

# ON THE NEED FOR PUBLIC BOARDING SCHOOLS

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“There are certain kids that if you’re serious about ending poverty, you need to have them 24-7.”<sup>1</sup>

—Arne Duncan

## I. INTRODUCTION

The American public education system is facing a crisis.<sup>2</sup> Nowhere are its failings more striking than in high-poverty, urban schools that predominantly serve disadvantaged, minority students. More than half a century after the Supreme Court struck down de jure segregation and rejected the “separate but equal” doctrine of *Plessy v. Ferguson* in public education,<sup>3</sup> poor,

<sup>1</sup> Carl Campanile, *Public Boarding Schools Pique Interest*, N.Y. POST, Apr. 3, 2009, at 2.

<sup>2</sup> See Seyward Darby, *The Crisis in U.S. Education Isn’t Overblown: A Response to Nicholas Lemann*, THE NEW REPUBLIC, Sept. 22, 2010 (citing alarmingly high drop-out rates as well as racial and class-based achievement gaps). In its most recent report, The Programme for International Student Assessment (PISA), the leading agency in comparative international assessment of student performance, concluded that out of the thirty-four OECD countries, the United States is ranked fifteenth in reading (tie), twenty-fourth in science, and thirty-first in math (tie). OECD, *PISA 2009 Results: Executive Summary*, at 7, available at <http://www.oecd.org/pisa/pisaproducts/46619703.pdf>; see also Barack Obama, State of the Union Address (Jan. 25, 2011), available at <http://www.npr.org/2011/01/26/133224933/transcript-obamas-state-of-union-address> (noting that American “math and science education lags behind many other nations” and expressing concern that many Americans lack the educational attainment necessary to benefit from future job growth); NAT’L CTR. FOR EDUC. STATISTICS, THE CONDITION OF EDUCATION: CURRENT TABLES tbls.A-23-1 & A-24-1 (2011), available at [http://nces.ed.gov/programs/coe/current\\_tables.asp](http://nces.ed.gov/programs/coe/current_tables.asp) (reporting that in 2009, only 38% of twelfth graders were proficient in reading and only 26% were proficient in math).

<sup>3</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954). The practical significance of *Brown* has been the subject of considerable debate. See generally MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY (2004) (arguing that *Brown* only indirectly produced desegregation by sparking violent racial backlash); GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? (2d ed. 2008) (arguing that *Brown* did not have much impact on racial desegregation). Other observers have questioned the continued import of *Brown* in providing access to educational opportunity to minority children. See generally CHARLES T. CLOTFELTER, AFTER *BROWN*: THE RISE AND RETREAT OF SCHOOL DESEGREGATION (2004); GARY ORFIELD, SUSAN E. EATON & THE HARVARD PROJECT ON SCHOOL DESEGREGATION, DISMANTLING DESEGREGATION: THE QUIET REVERSAL OF *BROWN V. BOARD OF EDUCATION* (1996) (discussing metropolitan-wide educational disparities and the resurgence of school segregation as a result of federal courts’ increased willingness to end their supervision of previously segregated school districts); see also Molly S. McUsic, *The Future of Brown v. Board of Education: Economic Integration of the Public Schools*, 117 HARV. L. REV. 1334, 1334 (2004) (arguing that “legal scholars will be obliged to note that as a legal decision, the influence of *Brown* is thirty years past its peak, and the changes it prompted are everywhere being reversed”).

minority children all too often are forced to attend schools that are both separate and unequal.<sup>4</sup> These schools are often plagued by high drop-out rates, greater incidences of violence, and abysmal test scores.<sup>5</sup>

The preponderance of American parents use their financial resources to spare their children from ever having to set foot in such schools, purchasing greater educational opportunities for

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Due to political resistance and unfavorable Supreme Court case law, racial desegregation litigation has largely run its course. *See, e.g.*, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 747–48 (2007) (limiting courts' and school districts' abilities to address de facto segregation); *Missouri v. Jenkins*, 515 U.S. 70, 98 (1995) (limiting authority of federal courts in ordering equitable relief for previously segregated school districts); *Freeman v. Pitts*, 503 U.S. 467, 489 (1992) (lowering the standards required for federal district courts to release previously segregated school districts from court-imposed desegregation remedies); *Bd. of Educ. v. Dowell*, 498 U.S. 237, 249–50 (1991) (allowing for the dissolution of federal desegregation orders even when doing so would result in resegregation); *Milliken v. Bradley*, 418 U.S. 717, 744–45 (1974) (limiting scope of desegregation remedies to urban school districts in absence of evidence that suburban school districts had also engaged in racial segregation).

<sup>4</sup> Due to the vestiges of past segregation, private discrimination, and private choice (for example, “white flight”), black Americans still tend to live in racially homogenous communities. *See generally* DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993). More than a decade into the twenty-first century, millions of black children still attend schools that are nearly just as racially segregated as the schools that had existed in the South prior to *Brown*. GARY ORFIELD, *REVIVING THE GOAL OF AN INTEGRATED SOCIETY: A 21ST CENTURY CHALLENGE 3* (2009). In addition to these persisting patterns of racial segregation, segregation on the basis of family income has increased over the course of the past forty years. SEAN F. REARDON & KENDRA BISCHOFF, *GROWTH IN THE RESIDENTIAL SEGREGATION OF FAMILIES BY INCOME, 1970–2009*, at 1 (2011); *see also* Jeannie Oakes, *Schools That Shock the Conscience: What Williams v. California Reveals About the Struggle for an Education on Equal Terms Fifty Years After Brown*, in *QUALITY EDUCATION AS A CONSTITUTIONAL RIGHT* 49, 49–68 (Perry et al. eds., 2010) (discussing litigation over unequal educational opportunity in California and documenting horrific conditions in an under-resourced California school).

<sup>5</sup> *See, e.g.*, Christine Armario, *Percentage of High Poverty Schools Rises*, NBC NEWS (May 27, 2010, 1:52 PM), [http://www.msnbc.msn.com/id/37380825/ns/us\\_news-life/t/percent-age-high-poverty-schools-rises/](http://www.msnbc.msn.com/id/37380825/ns/us_news-life/t/percent-age-high-poverty-schools-rises/) (noting that in 2007–2008, only 68% of seniors in high-poverty schools earned a diploma, compared to a figure of 91% at low-poverty schools); *Report: Violence Rife in Poor Public Schools*, EDUC. NEWS (Oct. 19, 2011), <http://www.educationnews.org/education-policy-and-politics/report-violence-rife-in-poor-public-schools/> (last visited Oct. 16, 2012) (discussing a report that “uncovered more than 4,500 criminal acts that occurred at the 141 public schools scoring worst in the Pennsylvania System of School Assessment”); Cynthia McCabe, *The Economics Behind International Education Rankings*, NEA TODAY (Dec. 9, 2010), <http://neatoday.org/2010/12/09/a-look-at-the-economic-numbers-on-international-education-rankings> (noting that high-poverty schools scored substantially lower than low-poverty schools on the PISA test).

their children by either paying to reside in more expensive neighborhoods with superior public schools or sending their children to private schools.<sup>6</sup> Those who cannot do so, the truly disadvantaged, are left behind; their children stuck in schools that at times seem to exist merely to warehouse poor children before releasing them to join the ranks of the unemployed, underemployed, and over-incarcerated urban poor.<sup>7</sup> This manner

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<sup>6</sup> See Jennifer Jellison Holme, *Buying Homes, Buying Schools: School Choice and the Social Construction of School Quality*, 72 HARV. ED. REV. 177, 177–80 (2002) (explaining that parents with means exercise school choice by purchasing homes that are located in school districts with schools that they perceive to be high-quality); Joseph P. Viteritti, *A Way Out: School Choice and Educational Opportunity*, BROOKINGS REV., Fall 1999, at 36–37 (“Not only do [middle-class families] have the means to acquire a private school education, they also have the economic mobility to reside in communities where the quality of public schools is relatively high.”). This trend has not gone unnoticed by school-choice advocates, who have criticized certain politicians for practicing school choice with their own children while denying the privilege to families unable to afford it. See, e.g., MICHAEL STEELE, RIGHT NOW: A 12-STEP PROGRAM FOR DEFEATING THE OBAMA AGENDA 68–70 (2010) (criticizing President Obama for signing into law a bill that terminated a voucher program for low-income D.C. children while sending his daughters to the \$30,000 per year Sidwell Friends); Michael Lynch, *Gore Bashes Vouchers*, REASON (Feb. 22, 2000), <http://reason.com/archives/2000/02/22/gore-bashes-vouchers> (describing how then-presidential candidate Al Gore came under fire for opposing private-school vouchers for low-income schoolchildren while sending his own children to some of the most expensive private schools in the country).

<sup>7</sup> Deprived of any meaningful chance of attaining upward social mobility through educational achievement, many of the most disadvantaged students succumb to the brutal cycle of multi-generational poverty. See BRUCE WESTERN, PUNISHMENT AND INEQUALITY IN AMERICA 30–31 (2006) (noting the substantial gap in incarceration rates between college-educated and non-college-educated men and observing that low-educated black men are more likely to be incarcerated than in labor unions or job-training programs). The staggering rise in incarceration rates in low-income black communities has had disastrous collateral consequences and has greatly exacerbated racial inequality for recent and future generations of black Americans. See Loïc Wacquant, *Deadly Symbiosis: Rethinking Race and Imprisonment in Twenty-First-Century America*, BOSTON REV., Apr./May 2002, available at <http://www.bostonreview.net/BR27.2/wacquant.html> (discussing states’ use of “hyperincarceration” of black Americans to “shore up caste division in American society”). Indeed, the adverse racial consequences have been so severe that some researchers have likened them to the caste-based apartheid of the pre-civil-rights-era South. See, e.g., MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 20–57 (2010); ROBERT PERKINSON, TEXAS TOUGH: THE RISE OF AMERICA’S PRISON EMPIRE 9 (2010) (“Denied a place in society at large, Jim Crow has moved behind bars.”). But see RICHARD THOMPSON FORD, RIGHTS GONE WRONG: HOW LAW CORRUPTS THE STRUGGLE FOR EQUALITY 206 (2011) (arguing that “[t]he incarceration of young black men is not a new Jim Crow, even if some of the prejudices of the latter have contributed to the former”); James Forman, Jr., *Harm’s Way: Understanding Race and Punishment*, BOSTON REV., Jan./Feb. 2011, at 55, 58–60 (criticizing the comparison as inaccurate).

of educating the urban poor imposes considerable long-term financial burdens on the nation as a whole and perpetuates the substantial racial gaps in wealth<sup>8</sup> and education.<sup>9</sup>

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The extraordinary costs of mass-incarceration policies on disadvantaged families and communities have been thoroughly documented. *See generally* DONALD BRAMAN, DOING TIME ON THE OUTSIDE: INCARCERATION AND FAMILY LIFE IN URBAN AMERICA (2004) (highlighting the harms and hardships of imprisonment on the lives of prisoners' families); TODD R. CLEAR, IMPRISONING COMMUNITIES: HOW MASS INCARCERATION MAKES DISADVANTAGED NEIGHBORHOODS WORSE (2007); JOAN PETERSILIA, WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY (2003) (discussing the challenges faced by former prisoners upon their reentry into society).

<sup>8</sup> The disparity in wealth (total assets and debts) between black and white Americans is substantially larger and more consequential than racial differences in income. *See* DALTON CONLEY, BEING BLACK, LIVING IN THE RED: RACE, WEALTH AND SOCIAL POLICY IN AMERICA 1 (1999) (noting that "in 1994, the median white family held assets worth more than seven times those of the median nonwhite family"); MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH, WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY 5 (2006) (discussing wealth inequality as "the sedimentation of racial inequality," reflecting the cumulative effects of generations of racial stratification).

<sup>9</sup> *See* PAUL E. BARTON & RICHARD J. COLEY, THE BLACK-WHITE ACHIEVEMENT GAP: WHEN PROGRESS STOPPED 2 (2010), available at <http://www.ets.org/Media/Research/pdf/PICBWGAP.pdf> (examining the "very substantial gap" between the educational achievement of white and black Americans and noting that these disparities have not improved much since the late 1980s); Eric A. Hanushek & Steven G. Rivkin, *School Quality and the Black-White Achievement Gap 2* (Nat'l Bureau of Econ. Research, Working Paper No. 12651, 2006), available at <http://www.nber.org/papers/w12651.pdf> (noting that among "men and women 20 to 24 years old, blacks are far less likely to complete or be in the process of completing college"); *see also* WESTERN, *supra* note 7, at 31 (observing that recent generations of black men are less likely to have earned a four-year college degree than to have spent time in jail or prison). In some districts, fewer than 25% of black male students graduate from high school. SCHOTT FOUND. FOR PUB. POLICY, YES WE CAN: THE SCHOTT 50 STATE REPORT ON PUBLIC EDUCATION AND BLACK MALES 10 (2010).

Although affirmative action in higher education has been the source of extensive federal litigation, *see, e.g.*, Grutter v. Bollinger, 539 U.S. 306 (2003); Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978); Fisher v. Univ. of Tex. at Austin, 631 F.3d 213 (5th Cir. 2011), *cert. granted*, 132 S. Ct. 1536 (2012), and the motivating force behind a number of state-wide initiatives and referenda, many of which have also been challenged in federal court, *see, e.g.*, Coal. to Defend Affirmative Action v. Regents of the Univ. of Mich., 652 F.3d 607, 610 (6th Cir. 2011) (deciding a challenge to an anti-affirmative action initiative passed in Michigan), *reh'g en banc granted and vacated*, Sept. 9, 2011; Coal. for Econ. Equity v. Wilson, 122 F.3d 692, 696 (9th Cir. 1997) (considering "a provision of the California Constitution prohibiting public race and gender preferences"), the reality is that such policies only affect a small minority of young black men and women. For black males born in the early 1980s, only 11% will have graduated college by the age of twenty-five. Martha J. Bailey & Susan M. Dynarski, *Inequality in Postsecondary Education*, in *WHITHER OPPORTUNITY? RISING INEQUALITY, SCHOOLS, AND CHILDREN'S LIFE CHANCES* 117, 124 (Greg J. Duncan & Richard J. Murnane eds., 2011).

Massive efforts aimed at stemming the plight of disadvantaged students and the underperforming schools that serve them have hardly made a dent in this problem.<sup>10</sup> As we will explain, this lack of progress should not be surprising. The vast majority of these reforms, though well-intentioned, have been compromised by their misguided, narrow focus on in-school factors that shape students' classroom experiences. Our view is that in order to provide meaningful educational opportunity for disadvantaged students, reformers must also address the well-documented community and household challenges to learning that so many underperforming students (and their schools) must overcome in order to succeed.<sup>11</sup>

In light of the considerable difficulties and hindrances disadvantaged students face outside of the classroom, the growing wealth gap in education, and the lack of proof that conventional reform strategies can produce meaningful results, we believe that the time is right to consider more comprehensive, holistic approaches to educational reform.<sup>12</sup> This Article proposes one such

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<sup>10</sup> The gap between disadvantaged students and students from higher-income homes is larger and growing at a faster rate than the well-documented black-white achievement gap. Sean F. Reardon, *The Widening Academic Achievement Gap Between the Rich and the Poor: New Evidence and Possible Explanations*, in *WHITHER OPPORTUNITY?*, *supra* note 9, at 91, 91. Children from poor families are less likely to graduate from high school, less likely to enter college, and less likely to graduate from college. Bailey & Dynarski, *supra* note 9, at 117. In some high-poverty cities, the majority of students fail to graduate from high school. See Associated Press, *Report: Low Graduation Rates in Many City School Districts*, ABC NEWS (Apr. 1, 2008), <http://abcnews.go.com/US/story?id=4566292&page=1> (reporting graduation rates of 24.9% and 34.1% in the Detroit and Cleveland public school districts, respectively). We discuss the shortcomings of past efforts to address educational inequality in Part I, *infra*.

<sup>11</sup> We discuss the extensive literature addressing these challenges in Part III, *infra*.

<sup>12</sup> Indeed, this dire state of affairs has led some researchers to advocate far broader, redistributionist reforms. See, e.g., Helen F. Ladd, *Presidential Address: Education and Poverty: Confronting the Evidence*, 31 J. POLY ANALYSIS AND MGMT. 203, 212 (2012) ("One logical policy response . . . would be to pursue policies to reduce the incidence of poverty and other contributors to low [socioeconomic status]. That might be done, for example, through macroeconomic policies designed to reduce unemployment, cash assistance programs for poor families, tax credits for low-wage workers, or an all-out assault 'war on poverty' as pursued by Lyndon Johnson in the 1960s."); Diane Ravitch, *How, and How Not, To Improve the Schools*, N.Y. REV. BOOKS, Mar. 22, 2012, at 17, 19 ("Children need better schools, and they also need health clinics, high-quality early childhood education, arts programs, after-school activities, safe neighborhoods, and basic economic security. To the extent that we reduce poverty, we will improve student achievement."). While we support these ambitious objectives in principle, we consider them to be both politically unfeasible and unattainable. Furthermore, even if these types of reforms were somehow implemented, it would likely take decades for them to take hold and alter the local and familial norms and conditions that also make success

solution by arguing for the creation of public boarding schools as a means of educating disadvantaged young children who are enrolled in underperforming schools. Though this solution might seem radical at first blush, international models both past and present suggest that boarding school education has long been, and continues to be,<sup>13</sup> a by no means extraordinary educational option for young children.<sup>14</sup> Here in the United States, there are at least two private boarding schools for disadvantaged children that enroll students as early as four-years-old.<sup>15</sup>

This Article sets forth the argument for public boarding schools in four parts. Part II surveys prior educational reform approaches and discusses their relatively disappointing results. These past efforts have focused primarily on changing the classroom conditions in which disadvantaged children spend their days, often by attempting to increase funding for schools that serve low-income students. We argue that this focus has been unduly narrow and therefore ultimately self-defeating. Part III describes the detrimental family and community circumstances that make

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in school so challenging for so many students. In contrast, we believe that our proposal addresses the immediate need of improving educational opportunities for poor children who currently live in challenging environmental conditions.

<sup>13</sup> Wealthy Europeans have long sent their children to boarding school from as young as seven- or eight-years-old. To cite a somewhat recent example, Princes William and Harry attended Ludgrove School, an all-boarding school for boys that educates children from ages eight to thirteen. See School Details of Ludgrove School, U.K. DEP'T OF EDUC., <http://www.education.gov.uk/cgi-bin/schools/performance/school.pl?urn=110138> (last visited Sept. 24, 2012) (describing basic information about the school). Boarding school for primary education is also becoming increasingly common in China. *Boarding Schools*, STANFORD UNIV., RURAL EDUCATION ACTION PROJECT, [http://reap.stanford.edu/docs/boarding\\_schools/](http://reap.stanford.edu/docs/boarding_schools/) (last visited Oct. 21, 2012).

<sup>14</sup> At least one other legal scholar has called for the creation of boarding schools to educate low-income American children. See Kevin Brown, *Can Public International Boarding Schools in Ghana Be the Next Educational Reform Movement for Low-Income Urban Minority Public School Students?*, 19 TEMP. POL. & CIV. RTS. L. REV. 91, 113 (2009) (suggesting that boarding schools “may be effective alternatives to public day schools”). Former New York City mayor Ed Koch has endorsed a similar plan. See ELLIS COSE, *THE END OF ANGER: A NEW GENERATION'S TAKE ON RACE AND RAGE* 52 (2011) (quoting Koch).

<sup>15</sup> They are The Milton Hershey School, which enrolls financially disadvantaged children as young as four-years-old and Girard College, which enrolls financially disadvantaged children as young as first grade, both in a boarding school setting. See *Frequently Asked Questions*, MILTON HERSHEY SCH., <http://www.mhs-pa.org/about/frequently-asked-questions> (last visited Oct. 16, 2012); *Girard at a Glance*, GIRARD C., <http://www.girardcollege.edu/pa/ge.cfm?p=358> (last visited Oct. 14, 2012).



success in school so difficult for many disadvantaged children and explains why prior efforts, by ignoring or underestimating these factors, have been doomed to fail. In discussing these problems, we do not intend to “blame” poor families for their struggles or to absolve American society for its inadequate efforts to address inequality. Rather, we do so because we believe that efforts seeking to address educational inequality must account for these important nonschool factors—advocates who ignore them out of fear of presenting disadvantaged families in a bad light do their intended beneficiaries a serious disservice. Part IV examines two school reform organizations that address some of the concerns raised in Part III—the Knowledge is Power Program (KIPP) and the Schools for Educational Evolution and Development (SEED) Foundation.<sup>16</sup> KIPP and SEED each use innovative pedagogical approaches that, among other things, require students to spend far more time in school than their public school counterparts. This

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<sup>16</sup> The results attained by KIPP and SEED are exceptional; most charter schools have not been similarly successful. Although the charter-school movement has emerged as a dominant approach to education reform in recent years, learning gains in charter schools—particularly for black and Latino students—have failed to outpace those of students in traditional public schools. See STANFORD UNIV. CTR. FOR RESEARCH ON EDUC. OUTCOMES, *Multiple Choice: Charter School Performance in 16 States* 45–46 (2009), [http://credo.stanford.edu/reports/MULTIPLE\\_CHOICE\\_CREDO.pdf](http://credo.stanford.edu/reports/MULTIPLE_CHOICE_CREDO.pdf) (showing that only a small fraction of charter schools provide superior educational outcomes, and finding that black and Latino children experience slower learning gains in charter schools than traditional public schools); see also STANFORD UNIV. CTR. FOR RESEARCH ON EDUC. OUTCOMES, *Charter School Performance in Pennsylvania* 3 (2011), [http://credo.stanford.edu/reports/PA%20State%20Report\\_20110404\\_FINAL.pdf](http://credo.stanford.edu/reports/PA%20State%20Report_20110404_FINAL.pdf) (estimating that “students in Pennsylvania charter schools on average make smaller learning gains” than they would have in traditional public schools); Stéphane Lavertu & John Witte, *The Impact of Milwaukee Charter Schools on Student Achievement*, ISSUES IN GOVERNANCE STUD. 1–2 (Mar. 2009), [http://www.brookings.edu/~media/research/files/papers/2009/3/charter%20lavertu%20witte/03\\_charter\\_lavertu\\_witte](http://www.brookings.edu/~media/research/files/papers/2009/3/charter%20lavertu%20witte/03_charter_lavertu_witte) (finding that Milwaukee’s extensive foray into charter-school education produced results that were only modestly better, and by some metrics worse, than traditional public schools). Even the results of one of the most widely heralded charter schools in the country have been called into question. See, e.g., Grover J. Whitehurst & Michelle Croft, *The Harlem Children’s Zone, Promise Neighborhoods, and the Broader, Bolder Approach to Education*, BROOKINGS (July 10, 2010), <http://www.brookings.edu/research/reports/2010/07/20-hcz-whitehurst> (noting the limited gains of the Harlem Children’s Zone’s approach to education reform and finding that “[t]here is no compelling evidence that investments in parenting classes, health services, nutritional programs, and community improvement in general have appreciable effects on student achievement in schools in the U.S. Indeed there is considerable evidence in addition to the results from the present study that questions the return on such investments for academic achievement.”).

Part argues that this removal of students from the risk factors and hindrances of their home and neighborhood environments contributes to the impressive educational outcomes of KIPP and SEED students. Consistent with this hypothesis, Part V sets forth a tentative model for a more comprehensive educational experience for disadvantaged children: seven-day boarding schools commencing as early as kindergarten. This part also addresses some of the criticisms that we anticipate will be raised in reaction to our proposal.

## II. LIMITATIONS OF PREVIOUS REFORM EFFORTS

The problems of America's most underperforming schools and the vast educational disparities between disadvantaged schoolchildren and their more privileged counterparts have been topics of concern for scholars and civil-rights attorneys for half a century.<sup>17</sup> Yet, despite decades of litigation and advocacy, the prospects of children living in disadvantaged communities remain grim. This Part discusses two strategies that reformers commonly have relied upon in recent decades. The first strategy, school-finance litigation, has proceeded under the premise that the root cause of discrepancies in educational outcomes is a lack of adequate funding. As shown below,<sup>18</sup> due to political resistance and underwhelming results, this approach offers little hope for the future.<sup>19</sup> The second strategy, focused on school and teacher

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<sup>17</sup> See JAMES S. COLEMAN, U.S. DEP'T OF HEALTH, EDUC. & WELFARE, EQUALITY OF EDUCATIONAL OPPORTUNITY 1–3 (1966) (undertaking a massive, agenda-changing study on educational inequality); *Serrano v. Priest*, 487 P.2d 1241, 1262–63 (Cal. 1971) (finding that California's school-funding scheme based on local property taxes was unconstitutional). The NAACP began its legal efforts to address race-based inequality in educational opportunity decades earlier. See generally MARK TUSHNET, THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925–1950 (1987).

<sup>18</sup> See Part II.A, *infra*.

<sup>19</sup> See Michael Heise, *Litigated Learning and the Limits of Law*, 57 VAND. L. REV. 2417, 2440 (2004) (discussing the extraordinary difficulties of improving educational achievement through school-finance litigation); see also Derek W. Black, *Middle-Income Peers as Educational Resources and the Constitutional Right to Equal Access*, 53 B.C. L. REV. 373, 374 (2012) (noting that school-finance litigation is “caught between progressive legal doctrine and empty state coffers”). But see MICHAEL A. REBELL, COURTS AND KIDS: PURSUING EDUCATIONAL EQUITY THROUGH THE STATE COURTS 30 (2009) (highlighting “[p]laintiffs’ extraordinary winning record at the liability stage” of school-finance litigation).

accountability on the basis of their students' performance on standardized tests, has come into vogue somewhat more recently.<sup>20</sup> Though efforts in this vein are relatively new, the initial data indicate that they too have had limited, if any, success. The following sections discuss these two efforts in greater detail.

#### A. THE INADEQUACY OF SCHOOL-FINANCE LITIGATION

Over the past forty years, litigants have fought for greater funding for lower-income school districts. Because school districts typically receive most of their funding through local property taxes, schools in poor areas generally receive substantially less funding per student than those in more affluent districts, sometimes strikingly so.<sup>21</sup> Though the Supreme Court has held that education is not a constitutional right and that unequal funding therefore does not violate the U.S. Constitution,<sup>22</sup> litigants have challenged school-funding mechanisms in virtually every state on state constitutional grounds.<sup>23</sup>

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<sup>20</sup> See Peter W. Airasian, *State Mandated Testing and Educational Reform: Context and Consequences*, 95 AM. J. EDUC. 393, 393–401 (1987) (documenting dramatic increase in states' use of standardized testing to measure student and teacher competence as a policy response to broader changes in American education).

<sup>21</sup> See John G. Augenblick et al., *Equity and Adequacy in School Funding*, 7 FUTURE OF CHILD. 63, 64–65 (1997) (discussing the concerns apparent when school districts rely on property-tax revenue and the inherent differences that it creates in the quality of materials supplied to students); Heise, *supra* note 19, at 2437 (“Higher property value areas find it comparatively easier, from a tax effort perspective, to raise funds for their schools.”). For school-finance litigants, these school-funding disparities provide convenient, quantifiable measures of the input disparities between school districts. See BRUCE BAKER, DAVID SCIARRA & DANIELLE FARRIE, *IS SCHOOL FUNDING FAIR? A NATIONAL REPORT CARD* 13 (2d ed., 2012), available at [http://www.schoolfundingfairness.org/National\\_Report\\_Card\\_2012.pdf](http://www.schoolfundingfairness.org/National_Report_Card_2012.pdf) (“[Sixteen] states have regressive funding systems, providing high-poverty districts with less state and local revenue than low-poverty districts. . . . Only 17 states have progressive funding systems, providing greater funding to high-poverty districts than to low-poverty districts.”); LEGISLATIVE SERV. COMM'N, *SCHOOL FUNDING COMPLETE RESOURCE* 26 (2011), available at <http://www.lsc.state.oh.us/schoolfunding/edufeb2011.pdf> (“The amount of revenue generated by a one-mill property tax levy varies from about \$50 per student in some low wealth districts to more than \$200 per student in some high wealth districts.”).

<sup>22</sup> *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35, 51–52 (1973).

<sup>23</sup> See Jeffrey S. Sutton, *Essay, San Antonio Indep. Sch. Dist. v. Rodriguez and Its Aftermath*, 94 VA. L. REV. 1963, 1974 (2008) (noting that “as of June 2008, forty-five States have faced state-constitutional challenges to their systems of funding public schools”). A number of state courts have found their states' public-education funding schemes to be unconstitutional. These states include: Alabama (*Harper v. Hunt*, 624 So. 2d 107, 110 (Ala.

Prior school-funding litigation has sought to provide poor districts greater resources for uses such as improving the physical conditions of school buildings, increasing teacher salaries to attract better teachers, reducing class sizes, and procuring superior pedagogical aids such as computers, lab equipment, and newer books.<sup>24</sup> Underlying these efforts has been a presumption that improving the physical and pedagogical conditions disadvantaged students experience during school hours both could be accomplished through litigation and would flow naturally from increased funding, leading in turn to improved educational outcomes.<sup>25</sup> Unfortunately, neither presumption has proven correct. Often, when school-funding litigants have prevailed in court, their efforts have been stymied by spirited backlash and recalcitrance from state legislatures. In these instances,

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1993)); Arizona (*Roosevelt Elementary Sch. Dist. v. Bishop*, 877 P.2d 806, 808 (Ariz. 1994)); Arkansas (*Lake View Sch. Dist. No. 25 v. Huckabee*, 10 S.W.3d 892, 899 (Ark. 2000); *Tucker v. Lake View Sch. Dist. No. 25*, 917 S.W.2d 530, 533 (Ark. 1996); *Dupree v. Alma Sch. Dist. No. 30*, 651 S.W.2d 90, 93 (Ark. 1983)); California (*Serrano v. Priest*, 557 P.2d 929, 953 (Cal. 1977)); Connecticut (*Horton v. Meskill*, 376 A.2d 359, 374 (Conn. 1977)); Idaho (*Idaho Sch. for Equal Educ. Opportunity v. State*, 976 P.2d 913, 914 (Idaho 1998); *Idaho Sch. for Equal Educ. Opportunity v. Evans*, 850 P.2d 724, 736 (Idaho 1993)); Kansas (*Montoy v. State*, 120 P.3d 306, 308 (Kan. 2005)); Kentucky (*Rose v. Council for Better Educ.*, 790 S.W.2d 186, 213 (Ky. 1989)); Massachusetts (*McDuffy v. Sec'y of Executive Office of Educ.*, 615 N.E.2d 516, 552 (Mass. 1993)); Montana (*Helena Elementary Sch. Dist. No. 1 v. State*, 769 P.2d 684, 690 (Mont. 1989)); Missouri (*Comm. for Educ. Equal. v. State*, 878 S.W.2d 446, 448 (Mo. 1994)); New Hampshire (*Claremont Sch. Dist. v. Governor*, 703 A.2d 1353 (N.H. 1997)); New Jersey (*Robinson v. Cahill*, 303 A.2d 273, 295 (N.J. 1973)); New York (*Campaign for Fiscal Equity, Inc. v. State*, 655 N.E.2d 661, 663 (N.Y. 1995)); North Carolina (*Leandro v. State*, 488 S.E.2d 249, 258 (N.C. 1997)); Ohio (*DeRolph v. State*, 677 N.E.2d 733, 740 (Ohio 1997)); South Carolina (*Abbeville Cnty. Sch. Dist. v. State*, 515 S.E.2d 535, 540 (S.C. 1999)); Tennessee (*Tenn. Small Sch. Sys. v. McWhorter*, 851 S.W.2d 139, 154 (Tenn. 1993)); Texas (*Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 398 (Tex. 1989)); Vermont (*Brigham v. State*, 692 A.2d 384, 396 (Vt. 1997)); Washington (*Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71, 103 (Wash. 1978)); West Virginia (*Pauley v. Kelly*, 255 S.E.2d 859, 883–84 (W. Va. 1979)); and Wyoming (*Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238, 1267–68 (Wyo. 1995); *Washakie Cnty. Sch. Dist. No. 1 v. Herschler*, 606 P.2d 310, 335 (Wyo. 1980)).

<sup>24</sup> See ERIC A. HANUSHEK & ALFRED A. LINDSETH, SCHOOLHOUSES, COURTHOUSES, AND STATEHOUSES: SOLVING THE FUNDING-ACHIEVEMENT PUZZLE IN AMERICA'S PUBLIC SCHOOLS 118–200 (2009) (discussing the objectives of plaintiffs in school-finance litigation).

<sup>25</sup> See Michael Heise, *Litigated Learning, Law's Limits, and Urban School Reform Challenge*, 85 N.C. L. REV. 1419, 1451 (2007) (explaining dependence of school-finance litigation on assumptions about per-pupil spending); HANUSHEK & LINDSETH, *supra* note 24, at 122–24 (describing how plaintiffs and courts in school-finance litigation often rely upon highly questionable assumptions concerning the correlation between financial inputs and student performance outcomes).

successful litigation has resulted in minimal increases in the resources that poor schools actually receive.<sup>26</sup> It should therefore come as no surprise that the correlation between legal victories in these states and improvements to the educational experiences of poor children has been tenuous.<sup>27</sup>

But even in states where legal victories have actually led to more equitable state-wide funding without shrinking the pot, poor schools have in the main continued to underperform.<sup>28</sup> One reason

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<sup>26</sup> See Heise *supra* note 19, at 2438 (“As for the remedies, an important aspect of school-finance litigation is that even successful challenges have not led to equal funding, nor have any of the suits done much to alter the basic structure of school finance schemes.”). The most prominent example of political backlash undermining successful litigation is California, which, in the decades after *Serrano*, passed an anti-tax referendum, Proposition 13, and went from being one of the most generous spending states on education, per capita, to one of the lowest. See *Has School Finance Reform Been Good for California?*, RESEARCH BRIEF (Pub. Policy Inst. of Cal., San Francisco, Cal.), Dec. 2000 (discussing the mixed results of plaintiffs’ victory in *Serrano*).

The struggles in New Jersey over the implementation of the ambitious *Abbott* ruling, *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990), have also been illustrative. See Margaret E. Goertz, *Steady Work: The Courts and School Finance Reform in New Jersey*, in STRATEGIES FOR SCHOOL EQUITY: CREATING PRODUCTIVE SCHOOLS IN A JUST SOCIETY 111–13 (Marilyn J. Gittell ed., 1998) (documenting the political difficulties of school-finance implementation in New Jersey). In recent years, the other political branches in New Jersey have made several attempts to contest and modify various aspects of the *Abbott* ruling in order to provide less funding. See Chris Megerian, *Gov. Christie’s Legal Team Tells N.J. Supreme Court to Keep Hands Off Education Dollars*, NJ.COM (Apr. 21, 2011, 5:31 PM), [http://www.nj.com/news/index.ssf/2011/04/gov\\_christies\\_legal\\_team\\_tells.html](http://www.nj.com/news/index.ssf/2011/04/gov_christies_legal_team_tells.html).

<sup>27</sup> Several researchers have questioned this correlation. *E.g.*, HANUSHEK & LINDSETH, *supra* note 24, at 146; Heise, *supra* note 25, at 1451–53; James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 YALE L.J. 2043, 2103 (2002); James E. Ryan, *Schools, Race, and Money*, 109 YALE L.J. 249, 254–55 & nn.15–21 (1999).

<sup>28</sup> Even where legal victories have produced greater financial resources for poor districts, the empirical evidence concerning whether such funding actually leads to substantial improvements is mixed at best. See, *e.g.*, HANUSHEK & LINDSETH, *supra* note 24, at 145–60 (finding that substantial infusions of funds into poorer school districts in New Jersey, Kentucky, and Wyoming failed to produce appreciable gains); Douglas Coate & James VanderHoff, *Public School Spending and Student Achievement: The Case of New Jersey*, 19 CATO J. 85, 98 (1999) (finding no evidence of positive effects of increased expenditures on education outcomes in New Jersey); Eric A. Hanushek, *When School Finance “Reform” May Not Be Good Policy*, 28 HARV. J. ON LEGIS. 423, 425 (1991) (asserting that “[t]here is no systematic relationship between school expenditures and student performance” (emphasis omitted)); Heise, *supra* note 25, at 1451–53 (questioning the relative importance of increased funding). *But see* DAVID GRISMER ET AL., IMPROVING STUDENT ACHIEVEMENT: WHAT STATE NAEP TEST SCORES TELL US (2000), available at [http://www.rand.org/content/dam/rand/pubs/monograph\\_reports/2000/MR924.pdf](http://www.rand.org/content/dam/rand/pubs/monograph_reports/2000/MR924.pdf) (arguing that increased funding, properly used, can lead to improved educational outcomes); Larry V. Hedges et al., *Does Money Matter? A Meta-Analysis of Studies of the Effects of Differential School Inputs on*

for this lack of progress is that increased funding for struggling school districts won through litigation has not always been spent in ways optimally designed to improve student performance.<sup>29</sup> Indeed, it is still far from clear which uses of additional funding for struggling schools, if any, can plausibly be expected to substantially improve educational outcomes. Although some reforms made possible by increased funding have shown promise,<sup>30</sup> they have not come close to bridging the enormous gap between disadvantaged and privileged students.<sup>31</sup> Overall, the data indicate that providing increased funding to existing, underperforming schools and school districts has failed to foster widespread improvement.

#### B. TESTING, SCAPEGOATING, AND EDUCATIONAL JUSTICE ON THE CHEAP

In recent years, a different approach has come into vogue and dominated much of the public discourse on education reform. This approach essentially attributes student underperformance not to schools' financial inputs or student background characteristics, which are dismissed as unconvincing "excuses,"<sup>32</sup> but to subpar teacher performance and the failure of school leadership to set

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*Student Outcomes*, 23 EDUC. RESEARCHER 5, 5 (1994) (critiquing Hanushek's research methodology); Michael A. Rebell, *Fiscal Equity in Education: Deconstructing the Reigning Myths and Facing Reality*, 21 N.Y.U. REV. L. & SOC. CHANGE 691, 696 (1995) (arguing that higher funding can positively affect educational performance).

<sup>29</sup> See Ryan, *supra* note 27, at 290–91 (discussing, as an example, the Kansas City School District's inefficient use of over a billion dollars in funding). States have spent tens of billions of dollars to comply with judicial orders in lawsuits over their school-finance allocations, with overall results that are minimally appreciable. See Laurie Reynolds, *Full State Funding of Education as a State Constitutional Imperative*, 60 HASTINGS L.J. 749, 754 (2009) (noting that states have spent an estimated \$34 billion in compliance efforts).

<sup>30</sup> See generally Charles Clotfelter et al., *Would Higher Salaries Keep Teachers in High-Poverty Schools? Evidence from a Policy Intervention in North Carolina*, 92 J. PUB. ECON. 1352 (2008) (finding that increasing teacher salaries may help poor school districts attract and retain better teachers); Alan B. Krueger, *Economic Considerations and Class Size*, 113 ECON. J. F34 (2003) (finding that smaller class sizes are associated with greater educational outcomes).

<sup>31</sup> See Clotfelter et al., *supra* note 30, at 1369 (estimating an increase in test scores of 1% of a standard deviation as a result of the program); Krueger, *supra* note 30, at F61 (noting that the effect of smaller class sizes is "subtle").

<sup>32</sup> Paul Tough, *No, Seriously: No Excuses*, N.Y. TIMES, July 7, 2011 (Magazine), at 11.

appropriate expectations for student progress.<sup>33</sup> Much of this line of reform, exemplified by the passage of the landmark No Child Left Behind Act of 2001 (NCLB),<sup>34</sup> is rooted in the assumption that raising student and teacher accountability, most often by increased reliance on standardized testing, will incentivize teachers and school administrators to better educate their students. Based on this premise, a number of current reformers argue that the solutions to education disparities lie primarily in raising expectations for students and rewarding or punishing schools and teachers based on their students' performance.<sup>35</sup>

This strand of education reform has considerable appeal to those looking for relatively cheap, simple fixes to the numerous, multifaceted problems that plague underperforming schools. Instead of expending the resources necessary to alleviate disparities in school finance or to address the poverty and grave social problems that undermine the educational achievement of many poor children, these reformers believe that they can adequately address educational inequality by implementing more comprehensive testing and providing enhanced incentives for teachers. But to the extent that these policies fail to account squarely for the considerable external factors that lead disadvantaged students to educationally underperform, they will not produce truly meaningful progress.

Although efforts in this vein have been widely celebrated,<sup>36</sup> in several instances the claimed progress has not withstood

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<sup>33</sup> See, e.g., Amanda Ripley, *Can She Save Our Schools?*, TIME, Dec. 8, 2008, at 36 (claiming that “[t]he biggest problem with U.S. public schools is ineffective teaching, according to decades of research.”).

<sup>34</sup> Pub. L. 107-110, 115 Stat. 1425 (2002) (codified as amended primarily in scattered sections of 20 U.S.C.). NCLB imposed assessment and accountability measures in all states, in order to eliminate educational achievement gaps among racial, ethnic, and special education status groups. A. Gary Dworkin, *The No Child Left Behind Act: Accountability, High-Stakes Testing, and Roles for Sociologists*, 78 SOC. OF EDUC. 170, 170 (2005).

<sup>35</sup> States have begun using student performance on standardized tests to identify the best and worst teachers and principals, promoting and paying more to the former and demoting, punishing, or firing the latter. See DIANE RAVITCH, *THE DEATH AND LIFE OF THE GREAT AMERICAN SCHOOL SYSTEM: HOW TESTING AND CHOICE ARE UNDERMINING EDUCATION* 15–30 (2010) (discussing the use of testing). Schools with inadequate test scores may face sanctions, including the ultimate sanction, being forced to close. *Id.* at 165.

<sup>36</sup> Former Washington, D.C. schools chancellor Michelle Rhee in particular has received an extraordinary amount of approving media attention for her efforts to enforce

scrutiny.<sup>37</sup> The central underlying premise—that the incentives created by “high-stakes” testing will lead to better teaching and academic performance—has been challenged by educational researchers.<sup>38</sup> What is more, reform efforts seeking to measure school and teacher quality based on students’ standardized test scores have created perverse incentives for teachers and school administrators to skirt accurate assessment by “teaching to the

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accountability among teachers and principals. *See, e.g.*, RICHARD WHITMIRE, *THE BEE EATER: MICHELLE RHEE TAKES ON THE NATION’S WORST SCHOOL DISTRICT 156* (2011) (crediting Rhee with achieving “dramatic progress” in struggling urban schools); Ripley, *supra* note 33 (praising Rhee’s focus on removing “ineffective” teachers and principals as a promising means of improving student educational achievement); *Meet the Press* (NBC television broadcast Sept. 26, 2010), available at <http://broadacademy.hellodesign.com/meetthepress.html> (discussing teacher-based reform efforts in the D.C. and Detroit school districts); *PBS Newshour: D.C. Schools Chief Rhee Faces High Hopes for Reform* (PBS television broadcast Nov. 19, 2007), available at [http://www.pbs.org/newshour/bb/education/july-dec07/dcschools\\_11-19.html](http://www.pbs.org/newshour/bb/education/july-dec07/dcschools_11-19.html) (reporting Rhee’s plans to turn around the city’s troubled school system); *WAITING FOR SUPERMAN* (Walden Media 2010) (celebrating the apparent successes of Rhee, Geoffrey Canada, and other education reformers in improving student achievement).

<sup>37</sup> *See, e.g.*, Jack Gillum & Marisol Bello, *When Standardized Test Scores Soared in D.C., Were the Gains Real?*, USA TODAY, Mar. 28, 2011, at 1A (investigating student test performance in a school once touted as “an example of how the sweeping changes [Rhee] championed could transform even the lowest-performing Washington schools” and finding irregularities consistent with rampant cheating); Kristen A. Graham & Dylan Purcell, *City School’s Fast-Rising Test Scores Questioned*, PHILA. INQUIRER, May 1, 2011, at A1 (detailing teachers’ observations of rampant cheating and testing irregularities in a Philadelphia school that had been widely celebrated for rising test scores).

<sup>38</sup> *See* COMM. ON INCENTIVES & TEST-BASED ACCOUNTABILITY IN PUB. EDUC., *INCENTIVES & TEST-BASED ACCOUNTABILITY IN EDUC.* 3–4 (Michael Hout & Stewart W. Elliott eds., 2011) (finding that policy makers and educators do not know how to use standardized testing to consistently produce gains in educational achievement and noting that a number of test-based incentive programs have had minimal effects on student achievement); RAVITCH, *supra* note 35, at 12 (suggesting that accountability through testing is “antithetical” to good education); Valerie Strauss, *Report: Test-Based Incentives Don’t Produce Real Student Achievement*, WASH. POST (May 28, 2011, 4:19 PM), [http://www.washingtonpost.com/blogs/answer-sheet/post/report-test-based-incentives-dont-produce-real-student-achievement/2011/05/28/AG39wXDH\\_blog.html](http://www.washingtonpost.com/blogs/answer-sheet/post/report-test-based-incentives-dont-produce-real-student-achievement/2011/05/28/AG39wXDH_blog.html) (discussing a National Research Council report showing incentive programs are largely unproductive). Researchers have found that student test scores may not accurately measure teacher performance, let alone lead to improved performance. *See* SEAN P. CORCORAN, *CAN TEACHERS BE EVALUATED BY THEIR STUDENTS’ TEST SCORES? SHOULD THEY BE?* 28 (2010) (concluding that the assumption that teacher performance can be comprehensively, accurately measured by student testing outputs is “not supported by the data”); Thomas J. Kane & Douglas O. Staiger, *The Promise and Pitfalls of Using Imprecise School Accountability Measures*, 16 J. ECON. PERSP. 91, 91, 95 (2002) (noting that student test-score measures are “less reliable than is commonly recognized” and subject to “many potential sources of short-term fluctuations”).



test”<sup>39</sup> and have led to allegations of widespread cheating in at least two major cities.<sup>40</sup> School-reform measures focusing on teacher accountability and venerating standardized testing, such as NCLB, have had mixed effects on student achievement,<sup>41</sup> while often resulting in serious negative consequences for many disadvantaged schools.<sup>42</sup> Perhaps the most notable shortcoming of NCLB is that it essentially ignores the effects of student

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<sup>39</sup> Teachers have incentives to maximize student test performance at the cost of overall student learning by, for example, narrowing the curriculum to exclude subjects that are not featured on the state exams and by implementing rote memorization and testing drills that may provide students with limited overall mastery of the substantive material. See Valerie Strauss, *What’s Wrong with Standardized Tests?*, WASH. POST (May 27, 2010, 11:59 AM), <http://voices.washingtonpost.com/answer-sheet/standardized-tests/whats-wrong-with-standardized.html> (noting that because of pressure to increase student scores on high-stakes standardized testing, schools often “narrow and change the curriculum to match the test”); see also Kane & Staiger, *supra* note 38, at 109 (discussing the coaching of students on the form of test questions rather than employing more comprehensive teaching methods).

Likewise, states have been accused of lowering their proficiency standards in order to artificially inflate the number of students receiving passing marks on these high-stakes tests. Steve Inskeep, *Former ‘No Child Left Behind’ Advocate Turns Critic*, NPR (Mar. 2, 2010), <http://www.npr.org/templates/story/story.php?storyId=124209100> (discussing allegations that some states have intentionally “dumbed down” their standards and now claim that more than 90% of students are proficient). The percentage of schools earning failing marks varies across states according to the toughness of the states’ standards. Ladd, *supra* note 12, at 215–16 n.13.

<sup>40</sup> See Kristen A. Graham & Dylan Purcell, “*Compelling Evidence of Cheating in Many Phila. Schools*,” PHILA. INQUIRER, Mar. 11, 2012, at A1 (discussing the alleged cheating on standardized tests by fifty-six Philadelphia public and charter schools and noting that the “pressure to perform well on achievement tests is intense”); Jaime Sarrio, *Atlanta’s Testing Scandal Adds Fuel to U.S. Debate*, ATLANTA J.-CONST., July 10, 2011, at A1 (describing Atlanta’s public-school cheating scandal as “one of the largest in U.S. history” and attributing it to pressure to meet testing targets); see also Greg Toppo, *Schools Flunked Inquiries into Suspicious Scores in 2011*, USA TODAY, Dec. 30, 2011, at A6 (reporting numerous scandals of teachers cheating because of test-based accountability).

<sup>41</sup> See Thomas S. Dee & Brian Jacob, *The Impact of No Child Left Behind on Student Achievement*, 30 J. POL’Y ANALYSIS & MGMT. 418–46 (2011) (finding that NCLB raised fourth graders’ and (to a lesser extent) eighth graders’ math achievement while having no discernable effect on reading achievement). These gains have been extremely modest compared to NCLB’s ambitious statutory goals. *Id.* These underwhelming results are consistent with the concerns of early critics and commentators. See, e.g., James E. Ryan, *The Perverse Incentives of the No Child Left Behind Act*, 79 N.Y.U. L. REV. 932, 934 (2004) (arguing that NCLB “creates incentives that work against the Act’s goals,” including incentives for states “to lower academic standards” and “to increase segregation by class and race and to push low-performing students out of school entirely”).

<sup>42</sup> See Ladd, *supra* note 12, at 215–16 (noting that NCLB has led to large numbers of schools being designated as failing, to the narrowing of class curricula, to lower teacher morale, and to cheating).

socioeconomic backgrounds on educational achievement—it requires each school to meet the same standards, regardless of the disadvantages that students bring with them to the classroom.<sup>43</sup>

This Part has shown some of the reasons that education reform efforts over the past forty years have largely failed to deliver. Litigation efforts aimed at increasing funding for underperforming schools have in the main come up short due to their inability to deliver increased funding. In the instances where litigation has resulted in an increase in the resources available to poor schools, additional spending has not produced widespread improvement in educational outcomes. More recent school-reform efforts stressing the importance of teacher accountability have to date delivered only limited, questionable successes, and they also have created a number of new problems and complications. The following Part discusses what we believe is the predominant reason why these efforts, focused on the classroom experience to the exclusion of students' household and environmental challenges, have failed.

### III. DISADVANTAGES OUTSIDE THE SCHOOLHOUSE DOOR

The limited success of school-finance litigation and other popular education reform efforts should not be surprising, given the large body of social science research establishing the importance of nonschool factors in shaping disadvantaged students' educational outcomes. School-reform efforts that focus narrowly on conditions behind the schoolhouse door, during school hours, ignore many of the root causes of unequal educational outcomes.<sup>44</sup> The grim but unavoidable truth is that the structural

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<sup>43</sup> *Id.* Other prominent education reformers, including the founder of Teach for America, have also deemphasized the importance of poverty as an impediment to educational progress. See Paul E. Peterson, *Neither Broad nor Bold*, 12 EDUC. NEXT 38, 42 (2012) (arguing that Ladd's poverty-focused reform efforts are "narrow, niggling, naïve, and negligible" and claiming that "[c]ontrary to Ladd's claims, the unique effects of family income on student achievement are only modest"). But see Valerie Strauss, *A New Poverty-Doesn't-Really-Matter-Much Argument*, WASH. POST (Mar. 16, 2012, 11:51 AM), [http://www.washingtonpost.com/blogs/answer-sheet/post/a-new-poverty-doesnt-really-matter-much-argument/2012/03/15/gIQANm6XGS\\_blog.html](http://www.washingtonpost.com/blogs/answer-sheet/post/a-new-poverty-doesnt-really-matter-much-argument/2012/03/15/gIQANm6XGS_blog.html) (criticizing Peterson and other education reformers for downplaying the effects of poverty on educational achievement).

<sup>44</sup> To be sure, not all reformers have ignored these factors. See, e.g., Ravitch, *supra* note 12, at 9 ("The problems of American education are not unsolvable, but the remedies must be

inequalities that affect poor children's lives outside of school are often more substantial and of far greater consequence than the disparities in resources and teacher quality between their schools and those attended by more affluent children. A number of researchers have found that these student-background factors are more closely associated with educational outcomes than school-based factors.<sup>45</sup> Due to these factors, it remains unclear whether the resources sought in school-finance litigation or attempts to incentivize teachers to raise test scores can substantially raise student achievement.

That schools constitute only part of the problem is illustrated by the extent to which disadvantaged children typically enter kindergarten significantly behind their more affluent counterparts in terms of school-readiness.<sup>46</sup> Upon reaching school age, the average American child still spends most of his or her waking hours during the academic year away from school.<sup>47</sup> For many disadvantaged children, this time away from school has

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rooted in reality. Schools are crucial institutions in our society and teachers can make a huge difference in changing children's lives, but schools and teachers alone cannot cure the ills of an unequal and stratified society."); Ladd, *supra* note 12, at 204 (criticizing the "teacher accountability" movement and other reform efforts for ignoring the importance of poverty and segregation on educational outcomes).

<sup>45</sup> See, e.g., COLEMAN, *supra* note 17, at 21–22 (finding that educational outcomes were more strongly correlated with students' backgrounds than with school funding); see also Spyros Konstantopoulos & Larry Hedges, *How Large an Effect Can We Expect from School Reforms?*, 110 TCHRS. C. REC. 1611, 1629 (2008) (noting that "a substantial proportion of the variation in school effects is due to differences in student background").

<sup>46</sup> See, e.g., JULIA B. ISSACS, STARTING SCHOOL AT A DISADVANTAGE: THE SCHOOL READINESS OF POOR CHILDREN 2 (2012) (reporting 48% of poor children are ready for school at age five, compared to 75% of children from families with moderate and high income); George Farkas & Jacob Hibel, *Being Unready for School: Factors Affecting Risk and Resilience*, in DISPARITIES IN SCHOOL READINESS: HOW FAMILIES CONTRIBUTE TO TRANSITIONS INTO SCHOOL 3 (Alan Booth & Ann C. Crouter eds., 2008) (examining the negative effects that variables such as parental education, family poverty and income, and immigration status have on kindergarten readiness); Rachel A. Razza et al., *Associations Among Family Environment, Sustained Attention, and School Readiness for Low-Income Children*, 46 DEV. PSYCHOL. 1528, 1539 (2010) (examining school readiness within a low-income sample and concluding that targeting sustained attention efforts will increase percentages).

<sup>47</sup> See Sandra L. Hofferth & John F. Sandberg, *How American Children Spend Their Time*, 63 J. MARRIAGE & FAM. 295, 300 (2001) (finding that American children aged six to twelve spend on average between thirty-two and thirty-three hours per week in school and roughly sixty-five hours in other activities).

deleterious effects on educational achievement that are as profound as the funding and teacher quality deficiencies with which they must contend during their time at school. These students fall further behind their more affluent counterparts during their time away from school, particularly during summer vacations, than they do during the course of the school year.<sup>48</sup> Hence, even when the schools of disadvantaged children are well-resourced, with small class sizes and new facilities,<sup>49</sup> conditions outside of the classroom still consistently produce wide disparities in educational outcomes. This Part elaborates on this point by describing in greater detail the household and neighborhood challenges that many underprivileged children must overcome in order to succeed academically.

#### A. HOME LIFE

Many poor families struggle to feed<sup>50</sup> and clothe their children and to take care of basic medical expenses,<sup>51</sup> let alone provide the extra support that children generally require in order to thrive

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<sup>48</sup> Douglas B. Downey et al., *Are Schools the Great Equalizer? Cognitive Inequality During the Summer Months and the School Year*, 69 AM. SOC. REV. 613, 632 (2004); see also David T. Burkam et al., *Social-Class Differences in Summer Learning Between Kindergarten and First Grade: Model Specification and Estimation*, 77 SOC. EDUC. 1, 6 (2004) (“The [socioeconomic status] gaps at the beginning of kindergarten may be exacerbated over time by learning differences over the summer.”); Doris R. Entwisle & Karl L. Alexander, *Summer Setback: Race, Poverty, School Composition, and Mathematics Achievement in the First Two Years of School*, 57 AM. SOC. REV. 72, 82 (1992) (documenting the large disparities in summer gains between low- and high-income students).

<sup>49</sup> To be clear, research suggests that smaller class size is associated with some increase in educational achievement. See generally Alan B. Krueger, *Understanding the Magnitude and Effect of Class Size on Student Achievement*, in THE CLASS SIZE DEBATE (Lawrence Mischel & Richard Rothstein eds., 2002).

<sup>50</sup> See Patrick H. Casey et al., *Children in Food-Insufficient, Low-Income Families: Prevalence, Health, and Nutrition Status*, 155 ARCHIVE OF PEDIATRIC & ADOLESCENT MED. 508, 508 (2001) (estimating that 2.4 to 3.2 million children under twelve live in food-insufficient families). Food insufficiency may independently harm students’ educational outcomes. See Katherine Alaimo et al., *Food Insufficiency and American School-Aged Children’s Cognitive, Academic, and Psychosocial Development*, 108 PEDIATRICS 44, 49 (2001) (reporting the existence of food-insufficient households).

<sup>51</sup> See generally Llewellyn J. Cornelius, *Barriers to Medical Care for White, Black, and Hispanic American Children*, 85 J. NAT’L MED. ASS’N 281 (1993) (finding that minority children were more likely to lack health insurance and to have to wait longer to see medical providers).

academically. Students growing up in poor households tend to live in overcrowded conditions with greater residential instability<sup>52</sup> and greater influx and exit of household members.<sup>53</sup> They also suffer greater rates of familial violence.<sup>54</sup> Understandably, the economic pressures that these families face lead to greater familial stress and maternal emotional distress, which appears to result in increased incidences of child misbehavior.<sup>55</sup> It should therefore come as no surprise that growing up poor has been associated with a wide range of negative educational, employment, and life outcomes.<sup>56</sup>

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<sup>52</sup> See REBECCA COHEN & KEITH WARDRIP, SHOULD I STAY OR SHOULD I GO? EXPLORING THE EFFECTS OF HOUSING INSTABILITY AND MOBILITY ON CHILDREN 4 (Ctr. for Hous. Pol’y 2011), available at <http://www.nhc.org/media/files/HsgInstablityandMobility.pdf> (noting that hyper-mobility, both moving residences and changing schools, has a sharp negative impact on children’s academic performance); see also INST. FOR CHILDREN & POVERTY, EXAMINATION OF RESIDENTIAL INSTABILITY AND HOMELESSNESS AMONG YOUNG CHILDREN 1 (2009), [http://www.icphusa.org/PDF/reports/ICP%20Report\\_Examination%20of%20Residential%20Instability%20and%20Homelessness%20among%20Young%20Children.pdf](http://www.icphusa.org/PDF/reports/ICP%20Report_Examination%20of%20Residential%20Instability%20and%20Homelessness%20among%20Young%20Children.pdf) (“Empirical literature suggests that residential instability is a key factor in reducing the educational success of low-income children because frequent moves often include school transitions that may result in lower academic performance including high school completion.”).

<sup>53</sup> Ethnographers studying poor families have often observed the influx and exit of different household members. See, e.g., CAROL B. STACK, ALL OUR KIN: STRATEGIES FOR SURVIVAL IN A BLACK COMMUNITY 62–67 (1974) (describing the fluid household compositions of a group of poor families).

<sup>54</sup> See Robert E. Emery & Lisa Laumann–Billings, *An Overview of the Nature, Causes, and Consequences of Abusive Family Relationships: Toward Differentiating Maltreatment and Violence*, 53 AM. PSYCHOLOGIST 121, 126 (1998) (noting that “[t]he relation between poverty, social isolation, and child maltreatment has now been well established across all categories of abuse”).

<sup>55</sup> See W. Jean Yeung et al., *How Money Matters for Young Children’s Development: Parental Investment and Family Processes*, 73 CHILD. DEV. 1861, 1875 (2002) (finding an association between family poverty and both problem behavior and lower scores on cognitive tests).

Poor families headed by single parents have even lower household financial resources, less social capital, and less time to monitor and participate in the development of their children than other poor households. See SARA McLANAHAN & GARY SANDEFUR, GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS 39–63 (1994) (discussing behavioral and educational disparities associated with growing up in single-parent households); Sara McLanahan & Christine Percheski, *Family Structure and the Reproduction of Inequalities*, 34 ANN. REV. SOC. 257, 264 (2008) (“Children who grow up apart from their biological father also experience a higher prevalence of behavioral and psychological problems, such as shyness and aggression, than other children.”).

<sup>56</sup> See Andrew J. Cherlin, *Going to Extremes: Family Structure, Children’s Well-Being, and Social Science*, 36 DEMOGRAPHY 421, 427 (1999) (noting that “the long-term mental health of adults who experienced parental divorce as children or adolescents appears to

In addition to these material hardships, poor children are disadvantaged in comparison to their middle-class and affluent counterparts by their parents' limited social and cultural capital. Poor households tend to lack the social capital and networks that other families enjoy and can capitalize upon.<sup>57</sup> They generally have smaller social networks and less contact with their social ties, and they are involved in fewer organizations.<sup>58</sup> In terms of cultural capital,<sup>59</sup> a long line of research has documented that middle-class and affluent parents tend to adopt parenting styles and tactics that differ sharply from those of poorer, less-educated parents and also tend to better prepare their children to succeed in

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deteriorate in relation to the mental health of those who grew up with two biological parents"); Mignon R. Moore & P. Lindsay Chase-Lansdale, *Sexual Intercourse and Pregnancy Among African American Girls in High-Poverty Neighborhoods: The Role of Family and Perceived Community Environment*, 63 J. MARRIAGE & FAM. 1146, 1146 (2001) ("[W]e know poor adolescents have a greater probability of earlier sexual activity compared with those in more advantaged households . . ."). See generally McLanahan & Percheski, *supra* note 55; MCLANAHAN & SANDEFUR, *supra* note 55.

<sup>57</sup> The term *social capital* encapsulates the information, influence, solidarity, and other forms of goodwill available to individuals on the basis of their social relations. Paul S. Adler & Seok-Woo Kwon, *Social Capital: Prospects for a New Concept*, 27 ACAD. OF MGMT. REV. 17, 23 (2002). Social capital is a resource that can help people achieve goals in many realms of life, including educational achievement. See James S. Coleman, *Social Capital in the Creation of Human Capital*, 94 AM. J. SOC. S95, S113 (Supp. 1988) (explaining the effect of social capital on dropout rates). The social capital relevant to students' educational performances reflects the content and quality of relationships within their households and in household members' external relationships with community members and societal institutions. See *id.* (emphasizing that social capital also exists in relationships extending outside the family unit).

<sup>58</sup> J.S. House et al., *Structures and Processes of Social Support*, 14 ANN. REV. SOC. 293, 311–12 (1988).

<sup>59</sup> *Cultural capital*, as used in sociological research, refers to individuals' cultural tastes, knowledge, dispositions, and practices. PIERRE BOURDIEU, *DISTINCTION: A SOCIAL CRITIQUE OF THE JUDGEMENT OF TASTE* 22–23 (Richard Nice trans., 1984); see also Michele Lamont & Annette Lareau, *Cultural Capital: Allusions, Gaps and Glissandos in Recent Theoretical Developments*, 6 SOC. THEORY 153, 153–57 (1988) (describing the history of sociologists' use of the term "cultural capital"). Cultural capital may be acquired through formal instruction at school or other institutions, or through "informal" lessons passed down by family members in the course of conversation and interactions. See Pierre Bourdieu, *The Forms of Capital*, in HANDBOOK AND THEORY OF RESEARCH FOR THE SOCIOLOGY OF EDUCATION 241, 242–48 (John G. Richardson ed., 1986) (identifying various components of cultural capital and describing how they are acquired). Cultural-capital theorists have argued that schools and other mainstream institutions reward students who possess high-status cultural capital and at times conflate it with merit and competence. See *id.* at 244 ("[T]he scholastic yield from educational action depends on the cultural capital previously invested by the family.").

school.<sup>60</sup> Poor and working class parents tend to be less actively involved in and up to speed on their children's schooling and extracurricular involvements.<sup>61</sup> They also tend to be less aware of how their children spend their free time and know fewer of their children's friends.<sup>62</sup>

Compared to college graduates, less-educated parents (who tend to be poorer),<sup>63</sup> spend less time engaging in various enrichment experiences with their children, including reading and taking them to novel places.<sup>64</sup> Researchers have found that they are also less warm, less verbally responsive, and more likely to use

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<sup>60</sup> See, e.g., FIONA DEVINE, CLASS PRACTICES: HOW PARENTS HELP THEIR CHILDREN GET GOOD JOBS 18 (2004) (discussing the cultural, social, and material resources that middle-class parents mobilize to maximize their children's chances of educational success); SHARON HAYS, THE CULTURAL CONTRADICTIONS OF MOTHERHOOD 93–95 (1996) (finding that middle-class mothers use more labor-intensive approaches to parenting than poor parents, which may reproduce social inequalities); D. Henderson, *Contextual Specificity, Discretion and Cognitive Socialization with Special Reference to Language*, in CLASS, CODES AND CONTROL, VOLUME 2: APPLIED STUDIES TOWARDS A SOCIOLOGY OF LANGUAGE 44, 48–53 (Basil Bernstein ed., 1975) (finding that middle- and working-class parents used different speech practices in their communications with their children, and arguing that this influences children's success in school); MELVIN L. KOHN, CLASS AND CONFORMITY: A STUDY IN VALUES 46 (2d ed. 1977) (finding that “middle-class parents put greater emphasis on children's self-direction, working-class parents on their conformity to external standards.”); ANNETTE LAREAU, UNEQUAL CHILDHOODS: CLASS, RACE, AND FAMILY LIFE 2–13 (2003) (discussing the advantages that the “concerted cultivation” parenting model used by many middle-class parents bestows upon middle-class children). See generally HILARY LEIGH LEVEY, PLAYING TO WIN: RAISING CHILDREN IN A COMPETITIVE ENVIRONMENT (unpublished dissertation) (2009) (discussing the increased efforts of middle-class parents to strategically enroll their children in extracurricular activities).

<sup>61</sup> LAREAU, *supra* note 60, at 163; Valerie E. Lee & Robert G. Croninger, *The Relative Importance of Home and School in the Development of Literacy Skills for Middle-Grade Students*, 102 AM. J. EDUC. 286, 315–16 (1994); David L. Stevenson & David P. Baker, *The Family-School Relation and the Child's School Performance*, 58 CHILD DEV. 1348, 1349 (1987).

<sup>62</sup> Lee & Croninger, *supra* note 61, at 315–16.

<sup>63</sup> U.S. CENSUS BUREAU, INCOME, POVERTY AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2009 (2010), at 51 tbl.A-5, available at <http://www.census.gov/prod/2010pubs/p60-238.pdf> (showing a correlation between household income and educational attainment of householder); see also Pamela E. Davis-Kean, *The Influence of Parent Education and Family Income on Child Achievement: The Indirect Role of Parental Expectations and the Home Environment*, 19 J. FAM. PSYCHOL. 294, 294–95 (2005) (examining how parental education and income relates to children's academic achievement through beliefs and behaviors).

<sup>64</sup> Meredith Phillips, *Parenting, Time Use, and Disparities in Academic Outcomes*, in WHITHER OPPORTUNITY?, *supra* note 9, 207, 217–18.

physical discipline with their children.<sup>65</sup> Studies also have documented important class-based differences in physical discipline and other harsh parenting practices, tactics that are believed to negatively affect child cognitive and emotional development and behavior.<sup>66</sup> While poor parents often adopt direct, even authoritarian, parenting styles when communicating with their children, middle-class parents more often engage their children in deliberations and discourse that may improve their vocabulary, analytical abilities, and sense of self-confidence and self-entitlement.<sup>67</sup> This approach has been associated with better educational outcomes.<sup>68</sup> These class-based disparities in financial resources and parenting practices have led some researchers to argue that attending school with well-supported peers is a better means of enhancing educational opportunity for disadvantaged children than infusing their struggling schools with additional funding.<sup>69</sup>

Although education-reform-minded legal scholars have tended to ignore or tiptoe around these findings, the implications of this voluminous research are clear: conditions and parenting practices that tend to be more prevalent in poor and less-educated households can significantly compound school-based inequalities, further undermining poor children's prospects for educational success. Without the right support outside of the classroom, poor children will continue to underperform their middle-class peers, regardless of whether they attend schools that are equally funded or have relatively better teachers.

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<sup>65</sup> *Id.* at 218–20.

<sup>66</sup> Robert H. Bradley et al., *The Home Environments of Children in the United States Part I: Variations by Age, Ethnicity, and Poverty Status*, 72 CHILD DEV. 1844, 1863–64 (2001).

<sup>67</sup> See HAYS, *supra* note 60, at 37, 86–93 (discussing the various ways social class and economic status impact parenting); LAREAU, *supra* note 60, at 107–33 (discussing the differences in parenting styles between middle-class and poor parents and the impact such styles have on children).

<sup>68</sup> LAREAU, *supra* note 60, at 132–33, 159–60.

<sup>69</sup> See COLEMAN, *supra* note 17, at 183 (discussing the impact that a student's peers have on the educational environment); RICHARD D. KAHLENBERG, ALL TOGETHER NOW: CREATING MIDDLE-CLASS SCHOOLS THROUGH PUBLIC SCHOOL CHOICE 47–76 (2001) (arguing that one of the most influential factors affecting school performance is the characteristics of a student's peers); Black, *supra* note 19, at 373 (conceptualizing “middle-income students as one of the educational resources that school districts allocate”).



Before moving forward, because we have identified a number of factors that could be construed as painting poor families in a negative light, we again emphasize that it is not our intention to blame poor parents for educational inequality or to absolve the rest of society of responsibility for the persistent academic underachievement of the urban poor. Nonetheless, some might bristle at our highlighting the numerous negative attributes that have been associated with poor parents. We understand the source of this concern. Over the past several decades, conservative interests have evoked and exploited a number of class-based and racial stereotypes about poor parents—particularly single black mothers—to justify the retrenchment of the social welfare state, thereby undermining the dignity and autonomy of disadvantaged women.<sup>70</sup> In the wake of such attacks, progressive scholars have aggressively pushed back in an effort to liberate these parents from various mean-spirited stereotypes, generalizations, and myths.<sup>71</sup>

Unfortunately, in their vigilance to rebut criticisms of poor parents, many scholars have assumed positions on the opposite extreme, supporting a narrative that diminishes the importance of many well-documented risk factors that have been associated with growing up in poor households and communities. Such efforts, though generally well-meaning, have had the unfortunate effect of artificially narrowing scholarly and policy analysis of the mechanisms of urban inequality. Researchers and commentators seeking to address in frank terms the cultural and behavioral

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<sup>70</sup> See 'Welfare Queen' Becomes Issue in Reagan Campaign, N.Y. TIMES, Feb. 15, 1976, at 51 (documenting then-presidential candidate Ronald Reagan's political use of stereotype-laden anecdotes about undeserving welfare recipients); John Blake, *Return of the 'Welfare Queen'*, CNN (Jan. 23, 2012, 5:32 PM), <http://www.cnn.com/2012/01/23/politics/welfare-queen/index.html> (discussing Reagan's racialized anecdotes about welfare abuse and a recent statement by then-presidential candidate Rick Santorum associating black people with welfare dependency).

<sup>71</sup> For ideological critiques of the political and rhetorical use of these stereotypes, see Martha L. Fineman, *Images of Mothers in Poverty Discourse*, 1991 DUKE L.J. 274, 289; see also Khiara M. Bridges, *Quasi-Colonial Bodies: An Analysis of the Reproductive Lives of Poor Black and Racially Subjugated Women*, 18 COLUM. J. GENDER & L. 609, 621–22 (2009) (criticizing the use of racial stereotypes in reproductive healthcare); Nancy E. Dowd, *Stigmatizing Single Parents*, 18 HARV. WOMEN'S L.J. 19, 47–48 (1995) (criticizing the stereotyping of black women).

problems associated with disadvantaged homes and communities now risk being accused of “blaming the victim” or even being caricatured as attacking black women and families.<sup>72</sup> In recent years, a number of perceived attacks on poor and black families, including efforts to increase marriage rates among poor families,<sup>73</sup> Bill Cosby’s cultural critique of poor black families on the NAACP’s fiftieth anniversary of *Brown v. Board of Education*,<sup>74</sup> and President Obama’s blunt discussion of the fatherhood crisis among black Americans,<sup>75</sup> have drawn heated criticism.<sup>76</sup>

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<sup>72</sup> This tendency is evident in the outrage that is still directed at the well-meaning but widely misunderstood “Moynihan Report,” OFFICE OF POLICY PLANNING AND RESEARCH, U.S. DEP’T OF LABOR, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965), an internal Labor Department memorandum from 1965 in which Daniel Moynihan discussed racial inequality and black family structure. See JAMES T. PATTERSON, *FREEDOM IS NOT ENOUGH: THE MOYNIHAN REPORT AND AMERICA’S STRUGGLE OVER BLACK FAMILY LIFE FROM LBJ TO OBAMA* 213 (2010) (documenting scholars’ reaction to the Moynihan Report at a 2009 convention); William Julius Wilson, *The Moynihan Report and Research on the Black Community*, 621 ANNALS AM. ACAD. POL. & SOC. SCI. 34, 39 (2009) (describing the cultural context that spurred the negative reaction to the report). For examples of attacks on Moynihan and his report, see MELISSA V. HARRIS-PERRY, *SISTER CITIZEN: SHAME, STEREOTYPES, AND BLACK WOMEN IN AMERICA* 93–94 (2011); BELL HOOKS, *AIN’T I A WOMAN: BLACK WOMEN AND FEMINISM* 75–76, 104–05 (1981); Maxine Baca Zinn, *Family, Race, and Poverty in the Eighties*, 14 SIGNS 856, 857–58 (1989).

<sup>73</sup> See Jean V. Hardisty, *Pushed to the Altar: The Right-Wing Roots of Marriage Promotion*, PUB. EYE MAG., Jan. 2008, available at <http://www.publiceye.org/pushedtothealtar/index.html> (criticizing governmental marriage promotion programs as relying on “bad science” and “often reflect[ing] racial, ethnic, and gender stereotypes,” while “disproportionately target[ing] communities of color—especially African Americans”).

<sup>74</sup> During his infamous tirade at an NAACP gala celebrating the fiftieth anniversary of *Brown*, Cosby criticized poor black people for, among other things, wearing dresses “up to the crack,” getting unusual body piercings, having babies at twelve and thirteen years of age, getting shot by police while in possession of stolen pound cake, and murdering people over pizza. Bill Cosby, Address at the NAACP on the Fiftieth Anniversary of *Brown v. Board of Education* (May 17, 2009) (transcript available at <http://www.americanrhetic.com/speeches/billcosbypoundcakespeech.htm>).

<sup>75</sup> See Julie Bosman, *Obama Calls for More Responsibility from Black Fathers*, N.Y. TIMES, Jan. 16, 2008, at A15 (“Too many fathers are M.I.A., too many fathers are AWOL, missing from too many lives and too many homes . . . . They have abandoned their responsibilities, acting like boys instead of men. And the foundations of our families are weaker because of it.” (internal quotation marks omitted)).

<sup>76</sup> See MICHAEL ERIC DYSON, *IS BILL COSBY RIGHT? OR HAS THE BLACK MIDDLE CLASS LOST ITS MIND?* 2 (2005) (criticizing and casting Cosby’s comments as reflecting classist, bourgeois biases against poor black families); Beth Harry, Janette K. Klingner & Juliet Hart, *African American Families Under Fire: Ethnographic Views of Family Strengths*, 26 REMEDIAL SPEC. EDUC. 101, 101 (2005) (criticizing Cosby’s “diatribe” for ignoring important contextual information about the challenges faced by poor black families). Obama’s

Although we understand the source of this uneasiness in this context, to the extent that they contribute to the continued misdiagnosis of the barriers affecting poor children, such critiques are ultimately counterproductive.<sup>77</sup> In our view, given the research discussed throughout this Section, all efforts aimed at improving the education of disadvantaged children must take seriously the household factors that impede educational achievement and account for them in shaping a solution.

#### B. THE ACUTE DANGERS AND DISADVANTAGES OF GROWING UP IN POOR NEIGHBORHOODS

In addition to the significant household factors that can act to impede disadvantaged students' academic achievement, there exist a number of neighborhood characteristics that tend to do the same. Not surprisingly, poor families are far more likely than others to live in high-poverty neighborhoods with other poor families.<sup>78</sup> The dangers and disadvantages of living in such neighborhoods are myriad. As psychologist Gary Evans has noted, in a classic academic understatement, children in these neighborhoods are subjected to a "daunting array of suboptimal physical and

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remarks famously drew such wrath in some quarters that it led longtime civil rights leader Jesse Jackson to utter into a "hot mic" that he wanted to "cut [President Obama's] nuts off." *Jackson Apologizes for "Crude" Obama Remarks*, CNN (July 9, 2008), [http://articles.cnn.com/2008-07-09/politics/jesse.jackson.comment\\_1\\_obama-campaign-jesse-jackson-black-vote.s?\\_s=PM:POLITICS](http://articles.cnn.com/2008-07-09/politics/jesse.jackson.comment_1_obama-campaign-jesse-jackson-black-vote.s?_s=PM:POLITICS).

<sup>77</sup> For this reason, a number of sociologists have recently begun to devote renewed attention to exploring the possible role of culture in perpetuating poverty and inequality. See Mario Small et al., *Reconsidering Culture and Poverty*, 629 ANNALS AM. ACAD. POL. & SOC. SCI. 6, 11 (2010) (warning that "ignoring culture can lead to bad policy"); Alford A. Young Jr., *New Life for an Old Concept: Frame Analysis and the Reinvigoration of Studies in Culture and Poverty*, 629 ANNALS AM. ACAD. POL. & SOC. SCI. 53, 53–55 (2010) (discussing the reemergence of culture-based approaches to studying poverty); Stephen Vaisey, *What People Want: Rethinking Poverty, Culture, and Educational Attainment*, 629 ANNALS AM. ACAD. POL. & SOC. SCI. 75, 96 (2010) (arguing that researchers should study how environmental factors including poverty "influence the formation of values, desires, and preferences" and thereby affect human behavior). See generally LAREAU, *supra* note 60.

<sup>78</sup> The threshold for "high-poverty" or "concentrated poverty" neighborhoods has usually been set at a 40% rate of neighborhood poverty. E.g., PAUL A. JARGOWSKY, *POVERTY AND PLACE: GHETTOS, BARRIOS, AND THE AMERICAN CITY* 11 (1997); Lincoln Quillian, *Migration Patterns and the Growth of High-Poverty Neighborhoods, 1970–1990*, 105 AM. J. SOC. 1, 13 (1999).

psychosocial conditions.”<sup>79</sup> Such conditions undermine these children’s ability to succeed in school,<sup>80</sup> in no small part because neighborhood poverty has been associated with a greater incidence of child neglect and abuse,<sup>81</sup> greater prevalence of crime and violence,<sup>82</sup> and fear for personal safety.<sup>83</sup>

These threats have profound consequences for the social organization of life in these communities. Community members, particularly adolescent males, must adopt defensive strategies and tactics to protect themselves from victimization.<sup>84</sup> Families must divert energy from maximizing children’s educational achievement in order to ensure their safety and the avoidance of crime and violence.<sup>85</sup> The defensive strategies that children growing up in these conditions often adopt to protect themselves further increase the likelihood that they will underperform educationally, in some instances by design.<sup>86</sup>

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<sup>79</sup> Gary W. Evans, *The Environment of Childhood Poverty*, 59 AM. PSYCH. 77, 77 (2004).

<sup>80</sup> *Id.* at 81.

<sup>81</sup> See Brett Drake & Shanta Pandey, *Understanding the Relationship Between Neighborhood Poverty and Specific Types of Child Maltreatment*, 20 CHILD ABUSE & NEGLECT 1003, 1013 (1996) (finding that neighborhood poverty is associated with three types of child abuse: physical abuse, sexual abuse, and neglect).

<sup>82</sup> DAVID J. HARDING, *LIVING THE DRAMA: COMMUNITY, CONFLICT, AND CULTURE AMONG INNER-CITY BOYS* 18 (2010); Ching-Chi Hsieh & M.D. Pugh, *Poverty, Income Inequality, and Violent Crime: A Meta-Analysis of Recent Aggregate Data Studies*, 18 CRIM. JUST. REV. 182, 198 (1993); Robert J. Sampson et al., *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, 277 SCIENCE 918, 918 (1997).

<sup>83</sup> See Lawrence F. Katz et al., *Moving to Opportunity in Boston: Early Results of a Randomized Mobility Experiment*, 116 Q.J. ECON. 607, 648 (2001) (noting that children in the Moving to Opportunity program’s experimental group, who relocated to housing in low-poverty neighborhoods, were less likely to be victims of crime, and that their parents reported better mental health than their control group counterparts who primarily remained in high-poverty neighborhoods).

<sup>84</sup> See HARDING, *supra* note 82, at 103–07 (discussing the far-reaching effects of neighborhood violence on the socialization and lifestyles of teenage boys).

<sup>85</sup> *Id.*; see also ELLIJAH ANDERSON, *CODE OF THE STREET: DECENCY, VIOLENCE, AND THE MORAL LIFE OF THE INNER CITY* 98–106 (1999) (discussing the strategies and tactics that even “good” teenage boys feel compelled to take to avoid victimization).

<sup>86</sup> See, e.g., ANDERSON, *supra* note 85, at 95 (“The decent kids mimic the street ones, behaving in street ways that often confuse teachers . . .”); Signithia Fordham & John Ogbu, *Black Students’ School Success: Coping with the Burden of Acting White*, 18 URB. REV. 176, 180–82 (1986) (finding that some poor black adolescents underperform academically to avoid being criticized for “acting white”). But see James W. Ainsworth-Darnell & Douglas B. Downey, *Assessing the Oppositional Culture Explanation for Racial/Ethnic Differences in School Performance*, 63 AM. SOC. REV. 536, 551 (1998)

What is more, in poor urban neighborhoods, children tend to spend more time in cross-age social groups with older peers who may expose them to unlawful and non-age-appropriate behaviors detrimental to their educational outcomes.<sup>87</sup> Even ambitious, college-oriented children who reside in these neighborhoods must frequently come into contact with students with less ambitious educational goals. These peer influences may result in lower educational outcomes,<sup>88</sup> behavioral problems,<sup>89</sup> or, as in the well-publicized beating death of Chicago high-school student Derrion Albert, consequences far more tragic.<sup>90</sup>

A number of factors in these neighborhoods function together to reroute children away from success in mainstream educational and economic institutions. Structural developments in the late twentieth century, including deindustrialization,<sup>91</sup> the rise of

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(criticizing oppositional culture explanations of minority academic underachievement as “misplaced” and finding instead that “if anything, African Americans maintain *more* pro-school values and are *more* likely to esteem their high-achieving friends than are whites”); ANGEL L. HARRIS, KIDS DON’T WANT TO FAIL: OPPOSITIONAL CULTURE AND THE BLACK-WHITE ACHIEVEMENT GAP 98–104 (2011) (arguing that black students value education as much as their white counterparts); BEYOND ACTING WHITE: REFRAMING THE DEBATE ON BLACK STUDENT ACHIEVEMENT (Erin M. Horvat & Carla O’Connor eds., 2006) (disputing the importance of the fear of acting white and other elements of opposition culture in explaining education disparities).

<sup>87</sup> HARDING, *supra* note 82, at 6.

<sup>88</sup> David J. Harding, *Rethinking the Cultural Context of Schooling Decisions in Disadvantaged Neighborhoods: From Deviant Subculture to Cultural Heterogeneity*, 84 SOC. EDUC. 322, 323–24 (2011).

<sup>89</sup> See, e.g., Delbert S. Elliott et al., *The Effects of Neighborhood Disadvantage on Adolescent Development*, 33 J. RES. CRIME DELINQ. 389, 394–95 (1996) (noting that “[t]he concentration of poverty, joblessness, single parents, and highly mobile family units in socially disadvantaged neighborhoods gives rise to strong peer control systems, including delinquent gangs, that deviate from conventional norms and behavior.”); Bruce H. Rankin & James M. Quane, *Social Contexts and Urban Adolescent Outcomes: The Interrelated Effects of Neighborhoods, Families, and Peers on African-American Youth*, 49 SOC. PROBS. 79, 81 (2002) (“Children growing up in poverty do worse than those from more affluent families on a variety of health, cognitive, social, and behavioral outcomes.”).

<sup>90</sup> See CATHY J. COHEN, DEMOCRACY REMIXED 14–16 (2010) (discussing the beating death of honor-roll student Albert at the hands of neighborhood gang members); THE INTERRUPTERS (Kartemquin Films 2011), *available at* <http://www.pbs.org/wgbh/pages/frontline/interrupters/> (discussing the Albert murder and vividly documenting the way that violence permeates the lives of all children in these neighborhoods).

<sup>91</sup> WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY 135–36 (1987).

punitive mass-incarceration-based criminal-justice policies,<sup>92</sup> and the flight of whites and middle-class blacks to the suburbs,<sup>93</sup> have dramatically altered the fabric of life in the neighborhoods where disadvantaged minority children reside. These changes have weakened poor neighborhoods' attachments to mainstream labor markets by ushering in more concentrated poverty and rampant joblessness.<sup>94</sup> Some children in these communities live in what sociologists have referred to as "social isolation," with a shortage of adults who have succeeded through educational achievement and (legal) work, and with a preponderance of negative role models.<sup>95</sup>

As a result, living in such neighborhoods leads to greater incidences of self-limiting behavior, including dropping out of high school<sup>96</sup> and teenage motherhood.<sup>97</sup> Researchers have linked problem behaviors of disadvantaged youth—including delinquency and criminal activity,<sup>98</sup> drug and alcohol use, nonmarital pregnancy, and absence from school—to the behavior of older family members.<sup>99</sup> Children are similarly influenced by the problem behaviors of their neighborhood peers.<sup>100</sup>

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<sup>92</sup> ALEXANDER, *supra* note 7, at 224–25; WESTERN, *supra* note 7, at 30–31.

<sup>93</sup> WILSON, *supra* note 91, at 136.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 144; HARDING, *supra* note 82, at 54–56. *But see* KATHERINE S. NEWMAN, NO SHAME IN MY GAME: THE WORKING POOR IN THE INNER CITY 209 (1999) (suggesting that Wilson and others overstate the extent to which residents of poor neighborhoods, even the jobless, are socially distant from working people); MARIO LUIS SMALL, VILLA VICTORIA: THE TRANSFORMATION OF SOCIAL CAPITAL IN A BOSTON BARRIO 183–84 (2004) (cautioning against making overly broad generalizations about living conditions in high-poverty neighborhoods).

<sup>96</sup> Kyle Crowder & Jay Teachman, *Do Residential Conditions Explain the Relationship Between Living Arrangements and Adolescent Behavior?*, 66 J. MARRIAGE & FAM. 721, 721 (2004); David J. Harding, *Counterfactual Models of Neighborhood Effects: The Effect of Neighborhood Poverty on Dropping Out and Teenage Pregnancy*, 109 AM. J. SOC. 676, 676 (2003).

<sup>97</sup> Scott J. South & Kyle D. Crowder, *Neighborhood Effects on Family Formation: Concentrated Poverty and Beyond*, 64 AM. SOC. REV. 113, 113 (1999); Crowder & Teachman, *supra* note 96, at 721; Harding, *supra* note 96, at 676.

<sup>98</sup> Faith Peeples & Rolf Loeber, *Do Individual Factors and Neighborhood Context Explain Ethnic Differences in Juvenile Delinquency?*, 10 J. QUANTITATIVE CRIMINOLOGY 141, 149–51 (1994).

<sup>99</sup> Anne C. Case & Lawrence F. Katz, *The Company You Keep: The Effects of Family and Neighborhood on Disadvantaged Youths* 10–11 (Nat'l Bureau of Econ. Research, Working Paper No. w3705, 1991) (finding that "[y]ouths who had family members in jail when they were being raised are [much more likely] to . . . be involved in criminal activity; those with

Considering these household and neighborhood disadvantages in total, it should be clear that school-reform efforts that merely tinker with students' classroom experiences during the customary school day have little chance of closing the achievement gap—efforts that aim to bring about educational equality but fail to address the meaningful impediments, negative influences, and well-documented disadvantages that poor children often face in their households and neighborhoods are doomed to fail. To truly provide disadvantaged children with opportunities to succeed, it is necessary to consider ambitious, far-reaching measures that immerse children in positive environments and shield them from these negative influences.

#### IV. KIPP AND SEED

The Knowledge is Power Program (KIPP) and Schools for Education Development (SEED) foundations have picked up on this observation. Employing innovative educational models, KIPP and SEED have become leaders in the education-reform movement over the past decade and have had a number of successes. This part discusses the KIPP and SEED models of educating underserved populations in order to show the improvements that can take place when students spend longer periods of time in positive academic environments and to lay the foundation for our discussion of the feasibility and desirability of public, seven-day boarding schools starting in kindergarten.

##### A. BACKGROUND AND RESULTS

The Knowledge is Power Program (KIPP) bills itself as “a national network of free, open-enrollment, college-preparatory public charter schools with a track record of preparing students in underserved communities for success in college and in life.”<sup>101</sup> The 125 existing KIPP schools stretch across twenty states and the

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family members with drug and alcohol problems are . . . more likely to use drugs”; those with teenage mothers and unmarried parents are substantially more likely to have children out of wedlock; and those with better-educated parents get more schooling).

<sup>100</sup> *Id.* at 16.

<sup>101</sup> *About KIPP*, KIPP, <http://www.kipp.org/about-kipp> (last visited Sept. 29, 2012).

District of Columbia and serve more than 39,000 students.<sup>102</sup> By actively engaging students and parents in the educational process, expanding the time and effort students devote to their studies, and reinforcing students' social competencies and positive behaviors, KIPP schools endeavor to dramatically improve students' academic achievement.<sup>103</sup> The ultimate objective of each KIPP school is to prepare its students to enroll and succeed in college.<sup>104</sup>

The Schools for Educational Evolution and Development (SEED) Foundation "partners with urban communities to provide innovative educational opportunities that prepare underserved students for success in college and beyond."<sup>105</sup> The SEED model "integrates a rigorous academic program with a nurturing boarding program that teaches life skills and provides students with a safe and secure environment," and it "includes academic, residential, mental health, physical health, social, and enrichment programs."<sup>106</sup> Though boarding its students is essential to the SEED model, the Foundation stresses the importance of cultivating positive relationships with families and community leaders, in part as a means of strengthening students' support structures and out-of-school communities.<sup>107</sup>

SEED currently operates two schools, one in Washington, D.C., and the other in Baltimore, Maryland.<sup>108</sup> The SEED School of Washington, D.C., is a public charter school and the nation's first tuition-free college-preparatory boarding school.<sup>109</sup> The school educates more than 320 students in grades six through twelve.<sup>110</sup>

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<sup>102</sup> *Id.*

<sup>103</sup> CHRISTINA CLARK TUTTLE ET AL., STUDENT CHARACTERISTICS AND ACHIEVEMENT IN 22 KIPP MIDDLE SCHOOLS, at xi (Mathematica Policy Research, Inc., 2010), available at [http://www.mathematica-mpr.com/publications/pdfs/education/KIPP\\_fnl rpt.pdf](http://www.mathematica-mpr.com/publications/pdfs/education/KIPP_fnl rpt.pdf).

<sup>104</sup> *Id.*

<sup>105</sup> *About SEED*, SEED FOUND., <http://www.seedfoundation.com/index.php/about-seed> (last visited Sept. 29, 2012).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* SEED students live at school from Sunday evening through Friday afternoon, going home most weekends. *FAQs*, SEED FOUND., <http://www.seedfoundation.com/index.php/about-seed/faqs> (last visited Sept. 29, 2012). Because SEED believes that even resource-poor families and communities can contribute to children's learning and development, SEED schools actively encourage robust parental involvement.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *SEED Schools, Washington, D.C.*, SEED FOUND., <http://www.seedfoundation.com/ind>



The SEED School of Maryland is a statewide, public college-preparatory boarding school.<sup>111</sup> The school is projected to serve up to 400 students in grades six through twelve.<sup>112</sup>

KIPP and SEED are similar in a number of ways. First, both operate under a set of enumerated principles that differentiate them from traditional public schools. KIPP's principles, for example, include "High Expectations," "Focus on Results," and "More Time" (in the form of "an extended school day, week and year"),<sup>113</sup> while SEED's include "Positive Culture of High Expectations," "Individual Student Support," and a twenty-four-hour "Learning Environment."<sup>114</sup> Second, both KIPP and SEED seek to prepare members of underserved communities for college.<sup>115</sup> In other words, both programs target the same types of students we seek to educate. Third, KIPP and SEED schools place a great deal of emphasis on providing a structured environment conducive to academic achievement and have a comparatively low tolerance for misbehavior.<sup>116</sup>

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ex.php/seed-schools/washington-dc (last visited Feb. 29, 2012).

<sup>111</sup> *SEED Schools, Maryland*, SEED FOUND., <http://www.seedfoundation.com/index.php/seed-schools/Maryland> (last visited Sept. 19, 2012).

<sup>112</sup> *Id.* SEED Maryland currently enrolls 308 students in grades six through nine.

<sup>113</sup> KIPP's Five Pillars, its core set of operating principles, are as follows: (1) "High Expectations," (2) "Choice & Commitment," (3) "More Time," (4) "Power to Lead," (5) "Focus on Results." *Five Pillars*, KIPP, <http://www.kipp.org/our-approach/five-pillars> (last visited Sept. 29, 2012). For a full description of each of these Pillars, see *id.*

<sup>114</sup> SEED's operational "Beliefs" are encapsulated in the following principles: (1) "College-Bound Culture," (2) "24-hour Learning Environment," (3) "Positive Culture of High Expectations," (4) "Integrated and Engaging Program to Foster Love of Learning," (5) "Individual Student Support," (6) "Focus on Data and Continuous Improvement," (7) "Recruiting and Nurturing Outstanding Educators," (8) "Family and School Partnership," (9) "Community Relationships." *Beliefs*, SEED FOUND., <http://www.seedfoundation.com/index.php/about-seed/beliefs> (last visited Sept. 29, 2012). For a full description of these beliefs, see *id.*

<sup>115</sup> See *Frequently Asked Questions*, KIPP, <http://www.kipp.org/about-kipp/faq> (last visited Feb. 29, 2012) (noting KIPP's targeting of underserved communities and that "more than 85 percent of KIPP students are eligible for the federal free or reduced-price meals program, and 95 percent are African American or Latino"); see also *FAQs*, *supra* note 107 (noting that over 98% of SEED students are minorities, 91% have no family member who has attended college, 75% are Title I eligible, 80% live with a single parent or with neither parent, and 12% of SEED graduates have special education needs).

<sup>116</sup> The first of KIPP's "Five Pillars," "High Expectations," provides that KIPP schools shall "make no excuses based on the students' backgrounds" and that staff are to "create and reinforce a culture of achievement and support through a range of formal and informal rewards and consequences for academic performance and behavior." *Five Pillars*, *supra*

Although they have had their critics<sup>117</sup>—at least some criticism of bold educational reforms is to be expected<sup>118</sup>—KIPP and SEED have been indisputably successful in raising achievement levels for thousands of students.<sup>119</sup> Based on the most recent data available,

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note 113. SEED's third principle, "Positive Culture of High Expectations," provides that "SEED students and staff are expected to relentlessly pursue excellence and to consistently exhibit the SEED core values of responsibility, respect, self-discipline, compassion and integrity." *Beliefs*, *supra* note 114.

<sup>117</sup> KIPP and SEED have been subject to a great deal of criticism, in large part arising out of the fact that the schools they operate are not traditional public schools. Some critics have alleged that the magnitude of their successes is likely exaggerated on account of the schools' high attrition rates and their "creaming" the most promising public school students. See Maggie Jones, *A Different Kind of Prep School*, N.Y. TIMES, Sept. 27, 2009 (Magazine), at 43, available at [http://www.nytimes.com/2009/09/27/magazine/27Boarding-t.html?\\_r=1](http://www.nytimes.com/2009/09/27/magazine/27Boarding-t.html?_r=1) (under the title, *The Inner-City Prep School Experience*) (observing that SEED D.C.'s high attrition rate renders its "much-lauded college acceptance rate less impressive"); Jeffrey R. Henig, *What Do We Know About the Outcomes of KIPP Schools* (Great Lakes Ctr. for Educ. Research & Practice), Nov. 2008, at 1, 16 (describing high-attrition rates at a number of KIPP schools and noting that it is likely "exaggerating the findings of relative gains made by KIPP cohorts").

<sup>118</sup> Charges relating to "creaming" and high-attrition rates are not unique to KIPP and SEED. In recent years, a wide variety of choice-based attempts to improve the educational opportunities and experiences available to some disadvantaged children have been met with severe criticisms that accuse such programs of harming students who will be left behind and unable to take advantage of new opportunities. See, e.g., Martha Minow, *Lecture, Reforming School Reform*, 68 FORDHAM L. REV. 257, 258 (1999) (warning that "[v]ouchers and charters also risk perpetuating inequality by excluding and segregating children with special needs, skimming from public schools those families motivated enough to take advantage of voucher and charter programs"); see also James Forman, Jr., *Do Charter Schools Threaten Public Education? Emerging Evidence from Fifteen Years of a Quasi-market for Schooling*, 2007 U. ILL. L. REV. 839, 876 (discussing criticisms that charter schools may undermine the public's support of other public schools); Joseph P. Viteritti, *Reaching for Equality: The Salience of School Choice*, 14 J.L. & POL. 469, 476-77 (1998) (discussing these criticisms as applied to school voucher programs).

On some level, skepticism about choice policies is understandable, given their past use as a means for southern schools to escape racial desegregation. See Christopher Bonastia, *Why the Racist History of the Charter School Movement Is Never Discussed*, ALTERNET (Mar. 9, 2012), [http://www.alternet.org/story/154425/why\\_the\\_racist\\_history\\_of\\_the\\_charter\\_school\\_movement\\_is\\_never\\_discussed?](http://www.alternet.org/story/154425/why_the_racist_history_of_the_charter_school_movement_is_never_discussed?) (last visited Sept. 29, 2012); see also Griffin v. Cnty. Sch. Bd., 377 U.S. 218, 232 (1964) (finding the segregationist use of school vouchers to replace public school unconstitutional under the Equal Protection Clause); STEPHEN L. WASBY ET AL., *DESEGREGATION FROM BROWN TO ALEXANDER: AN EXPLORATION OF SUPREME COURT STRATEGIES* 150-51 (1977) (discussing the possibility of avoiding desegregation by converting to "private" schools). That these policies have been enthusiastically embraced by some libertarians who make no qualms about their aspirations to eventually do away with the public school system entirely adds fuel to the fire. But in its more rigid form, this criticism becomes counterproductive; by so wielding it, proponents make the good the enemy of the perfect.

<sup>119</sup> Though alluded to in the prior footnote, the charge of "creaming" is unfounded, for as a

91% of SEED students who enter ninth grade graduate from high school; 94% of SEED graduates from 2004–2011 have been accepted to a four-year college or university (the same percentage enrolling in college within eighteen months of graduation); and three times as many SEED graduates complete college compared to their peers.<sup>120</sup>

Evaluating KIPP's success is more complicated due to the organization's larger and more diverse portfolio of schools (125 elementary, middle, and high schools throughout the country). But at every level, KIPP's approach seems to be working. Based on data from 2010, by the end of kindergarten, 63% of KIPP students outperform national peers in reading, and 47% outperform in math.<sup>121</sup> By the end of eighth grade, the numbers jump to 66% and 54%, respectively.<sup>122</sup> Of greater relevance, 98% of KIPP eighth-grade classes outperform their local districts in reading, while 90% do so in math.<sup>123</sup> Most impressive of all, 100% of KIPP high-school classes outperform their local districts on end-of-year state exams in English (though only 81% do so in math).<sup>124</sup> In terms of college, "89 percent of students who completed a KIPP middle school five or more years ago have matriculated to

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practical matter, the urban public schools that are the site of the alleged "creaming" have already been "creamed," in the sense that the vast majority of families with sufficient financial resources have long since opted not to send their children there. See Holme, *supra* note 6, at 177–80 (exploring how parents with means purchase homes to avoid sending their children to low-quality schools); Joe Nathan, *Heat and Light in the Charter School Movement*, 79 PHI DELTA KAPPAN 499, 502 (1998) ("This nation already has a massive school choice program favoring wealthy families."); Viteritti, *supra* note 6, at 37 (noting that "many middle-class families already enjoy choice" because they "have the economic mobility to reside in communities where the quality of public schools is relatively high").

<sup>120</sup> *Results*, SEED FOUND., <http://www.seedfoundation.com/index.php/about-seed/results> (last visited Oct. 15, 2012).

<sup>121</sup> KIPP, 2010 REPORT CARD 20, available at <http://www.kipp.org/reportcard/2010> (last visited Oct. 21, 2012). The Report Card provides data that tracks the growth and development of the KIPP network, collected from each locally run KIPP school during the school year. Among other things, the Report Card features individual school results, enrollment and demographic data, and results of state-criterion-referenced and national-norm-referenced tests. *Id.*

<sup>122</sup> *Id.* at 22.

<sup>123</sup> *Id.* at 23.

<sup>124</sup> *Id.* at 24. The percentages for social studies and science are 100% and 73%, respectively. *Id.*

college,”<sup>125</sup> and “33 percent of students who completed a KIPP middle school ten or more years ago have graduated from a four-year college.”<sup>126</sup> Though this latter figure might not seem impressive at first blush, it exceeds the national college-completion rate of all students across income levels and is four times greater than the college-completion rate of comparable students from low-income communities.<sup>127</sup>

## B. IMPLICATIONS

Our boarding-school model builds on the approaches of KIPP and SEED, and it in many ways represents the next logical step in reforming public education for low-income children. Both KIPP and SEED have shown that low-income children can thrive in a structured, rigorous, and comprehensive learning environment. Both have also done well to underscore the importance of student and staff accountability by articulating and enforcing high standards for all members of the school community, including a rejection of social promotion and, when necessary, removing incompatible community members. Most important of all, both have taken head-on the challenging out-of-school environmental circumstances with which so many of their students must contend by embracing a longer school day, week, and year (as KIPP does) and a twenty-four-hour learning environment (as SEED does).

Though building upon them, our proposal is distinct from the KIPP and SEED models in two meaningful ways. First, unlike SEED, our point of educational emphasis is primary education rather than middle and high school. As others have shown, early childhood care and education play a vital role in lifelong student outcomes,<sup>128</sup> and a recent study highlighted the particular

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<sup>125</sup> KIPP, THE PROMISE OF COLLEGE COMPLETION: KIPP'S EARLY SUCCESSES AND CHALLENGES 8 (2011), available at <http://www.kipp.org/files/dmfile/CollegeCompletionReport.pdf>. Nationally, just 62% of all students and 41% of low-income students enroll in college, meaning that KIPP students are entering college at more than twice the rate of comparable students across the country. *Id.*

<sup>126</sup> *Id.* at 4.

<sup>127</sup> *Id.*

<sup>128</sup> See, e.g., W. Steven Barnett, *Long-Term Effects of Early Childhood Programs on Cognitive and School Outcomes*, THE FUTURE OF CHILDREN, Winter 1995, at 25, 25 (showing, “through a detailed, critical review of research that public investments in quality

importance of education from kindergarten through third grade.<sup>129</sup> We have therefore surmised that the negative household and neighborhood environmental factors discussed at length above—including residential instability, lack of parental engagement and supervision, harsh parenting practices, and indifference to academic achievement<sup>130</sup>—have their most meaningful impact on the potential academic achievement of younger children. In light of these observations, we advocate boarding school for children as young as kindergarten as a form of early intervention. Second, going beyond KIPP and SEED, we advocate a seven-day boarding model and a lengthened school year, rather than merely a five-day boarding school (like SEED) or more time spent in nonresidential school through longer school days and an extended school year (like KIPP). While the five-day boarding model has many benefits, the social and emotional challenges inherent to shuttling between two drastically different environments on a weekly basis counsel against it, especially for children so young.<sup>131</sup> We flesh out our

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early childhood care and education can produce important long-term improvements in the intellectual and social development of disadvantaged children”); Arthur J. Reynolds et al., *School-Based Early Intervention and Child Well-Being in the Chicago Longitudinal Study*, 82 CHILD WELFARE 633, 634–35 (2003) (discussing studies that “have demonstrated the short- and long-term positive effects of participating in early childhood intervention for a variety of school and social competencies”). See generally EARLY CHILDHOOD MATTERS: EVIDENCE FROM THE EFFECTIVE PRE-SCHOOL AND PRIMARY EDUCATION PROJECT (Kathy Sylva et al. eds., 2010) (noting the lasting effect of preschool education in the UK on future schooling and the impact it can have on alleviating the effects of social disadvantage).

<sup>129</sup> Raj Chetty et al., *How Does Your Kindergarten Classroom Affect Your Earnings? Evidence from Project STAR* 37 (Nat’l Bureau of Econ. Research, Working Paper No. 16381, 2011), available at <http://obs.rc.fas.harvard.edu/chetty/STAR.pdf> (showing that students “randomly assigned to higher quality classrooms in grades K-3 earn more, are more likely to attend college, save more for retirement, and live in better neighborhoods”).

<sup>130</sup> See *supra* notes 57–69 and accompanying text.

<sup>131</sup> In an article about SEED Washington, D.C., Maggie Jones records some of the challenges of five-day boarding. “Black inner-city boys,” she observes, “particularly have to wrestle with the question of whether it is O.K. to be smart. And if it is, then they have to figure out how to wear that—or not wear it—when they return to their neighborhoods each weekend.” Jones, *supra* note 117. She continues:

To survive that back and forth, many SEED students learn to code switch. A SEED student knows he can’t swagger through the hallways in baggy jeans, the rapper Ludacris blaring out of his iPod, while he avoids eye contact and a handshake with Mr. Adams. But if he takes too much of SEED back to the neighborhood basketball court—the big words and pressed shirts—he could have troubles of a different sort.

*Id.* Nonetheless, we also take seriously the potential familial costs of seven-day boarding

proposal and address some anticipated arguments against it in the following part.

#### V. A PROPOSED PUBLIC BOARDING-SCHOOL MODEL

Though KIPP and SEED have had a number of notable successes in a relatively short period of time,<sup>132</sup> we believe that their many accomplishments have arisen as much out of the extent to which they have successfully been able to remove their students from negative household and neighborhood environments as out of their innovative pedagogical approaches. The model set forth below builds on this supposition. In short, though KIPP and SEED have taken meaningful steps in the right direction by removing students from negative household and neighborhood environments for longer periods of time than do traditional public schools, school-reform efforts could and should go further. Our belief is that the gains in student achievement that have arisen out of longer school days, a longer school year, and weekend classes (as in KIPP), and out of a five-day boarding model targeting middle- and high-school-aged children (as in SEED) would be magnified for disadvantaged students were they to attend a seven-day boarding school from an early age.<sup>133</sup> Though we recognize the significant costs inherent in the model we propose,<sup>134</sup> we believe that seven-day boarding school should be placed on the menu of options policy makers consider in attempting to educate the underserved. This part describes the model we envision and addresses the primary criticisms of it that we anticipate: cultural deprivation, feasibility, and marginalization of the poor family.

##### A. AGE, SELECTION, FAMILY RELATIONS, AND DURATION

Our proposal incorporates three broad principles. First, public boarding schools should focus on early education. As noted, this is

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school for young children, and Part V.A, *supra*, offers a number of proposed mechanisms for ensuring that children remain attached to their families, such as on- and off-campus visits and weekends at home.

<sup>132</sup> See *supra* Part IV.

<sup>133</sup> See *supra* note 131 and accompanying text.

<sup>134</sup> We address a number of these concerns in Part V.B, *infra*.

in contrast to the SEED boarding schools, which enroll students from grades six through twelve. Second, the schools we envision would not be selective, but rather designed to serve the public as a whole. Third, though the impetus for our proposal is an acknowledgment of the extent to which household and neighborhood hurdles make educational achievement difficult for many disadvantaged children, our point of emphasis is on educating children effectively rather than separating them from their families and communities. We address these points in turn.

As discussed above, poor children typically begin their educational careers significantly behind their more affluent peers in terms of school-readiness.<sup>135</sup> Though this discrepancy can be attributed to any number of factors, a child's household<sup>136</sup> and neighborhood<sup>137</sup> environments play a significant role. Pairing these observations, we believe that in order to have the greatest possible impact, our proposed public boarding schools should seek to enroll students at the outset of their education. Though many disadvantaged students have already fallen significantly behind by this time, earlier intervention strikes us as neither feasible nor desirable.<sup>138</sup>

In terms of admission criteria, we advocate a strictly voluntary, open-enrollment model in line with those of KIPP and SEED.<sup>139</sup> It is not our intention to create a magnet school that intentionally selects only the most school-ready children from within a given community<sup>140</sup> but rather a neighborhood boarding school that is open to all. We nonetheless believe it is essential that school

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<sup>135</sup> See *supra* note 46 and accompanying text.

<sup>136</sup> See *supra* Part III.A.

<sup>137</sup> See *supra* Part III.B.

<sup>138</sup> It should be noted that here and throughout this section our points of emphasis are the general desirability of public boarding school as an option for disadvantaged children and the broad principles we believe support our arguments, rather than any of the specifics set forth herein. For example, we are not married to our suggestion that the schools begin at kindergarten, but we do think it essential that they seek to enroll students early in their education.

<sup>139</sup> Should open enrollment produce more students than available slots, we would move to a lottery such as those employed by KIPP and SEED.

<sup>140</sup> To be sure, given our voluntary model, parents seeking to send their children to the boarding school we contemplate would have to take steps to enroll their children. Though it has been suggested that the requirement of an opt-in is a form of "creaming," this is not a major concern for us. See *supra* notes 117–19.

administrators wield the authority to dismiss students who over time prove themselves to be behaviorally or emotionally unfit for the educational environment we seek to create. Such authority would have to extend far beyond that customarily afforded to public school administrators, but it would at the very least be subject to a formal appeals process and opportunities for readmission.

Notwithstanding the value of separating certain children from detrimental neighborhood and household conditions in order to promote their academic achievement, we recognize the importance of providing opportunities for students to spend time with their families—we in no way endeavor to sever ties between the children we seek to educate and their families. Accordingly, though we advocate a seven-day boarding model, we think it is essential that parents have an unlimited right to visit their children on weekends and, should the parents desire, during a brief visitation period each day.<sup>141</sup> In accordance with our broader mission, weekday visits would necessarily have to be entirely on-campus, though weekend visits could be either on-campus or composed of a combination of an on-campus visit and a brief departure away from campus—perhaps for a meal or a trip home or to church.

Because successful engagement of parents is a core aspiration,<sup>142</sup> we also believe it is essential that there be regular opportunities for parent-teacher conferences, showcases in which parents can come to campus to observe student achievements, and meaningful opportunities for parents to have a voice in school operations through a robust parent-teacher association. Though again the impetus for our proposal is a concern about parents who are unwilling or unable to provide the necessary support to their children's education, we endeavor to ensure that any parents who so desire and are able to do so can be substantive participants in shaping their children's education. Finally, we endeavor to

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<sup>141</sup> Cf. *Your Guide to the MHS Visitation Policy* (Milton Hershey Sch.), 2011, available at [http://www.mhs-pa.org/assets/Upload/Files/MHS\\_Visitation\\_Policy\\_\\_Oct2011\\_002593.pdf](http://www.mhs-pa.org/assets/Upload/Files/MHS_Visitation_Policy__Oct2011_002593.pdf) (describing the visitation policy of the Milton Hershey School, a pre-K-12 boarding school in Pennsylvania that permits its students only weekend daytime visits, visits home during vacations, and up to five weekend visits per year).

<sup>142</sup> Our approach in this regard is again akin to SEED's. See *supra* note 107 and accompanying text.



provide children opportunities to spend some weekends at home. The main qualifications to this privilege would be that students desiring to go home on weekends be in good academic standing and that they satisfactorily complete all required schoolwork while home. So long as these conditions are met, we have no problem with regular trips home for students who are performing well socially and academically.

Though ideally the public boarding schools for disadvantaged children we envision would extend from kindergarten through high school, we recognize that thirteen years of taxpayer-supported, tuition-free boarding school might not be feasible at the outset. But given SEED's experience, it is clear that there exists enough public will and funding to support public boarding schools that stretch over seven years.<sup>143</sup> In that regard, we believe that to the extent that kindergarten through twelfth grade public boarding education might at first not be feasible, underserved students should be given an opportunity to attend boarding school from kindergarten through sixth grade (also seven years). This approach is consistent with research highlighting the importance of early education in shaping life outcomes.<sup>144</sup> Again, however, we reiterate our belief that the most successful approach would be to provide boarding schools for disadvantaged children from kindergarten through twelfth grade. But some boarding school is better than none, and targeting younger students rather than older ones is our preferred strategy.

Because removing children from difficult household and neighborhood environments is the impetus for this Article, even

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<sup>143</sup> See *supra* notes 110, 112 and accompanying text (noting that SEED schools begin in sixth grade and end in twelfth grade). SEED also benefits from a great deal of private funding. See *infra* Part V.B.2.

<sup>144</sup> See, e.g., Barnett, *supra* note 128, at 25 (referencing the long-term improvements in intellectual development associated with quality childcare and education); Chetty et al., *supra* note 129, at 3 (describing a finding that students in higher quality K-3 classes are "significantly more likely to attend college"). This is also consistent with recent research indicating that teacher quality is most important in early grades. See, e.g., Raj Chetty et al., *The Long-term Impacts of Teachers: Teacher Value-added and Student Outcomes in Adulthood* 45-47 (Nat'l Bureau of Econ. Research, Working Paper No. 17699, 2011) (noting that having quality teachers in earlier grades appears to affect life outcomes more than having quality teachers in later grades).

assuming a lengthened school year like KIPP's,<sup>145</sup> one question that will inevitably arise is what to do with our schools' children over the summer, when they would presumably return to the challenging environments and obstacles to academic achievement from which our boarding-school model seeks to insulate them. In light of the vast literature on the extent to which summer vacation can undermine the learning that takes place during the academic year,<sup>146</sup> this is an important question. In answering it, we advocate voluntary enrollment in one or more edifying summer camps,<sup>147</sup> as well as week-long academic and skills workshops interspersed throughout the (shortened) summer vacation.<sup>148</sup>

#### B. ARGUMENTS AGAINST PUBLIC BOARDING SCHOOLS FOR POOR CHILDREN

1. *Cultural Deprivation: The American Indian Precedent.* Critics of our proposal might object to a public-boarding-school model for educating young children from disadvantaged communities by likening it to the misguided attempt by the U.S. government to educate and assimilate American Indian children in state-sponsored boarding schools during a roughly fifty-year period beginning around 1875.<sup>149</sup> This effort was premised upon the bigoted assumption that Indian children were from a savage culture and that, though the children themselves were blameless,<sup>150</sup> they simply could not become productive and useful

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<sup>145</sup> See *Five Pillars*, *supra* note 113 (describing KIPP's "Five Pillars," one of which seeks a commitment to an "extended school day, week, and year").

<sup>146</sup> See *supra* note 48 and accompanying text.

<sup>147</sup> By "voluntary" we mean that enrollment in camp over the summer would not be a requirement of remaining enrolled in school. That said, the ideal structure would be opt-out rather than opt-in, meaning that by default students would enroll in camp over the summer, even as the right not to enroll would be preserved.

<sup>148</sup> With regard to the feasibility of staffing summer workshops, it is worth noting here that some KIPP schools require that its teachers work three weeks each summer. *Frequently Asked Questions*, *supra* note 115.

<sup>149</sup> See generally DAVID WALLACE ADAMS, *EDUCATION FOR EXTINCTION: AMERICAN INDIANS AND THE BOARDING SCHOOL EXPERIENCE, 1875-1928* (1995) (examining how boarding schools were used as a way to assimilate American Indian children into "American" culture).

<sup>150</sup> Richard Henry Pratt, founder of the Carlisle Indian Industrial School and the leading figure in Indian education for a quarter of a century, observed, "It is a great mistake . . . to think that the Indian is born an inevitable savage. He is born a blank, like the rest of us.

Americans without stripping them of their cultural identity.<sup>151</sup> In the name of civilizing American Indian children, off-reservation boarding schools<sup>152</sup> viciously denigrated American Indian culture and religion and enforced the complete separation of students from their family and community members.<sup>153</sup> Conditions were often grim: many such schools were characterized by neglect, malnutrition, overcrowding, disease, and not infrequent student deaths.<sup>154</sup> Though there are admittedly certain surface similarities between our proposal and the clumsy, racist attempts of earlier policy makers to educate American Indian children in boarding schools, our model is materially distinct in three ways.

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Left in the surroundings of savagery, he grows to possess a savage language, superstition, and life.” Clifford E. Trafzer et al., *Introduction* to BOARDING SCHOOL BLUES: REVISITING AMERICAN INDIAN EDUCATIONAL EXPERIENCES 1, 13 (Clifford E. Trafzer et al. eds., 2006).

<sup>151</sup> See *id.* (“Pratt and other reformers believed that Indian people had the ability to learn and grow intellectually, but in order to bring this about, Pratt wanted to segregate Indian children from their parents and cultures, gradually integrating them into the white world in a controlled fashion.”). Contrary to the then-popular slogan that the “only good Indian is a dead one,” Pratt subscribed to the principle, “Kill the Indian in him and save the man.” ADAMS, *supra* note 149, at 51–52; see also Lorie M. Graham, *Reparations, Self-Determination, and the Seventh Generation*, 21 HARV. HUM. RTS. J. 47, 51 (2008) (“Children are the most ‘logical targets of a policy designed to erase one culture and replace it with another,’ as they are the most ‘vulnerable to change and least able to resist it.’” (quoting CLYDE ELLIS, *TO CHANGE THEM FOREVER* 3 (1996))).

<sup>152</sup> Off-reservation boarding schools are to be distinguished from reservation day schools and reservation boarding schools. Though the U.S. government supported all three types of schools at various times, off-reservation boarding schools proved to be the most controversial and enduring, twenty-five of them opening between 1879 and 1902. ADAMS, *supra* note 149, at 57. For a discussion of the two types of reservation schools, see *id.* at 28–36.

<sup>153</sup> See ADAMS, *supra* note 149, at 55 (describing the growing consensus that “Indian children would have to be removed from the reservation environment altogether if they were going to be effectively assimilated”); see also ROBERT A. TRENNERT, JR., *THE PHOENIX INDIAN SCHOOL: FORCED ASSIMILATION IN ARIZONA, 1891–1935*, at xi (1988) (noting that at its founding and for its first forty years, the Phoenix Indian School’s “main goal was to remove Indian youngsters from their traditional environment, obliterate their cultural heritage, and replace that background with the values of white middle-class America”).

<sup>154</sup> See LEWIS MERIAM ET AL., *INST. FOR GOV’T RESEARCH, THE PROBLEM OF INDIAN ADMINISTRATION* 11–12 (1928) (noting the “grossly inadequate” care of Indian children in boarding schools, which included a diet “deficient in quantity, quality, and variety,” overcrowding in dormitories, inadequate supplies of soap and towels, and elevated rates of tuberculosis and trachoma); see also ADAMS, *supra* note 149, at 130 (discussing death rates at Indian boarding schools generally as well as the incidence of measles, influenza, mumps, trachoma, tuberculosis, and scrofula).

First, the boarding-school model we envision would be entirely voluntary. We do not suggest mandating boarding-school education for children based on their parents' ethnicity, income, education level, or whether one or more of their parents is in prison or jail. Equally important, in contrast to the American Indian schools of the late nineteenth and early twentieth centuries, parents would be free to visit their children regularly, to bring their children home on many weekends and all vacations, and to withdraw their children at any time for any reason whatsoever.

Second, whereas the stated objective of American Indian boarding schools was to eliminate Indian cultural influences and assimilate children to white middle-class norms,<sup>155</sup> our focus is on academics rather than culture, and we would encourage robust parental involvement and participation; we seek to empower and work with parents rather than to marginalize or isolate them. Where parents are willing and able to assist in shaping the particulars of their children's education, we welcome their input.

Third, our proposal is not race-specific—attendance in our schools would be open to students of all racial backgrounds. Our objective is to provide an alternative for children currently enrolled in underperforming schools who, for whatever reason, lack the domestic and environmental resources and support conducive to academic achievement. To be sure, many of our students would likely be black or Latino but only because the most underserved schools tend to be populated by such students;<sup>156</sup> race and ethnicity are not at the core of our proposal. Our objective is not to disparage students' ethnic and racial cultures; rather, it is simply to provide them robust opportunities to succeed academically. This stands in stark contrast to the deservedly much-maligned, explicitly racist efforts to educate only American Indians in publicly financed boarding schools a century ago.

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<sup>155</sup> See *supra* notes 149–53 and accompanying text.

<sup>156</sup> See Vincent J. Roscigno, *Family/School Inequality and African-American/Hispanic Achievement*, 47 SOC. PROBS. 266, 269 (2000) (noting that “neighborhoods and schools with high African-American and Hispanic concentrations are disproportionately located in poor, economically stagnant areas”).

2. *Feasibility.* Readers who are willing to concede that our model is not nearly as problematic as the disgraceful American Indian boarding-school experiment might still quite reasonably question its feasibility. Though cost estimates vary,<sup>157</sup> it is clear that the expense of operating a public boarding school far exceeds the expense of operating a traditional public school. As one study observed, “[T]he difficulty of securing the necessary operating funds to run a boarding school remains the most significant challenge.”<sup>158</sup> Nonetheless, KIPP, SEED, and a number of other organizations have shown in recent years that there is significant public and private funding available for innovative, ambitious, and ultimately successful education-reform efforts.

For example, prior to opening, the SEED School of Washington, D.C., procured \$26 million to build its physical plant,<sup>159</sup> secured funding from the District of Columbia of \$1.74 for each \$1.00 of basic charter-school funding, and effectively lobbied for additional sums for facilities and special allocations.<sup>160</sup> Thanks to these adjustments, SEED initially received more than \$20,000 per student from the District of Columbia,<sup>161</sup> and it continues to be extraordinarily well-funded by public dollars today.<sup>162</sup> To be sure,

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<sup>157</sup> One study estimates that “[p]er-pupil costs for a boarding school are nearly three times that of a day school.” SUSAN MAYER ET AL., CHAPIN HALL CTR. FOR CHILDREN AT THE UNIV. OF CHI., CLOSE TO HOME: COMMUNITY BOARDING SCHOOLS AND DISADVANTAGED CHILDREN AND YOUTH 21 (2003), available at <http://www.chapinhall.org/sites/default/files/old-reports/23.pdf>. Per-pupil costs at Samuel DeWitt Proctor Academy, a public boarding school in West Trenton, New Jersey, that lasted only four years, were \$14,400. But this figure is artificially low due to two years of rent forbearance by the New Jersey legislature. *Id.* at 22. A more realistic estimate of the per-pupil public cost would be between \$30,000 and \$35,000 per year. This estimate is in line with the current public funding of SEED Washington, D.C., and estimates of the per-pupil costs of fledgling public boarding schools in Ohio and Florida. See *infra* notes 162–65 and accompanying text.

<sup>158</sup> MAYER ET AL., *supra* note 157, at 23.

<sup>159</sup> Brown, *supra* note 14, at 113. This consisted of approximately \$14 million in tax-free bonds and \$12 million in donations. *Id.*

<sup>160</sup> MAYER ET AL., *supra* note 157, at 21–22.

<sup>161</sup> *Id.* at 22.

<sup>162</sup> See SEED School Operating Revenues (2011) (unpublished data) (on file with authors) (showing that SEED D.C. receives \$34,000 per student per year from the D.C. and federal governments and SEED Maryland receives \$35,000 per pupil per year from Maryland); Sam Feldman, *Meet SEED, DC's One-of-a-Kind Public Boarding School*, GREATER GREATER WASH. (Oct. 22, 2010, 11:19 AM), <http://greatergreaterwashington.org/post/7702/meet-seed-dcs-one-of-a-kind-public-boarding-school/> (noting that SEED receives \$10,000 per student for day school and another \$25,000 per student for its boarding program).

SEED D.C. is something of an anomaly with respect to the degree of its legislative success, but the establishment of a second SEED school in Maryland through similar legislative maneuvering<sup>163</sup> and recent pro-public-boarding-school legislation enacted in Ohio<sup>164</sup> and Florida<sup>165</sup> suggest that public support for residential education is not confined to our nation's capital. In short, tuition-free boarding schools are not prohibitively expensive or otherwise infeasible.

Moreover, a strong case can be made that spending effectively targeted public dollars to educate low-income students is fiscally conservative. Investing in these students at a young age will provide them with the skills and habits to become productive, tax-paying adults and will help them to avoid future public assistance. What is more, the \$35,000 per year per student that SEED currently receives from the District of Columbia pales in comparison to the more than \$87,000 per inmate per year that states spend on average for juvenile incarceration.<sup>166</sup> The recent boarding-school legislation enacted in Maryland, Ohio, and Florida indicates that states long accustomed to spending such great sums sending children to prison are beginning to recognize the value of spending less than half that amount sending children to school.

All of that said, the key to our proposed boarding school's success might ultimately lie in the private sector. In recent years, KIPP, SEED, and a number of other organizations have shown

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<sup>163</sup> See MD. CODE ANN., EDUC. §§ 8-701 to -710 (LexisNexis 2012) (establishing Residential Boarding Education Programs for at-Risk Youth).

<sup>164</sup> See OHIO REV. CODE ANN., §§ 3328.01-.99 (LexisNexis 2012) (establishing College-Preparatory Boarding Academy Pilot Program for at-Risk Students); see also Jessica Brown, *Boarding School Gains CPS' Support*, CINCINNATI ENQUIRER, Jan. 10, 2011 (noting a cost of \$35,000 per student per year).

<sup>165</sup> See FLA. STAT. § 1002.3305 (2012) (establishing College-Preparatory Boarding Academy Pilot Program for at-risk students); see also Ana M. Valdes, *Boarding School in Fla. Budget?*, PALM BEACH POST, Aug. 15, 2011, at 1A (noting the difficulty of funding a public boarding school for at-risk youth mandated by Florida lawmakers, which would cost \$30,000 per student per year).

<sup>166</sup> See JUSTICE POLICY INST., THE COSTS OF CONFINEMENT: WHY GOOD JUVENILE JUSTICE POLICIES MAKE GOOD FISCAL SENSE 1 (2009), available at <http://www.justicepolicy.org/research/78> (noting an average cost of about \$241 per day per youth for juvenile incarceration); see also THE ANNIE C. CASEY FOUND., NO PLACE FOR KIDS: THE CASE FOR REDUCING JUVENILE INCARCERATION 19 (2001), available at <http://www.aecf.org/OurWork/JuvenileJustice/JuvenileJusticeReport.aspx> (noting same).

that corporations, individuals, and foundations can be exceedingly generous when it comes to funding ambitious efforts aimed at education reform. Since 2000, for example, KIPP has received over \$60,000,000 from two different donors, \$5,000,000 or more from eight foundations, and over \$1,000,000 from thirteen additional donors.<sup>167</sup> In its most recent fiscal year, SEED, which currently operates just two schools, received four gifts in excess of \$1 million, fourteen more in excess of \$100,000, and another thirty-two in excess of \$25,000.<sup>168</sup> Going forward, SEED will be able to count on the support of Cincinnati's Farmer Family Foundation, which has pledged to raise \$40 million to cover SEED Ohio's construction and startup costs.<sup>169</sup>

Beyond KIPP and SEED, other organizations endeavoring to promote educational opportunity have succeeded in raising significant sums of private funding. A Better Chance, a national organization that helps place minority students in leading boarding, day, and public schools, received over \$1.7 million in contributions during its most recent fiscal year, including five six-figure gifts.<sup>170</sup> Prep for Prep, an organization that prepares promising New York City students of color for independent and boarding-school education, raises its entire \$10 million annual operating budget from private contributions.<sup>171</sup> And the Harlem Children's Zone, an organization offering education, social-service, and community-building programs to children and families, received nearly \$225 million from corporations, foundations, and individual donors in its most recent fiscal year.<sup>172</sup> These numbers indicate that there is enormous private interest in supporting educational opportunity for those who otherwise might not have it. Because our proposal is animated by the same concerns and

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<sup>167</sup> See *National Partners*, KIPP, <http://www.kipp.org/about-kipp/the-kipp-foundation/national-partners> (last visited Sept. 30, 2012). Dozens more have given at least \$50,000. *Id.*

<sup>168</sup> THE SEED FOUND., ANNUAL REPORT 2010–2011, at 23 (2010), available at <http://www.seedfoundation.com/wp-content/uploads/2010/12/seed-report-2011.pdf>.

<sup>169</sup> MEYER ET AL., *supra* note 157.

<sup>170</sup> A BETTER CHANCE, 2011 ANNUAL REPORT 6–7 (2011), available at <http://www.abetterchance.org/ftp/FY11%20Annual%20Report.pdf>.

<sup>171</sup> *Lilac Ball*, PREP FOR PREP, <http://www.prepforprep.org/lilacball2012> (last visited Sept. 30, 2012).

<sup>172</sup> HARLEM CHILDREN'S ZONE, 2010–2011 BIENNIAL REPORT 23 (2010), available at <http://www.hcz.org/books/HCZ%202011%20Biennial/index.html>.

aspirations as KIPP, SEED, Prep for Prep, and the Harlem Children's Zone, we are optimistic that it would be able to garner meaningful financial support from the private sector.

3. *Does This Proposal Marginalize Disadvantaged Families?* Even assuming that public boarding schools for young children are feasible financially and possibly an efficient use of taxpayer dollars in the long run, one might fairly question their desirability as a solution for underperforming schools. To be sure, the notion of sending a young child to a seven-day boarding school is a nonstarter for many parents, and for some it will seem unjust to offer a good education only in exchange for removing a child from his or her home. Critics making this point might characterize our proposal as falling into the trap of blaming the victim, focusing on the perceived shortcomings of certain parents rather than the failures of society to provide them with the opportunities and skills that would allow them to effectively support their children's academic achievement.

We recognize and take seriously criticisms of this kind, and we too lament the confluence of structural inequalities and societal forces that have led to the current state of affairs.<sup>173</sup> We do not, as a general matter, advocate the separation of low-income children from their parents, and we acknowledge that boarding school is not an acceptable alternative for many—perhaps most—parents. But we also know that parents want their children to have a meaningful opportunity to succeed, and, as things currently stand, there are many parents who recognize that their current situation does not permit them to offer their children this opportunity. For these parents, tuition-free boarding school for their young children could be a godsend. The Milton Hershey School and Girard College, private boarding schools for low-income children that begin in pre-kindergarten and first grade, respectively, illustrate this point. Both have competitive admissions processes,<sup>174</sup> and the two schools combined currently enroll over 2,300 disadvantaged

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<sup>173</sup> These include deindustrialization, mass incarceration, and the flight of whites and middle-class blacks to the suburbs. *See supra* notes 91–95 and accompanying text.

<sup>174</sup> *See Admissions Criteria*, MILTON HERSHEY SCH., <http://www.mhs-pa.org/admissions/criteria> (last visited Sept. 30, 2012); *Admission Criteria*, GIRARD C., <http://www.girardcollege.edu/page.cfm?p=368> (last visited Sept. 30, 2012).



children in a boarding-school setting.<sup>175</sup> Though many might balk at the notion of sending a five-, six-, or seven-year-old child away for school, it is clear that there exists a not insignificant demand for the setting and services a public boarding school can provide.

Nonetheless, some might question our motivations, regarding our proposal as just the most recent entrant in a long-standing tradition of demonizing the parenting practices of the poor and people of color, or believing that at bottom our objective is to take black and brown children away from their families.<sup>176</sup> Though we have gone to great lengths to show that our proposal's point of emphasis is placing children in a position to succeed, rather than taking them away from their families, this potential critique deserves consideration.

While it may be true that the "devaluation of Black motherhood has been reinforced by stereotypes that blame Black mothers for the problems of the Black family,"<sup>177</sup> our proposal is not at all similar to this tradition. Providing the opportunity for some parents to send their children to boarding school is nothing like removing children from their homes based on government criteria that may be culturally biased.<sup>178</sup> Were we seeking to impose mandatory boarding school for certain classes of students, this

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<sup>175</sup> *Student Body Statistics*, MILTON HERSHEY SCH., <http://www.mhs-pa.org/about/student-body-statistics> (last updated Jan. 2012) (listing current enrollment at Milton Hershey School as 1,866 students); *Girard at a Glance*, *supra* note 15 (listing current enrollment at Girard College as 475 students).

<sup>176</sup> Dorothy Roberts explains that, historically, the "state has . . . been more willing to intrude upon the autonomy of poor Black families, and in particular of Black mothers, while protecting the integrity of white, middle-class homes." Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419, 1441 (1991); see also Julianne Hing, *Jezebels, Welfare Queens—And Now, Criminally Bad Black Moms*, COLORLINES: NEWS FOR ACTION (Aug. 8, 2011, 10:30 AM), [http://www.colorlines.com/archives/2011/08/the\\_criminal\\_justice\\_systems\\_hit\\_and\\_run\\_of\\_black\\_moms\\_in\\_the\\_us.html](http://www.colorlines.com/archives/2011/08/the_criminal_justice_systems_hit_and_run_of_black_moms_in_the_us.html) (quoting sociologist Nikki Jones as stating that "American policies have essentially been a hit and run on black women that leave them in circumstances where they're managing day to day and then getting punished for their very victimhood").

<sup>177</sup> Roberts, *supra* note 176, at 1441.

<sup>178</sup> See *id.* ("Black childrearing patterns that diverge from the norm of the nuclear family have been misinterpreted by government bureaucrats as child neglect. For example, child welfare workers have often failed to respect the longstanding cultural tradition in the Black community of shared parenting responsibility among blood-related and non-blood kin." (footnotes omitted)).

critique might be more salient. But our proposal unambiguously relates to offering a new choice aimed at solving a persistent and well-documented set of problems rather than disparaging poor families in an effort to break them apart—hence our eagerness to partner with parents, our liberal visitation policy, and our provision of opportunities for children to go home on weekends. In short, we consider our proposal to be a balanced, pragmatic solution to addressing many of the shortcomings of our current approach to educating the underserved.

In closing, we underscore the two takeaways we deem most essential. First, our proposal should not be construed as an alternative to the structural reform that many have advocated as a means of improving the negative household and neighborhood environments to which we respond in suggesting this boarding-school model. In a more equitable society, there would be no need for public boarding school as an option for low-income young children, but we offer our proposal as a response to conditions as they currently exist, rather than in anticipation of an as-yet unrealized aspiration. Second, given the gravity of the situation and the fact that prior efforts have proven largely unsuccessful, to the extent policy makers are serious about providing opportunity for the underserved, why not give boarding school a try? Its potential benefits are numerous and more than justified, both financially and in terms of social justice. And if it does not work, public boarding school will not be without company.

## VI. CONCLUSION

There is a consensus that public schools are failing to effectively educate the most disadvantaged children. This Article has argued that the majority of efforts aimed at addressing this problem have suffered from a misguided point of emphasis. Though in-school factors are important, social science data suggest that domestic and environmental factors are often of far greater influence in inhibiting academic achievement. Based on this observation, this Article has argued that in order to close the achievement gap, policy makers should consider public boarding school as a means of educating young children from underserved environments. Though boarding schools are unorthodox and expensive, given the

demand for boarding-school education among poor parents, the proven desire in both the private and public sectors to finance innovative efforts aimed at closing the achievement gap, and SEED's success in creating public boarding schools for older students, now is the time to consider making boarding school for young children an option available to parents. Though there can never be a guarantee of success, in the best case, public boarding school for disadvantaged young children could prove to be an efficient, groundbreaking means of reversing generations of poverty and uplifting an otherwise practically hopeless class of children.