

Beyond Either/Or: The Constitutional Right to an Equitable and Diverse Public Education

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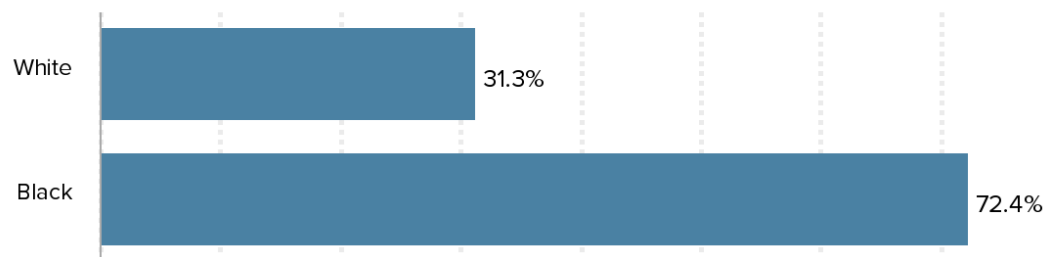
Student Segregation by Race and Poverty

- Structured into state public education systems
- Created/Sustained by state laws and policies
 - in housing, employment, taxation, child care, etc.
 - in public education: school finance, district/school boundaries, school governance, etc.
- Result: persistent disparities and gaps in education funding, resources, outcomes and opportunities between public schools/students in high wealth v. low wealth communities
- Result: student isolation by race and class in public schools

Student Concentration by Race/Poverty

Black children are more than twice as likely as white children to attend high-poverty schools

Shares of white and black eighth-graders attending high-poverty schools, 2017



Note: High-poverty schools are schools in which 51–100% of students are eligible for free or reduced-price lunch.

Source: Author's analysis of microdata from the National Assessment of Educational Progress (NAEP).

Economic Policy Institute

Black children are five times as likely as white children to attend schools that are highly segregated by race and ethnicity

Shares of white and black eighth-graders attending schools with a high concentration of students of color, 2017



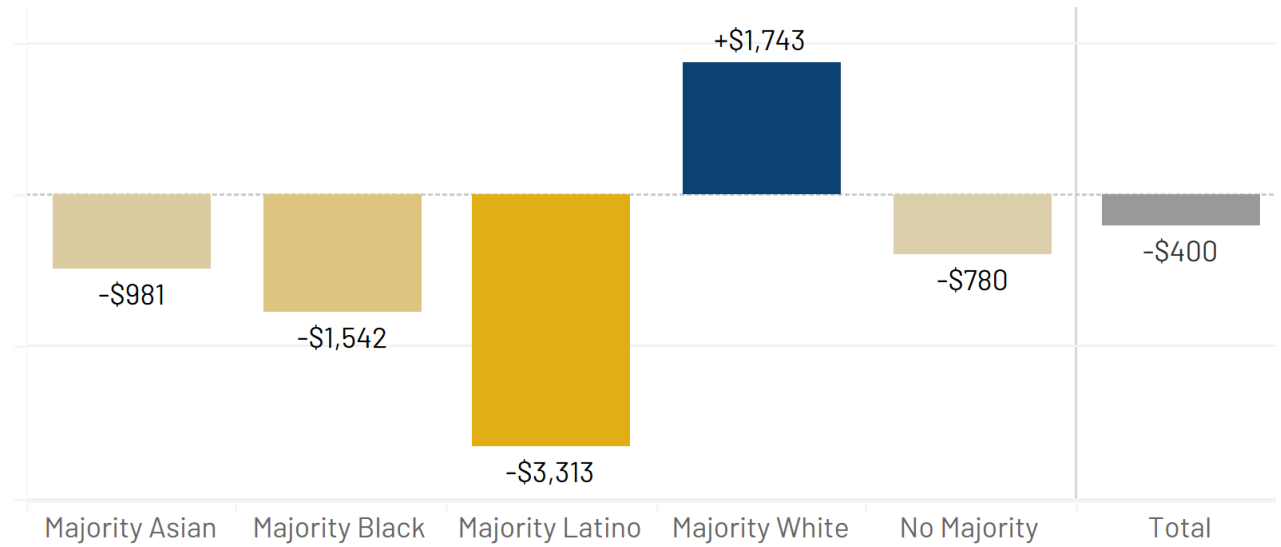
Note: Schools with a high concentration of students of color are those in which 51–100% of students are black, Hispanic, Asian, or American Indian.

Source: Author's analysis of microdata from the National Assessment of Educational Progress (NAEP).

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Funding Disparities by Race & Poverty

NJ Spending Gaps by District Racial Majority, 2020-21

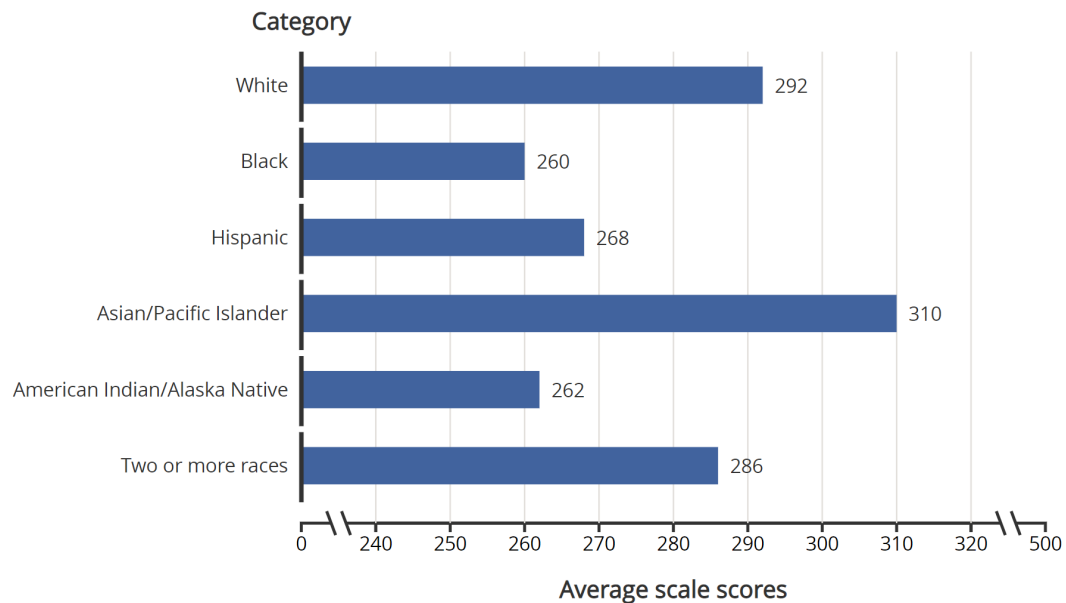


# Districts	5	11	58	388	102	564
Enrollment	39,439	47,279	373,168	602,840	342,835	1,405,561
SFRA Target	\$16,775	\$20,819	\$21,237	\$16,783	\$18,833	\$18,601
Spending PP	\$15,794	\$19,277	\$17,924	\$18,527	\$18,053	\$18,201
# Asian	25,310	326	9,194	48,382	54,323	137,533
# Black	2,434	26,565	49,152	32,441	57,312	167,903
# Latino	3,405	9,712	203,641	79,405	90,718	386,880
# White	6,642	2,159	27,484	407,565	101,684	545,533

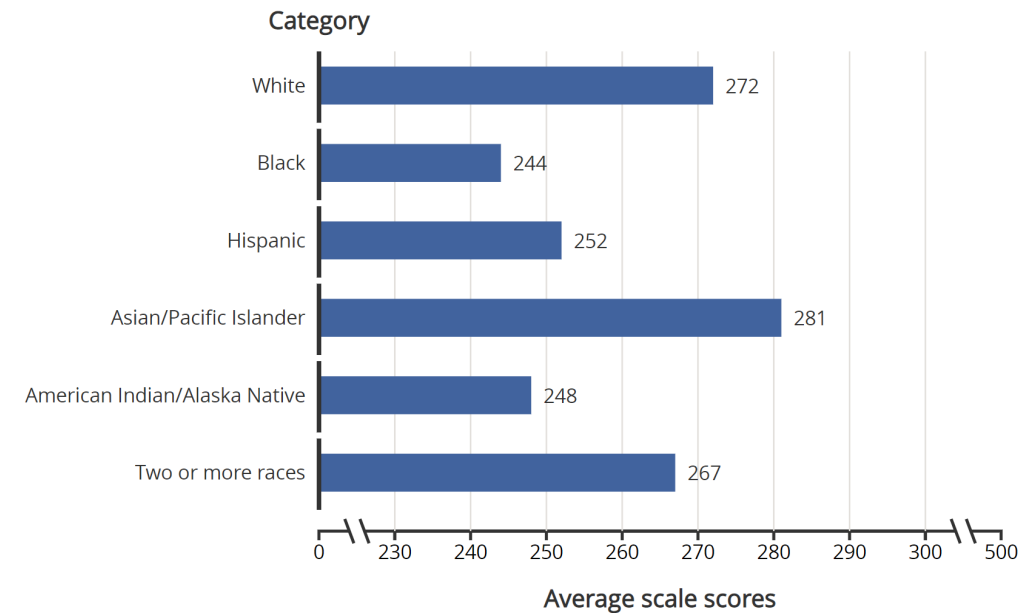
Source: NJDOE State Aid Notices, Fall Enrollment Reports, User Friendly Budget

Outcome Disparities by Race & Poverty

Average scale scores for grade 8 mathematics, by Race/ethnicity used to report trends, school-reported [SDRACE] for jurisdiction: 2019
2019, National



Average scale scores for grade 8 reading, by Race/ethnicity used to report trends, school-reported [SDRACE] for jurisdiction: 2019
2019, National



Outcome Disparities by Race & Poverty

Performance of black students suffers when these students attend high-poverty schools with high shares of students of color

Math performance of black students by school segregation, 2017



Notes: Schools with a high concentration of students of color are those in which 51–100% of students are black, Hispanic, Asian, or American Indian. Mostly white schools are those in which more than 75% of students are white. High-poverty schools are schools in which 51–100% of students are eligible for free or reduced-price lunch (FRPL). Low-poverty schools are those in which up to 25% are FRPL eligible.

Source: Author's analysis of microdata from the National Assessment of Educational Progress (NAEP).

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The Great Debate

- How to remedy deep deficits in public education for students in segregated districts/schools?
- Equity/Adequacy or Desegregation/Diversity?
- Separate but Equal or Integration?
- Neighborhood schools or schools elsewhere?
- Give Black/Latino/poor students what they need now or wait for the day when they can sit in classrooms next to white/affluent students?
- Stuck in the Great Debate?

Moving Past the Great Debate

We need a new set of assumptions:

- 1. Equity/Adequacy is crucial to ensuring today's students have the funding, resources and opportunities for education success, even in segregated schools/districts**
- 2. Diversity itself is now a core component of a minimally adequate public education; success in the 21st century workforce and the continued strength of our democracy require students to be prepared to work across lines of difference**
- 3. Diversity is also a necessary precursor to equitable school resourcing by underscoring the additional costs of education in areas of concentrated poverty and the challenges endemic to segregated schools such as teacher recruitment/retention, access to rigorous curriculum, etc.**

The Way Forward: A Proposal

Ground our work of remediating the educational harm to students of color and students in poverty caused by segregated school systems in an expanded definition of the legal right to public education in the United States

The US Constitutional Right to Education

All 50 State Constitutions contain an affirmative guarantee of public education for all resident children and a mandatory obligation on the State – typically the Legislature – to maintain and support a system of free public schools

Constitutional Right to Education Defined

Constitutional right to public education has been defined by Legislatures and, in many states, interpreted by state high courts in various ways. But the common thread is an education that prepares all students for citizenship and participation in our democracy and to make a positive contribution to the civic life and economy of their communities (e.g., “college and career readiness”).

State Constitutional Obligations

The states have two complimentary, inter-related obligations to effectuate students' right to a constitutional public education in their school systems historically segregated by race and poverty:

- Equity and adequacy, *Abbott v. Burke* (NJ)
- Desegregation and diversity, *Sheff v. O'Neill* (CT)

State failure to fulfill these obligations is a violation of students' constitutional right to public education

Remedies for a Constitutional Education

State obligations to educate all students require remedies to fully effectuate the right to education for students in segregated school systems.

These remedies are essential for states to deliver a constitutional education to students in segregated schools/districts.

The remedies advance BOTH equity/adequacy and desegregation/diversity.

State Remedies: Adequacy

- Funding segregated districts at levels adequate to give all students the resources essential to achieve state academic standards
- Funding beyond levels in wealthier districts targeted to staff, programs and interventions to address the academic, social and health needs from concentrated, deep student poverty
- Funding to provide all three- and four-year-olds access to universal, high quality, well-planned early education
- Funding to make and maintain all school buildings as a safe, not overcrowded, and educationally adequate environment to learn

Adequate Funding: Foundational for High Performing School Systems

- “A fair school finance formula would provide the funding needed to enable schools to design and implement programs that serve students from households living in deep poverty.”
- “Research consistently shows that, for historical and structural reasons, students of color are typically least well served and benefit most from investments in a range of resources, from high-quality preschool to better-qualified teachers. Because all students living in deep poverty need more support than simply going to classes, their schools need to be organized to provide wraparound services and continuous care.”

Building School Communities for Students Living in Deep Poverty, Learning Policy Institute, May 2022.

State Remedies: Equity (Non-discrimination)

- Continuously identify and act to ameliorate deficits in essential resources in segregated districts/schools, including lack of qualified teachers, teacher shortages, nurses, guidance counselors, technology and remote learning, mental health and social services, access to AP courses, etc.
- Continuously identify and act to ameliorate district/school policies and practices that disproportionately impact students of color and students in poverty, including suspensions, push-outs and arrests, delays in delivery of special education services and English language instruction, etc.

State Remedies: School Desegregation

- Identify and dismantle policy barriers causing de facto racial and socio-economic (SES) segregation of students and perpetuate racial and SES imbalance in districts and schools
- Adopt and implement policies designed to afford all students – Black/Latino/Asian/White/Low-Income/More Affluent – the opportunity to be educated in a racially and SES diverse learning environment

State Remedies: School Diversity

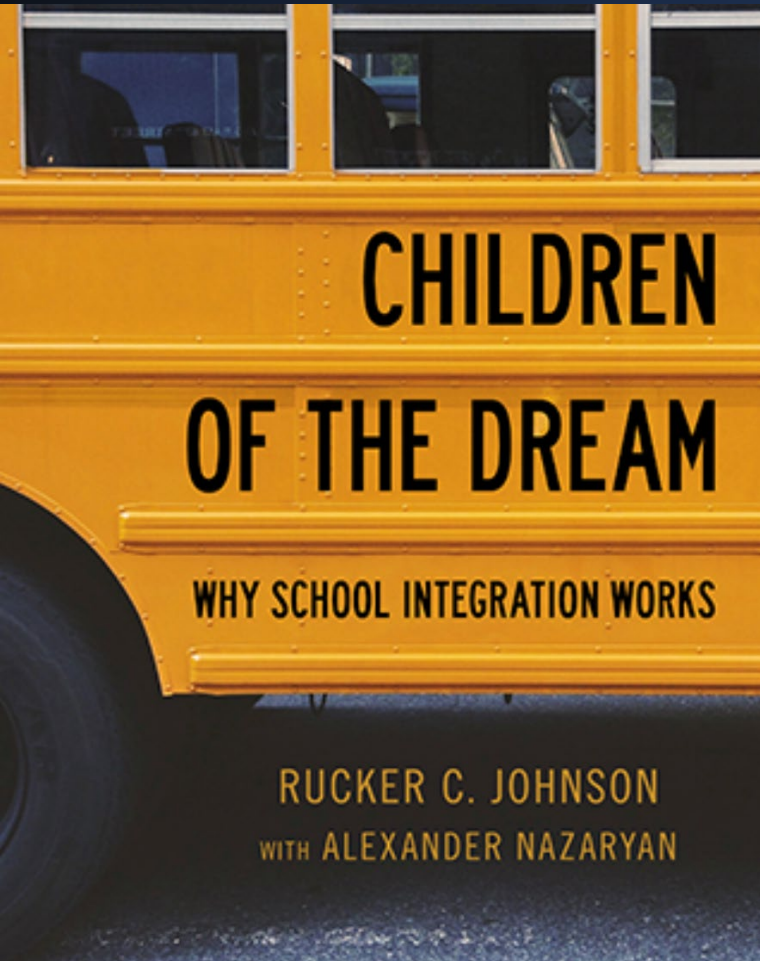
- SEA leadership, reporting and capacity
- School district consolidation
- Ban on segregative district successions
- Interdistrict school choice
- Magnet school interdistrict choice
- Controlled choice assignment plans
- Multi-district diverse charter schools

Using SES to Advance School Diversity

“As the primary means to reducing isolation and promoting racial, ethnic and economic integration opportunities for Hartford-resident minority students, the state will pursue the goal of enrolling applicants to *Sheff* Interdistrict Magnet Schools and the *Sheff* Connecticut Technical Education and Career System (CTECS) schools..... to maximize SES diversity, up to a maximum of 60% from Tier A and a minimum of 30% from Tier C for incoming enrollments for each school through the Student Assignment Plan and placement protocols managed by the Regional School Choice System (RSCO).” (emphasis added)

Sheff v. O’Neill, Permanent Injunction,
Connecticut Superior Court,
January 27, 2022

Benefits of Diverse Schools



- Black children who experienced integrated schools from K-12 completed over a full year of education more than comparable Black children in segregated schools.
- Five years in a desegregated school led to increased wages and work hours that, combined, came to a 30 percent increase in earnings.
- Exposure to desegregated schools in elementary school led to a 22-point decline in the probability the student would be incarcerated as an adult.

Beyond Either/Or: A Call to Action

“If the claim is that these students [in segregated districts] cannot make it, the constitutional answer is, give them a chance. The Constitution does not tell them that since money will not help, we will give them less; that because their needs cannot be fully met, they will not be met at all. It does not tell them they will get the minimum, because that is all they can benefit from.”

Abbott v. Burke, 119 N.J. 287, 375 (1990)

Beyond Either/Or: A Call to Action

The educational deprivation endured by students in segregated districts impacts “the entire state and its economy—not only on its social and cultural fabric, but on its material well-being, on its jobs, industry, and business. Economists and business leaders say that our state's economic well-being is dependent on more skilled workers, technically proficient workers, literate and well-educated citizens. And they point to the urban poor as an integral part of our future economic strength.... So it is not just that their future depends on the State, the state's future depends on them.” *Abbott v. Burke*, [119 N.J. 287](#), 392, [575 A.2d 359](#) (1990). Finding a way to cross the racial and ethnic divide has never been more important than it is today.”

Sheff v. O’Neill, 238 Conn. 1, 40 (1996)

Beyond Either/Or: A Call to Action

“In a society such as ours, it is not enough that the 3 R’s are being taught properly for there are other vital considerations. The children must learn to respect and live with one another in multi-racial and multi-cultural communities and the earlier they do so the better. It is during their formative school years that firm foundations may be laid for good citizenship and broad participation in the mainstream of affairs. Recognizing this, leading educators stress the democratic and educational advantages of heterogeneous school populations and point to the disadvantages of homogeneous student populations, particularly when they are composed of a racial minority whose separation generates feelings of inferiority.”

Booker v. Bd. of Ed. of City of Plainfield, 212
A.2d 1, 6 (N.J. 1965)