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**HOW INCREASED LEGAL REPRESENTATION CAN CLOSE THE
GAP IN SPECIAL EDUCATION DISCREPANCIES**

*Todd Carney**

ABSTRACT:

This piece looks at how the existing education regime has led to disparities between white and minority students. The paper finds that the disparity gets even worse when special education is factored in. The reason so many low-income and minority students with disabilities receive such a poor education is that they do not have the proper legal representation to demand the rights that they are guaranteed under US law. This paper looks at how low-income and minority families have been cheated out of proper legal representation in other areas and how receiving the necessary legal representation can lead to the needed change in education to ensure that low-income and minority students with disabilities receive the education they need and are supposed to be guaranteed under US law.

HOW INCREASED LEGAL REPRESENTATION CAN CLOSE THE GAP IN SPECIAL EDUCATION DISCREPANCIES

I. INTRODUCTION

America has had some landmark achievements in civil rights.¹ Sixty-five years ago, the Supreme Court found that segregated education on the basis of race is a violation of the U.S. Constitution in *Brown v. Board of Education*.² Forty-four years ago, Congress passed what was then known as the “Education for All Handicapped Children Act,” now known as the “Individuals with Disabilities Education Act” (“IDEA”), which laid out fundamental rights to special education for people with learning disabilities.³ Despite these achievements, a lot of issues remain in both these aspects.⁴ In terms of racial access to education, studies show African Americans struggle for the same academic results as other races.⁵ Moreover, the actual money going to school districts varies by race, which has resulted in minority students having less access to resources.⁶ There have been many instances of school districts or even state governments working to deny students with learning disabilities their right to spe-

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¹ *Civil Rights Movement Timeline*, HISTORY (Jan. 19, 2021), <https://www.history.com/topics/civil-rights-movement/civil-rights-movement-timeline>.

² 347 U.S. 483, 494 (1954).

³ Andrew M.I. Lee, *Individuals with Disabilities Education Act (IDEA): What You Need to Know*, UNDERSTOOD, <https://www.understood.org/en/school-learning/your-childs-rights/basics-about-childs-rights/individuals-with-disabilities-education-act-idea-what-you-need-to-know> (last visited Jan. 15, 2021).

⁴ Lindsey Cook, *U.S. Education: Still Separate and Unequal*, U.S. NEWS & WORLD REP. (Jan. 28, 2015), <https://www.usnews.com/news/blogs/datamine/2015/01/28/us-education-still-separate-and-unequal>.

⁵ *Id.*

⁶ Ariel Jao, *Segregation, School Funding Inequalities Still Punishing Black, Latino Students*, NBC NEWS (Jan. 12, 2018, 4:20 PM), <https://www.nbcnews.com/news/latino/segregation-school-funding-inequalities-still-punishing-black-latino-students-n837186>.

cial education.⁷ As a result of the barriers to access these supposedly guaranteed rights to special education, many families have been forced to sue school districts and governments to gain access to necessary resources.⁸ While it is inherently wrong that someone has to sue for something supposedly guaranteed to them as a constitutional right, these lawyers still come at a cost.⁹ The average special education lawyer minimally costs \$20,000.¹⁰ The median family has \$11,700 in their savings account and 29 percent of American families have less than \$1,000 in savings.¹¹ Worse yet, Hispanics and African Americans have been found to have as little as \$1,000 in savings.¹² This financial reality helps underscore the tough situation for families who want to help their kids overcome a disability that the child has, due to no fault of their own, but are unable to do so because of insufficient funds – an issue especially prominent in minority families.¹³

This paper sheds light on the role that lack of access to legal services plays in creating disparities in academic achievement among

⁷ See Taylor Mirfendereski & Susannah Frame, *Washington Kids with Special Needs Often Denied Right to Learn In General Classes*, KING5 (May 13, 2018), <https://www.king5.com/article/news/local/washington-kids-with-special-needs-often-denied-right-to-learn-in-general-classes/281-552757498>; see also Michelle Diamant, *Feds: Students with Disabilities Illegally Denied Special Education*, DISABILITYSCOOP (Jan. 11, 2018), <https://www.disabilityscoop.com/2018/01/11/feds-denied-special-education/24579>.

⁸ See Chris Borreca, *The Litigious Mess of Special Education*, THE ATL. (May 1, 2012), <https://www.theatlantic.com/national/archive/2012/05/the-litigious-mess-of-special-education/256541>; see also Chris Kenrick, *Special-Education Family Sues District*, PALO ALTO ONLINE (Mar. 6, 2014, 10:53 AM), <https://www.paloaltoonline.com/news/2014/03/06/special-education-family-sues-district>; see also Kristen Taketa, *Families Endure Costly Legal Fights Trying to Get the Right Special Education Services*, L.A. TIMES (Oct. 6, 2019, 11:39 AM), <https://www.latimes.com/california/story/2019-10-06/legal-fights-families-special-education-services>.

⁹ Mirfendereski & Frame, *supra* note 7.

¹⁰ Lisa Lightner, *8 Ways the Special Education System Really is Stacked Against Parents*, A DAY IN OUR SHOES, <https://adayinourshoes.com/ways-the-special-education-system-really-is-stacked-against-parents> (last visited Jan. 15, 2021).

¹¹ Kathleen Elkins, *Here's How Much Money Americans Have in Savings at Every Income Level*, CNBC (Oct. 11, 2018, 12:02 AM), <https://www.cnbc.com/2018/09/27/heres-how-much-money-americans-have-in-savings-at-every-income-level.html>.

¹² Liz Smith, *Here's How Much Americans Have in Their Savings Accounts*, BUS. INSIDER (Feb. 8, 2018, 3:26 PM), <https://www.businessinsider.com/how-much-the-average-american-has-in-their-savings-account-2018-2>.

¹³ Borreca, *supra* note 8.

minority and white students with disabilities and analyzes these disparities from a socioeconomic standpoint. In part one, it evaluates what laws may be violated due to the failure to provide all students with a quality education. In part two, it then looks at what legal strategies have been tried and whether they have been effective. In part three, it proposes what can be done to increase access to legal services to students with disabilities from marginalized groups. Some questions it seeks to answer are: how grave are the current disparities between minorities and whites with disabilities? How much is the issue of disparities in access to resources for students with learning disabilities being addressed? Is there a lack of data available on this issue? How much of the disparity is due to lack of legal services? What can be done to improve access to legal services for marginalized communities?

II. LEGAL CONTEXT

A. History of Civil Rights in Education

For about eighty years after slavery was abolished in the U.S., the Supreme Court repeatedly upheld segregation in schools.¹⁴ In 1936 the tide started to change, first with *Pearson v. Murray*¹⁵ from Maryland's Supreme Court, which ruled that the white law school had to enroll African Americans because there was not a law school for African Americans.¹⁶ The U.S. Supreme Court followed suit in *Missouri ex rel. Gaines v. Canada*,¹⁷ which ruled that Missouri violated its separate but equal obligation because it was sending African Americans out of state for law school.¹⁸ Next in *Mendez v. Westminster*

¹⁴ *Brown v. Board: Timeline of School Integration in the U.S.*, TEACHING TOLERANCE (2004), <https://www.tolerance.org/magazine/spring-2004/brown-v-board-timeline-of-school-integration-in-the-us>; see also *Roberts v. Boston*, 59 Mass. 198 (1849); *United States v. Stanley*, 109 U.S. 3 (1883); *Plessy v. Ferguson*, 163 U.S. 537 (1896); *Cumming v. Richmond Cty. Bd. of Educ.*, 175 U.S. 528 (1899); *Berea Coll. v. Kentucky*, 211 U.S. 45 (1908); *Gong Lum v. Rice*, 275 U.S. 78 (1927). (*Stanley* is particularly relevant as that struck down the 1875 Civil Rights Act that barred discrimination against minorities in public accommodations. *Plessy* is also particularly relevant because it established the “separate but equal” principle that legally legitimized segregation). *Id.*

¹⁵ 169 Md. 478 (1936).

¹⁶ *Id.* at 594.

¹⁷ 305 U.S. 337 (1938).

¹⁸ See *id.* at 343.

ster School District,¹⁹ a federal appeals court rejected a plan from California to segregate Mexican students from white students.²⁰ In a series of rulings over the next decade, the Supreme Court ordered several higher education institutions to enroll minorities because there were no minority equivalents in the respective states.²¹ Then of course came *Brown v. Board of Education*.²² There was a follow up to *Brown v. Board of Education*, known as *Brown II*,²³ which ordered desegregation in schools but with “deliberate speed,”²⁴ which was very vague and prevented real pressure being put on schools to desegregate. In 1964, the Civil Rights Act passed, which allowed for the U.S. Justice Department to file cases related to segregation.²⁵ Over the next fifty years, the Supreme Court largely ruled in favor of further desegregation and struck down many local attempts to evade desegregation.²⁶ Despite all of these legal victories, in the early 2000s, studies began showing that segregation in the U.S. was at the same level reported in 1969.²⁷ A central reason for this was the end of bussing for minority children to go to schools outside of their neighborhood, and also the migration of minorities to the suburbs where they have had to live in segregated neighborhoods within these

¹⁹ *Mendez v. Westminster Sch. Dist.*, 64 F. Supp. 544 (S.D. Cal. 1946).

²⁰ *Id.* at 551.

²¹ See *Sipuel v. Bd. of Regents*, 332 U.S. 631 (1948); *McLaurin v. Okla. State Regents for Higher Educ.*, 339 U.S. 637 (1950); *Sweatt v. Painter*, 339 U.S. 629 (1950).

²² 347 U.S. 483 (1954).

²³ 349 U.S. 294 (1955).

²⁴ *Id.* at 301 (1955).

²⁵ *Civil Rights Act of 1964*, HISTORY, <https://www.history.com/topics/black-history/civil-rights-act> (Jan. 25, 2021).

²⁶ See *Green v. Cty. Sch. Bd.*, 391 U.S. 430 (1968); *Alexander v. Holmes Cty. Bd. of Educ.*, 396 U.S. 19 (1969); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971); *Wright v. Council of Emporia*, 407 U.S. 451 (1972); *United States v. Scotland Neck City Bd. of Educ.*, 407 U.S. 484 (1972); *Norwood v. Harrison*, 413 U.S. 455 (1973); *Keyes v. Sch. Dist.*, 413 U.S. 189 (1973); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973); *Milliken v. Bradley*, 418 U.S. 717 (1974); *Lau v. Nichols*, 414 U.S. 563 (1974); *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978); *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983); *Bd. of Educ. v. Dowell*, 498 U.S. 237 (1991); *Freeman v. Pitts*, 503 U.S. 467 (1992); *United States v. Fordice*, 505 U.S. 717 (1992); *Missouri v. Jenkins*, 515 U.S. 70 (1995).

²⁷ See Michael Dobbs, *U.S. School Segregation Now at '69 Level*, WASH. POST (Jan. 18, 2004), <https://www.washingtonpost.com/archive/politics/2004/01/18/us-school-segregation-now-at-69-level/442bfc77-d328-452d-966f-2356e11e213c>.

new locations.²⁸ Reports from this year have found that segregation is continuing to increase.²⁹

B. The History of the IDEA Act

The IDEA Act was legislation long in the making.³⁰ The triumphs of cases such as *Brown v. Board of Education* and the passage of President Lyndon Johnson's education component in his "War on Poverty" program led to greater emphasis on education in civil rights.³¹ In 1971, there were two federal court decisions concerning access to special education.³² *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania*³³ and *Mills v. Board of Education of the District of Columbia*³⁴ both ruled that students with intellectual disabilities were entitled to public funding for their accommodations.³⁵ In the wake of these decisions, Congress decided to look into how many students in America required special education and found 8,000,000 children needed special education, yet less than half had their educational needs met.³⁶ This discovery caused Congress to pass the Education for All Handicapped Children Act ("AHCA") in 1975.³⁷ The bill mandated that all states that accepted federal funds for education had to provide equal education access to students with disabilities starting at age three.³⁸ This included the development of an Individual Education Plan ("IEP") for each

²⁸ *Id.*

²⁹ See Ayanna Runcie, *School Segregation on the Rise 65 Years After Brown v. Board Of Education*, CBS NEWS (May 20, 2019, 7:09 PM), <https://www.cbsnews.com/news/school-segregation-on-the-rise-65-years-after-brown-v-board-of-education>.

³⁰ See *Timeline of the Individuals with Disabilities Education Act (IDEA)*, UNIV. OF KAN. (Apr. 1, 2019), <https://educationonline.ku.edu/community/idea-timeline>.

³¹ *Id.*

³² *Id.*

³³ Pa. Ass'n for Retarded Children v. Pennsylvania, 334 F. Supp. 1257, 1258 (E.D. Pa. 1971).

³⁴ Mills v. Bd. of Educ., 348 F. Supp. 866, 876-77 (D.D.C. 1972).

³⁵ *Id.*; see also Pa. Ass'n for Retarded Children v. Pennsylvania, 334 F. Supp. 1257, 1258 (E.D. Pa. 1971).

³⁶ *Timeline of the Individuals with Disabilities Education Act (IDEA)*, UNIVERSITY OF KANSAS (Apr. 1, 2019) <https://educationonline.ku.edu/community/idea-timeline>

³⁷ *Individuals with Disabilities Education Act*, BRAIN INJURY ASS'N OF AM., <https://www.biausa.org/public-affairs/public-policy/individuals-with-disabilities-education-act> (last visited Jan. 15, 2020).

³⁸ *Id.*

student.³⁹ A year later, the bill was amended to provide services to children with disabilities from birth.⁴⁰ In 1986, Congress further amended the process with the “Handicapped Children’s Protection Act,” which established rights for parents of children with disabilities to have a say in what their child’s IEP entailed.⁴¹ The 1990 reauthorization of the then AHCA added autism and traumatic brain injury as disabilities entitled to IEP and also mandated an individual transition plan (“ITP”) to help students with disabilities transition into post-school life.⁴² AHCA was also renamed IDEA.⁴³ In 1997, Congress provided a broader scope for the act by including more mandates of schools and state governments.⁴⁴ In 2004, Congress reauthorized the bill again and provided further clarification on several issues in order to handle various complaints that disability advocates had regarding the bill.⁴⁵ The last change to the bill came in 2009 when Congress added \$12.2 billion in additional funding.⁴⁶

C. History of Section 504

Prior to IDEA, Congress also passed “Section 504 of the Rehabilitation Act” in 1973.⁴⁷ The legislation provided vague “guarantees” to education for disabled children and mandated that students with disabilities should not be excluded from the same education opportunities as their peers.⁴⁸ That “guarantee” could be taken two ways; on one hand it could just allow students with disabilities to be able to go to public schools, even if they were unable to keep up, but on the other hand, it could in effect guarantee them accommodations

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *American Recovery and Reinvestment Act of 2009: IDEA Recovery Funds for Services to Children and Youths with Disabilities*, U.S. DEP’T OF EDUC. (Apr. 1, 2009), <https://www2.ed.gov/policy/gen/leg/recovery/factsheet/idea.html>.

⁴⁷ Andrew M.I. Lee, *Section 504 of the Rehabilitation Act of 1973: What You Need to Know*, UNDERSTOOD, <https://www.understood.org/en/school-learning/your-childs-rights/basics-about-childs-rights/section-504-of-the-rehabilitation-act-of-1973-what-you-need-to-know> (last visited Jan. 15, 2020).

⁴⁸ *Id.*

like IDEA ultimately did.⁴⁹ One clear advantage it had over IDEA was the fact that it put this mandate on all institutions that received federal funding, which included high education institutions, while IDEA had only protected students through high school.⁵⁰ Moreover, like IDEA, Section 504 has been updated to mandate that schools seek out children with disabilities, rather than waiting for families to come to them.⁵¹ In Jimmy Carter's administration, where his secretary of Health, Education and Welfare refused to sign new regulations, they were subject to a "sit-in" by disability activists, that eventually got the Carter administration to sign new regulations.⁵²

D. 504 Plans Versus IEPs

Though a 504 Plan and an IEP do overlap in many areas, there are several differences.⁵³ To start with the similarities, both a 504 Plan and an IEP guarantee a student with disabilities learning accommodations, which provide the student with a disability an equal education in public schools to students without disabilities.⁵⁴ However, a Section 504 plan entitles someone to their rights through their entire life, while IEP is only guaranteed until age twenty-one.⁵⁵ The two laws are governed by different divisions; an IEP is governed by the U.S. Department of Education: Office of Special Education and Rehabilitation Services and U.S. Department of Education: Office of Civil Rights.⁵⁶ IEPs require a written plan documenting what the student is entitled to, while the 504 plan does not require a formal

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Kitty Cone, *Short History of the 504 Sit in*, DISABILITY RTS. EDUC. & DEF. FUND, <https://dredf.org/504-sit-in-20th-anniversary/short-history-of-the-504-sit-in> (last visited Jan. 15, 2020).

⁵³ *What Is an IEP? Everything You Need to Know About IDEA, IEPs, and 504 Plans*, ADDITUDE (Feb. 7, 2021) <https://www.additudemag.com/iep-vs-504-plan-idea-adhd-disability-education/#:~:text=IEP%20vs.,who%20still%20require%20some%20accommodations>.

⁵⁴ *See IEP and 504 Plan: What's the Difference, and Which Is Most Appropriate for My Visually Impaired Child?*, FAM. CONNECT, <https://www.familyconnect.org/info/education/your-childs-iep-or-ifsp/iep-and-504-plan-differences/135> (last visited Jan. 15, 2020).

⁵⁵ *Id.*

⁵⁶ *Id.*

written plan, just a general plan from the school “not to discriminate against the student.”⁵⁷ An IEP lists out specific rights of the parents, while a 504 plan just requires that parents generally receive a notification.⁵⁸ An IEP is also more encompassing in terms of specifically listed accommodations.⁵⁹ 504 plans are broadly protected by the ADA, while IEPs are not directly protected by the ADA, but are of course protected by IDEA.⁶⁰ Ultimately it seems that both provide solid protections in terms of rights guaranteed to students with disabilities, but of course whether these protections exist in reality is another question. Furthermore, it seems that IEPs provide more specific and encompassing rights to students, but 504 plans last longer, including college, graduate school and the workplace.⁶¹ Regardless, someone with a learning disability needs access to one of these programs in order to succeed in school, and it can be a cumbersome process in order to gain access to them.

III. DISPARITIES IN EDUCATION ACHIEVEMENTS

A. The State of Special Needs Access for Minorities

The situation regarding minority students with learning disabilities is a bit of a contradiction. To start, there have been decades of minorities seemingly overrepresented in special education due to the low regard that special education was originally held in and that it was just a place to park “problem students.”⁶² Some even considered the situation to be a way to create explicit segregation after *Brown v. Board of Education*.⁶³ As a result, some minority advocates have called on minority families to reject their children being placed in special education.⁶⁴ Furthermore, there was concern over the stigma

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² George Farkas & Paul L. Morgan, *Risk and Race in Measuring Special Education Need*, CONTEXTS (Jan. 14, 2019), <https://contexts.org/articles/risk-and-race-in-measuring-special-education-need>.

⁶³ *Id.*; see also *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

⁶⁴ Farkas & Morgan, *supra* note 62.

that can be attached to having a learning disability.⁶⁵ Moreover, the implicit biases that the evaluators had towards minority children would cause the evaluators to believe that the minority students had problems such as being “emotionally disturbed” due to potential problems in their communities.⁶⁶ Even if these students did face trauma at home and/or their communities, it was wrong to assume that it would impair their learning to the degree of someone with a learning disability and that simply putting these students in special education would solve their problems.⁶⁷ There is also concern that once students are placed in broad special education programs, they see themselves as someone with no future and inherently impaired, which then affects their performance in school, ultimately creating a self-fulfilling prophecy of failure.⁶⁸ These advocates remain particularly concerned that once students are designated as a special education student, it is easier to punish them, which leads them eventually be sent to juvenile programs and later on jail.⁶⁹ In reaction to the issues with discipline, many have called on for the Federal Government to clamp down on school districts that put large numbers of minority children in special education, but the government has had mixed results on being able to actually evaluate these claims and find a palpable solution for all sides.⁷⁰

Though this clear-cut bleak situation for students in special education was historically true, improvements in special education have made the situation more complicated. While being in special education used to be considered an avenue with little future, the IDEA Act has provided improved outcomes for students with disabilities.⁷¹ Part of the reason for this is that though some minority stu-

⁶⁵ Avi Salzman, *Special Education and Minorities*, N.Y. TIMES (Nov. 20, 2005), <https://www.nytimes.com/2005/11/20/nyregion/nyregionspecial2/special-education-and-minorities.html>.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See Salzman, *supra* note 65.

⁶⁹ See Farkas & Morgan, *supra* note 62.

⁷⁰ See Valerie Strauss, *Why DeVos’s Plan to Delay Obama-era Rule On Minority Special-Education Students is a Mistake*, WASH. POST (Mar. 20, 2018, 5:00 AM), <https://www.washingtonpost.com/news/answer-sheet/wp/2018/03/20/why-devoss-plan-to-delay-obama-era-rule-on-minority-special-education-students-is-a-mistake>.

⁷¹ Louis Danielson, *Forty Years Later, IDEA Still Seeks Success for Students with Disabilities*, AM. INST. FOR RSCH. (Dec. 11, 2015), <https://www.air.org/resource/forty-years-later-idea-still-seeks-success-students-disabilities>.

dents do receive special education services, it is often too little too late, while other children, particularly white students receive the resources they need early on.⁷² Moreover, improvements have helped special education students as a whole be less removed from the classroom, so they do not feel isolated and are able to keep up with the class, yet studies have found that students of color with disabilities are more frequently removed from the classroom than white students.⁷³ This again gets at the issue raised above that if students are segregated from the classroom with the old view of special education, they will begin to have a negative view of themselves that can affect their performance.⁷⁴ It is important to account for the negative aspects that can come with being diagnosed as needing special education. Some might think that receiving special education results in perks like getting extra time on exams, which for someone with no learning disability, that could be a huge benefit.⁷⁵ If this is all receiving accommodations was, then this “overrepresentation” would perhaps not seem so oppressive.

Conversely, many believe that there is not an overrepresentation of minority students in special education and instead an underrepresentation.⁷⁶ Some people also allege that this focus on overrepresentation has prevented minority students with learning disabilities from getting the help that they need.⁷⁷ This is not so unfathomable as even some of the proponents of the overrepresentation theory have argued that minority students may be underrepresented in the beneficial special education systems that are able to provide inte-

⁷² Kristen Harper, *5 things to know about racial and ethnic disparities in special education*, CHILD TRENDS (Jan. 12, 2017) <https://www.childtrends.org/child-trends-5/5-things-know-racial-ethnic-disparities-special-education>

⁷³ *Id.*

⁷⁴ See Salzman, *supra* note 65.

⁷⁵ See Doree Lewak, *Rich Parents are Using Doctor's Notes to Help Kids Cheat the SATs*, N.Y. POST (May 2, 2018, 8:37 PM), <https://nypost.com/2018/05/02/rich-parents-are-using-doctors-notes-to-help-kids-cheat-the-sats>; Nick Anderson, *Abuse of 'extended time' on SAT and ACT outrages learning disability community*, WASH. POST (Mar. 29, 2019, 10:00 PM), https://www.washingtonpost.com/local/education/abuse-of-extended-time-on-sat-and-act-outrages-learning-disability-community/2019/03/29/d58de3c6-4c1f-11e9-9663-00ac73f49662_story.html.

⁷⁶ Nora Gordon, *Race, Poverty, and Interpreting Overrepresentation in Special Education*, BROOKINGS (Sept. 20, 2017), <https://www.brookings.edu/research/race-poverty-and-interpreting-overrepresentation-in-special-education>.

⁷⁷ *Id.*

gration, individualized attention and an abundance of resources, in other words special education that actually helps students succeed.⁷⁸ Though being diagnosed as someone who needs special education can have its detriments, there are certainly benefits, especially if the child needs the resources.⁷⁹ On this notion, some have called into question past classifications of people in “special education” to only be when someone is put into a full-time special education, not when someone receives something like extra time or a special book but remains in the same class.⁸⁰

When other classification types are factored in, there is evidence that a black student is less likely to be placed in special education.⁸¹ It is particularly troubling because schools avoid providing individualized special education services like extra time because these services are expensive and again can unfairly advantage a student who does not need them, so it is almost always incumbent upon a parent and/or lawyer to specifically ask for these accommodations.⁸² These researchers have found that a big part of the issue is the lack of identification early on, as overrepresentation advocates have stated.⁸³ White children on average receive a diagnosis of Autism a year earlier than African American children.⁸⁴

A study from Pennsylvania State University of approximately 400,000 different students in both elementary and middle school found that when the special education classification was expanded to include broad categorizations of “specific learning disabilities (SLD), attention-deficit/hyperactivity disorder (ADHD), emotional disturbance (ED), intellectual disabilities (ID), and speech or language impairments (SLI)” and other factors were controlled like income, mi-

⁷⁸ *Id.*

⁷⁹ See Lewak, *supra* note 75. As mentioned above, accommodations like extra time are so sought after that wealthy families of children who have no learning disabilities are trying to rig the system by making it seem like their child has a learning disability. *Id.* For a student who does have a learning disability that requires extra time, not receiving this accommodation could make keeping up with their class and moreover excelling nearly impossible. *Id.*

⁸⁰ Gordon, *supra* note 76.

⁸¹ Gordon, *supra* note 76.

⁸² Gordon, *supra* note 76; see also Lewak, *supra* note 75.

⁸³ Kristen Harper, *5 Things to Know About Racial and Ethnic Disparities in Special Education*, CHILD TRENDS (Jan. 12, 2017), <https://www.childtrends.org/child-trends-5/5-things-know-racial-ethnic-disparities-special-education>.

⁸⁴ Gordon, *supra* note 76.

nority children were underrepresented.⁸⁵ This study found African American children were fifty-eight percent less likely to be diagnosed as having a disability and Hispanic children were seventy-three percent less likely to be diagnosed with one.⁸⁶ Some scholars have taken issue with the Pennsylvania State University study and claimed that the study is hurting the cause to fight racial segregation that results from special education.⁸⁷ However, other advocates have made the point that these studies are showing the other racist side of special education that deals with underrepresentation.⁸⁸ The issue is that teachers and administrators do not expect as much from minority students as white students due to the teacher and administrators' racist preconceptions that minorities cannot achieve as much, so the faculty members do not make the extra effort to see if there are extra resources that can make the minority students perform at the average level or even excel.⁸⁹ Moreover, as raised earlier, ensuring a child receives accommodations is often time-consuming and costly, and school districts or even states may fight to prevent access to these accommodations to save costs, so it is not inconceivable that low-income people, which typically includes minorities, in general are going to lose out on being able to receive crucial accommodations.⁹⁰

So ultimately while there may be some students unfairly placed in special education, there are plenty of students that are not receiving the resources they need to overcome their learning disability. It is even possible that some of the students just placed into special education do have a learning disability, but just need extra time or some other specific accommodation, so there may be overlap among the claims of overrepresentation and underrepresentation.

⁸⁵ Paul L. Morgan et al., *Replicated Evidence of Racial and Ethnic Disparities in Disability Identification in U.S. Schools*, SAGE J. (Aug. 27, 2017), <https://journals.sagepub.com/doi/10.3102/0013189X17726282>.

⁸⁶ Amaya Garcia, *A Challenge to Popular Wisdom: The Underrepresentation of Minorities in Special Education*, NEW AM. (July 6, 2015), <https://www.newamerica.org/education-policy/edcentral/minorities-specialeducation>.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *See id.*

⁹⁰ *See* Jao, *supra* note 6; Mirfendereski & Frame, *supra* note 7; Borreca, *supra* note 8; Runcie, *supra* note 29. It is established that receiving individual accommodations is a costly process and are highly sought after to the point that people are hiring attorneys to sue, and rich people are even manipulating the system.

B. Overall Minority Educational Results

There are overall disparities between white and minority students. Eighty-seven percent of white students graduate from high school on the normal track, but only seventy-six percent of Hispanics and seventy-three percent of African Americans graduate high school on the normal track.⁹¹ Furthermore, minorities have been found far less likely to complete a college degree than white students, which raises questions regarding the type of education minority students are receiving and whether it adequately prepares them for college and other opportunities after high school.⁹² A major component of this disparity in achievement is poverty.⁹³ Three-fourths of African Americans and Hispanic Americans attend schools where the majority of the students are low-income, as opposed to one-third of white students.⁹⁴ An analysis of the 1,000 poorest districts found that only 6.8 percent have an average score above the national mean.⁹⁵ Since so many minority students are in low-income areas, they are put in school systems that are statistically proven to dramatically underperform.⁹⁶ The chief reason for this underperformance is that nonwhite school districts receive \$23 billion in funding a year.⁹⁷ When other factors are controlled for, that can come out to about \$11,000 less in funding per student.⁹⁸

The disparity in funding manifests itself in less access to advanced courses, early education programs, and teachers with the credentials needed to overcome the structural issues in these communities.⁹⁹ In many communities, students could not enroll in Algebra

⁹¹ Ronald Brownstein, *The Challenge of Educational Inequality*, THE ATL. (May 19, 2016), <https://www.theatlantic.com/education/archive/2016/05/education-inequality-takes-center-stage/483405>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Clare Lombardo, *Why White School Districts Have so Much More Money*, NAT'L PUB. RADIO (Feb. 26, 2019, 2:00 PM), <https://www.npr.org/2019/02/26/696794821/why-white-school-districts-have-so-much-more-money>.

⁹⁸ *Id.*

⁹⁹ Charles Dervarics, *Study: Minority, Low-Income Students Lack Adequate Access to Educational Opportunities*, DIVERSE EDUC. (Aug. 8, 2011), <https://diverseeducation.com/article/16180>.

two, a course that has material that comes up on the SAT and ACT.¹⁰⁰ If students cannot learn that material, then they would have little hope of scoring well on the SAT or ACT, so the lack of access to a course like Algebra two likely precludes marginalized students from attending higher education.¹⁰¹ There have been further statistics showing that schools are failing to prepare minority students for success after high school, for example, in some states only three percent of African American students were college-ready.¹⁰² Additionally, in some states only five percent of African Americans had taken on Advanced Placement class in STEM.¹⁰³ Looking at high school, in Nevada and Oregon, the graduation rate of African Americans was fifty-seven percent.¹⁰⁴ Another survey found that only sixteen percent of African Americans in eighth grade were proficient in reading and only thirteen percent were proficient in math.¹⁰⁵

The “United Negro College Fund” (UNCF) did a separate report that found many of the same devastating results as the other studies.¹⁰⁶ The UNCF study found that only fifty-seven percent of African Americans have access to classes necessary to be ready for college.¹⁰⁷ This was further corroborated by the statistic that sixty-one percent of African Americans met none of the four ACT readiness benchmarks.¹⁰⁸ Only thirty-eight percent of African American and Latino students do have access to AP classes and just twenty-nine percent of African American and Latino students are enrolled in at least one AP class.¹⁰⁹ Additionally, the UNCF and other organizations have all found that school districts with a high number of minorities are getting “novice” teachers instead of experts.¹¹⁰ These

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Lauren Camera, *African-American Students Lagging Far Behind*, U.S. NEWS & WORLD REP. (Dec. 11, 2015, 5:15 PM), <https://www.usnews.com/news/articles/2015/12/11/african-american-students-lagging-far-behind>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See *K-12 Disparity Facts and Statistics*, UNITED NEGRO COLL. FUND, <https://www.uncf.org/pages/k-12-disparity-facts-and-stats> (last visited Jan. 15, 2021).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

novice teachers are particularly unprepared to deal with the added issues that come with the structural issues in many marginalized communities.¹¹¹

The lack of educational achievements has drastic economic effects on minority communities. The average annual income for people who do not finish high school is \$20,241, the average annual income for people who finish high school is \$30,627, the average income for people with a bachelor's degree is \$56,665.¹¹² When advanced degrees start to be factored in, the average income gets as high as \$127,803.¹¹³ Moreover, the average unemployment for people without a high school education is 9.1 percent, 6.2 percent for high school graduates and 3.2 percent for college graduates.¹¹⁴ The labor force participation holds up in a similar manner, only forty-five percent of people without a high school degree participate in the labor force, fifty-eight percent of high school graduates participate in the labor source, and seventy-five percent of college graduates participate in the labor force.¹¹⁵

Ultimately poverty seems to lead to a lack of education, which leads to poverty and results in an endless cycle of oppression.¹¹⁶ This comes against the backdrop of the U.S. constitution recognizing the right to a quality education as a constitutional right and segregation as illegal.¹¹⁷ Yet racial and income disparities remain in terms of access to education resources and achievements.¹¹⁸ As long as academic success comes from access to resources, minority and low-income students will be severely disadvantaged and have little chance of escaping this cycle of oppression. Moreover, there have been many Supreme Court cases and legislative victories to help bring more equality in education.¹¹⁹ Though these changes have

¹¹¹ *Id.*; Kelley Taylor, *Poverty's Long-Lasting Effects on Students' Education and Success*, INSIGHT INTO DIVERSITY (May 30, 2017), <https://www.insightintodiversity.com/povertys-long-lasting-effects-on-students-education-and-success>.

¹¹² David Kohl, *Impact of Education on Income and Unemployment*, FARM PROGRESS (Mar. 10, 2015), <https://www.farmprogress.com/blog/impact-education-income-and-unemployment>.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Lombardo, *supra* note 97; Dervarics, *supra* note 99; Camera, *supra* note 102.

¹¹⁷ *See Mendez v. Westminster Sch. Dist.*, 64 F. Supp. 544 (S.D. Cal. 1946).

¹¹⁸ Lombardo, *supra* note 97; Dervarics, *supra* note 99; Camera, *supra* note 102.

¹¹⁹ *See cases cited supra* note 14.

helped bring some success to education, they clearly have not done enough. Furthermore, when individual school districts violate federal law, typically the only way to hold them accountable is to get a judge to demand compliance, so this is where access to legal services is crucial.

C. Overall Disability Education Results

Just like minority students, students with disabilities face a lot of issues regarding their ability to meet the academic achievements of the general population. Students with disabilities are three times more likely to drop out of high school; while 18.1 percent of all high school students drop out of high school, fifty-four percent of students with disabilities drop out of high school.¹²⁰ Additionally, students with IEPs were eighty-five percent more likely to have to repeat a grade than the general population.¹²¹ A big part of this is the fact that only one in sixteen schools are prepared to administer IEPs.¹²² Furthermore, there are many stigmas against students with learning disabilities; thirty-three percent of educators consider learning disabilities to just be laziness, forty-three percent of educators would not want to know if their child had a learning disability, and forty-eight percent of parents believe that children can outgrow these disabilities.¹²³ These structural issues contribute the restrictions surrounding access to quality special education in schools, which prevents students from getting the resources that they need to succeed and leads to the statistics mentioned above.¹²⁴ A similar study found that fifty-nine percent of students with disabilities graduated high school, as opposed to seventy-eight percent of the general population.¹²⁵ If students have multiple disabilities, then their graduation rate can be as low as sixteen percent.¹²⁶ Moreover, the high school dropout rate for people

¹²⁰ Sri Ravipati, *Report: Students with Learning and Attention Issues Three Times More Likely to Drop Out*, THE JOURNAL (May 17, 2017), <https://thejournal.com/articles/2017/05/17/students-with-learning-and-attention-issues-three-times-more-likely-to-drop-out.aspx>.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *See id.*

¹²⁵ Vanessa Barrat, *Research Helps Target Support for Students with Disabilities*, WESTED (May 30, 2016), https://www.wested.org/rd_alert_online/disabilities-students-research-supports/#.

¹²⁶ *Id.*

who have an “emotional disturbance” as their categorized disability can be as high as forty-four percent.¹²⁷

For students with disabilities who go to college, the results get worse. Only one-third of students with disabilities that go to a four-year institution graduate within eight years.¹²⁸ Even with two-year colleges, only forty-one percent of students with disabilities graduate within eight years.¹²⁹ The reason for these setbacks is not because students with disabilities cannot keep up in college; instead, it is more difficult for college students to receive the necessary accommodations and support that they received in high school.¹³⁰ The social stigma associated with disabilities causes many students to believe they are not even qualified for college, so half as many college-qualified students with disabilities attend college.¹³¹ Moreover, only twenty-four percent of students with disabilities told their colleges that they have a learning disability.¹³² Furthermore, school control over IEPs leaves parents out of the equation since forty-five percent of parents do not have a say regarding their child’s accommodations under their collegiate IEP.¹³³ Fewer than half of colleges accept a high school IEP or a Section 504 plan as sufficient verification of a disability, while the rest require further evaluations that can prove costly and cumbersome.¹³⁴ Additionally, even just waiting one year to request accommodations in college left a student 3.5 percent less likely to be able to finish college.¹³⁵

Career prospects for students who did not go to college are not much better. One report found that there are 420,000 people with disabilities who only earn an average of \$2.15 per hour.¹³⁶ Many

¹²⁷ *Id.*

¹²⁸ Stephanie Snider, *Barriers to Education – Disabilities*, BEST COLLS. <https://www.bestcolleges.com/research/college-barriers-disabilities> (last visited Jan. 15, 2021).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Ravipati, *supra* note 120.

¹³² *Transitioning to Life After High School*, NAT’L CTR. FOR LEARNING DISABILITIES (Jan. 27, 2017), <https://www.nclد.org/research/state-of-learning-disabilities/transitioning-to-life-after-high-school#ch5challenge1>.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Sarah Kim, *The Truth of Disability Employment That No One Talks About*, FORBES (Oct. 24, 2019 3:36 PM) <https://www.forbes.com/sites/sarahkim/2019/10/24/sub-minimum-wages->

schools do not adequately prepare students with disabilities for the workplace because they fail to provide classes that would enhance essential skills that are not as intuitive for students with disabilities or classes that would give these students specific strategies they could use to overcome their disabilities.¹³⁷ This manifests itself later in life by the fact that the employment rate of people with disabilities is forty-six percent.¹³⁸ Moreover, in places with less access to resources, disability employment can be up to thirty-five percent below the national average.¹³⁹ Though some of it has to do with lack of actual resources for industry in these communities, people with disabilities constantly underperform people without disabilities regarding employment.¹⁴⁰ Also, seventy percent of people with disabilities do not participate in the workforce, as opposed to nineteen percent of people without disabilities.¹⁴¹ Given that poverty plays a role in furthering economic inequality, the inability to provide a solid education to yet another marginalized group is creating another cycle of poverty similar to the cycle minority students endure. While some students may not be able to get to college due to their disability, they should at least have the opportunity to obtain gainful employment.

The stark disparity between graduation statistics for students with disabilities when compared to their non-disabled counterparts at all grade levels,¹⁴² and the deep unemployment,¹⁴³ shows that schools are failing students with disabilities.¹⁴⁴ The economic disparities are

disability/?sh=385a9a0c22be. Meanwhile the federal minimum wage for non-exempt employees is \$7.25 per hour. *Minimum Wage*, U.S. DEP'T OF LAB., <https://www.dol.gov/general/topic/wages/minimumwage> (last visited Jan. 15, 2020).

¹³⁷ Jackie Mader & Sarah Butrymowicz, *The Vast Majority of Students with Disabilities Don't Get A College Degree*, HECHINGER REP. (Nov. 11, 2017), <https://hechingerreport.org/vast-majority-students-disabilities-dont-get-college-degree>; see also *Transitioning to Life After High School*, *supra* note 133.

¹³⁸ *Transitioning to Life After High School*, *supra* note 133.

¹³⁹ Nicole Bateman & Martha Ross, *Only Four Out Of Ten Working-Age Adults with Disabilities Are Employed*, BROOKINGS INST. (July 25, 2018), <https://www.brookings.edu/blog/the-avenue/2018/07/25/only-four-out-of-ten-working-age-adults-with-disabilities-are-employed>.

¹⁴⁰ See *id.*

¹⁴¹ *Disability Rates and Employment Status by Educational Attainment*, NAT'L CTR. FOR EDUC. STATS. (May 2017), https://nces.ed.gov/programs/coe/indicator_tad.asp.

¹⁴² See Ravipati, *supra* note 120; Barrat, *supra* note 125.

¹⁴³ *Disability Rates and Employment Status by Educational Attainment*, *supra* note 142.

¹⁴⁴ See *K-12 Disparity Facts and Statistics*, *supra* note 106.

no different from minority students and the challenges they face to break the cycle of poverty.¹⁴⁵ In both cases, there are unresponsive governments at the local and state level that refuse to provide the necessary accommodations and support or succeed.¹⁴⁶ This reality exists despite protections for students with disabilities outlined in laws like the IDEA, and Section 504 plans.¹⁴⁷ Given this reality, the next best option seems to be compelling these districts and state law to comply with their constitutional and statutory obligations through legal action. From this point, legal actions and the ability to access them need to be considered in terms of providing access to special education resources, because sometimes an enforceable court order is the only way or get an institute to comply with existing laws.

IV. MINORITY STUDENTS WITH LEARNING DISABILITIES

Unfortunately, there was no clear-cut information available on how minority students with disabilities perform overall and their performance compared to other groups. It seems that minority students face similar disadvantages in terms of protectoral disadvantages that leave them behind in learning.¹⁴⁸ However, given that students with disabilities face enormous challenges in terms of receiving a quality education, it appears that more can be done to connect students with disabilities with quality education and likely more students with disabilities. As the earlier section shows, when students do not have a solid education, and regardless of whether minority students are overrepresented or underrepresented in special education, all students with disabilities in the classroom need support and advocacy, that many are unable to receive.¹⁴⁹ Perhaps some more than others, but it is still service that the school does not provide in full despite being legally required to by Section 504, ADA and IDEA.

¹⁴⁵ Brownstein, *supra* note 91; Lombardo, *supra* note 97; *K-12 Disparity Facts and Statistics*, *supra* note 106.

¹⁴⁶ Brownstein, *supra* note 91; Lombardo, *supra* note 97; *see K-12 Disparity Facts and Statistics*, *supra* note 106.

¹⁴⁷ *IEP and 504 Plan: What's the Difference, and Which Is Most Appropriate for My Visually Impaired Child?*, *supra* note 54.

¹⁴⁸ *K-12 Disparity Facts and Statistics*, *supra* note 106.

¹⁴⁹ Borreca, *supra* note 8.

V. LACK OF ACCESS TO LEGAL RESOURCES FOR MINORITIES

A. The State of Legal Access

Looking first generally at the issues of access to legal services for low-income individuals, seventy percent of low-income people face some sort of litigation dispute.¹⁵⁰ Eighty-six percent of those cases center around people living at or near the poverty line.¹⁵¹ As a result, three-fourths of individuals in the civil litigation system do not have an attorney.¹⁵² Unlike in criminal cases, there is no right to counsel in civil cases.¹⁵³ Though some states have established programs for civil cases that are similar to a public defender, most states do not have anything regarding free civil representation.¹⁵⁴ State laws generally have not created legal protection for low-income people without attorneys.¹⁵⁵ One-fourth of states do not have any rules on how legal clerks can help people without attorneys.¹⁵⁶ Furthermore, about half of the state judicial websites do not have information in any language besides English.¹⁵⁷ As a result of these issues, eighty percent of civil legal needs go unmet for low-income individuals and even for the middle-class, forty to sixty percent of middle-class individuals do not have their legal needs met.¹⁵⁸ In certain types of civil disputes, the percent of representation for low and middle-class can be as low as five percent.¹⁵⁹ When the disputes go to more high-stake situations, with larger money at interest, ninety-eight percent of low-income individuals do not have attorneys in

¹⁵⁰ Christie Thompson, *Can't Afford a Lawyer?*, MARSHALL PROJECT (July 18, 2018, 10:00 PM), <https://www.themarshallproject.org/2018/07/18/can-t-afford-a-lawyer>.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Erin Gordon, *Advocates Promote a Right to Counsel in Civil Cases, Too*, A.B.A. J. (Feb. 1, 2018, 2:55 AM), http://www.abajournal.com/magazine/article/right_to_counsel_in_civil_cases.

¹⁵⁴ *Id.*

¹⁵⁵ Carrie Johnson, *Rights Advocates See 'Access to Justice' Gap in U.S.*, N.P.R. (Mar. 10, 2014, 12:05 AM), <https://www.npr.org/sections/thetwo-way/2014/03/10/288225649/rights-advocates-see-access-to-justice-gap-in-u-s>.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Rebecca Buckwalter-Poza, *Making Justice Equal*, CTR. FOR AM. PROGRESS (Dec. 8, 2016, 9:03 AM), <https://www.americanprogress.org/issues/criminal-justice/reports/2016/12/08/294479/making-justice-equal>.

¹⁵⁹ *Id.*

these cases.¹⁶⁰ In recessions, and the recovery time after, the number of self-represented cases greatly increases due to people having less money for an attorney and also their financial shortages, which cause more legal issues.¹⁶¹ These cases further overwhelm the court systems because people do not always get the technicalities right on their own.¹⁶² So it makes court personnel less available to help people with their legal needs, further lessening the ability of low-income people to get sound legal representation.¹⁶³ In most developed countries,¹⁶⁴ there is a clear right to an attorney in civil matters and these countries provide as much as ten times the amount of funding that the U.S. provides to low-income individuals in civil cases.¹⁶⁵

B. Who is Impacted by the Shortages?

Twenty percent of the population lives in rural areas, yet only two percent of lawyers work in rural areas.¹⁶⁶ In Nebraska, for example, twelve of its ninety-three counties have no lawyers.¹⁶⁷ In Arkansas, lawyers in the rural area have declined by eighteen percent over four years.¹⁶⁸ Overall, there is less than one person for every 10,000 people that can provide free legal representation.¹⁶⁹ Furthermore, if someone is hit with some big legal problem, that issue itself causes financial shortages before getting into hiring an attorney, which makes financial access to legal representation all the more dif-

¹⁶⁰ *Id.*

¹⁶¹ Dave Collins, *Courts Flooded with Poorer Americans Representing Themselves*, NBC NEWS (Aug. 20, 2012, 9:47 AM), <https://www.nbcnews.com/business/markets/courts-flooded-poorer-americans-representing-themselves-flna953965>.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ These regions include United States and Western European countries. Buckwalter-Poza, *supra* note 161.

¹⁶⁵ Buckwalter-Poza, *supra* note 161.

¹⁶⁶ April Simpson, *Wanted: Lawyers for Rural America*, PEW (June 26, 2019), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/06/26/wanted-lawyers-for-rural-america>.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Hanna Kozłowska, *There's a Devastating Shortage of Lawyers in the US Who Can Help the Poor With Eviction or Child Custody Cases*, QUARTZ (May 12, 2016), <https://qz.com/681971/for-every-10000-poor-people-in-the-united-states-theres-less-than-1-lawyer-who-can-help-them-with-an-eviction-or-child-custody-case>.

ficult.¹⁷⁰ This leads to millions of people representing themselves in court.¹⁷¹ Someone having to represent themselves in court is likely to lead to them losing the case.¹⁷² For example, in eviction cases, when someone did not have an attorney, they only won fifty percent of the time, but when they had an attorney, they won ninety percent of the time.¹⁷³ Part of the issue is that on average, an attorney has to do 200 discrete tasks that the attorney's support staff can handle.¹⁷⁴ The discrete tasks handled by a lawyer or their staff can be extremely difficult for someone to do on their own.¹⁷⁵

Evictions are known to affect Hispanics in particular because in some cases they have an undocumented family member or are undocumented themselves.¹⁷⁶ So, even though plaintiffs in tenancy disputes may have a legal right to contest evictions, their concerns about deportation cause them to ultimately not to go to court.¹⁷⁷ Similarly, various government agencies have acted unfairly against undocumented immigrants in suspending guaranteed benefits such as drivers' licenses.¹⁷⁸ Undocumented immigrants are not always able to argue for their rights because of the lack of legal representation available to them.¹⁷⁹ If a DMV can suspend an essential service for people in the case of obtaining a driver's license, it is not unfathomable that people could be cheated out of access to special education re-

¹⁷⁰ Robert H. Frank, *How Rising Income Inequality Threatens Access to the Legal System*, DÆDALUS (2019), <https://www.amacad.org/publication/how-rising-income-inequality-threatens-access-legal-system>.

¹⁷¹ Lauren Sudeall & Darcy Meals, *Every Year, Millions Try to Navigate US Courts Without a Lawyer*, THE CONVERSATION (Sept. 21, 2017, 8:36 PM), <https://theconversation.com/every-year-millions-try-to-navigate-us-courts-without-a-lawyer-84159>.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Patricia Sullivan, *Undocumented Latinos and Their Families Sue After Evictions*, WASH. POST (May 23, 2016), https://www.washingtonpost.com/local/virginia-politics/undocumented-latinos-and-their-families-sue-after-evictions/2016/05/23/f11a1a88-20e4-11e6-8690-f14ca9de2972_story.html.

¹⁷⁷ *Id.*

¹⁷⁸ *Low-Income Drivers Sue California DMV for Illegally Suspending Licenses*, A.C.L.U. N. CAL. (Oct. 25, 2016), <https://www.aclunc.org/news/low-income-drivers-sue-california-dmv-illegally-suspending-licenses>.

¹⁷⁹ *Id.*

sources due to similar tactics. Additionally, in debt collection cases, only four percent of low-income African Americans have lawyers.¹⁸⁰

Without proper legal representation, like in the previously mentioned eviction cases, African Americans are unable to contest these cases.¹⁸¹ As with the issues present for Hispanics in eviction cases, debt collection is an issue that has been found to disproportionately affect African Americans.¹⁸²

C. Non-Civil Cases

Even beyond civil litigation, where there is a constitutional guarantee to a lawyer, the results are not much better. Though people have a right to counsel in criminal cases, some areas in the country still fail to provide public defenders for low-income individuals with no real accountability for failing to do so.¹⁸³ The lack of public defenders disproportionately impact minority defendants.¹⁸⁴ Furthermore, more than seventy-five percent of criminal cases are handled by public defenders.¹⁸⁵ Seven states do not provide any funding for public defenders at the state level, leaving counties to navigate the matter on their own. This is a task that many are unable to carry out.¹⁸⁶ Even in states that do provide funding at the state level, the public defenders are often overworked and take as much as forty-two percent more than the recommended case load to handle per year.¹⁸⁷ Additionally, when low-income people are victims of crimes, particularly those committed by government officials such as police shoot-

¹⁸⁰ Paul Kiel & Annie Waldman, *The Burden of Debt on Black America*, THE ATL. (Oct. 9, 2015), <https://www.theatlantic.com/business/archive/2015/10/debt-black-families/409756>.

¹⁸¹ *Id.*

¹⁸² *See id.*

¹⁸³ Sarah Breitenbach, *Right to an Attorney? Not Always in Some States*, PEW TRUSTS (Apr. 11, 2016) <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/04/11/right-to-an-attorney-not-always-in-some-states>.

¹⁸⁴ *Id.*

¹⁸⁵ Elizabeth Renter, *How the Broken Public Defense System Exacerbates Racial Disparities*, HUFFPOST https://www.huffpost.com/entry/how-the-broken-public-def_b_738305 (May 25, 2011).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

ings, wrongdoers are able to manipulate civil rules in order to prevent justice.¹⁸⁸

D. Attempted Solutions

While the federal government and state governments generally do not provide a guaranteed right to counsel, they have tried to establish programs that allow low-income people to have this right. The government has attempted to provide more access to legal services by setting up programs that hire attorneys to represent low-income people for free.¹⁸⁹ In some states, as many as 110 million people qualify for legal aid under these programs, yet there are only 7,000 attorneys to offer them representation.¹⁹⁰ If low-income people do not have access to a free attorney, they can turn to a private attorney; however, those attorneys typically charge \$300 an hour, something no low-income person can afford.¹⁹¹ There has been an array of proposed solutions for the shortages in legal representation. One was the establishment of the Legal Services Corporation (the “LSC”) in 1974.¹⁹² The LSC established hundreds of legal programs throughout the country funded by grants from private businesses, non-profits, and even some state budgets.¹⁹³ On average, the LSC provides one-third to one-half of the funding for legal services to low-income people, but in some states it is as much as eighty percent.¹⁹⁴ Since the LSC’s creation, it has faced several administrations and congressional majorities that have wanted to eliminate the initiative in order to save money.¹⁹⁵ Though the attempts to eliminate the LSC have failed, the program has still faced millions in funding cuts.¹⁹⁶ Due to

¹⁸⁸Taylor Dolven, *Shot by Cops, Smearred in Court*, VICE NEWS (Oct. 30, 2017), https://news.vice.com/en_us/article/pazq57/police-shootings-rule-609.

¹⁸⁹ Bryce Covert, *Poor People Don’t Stand a Chance in Court*, THINK PROGRESS (May 11, 2016, 12:00 PM), <https://thinkprogress.org/poor-people-dont-stand-a-chance-in-court-7e46bd4e5719>.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Matt Ford, *What Will Happen to Americans Who Can't Afford an Attorney?*, THE ATL. (Mar. 19, 2017), <https://www.theatlantic.com/politics/archive/2017/03/legal-services-corporation/520083>.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

these cuts, there are hundreds of thousands of people who qualify for LSC services that are unable to claim them due to the shortages in funding.¹⁹⁷ Advocates for greater legal representation have lobbied to not only save the LSC but also to increase the funding, which would allow the LSC to provide greater representation.¹⁹⁸ Over the last decade, ten million more people have qualified for LSC coverage, yet funding has not increased to match this growth.¹⁹⁹ As a result, at least fifty percent of people seeking LSC's services have been turned away.²⁰⁰

In reaction to funding shortages from the LSC, among other issues, states have tried to start their own programs to try to increase legal access. For example, the state of Washington has implemented an initiative known as the Limited License Legal Technicians program (“LLLT”).²⁰¹ The LLLT program provides an opportunity for non-lawyers to get a license and receive substantive training before offering services.²⁰² A study found that, despite some issues regarding substantive legal services, the program was ultimately a success and low-income people were ultimately better off with these services.²⁰³ However, some people are concerned that, even if these programs provide helpful legal services, these programs are not the same as having a lawyer – where the person spends three years in school, passes a rigorous bar exam, and works full-time on complex legal issues.²⁰⁴ Other states create more traditional legal service programs, like the LSC, and fund these programs with as much as \$72 million annually.²⁰⁵ However, even in cases like these, it is not

¹⁹⁷ *Id.*

¹⁹⁸ Amanda Robert, *With LSC Under Threat for Third Year, ABA President Asks Congress to Increase Legal Aid Funding*, A.B.A. J. (Mar. 18, 2019, 3:40 PM), <http://www.abajournal.com/news/article/aba-president-responds-to-trumps-plan-to-cut-lsc-funding-for-third-time-in-three-years>.

¹⁹⁹ *Introduction: The Current Crisis in Legal Services*, LEGAL SERVS. CORP., <https://www.lsc.gov/media-center/publications/report-pro-bono-task-force> (last visited Jan. 15, 2020).

²⁰⁰ *Id.*

²⁰¹ Leonard Wills, *Access to Justice: Mitigating the Justice Gap*, A.B.A. (Dec. 3, 2017), <https://www.americanbar.org/groups/litigation/committees/minority-trial-lawyer/practice/2017/access-to-justice-mitigating-justice-gap>.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Martha Bergmark, *States' Vital Role in Providing Civil Justice for Everyone*, GOVERNING (Apr. 2, 2018), <https://www.governing.com/gov-institute/voices/col->

enough to cover all of the legal needs of their citizens.²⁰⁶ On the other hand, there are states like Louisiana that have gone as far as eliminating their legal service programs in order to save money.²⁰⁷ This has put significant strains on local non-profits that seek to provide legal services to low-income people who, like the LSC, often have to turn people away.²⁰⁸

An alternative to legal service programs is for law firms to provide pro-bono services. Pro-bono hours are a great way for attorneys to provide legal services to the disadvantaged while being able to work at a private law firm.²⁰⁹ According to one study, eighty-one percent of lawyers have provided pro-bono services in their careers, but when the study focused on the previous year, that number dropped to only fifty percent.²¹⁰ The average lawyer provided 36.9 hours per lawyer, despite the goal being fifty hours.²¹¹ Furthermore, only twenty percent of attorneys provided the fifty-hour goal of pro-bono hours a year.²¹² Additionally, many of the attorneys that perform the bulk of pro-bono hours are senior attorneys close to retirement, so there is a question of how up to date these attorneys are on the latest laws and strategies.²¹³ When economic turbulence occurs, law firms will cut back on pro-bono hours.²¹⁴ Some critics have also been concerned whether law firms are prioritizing the most important pro-bono legal services, on the basis that some firms prioritize politi-

state-legislatures-legal-aid-funding-civil-justice-reform.html; *If Mississippi Can Pay for Civil Legal Aid, So Can Louisiana*, NOLA, https://www.nola.com/opinions/article_ea7d4513-15e0-50f8-8f09-53b501b78f94.html (July 22, 2019, 2:48 PM).

²⁰⁶ Bergmark, *supra* note 208; *see also If Mississippi Can Pay for Civil Legal Aid, So Can Louisiana*, *supra* note 208.

²⁰⁷ Richard Webster, *In Louisiana Civil Courts, The Poor Are Left to Defend Themselves*, NOLA, https://www.nola.com/news/article_f7a10a25-a042-50a6-85e5-3e07fe07e4a7.html (Oct. 1, 2020, 6:56 PM).

²⁰⁸ *Id.*

²⁰⁹ Debra Cassens Weiss, *Which Lawyers Spend the Most Time on Pro Bono? ABA Surveyed 47,000 For the Answer*, A.B.A. J. (Apr. 26, 2018, 3:59 PM), http://www.abajournal.com/news/article/which_lawyers_spend_the_most_time_on_pro_bono_survey_finds_4_out_of_5_offer.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ Elizabeth G. Olson, *Hard Times for Law Firms Spell Pro Bono Cuts*, FORTUNE (Nov. 28, 2011, 5:25 PM), <https://fortune.com/2011/11/28/hard-times-for-law-firms-spell-pro-bono-cuts>.

cal issues rather than ones concerning evictions and debt collection.²¹⁵ Even with a wide array of pro-bono services currently, there are significant shortages in legal services available to low-income individuals.²¹⁶

VI. LAWSUITS FOR ACCESS TO EDUCATION

A. Legal Fight for Public Education

Today there have been many high-profile lawsuits regarding education.²¹⁷ Although not all of these lawsuits have to do with disability accommodations, all of the cases do provide important insight regarding what legal avenues exist for advocating for learning accommodations. Perhaps one of the most prominent litigation moments has been in Detroit, Michigan.²¹⁸ Students from Detroit's five worst-performing schools sued the state on the basis that they had not received their guaranteed right to an education.²¹⁹ The lawsuit claimed that the educators knew nothing about the topics they taught and that the students would watch Disney movies for hours on some days.²²⁰ One student described their four years in Detroit high school as "prison or daycare."²²¹ The case pointed out that ninety-seven percent of the students at these schools were students of color and that those students have low literacy and civil skills that are essential to function in the real world.²²² Though the Constitution does not focus on the quality of education, many states do specify that students

²¹⁵ Heather Mac Donald, *What Good is Pro Bono?*, CITY J. (2000), <https://www.city-journal.org/html/what-good-pro-bono-12263.html>.

²¹⁶ Rudy Apodaca, *A Justice Gap Still Exists Even After Strenuous Pro Bono Efforts*, AP NEWS (May 25, 2019), <https://apnews.com/4e2e468aa7334e4a91843037e76f8161>.

²¹⁷ See Young & McMahon, *infra* note 222; Rock, *infra* note 230.

²¹⁸ Robin Young & Serena McMahon, *Detroit Public School Students Allege They Were Deprived Access to Literacy In Lawsuit*, WBUR (Nov. 7, 2019, 9:38 AM), <https://www.wbur.org/hereandnow/2019/11/07/detroit-public-schools-literacy-lawsuit>; see also Gary B. v. Snyder, 313 F. Supp. 3d 852, 856 (E.D. Mich. 2018).

²¹⁹ See Young & McMahon, *supra* note 222.

²²⁰ Young & McMahon, *supra* note 222.

²²¹ Young & McMahon, *supra* note 222.

²²² Alia Wong, *Students in Detroit Are Suing the State Because They Weren't Taught to Read*, THE ATL. (July 6, 2018), <https://www.theatlantic.com/education/archive/2018/07/no-right-become-literate/564545>.

are entitled to a quality education.²²³ Moreover, the plaintiffs made the argument that even if “quality” is not mentioned in the U.S. Constitution or state constitutions, there would be no point in a public education if it does not prepare students to be citizens of society and perform basic tasks like reading.²²⁴ This case puts the spotlight on a breaking point in education where minorities and/or low-income students have no access to education that is needed to succeed in life and are now turning to the use of legal resources to right this inequality.²²⁵

Students in Rhode Island have followed suit and put a similar lawsuit forward against the Rhode Island school system.²²⁶ In a press conference about the lawsuit, lawyers for the state kept saying that education is not a right, which seems to cut against the point of public education.²²⁷ Based on a similar principle as the Rhode Island and Michigan lawsuits, students and education advocacy groups have sued specific school districts in California that lag behind the rest of the state in terms of resource availability, such as having consistent teachers, sufficient school funding and ignoring the input of teachers to improve the classroom.²²⁸ The California school districts eventually settled the lawsuit and the settlement mandated that the schools fix these issues and “pay \$400,000 in legal fees to the plaintiffs.”²²⁹ Despite this temporary victory, the overall quality of schools in Los Angeles remains poor and segregation is still widespread in these

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ Julia Rock, *Federal Judge Holds First Hearing in Student Lawsuit Against State Of Rhode Island*, UPRISE RI (Dec. 7, 2019), <https://upriseri.com/2019-12-07-cook-v-raimondo>.

²²⁷ *Id.*

²²⁸ Stephen Ceasar, *ACLU, Others Sue Over Gap in Instructional Time in State Schools*, L.A. TIMES (May 29, 2014, 12:03 PM), <https://www.latimes.com/local/lanow/la-me-ln-aclu-schools-lawsuit-20140529-story.html>.

²²⁹ Joy Resmovits, *Settlement Seeks to Keep High School Students Out Of ‘Fake’ Classes*, L.A. TIMES (Nov. 5, 2015, 12:11 PM), <https://www.latimes.com/local/education/community/la-me-edu-cruz-v-california-settlement-fake-classes-20151105-story.html>.

schools.²³⁰ Still, the lawsuit forced one state to recognize the right to financial resources from the state to make education equal.²³¹

Many of the issues at play in these cases seemingly were settled in 1973, in *San Antonio Independent School District v. Rodriguez*.²³² In this case, minority students sued their school and claimed their lack of access to proper education violated the fourteenth amendment.²³³ Although the Supreme Court ruled against the plaintiffs, if a school fails to properly educate a student on how to read, write, or speak, it may be a bar to the student exercising their fundamental right to vote, and therefore is a violation of the Constitution.²³⁴ Moreover, the case did not address the specific question of whether all students were entitled an education that allows them “the basic minimal skills necessary for the enjoyment of the rights of speech and full participation in the political process.”²³⁵ This case specifically examined whether students in poorer school districts had access to the same funding as wealthier school districts,²³⁶ while earlier cases examined whether students had the proper funding needed to make their education functional to make them participatory citizens in society without using wealthier school districts as a baseline.²³⁷

B. The Legal Fight in For-Profit Education

Over the last few years, there have been an array of lawsuits trying to hold higher education institutions accountable for not delivering on their promises for education with a particular focus on for-profit education institutions.²³⁸ Approximately 160,000 students sued for-profit institutions and government agencies for not properly regu-

²³⁰ *California’s Schools Are Among the Most Segregated in U.S. What Can Be Done About It?*, SACRAMENTO BEE (Nov. 25, 2019, 2:30 AM), <https://www.sacbee.com/opinion/editorials/article237649709.html>.

²³¹ Resmovits, *supra* note 233.

²³² 411 U.S. 1 (1973).

²³³ *Id.* at 17.

²³⁴ *Id.* at 35-36.

²³⁵ *Id.* at 37.

²³⁶ *Id.* at 19.

²³⁷ See Wong, *supra* note 226; see Ceasar, *supra* note 232.

²³⁸ *Samantha Masunaga, 8 States Support Lawsuit Against Education Department Over For-Profit Colleges*, GOVERNING (Oct. 12, 2018), <https://www.governing.com/archive/8-States-Sign-Brief-Supporting-Lawsuit-Against-Education-Department-Over-For-Profit-Colleges.html>.

lating these institutions.²³⁹ These lawsuits alleged that for-profit schools have not lived up to the education standards they promised, and spent only ten percent of their funding on education instruction.²⁴⁰ As a result, students did not get the skills they needed and are now unable to obtain jobs they had gone to school for.²⁴¹ These students took out loans with the expectation that they would have salaries that would pay off the loans they took.²⁴²

Despite recent pushback from the government, students have had a lot of success in recovering damages.²⁴³ The for-profit college corporation Career Education agreed to pay out nearly \$500 million in settlements to 180,000 former students to cancel student debt due to findings of deceptive and coercive behavior.²⁴⁴ The settlement also mandated that the corporation's schools must be more transparent in terms of future employment opportunities and hold the schools to higher education standards in terms of education.²⁴⁵ Moreover, the University of Phoenix recently announced a \$141 million settlement with the Federal Trade Commission ("FTC").²⁴⁶ This was the largest settlement the FTC had ever received against a for-profit college.²⁴⁷ The lawsuit primarily focused on fraud, rather than a lack of educational standards; however, the settlement mandated that the University of Phoenix cannot make fraudulent claims about its programs.²⁴⁸ The FTC took an aggressive tone in the matter with the head of the FTC's Bureau of Consumer Protection saying "[s]tudents making important decisions about their education need the facts, not fantasy

²³⁹ Gavrielle Jacobovitz, *Nearly 160,000 Former For-Profit College Students Sue Education Secretary Betsy DeVos*, HUFFPOST (June 25, 2019, 8:27 PM), https://www.huffpost.com/entry/betsy-devos-suit-for-profit-schools-loans_n_5d128d43e4b0aa375f54e243.

²⁴⁰ *Id.*

²⁴¹ *See id.*

²⁴² *Id.*

²⁴³ Zack Friedman, *Why This For-Profit College Will Cancel \$500 Million Of Student Loans*, FORBES (Jan. 7, 2019, 8:32 AM), <https://www.forbes.com/sites/zackfriedman/2019/01/07/student-loan-forgiveness-for-profit/#427d7fb67ee9>.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *University of Phoenix to Cancel \$141 Million in Student Debt*, ASSOCIATED PRESS (Dec. 11, 2019, 10:45 AM), <https://www.nbcnews.com/news/us-news/u-phoenix-agrees-cancel-141-million-student-loan-debt-n1099681>.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

job opportunities that do not exist”²⁴⁹ This hopefully suggests that the FTC will work further on behalf of students to hold for-profit colleges accountable. Despite these successes, not every relevant government agency has held these schools accountable. Senator Elizabeth Warren claimed that the SEC mishandled a claim against a for-profit institution called Corinthians Colleges, which collapsed due to misrepresentations regarding graduation rates and job placement opportunities.²⁵⁰ In the case, the SEC was alleging Corinthian’s CEO, Jack Massimino, and CFO, Robert Owen, personally acted fraudulently and Massimino and Owen ended up settling.²⁵¹ Massimino only ended up paying \$80,000 and Owen paid \$20,000.²⁵² This was problematic as Corinthians was found to have preyed on thousands of students, who are still struggling to repay their debt.²⁵³ Furthermore, in recent years, the Department of Education has stepped back in terms of regulating for-profit education and gaining remedies for students.²⁵⁴ In reaction to this, State Attorney Generals across the nation have begun regulating for-profit colleges through state legislation.²⁵⁵ The State Attorney Generals have sued these institutions and imposed compliance regulations on them to prevent students from being taken advantage of.²⁵⁶ When the U.S. House of Representatives tried to block State Attorney Generals from regulating for-profit institutions, thirty State Attorney Generals from both parties protested against the bill.²⁵⁷ Although this is not related to disabilities, it still serves as an example of how the law can be used to win rights for students.

²⁴⁹ *Id.*

²⁵⁰ Jillian Berman, *Elizabeth Warren: SEC Settlement with For-Profit College Executives is an ‘Insult’ To Students*, MKT. WATCH (Mar. 6, 2019, 11:12 AM), <https://www.marketwatch.com/story/elizabeth-warren-sec-settlement-with-for-profit-college-executives-is-an-insult-to-students-2019-03-06>.

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*; Jillian Berman, *Feds Must Stop Collecting Debts of Students Who Say They Were Scammed by Schools*, MKT. WATCH (June 20, 2018, 4:06 PM), <https://www.marketwatch.com/story/feds-must-stop-collecting-debts-of-students-who-say-they-were-scammed-by-schools-2018-06-20>.

²⁵⁴ Jon Marcus, *As Feds Pull Back, States Step in To Regulate For-Profit Colleges and Universities*, HECHINGER REP. (July 7, 2018), <https://hechingerreport.org/as-feds-pull-back-states-step-in-to-regulate-for-profit-colleges-and-universities>.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

C. Legal Fight in Law Schools

The same State Attorney Generals that sued for-profit colleges sued law schools over misleading employment and bar passage rate information.²⁵⁸ Lawsuits like these have been filed against several non-profit law schools.²⁵⁹ The plaintiffs sought \$250 million and \$200 million in refunds and damages from Cooley Law School and New York Law School, respectively.²⁶⁰ The plaintiffs described their lawsuit as a way "to remedy a systemic, ongoing fraud that is ubiquitous in the legal education industry and threatens to leave a generation of law students in dire financial straits."²⁶¹ Again, these lawsuits were partly based on fraudulent advertising, but took issue with the actual institutions not living up to what they had promised.²⁶² The lawsuits were ultimately dismissed on the basis that the American Bar Association should have better oversight and the students should have been more diligent in fact-checking the claims made by the schools.²⁶³ There was another lawsuit against Thomas Jefferson School of Law where the plaintiff claimed that they chose the law school over other law schools based on misleading statistics of employment opportunities.²⁶⁴ Though the plaintiff did not win, three people on the jury voted in the plaintiff's favor.²⁶⁵ A similar lawsuit did prevail against Golden Gate University School of Law, though

²⁵⁸ *Id.*

²⁵⁹ Patrick G. Lee, *Law Grads Sue Over Tuition*, WALL STREET J. (Aug. 11, 2011, 10:18 AM), <https://www.wsj.com/articles/SB10001424053111904823804576500694179259396>.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ Staci Zaretsky, *Class Action Lawsuit Against Thomas M. Cooley Law School Dismissed*, ABOVE THE L. (July 23, 2012, 10:23 AM), <https://abovethelaw.com/2012/07/class-action-lawsuit-against-thomas-m-cooley-law-school-dismissed/?rf=1>; Peter Lattman, *9 Graduates Lose Case Against New York Law School*, N.Y. TIMES (Mar. 22, 2012, 7:59 PM), <https://dealbook.nytimes.com/2012/03/22/9-graduates-lose-case-against-new-york-law-school>.

²⁶⁴ Elizabeth Olson, *Law Graduate Who Sued Her School Loses at Trial*, N.Y. TIMES (Mar. 24, 2016), <https://www.nytimes.com/2016/03/25/business/dealbook/law-graduate-who-sued-her-school-loses-at-trial.html>.

²⁶⁵ *Id.*

with small damages of \$8,000.²⁶⁶ Overall, plaintiffs have filed over one dozens more lawsuits against various low-performing law schools.²⁶⁷ Furthermore, lawsuits have continued to be filed against many of the schools that have been the target of past lawsuits.²⁶⁸ Finally, a comprehensive report from the Center for American Progress, found that in the quest for equal access to education, litigation is a powerful tool, even if it is not absolute.²⁶⁹ Overall, litigation has resulted in greater access to funding for low-income students.²⁷⁰ In cases regarding access to disabilities, there are already many legislative protections in place through the ADA, IDEA, and Section 504, so litigation is needed to force schools and governments to comply with what is mandated by the state.

D. Lawsuits Over Learning Accommodations

As mentioned earlier, there have been an array of lawsuits filed over schools not living up to their obligations under the existing federal laws under the ADA, IDEA, and Section 504. One prominent lawsuit has been against the Texas State government.²⁷¹ Over the last four years, Texas has resisted complying with IDEA in regards to the accommodations that Texas is mandated to grant students with disabilities under IDEA.²⁷² Though there is still much work to be done in getting Texas to comply with IDEA, lawsuits have helped put more pressure on them to comply.²⁷³ Furthermore, disability advocates

²⁶⁶ *Id.*

²⁶⁷ Sara Randazzo, *Jobless Graduates Who Sued Law Schools Find Little Success in Court*, WALL STREET J., <https://www.wsj.com/articles/jobless-graduates-who-sued-law-schools-find-little-success-in-court-1444936032> (Oct. 15, 2015).

²⁶⁸ *Id.*; Max Marbut, *Student Files Suit Against Florida Coastal School of Law*, JACKSONVILLE DAILY REC. (Sept. 17, 2019, 10:33 AM), <https://www.jaxdailyrecord.com/article/student-files-suit-against-florida-coastal-school-of-law>.

²⁶⁹ Carmel Martin et al., *A Quality Approach to School Funding*, CTR. FOR AM. PROGRESS (Nov. 13, 2018, 12:01 AM), <https://www.americanprogress.org/issues/education-k-12/reports/2018/11/13/460397/quality-approach-school-funding>.

²⁷⁰ *Id.*

²⁷¹ Andrea Zelinski, *Texas Ignores Federal Law Regarding Special Education Students Over 18, Lawsuit Claims*, HOUS. CHRON. (Nov. 9, 2019), <https://www.houstonchronicle.com/news/politics/texas/article/Texas-ignores-federal-law-regarding-special-14821418.php>.

²⁷² *Id.*

²⁷³ *Id.*

gained a great victory in Iowa, when a Judge ruled that Iowa was violating IDEA by not providing adequate access to special education for all students with disabilities.²⁷⁴ The case found that even when officials such as hospitals recommended accommodations for students with disabilities, Iowa schools would ignore it.²⁷⁵ As a result, between 2006 and 2016, the number of students in special education in Iowa declined by about 10,000.²⁷⁶ The Iowa court ruling will hopefully reverse this trend. The court also ruled that the school system must pay the plaintiff's legal bills, which implied that there is a right to the proper legal representation that gets the person their guaranteed accommodations.²⁷⁷ Charter schools face similar issues. In a lawsuit against a Brooklyn charter school, the plaintiff alleged that the charter school and the New York City Department of Education had not provided the accommodations that they are guaranteed under the disability laws.²⁷⁸ In California, plaintiffs have sued the Berkley Unified School District on the basis that the school district ignored IEP and 504 plans.²⁷⁹ Other lawsuits have looked beyond exam accommodations like extending timing to other components sometimes found in an IEP such as emotional support for students whose disabilities cause them to act up.²⁸⁰ A family of a child with an emotional disturbance disability alleged that the school system ignored input that came from medical professionals when the school developed the

²⁷⁴ Mackenzie Ryan, *Court Ruling Gives Iowa Students with Learning Disabilities Improved Special Education Access*, DES MOINES REG. (Oct. 2, 2018, 5:59 PM), <https://www.desmoinesregister.com/story/news/education/2018/10/02/iowa-special-education-students-learning-disabilities-access-lawsuit-disabilities-act-federal-court/1486925002>.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ Elizabeth A. Harris, *Lawsuit Accuses Brooklyn Charter School of Failing to Provide Special Education Services*, N.Y. TIMES (Nov. 5, 2015), <https://www.nytimes.com/2015/11/06/nyregion/lawsuit-accuses-brooklyn-charter-school-of-failing-to-provide-special-education-services.html>.

²⁷⁹ *Students with Reading Disorders Sue Berkeley Unified School District (BUSD) for Failing to Educate Them*, DISABILITY RTS. EDUC. & DEF. FUND (May 2, 2017), <https://dredf.org/2017/05/02/students-with-reading-disorders-sue-berkeley-unified-school-district>.

²⁸⁰ Elizabeth Behrman, *Family of Special Needs Student Sues Pittsburgh Public Schools Over Unlawful Restraint, Lack of Support*, PITTSBURGH POST-GAZETTE (Jan. 8, 2019, 7:06 AM), <https://www.post-gazette.com/news/education/2019/01/08/Pittsburgh-Public-Schools-special-education-police-student-discipline-lawsuit/stories/201901070083>.

child's IEP.²⁸¹ In a boon for students with disabilities, just two years ago, the Supreme Court found that students with disabilities under IDEA must have quality education and that quality:

is satisfied, and a child has received a FAPE, if the child's IEP sets out an educational program that is "reasonably calculated to enable the child to receive educational benefits." For children receiving instruction in the regular classroom, this will generally require an IEP "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade."²⁸²

This makes it all the more difficult for schools to write off students with disabilities and feel that they can dismiss a student's ability to excel academically just because they have a disability.²⁸³

Higher education institutions have also run into issues with providing accommodations. Fifty colleges have been at the center of a lawsuit that alleges their websites are inaccessible to the blind, making it difficult for a blind student to learn about and apply to these institutions.²⁸⁴ Blind and deaf students have filed lawsuits against prestigious institutions, such as Berkeley and Harvard, over their inability to provide proper accommodations for the blind and deaf for online learning material.²⁸⁵ Additionally, there is less stigma around having a disability, so people feel empowered to advocate for themselves.²⁸⁶

²⁸¹ *Id.*

²⁸² Andrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 995-96 (2017) (quoting *Bd. of Educ. v. Rowley*, 458 U.S. 176, 204, 207 (1982)). F.A.P.E. is an acronym for Free and Appropriate Public Education for children with disabilities. *Id.*

²⁸³ Anya Kamenetz & Cory Turner, *The Supreme Court Rules in Favor of a Special Education Student*, N.P.R. (Mar. 22, 2017, 12:04 PM), <https://www.npr.org/sections/ed/2017/03/22/521094752/the-supreme-court-rules-in-favor-of-a-special-education-student>.

²⁸⁴ Lindsay McKenzie, *50 Colleges Hit with ADA Lawsuits*, INSIDE HIGHER ED (Dec. 10, 2018), <https://www.insidehighered.com/news/2018/12/10/fifty-colleges-sued-barrage-ada-lawsuits-over-web-accessibility>.

²⁸⁵ Vivian Wang, *College Websites Must Accommodate Disabled Students, Lawsuits Say*, N.Y. TIMES (Oct. 11, 2017), <https://www.nytimes.com/2017/10/11/nyregion/college-websites-disabled.html>.

²⁸⁶ *Id.*

Despite all of this, most of the lawsuits remain mired in court with no real indication of how they will turn out.²⁸⁷ Failure to get proper accommodations has grave results. For example, one lawsuit against the Southern Oregon University alleges that a student was succeeding in their classes where they got accommodations, but two of the student's classes refused their right to accommodations and the student received an F in both of those classes.²⁸⁸ Obviously receiving an F has long-lasting consequences, it can delay graduation, keep students from taking other classes, and the F itself looks horrible on a transcript.²⁸⁹ The lawsuit is of course not saying that the student deserved to pass those classes but instead that the student just deserved the accommodations that they are legally entitled to in order for them to have a chance to succeed.²⁹⁰ Even when accommodations are granted, an institutions mishandling of accommodations can cause issues; there was recently a class action lawsuit against the ACT on the basis that the ACT improperly disclosed the information of students who requested accommodations.²⁹¹ ACT sold this information to colleges so the colleges could use this for recruiting.²⁹² While there could be benefits to students with disabilities in having schools with solid accommodations programs reach out to them, ultimately it was an invasion of the students with disabilities' privacy and as a result of the lawsuit, the ACT stopped this process.²⁹³ Though the more economically privileged are likely to make up the college population, it still raises an important issue over whether people from marginalized groups that are able to succeed and get to college may ultimately not have proper access to accommodations in college and fail there despite succeeding in the last. To advocate for themselves against professors and administrative figures, students would need to hire an at-

²⁸⁷ *Id.*

²⁸⁸ Nick Morgan, *SOU Sued Over Dyslexic Student's F Grades*, MAIL TRIB. (Oct. 12, 2017), <https://mailtribune.com/news/happening-now/sou-sued-over-dyslexic-student-s-f-grades>.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ Scott Jaschik, *ACT Ends Practice Some Said Hurt Students with Disabilities*, INSIDE HIGHER ED (Oct. 8, 2018, 3:00 AM), <https://www.insidehighered.com/admissions/article/2018/10/08/act-ends-practice-over-which-it-was-sued-advocates-students>.

²⁹² *Id.*

²⁹³ *Id.*

torney that costs tens of thousands of dollars, which can be very difficult to overcome.

Accommodations have particularly been at the center of court cases regarding law school. One of most groundbreaking cases was back in 2014, in *Department of Fair Employment and Housing v. Law School Admissions Council Inc.*²⁹⁴ Prior to the case, the Law School Admission Council (LSAC), which administers the law school admission exam, LSAT, regularly denied students accommodations, even when they had overly thorough documents and/or had a permanent physical disability.²⁹⁵ Moreover, students who had basic and regularly granted accommodations were routinely flagged by the LSAC for seemingly no reason.²⁹⁶ Students also faced a lack of transparency in terms of what stage their accommodation application was in, and the reason the accommodation was rejected.²⁹⁷ The case originally entailed a group of students out of California, but the US Department of Justice intervened on behalf of the students, and as a result, the LSAC settled, agreed to end its flagging, streamline its evaluation process, and listen to recommendations on best practices to review accommodations from a panel made on behalf of both parties.²⁹⁸ A further victory came for students with accommodations through the recent Michigan settlement regarding the LSAT logic games component being very hard for the blind to decipher.²⁹⁹ Though the LSAT already had accommodations, in the case of the logic games, the accommodations did not seem to cut it.³⁰⁰ So the case ended up being in the best interest of everyone to eliminate the logic games section, since there were other sections to test students

²⁹⁴ *Law School Admission Council Agrees to Systemic Reforms and \$7.73 Million Payment to Settle Justice Department's Nationwide Disability Discrimination Lawsuit*, DEP'T OF JUST. (May 20, 2014), <https://www.justice.gov/opa/pr/law-school-admission-council-agrees-systemic-reforms-and-773-million-payment-settle-justice> [hereinafter *LSAC Settlement*]; see also *Dep't of Fair Emp't & Hous. v. Law Sch. Admission Council, Inc.*, No. C-12-1830 EMC, 2013 U.S. Dist. LEXIS 16942 (N.D. Cal. Feb. 6, 2013).

²⁹⁵ *LSAC Settlement*, *supra* note 298.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ Ryan Prior, *A Lawsuit Argued the LSAT Discriminates Against the Blind. Now it's Changing for Everyone*, CNN (Oct. 10, 2019, 9:15 PM), <https://www.cnn.com/2019/10/10/us/lsat-blind-people-trnd/index.html>.

³⁰⁰ *Id.*

on what is needed to succeed in law school.³⁰¹ Prior to this change, it was extremely difficult for blind people to get the scores needed to get into law school, and the change could create a new generation of lawyers.³⁰² Even with this legal victory, there are still barriers to law school for students with disabilities. To receive accommodations, a student typically has received a diagnostic test on top of whatever ones they received for high school or college, which is time consuming and costly.³⁰³ Though law school is likely winnowed down to even more privileged populations, these legal victories show the strength of using litigation to gain equality.

Lawsuits have clearly been a potent tool in terms of students receiving accommodations. No matter how oppressive and difficult the educational institution is, courts and the pressure of a lawsuit can force schools and the government to do the right thing. The one thing missing from all of these cases and the articles surrounding them is the cost involved in getting an attorney to take these cases. As mentioned earlier, on average a disability attorney costs \$20,000.³⁰⁴ Though some of these cases involve class actions and/or attorneys willing to take on the case pro-bono, as demonstrated above, those are not frequent and there are limitations to firms and non-profit organizations being able to extend these types of services. Furthermore, not every disabled student's request for accommodations can or should turn into a big federal case that takes years to resolve. Though those cases do clearly lead to important changes, many times getting an individual attorney can resolve the matter far quickly. Furthermore, even in winning cases, the school cannot be relied on to always comply without further oversight and advocacy, so it is beneficial to have an attorney available.

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ David McAfee, *Aspiring Lawyer Denied LSAT Accommodation Gets New Shot at Suit*, BLOOMBERG NEWS (Nov. 1, 2019, 3:33 PM), <https://news.bloomberglaw.com/us-law-week/aspiring-lawyer-denied-lsat-accommodation-gets-new-shot-at-suit>; *Doe v. Law Sch. Admission Council, Inc.*, 791 Fed. App'x. 316, 317-18 (3d Cir. 2019).

³⁰⁴ Lightner, *supra* note 10.

E. Access to Attorneys for Low-Income Families in Education Cases

Given the complexities of advocating for accommodations, it is easy to see how people without the proper legal support can get lost in the accommodations process. This has happened across the country in low-income communities. In Maryland for example, the Districts won eighty-five percent of the time.³⁰⁵ The report found that it was a “David v. Goliath” type fight due to the fact that the school districts had far more resources and that the legal battles could extend for days, so the parents could not afford to miss days of work.³⁰⁶ If parents represented themselves, they always lost.³⁰⁷ Moreover, parents needed even more than just lawyers, they need expert witnesses as well, which further increased the costs of a legal battle.³⁰⁸ The school districts maintain they are doing everything they can to accommodate the students, but the numerous lawsuits emerging suggest that the schools are failing to live up to their duties.³⁰⁹ Many parents have gotten frustrated with the public school system and put their children in private schools, but typically, low-income people of course do not have the money for private schools.³¹⁰ Similar results have been found in Wisconsin, Minnesota, Texas, and Massachusetts.³¹¹

A similar study found that parents only lost cases sixty-four percent of the time when they had an attorney present, but ninety-eight percent of the time when they did not have an attorney.³¹² Looking specifically at rural areas, in Georgia disabled students had a

³⁰⁵ Talia Richman, *'Why Would We Even Try?'* Parents of Disabled Students Almost Never Win in Fights Against Maryland Districts, BALT. SUN (May 2, 2019), <https://www.baltimoresun.com/news/investigations/bs-md-due-process-hearings-20190502-story.html>.

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *See id.*

³¹⁰ *See id.*

³¹¹ G. Thomas Schanding et al., *Analysis of Special Education Due Process Hearings in Texas*, 7 SAGE OPEN (June 14, 2017), <https://doi.org/10.1177/2158244017715057>.

³¹² William H. Blackwell & Vivian V. Blackwell, *A Longitudinal Study of Special Education Due Process Hearings in Massachusetts: Issues, Representation, and Student Characteristics*, 5 SAGE OPEN (Mar. 23, 2015), <https://doi.org/10.1177/2158244015577669>.

tough time receiving accommodations.³¹³ One student did not have access to accommodations while in elementary school and then ten years later the student had dropped out of high school and attempted suicide.³¹⁴ There is hope that the Justice Department will intervene in cases in Georgia, but if not then the people fighting for accommodations will be forced to turn to non-profit and pro-bono legal services in order to hopefully gain accommodations.³¹⁵ A similar issue occurred in Bronx, New York school districts, where the children had access to accommodations, but the school district said that the parents had to find someone to administer the accommodations on their own.³¹⁶ The mandate from the school proved to be a difficult task because even when parents had the resources to find providers, the providers were unable to and/or unwilling to travel to the Bronx.³¹⁷ Eventually, a class action lawsuit was filed by a disability rights organization, but had that organization not been around, it is hard to imagine that the parents would have had many options.³¹⁸ The exact numbers on what shortcomings are occurring in NYC are unclear because the school data systems are unable to keep track.³¹⁹ Though the lack of access to legal services is not the only issue for low-income students in being able to gain access to accommodations, it is a huge hurdle, as attorneys appear to be a last resort when everything else failed. So, in the event that a low-income family has already been repeatedly failed by a school district, their last available resource is the most out of range. The policies of IDEA, ADA, and

³¹³ See generally Timothy Pratt, *The Separate, Unequal Education of Students with Special Needs*, HECHINGER REP. (Mar. 21, 2017), <https://hechingerreport.org/georgia-program-children-disabilities-separate-unequal-education/>.

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ Kate Taylor, *City Violates Disabled Students' Rights, Suit Claims*, N.Y. TIMES (July 27, 2017), <https://www.nytimes.com/2017/07/27/nyregion/city-violates-disabled-students-rights-suit-claims.html?action=click&module=RelatedCoverage&pgtype=Article®ion=Footer>.

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ Kate Taylor, *Thousands of New York City Students Deprived of Special-Education Services, Report Says*, N.Y. TIMES (Mar. 1, 2016), <https://www.nytimes.com/2016/03/02/nyregion/thousands-of-new-york-city-students-deprived-of-special-education-services-report-says.html>.

Section 504 are all very complicated and it is a lot to ask any non-lawyer to be able to decipher them.

Looking at higher education, the Admissions Cheating Scandal has highlighted how low-income people have trouble getting access to accommodations. Many families in the scandal received extra time for their children, despite their children not having learning disabilities.³²⁰ Furthermore, even in cases where the students may have proper access to learning accommodations based on having a real disability, the fact that students in a school district in the top one percent has eight times as many students diagnosed with learning disabilities as students in median income districts shows that there is a real disparity in terms of access to accommodations based on income.³²¹ The same piece found that high-income parents are employing private resources to ensure the accommodation process results in their favor.³²² Moreover, many parents are not aware of the resources available to them to qualify for extra time on the ACT and SAT.³²³ These studies did not have as much information available regarding legal services differences in receiving accommodations; however, it is likely that the students facing pushback for accommodations for regular school services will likely run into similar problems for higher education accommodations.

Overall, the accommodations process is a lengthy process that involves time and money. When schools refuse to follow accommodations, the issue can go in many directions. Sometimes a plaintiff will have a sound case and get a lawyer and still lose. But other times, having a lawyer and other legal resources can minimally educate the families on what their rights are. Lawyers can also back up the parents in terms of being able to advocate for these rights to the school or even bring a lawsuit that can secure rights for the individual child and perhaps others. However, the necessary legal assistance for this advocacy costs a lot of money. While there are pro-bono opportunities available, they can only go so far. The students cannot be subject to the whim of a lawyer's free time. There needs to be further

³²⁰ Colin Seale, *Questioning The 'Have Money, Get Test-Taking Accommodations' Scandal*, FORBES (Aug. 3, 2019, 11:06 AM), <https://www.forbes.com/sites/colinseale/2019/08/03/questioning-the-have-money-get-test-taking-accommodations-scandal/#1fef063b7b77>.

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*

ways that families of students with disabilities can secure their rights so they can succeed.

VII. CONCLUSION

Access to education among marginalized groups, be it minorities or low-income communities, has come a long way. All three branches of the US government, along with the state governments have repeatedly affirmed the legal right to a quality education for the US population as a whole. In regard to an education that levels the playing field for people with disabilities, the rights have been further codified through the IDEA, ADA, and Section 504 in particular. However, despite this wide recognition, a lot of inequalities still exist. In terms of education overall with regard to race, there are major discrepancies that have put the US in a segregated education system like the days before *Brown v. Board of Education*. These inequalities exist further when it comes to getting access to accommodations.

Though systemic inequalities exist in the education system, the use of litigation has been a powerful tool to right wrongs.³²⁴ Through *Brown v. Board of Education* and an array of other cases, there have been many rights granted to people for access to education.³²⁵ While these monumental cases have helped improve legal rights regarding education, there is still a lot of legal work that needs to be done in order to guarantee these rights are provided on local levels.³²⁶ Similarly, there have been many legal victories that recognized the right to legal services, along with a development of many different legal services provided.³²⁷ Still, numerous articles show that the government has proven insufficient in giving the quality needed legal services for individual cases.³²⁸ So, it is essential for people to have access to general legal advice and/or lawyers that can guarantee people have the right to education that they need. Ultimately this article highlighted how litigation can be an effective tool in securing rights that are guaranteed by both the Constitution and

³²⁴ See sources cited *supra* note 14.

³²⁵ See sources cited *supra* note 14.

³²⁶ *Supra* notes 6-8 & accompanying text.

³²⁷ Johnson, *supra* note 158.

³²⁸ See *supra* notes 156–60 and accompanying text.

Federal law.³²⁹ The next step is to codify firm initiatives to create those resources.

³²⁹ Resmovits, *supra* note 233; *LSAC Settlement*, *supra* note 298.