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## Parental Social Capital and Educational Inequality

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# PARENTAL SOCIAL CAPITAL AND EDUCATIONAL INEQUALITY

*Solangel Maldonado\**

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## INTRODUCTION

When we imagine how the law can and should support parents, we often think of child tax credits, subsidized childcare, paid parental leave, and universal pre-K. Eliminating racially segregated schools probably does not come to mind. Although education scholars have devoted significant attention to racially segregated schools and unequal educational opportunities, this issue is not addressed in most family law casebooks or courses, and family law scholars generally do not write about educational inequality. However, the intersection between family law and education law shares many similarities with the intersections between family law and criminal law<sup>1</sup> and between family law and immigration.<sup>2</sup> The reasons why the government should provide child tax credits, subsidized childcare, paid parental leave, and universal pre-K also warrant elimination of racially segregated schools and their attendant and long-term adverse effects on children’s achievement. These supports help parents exercise their fundamental rights and duties to raise children who will be prepared to

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1. See generally Melissa Murray, *Strange Bedfellows: Criminal Law, Family Law, and the Legal Construction of Intimate Life*, 94 IOWA L. REV. 1253 (2009).

2. See Kerry Abrams & R. Kent Piacenti, *Immigration’s Family Values*, 100 VA. L. REV. 629, 630 (2014). See generally Kari E. Hong, *Famigration (Fam-Imm): The Next Frontier in Immigration Law*, 100 VA. L. REV. ONLINE 63 (2014).

participate effectively in society. The U.S. Supreme Court has expressly recognized parents' right and "high duty" to direct their children's education,<sup>3</sup> but a quality public school education is necessary for most parents to exercise this right and obligation. Although the Supreme Court and the states have recognized the importance of public schools to our democracy,<sup>4</sup> the state denies parents the ability to provide their children with a quality education when it maintains racially segregated schools.

The Supreme Court recognized the harms of school segregation to minority group children more than sixty-five years ago in *Brown v. Board of Education (Brown I)*.<sup>5</sup> Yet, public schools in many states are as segregated today as they were when the *Brown II* Court, the following year, ordered them to desegregate "with all deliberate speed."<sup>6</sup> But, the Court set no deadlines or standards by which to accomplish this objective. And, perhaps directly connected to the impotency of *Brown II*'s remedial prescription, Black<sup>7</sup> and Latinx<sup>8</sup> children continue to experience the harms of educational segregation—most notably a significant achievement gap—vis-à-vis White<sup>9</sup> children.<sup>10</sup> This trajectory, however, was not preordained.

3. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925) (holding that parents have a fundamental right to "direct the upbringing and education of children under their control" and "the high duty[] to recognize and prepare [the child] for additional obligations").

4. *See Brown v. Bd. of Educ. (Brown I)*, 347 U.S. 483, 493 (1954) ("[E]ducation is perhaps the most important function of state and local governments. . . . It is the very foundation of good citizenship."); Shavar D. Jeffries, *The Structural Inadequacy of Public Schools for Stigmatized Minorities: The Need for Institutional Remedies*, 34 HASTINGS CONST. L.Q. 1, 2 (2006) ("While state constitutions vary in their respective definitions, they generally guarantee an education enabling students to participate meaningfully in the state's economic and civic life.").

5. 347 U.S. 483 (1954); *see also infra* note 44 and accompanying text.

6. *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294, 301 (1955). For a critique of *Brown*'s "all deliberate speed" mandate and its lack of remedial force, see Jack M. Balkin, *Brown v. Board of Education—A Critical Introduction*, in WHAT *BROWN V. BOARD OF EDUCATION* SHOULD HAVE SAID: THE NATION'S TOP LEGAL EXPERTS REWRITE AMERICA'S LANDMARK CIVIL RIGHTS DECISION 3, 22, 40–41, 64–67 (Jack M. Balkin ed., 2001).

7. Similar to Dean Angela Onwuachi-Willig's preference, "I generally prefer the term 'Blacks,' rather than the term 'African-Americans,' when referring to the entire group of people who identify as part of the black race in the United States because it is more inclusive." Angela Onwuachi-Willig, *The Trauma of Awakening to Racism: Did the Tragic Killing of George Floyd Result in Cultural Trauma for Whites?*, 58 HOUS. L. REV. 817, 821 n.9 (2021). Like Dean Onwuachi-Willig, "I capitalize the words *Black* and *White* when used as nouns to describe racialized groups." Angela Onwuachi-Willig, *Celebrating Critical Race Theory at 20*, 94 IOWA L. REV. 1497, 1500 n.11 (2009).

8. Although I recognize that most Latinx persons prefer the term Latino, Latina, or Hispanic, I use the term "Latinx" because it "is both gender-neutral and does not exclusively honor Spanish origin" and also recognizes our African and indigenous ancestries. Luz E. Herrera & Pilar Margarita Hernández Escontrías, *The Network for Justice: Pursuing a Latinx Civil Rights Agenda*, 21 HARV. LATINX L. REV. 165, 165 n.1 (2018).

9. Similar to Professor Brant Lee, I capitalize "White" not because I believe this is a "natural, objective description[] of a biological characteristic" but because it is "a socially and culturally constructed identity category, much like religious or national affiliations, and therefore should be capitalized." Brant T. Lee, *The Networking Economic Effects of Whiteness*, 53 AM. U. L. REV. 1259, 1260 n.1 (2004).

10. *See ERICA FRANKENBERG ET AL., C.R. PROJECT, HARMING OUR COMMON FUTURE: AMERICA'S SEGREGATED SCHOOLS 65 YEARS AFTER BROWN* 4 (2019),

In *Swann v. Charlotte-Mecklenburg Board of Education*,<sup>11</sup> widely considered the high-water mark in terms of the Court's willingness to tackle school segregation in the post-*Brown* era, the Court unanimously approved the redrawing of school district attendance zones and busing as solutions to integrate Mecklenburg County, North Carolina.<sup>12</sup> Just a few years later, however, in *Milliken v. Bradley*,<sup>13</sup> a divided Court denied a metropolitan-wide relief plan to integrate school districts in Detroit, Michigan.<sup>14</sup> Finding insufficient evidence to support a claim that school districts in the suburbs of Detroit violated plaintiffs' constitutional rights by effecting the segregated conditions the plaintiffs complained of, the Court reasoned that a cross-district remedy was inappropriate.<sup>15</sup> This decision limited states' ability to integrate students from predominantly White suburban school districts with students from predominantly Black and Latinx districts, absent evidence of intentional segregation.<sup>16</sup> Consequently, efforts to bridge the achievement gap have targeted school financing regimes that provide greater resources to schools in areas with higher property values, a route that has also had its roadblocks.<sup>17</sup>

*San Antonio Independent School District v. Rodriguez*<sup>18</sup> is exemplary. There, the Court held that education is not a fundamental right and upheld a school funding regime that included spending more money per student in areas with higher property taxes,<sup>19</sup> legitimizing the idea that race and class could properly serve as the basis for affording children different educational opportunities. Although it is hard to overstate the negative impact *Rodriguez* has had on the educational opportunities afforded to Black and Latinx children, the blow dealt by the *Rodriguez* Court is softened by the fact that virtually every state's constitution recognizes a fundamental right to an adequate education.<sup>20</sup> Consequently, some state courts have required

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<https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/harming-our-common-future-americas-segregated-schools-65-years-after-brown/Brown-65-050919v4-final.pdf> [<https://perma.cc/Q496-EQ33>].

11. 402 U.S. 1 (1971).

12. *See id.* at 28–30.

13. 418 U.S. 717 (1974).

14. *See generally id.*

15. *See generally id.*

16. *See id.* at 745 (holding that, “without an interdistrict violation and interdistrict effect [of segregation], there is no constitutional wrong calling for an interdistrict remedy”). *See generally* Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701 (2007) (holding that a school assignment plan that considered race to achieve racially balanced schools violated students' equal protection rights).

17. *See, e.g.,* San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 12–13 (1973) (challenging an education funding plan that spent as much as \$248 more per student in wealthy school districts as compared to the spending per student in poor districts).

18. 411 U.S. 1 (1973).

19. *See id.* at 54–55 (upholding a Texas educational funding system that provided “unequal expenditures” for pupils living in different districts because it did not create a disparity that was “so irrational as to be invidiously discriminatory”).

20. *See, e.g.,* CONN. CONST. art. VIII, § 1; FLA. CONST. art. IX, § 1(a); N.H. CONST. pt. II, art. LXXXIII; N.J. CONST. art. VIII, § 4(1); *see also* Seattle Sch. Dist. No. 1 v. State, 585 P.2d 71, 94–95 (Wash. 1978) (holding that the state constitution requires the state to provide, at a

legislators to ensure that funding between poor and wealthy school districts is equitable or to provide even greater funding to poor districts based on their students' greater needs.<sup>21</sup>

Despite these financial investments in some poor and disproportionately Black and Latinx school districts, the achievement gap between Black and Latinx children vis-à-vis White children persists.<sup>22</sup> Scholars have posited a number of theories for the achievement gap and have concluded that investing greater financial resources is unlikely to narrow it.<sup>23</sup> I am unconvinced that greater financial resources would not be beneficial, but I agree that additional school funding alone will not close the achievement gap. Financial resources, however, are not the only tools available to narrow the achievement gap.

This Essay argues that scholars must consider the *nonmonetary* resources—specifically, the social capital<sup>24</sup>—that middle- and upper-income parents bring to the predominantly White schools their children attend. While scholars have recognized middle- and upper-income *students* as educational resources that can help bridge the achievement gap, they have yet to explore the effects of nonmonetary resources that middle- and upper-income White *parents* bring to predominantly White school districts, and how these resources advantage children in these schools. This Essay calls on social scientists to study these effects and urges lawmakers to support parents by (1) integrating schools and (2) funding programs that seek to level

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minimum, an education sufficient to allow participation in the open political system and competition in economic markets and the marketplace of ideas); Jeffries, *supra* note 4, at 2.

21. See, e.g., *Abbott by Abbott v. Burke*, 575 A.2d 359, 408 (N.J. 1990) (requiring “that poorer urban districts’ educational funding [be] substantially equal to that of property-rich districts”); see also *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 348 (N.Y. 2003) (holding that a state’s school funding system violated the right to a sound basic education under the state constitution and requiring the state to provide greater funding to districts “where need is high and local ability to pay is low”); *DeRolph v. State*, 780 N.E.2d 529, 531 (Ohio 2002) (holding that the school financing system both violated the state constitution and required a complete and systemic overhaul and citing approvingly the statement of delegate James Taylor that “the true policy of the statesman is to provide the means of education . . . to every child in the State, the offspring of the black man equally with that of the white man, the children of the poor equally with the rich”); *Opinion of the Justs.*, 624 So. 2d 107, 166 (Ala. 1993) (requiring that the state provide all students with “equitable and adequate educational opportunities” “regardless of the wealth of the communities in which the schoolchildren reside”). Many state courts, however, have rejected claims asserting a right to equal funding. For a summary of school funding cases since *Rodriguez*, see *Overview of Litigation History*, SCHOOLFUNDING.INFO, <https://www.schoolfunding.info/litigation-map/> [<https://perma.cc/365F-DGJ3>] (last visited Apr. 2, 2022). Although school finance reform is not explicitly about racial inequity, race plays a significant role in school finance litigation. See generally James E. Ryan, *The Influence of Race in School Finance Reform*, 98 MICH. L. REV. 432 (1999).

22. See *infra* notes 47–51 and accompanying text.

23. See *infra* notes 62–63 and accompanying text.

24. Social capital is “the idea that networks and relationships have value that can be used to promote student well-being.” Jeffrey Alvin Anderson et al., *Successes, Challenges, and Future Directions for an Urban Full Service Community Schools Initiative*, 51 EDUC. & URB. SOC’Y 894, 898 (2019) (citing Ralph B. McNeal Jr., *Parental Involvement as Social Capital: Differential Effectiveness on Science Achievement, Truancy, and Dropping Out*, 78 SOC. FORCES 117 (1999)).

the playing field for students who attend schools with predominantly Black and Latinx students, whose parents lack the social capital that advantage students in wealthier, predominantly White schools.

### I. EDUCATIONAL SEGREGATION AND ITS HARMS

Almost seven decades after the Supreme Court's decision in *Brown I*, a high percentage of Black and Latinx students still attend segregated schools, where the majority of students are Black and Latinx.<sup>25</sup> Similarly, although White students comprise a minority of students in public schools overall,<sup>26</sup> the majority of White students in public schools attend schools with mostly White students and few Black and Latinx students.<sup>27</sup> Although segregated schools are prevalent across the country, the majority of Black and Latinx students in states with the most segregated schools—California, Illinois, Maryland, New Jersey, New York, and Texas—attend schools with only a few White students.<sup>28</sup> Some Black and Latinx students attend what Gary Orfield and Danielle Jarvie have labeled, “apartheid schools, comprised of 99 to 100% non-White students.”<sup>29</sup>

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25. See FRANKENBERG ET AL., *supra* note 10, at 25–31.

26. See *id.* at 4. This is a result of lower birth rates among the White population, the growth of the Asian and Latinx populations due to immigration, and White students' enrollment in private schools. See *id.* See generally RICHARD FRY, PEW HISPANIC CTR., *THE CHANGING RACIAL AND ETHNIC COMPOSITION OF U.S. PUBLIC SCHOOLS* (2007).

27. See FRANKENBERG ET AL., *supra* note 10, at 31–33; see also FRY, *supra* note 26, at 8.

28. New York is the most segregated state for Black students, and it is the second most segregated state for Latinx students; California is the most segregated state for Latinx students. See DANIELLE COHEN, UCLA C.R. PROJECT, *NYC SCHOOL SEGREGATION: A REPORT CARD FROM THE UCLA CIVIL RIGHTS PROJECT 9* (2021), [https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/nyc-school-segregation-report-card-still-last-action-needed-now/NYC\\_6-09-final-for-post.pdf](https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/nyc-school-segregation-report-card-still-last-action-needed-now/NYC_6-09-final-for-post.pdf) [<https://perma.cc/6X3T-RESL>]; GARY ORFIELD & DANIELLE JARVIE, UCLA C.R. PROJECT, *BLACK SEGREGATION MATTERS: SCHOOL RESEGREGATION AND BLACK EDUCATIONAL OPPORTUNITY 31* tbl.14 (2020), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/black-segregation-matters-school-resegregation-and-black-educational-opportunity/BLACK-SEGREGATION-MATTERS-final-121820.pdf> [<https://perma.cc/W4VK-D7WA>]; Press Release, The C.R. Project, *UCLA Civil Rights Project Report Shows School Segregation in New York Remains Worst in Nation* (June 10, 2021, 12:01 AM), <https://www.civilrightsproject.ucla.edu/news/press-releases/2021-press-releases/report-shows-school-segregation-in-new-york-remains-worst-in-nation/School-Segregation-in-NY-rls-final.pdf> [<https://perma.cc/2KEP-2UCJ>].

29. ORFIELD & JARVIE, *supra* note 28, at 6. I attended what I now recognize as apartheid schools all throughout elementary and middle school. I would have attended an apartheid high school had I not been accepted into one of New York City's specialized high schools, which have in recent years been the subject of much controversy because few Black and Latinx students are admitted. See Syed Ali & Margaret M. Chin, *What's Going On with New York's Elite Public High Schools?*, ATLANTIC (June 14, 2018), <https://www.theatlantic.com/education/archive/2018/06/new-york-high-schools-stuyvesant-brooklyn-bronx/562772/> [<https://perma.cc/Q4CW-9HHE>].

Educational segregation is a direct result of housing segregation. Although the Fair Housing Act<sup>30</sup> and state laws<sup>31</sup> prohibit racial discrimination in housing, residential segregation persists as a result of decades of federal, state, and local practices that exclude Black and, to a lesser extent, Latinx families from White neighborhoods.<sup>32</sup> Today, those neighborhoods are out of reach for the majority of Black, Latinx, and lower-income families, as real estate prices have skyrocketed and affordable housing is concentrated in predominantly low-income Black and Latinx municipalities with low-performing schools.<sup>33</sup> In addition, as a result of the wealth gap created by decades of housing, educational, and employment discrimination, many Black and Latinx families lack the required down payments to purchase a home, even when they can afford the monthly mortgage payments.<sup>34</sup> Moreover, the racial harassment and threats of harm Black families face in predominantly White suburbs<sup>35</sup> lead many middle-class Black families to reside in the same low-income minority neighborhoods as poorer families.<sup>36</sup>

Segregated schools are not an inevitable consequence of residential segregation. As a result of the school assignment system, however, residential segregation often leads to segregated schools. In most states, students are assigned to schools within their zones and generally cannot

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30. Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 81 (codified as amended in scattered sections of the U.S.C.).

31. *See, e.g.*, MASS. GEN. LAWS ANN. ch. 151B, § 4(7) (West 2022); N.J. STAT. ANN. § 10:5-12 (West 2021); N.Y. EXEC. LAW § 296(5)(a) (McKinney 2022).

32. *See* RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 8 (2017).

33. *See id.* at 182 (explaining that homes that were affordable in the late 1940s, such as in Levittown, have appreciated exponentially); INGRID GOULD ELLEN ET AL., OFF. OF POL’Y DEV. & RSCH., U.S. DEP’T OF HOUS. & URB. DEV., *EFFECT OF QAP INCENTIVES ON THE LOCATION OF LIHTC PROPERTIES: MULTI-DISCIPLINARY RESEARCH TEAM REPORT 4* (2015), <https://s3.documentcloud.org/documents/6405894/Pdr-Qap-Incentive-Location-Lihtc-Properties-050615.pdf> [<https://perma.cc/KJ3F-YV65>] (showing that affordable housing is concentrated in low-income, high-poverty areas); *see also* Jacqueline Rabe Thomas, *Separated by Design: Why Affordable Housing Is Built in Areas with High Crime, Few Jobs and Struggling Schools*, PROPUBLICA (Nov. 25, 2019, 5:00 AM), <https://www.propublica.org/article/separated-by-design-why-affordable-housing-is-built-in-areas-with-high-crime-few-jobs-and-struggling-schools> [<https://perma.cc/CG3S-RCVJ>]. *See generally* INGRID GOULD ELLEN & KEREN MERTENS HORN, *POVERTY & RACE RSCH. ACTION COUNCIL, DO FEDERALLY ASSISTED HOUSEHOLDS HAVE ACCESS TO HIGH PERFORMING PUBLIC SCHOOLS?* (2012), <http://www.prrac.org/pdf/PRRACHousingLocation&Schools.pdf> [<https://perma.cc/6LVJ-DXG8>].

34. *See* Meghan M. O’Neil, *Housing Policy, Race, Inequality, and Disparate Impact*, 55 *PHYLON* 60, 63, 72 (2018).

35. *See* Jeannine Bell, *The Hidden Fences Shaping Resegregation*, 54 *HARV. C.R.-C.L. L. REV.* 813, 817 (2019).

36. For example, “the average Black household earning more than \$75,000 per year resides in a poorer neighborhood than the average low-income white household, which earns less than \$40,000 per year.” *Id.* at 815–16 (citing Sean F. Reardon et al., *Neighborhood Income Composition by Household Race and Income, 1990–2009*, 660 *ANNALS AM. ACAD. POL. & SOC. SCI.* 78, 85–90 (2015)) (noting that “the neighborhoods in which upper-middle-class Blacks live are nearly as Black as those of poor Blacks”).

attend a public school outside those zones.<sup>37</sup> These school zones are drawn along the boundaries of residentially segregated municipalities. For example, four of the school districts in Union County, New Jersey—Elizabeth, Hillside, Plainfield, and Roselle—are at least 89 percent non-White and have a poverty rate of at least 65 percent.<sup>38</sup> Interestingly, four school districts in the same county—Cranford, Mountainside, Scotch Plains, and Westfield—are predominantly White and wealthy.<sup>39</sup> The same is true in Westchester County, New York, where parents of children in public schools in the Bronxville Union Free School District have a median household income over four times that of such parents in the neighboring Yonkers and Mount Vernon school districts and a student body that is only 8 percent Black

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37. See, e.g., N.J. STAT. ANN. § 18A:38-1 (West 2021). In fact, it is a crime to falsely represent that a student lives in a particular district—for example, by using another family member’s address—for the purpose of attending school in that district. See *id.* § 18A:38-1(c); see also SPECIAL CAP. PROJECT, U.S. CONG. JOINT ECON. COMM., ZONED OUT: HOW SCHOOL AND RESIDENTIAL ZONING LIMIT EDUCATIONAL OPPORTUNITY (2019), [https://www.jec.senate.gov/public/\\_cache/files/f4880936-8db9-4b77-a632-86e1728f33f0/jec-report-zoned-out.pdf](https://www.jec.senate.gov/public/_cache/files/f4880936-8db9-4b77-a632-86e1728f33f0/jec-report-zoned-out.pdf) [<https://perma.cc/CH34-3WWV>] (“Public education has traditionally been tied directly to housing through residential assignment policies that assign homes to schools via school attendance zones. School zones are typically designed so that students attend schools near home, and despite growing opportunities to opt out or choose another school via charters, magnets, and public school open enrollment policies, 71 percent of students attend their assigned public school.”). But see Barbara Armijo, *Can Your Child Go to School Outside Their District?*, U.S. NEWS & WORLD REP. (Sept. 23, 2021, 1:42 PM), <https://www.usnews.com/education/k12/articles/can-your-child-go-to-school-outside-their-district> [<https://perma.cc/9AZM-ML9K>] (discussing opportunities for children to attend a school outside their district).

38. See Amended Complaint for Declaratory Judgment and Other Relief at 18, Latino Action Network v. New Jersey, No. MER-L-001076-18 (N.J. Super. Ct. Law Div. Aug. 2, 2019).

39. See *Cranford Township School District, NJ*, CENSUS REP. <https://censusreporter.org/profiles/97000US3403570-cranford-township-school-district-nj/> [<https://perma.cc/94R4-JMKY>] (last visited Apr. 2, 2022) (documenting median household income as \$132,539 and indicating that the township is 83 percent White and 2 percent Black); *Mountainside Borough School District, NJ*, CENSUS REP. <https://censusreporter.org/profiles/97000US3411040-mountainside-borough-school-district-nj/> [<https://perma.cc/BQC6-GCV7>] (last visited Apr. 2, 2022) (documenting median household income as \$121,172 and indicating that the school district is 75 percent White and 2 percent Black); *Scotch Plains-Fanwood Regional School District, NJ*, CENSUS REP. <https://censusreporter.org/profiles/97000US3414670-scotch-plains-fanwood-regional-school-district-nj/> [<https://perma.cc/TY2T-WR4A>] (last visited Apr. 2, 2022) (documenting median household income as \$145,464 and indicating that the school district is 69 percent White and 8 percent Black); *Westfield Town School District, NJ*, CENSUS REP. <https://censusreporter.org/profiles/97000US3417760-westfield-town-school-district-nj/> [<https://perma.cc/6QMY-4XMJ>] (last visited Apr. 2, 2022) (documenting median household income as \$158,323 and indicating that the school district is 78 percent White and 2 percent Black). The disparity in household income is even greater when looking at the median household income of parents with children in public schools: Plainfield’s is \$59,241, with 31 percent residing in an owner-occupied home, as compared to Westfield’s \$250,001, with 89.2 percent residing in an owner-occupied home. Compare *Plainfield City School District, NJ*, NAT’L CTR. FOR EDUC. STAT., <https://nces.ed.gov/Programs/Edge/ACSDashboard/3413140> [<https://perma.cc/E5EX-Y7JL>] (last visited Apr. 2, 2022), with *Westfield Town School District, NJ*, NAT’L CTR. FOR EDUC. STAT., <https://nces.ed.gov/Programs/Edge/ACSDashboard/3417760> [<https://perma.cc/8W58-VHHQ>] (last visited Apr. 2, 2022).



and Latinx.<sup>40</sup> The majority of students in the Yonkers and Mount Vernon school districts, in contrast, are Black or Latinx.<sup>41</sup> Students who reside in predominantly Black and Latinx neighborhoods are zoned out of schools in predominantly White and wealthy school districts, even when these schools are in close proximity, sometimes only hundreds of feet, to their homes.<sup>42</sup>

As the Supreme Court recognized in *Brown I*, segregated schools deprive Black (and Latinx) children of equal educational opportunities, even if “the physical facilities and other ‘tangible’ factors” are equal.<sup>43</sup> Thus, segregated

40. See *New York State Education at a Glance*, N.Y. STATE EDUC. DEP’T, <https://data.nysed.gov/> [<https://perma.cc/WX8X-LK46>] (last visited Apr. 2, 2022). The Mount Vernon City School District and Yonkers Public Schools district are 16 percent and 37 percent White, respectively, and the median household income of parents with children in public schools is \$57,903 and \$59,549, respectively. See *Mount Vernon School District, NY*, NAT’L CTR. FOR EDUC. STAT., <https://nces.ed.gov/Programs/Edge/ACSDashboard/3620100> [<https://perma.cc/NXM6-T32G>] (last visited Apr. 2, 2022); *Yonkers School District, NY*, NAT’L CTR. FOR EDUC. STAT., <https://nces.ed.gov/Programs/Edge/ACSDashboard/3631920> [<https://perma.cc/AM95-RGWU>] (last visited Apr. 2, 2022). The Bronxville Union Free School District is 82 percent White and only 1 percent Black, and the median household income of parents with children in public schools is \$250,001. See *Bronxville Union Free School District, NY*, NAT’L CTR. FOR EDUC. STAT., <https://nces.ed.gov/Programs/Edge/ACSDashboard/3605640> [<https://perma.cc/JF26-Y8DF>] (last visited Apr. 2, 2022).

41. See *Mount Vernon School District, NY*, *supra* note 40 (reporting that 63 percent of children in the Mount Vernon school district are Black and 16 percent are Hispanic or Latinx); *Yonkers School District, NY*, *supra* note 40 (reporting that 38 percent of children in the Yonkers school district are Hispanic or Latinx and 16 percent are Black).

42. See *Sheff v. O’Neill*, 678 A.2d 1267, 1274 (Conn. 1996) (agreeing with the trial court’s conclusion that the statute assigning students to schools where they reside was “the single most important factor contributing to the present concentration of racial and ethnic minorities in . . . Hartford . . .” (emphasis omitted)). As I was house hunting a number of years ago, I saw a beautiful house in Plainfield, New Jersey, where schools are ranked among the lowest in the state and only 9 percent of the town’s students are White. See *Plainfield City School District, NJ*, *supra* note 39; *Plainfield Public School District*, GREATSCHOOLS, <https://www.greatschools.org/new-jersey/plainfield/plainfield-public-school-district/> [<https://perma.cc/MT6F-CF7X>] (last visited Apr. 2, 2022). As I walked around the backyard, I looked over the fence that divided this house from the house behind it. My realtor pointed out that the house on the other side of the yard was also for sale, but it was priced \$200,000 higher, even though it was smaller. This was because the house across the yard was in the highly-regarded Scotch Plains-Fanwood School District, which is wealthy and predominantly White. *Scotch Plains-Fanwood Regional School District, NJ*, *supra* note 39; *Scotch Plains-Fanwood School District*, GREATSCHOOLS, [https://www.greatschools.org/new-jersey/scotch-plains/scotch-plains\\_fanwood-school-district/](https://www.greatschools.org/new-jersey/scotch-plains/scotch-plains_fanwood-school-district/) [<https://perma.cc/37KG-CEX7>] (last visited Apr. 2, 2022). For an excellent critique of school rankings, see generally Timothy P. Glynn & Sarah E. Waldeck, *Penalizing Diversity: How School Rankings Mislead the Market*, 42 J.L. & EDUC. 417 (2013).

43. *Brown I*, 347 U.S. 483, 493 (1954). The harms of segregation extend beyond denial of equal educational opportunities. Segregation may perpetuate racial stereotypes and bias against and as between different groups. See Stacy Hawkins, *Reverse Integration: Centering HBCUs in the Fight for Educational Equality*, 24 U. PA. J.L. & SOC. CHANGE 351, 399 (2021) (noting that “segregation . . . harms white children by fomenting racial hatred and division while engendering notions of white supremacy”); Angela Onwuachi-Willig, *Reconceptualizing the Harms of Discrimination: How Brown v. Board of Education Helped to Further White Supremacy*, 105 VA. L. REV. 343, 359 (2019) (arguing that *Brown* failed “to identify one key, harmful consequence of segregation and racism—its dehumanizing effects on Whites”). It also harms White students who are deprived of opportunities to learn with and from peers of different backgrounds, thereby limiting opportunities to thrive in a racially and

schools “are inherently unequal,”<sup>44</sup> even if the state provides schools with predominantly Black and Latinx students with the same resources—funding, quantity and quality of teachers, academic programming, cocurricular and extracurricular activities, and counselors—as schools with majority White students. Although *Brown* involved de jure (legally sanctioned) segregation, some states have concluded that de facto segregation violates their state constitutions<sup>45</sup> because it deprives Black and Latinx students of equal opportunities for academic “achievement, college success, long-term employment and income.”<sup>46</sup> This is evident from the achievement gap.

### A. The Achievement Gap

Researchers have well documented the achievement gap between Black and White students, Latinx and White students, and low-income and upper-income students.<sup>47</sup> Although several factors contribute to the

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culturally diverse society. Discussion of these harms is beyond the scope of this Essay, but for an exploration of these harms, see Onwuachi-Willig, *supra*; ROSLYN ARLIN MICKELSON, NAT'L COAL. ON SCH. DIVERSITY, SCHOOL INTEGRATION AND K–12 OUTCOMES: AN UPDATED QUICK SYNTHESIS OF SOCIAL SCIENCE EVIDENCE 5–6 & nn.23–29 (2016), <https://www.school-diversity.org/pdf/DiversityResearchBriefNo5Oct2016Big.pdf> [https://perma.cc/M749-39X8]; MARGERY AUSTIN TURNER ET AL., URB. INST., WHITE PEOPLE'S CHOICES PERPETUATE SCHOOL AND NEIGHBORHOOD SEGREGATION: WHAT WOULD IT TAKE TO CHANGE THEM? 7–10 (2021), <https://www.urban.org/sites/default/files/publication/104127/white-peoples-choices-perpetuate-school-and-neighborhood-segregation.pdf> [https://perma.cc/49KT-37JT] (citing studies demonstrating how segregation undermines White children's chances to thrive); John F. Dovidio et al., *Reducing Intergroup Bias Through Intergroup Contact: Twenty Years of Progress and Future Directions*, 20 GRP. PROCESSES & INTERGROUP REL. 606, 614 (2017); Thomas F. Pettigrew & Linda R. Tropp, *A Meta-Analytic Test of Intergroup Contact Theory*, 90 J. PERSONALITY & SOC. PSYCH. 751, 751–52, 766–67 (2006); Thomas F. Pettigrew et al., *Recent Advances in Intergroup Contact Theory*, 35 INT'L J. INTERCULTURAL REL. 271, 272–73, 278 (2011). See generally Mark J. Chin, *The Impact of School Desegregation on White Individuals' Racial Attitudes and Politics in Adulthood* (Annenberg Inst. for Sch. Reform at Brown Univ. Ed., Working Paper No. 20-318, 2020), <https://www.edworkingpapers.com/sites/default/files/ai20-318.pdf> [https://perma.cc/QS3N-A47X]; Peter B. Wood & Nancy Sonleitner, *The Effect of Childhood Interracial Contact on Adult Antiracial Prejudice*, 20 INT'L J. INTERCULTURAL REL. 1 (1996). Integration is not without costs, however. Minority students who attend predominantly White schools may be subjected to the “racial and cultural insensitivity of whites in the suburbs.” Amy Stuart Wells, *The “Consequences” of School Desegregation: The Mismatch Between the Research and the Rationale*, 28 HASTINGS CONST. L.Q. 771, 787 (2001) (reporting that “white teachers, administrators and students of suburbia regularly made [minority] transfer students feel unwanted and unwelcome”).

44. *Brown I*, 347 U.S. at 495.

45. See *Sheff*, 678 A.2d at 1289–90. See generally *Booker v. Bd. of Educ.*, 212 A.2d 1 (N.J. 1965); *In re North Haledon*, 854 A.2d 327 (N.J. 2004).

46. FRANKENBERG ET AL., *supra* note 10, at 4.

47. See, e.g., Glynn & Waldeck, *supra* note 42, at 428 (discussing the achievement gap and summarizing studies); Derek W. Black, *Middle-Income Peers as Educational Resources and the Constitutional Right to Equal Access*, 53 B.C. L. REV. 373, 404 (2012) (discussing two to three year achievement gap in reading and math between Black and White eighth graders); *NAEP Report Card: Reading*, THE NATION'S REP. CARD, <https://www.nationsreportcard.gov/reading/nation/achievement/?grade=4> [https://perma.cc/3TDN-YJNZ] (last visited Apr. 2, 2022) (reporting that 45 percent of White fourth graders, as compared to 18 percent of Black, 23 percent of Hispanic, and 57 percent of Asian fourth graders, were proficient in reading, based on 2019 test scores); *NAEP Report Card:*

achievement gap, segregated schools are a significant cause. Children who attend schools with a significant percentage of White students tend to perform better academically than students in schools attended by predominantly Black and Latinx students, regardless of race.<sup>48</sup> Indeed, attending a school with predominantly Black and Latinx students or students from low-income families is correlated with poorer academic performance by students of all races in elementary school,<sup>49</sup> middle school, and high

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*Mathematics*, THE NATION'S REP. CARD, <https://www.nationsreportcard.gov/mathematics/?grade=4> [<https://perma.cc/RM37-JZR6>] (last visited Apr. 2, 2022) (reporting score gap in mathematics test by race/ethnicity in 2019); Sean F. Reardon, *The Widening Academic Achievement Gap Between the Rich and the Poor: New Evidence and Possible Explanations*, in *WHITHER OPPORTUNITY?: RISING INEQUALITY, SCHOOLS, AND CHILDREN'S LIFE CHANCES 92* (Greg J. Duncan & Richard J. Murnane eds., 2011). See generally THE BLACK-WHITE TEST SCORE GAP (Christopher Jencks & Meredith Phillips eds., 1998); NAT'L CTR. FOR EDUC. STAT., *SCHOOL COMPOSITION AND THE BLACK-WHITE ACHIEVEMENT GAP* (2015), [https://nces.ed.gov/nationsreportcard/subject/studies/pdf/school\\_composition\\_and\\_the\\_bw\\_achievement\\_gap\\_2015.pdf](https://nces.ed.gov/nationsreportcard/subject/studies/pdf/school_composition_and_the_bw_achievement_gap_2015.pdf) [<https://perma.cc/NJZ7-FXHQ>]; F. CADELLE HEMPHILL ET AL., NAT'L CTR. FOR EDUC. STAT., *ACHIEVEMENT GAPS: HOW HISPANIC AND WHITE STUDENTS IN PUBLIC SCHOOLS PERFORM IN MATHEMATICS AND READING ON THE NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS* (2011), <https://nces.ed.gov/nationsreportcard/pdf/studies/2011459.pdf> [<https://perma.cc/M79L-LZ7M>]. The COVID-19 pandemic will likely exacerbate this gap for years to come. See generally DEP'T OF EDUC. OFF. FOR C.R., *EDUCATION IN A PANDEMIC: THE DISPARATE IMPACT OF COVID-19 ON AMERICA'S STUDENTS* (2021), <https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf> [<https://perma.cc/48WC-NB3K>]; Emma Dorn et al., *COVID-19 and Education: The Lingering Effects of Unfinished Learning*, MCKINSEY & CO. (July 27, 2021), <https://www.mckinsey.com/industries/education/our-insights/covid-19-and-education-the-lingering-effects-of-unfinished-learning> [<https://perma.cc/FT2T-L76U>].

48. See Hanna Dumont & Douglas D. Ready, *Do Schools Reduce or Exacerbate Inequality?: How the Associations Between Student Achievement and Achievement Growth Influence Our Understanding of the Role of Schooling*, 57 AM. EDUC. RSCH. J. 728, 733–34 (2020). See generally MICKELSON, *supra* note 43.

49. See Dumont & Ready, *supra* note 48, at 734 (“[S]tudents attending schools with higher proportions of non-White/non-Asian students typically gained fewer math skills in both kindergarten and first grade and fewer reading skills in first grade.”). I am not suggesting that children learn more when they attend school with White children. Proximity to White students per se does not lead to better educational outcomes. Cf. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 479 (1976) (critiquing civil rights lawyers’ focus on integration and failure to pursue alternatives, such as equal resources, for predominantly minority schools and “making black schools educationally effective”); Hawkins, *supra* note 43, at 399 (arguing that segregation is not what is “most detrimental to Black children in the educational context [but] [i]nstead, the cause of the most detrimental harm, and the chief impediment to realizing equal educational opportunities, is the inequality of resources afforded to Black children attending segregated schools”). However, middle- and upper-income White parents bring resources, including their social capital, to the schools their children attend. It is these resources, which are lacking in predominantly Black and Latinx schools, that benefit all the children in that school. See Wells, *supra* note 43, at 790 (“African American students did not need to sit next to white students to learn, but if they did, they were more likely to be in social institutions that conferred status and prestige.”).

school.<sup>50</sup> This has detrimental consequences that affect opportunities for higher education and career paths.<sup>51</sup>

The most obvious explanation for the achievement gap between schools with mostly White students and schools with mostly Black and Latinx students is resources. Schools that serve White students generally have greater resources than schools with mostly Black and Latinx students.<sup>52</sup> These schools can provide superior curricula, facilities, and more experienced teachers, administrators, and counselors.<sup>53</sup> Thus, researchers have concluded that the achievement gap “is largely attributable to the fact that predominantly [Black and Latinx] schools are also overwhelmingly high-poverty schools, and high-poverty schools depress the academic achievement of students who attend those schools.”<sup>54</sup> Schools with large numbers of students from low-income families not only harm low-income students but also “have a negative impact on a student’s educational outcomes regardless of the student’s individual socioeconomic status.”<sup>55</sup> Thus, Black students from middle- and upper-income families, who, as noted, tend to reside in the same neighborhoods as low-income Black students, may experience negative educational outcomes when they attend high-poverty, racially segregated schools.

Although the achievement gap largely may be the result of inadequate resources, it is not the only cause. As a result of school funding litigation,<sup>56</sup> some states spend more money per student in high-poverty (and disproportionately Black and Latinx) districts than in wealthier districts. For example, from 2020 to 2021, New Jersey spent \$30,129 per student in the majority Black and Latinx Newark Public Schools district as compared to \$18,154 per pupil in the majority White and wealthier Toms River Regional

50. See generally MICKELSON, *supra* note 43; see also Roslyn Arlin Mickelson, *Subverting Swann: First- and Second-Generation Segregation in the Charlotte-Mecklenburg Schools*, 38 AM. EDUC. RSCH. J. 215, 243 (2001) (finding that, even controlling for factors such as a student’s family background, prior achievement, peer effects, and self-reported academic effort, students who spent more time in predominantly minority elementary schools had lower standardized test scores and grade point averages in middle and high school).

51. For example, only about 40 percent of high school students at predominantly Black and Latinx schools graduate on time, regardless “of a student’s individual race or wealth.” Black, *supra* note 47, at 407. Students in these schools are also less likely to attend college. See *id.* at 408; see also MICKELSON, *supra* note 43, at 4 (citing studies).

52. See Bell, *supra*, note 35, at 814 (explaining that schools in “predominantly white neighborhoods have . . . better-resourced schools than predominantly Black neighborhoods”). Indeed, the “nation’s education system continues to confine poor and minority communities to the poorest-performing teachers, poorly maintained facilities, and inferior academic opportunities and expectations.” Kimberly Jenkins Robinson, *The High Cost of Education Federalism*, 48 WAKE FOREST L. REV. 287, 319–20 (2013).

53. See Black, *supra* note 47, at 404–05 (“[S]tudents in predominantly poor and minority schools tend to receive a generally low-quality curriculum[,] have unequal access to high-level curricular offerings . . . [, and] have limited access to highly qualified teachers.”).

54. *Id.* at 404.

55. *Id.*

56. See generally Conn. Coal. for Just. in Educ. Funding, Inc. v. Rell, 990 A.2d 206 (Conn. 2010); Abbott by Abbott v. Burke, 575 A.2d 359 (N.J. 1990). For a summary of school funding cases since *Rodriguez*, see *Overview of Litigation History*, *supra* note 21.

Schools district.<sup>57</sup> Yet, despite these additional financial resources, children in Newark public schools (who attend schools with predominantly Black and Latinx students) lag behind students in Toms River schools (who attend predominantly White schools).<sup>58</sup> This is not surprising, given that students from low-income families may have greater needs that are likely to go unmet when a large proportion of the student body also has significant needs but teachers, counselors, and administrators cannot devote the necessary attention and resources to each student.

Retention of experienced teachers is also a challenge in schools where a significant portion of the student body has significant needs.<sup>59</sup> Moreover, despite additional resources, the curricular offerings at high-poverty schools are unlikely to be similar to those in wealthier schools because poorer schools may need to direct resources to meet other basic needs.<sup>60</sup> Despite these and other possible explanations for the achievement gap, including racial bias and stereotype threats that may affect student performance,<sup>61</sup> some researchers

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57. See *Newark Public School District, NJ*, NAT'L CTR. FOR EDUC. STAT., <https://nces.ed.gov/ccd/districtsearch/index.asp> [https://perma.cc/MXV8-YKZT] (last visited Apr. 2, 2022); *Toms River Regional School District, NJ*, NAT'L CTR. FOR EDUC. STAT., <https://nces.ed.gov/ccd/districtsearch/index.asp> [https://perma.cc/2C8T-M7KX] (last visited Apr. 2, 2022). Toms River's population is 81 percent White and 13 percent Black and Latinx, and its residents have a median household income of \$80,145; Newark's population is 11 percent White and 85 percent Black and Latinx, its residents have a median household income of \$37,476, and five times as many children in Newark are below the poverty line as compared to children living in Toms River. See *Newark, NJ*, CENSUS REP., <https://censusreporter.org/profiles/16000US3451000-newark-nj/> [https://perma.cc/AH45-77LJ] (last visited Apr. 2, 2022); *Toms River, NJ*, CENSUS REP., <https://censusreporter.org/profiles/16000US3473110-toms-river-nj/> [https://perma.cc/V7CX-PMUH] (last visited Apr. 2, 2022).

58. For example, students in the Toms River Regional Schools district score higher on standardized tests, including statewide math, algebra, and geometry tests, as well as the ACT, a test used by most colleges when making admissions decisions, than students in the Newark Public Schools district. They are more likely to graduate from high school in four years and enroll in college or vocational programs. Compare *Toms River Regional School District*, GREATSCHOOLS, <https://www.greatschools.org/new-jersey/toms-river/toms-river-regional-school-district/> [https://perma.cc/9HWG-QYSV] (last visited Apr. 2, 2022), with *Newark Public School District*, GREATSCHOOLS, <https://www.greatschools.org/new-jersey/newark/the-newark-public-school-district/> [https://perma.cc/K2AN-GPJQ] (last visited Apr. 2, 2022).

59. See generally EMMA GARCÍA & ELAINE WEISS, ECON. POL'Y INST., *THE TEACHER SHORTAGE IS REAL, LARGE AND GROWING, AND WORSE THAN WE THOUGHT* (2019), <https://files.epi.org/pdf/163651.pdf> [https://perma.cc/WYB7-EY9Z] (discussing challenges of hiring and retaining highly credentialed, experienced teachers in high-poverty schools); Hamilton Lankford et al., *Teacher Sorting and the Plight of Urban Schools: A Descriptive Analysis*, 24 EDUC. EVALUATION & POL'Y ANALYSIS 37 (2002).

60. For example, the Toms River Regional Schools district allocates 59 percent of its funds to student instruction, including teacher salaries and programming, and only 4 percent of its funds to "other"—community services, adult education, buildings, and roads. See *Toms River Regional School District*, *supra* note 58. The Newark Public Schools district, in contrast, allocates 35 percent of its funds to student instruction and almost as much (34 percent) to "other." See *Newark Public School District*, *supra* note 58.

61. See generally Christopher Jencks, *Racial Bias in Testing*, in *THE BLACK-WHITE TEST SCORE GAP*, *supra* note 47, at 55; Ronald F. Ferguson, *Teachers' Perceptions and Expectations and the Black-White Test Score Gap*, in *THE BLACK-WHITE TEST SCORE GAP*, *supra* note 47, at 273; Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Test*

have concluded that additional school funding is unlikely to close the achievement gap,<sup>62</sup> pointing to factors outside of school that impact a child's learning, including poverty, unstable home environments, lack of parental engagement, and family structure.<sup>63</sup>

### B. Educational and Social Capital

Researchers who focus primarily on factors outside of school as the causes of the achievement gap have not always considered all of the resources that students bring to their schools and how these resources differ significantly based on a student's family income and—given the association between wealth, race, and ethnicity—a student's racial or ethnic background.<sup>64</sup> Professor Derek Black, however, has identified one educational resource that other scholars have not explored sufficiently: middle- and upper-income students. He argues that “[t]he percentage of middle income students in a school can be more important to the educational achievement of all students in that school than any other resource or factor.”<sup>65</sup> He further explains that, “[d]ue to the opportunities they receive outside of school, middle- and high-income students tend to bring more educational capital to school and, thus, elevate the learning of those around them.”<sup>66</sup>

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*Performance of Academically Successful African Americans, in THE BLACK-WHITE TEST SCORE GAP, supra note 47, at 401.*

62. See ERIC A. HANUSHEK & ALFRED A. LINDSETH, AM. ENTER. INST. FOR PUB. POL'Y RSCH., THE EFFECTIVENESS OF COURT-ORDERED FUNDING OF SCHOOLS 7 (2009), <https://www.aei.org/wp-content/uploads/2011/10/06%20EduO%20Hanushek-g.pdf?x91208> [<https://perma.cc/RD5D-2K8W>] (“The results in three of the states—Kentucky, Wyoming, and New Jersey—are disappointing for anyone hoping that court-ordered funding increases will lead to dramatic student achievement gains. This is especially true for black students: we found no evidence in these four states of significant progress by black students.”); see also Eric A. Hanushek, *Some U.S. Evidence on How the Distribution of Educational Outcomes Can Be Changed*, in SCHOOLS AND THE EQUAL OPPORTUNITY PROBLEM 159, 164–65 (Ludger Woessmann & Paul E. Peterson eds., 2007); Christopher Jencks & Meredith Phillips, *The Black-White Test Score Gap: Why It Persists and What Can Be Done*, BROOKINGS INST. (Mar. 1, 1998), <https://www.brookings.edu/articles/the-black-white-test-score-gap-why-it-persists-and-what-can-be-done/> [<https://perma.cc/W45X-YB9V>].

63. See, e.g., Meredith Phillips et al., *Family Background, Parenting Practices, and the Black-White Test Score Gap, in THE BLACK-WHITE TEST SCORE GAP, supra note 47, at 103*; Sean F. Reardon & Claudia Galindo, *The Hispanic-White Achievement Gap in Math and Reading in the Elementary Grades*, 46 AM. EDUC. RSCH. J. 853, 857–58 (2009). Although numerous factors outside of school may hinder a student's academic performance, the achievement gap actually increases during the school year. See Dumont & Ready, *supra* note 48, at 758 (discussing a study that found that Black/White inequalities grow faster once formal schooling begins and that found that inequalities were greater in kindergarten through second grade than they were when the kids began school). “[S]tudents learned less in schools with higher percentages of minority students. . . . [W]e observed these associations only during the school year and not during the summer months.” *Id.* at 759. This suggests that the home environment is either not a source of the achievement gap or is a small contributor and that the school itself is a cause of the achievement gap.

64. *But see* Wells, *supra* note 43, at 785 (discussing studies exploring the benefits that Black students “accrue via association—that is, attending higher status schools that serve mostly white and wealthy students”).

65. Black, *supra* note 47, at 377.

66. *Id.* at 409.

I agree with Professor Black, but I argue that middle- and upper-income students bring not only their own educational capital into their schools but also bring their parents' social capital. Upper-income parents, in particular, have significant networks and access to opportunities that low-income parents lack and might not even know exist.<sup>67</sup> They also have the ability to raise funds for a wide range of programs that maximize their children's opportunities,<sup>68</sup> and the power to exert significant influence over their children's schools.<sup>69</sup> These parents bring their social capital and influence to the schools their children attend—schools in predominantly White school districts—thereby providing White students with resources and opportunities that are unavailable to Black and Latinx students.

Some readers may be skeptical about the value of parents' social capital and whether it actually provides children with significant advantages. The impact of parents' social capital on children's education is unknown, but the data on social capital and professional opportunities suggests that it may be significant, especially as children enter high school and pursue activities and opportunities that will impress college admissions committees. Experts estimate that as many as 80 percent of jobs are filled through professional and personal networks,<sup>70</sup> and that 70 to 80 percent of positions are never

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67. See PEW RSCH. CTR., *PARENTING IN AMERICA* 4 (2015) (finding that lower-income parents' financial instability limits "their children's access . . . to the kinds of enrichment activities that affluent parents take for granted"); see also Julia Freeland Fisher, *How to Get a Job Often Comes Down to One Elite Personal Asset, and Many People Still Don't Realize It*, CNBC (Feb. 14, 2020, 1:08 PM), <https://www.cnbc.com/2019/12/27/how-to-get-a-job-often-comes-down-to-one-elite-personal-asset.html> [<https://perma.cc/FPG8-MCH9>] (noting that children of educated and wealthy families have networks that children of less educated and lower-income families do not).

68. See, e.g., *Nice White Parents*, N.Y. TIMES (May 5, 2021), <https://www.nytimes.com/2020/07/23/podcasts/nice-white-parents-serial.html> [<https://perma.cc/SM69-557M>] (describing, through multiple podcast episodes, the efforts of wealthy White parents to create a French language program in a middle school in Brooklyn and concluding that White parents are the most powerful resource in public schools).

69. See *id.*; see also Black, *supra* note 47, at 409; *Southlake*, NBC NEWS, <https://www.nbcnews.com/southlake-podcast> [<https://perma.cc/EL3E-UZJX>] (last visited Apr. 2, 2022). See generally MICKELSON, *supra* note 43. The entire fight over critical race theory in schools shows the power of wealthy White parents to influence their children's schools. See Esther Wang, *Angry White Parents Are Once Again Winning the Battle for the American Classroom*, NEW REPUBLIC (July 14, 2021), <https://newrepublic.com/article/162976/critical-race-theory-fox-news-angry-white-parents> [<https://perma.cc/6VDS-S9L6>]. One poll found that "just 37% of white parents are in favor of their children's schools teaching critical race theory, compared to 83% of Black parents." Erin Richards & Alia Wong, *Parents Want Kids to Learn About Ongoing Effects of Slavery—but Not Critical Race Theory. They're the Same Thing.*, USA TODAY (Nov. 3, 2021, 3:39 PM), <https://www.usatoday.com/story/news/education/2021/09/10/crt-schools-education-racism-slavery-poll/5772418001/> [<https://perma.cc/6UHN-8BFS>]. Yet, "41 states have introduced bills or taken other steps that would restrict teaching critical race theory or limit how teachers can discuss racism and sexism." Sarah Schwartz, *Map: Where Critical Race Theory Is Under Attack*, EDUC. WEEK (Mar. 16, 2022), <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06> [<https://perma.cc/VTQ7-NJRB>].

70. See Fisher, *supra* note 67. Other studies have found that 70 percent of jobs are filled through networking. See Paige Harden, *How to Land a Job by Networking*, WASH. POST

listed but are filled internally or via networking.<sup>71</sup> Adults with broad personal and professional networks have significant advantages over people without these networks, even if they have similar credentials or qualifications and experience. These “unequal networks”—or what LinkedIn CEO, Jeff Weiner, has called the “network gap[, which] refers to the advantage some people have over others in accessing opportunity based on where they grew up, where they went to school, and where they work”—are created at birth.<sup>72</sup> As one researcher explains, “From the zip code a child is born into, to the postsecondary education institution (or lack thereof) that she attends, to her first (and second, and third) job, every experience an individual has impacts the professional connections within her reach.”<sup>73</sup> Upper-income families recognize the value of social capital and invest in activities that will increase their children’s access to informal mentors, such as “coaches, tutors, and leaders encountered through everyday life.”<sup>74</sup> It is also the reason that parents fight so hard to enroll their children in the right school. Although parents recognize the importance of a comprehensive curriculum and excellent teachers, Professor Derek Black has observed that parents “flock[] to schools based more on the socioeconomic status of the students who attend them than the characteristics of the school facility or the particular staff who teach in them.”<sup>75</sup>

These networks influence how parents guide their children’s education. For example, I recently spoke with a Black mother who lives in a predominantly Black and Latinx neighborhood with segregated schools. She shared that she is working two jobs so her children can attend a private (and predominantly White) school where they will have access to the networks of their peers’ wealthier parents. She recognized the value of social capital, but like most low-income and Black and Latinx parents, she lacked the networks that middle- and upper-income parents rely on to discover and provide access to opportunities for their children. For example, some high school students secure impressive internships (at least on paper) with politicians, judges, and

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(May 23, 2016), <https://jobs.washingtonpost.com/article/how-to-land-a-job-by-networking/> [<https://perma.cc/YAA2-FCBF>].

71. See Gina Belli, *At Least 70% of Jobs Are Not Even Listed—Here’s How to Up Your Chances of Getting a Great New Gig*, BUS. INSIDER (Apr. 10, 2017, 3:52 PM), <https://www.businessinsider.com/at-least-70-of-jobs-are-not-even-listed-heres-how-to-up-your-chances-of-getting-a-great-new-gig-2017-4> [<https://perma.cc/64S3-SNBN>]; Wendy Kaufman, *A Successful Job Search: It’s All About Networking*, NPR (Feb. 3, 2011, 3:43 PM), <https://www.npr.org/2011/02/08/133474431/a-successful-job-search-its-all-about-networking> [<https://perma.cc/C44G-L3XK>] (stating that “the vast majority of hiring is friends and acquaintances hiring other trusted friends and acquaintances”).

72. Fisher, *supra* note 67.

73. *Id.*

74. *Id.* For a general discussion of parental investments in children, see generally Lingxin Hao & Wei-Jun Jean Yeung, *Parental Spending on School-Age Children: Structural Stratification and Parental Expectation*, 52 DEMOGRAPHY 835 (2015) (finding that race is a predictor of parental spending on children even after controlling for socioeconomic status); Sabino Kornrich & Frank Furstenberg, *Investing in Children: Changes in Parental Spending on Children, 1972–2007*, 50 DEMOGRAPHY 1 (2012).

75. Black, *supra* note 47, at 438–39.



Fortune 500 companies without formally applying for these positions. In many cases, there was no formal position. They (or their parents) learned about and accessed these opportunities as a result of their parents' networks. In some cases, the positions were created for specific students as a result of the parents' connections.

Children in apartheid schools rarely obtain opportunities informally because low-income and Black and Latinx parents are significantly less likely to work in professional fields or have connections to individuals who can provide access to informal opportunities.<sup>76</sup> To illustrate, about 75 percent of adults in Westfield, a wealthy and predominantly White suburb in New Jersey, have a college degree.<sup>77</sup> The parents of students in the Westfield Public Schools district are lawyers, doctors, accountants, financial analysts, and other professionals, providing a broad potential network of professionals for students, the majority of whom are White.<sup>78</sup> Although 43 percent of the students in New Jersey's public schools are Black or Latinx,<sup>79</sup> only 11 percent of students in the Westfield Public Schools district are Black and Latinx—3 percent and 8 percent, respectively.<sup>80</sup> By contrast, only 20 percent of adults in Plainfield, a neighboring predominantly Black and Latinx city in New Jersey, have a college degree.<sup>81</sup> Parents in Plainfield have limited access to professionals who can mentor their children or provide access to opportunities. Not surprisingly, young adults from the top socioeconomic quartile have twice as many people in their informal networks from whom they may seek advice about college majors and careers as do young adults from families in the lower quartile.<sup>82</sup>

Low-income and Black and Latinx parents are also unlikely to be aware of informal opportunities which, by definition, are not advertised. Indeed, a lot

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76. See Wells, *supra* note 43, at 780 (“African American students in segregated urban schools lack social networks and personal contacts with people in universities, businesses, law firms, or art museums—the types of contacts who could help them get summer jobs, teach them about career paths, and open their eyes to new possibilities for life after high school.”).

77. See *Westfield Town School District, NJ*, *supra* note 39.

78. See *id.* (reporting that 79 percent of Westfield residents are White, 3 percent are Black, 7 percent are Asian, and 8 percent are Hispanic); *Industry by Occupation for the Civilian Employed Population 16 Years and Over*, U.S. CENSUS BUREAU (2020), <https://data.census.gov/cedsci/> (search “S2405: Industry by Occupation for the Civilian Employed Population 16 Years and Over” and navigate to corresponding table; filter by “Geography” and click through to “Place” to “New Jersey” to “Westfield town, New Jersey”) [<https://perma.cc/KM4Z-C9MA>] (reporting that the majority of Westfield residents worked in management, business, finance, insurance, real estate, education, health care, and other professional services); *Westfield, NJ*, DATA USA, <https://datausa.io/profile/geo/westfield-nj#economy> [<https://perma.cc/7BW6-D4UJ>] (last visited Apr. 2, 2022) (reporting that “Westfield, NJ has an unusually high number of residents working as Legal Occupations (4.51 times higher than expected), Business & Financial Operations Occupations (2.03 times), and Life, Physical, & Social Science Occupations (2 times)”).

79. See Amended Complaint for Declaratory Judgment and Other Relief, *supra* note 38, at 7.

80. See *Westfield Town School District, NJ*, *supra* note 39.

81. See *Plainfield City School District, NJ*, CENSUS REP., <https://censusreporter.org/profiles/97000US3413140-plainfield-city-school-district-nj/> [<https://perma.cc/L7HS-SNPP>] (last visited Apr. 2, 2022).

82. See Fisher, *supra* note 67.

of the information parents discover and rely on to guide their children's education, such as enrichment opportunities outside of school, is garnered from other parents in their network rather than from formal sources, such as teachers or counselors.<sup>83</sup> It is through these networks that parents learn about resources for help with college applications, writing workshops, or community activities, to name a few examples, that help students build connections.<sup>84</sup> Low-income parents with children in predominantly Black and Latinx schools lack these information networks. The network gap and information gap deprive students—including top performing students—at segregated schools of opportunities available to their peers at predominantly White schools who benefit from their parents' social capital.

As a result of these disparities in parents' social capital—differences that are at least partly the result of historical and/or current residential, educational, and employment discrimination<sup>85</sup>—the opportunities in segregated schools are not comparable to those available in predominantly White schools. Parents' social capital creates and provides access to opportunities for students in the schools that their children attend. Further, even when states, like New Jersey, provide greater financial resources to high-poverty schools with mostly Black and Latinx students than to low-poverty predominantly White schools, predominantly White schools have the ability to raise funds to provide for the types of enrichment programs that will advantage their children even further.<sup>86</sup> They also have the power to exert significant influence over their children's schools.<sup>87</sup> Low-income

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83. See GFRP Staff, *New Study Confirms Benefits of Connecting Parents with Each Other to Build Social Capital*, GLOB. FAM. RSCH. PROJECT (Feb. 25, 2021), [https://globalfrp.org/content/download/865/5790/file/GFRP\\_FAST.pdf](https://globalfrp.org/content/download/865/5790/file/GFRP_FAST.pdf) [https://perma.cc/TCW5-BZF7] (discussing a study confirming that “helping parents form strong bonds with each other is a critical aspect of family engagement and may improve educational opportunities for children and youth”).

84. See Laura Hazard Owen, *Parents Really Want Useful Education News. They Aren't All Getting It.*, NIEMANLAB (Feb. 16, 2022, 12:42 PM), <https://www.niemanlab.org/2022/02/parents-education-news/> [https://perma.cc/A68U-EFZA] (noting that “White parents seem to be able to leverage their informal networks with greater efficiency” than Black or “Hispanic” parents); Michael Powell, *How It Feels to Be an Asian Student in an Elite Public School*, N.Y. TIMES (Jan. 25, 2022), <https://www.nytimes.com/2022/01/25/us/selective-high-schools-brooklyn-tech.html> [https://perma.cc/P4PT-BMNH] (discussing how parents learn about the test for New York City's elite schools through informal networks).

85. See generally Amended Complaint for Declaratory Judgment and Other Relief, *supra* note 38; IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA* (2005); ROTHSTEIN, *supra* note 32; ERIC S. YELLIN, *RACISM IN THE NATION'S SERVICE: GOVERNMENT WORKERS AND THE COLOR LINE IN WOODROW WILSON'S AMERICA* (2013).

86. See Laura McKenna, *How Rich Parents Can Exacerbate School Inequality*, ATLANTIC (Jan. 28, 2016), <https://www.theatlantic.com/education/archive/2016/01/rich-parents-school-inequality/431640/> [https://perma.cc/U74R-ZE36] (discussing how “parents in affluent communities can raise far more money for their schools than parents in other locations”); *Nice White Parents*, *supra* note 68.

87. See Osamudia James, *Risky Education*, 89 GEO. WASH. L. REV. 667, 699–700 (2021) (explaining that “prioritized parents use their capital to primarily benefit their own children, informally surveilling teachers and hoarding resources that less privileged families need,” while also using such capital “to develop or sustain broad academic and extracurricular

and Black and Latinx parents lack these networks and opportunities to raise substantial funds, which ultimately limits their abilities to advocate for programs their children need.<sup>88</sup>

## II. SUPPORTING PARENTS

Researchers have begun to explore the effects of high school students' developing relationships with adults who may become informal mentors, and they have found that internships and mentoring in high school are associated with higher quality jobs ten years later.<sup>89</sup> These opportunities are particularly important for Black and Latinx students from low-income families, but researchers have yet to study how parents and the schools their children attend exploit parents' social capital to create these opportunities. This Essay calls on researchers to examine the role of parents' social capital on educational opportunities and how these opportunities can be equitably distributed.

Integrated schools may increase low-income, Black, and Latinx students' access to informal mentors and opportunities. As such, integrated schools may help parents discover and access educational opportunities that may help narrow the achievement gap. Yet, educational integration continues to elude us. As this Essay goes to press, the State of New Jersey faces allegations that it was complicit in creating and maintaining one of the most segregated school systems in the country by requiring students to attend public schools in the racially segregated municipalities where they reside, thereby depriving Black and Latinx students of their rights to a "thorough and efficient education" and equal protection under the New Jersey state constitution.<sup>90</sup> Plaintiffs<sup>91</sup> propose a number of mechanisms for integrating schools,

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programming," which "privilege[s] white and middle-class parents" while "reinforc[ing] a model in which parents are positioned as the primary drivers of school improvement and student achievement"); *see also* Black, *supra* note 47, at 409; *Nice White Parents*, *supra* note 68; *Southlake*, *supra* note 69. *See generally* MICKELSON, *supra* note 43.

88. For example, in one New York City public school, wealthy White parents raised almost \$800,000 for an elementary school that was "75% white and serves a tiny fraction of the poor kids in the district" to pay "for after school programming, and ballroom dancing, chess, art, music, [and] a garden." *Nice White Parents*, *The Book of Statuses*, N.Y. TIMES, at 29:30–29:50 (Aug. 31, 2020), <https://www.nytimes.com/2020/07/30/podcasts/nice-white-parents-serial.html> [<https://perma.cc/QN7N-AWFG>]. That same year, a nearby—mostly Black and Latinx—middle school raised \$2,000. *See id.* at 29:55–30:05. When wealthy White parents then enrolled their children in that middle school, they organized a fundraising gala with outside donors to fund a new French program they wanted without regard to the needs of the Black and Latinx students who were unlikely to participate in the French program. *See id.* at 37:55–40:45, 43:25–43:45. In contrast, Black and Latinx parents relied on small donations from other parents in the school whenever they needed to raise funds. *See id.* at 18:00–18:45.

89. *See* MARTHA ROSS ET AL., BROOKINGS INST., PATHWAYS TO HIGH-QUALITY JOBS FOR YOUNG ADULTS 25 (2018), [https://www.brookings.edu/wp-content/uploads/2018/10/Brookings\\_Child-Trends\\_Pathways-for-High-Quality-Jobs-FINAL.pdf](https://www.brookings.edu/wp-content/uploads/2018/10/Brookings_Child-Trends_Pathways-for-High-Quality-Jobs-FINAL.pdf) [<https://perma.cc/34WH-S49E>].

90. *See* Amended Complaint for Declaratory Judgment and Other Relief, *supra* note 38, at 2, 30–31.

91. Plaintiffs are parents and Black and Latinx students in segregated, high-poverty schools, as well as civil rights organizations. *See id.* at 3–6.

including (1) the creation of interdistrict, themed magnet schools to attract students from all racial, ethnic, and socioeconomic backgrounds; (2) interdistrict desegregation transfer plans that would allow Black and Latinx students to attend schools outside their racially segregated districts; and (3) regional, controlled choice that would allow families to rank their preferred schools but that would involve officials balancing these preferences against the interest in achieving diversity in every school.<sup>92</sup> Although the New Jersey state constitution prohibits both *de facto* and *de jure* segregation,<sup>93</sup> the second and third proposals are unlikely to survive challenges in states without similar constitutions because the Supreme Court has not recognized *de facto* segregation as unconstitutional under the U.S. Constitution.<sup>94</sup> The success of interdistrict magnet schools is somewhat mixed<sup>95</sup> because many White parents have been hesitant to send their children to schools in racially diverse neighborhoods and continue to choose schools based on “the socioeconomic status of the students who attend them [rather] than the characteristics of the school facility or the particular staff who teach in them.”<sup>96</sup> Despite these challenges, each of these approaches would distribute parents’ social capital more equitably. Thus, lawmakers should consider these approaches and continue to explore other ways to integrate schools.

A number of nonprofit organizations have long recognized the value of parents’ social capital and have sought to provide students from low-income families in segregated schools with access to the opportunities students at middle- and upper-income, predominantly White schools enjoy. Two of

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92. *See id.* at 24.

93. *See* N.J. CONST. art. I, § 5 (stating that “[n]o person shall . . . be segregated . . . in the public schools, because of religious principles, race, color, ancestry or national origin”); *Booker v. Bd. of Educ.*, 212 A.2d 1, 6 (N.J. 1965) (holding that, regardless of whether the “federal constitution compels action to eliminate or reduce *de facto* segregation in the public schools, it does not preclude such action by state school authorities in furtherance of state law and state educational policies”); *Jenkins v. Morris Twp. Sch. Dist.*, 279 A.2d 619, 631–32 (N.J. 1971) (stating that, “as a matter of State policy and apart from federal dictates,” the state has “an ‘obligation to take affirmative steps to eliminate racial imbalance, regardless of its causes’” and to remedy “[d]e facto segregation or imbalance which is frustrating [its] constitutional goals”).

94. *See* *Milliken v. Bradley*, 418 U.S. 717, 745 (1974); *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 735 (2007).

95. *See, e.g.*, Chase M. Billingham & Matthew O. Hunt, *School Racial Composition and Parental Choice: New Evidence on the Preferences of White Parents in the United States*, 89 SOCIO. EDUC. 99, 99 (2016) (arguing that “the proportion of black students in a hypothetical school has a consistent and significant inverse association with the likelihood of white parents enrolling their children in that school”); Erica Frankenberg & Chinh Q. Le, *The Post-Parents Involved Challenge: Confronting Extralegal Obstacles to Integration*, 69 OHIO ST. L.J. 1015, 1061 (2008) (“[U]sing magnet schools as a de-coupling strategy to loosen the connection between residence and public school enrollment is only a short-term solution to the larger problem of racial, ethnic, and economic separateness.”); Anthony J. LoPresti, Comment, *Blurring the Lines: How Consolidating School Districts Can Combat New Jersey’s Public-School Segregation Problem*, 45 SETON HALL LEGIS. J. 235, 252 (2021) (discussing magnet programs that failed to attract White students and concluding that “many white families care more about racial composition than diversity, or even academic resources”).

96. Black, *supra* note 47, at 438–39.

these programs, Legal Outreach<sup>97</sup> and the New Jersey Law and Education Empowerment Project (NJ LEEP),<sup>98</sup> provide a model that the government should fund.<sup>99</sup> These privately funded programs serve middle school and high school students in high-poverty, racially segregated schools and seek to level the playing field by *formally* creating the professional networks that students at wealthier (and predominantly White) school districts enjoy as a result of their parents' social capital.<sup>100</sup> They do so by providing students in

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97. See *Raising the Bar Since 1983*, LEGAL OUTREACH, <https://legaloutreach.org/> [<https://perma.cc/XX95-37CJ>] (last visited Apr. 2, 2022). I participated in Legal Outreach as a student in the 1980s.

98. See NJ LEEP, <http://njleep.org/> [<https://perma.cc/VS9Y-EDZZ>] (last visited Apr. 2, 2022). I served on the board of trustees for NJ LEEP.

99. The federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95, §§ 4201–4203, 129 Stat. 1802, 1983–88, awards grants to states for after-school and summer programs that seek to narrow the achievement gap. The awards are made to state education agencies, which must then create and manage competitive grant programs and award subgrants to eligible entities, including nonprofits like NJ LEEP and Legal Outreach. See *id.* § 4204; see also *Nita M. Lowey 21st Century Community Learning Centers: Eligibility*, OFF. OF ELEMENTARY & SECONDARY EDUC. (Oct. 24, 2020), <https://oese.ed.gov/offices/office-of-formula-grants/school-support-and-accountability/21st-century-community-learning-centers/eligibility-21st-century-community-learning-centers/> [<https://perma.cc/8SNF-D65J>] (stating that “eligible entity” includes a “public or private entity” and “faith-based organizations”). In addition, more than half the states provide funding for after-school programs. See Adrienne Fisher, *State and Federal Investments in After School Programs*, NAT'L CONF. OF STATE LEGISLATURES (Dec. 2019), <https://www.ncsl.org/research/education/state-and-federal-investments-in-afterschool-programs.aspx> [<https://perma.cc/UB3W-7JK3>]. Unfortunately, funding levels are too low to meet the need for these programs. See *Supporting Student Success Through After School Programs*, NAT'L CONF. OF STATE LEGISLATURES (Mar. 5, 2021), <https://www.ncsl.org/research/education/expanding-learning-opportunities-through-afterschool-programs.aspx> [<https://perma.cc/VTS3-9LYF>] (reporting that funding is a barrier to after-school programming). Currently, school districts across the country are receiving federal funding to address learning loss resulting from COVID-related disruptions to education. See *Elementary and Secondary School Emergency Relief Funds*, N.J. DEP'T OF EDUC., <https://www.nj.gov/education/esser/> [<https://perma.cc/8UBH-8UAE>] (last visited Apr. 2, 2022). States like New Jersey plan to direct part of these funds to school “districts to support summer learning academies and tutoring, professional learning for educators, and education and training programs for parents and caregivers.” Press Release, U.S. Dep't of Educ., U.S. Department of Education Approves New Jersey's Plan for Use of American Rescue Plan Funds to Support K–12 Schools and Students, Distributes Remaining \$923 Million to State (Aug. 12, 2021), <https://www.ed.gov/news/press-releases/us-department-education-approves-new-jerseys-plan-use-american-rescue-plan-funds-support-k-12-schools-and-students-distributes-remaining-923-million-state> [<https://perma.cc/3C5U-RUVZ>]. However, rather than attempting to create new programs without a proven track record, school districts should instead look to programs with a proven success record like NJ LEEP and Legal Outreach to provide the supports that children in high-poverty, Black and Latinx districts need. I am grateful to Patricia C. Morgan, executive director of JerseyCAN, for this suggestion.

100. See Legal Outreach, Inc., *Our Mission*, LEGAL OUTREACH [hereinafter *Our Mission*], [https://legaloutreach.org/?page\\_id=6267](https://legaloutreach.org/?page_id=6267) [<https://perma.cc/DRN8-WSV4>] (last visited Apr. 2, 2022) (explaining that Legal Outreach's College Bound program “seeks to level the educational playing field for minority, low income, and first-generation students by implementing programs designed to fill the achievement, outlook, and support gaps which prevent students from achieving their highest aspirations and professional goals”); *About NJ LEEP*, NJ LEEP, <http://njleep.org/about> [<https://perma.cc/FB86-UHR5>] (last visited Apr. 2, 2022) (explaining that NJ LEEP ensures their “students have exposure to the professionalism needed in college and beyond”).

predominantly Black and Latinx school districts with access to internships, opportunities to network with professionals in different fields, mentorship opportunities, and family engagement and community-building workshops.<sup>101</sup> These organizations not only address the achievement gap but also the outlook gap by raising students' and parents' awareness of professional opportunities outside their networks.<sup>102</sup> These programs should be made available to every student who comes from a low-income family and does not have access to the social capital provided by parents of children in middle- and upper-income schools. Without government funding, however, these programs are accessible to only a small percentage of students and in only a few districts.<sup>103</sup>

### CONCLUSION

In recent years, family law scholars have shown that achieving justice for families requires addressing inequities in other areas of law such as criminal law, torts, property law, immigration law, and tax law.<sup>104</sup> Although education scholars recognize the burdens that low-income and Black and Latinx parents bear as they attempt to provide their children with educational opportunities,<sup>105</sup> family law scholars have not yet made educational justice a

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101. See *Our Mission*, *supra* note 100 (explaining that several of Legal Outreach's programs are "designed to expose . . . students to career opportunities that exist outside of the communities in which they reside," specifically underserved communities, through mentoring, workshops, and field trips, that "seek to raise students' awareness of career endeavors, expand their horizons, and lift their aspirations"); NJ LEEP, ANNUAL REPORT: JULY 1, 2020–JUNE 30, 2021, at 3–4 (2021) [hereinafter ANNUAL REPORT], <https://static1.squarespace.com/static/569a6297841aba8e210ea0b8/t/61c4aff1690646208191e435/1640280073502/Annual+Report+FY+21.pdf> [<https://perma.cc/35MP-Y7B4>] (showcasing that NJ LEEP offers career exposure with nearly fifty corporate partners and attorney mentors to assist students in their debates while also providing academic counseling, internship placement, and career and graduate school preparation).

102. See *Our Mission*, *supra* note 100; NJ LEEP, ANNUAL REPORT: SEPTEMBER 1, 2019–JUNE 30, 2020, at 8 (2020), <https://static1.squarespace.com/static/569a6297841aba8e210ea0b8/t/5fce9e3a86f8e37a92a17c5f/1607376531569/Annual+Report+Final.pdf> [<https://perma.cc/TA8U-GGPH>] ("Our goal is to create a seamless path for families to support their children through college graduation and beyond. Parent workshops and family meetings increase parental involvement, improving educational outcomes for students.").

103. Currently, these programs are funded primarily by private donors and foundations. See LEGAL OUTREACH, 2019–20 FINANCIAL REVIEW (2021), <https://legaloutreach.org/wp-content/uploads/2021/03/2019-20-Financial-Review.pdf> [<https://perma.cc/9Y55-H739>]. See generally ANNUAL REPORT, *supra* note 101.

104. See, e.g., Abrams & Piacenti, *supra* note 2, at 630; Cynthia Godsoe, *Redrawing the Boundaries of Relational Crime*, 69 ALA. L. REV. 169, 171 (2017); Anthony C. Infanti, *LGBT Families, Tax Nothings*, 17 J. GENDER, RACE & JUST. 35, 36 (2014). See generally Hong, *supra* note 2; Anthony C. Infanti, *The House of Windsor: Accentuating the Heteronormativity in the Tax Incentives for Procreation*, 89 WASH. L. REV. 1185 (2014); Murray, *supra* note 1; Sarah L. Swan, *Conjugal Liability*, 64 UCLA L. REV. 968 (2017); Sarah Swan, *Home Rules*, 64 DUKE L.J. 823 (2015).

105. See Black, *supra* note 47, at 404; James, *supra* note 87, at 673 (arguing that the state has abandoned efforts to integrate schools and has shifted responsibility for educational quality and outcomes to parents who bear "the hazards and insecurities induced and introduced by the state's abdication of responsibility for public education").

part of the agenda. In this moment of racial reckoning and political will to support families, we must make educational justice a family law issue.