions, and efforts to “balance the challenges” by ensuring lighter student loads and additional support services in high-poverty schools.¹¹¹

On a fundamental level, we need to change the way status is earned in the teaching profession. There is no formal recognition, material or otherwise, for great teaching; every teacher is treated the same, whether he or she is excellent, average, or abysmal.¹¹² This is unlike any other profession and it demeans the contributions of our best teachers. We need to acknowledge that helping students from low-income families to succeed academically at the highest levels is harder work, and we need to find ways to call people to this challenge, to honor high achievement when it is attained, and to reward successful teachers in high-poverty schools. Currently, we do the opposite: both higher status and higher pay are associated with elite schools and students,¹¹³ when it is students growing up in poverty who are most reliant on their schools and teachers for their learning. Weighted student funding can help offset some of the barriers to getting our best teachers into high-poverty schools, but whether new money makes any difference depends on how it is used.

B. Promising Policies: Curriculum Changes

The overwhelming majority of high school students, including high school students from low-income families, say they aspire to college.¹¹⁴ And the truth is that we need to encourage these

111. For a discussion of policy proposals that could raise teacher quality in high-poverty schools, see generally HEATHER G. PESKE & KATI HAYCOCK, EDUC. TRUST, TEACHING INEQUALITY: HOW POOR AND MINORITY STUDENTS ARE SHORTCHANGED ON TEACHER QUALITY (2006), available at <http://www2.edtrust.org/NR/rdonlyres/010DBD9F-CED8-4D2B-9E0D-91B446746ED3/0/TQReportJune2006.pdf>.

112. NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., SCHOOLS AND STAFFING SURVEY, 1999–2000 4 (2002), available at <http://nces.ed.gov/pubs2002/2002313.pdf> (documenting that more than 96% of public districts used a uniform salary schedule to determine teacher compensation); see also JULIE KOWAL ET AL., CTR. FOR AM. PROGRESS, PUBLIC IMPACT, TEACHER COMPENSATION IN CHARTER AND PRIVATE SCHOOLS: SNAPSHOTS AND LESSONS FOR DISTRICT PUBLIC SCHOOLS 18, available at http://www.americanprogress.org/issues/2007/02/pdf/teacher_compensation.pdf (describing compensation systems in public schools that, with a few noteworthy exceptions, employ uniform salary schedules with no differentiation based on performance); National Council on Teacher Quality, *Teachers' Roles, Rules and Rights*, <http://www.nctq.org/cb> (last visited Mar. 24, 2007) (posting salary schedules for the 50 largest school districts and documenting that the overwhelming majority of these districts differentiate compensation based only on paper credentials and years of experience).

113. See Roza, *supra* note 26, at 10.

114. HORN ET AL., *supra* note 72, at 9 (reporting results of student and parent surveys regarding expectations for postsecondary education).

aspirations. Economists project a massive shortage of college-educated workers as the baby boomers retire and jobs continue to change unless we successfully prepare more young people for college success.¹¹⁵

Policy should demand that every student has access to a college-prep curriculum. The research is clear that this challenging curriculum is better for students—they learn more and fail fewer classes—even if they were previously the lowest-performing students. But schools still withhold these opportunities from many students.¹¹⁶

A curriculum that is aligned with the demands of postsecondary education should be the default program for every student. Students or their parents should have to opt out affirmatively of this recommended curriculum by signing an acknowledgement that preparation for postsecondary education is being rejected. Some districts and states are moving in this direction.¹¹⁷ Other states, like Indiana, are going a step further and committing to low-income students while they are still in middle school that if the students complete the college-prep curriculum then the state will pay for their college education.¹¹⁸ In too many states and locales, however, low-income students still have to fight their way into the college-prep track.

It is possible that this agenda also could be advanced through litigation. Most state constitutions guarantee an adequate education,¹¹⁹ and it would seem obvious that the parameters of what education is “adequate” must change with the changing demands of citizenship and work. In the landmark case of *Campaign for Fiscal Equity v. New York*,¹²⁰ the New York Court of Appeals overruled the lower court’s ruling that an eighth- or ninth-grade education was sufficient to discharge the state’s responsibility for providing a “sound, basic education.”¹²¹ The court held that the state was obligated to provide an education that ensured students had the

115. Carnevale, *supra* note 11 (projecting a shortage of about seven million college-educated workers in the United States economy by 2012).

116. Patte Barth, *A Common Core Curriculum for the New Century*, THINKING K-16, Winter 2003, at 3, 16, available at http://www2.edtrust.org/NR/rdonlyres/26923A64-4266-444B-99ED-2A6D5F14061F/0/k16_winter2003.pdf.

117. *Id.* at 21–24 (describing the successful efforts of San Jose, Houston, and El Paso in instituting high-level default curriculum, as well as statewide efforts in Texas and Indiana).

118. For information about Indiana’s 21st Century Scholars program, see SAUL SPIGEL, OLR RESEARCH REPORT: INDIANA 21ST CENTURY SCHOLARS PROGRAM (2006), <http://www.cga.ct.gov/2006/rpt/2006-R-0401.htm>.

119. See Warner-King & Smith-Casem, *supra* note 110, at 23.

120. 801 N.E.2d 326 (N.Y. 2003).

121. *Id.* at 331.

opportunity to obtain employment that paid a living wage and to serve “capably and knowledgeably” as jurors and voters, and further held that “a high school level education is now all but indispensable” to meet these standards.¹²²

Just as New York’s highest court recognized the right to an education had evolved to include a full high school level education, other courts may extend the notion of a high school education into preparing for postsecondary education. As postsecondary education becomes imperative for jobs that pay a living wage and for meaningful participation in civil society, it may be constitutionally infirm for states to tolerate schools and districts that do not provide curricular options that prepare students for postsecondary success.

Finally, ensuring that students get access to courses with certain names does not ensure rigor in the curriculum. We also need to use end-of-course exams and other consistent measures of student learning to ensure that schools are providing the content and the supports students need. As the New York Court of Appeals noted, a system of public accountability is essential to ensure that the results are taken seriously and that student failure is treated as system failure.

CONCLUSION

It is easy to identify discrete ways in which law, policy, and educational practice could better respond to the needs of children growing up in poverty. The most acute need, and the area in which we have the furthest to go, is for leadership on these issues. Too often, advocates for the poor see their role as demanding more resources for public education and stop short of demanding difficult changes in how public education distributes resources and opportunities.

More than any other educational resource, poor students need their fair share of our best teachers, but that is not going to happen by spending more on public education generally, or by raising teacher salaries across the board, or by lowering class size in every school. Unless we are willing to talk about the bargains—both express and implied—that consign low-income students to the low end of the teacher talent pool, we cannot close achievement gaps.

There is evidence of a new willingness to confront these issues. In September 2006, the Democrat-controlled California legislature

122. *Id.*

passed and the Republican Governor Arnold Schwarzenegger signed a law that will allow previously low-performing schools more latitude in hiring their teachers.¹²³ No longer will these schools, which disproportionately enroll low-income students, be required to accommodate teachers who have been excused from other schools in what is commonly referred to as the “Dance of the Lemons.” Significantly, the law was enacted with overwhelming support from Democrats and advocates for low-income and minority students, and over the vociferous objections of the state’s powerful teacher’s unions.¹²⁴

Persistently low results under the state’s accountability system played an important role in elevating and advancing the equity agenda in the California legislation described above.¹²⁵ It is important for leaders to use serious accountability for student achievement as a lever for change in public education. Strong accountability systems ensure that we take standards seriously and force systems of public education to measure how well they are serving students from poverty and students of color.

With accountability, there no longer are hidden children; all students count. Setting outcome goals and expecting change when goals are not met is absolutely essential to making the case that more or different resources are needed, and also essential to making public schools change. And change is drastically needed if we are going to realize the potential of poor people to achieve at the highest levels and to contribute as active citizens.

For all our romantic visions of a democratic meritocracy with equality of opportunity, the truth is that public education is systematically undermining the education of students who are poor. Public schools are not remedying class distinctions, they are reifying such distinctions.

There may be new opportunities for addressing these problems because it is becoming increasingly clear that the under-education of low-income students undermines America’s ability to meet its commitments at home and abroad. Advocates for poor children must seek new coalitions by engaging civic, religious, corporate, and

123. 2006 Cal. Legis. Serv. ch. 518 (West) (codified as amended at CAL. EDUC. CODE § 35036 (West 2007)).

124. Nancy Vogel, *Transfers of Incompetent Teachers Curtailed*, L.A. TIMES, Sept. 29, 2006, at B7.

125. Jack Scott & Michelle Rhee, *Common Sense in Teacher Hiring: Why States Should Follow California’s Lead in Reforming Teacher-Transfer Rules*, EDUC. WK., Nov. 15, 2006, at 31.

political leaders to challenge patently unequal opportunities and the unacceptable outcomes they produce. We cannot shy away from discussing dysfunction and unfairness within public education, nor from accountability that defines success in terms of learning results for low-income children. It is fair to demand academic results from schools; it is unfair to students not to do so.

At root, the disparate opportunities we afford to these students are a manifestation of the deep-seated belief that these students simply cannot achieve at the highest levels. Consider how these low expectations are hard wired into our subconscious by the very construction of our language. "Poor students" at once means students who are growing up without an abundance of money or material resources, and at the same time means students of low quality and low achievement. Yet another connotation defines these students as objects of pity. We will not give these students the opportunity and the challenge they want and deserve, and we will not fold them into the mainstream of our schools or our society, until we recognize their potential to achieve at the highest levels and our collective responsibility to ensure they have the chance.

More than anything else, the belief that students who are poor are also poor students stands in the way of these students' educational achievement.

