



**ENSURING EQUITY,
DECONCENTRATING POVERTY
AND MEETING STUDENT NEEDS
THROUGH THE ELEMENTARY AND
SECONDARY EDUCATION ACT**

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This year, Congress will reauthorize Title I of the Elementary and Secondary Education Act (ESEA), which distributes nearly \$15 billion a year to public schools. The Act's purpose is to provide supplemental federal funding to states and school districts to meet the additional needs of poor students and close the achievement gap. Yet, contrary to its historical mission, Title I no longer narrowly focuses on poverty-stricken schools and the neediest students, but rather reaches almost every school district in the nation and attempts to shape general educational policy for all students. As a result, the funds are diluted and insufficient in high poverty schools, where student need is the greatest. Title I, however, still demands that poor students achieve at the same level as other students. Moreover, it makes these demands of students without also making the demand of the states and school districts that these students have equitable access to resources. In effect, they are expected to do more with less. This was not always the case.

Title I originally required states and districts to ensure strict equity between Title I schools and non-Title I schools. Now states and school districts are almost entirely free to distribute vital resources inequitably. Rather, than providing for poor students' additional needs, Title I often simply fills a portion of the gap that states and districts themselves create. Even with federal funds, the average national spending per pupil is \$825 less in schools with high levels of low-income students than in schools with low levels of impoverished students, and over \$1300 per student if one factors in the additional cost associated with educating poor students.¹ In an average elementary school of four hundred students, these spending practices can create an average shortfall of over \$500,000 in each low-income school. When poor students need more and the law provides them less, expecting them to close a staggering achievement gap is unrealistic. Based on the eighth grade national assessments in 2007, students in high-poverty schools lag 39 scaled points behind students in low-poverty schools in reading and 41 points in math,² the equivalents of approximately four years of learning.³ Not only does Title I fail to meet these students' resource needs or ensure equity in their schools, it also fails to offer the ultimate solution of deconcentrating poverty. In some respects, Title I actually makes it advantageous for states and school districts to leave poor students in the worst circumstances.

If this current reauthorization is to offer poor children any real opportunity for success, it must remedy the flaws from past reauthorizations that have diluted the impact of Title I funds and sanctioned resource inequalities and concentrated poverty. Congress could achieve this with three simple steps:

- Require equal access to resources both within and between school districts.
- Guarantee student rights through administrative processes and a private cause of action.
- Use Title I funding formulas to incentivize equitable resource distributions, deconcentrate poverty, and meet student needs.

**THE CURRENT TITLE I FRAMEWORK
HINDERS, RATHER THAN FURTHERS, THE
GOAL OF PROVIDING THE NECESSARY
FUNDS TO LOW-INCOME STUDENTS**

I. Title I's funding formulas are ineffective in directing funds to states and schools that serve the neediest students.

Congress distributes Title I funds through no less than four different funding formulas and grants.⁴ The failure to coordinate and reevaluate these different formulas has created ineffective fund distributions that seriously hinder Title I's efficacy.

A. The funding formulas' statutory minimums overfund some states at the expense of others.

The first flaw in the funding formulas is that they all include statutory minimums that provide a base level of funding to all states, regardless of their need, poverty levels, or other factors such as geographic cost.⁵ The effect is to provide relatively large Title I grants to small states even though they tend to have small percentages of poor students.⁶ For instance, South Dakota and Rhode Island's Title I funding per student exceeds the amount that two-thirds of other states receive, even though most other states have higher percentages of poor students.⁷ In short, the small state minimums provide funds to some states that bear no relation to the number of poor students they serve.⁸

B. The low threshold for eligibility drives funds away from high poverty school districts to low poverty school districts.

The threshold for eligibility under Title I is the existence of a mere 2% poverty in a school district's student population.⁹ With this low threshold, over 90% of school districts receive Title I funds and 58% of public schools receive Title I funds.¹⁰ Thus, the available funds are diluted across a wide cross-section of schools, many of which are relatively affluent middle class schools.¹¹ At the same time, the Title I funds that high poverty schools receive are generally insufficient to counter the effects of student poverty. Moreover, they must make their funds stretch further than other schools. Title I aid per student in schools that have low levels of poor students is \$773, while the number is only \$475 in schools with the highest levels of poor students.¹² In short, the low threshold takes needed funds away from the poorest schools and gives it to schools that have fewer poor students.

C. Arbitrary weights in the funding formulas neglect student needs in schools with the highest levels of poverty.

Another serious flaw in Title I is that its funding formulas do not fully account for the negative effects of concentrated poverty. Research uniformly indicates that as the concentration of poverty increases, the negative educational effects of poverty are compounded.¹³ Two of Title I's funding formulas recognize this principle, but do not fully account for it.¹⁴ These two formulas actually increase the per pupil expenditure as the percentage of poor students in a district increases, but flatten the increase once the poverty level reaches approximately 30%.¹⁵ Thus, while the formulas recognize that it costs more per pupil to educate poor students in a school with 30% poverty than, for instance, a school with 20% poverty, it treats all students above the 30% poverty level as equivalent to one another. Flattening the funding increase at 30% poverty, however, serves no purpose because the effects of poverty do not flatten at 30%. In fact, research on student achievement indicates that, so long as the percentage of students in poverty remains below 50%, the overall achievement of the student body can remain steady.¹⁶ But once poverty approaches or passes 50%, the effects become deleterious for both poor and middle-class students.¹⁷ By limiting the increase for

concentrated poverty at the arbitrary level of 30%, Title I denies additional funds to the most disadvantaged students, those for whom Title I was designed to aid.

D. Basing funds on state per pupil expenditures penalizes poor states and arbitrarily rewards some others.

Not only do the current funding formulas dilute the effectiveness of Title I funds, they actually increase the resource gaps between certain states. As discussed above, state minimums increases inequity between some rich and poor states. But Congress also exacerbates inequalities by primarily basing the Title I formulas on each state's per pupil expenditure.¹⁸ The variances in state per pupil expenditures do not closely correlate with the varying geographic costs.¹⁹ Thus, some states are over-compensated and others are under-compensated in terms of their cost. In fact, because of the discrepancy between local costs and state expenditures, the United States General Accounting Office (GAO) has recommended eliminating state expenditures as a weighting factor in Title I funding formulas.²⁰ Nevertheless, if basing federal funds on state expenditures created an incentive for states to increase their educational expenditures, this weight might be warranted, but unfortunately, they create very little, if any, incentive because federal funds are such a small part of education budgets.²¹ Several commentators conclude that basing Title I grants on the amount that states spend simply penalizes poor states, aggravating inequity between states.²² Rather than rewarding effort, it rewards wealth. Some states that have lower per pupil expenditures tax themselves at higher levels than states that spend far more per pupil.²³ Most states with low per pupil expenditures simply lack the capacity to raise the amount of funds that the higher spending states raise. Thus, student needs too often go unmet.

E. One funding formula favors large school districts even when they serve smaller percentages of poor students than other district, depriving the neediest students of funds.

While the funding formulas place insufficient weight on poverty concentration, they inexplicably place significant weight on district size.²⁴ The funding formula for Title I's Targeted Grants significantly increases the per pupil funds as the size of the school district

increases, advantaging large school districts over small ones.²⁵ While such a formula would make sense if district size corresponded with geographic location, district size actually has little relation to population density and costs.²⁶ Neither does the size of the school district have any correlation with the percentage of poor students a district serves.²⁷ In fact, over half of the nation's poor children attend school districts that are smaller than 50,000 students.²⁸ Nevertheless, under the formula, a medium sized school district, with over 90% poor students, would be disadvantaged in relation to a larger school district with a lower percentage of poor students. In addition, favoring large school districts further creates inequity between rural and urban districts, even though the percentage of poor students in many rural districts is just as high as in urban districts.²⁹ In sum, favoring large school districts does not serve the purpose of targeting additional funds to poor students; Rather, it actually does poor students a disservice by creating arbitrary inequalities, taking funds away from districts who need it, and giving it those who may not.

II. Contrary to its historical mission, Title I no longer requires equitable opportunities for poor students, but sanctions vast inequities.

During the early years of the Title I program, Congress was concerned that states and local school districts might use federal funds in ways that exacerbated inequities between schools. Both to prevent new inequities and to eliminate existing ones, Congress imposed two key conditions on the receipt of Title I funds. First, school districts could not use federal funds to supplant local funds, and second, the resources offered at Title I schools had to be comparable to the resources at other schools in the district. Initially, these conditions included strict compliance measures and operated as serious attempts to ensure equality, but, over the years, Congress has relaxed each of these conditions to the point that they are, at best, meaningless and, at worst, an excuse or sanction for school districts to maintain existing inequity.

A. The current Title I standards are too flexible to prevent states and school districts from reducing their own education funds and replacing them with federal funds.

The prohibition on supplanting local dollars requires

that school districts use federal dollars only to supplement local funds.³⁰ Without a prohibition on supplanting funds, school districts could simply fund a larger portion of their budget from federal resources and a smaller portion from local resources, leaving the total combined expenditures for schools flat. However, because the prohibition requires speculation regarding future budgets and is labor intensive to monitor, the Department of Education has practically stopped enforcing it. Title I's maintenance of effort standard is designed to assist in this effort, requiring that school districts maintain their fiscal effort from one year to the next.³¹ But the numerical requirements in the current maintenance of effort standard have been relaxed to the extent that it no longer provides any real check on school budgets. The current maintenance of effort standard only requires that school districts maintain their funding at 90% of the previous year,³² and further allows districts to petition for a waiver of this standard.³³ Because the federal government provides less than 10% of schools' budgets, the 90% standard permits districts to draw down their spending from year to year and replace it with federal dollars, the very thing the standard was intended to prevent. Of course, the prohibition on supplanting funds is designed to prevent this, but so long as it goes unenforced the threat remains. In fact, evidence suggests that some schools have taken advantage of this opportunity.³⁴ As a result, Title I too often funds the gaps and shortfalls that states and school districts create rather than providing the supplemental opportunities that Congress designed it to deliver.

B. Comparability standards allow gross inequities both within and between school districts.

While initial enactments of Title I and its regulations required that per pupil funding at Title I schools be within 5% of non-Title I schools within the school district,³⁵ the statute now explicitly rejects such a requirement, stating that “[n]othing in this subchapter shall be construed to mandate equalized spending per pupil for a state, local education agency, or school.”³⁶ Currently, the statute only includes the general statement that “services” at Title I schools must be comparable to other Title I schools within the district. This standard, however, is practically meaningless. First and most important, the comparability standards do not apply at all between school districts, where the grossest inequities occur; rather, the current standards apply only within school districts. Thus, existing state finance structures

that can create upwards of \$2,000 per pupil funding gaps for high poverty school districts are not scrutinized. Second, as to the within district inequities, the comparability standard leaves too much to interpretation because it lacks any numerical benchmarks. Third, schools within districts need only be “substantially” comparable, allowing for even more flexibility. Last, the largest portion of school budgets are exempted from even this ambiguous standard.

In particular, Title I entirely exempts teacher salaries from comparability analysis.³⁷ Teacher salaries, however, regularly account for 80% to 90% of school budgets.³⁸ Under Title I, schools need only maintain a single salary schedule that applies to all schools in the district.³⁹ Real inequities arise, not from variations in salary schedules, but from the unequal distribution of teachers among schools. Under Title I’s comparability standard, all of the twenty-year teachers could be placed at a single school and all of the first-year teachers at another without violating comparability. Assuming there were twenty-five teachers at each school and the salary gap between the experienced teachers and the new teachers was \$30,000 each, the school with the experienced teachers would have \$750,000 more in its budget than the other school. Unfortunately, this scenario is not just a hypothetical, but is a prevailing reality, as high poverty and high minority schools employ the least experienced teachers of any schools and encounter the most turnover as these teacher gain experience.⁴⁰ Such results are directly contrary to Title I’s other requirements that these students have access to highly qualified teachers. Nevertheless, under current standards, these schools are comparable.

Similarly, the comparability standards do not apply to central administration expenditures, such as gifted, tutoring, and prekindergarten programs because school districts generally fund such programs out of their central budgets rather than through individual school budgets.⁴¹ The programs, however, are offered at specific schools. By exempting these programs from the comparability evaluation, school districts are free to distribute these funds and programs unequally between their schools, including offering them at non-Title I schools. Ironically, these supplemental programs are often the same type of opportunities that Title I is designed to fund at high-poverty schools. But these Title I programs are intended to provide poor students supplemental resources beyond what students elsewhere

receive. In essence, these programs are necessary to compensate for their disadvantage. However, when districts unequally fund the same programs at non-Title I schools, Title I funds become necessary just to allow students at poor schools to stay even with others, subverting Title I’s effort to provide supplemental services. In short, Title I entirely ignores the most significant inequities, which occur between school districts, and sanctions the inequities that occur within districts by exempting the most important expenditures and permitting wide variances as to the others.

C. Title I does not account for school districts’ quality and equity obligations under state law.

Although central to the educational opportunities that poor children should receive, Title I does not account for states’ constitutional obligations in regard to education. All fifty states have constitutional clauses that guarantee students a public education, and many state courts have held that this constitutional right to education includes a qualitative component.⁴² The various state legislatures have also enacted statutes that further expand and define the meaning of this right. Over the past twenty years in particular, state constitutions, supreme courts, and statutes have increasingly obligated states to deliver an equitable and/or a qualitative level of education (including the inputs necessary to do so),⁴³ but Congress has paid scant attention to these developments. Scores of court orders have mandated specific expenditures, specific improvements, and specific educational opportunities in public schools.⁴⁴ Unfortunately, states and school districts have too often failed to meet these obligations. Congress, however, has not inquired as to whether state educational agencies are complying with these orders or how state obligations might affect Title I’s notions of comparability and its distribution of funds. Title I simply ignores state and local educational agencies’ responsibilities under state law.

RECOMMENDATIONS

I. Require equal access to resources both within and between school districts.

Title I must remain consistent with its original and core mission of ensuring equity in opportunities and resources for poor students. This can be achieved by:

- a. Including explicit and numerical measures of comparability, as opposed to the current inherently subjective and unquantifiable “substantially comparable” standard.
- b. Applying comparability standards to all school expenditures, which includes eliminating the exemptions for teacher salaries and supplemental programs that are funded through central administration budgets.
- c. Applying comparability standards not just within school districts, but also between them, which would require establishing metrics that account for varying cost of education based on locality costs and the number of special need, poor, and at-risk students a district serves.
- d. Per the GAO’s recommendations, eliminating the supplement-not-supplant standard and then narrowing the maintenance of effort requirement from 90% of the previous year’s expenditures to 95%.
- e. Requiring compliance with state constitutional and statutory laws that relate to the quality or financing of education, including any open court orders relating thereto and/or the standards, inputs, and measures that courts have relied upon.

II. Use the funding formulas to incentivize equitable resource distributions, deconcentrate poverty, and meet student needs.

Because so many states and school districts have operated in ways that have expanded inequity, immediately reversing these structures would exact significant costs on some districts. States and school districts would be expected to redirect funds and may face the prospect of losing funding. To eliminate any undue hardship suffered by states, districts, and schools as a result of the forgoing reforms, Congress should incentivize equity through its funding formulas and provide a gradual transition to new funding patterns. The focus of Title I should be on achieving equity, deconcentrating poverty, and meeting students’ needs, particularly those students who need help the most.

A gradual transition would mean flattening expenditures in the existing formulas immediately, and

then gradually eliminating them over time. As for the new formulas, they should eliminate funding based on state expenditures, which penalizes poor states, and replace it with a metric that accurately reflects locality cost and student need. The primary weighting of funds, however, should be based on the level of equity that states and school districts maintain. As the level of inequity between schools decreases, the formula should provide more funds to the state. Because this weighting alone is unlikely to encourage states to reduce inequity, the formulas should reward states that make good faith efforts towards achieving equity by providing additional assistance to meet the states’ goals. Moreover, to account for the limited capacity to raise or reallocate funds in poorer states, the formula should provide a proportionally greater level of assistance to states whose limited capacity exceeds its students’ needs.

Finally, Title I should not only encourage states to achieve equity, it should return to its initial mission of meeting student needs. In particular, it should help those that need help the most: those children attending schools with the highest concentrations of impoverished students. To appropriately meet those students’ needs, the formula should increase the per pupil allotments as the level of impoverished students increases, particularly when poverty levels move above 50 percent. While Title I must meet student needs, it must not incentivize policies that further concentrate poverty. Thus, Title I should withhold funding increases for school districts and states that enact new policies that increase the concentration of poor students in particular schools and districts from one year to the next. To encourage states and school districts to deconcentrate poverty, Title I must address the needs of both the schools/districts from which students would leave and the schools/districts that would receive them. First, Title I should maintain, for a period of years, the current level of funding in any school districts or states that enact new policies that deconcentrate their poor students, so long as those additional funds are focused on improving the academic achievement of their remaining poor students. Second and most important, Title I must also provide middle class districts and schools that accept transfer students, or students under a new assignment policy, with a Title I per-pupil expenditure for each new student that is equivalent to what those students’ original schools would have received.

III. Guarantee students rights through an administrative process and a private cause of action.

Unlike other civil rights legislation that guarantees equitable opportunities for students, Title I does not include a private cause of action. A private cause of action is a child's only guarantee that their educational rights will be protected. The specter of litigation has been instrumental in encouraging schools to voluntarily comply with the law in other contexts. In the absence of voluntary compliance, federal enforcement becomes more difficult, as agencies are generally reluctant to strictly enforce key provisions and terminate school districts' funding when necessary. As a result, Title I runs the risk of becoming merely an aspiration rather than an effective driver of educational equity.

To ensure that students' receive the educational opportunities that Title I attempts to offer them, Title I must provide a private right of action in federal court for its student beneficiaries. To help identify meritorious complaints and avoid full scale litigation, an administrative enforcement procedure should be created that serves as a mandatory prerequisite to litigation. The administrative process must have tight deadlines and standards for resolution. After filing a complaint, no student or guardian should have to wait more than a full year before going to court. The relief available in the administrative process and litigation should include declaratory and injunctive remedies and other relief (exclusive of monetary damages) as appropriate to make whole students who are unlawfully denied rights and benefits under the ESEA.

CONCLUSION

Title I once provided the hope of a nation to make good on the promise of education as the means of economic mobility for the disadvantaged. It pumped new funds into the poorest areas of the country and acknowledged that poor children need more resources than the average student if they are realistically to succeed on a consistent basis. These efforts radically changed the opportunities poor students received, and also played a significant role in other efforts to foster racial equity. But today a casual observer would struggle to recognize this rich history in the text and effect of Title I. Instead, many can see it only as a tool of general education reform.

When Congress reauthorizes Title I this year, it must refocus the Act on the unique needs of the children for whom it was created. If Congress does nothing else, it must: 1) *ensure that Title I funds promote equity for poor students, rather than replicate existing inequities; and 2) direct the bulk of funding to students who attend school in concentrated poverty, rather than diverting funds to places with far less need, but do so in a way that encourages the deconcentration of poverty.* These principles are not contrary to goals embodied in achievement tests, standards based reforms, charter schools, and parental choice. Yet, conversations about these goals too often ignore the role that Title I must play in equalizing schools and meeting the basic needs of our country's poorest children. The time has now come for Congress to reinvigorate the principles upon which Title I was founded, while at the same time modernizing the Act to meet other related goals.

¹ THE EDUCATION TRUST, FUNDING GAPS 2006, at 7 tbl.3 (2006), available at <http://www2.edtrust.org/NR/rdonlyres/CDEF9403-5A75-437E-93FF-EBF1174181FB/0/FundingGap2006.pdf>.

² INST. OF EDUC. SCIS., NAT'L CTR. FOR EDUC. STATISTICS, THE CONDITION OF EDUCATION 2009, at 153 tbl.A-12-2, 157 tbl.A-13-2 (2009), available at <http://nces.ed.gov/pubs2009/2009081.pdf>

³ CHRISTOPHER LUBIENSKI & SARAH THEULE LUBIENSKI, NAT'L CTR. FOR THE STUDY OF PRIVATIZATION IN EDUC., CHARTER, PRIVATE, PUBLIC SCHOOLS AND ACADEMIC ACHIEVEMENT: NEW EVIDENCE FROM NAEP MATHEMATICS DATA 5 (2006), available at http://www.ncspe.org/publications_files/OP111.pdf (explaining that ten to eleven points are equivalent to approximately one grade level when interpreting National Assessment of Educational Progress mathematics exam scores).

⁴ 20 U.S.C. § 6333 (2006) (Basic Grants); § 6334 (Concentration Grants); § 6335 (Targeted Grants); § 6337 (Education Finance Incentive Grants).

⁵ 20 U.S.C. §§ 6333(d), 6334(b), 6335(e), 6337(b)(1)(B).

⁶ EDUCATION TRUST, *supra* note 1, at 3 tbl.1.

⁷ *Id.*

⁸ *Id.*

⁹ 34 C.F.R. § 200.71 (2008).

¹⁰ C. Joy Farmer, Note, *The No Child Left Behind Act: Will it Produce a New Breed of School Financing Litigation?*, 38 COLUM. J.L. & SOC. PROBS. 443, 456 (2005); INST. OF EDUC. SCIS., NAT'L CTR. FOR EDUC. STATISTICS, NUMBERS AND TYPES OF PUBLIC ELEMENTARY AND SECONDARY SCHOOLS FROM THE COMMON CORE OF DATA: SCHOOL YEAR 2006-07 tbl.2 [hereinafter NUMBERS AND TYPES], available at <http://nces.ed.gov/pubs2009/2009304.pdf> (indicating that 58,021 of the nation's total 98,793 schools are Title I schools).

¹¹ James E. Ryan, *The Perverse Incentives of the No Child Left Behind Act*, 79 N.Y.U. L. REV. 932, 942 (2004).

¹² Goodwin Liu, *Improving Title I Funding Equity Across States, Districts and Schools*, 93 IOWA L. REV. 973, 1010 (2008) (citing

STEPHANIE STULLICH ET AL., U.S. DEP'T OF EDUC., TARGETING SCHOOLS: STUDY OF TITLE I ALLOCATIONS WITHIN SCHOOL DISTRICTS 10 (1999)).

¹³ JAMES S. COLEMAN ET AL., U.S. DEP'T OF HEALTH, EDUC., AND WELFARE, EQUALITY OF EDUCATIONAL OPPORTUNITY 20-23 (1966); RICHARD D. KAHLBERG, ALL TOGETHER NOW: CREATING MIDDLE-CLASS SCHOOLS THROUGH PUBLIC CHOICE 39-40 (2000) [hereinafter KAHLBERG, ALL TOGETHER NOW]; RICHARD D. KAHLBERG, THE CENTURY FOUND., RESCUING *BROWN V. BOARD OF EDUCATION*: PROFILES OF TWELVE SCHOOL DISTRICTS PURSUING SOCIOECONOMIC SCHOOL INTEGRATION 6-7 (2007) [HEREINAFTER KAHLBERG, THE CENTURY FOUND.], available at <http://www.tcf.org/publications/education/districtprofiles.pdf>; UNC CTR. FOR CIVIL RIGHTS, THE SOCIOECONOMIC COMPOSITION OF THE PUBLIC SCHOOLS: A CRUCIAL CONSIDERATION IN STUDENT ASSIGNMENT POLICY 1-4 (2005), available at <http://www.law.unc.edu/documents/civilrights/briefs/charlottereport.pdf>; Molly S. McUsic, *The Future of Brown v. Board of Education: Economic Integration of the Public Schools*, 117 Harv. L. Rev. 1334, 1335 (2004) (arguing the best way to reach the goal of *Brown* is desegregation by economic class); see also THE CONDITION OF EDUCATION 2009, *supra* note 2, at 157 (showing a decrease in student achievement with each increase in the percentage of poor students in a school); see also GARY ORFIELD & SUSAN E. EATON, DISMANTLING DESEGREGATION: THE QUIET REVERSAL OF *BROWN V. BOARD OF EDUCATION* 53 (1996) (research has consistently found a “powerful relationship between concentrated poverty and virtually every measure of school-level academic results”).

¹⁴ 20 U.S.C. §§ 6335(c)(1)(b), 6337(d)(1)(A).

¹⁵ *Id.* §§ 6335(c)(1)(b), 6337(d)(1)(A).

¹⁶ KAHLBERG, ALL TOGETHER NOW, *supra* note 13, at 39-40; MICHAEL J. PUMA ET AL., U.S. DEP'T OF EDUC., PROSPECTS: THE CONGRESSIONALLY MANDATED STUDY OF EDUCATIONAL GROWTH AND OPPORTUNITY: THE INTERIM REPORT 77 tbl.1.51 (1993), available at http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/13/10/cc.pdf (demonstrating a precipitous decline in student performance once the percentage of poor students reaches fifty percent).

¹⁷ KAHLBERG, ALL TOGETHER NOW, *supra* note 13, at 39-40. Consistent with this research, Wake County, North Carolina caps the percentage of poor students assigned to a single school at forty percent. KAHLBERG, THE CENTURY FOUND., *supra* note 13, at 9-11.

¹⁸ See, e.g., 20 U.S.C. § 6333(a)(1)(B) (basing grant amount on the “average per-pupil expenditure in the State”).

¹⁹ U.S. GEN. ACCOUNTING OFFICE, TITLE I FUNDING: POOR CHILDREN BENEFIT THOUGH FUNDING PER POOR CHILD DIFFERS 33 (2002), available at <http://www.gao.gov/new.items/d02242.pdf>.

²⁰ *Id.*

²¹ U.S. GEN. ACCOUNTING OFFICE, *supra* note 19, at 25 (not only do Title I funds fail to push states to spend on low-income students, “the amount of money that could be provided through an incentive grant is not likely to be sufficient to create changes in states’ behaviors”).

²² Goodwin Liu, THE EDUCATION TRUST, *supra* note 1, at 2; John Podesta & Cynthia Brown, CTR. FOR AM. PROGRESS, *Introduction, in* ENSURING EQUAL OPPORTUNITY IN PUBLIC EDUCATION: HOW LOCAL SCHOOL DISTRICT FUNDING PRACTICES HURT DISADVANTAGED STUDENTS AND WHAT FEDERAL POLICY CAN DO ABOUT IT 1, 3 (2008)

[hereinafter ENSURING EQUAL OPPORTUNITY], available at <http://www.americanprogress.org/issues/2008/06/pdf/comparability.pdf>; but see Bruce Baker, *Title I Does Not Make “Rich” States “Richer,”* <http://schoolfinance101.wordpress.com/>.

²³ Liu, THE EDUCATION TRUST, *supra* note 22, at 2; Podesta & Brown, *supra* note 222, at 3. For instance, Mississippi taxes itself at a rate that exceeds the national average, but because its taxable resources are well below the national average, it only generates funds that amount to 77% of the national average. Liu, THE EDUCATION TRUST, *supra* note 22, at 4 tbl.2.

²⁴ Liu, *supra* note 12, at 991. Compare 20 U.S.C. § 6335(c)(2)(C), with *id.* § 6335(c)(1)(C) (giving roughly the same weight in the funding formula to district size of approximately 94,000 and to thirty percent poverty).

²⁵ 20 U.S.C. § 6335(c)(1)(C).

²⁶ U.S. GEN. ACCOUNTING OFFICE, *supra* note 19, at 33

²⁷ *Id.*

²⁸ Goodwin Liu, *Improving Title I Funding Equity Across States, Districts and Schools*, 93 IOWA L. REV. 973 (2008)

²⁹ *Id.* at 1000 tbl.5.

³⁰ 20 U.S.C. § 6321(b)(1).

³¹ *Id.* at §§ 6321(a), 7901.

³² *Id.* at §§ 6321(a), 7901.

³³ *Id.* at § 7901(c).

³⁴ Ross Wiener, CTR. FOR AM. PROGRESS, *Strengthening Comparability: Advancing Equity in Public Education, in* ENSURING EQUAL OPPORTUNITY, *supra* note 22, at 40.

³⁵ Phyllis McClure, CTR. FOR AM. PROGRESS, *The History of Educational Comparability in Title I of the Elementary and Secondary Education Act of 1965, in* ENSURING EQUAL OPPORTUNITY, *supra* note 22, at 9, 18, available at <http://www.americanprogress.org/issues/2008/06/pdf/comparability.pdf>.

³⁶ 20 U.S.C. § 6576 (2006).

³⁷ 20 U.S.C. § 6321(c)(2)(B).

³⁸ Press Release, Education Trust, No Accounting for Fairness: Additional Federal and State Funds Intended for Ohio’s Low-Income Students Often Don’t Reach the State’s Highest Poverty Schools (Dec. 22, 2008), available at <http://www.edtrust.org/dc/press-room/press-release/no-accounting-for-fairness-additional-federal-and-state-funds-intended-f>.

³⁹ 20 U.S.C. § 6321(c)(2)(A). Thus, if all the first-year teachers in a school district are paid the same and all fifth-year teachers are paid the same, Title I would consider the schools’ teaching resources equal, regardless of how they distributed between schools.

⁴⁰ See ERICA FRANKENBERG, THE CIVIL RIGHTS PROJECT AT HARVARD UNIV., THE SEGREGATION OF AMERICAN TEACHERS 34-39 (2006), available at http://www.civilrightsproject.ucla.edu/research/deseg/segregation_american_teachers12-06.pdf; Catherine E. Freeman et al., *Racial Segregation in Georgia Public Schools, 1994-2001: Trends, Causes, and Impact on Teacher Quality, in* SCHOOL RESEGREGATION: MUST THE SOUTH TURN BACK? 148, 157-59 (John Charles Boger & Gary Orfield eds., 2005); Wendy Parker, *Desegregating Teachers*, 86 WASH. U. L. REV. 1, 35-37 (2008); Jay Mathews, *Top Teachers Rare in Poor Schools*, WASH. POST, Sept. 10, 2002, at A5; Christopher Jencks & Meredith Phillips, *The Black-White Test Score Gap: Why It Persists and What Can Be Done*, BROOKINGS INST. (Spring 1998), http://www.brookings.edu/articles/1998/spring_education_jencks.aspx.

⁴¹ Marguerite Roza, THE EDUCATION TRUST, *How Districts Shortchange Low-Income and Minority Students*, in FUNDING GAPS 2006, *supra* note 1, at 9, 10-11.

⁴² Allen W. Hubsch, *Education and Self-Government: The Right to Education Under State Constitutional Law*, 18 J.L. & EDUC. 93, 96-97 (1989); Michael A. Rebell, *Poverty, "Meaningful" Educational Opportunity, and the Necessary Role of the Courts*, 85 N.C. L. REV. 1467, 1502 (2007).

⁴³ Rebell, *supra* note 42, at 1527; Derek W. Black, *Unlocking the Power of State Constitutions with Equal Protection: The First Step Toward Education as a Federally Protected Right*, 51 WM. & MARY L. REV. 1343 (2010).

⁴⁴ *See, e.g.*, *Serrano v. Priest*, 557 P.2d 929, 951 (Cal. 1976); *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 215-16 (Ky. 1989); *Abbott v. Burke (Abbott V)*, 710 A.2d 450, 460-71 (N.J. 1998); *Tenn. Small Sch. Sys. v. McWherter*, 91 S.W.3d 232, 240-41 (Tenn. 2002); *see also* Black, *supra* note 43.