

Education Funding and Civil Rights in Ohio



A Report of the
Ohio Advisory Committee to the
U.S. Commission on Civil Rights

February 2020

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. They are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

Acknowledgments

The Ohio Advisory Committee (Committee) thanks each of the speakers who presented to the Committee during their September 14, 2018 and April 16, 2019 public meetings. The Committee is also grateful to members of the public who spoke during the selected periods of public comment, and those who shared their testimony in writing.

**Ohio Advisory Committee to the
U.S. Commission on Civil Rights**

The Ohio Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding the civil rights impact of education funding distributions in Ohio as part of its responsibility to study and report on civil rights issues in the state of Ohio. The contents of this report are primarily based on testimony the Committee heard during public hearings on September 14, 2018, and April 16, 2019, as well as related testimony submitted to the Committee in writing during the relevant period of public comment.

This report begins with a brief background of the issue to be considered by the Committee. It then presents an overview of the testimony received. Finally, it identifies primary findings as they emerged from this testimony, as well as recommendations for addressing related civil rights concerns. This report is intended to focus specifically on civil rights concerns regarding education funding distributions affecting access and quality in Ohio. While other important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion.

**Ohio Advisory Committee to the
U.S. Commission on Civil Rights**

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*Committee member Catherine Crosby resigned from the Committee on November 7, 2019 due to other current professional obligations. Committee member David Tryon recused himself from work on this project as of October 15, 2019 due to his appointment at the U.S. Department of Education Office of Civil Rights.

INTRODUCTION

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These committees advise the Commission of civil rights issues in their states that are within the Commission’s jurisdiction.

On June 14, 2017, the Ohio Advisory Committee (Committee) to the U.S. Commission on Civil Rights voted unanimously to take up a proposal to examine the civil rights implications of the state’s education funding allocations, including fulfillment of its obligation to provide “equal participation”¹ in a “through and efficient system of common schools.”²

On September 14, 2018, the Committee convened a public meeting in Cleveland, Ohio to hear testimony regarding the civil rights implications of the state’s education funding efforts. The Committee heard additional testimony at a community forum held in Columbus, Ohio on April 16, 2019, as well as through the submission of written testimony welcomed during this timeframe. The Committee heard from community members, education advocates, academic experts, teachers, school administrators, and private and community (charter) school representatives.

The following report results from the testimony provided during these meetings, as well as testimony submitted to the Committee in writing during the related period of public comment. It begins with a brief background of the issue to be considered by the Committee. It then presents an overview of the testimony received. Finally, it identifies primary findings as they emerged from this testimony, as well as recommendations for addressing related civil rights concerns. The purposes of this report are: (i) to relay the civil rights concerns brought forth by the speakers relating to education funding in Ohio; and (ii) to provide specific recommendations to the Commission regarding actions that can be taken to understand and address these issues moving forward.

BACKGROUND

While education laws in the U.S. vary significantly by state, all states have at least some compulsory education requirements (the age range in which students are required to attend school

¹ OHIO CONST. art. VIII, § 25 *Of schools and poor children* (1802).

² OHIO CONST. art. VI, § 2 *School Funds* (1851).

or the equivalent varies by state).³ All states also require public schools to admit students within a defined age range free of charge (the age range for free education likewise varies by state).⁴ In Ohio, the state Constitution requires that the General Assembly “secure a thorough and efficient system of common schools throughout the state.”⁵ Education is compulsory from ages 6--18,⁶ and must be offered through the high school level for free from ages 5--22.⁷ Federal law requires that such education services be provided in a manner that is free from discrimination on the basis of race, color, sex, religion, national origin, or disability status.⁸

Despite these protections, significant disparities persist in educational access and outcomes across the country generally, and Ohio in particular.⁹ According to an analysis of National Assessment of Educational Progress (NAEP) data conducted by the Educational Opportunity Monitoring Project at Stanford University, gaps in educational outcomes between white and black students, as well as white and Hispanic students, have persisted since the NAEP first began collecting data in the 1970’s.¹⁰ Progress has been made—the report notes that “[a]s of 2012, the white-black and white-Hispanic achievement gaps were 30--40% smaller than they were in the 1970s.”¹¹ But

³ Stephanie Aragon, “ECS 50-State Reviews: Free and Compulsory School Age Requirements,” Education Commission of the States, May 2015, <http://www.ecs.org/clearinghouse/01/18/68/11868.pdf>.

⁴ Aragon, “ECS 50-State Reviews.”

⁵ OHIO CONST. art. VI, § 2 *School Funds* (1851).

⁶ Aragon, “ECS 50-State Reviews,”; OHIO REV. CODE ANN. § 3321.01(A)(1).

⁷ Aragon, “ECS 50-State Reviews,”; OHIO REV. CODE ANN. §3313.64(B); § 3321.01; OHIO CONST. art VI.02 <https://www.legislature.ohio.gov/laws/ohio-constitution/section?const=6.02>.

⁸ Section 1 of the 14th Amendment to the U.S. Constitution prohibits any state from denying “to any person within its jurisdiction the equal protection of the laws;” Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, sex, religion, or national origin, including in institutions of public education; Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any federally funded education program or activity; The Equal Educational Opportunity Act of 1974 prohibits deliberate segregation in schools on the basis of race, color, and national origin; The Individuals with Disabilities Education Act (IDEA) requires state and local education agencies to “provide a free and appropriate public education to children with disabilities; The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities in any places of public accommodations, including public and private schools and daycare centers.

⁹ “Racial and Ethnic Achievement Gaps,” Center for Education Policy Analysis, Stanford University, accessed Feb. 11, 2020, <http://cepa.stanford.edu/educational-opportunity-monitoring-project/achievement-gaps/race/#first>.

¹⁰ “Racial and Ethnic Achievement Gaps,” Center for Education Policy Analysis.

¹¹ *Ibid.*

disparities in student academic achievement as measured by overall differences in math and reading scores remain large to the present day.¹²

In a series of cases between 1991 and 2003,¹³ the Ohio Supreme Court held in *DeRolph v. State of Ohio*¹⁴ that the state's educational funding system is unconstitutional because it fails to provide adequate funding, particularly in low-income districts without a sufficient property tax base, to support local schools.¹⁵ Despite the Court's holding that the state's educational funding system was unconstitutional, the Court granted the State a writ of prohibition in 2003 barring any further judicial review of the case, stating that "the duty now lies with the General Assembly to remedy an education system that has been found by the majority in *DeRolph IV* to still be unconstitutional."¹⁶

At the national level, a United States Supreme Court case originating in San Antonio, Texas, has impacted public education in Ohio and across the country. In *San Antonio v. Rodriguez*,¹⁷ a class action suit was brought against the state on behalf of poor families in school districts with a low property tax base.¹⁸ In a 5-to-4 decision, the U.S. Supreme Court held that (a) poverty is not a "suspect class" protected under anti-discrimination laws; and (b) education is not a fundamental right because it "is not within the limited category of rights recognized by this Court as guaranteed by the Constitution."¹⁹ While the Supreme Court has made clear that poverty is not a suspect class, lack of school funding or a grossly disproportionate allocation of funds between school districts, may have a disproportionate impact on certain communities whose members largely represent a protected class.²⁰

¹² Ibid.

¹³ Bricker & Eckler, Attorneys At Law. Insights & Resources. *DeRolph v. State of Ohio Resource Center*. Available at: <http://www.bricker.com/resource-center/derolph/key-resources/resource/chronology-of-the-derolph-v-ohio-school-funding-litigation-412> (last accessed June 7, 2017). [Hereafter cited as: *DeRolph Chronology*]

Note: The Committee also recognizes the potential significance of the U.S. Supreme Court's equal protection decision in the case *San Antonio v Rodriguez* regarding equal access to school funding (*San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973)).

¹⁴ *DeRolph v. State*, 97 Ohio St.3d 434, 2002-Ohio-6750, 780 N.E.2d 529.

¹⁵ *Id.*

¹⁶ *The State ex rel. State of Ohio v. Lewis*, 99 Ohio St.3d 97, 2003-Ohio-2476, 780 N.E. 2d 195, at ¶ 33.

¹⁷ *San Antonino Independent School District v. P. Rodriguez*, 411 U.S. 1 (1973).

¹⁸ *Id.* at 4-5.

¹⁹ *Id.* at 1.

²⁰ U.S. Department of Education, Office for Civil Rights, "Dear Colleague Letter: Resource Comparability," 2, 5 (Oct. 1, 2014), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf> ("these

In this study, the Committee sought to evaluate Ohio’s allocation of educational funding, and its impact on the availability and quality of educational services in the state. The Committee’s purpose is to review whether and to what extent the State’s current school funding efforts serve either to exacerbate or ameliorate identified disparities in educational quality and outcomes on the basis of race, color, sex, religion, national origin, and/or disability status.

SUMMARY OF SPEAKER TESTIMONY

The public meetings on September 14, 2018, and April 16, 2019, included testimony from academic experts, public school administrators, private and community (charter) school advocates, teacher and teacher union representatives, community members, and other advocates. Speakers were selected to provide a diverse and balanced overview of concerns on the distribution of education funds in Ohio. (Despite persistent efforts, we were unsuccessful in securing a speaker from the Ohio government.) Speakers identified specific areas in need of improvement, especially related to funding adequacy, equity, and a priority focus on evidence-based intervention.

B. State Education Funding Obligations

During his testimony, Ohio constitutional law scholar and former law school dean Steven Steinglass explained that “almost from the beginning” the state of Ohio has “viewed education as a fundamental and affirmative responsibility of the government.”²¹ He noted that the Northwest Ordinance of 1787, which set Ohio on the path to statehood, declared that “schools and the means of education shall forever be encouraged.”²² In 1802, the state’s Constitution explicitly placed the burden on the legislature to encourage this system of state-wide education,²³ including for the poor.²⁴

disparities may be indicative of broader discriminatory policies or practices that, even if facially neutral, disadvantage students of color.”).

²¹ Steven Steinglass, testimony, *Briefing Before the Ohio Advisory Committee to the U.S. Commission on Civil Rights, Civil Rights and Education Funding in Ohio*. Cleveland, OH, Sept. 14, 2018, transcript, p. 16 lines 4-8 (*hereinafter Cleveland Transcript*).

²² Steinglass Testimony, *Cleveland Transcript*, p. 16 lines 9-16.

²³ Steinglass Testimony, *Cleveland Transcript*, p. 16 line 21 – p. 17 line 5.

²⁴ Steinglass Testimony, *Cleveland Transcript*, p. 16 line 21 – p. 17 line 16; OHIO CONST. art. VIII, § 25.

Advocates and education scholars alike often refer to the state’s obligation to provide a “thorough and efficient system of common schools,”²⁵ though the term “thorough and efficient” has not been clearly defined. While the legislature’s responsibility to provide for such a system does not make education a fundamental constitutional right,²⁶ the legislature nonetheless has a constitutional obligation to fund a “thorough and efficient system of common schools ...an obligation that the Ohio Supreme Court ruled it failed to fulfill.”²⁷

Steinglass explained that in the nineteenth century when the state constitution was adopted, the mandates included were directed toward the legislature, and were not intended for litigation in the courts.²⁸ Over the years, the Ohio General Assembly has tasked several commissions with reviewing and revising these constitutional mandates, most recently the Ohio Constitutional Modernization Commission of 2013.²⁹ This 2013 Commission considered several proposals to further define the term “thorough and efficient,” including one proposal that would have expressly characterized education as a “fundamental right.”³⁰ Ultimately, however, the Commission was unable to agree on any of the proposed changes, and thus “ended up making a recommendation of no change.”³¹

Robert Heard, Senior Vice Chair of the Cleveland Metropolitan School District Board of Education, lamented that the U.S. Supreme Court has offered no additional protection.³² In *San Antonio v. Rodriguez*,³³ the Court found that basing education funding on local property taxes did not violate the 14th Amendment’s equal protection clause; as Heard opined, “because then it would become case law for the whole country and they’d have to figure out a way to fund public education.”³⁴ Dr. Tracy Najera, of the Children’s Defense Fund-Ohio raised similar concerns about

²⁵ Dyer Testimony, *Cleveland Transcript*, p. 42 lines 16-23, Fleeter Testimony, *Cleveland Transcript*, p. 189 line 23 – p. 191 line 10; Johnson Testimony, *Cleveland Transcript*, p. 212 line 14 – p. 213 line 4.

²⁶ Steinglass Testimony, *Cleveland Transcript*, p. 18 line 22 – p. 19 line 4

²⁷ *DeRolph v. State*, 97 Ohio St.3d 434, 2002-Ohio-6750. Available at: <https://www.sconet.state.oh.us/rod/docs/pdf/0/2002/2002-ohio-6750.pdf>; see also Johnson Testimony, *Cleveland Transcript*, p. 213 lines 8-20.

²⁸ Steinglass Testimony, *Cleveland Transcript*, p. 19 line 23 – p. 20 line 20.

²⁹ Steinglass Testimony, *Cleveland Transcript*, p. 20 line 25 – p. 24 line 21.

³⁰ Steinglass Testimony, *Cleveland Transcript*, p. 22 line 21 – p. 23 line 25.

³¹ Steinglass Testimony, *Cleveland Transcript*, p. 24 lines 1-10.

³² Heard Testimony, *Cleveland Transcript*, p. 124 line 16 – p. 125 line 8.

³³ *San Antonio Independent School District v. P. Rodriguez*, 411 U.S. 1 (1973).

³⁴ Heard Testimony, *Cleveland Transcript*, p. 124 line 16 – p. 125 line 8.

the *Rodriguez* case, noting “it’s really hard for me to understand how someone would believe that being poor wasn’t a suspect class,”³⁵ and that “children in poverty, they need additional resources especially if they live in higher concentrations of poverty.”³⁶ Najera further maintained the Court was wrong to conclude that education is not a fundamental right: “I believe that you cannot function in today’s democracy or economy without an education. Therefore, what is the role of our society to provide that to a citizen, to provide that to a resident? I think it’s fundamental.”³⁷

C. Adequacy, Equity, and Civil Rights

From a civil rights perspective, questions of adequacy in education funding become particularly relevant when considering the differential impact of inadequate funding on various communities. Speakers noted that some students cost more to educate than others.³⁸ Inadequate resources have the biggest impact on impoverished districts, districts predominantly serving students of color, and students with disabilities,³⁹ and may contribute to cross-generational poverty and inequality.⁴⁰ The state aid formula is intended to offset the inequities of local fiscal capacity, and to ensure a minimum adequate level of funding in every district.⁴¹ Since 2001, however, the percentage of economically disadvantaged students has increased by almost 67%, and the funding has only increased by 22.7%.⁴²

³⁵ Najera, testimony, *Community Forum of the Ohio Advisory Committee to the U.S. Commission on Civil Rights, Civil Rights and Education Funding in Ohio*. Columbus, OH, April 16, 2019, transcript, p. 16 lines 20-27 (*hereinafter Columbus Transcript*).

³⁶ Najera Testimony, *Columbus Transcript*, p. 16 lines 20-27.

³⁷ Najera Testimony, *Columbus Transcript*, p. 17 lines 1-23.

³⁸ Heard Testimony, *Cleveland Transcript*, p. 123 line 19 – p. 124 line 15; p. 146 lines 8-21; Quolke Testimony, *Cleveland Transcript*, p. 253 line 22 – p. 254 line 5.

³⁹ Dyer Testimony, *Cleveland Transcript*, p. 42 lines 7-15; p. 45 line 22 – p. 46 line 23; Fisher Remarks, *Cleveland Transcript*, p. 4 lines 12-21; Fleeter Testimony, *Cleveland Transcript*, p. 204 line 3 – p. 206 line 17; Sjoberg Testimony, *Cleveland Transcript*, p. 243 line 21 – p. 244 line 6; p. 247 line 19 – p. 248 line 7; Najera Testimony, *Columbus Transcript*, p. 4 lines 11-20.

⁴⁰ Najera Testimony, *Columbus Transcript*, p. 4 lines 29-33.

⁴¹ Fleeter Testimony, *Cleveland Transcript*, p. 189 line 23 – p. 191 line 10; Najera Testimony, *Columbus Transcript*, p. 5 lines 17-20.

⁴² Fleeter Testimony, *Cleveland Transcript*, p. 197 line 22 – p. 198 line 8.

1. Base funding concerns

Much of the testimony the Committee received on the topic of base student funding raised the concern that the current state formula is not related to any objective measure of student need.⁴³ Dr. Howard Fleeter of the Ohio Education Policy Institute explained that “the last year we had a base cost figure that was based on any objective analysis was for the 2009 school year.”⁴⁴ Dr. Fleeter calculated that even if the (outdated) 2009 numbers were still relevant, adjusting for inflation, the current per student base is now \$400 behind its 2009 level.⁴⁵ Steve Dyer of Innovation Ohio discussed two additional concerns that are raised by how the state calculates how much is needed and by how the state distributes the funds. First, Dyer argued that at its core, “per pupil funding is a poor expression of student need . . . because it’s generally an average cost that’s being expressed, not what an actual student needs for their actual education.”⁴⁶ When base student funding reflects average costs, “That amount would only apply to a handful of students. Every other student would be above or below the average,”⁴⁷ again, leaving the most vulnerable students behind.⁴⁸ Second, Dyer argued that the state’s attempt to account for additional student challenges, such as poverty and disability, reflect “arbitrary calculations based on budgets rather than facts.”⁴⁹ Currently, rather than expressing such “weights” as a percentage of the base funding formula, the state has converted these percentages to a fixed supplemental funding amount.⁵⁰ “Converting [these weights] to straight funding amounts means the calculation is necessarily wrong because it is no longer related to the base funding amount. And that’s assuming the weights are accurate. Ohio’s likely are not because they were last calculated for special education more than a decade ago.”⁵¹

⁴³ Dyer Testimony, *Cleveland Transcript*, p. 42 lines 7-15; p. 43 line 8 – p. 44 line 7; p. 57 lines 7-15; Fleeter Testimony, *Cleveland Transcript*, p. 194 lines 8-21; p. 195 lines 4-12; p. 250 lines 9-19; p. 251 lines 6-14.

⁴⁴ Fleeter Testimony, *Cleveland Transcript*, p. 250 lines 9-19; *see also* Dyer Testimony, p. 52 line 24 – p. 59 line 6 for a description of the State’s 2009 Evidence Based Model for education funding.

⁴⁵ Fleeter Testimony, *Cleveland Transcript*, p. 252 lines 1-14. *Note:* After the hearings, the Committee corresponded with the speakers to ask the following question: “what statistical methods did you employ, if any, to reach the conclusions you drew from the data you discussed at the public hearing?” Most of the speakers did not employ statistical methods.

⁴⁶ Dyer Testimony, *Cleveland Transcript*, p. 45 line 22 – p. 46 line 16.

⁴⁷ Dyer Testimony, *Cleveland Transcript*, p. 46 lines 10-16.

⁴⁸ Dyer Testimony, *Cleveland Transcript*, p. 44 line 8 – p. 45 line 21; p. 46 lines 17-23.

⁴⁹ Dyer Testimony, *Cleveland Transcript*, p. 44 lines 11-19.

⁵⁰ Dyer Testimony, *Cleveland Transcript*, p. 44 line 20 – p. 45 line 21.

⁵¹ Dyer Testimony, *Cleveland Transcript*, p. 45 lines 9-21.

Kerstin Sjoberg of Disability Rights Ohio raised similar concerns. She pointed to the work of Dr. Thomas Parrish,⁵² education policy researcher and consultant, with special expertise in fiscal policies relating to the provision of special education services.⁵³ In Dr. Parrish's August 2014 report to the United States District Court, S.D. Ohio, Eastern Division, Parrish found that the State does not collect sufficient data to monitor resources actually being spent on students in special education; the only year complete data is available is for the 2008--2009 school year.⁵⁴ Without accurate data, it is not possible to calculate actual funding needs, much less ensure they are adequately met.

2. Revenue limitations

David Quolke of the Cleveland Teacher's Union argued that tax cuts across the state, including business tax abatements and incentives, and corporate income tax elimination, have reduced the state's ability to pay for public services including education, and significantly contributed to funding inadequacies.⁵⁵ Citing a 2018 tax report from Policy Matters Ohio, Quolke testified that the city of Cleveland alone has lost almost \$34.2 million to tax abatements.⁵⁶ He also cited a 2013 Policy Matters Ohio report that found Cleveland public schools lost nearly \$20 million annually due to property tax exemptions afforded to the county's two largest private hospital systems, compared to if those properties were fully taxed.⁵⁷ Dr. Tracy Najera of the Children's Defense Fund-Ohio noted similar concerns, stating that quality education directly tied to economic gains for the community and closing tax loopholes could provide the necessary additional revenue to more fully support the schools.⁵⁸

⁵² Report of Dr. Thomas B. Parrish, *Doe, et al. v Ohio, et al.*; *Civil Action 2:91-cv-00464*, p. 4. See Appendix E(xii)(a).

⁵³ Sjoberg Testimony, *Cleveland Transcript*, p. 262 line 24 – p. 263 line 18; Report of Dr. Thomas B. Parrish, *Doe, et al. v Ohio, et al.*; *Civil Action 2:91-cv-00464*, p. 4. See Appendix E(xii)(a).

⁵⁴ Report of Dr. Thomas B. Parrish, *Doe, et al. v Ohio, et al.*; *Civil Action 2:91-cv-00464*, pp. 9-11.

⁵⁵ Quolke Testimony, *Cleveland Transcript*, p. 222 line 25 – p. 224 line 20; p. 229 lines 16-18; see also: Fleeter Testimony, *Cleveland Transcript*, p. 251 lines 15-25.

⁵⁶ Quolke Testimony, *Cleveland Transcript*, p. 224 lines 6-9; see also Schiller and Chu, *Tax Abetments Cost Ohio Schools At Least \$125 Million*, Policy Matters Ohio October 2018 (Quolke supporting documents, Appendix E).

⁵⁷ Quolke Testimony, *Cleveland Transcript*, p. 224 lines 10-20; see also Schiller and Hileman, *Hospitals Would Owe Tens of Millions If Exempt Properties Were Taxed*, Policy Matters Ohio, December 2013 (Quolke supporting documents, Appendix E).

⁵⁸ Najera Testimony, *Columbus Transcript*, p. 22 line 34 – p. 23 line 7.

Additionally, several speakers described how overreliance on property taxes for school funding exacerbates inequities.⁵⁹ The Ohio Supreme Court held in *DeRolph* that the state relies too much on property taxes to fund local schools, and speakers agreed with that criticism.⁶⁰ Dr. Fleeter noted that today, more than twenty years after *DeRolph*, the wealthiest districts still have more revenue per pupil than the less wealthy districts, though the gap has closed (reduced from about \$500 per pupil in 1997 to \$400 per pupil in 20 years).⁶¹ Most of these improvements came in the first 10 years.⁶² Greg Lawson of the Buckeye Institute concluded that “ultimately ... with local district school funding still tethered to local proper tax bases for operating revenues, closing the total funding gap between high-wealth and low-wealth districts ... is impossible for the foreseeable future, probably forever as well.”⁶³ Fleeter contended that closing the gap between wealthy and poor districts is not enough; poor districts have more high needs kids, so “these districts actually need more resources, not the same and certainly not less.”⁶⁴ Dr. Najera expanded on this concern, describing a number of non-academic needs facing children living in poverty that must be met for them to be successful in school, such as hunger, homelessness, and Post Traumatic Stress Disorder (PTSD).⁶⁵ Najera reported that many schools are financially stretched trying to meet these non-academic needs.⁶⁶

Meryl Johnson of the Ohio State Board of Education noted that since 1997, now 21 years after *DeRolph*, the percentage of school revenue from property tax remains unchanged at 55.62%.⁶⁷ Johnson further noted that in 1976, the state froze property taxes, requiring voters to approve levies

⁵⁹ Dyer Testimony, *Cleveland Transcript*, p. 46 line 24 - p. 49 line 6; Lawson Testimony, *Cleveland Transcript*, p. 67 line 25 – p. 68 line 13; p. 71 lines 9-17; Heard Testimony, *Cleveland Transcript*, p. 122 line 13 – p. 123 line 1; Fleeter Testimony, *Cleveland Transcript*, p. 188 line 7 – p. 189 line 22; Quolke Testimony, *Cleveland Transcript*, p. 231 lines 19-25; Najera Testimony, *Columbus Transcript*, p. 5 lines 5-16.

⁶⁰ *DeRolph v. State*, 97 Ohio St.3d 434, 2002-Ohio-6750; Dyer Testimony, *Cleveland Transcript*, p. 46 line 24 - p. 49 line 6; Lawson Testimony, *Cleveland Transcript*, p. 65 line 20 – p. 66 line 12; p. 67 lines 4-11; Heard Testimony, *Cleveland Transcript*, p. 123 lines 5-11; p. 127 lines 5-11; Fleeter Testimony, *Cleveland Transcript*, p. 187 line 19 – p. 188 line 6; Quolke Testimony, *Cleveland Transcript*, p. 222 lines 16-24; Johnson Testimony, *Cleveland Transcript*, p. 214 lines 1-4.

⁶¹ Fleeter Testimony, *Cleveland Transcript*, p. 200 lines 4-21.

⁶² Fleeter Testimony, *Cleveland Transcript*, p. 201 line 9 – p. 202 line 8; p. 249 line 21 – p. 250 line 8.

⁶³ Lawson Testimony, *Cleveland Transcript*, p. 71 lines 9-17.

⁶⁴ Fleeter Testimony, *Cleveland Transcript*, p. 200 line 22 – p. 201 line 8; p. 202 line 18 – p. 203 line 5.

⁶⁵ Najera Testimony, *Columbus Transcript*, p. 7 line 35 – p. 8 line 8; p. 6 lines 9-28.

⁶⁶ Najera Testimony, *Columbus Transcript*, p. 7 line 35 – p. 8 line 8.

⁶⁷ Johnson Testimony, *Cleveland Transcript*, p. 213 lines 21-25.

every three years for the taxes to keep up with inflation.⁶⁸ When voters do not pass such levies, school funding suffers significantly.⁶⁹ Quolke reasoned that “in an urban district, such as Cleveland, with many families already fighting to afford food, medicine, and basic needs, asking them to increase their taxes while the state ignores the Supreme Court ruling is unfair to our community, to our schools, and most importantly to our kids”⁷⁰ To illustrate, Quolke testified that the Cleveland school district passed only 2 levies in the 29 year period between 1983 and 2012.⁷¹ During this time, the district experienced a teachers’ strike, schools fell into disrepair, textbooks became outdated, and there was a state takeover of the schools.⁷² In the 2010/2011 school year, 16 schools were closed; more than 800 teachers, every social worker, and nearly half of the district’s nursing staff were laid off.⁷³ Quolke noted that since levies passed in 2012 and again in 2016, the district has not had any layoffs.⁷⁴

Regarding resources available for students with disabilities, Kerstin Sjoberg of Disability Rights Ohio highlighted a 2014 Report⁷⁵ of the Ohio Coalition for the Education of Children with Disabilities, which found a \$200 million shortfall between what is needed for special education and what the state provides.⁷⁶ Sjoberg again pointed to the work of Dr. Parrish, and noted his conclusion that education funding resources and support provided to students with disabilities in large, low poverty suburban districts (Typology 6)⁷⁷ substantially surpasses that provided to students with disabilities in high poverty urban districts (Typology 8), even though special education student needs and resources in Typology 8 districts “very substantially exceed” those in

⁶⁸ Johnson Testimony, *Cleveland Transcript*, p. 212 lines 1-13; *See also*: Fleeter Testimony, *Cleveland Transcript*, p. 192 line 10 – p. 194 line 7; p. 274 line 14 – p. 275 line 2.

⁶⁹ *Id.*

⁷⁰ Quolke Testimony, *Cleveland Transcript*, p. 226 lines 19-25.

⁷¹ Quolke Testimony, *Cleveland Transcript*, p. 228 line 3 – p. 229 line 3; *see also*: Heard Testimony, *Cleveland Transcript*, p. 121 line 15 – p. 122 line 4.

⁷² Quolke Testimony, *Cleveland Transcript*, p. 228 line 3 – p. 229 line 3.

⁷³ Quolke Testimony, *Cleveland Transcript*, p. 229 line 12 – p. 230 line 21.

⁷⁴ Quolke Testimony, *Cleveland Transcript*, p. 230 line 22 – p. 231 line 5.

⁷⁵ “Updated Analysis of Ohio’s Special Education Weighted Funding Formula,” The Ohio Coalition for the Education of Children with Disabilities, May 2014, <https://www.ocecd.org/Downloads/OCECD%20Sp%20Ed%20Funding%20Update-Final%205%202014.pdf>.

⁷⁶ Sjoberg Testimony, *Cleveland Transcript*, p. 247 line 19 – p. 248 line 7.

⁷⁷ “Typology of Ohio School Districts,” Ohio Department of Education, accessed July 15, 2019 <http://education.ohio.gov/Topics/Data/Frequently-Requested-Data/Typology-of-Ohio-School-Districts>.

Typology 6 districts.⁷⁸ Sjoberg noted that the Individuals with Disabilities in Education Act (IDEA)⁷⁹ requires that students with disabilities have access to “free and appropriate public education.”⁸⁰ The Act also requires that students with disabilities be educated in the least restrictive environment possible.⁸¹ Citing the work of Dr. Thomas Hehir of Harvard University School of Education, however, Sjoberg testified that students with disabilities in large urban districts with high student poverty are segregated from their peers in large numbers and have less access to the general education curriculum than their non-disabled peers.⁸² Hehir found that enrollment in a Typology 8 district was a stronger factor than race or economic disadvantage in predicting whether students with disabilities would be in a segregated setting,⁸³ and that the more students with disabilities are segregated, the more poorly they perform on statewide tests.⁸⁴

3. Funding and achievement

Some speakers argued that increasing school funding is not necessarily an effective solution to improving student achievement generally, nor specifically to closing the achievement gap between white students and students of color.⁸⁵ Chad Aldis of the Thomas Fordham Institute found that according to state funding reports, there is “no obvious correlation” between spending amounts and academic achievement, and that “achievement doesn’t appear to increase as per-pupil funding increases.”⁸⁶ Aldis testified that the state’s funding system drives significantly more dollars to

⁷⁸ Sjoberg Testimony, *Cleveland Transcript*, p. 262 line 23-p. 263 line 8; *See also* report of Dr. Thomas B. Parrish, *Doe, et al. v Ohio, et al.*; *Civil Action 2:91-cv-00464*, p. 3.

⁷⁹ Individuals with Disabilities in Education Act, Pub. L. 101- 476, 104 Stat. 1142 (codified as amended 20 U.S.C. § 1400 et seq.).

⁸⁰ Sjoberg Testimony, *Cleveland Transcript*, p. 234 line 15 – p. 235 line 1.

⁸¹ Sjoberg Testimony, *Cleveland Transcript*, p. 235 lines 2-14.

⁸² Sjoberg Testimony, *Cleveland Transcript*, p. 244 lines 7-19; *See also*: Report of Dr. Thomas Hehir, *Doe, et al, v. Ohio, et al. Civil Action 2:9-cv-00464*, pp. 2-3. *See Appendix E(xii)(b)*.

⁸³ Sjoberg Testimony, *Cleveland Transcript*, p. 245 lines 4-9; *See also*: Report of Dr. Thomas Hehir, *Doe, et al, v. Ohio, et al. Civil Action 2:9-cv-00464*.

⁸⁴ Sjoberg Testimony, *Cleveland Transcript*, p. 245 lines 10-19; *See also*: Report of Dr. Thomas Hehir, *Doe, et al, v. Ohio, et al. Civil Action 2:9-cv-00464*.

⁸⁵ Lawson Testimony, *Cleveland Transcript*, p. 60 line 22 – p. 61 line 2; Aldis Testimony, *Cleveland Transcript*, p. 34 line 1 – p. 36 line 4.

⁸⁶ Aldis Testimony, *Cleveland Transcript*, p. 34 line 1 – p. 36 line 4; *for data explanation, see also*: p. 89 line 19 – p. 90 line 17; Aldis PowerPoint slides, *Appendix D(i)*.

districts with higher numbers of black and Hispanic students,⁸⁷ with no obvious effect on achievement.⁸⁸

Citing a recent analysis of National Assessment of Education Progress (NAEP) scores published by the Cato Institute, Greg Lawson of the Buckeye Institute noted that Ohio's test scores have remained relatively flat for 15 years, despite notable funding increases.⁸⁹ Lawson testified that according to the Legislative Services Commission and the Ohio Department of Education, core state funding for education more than doubled between 1998 and 2018.⁹⁰ He also noted that Ohio spends slightly more than the national average on a per-student basis, and as of 2014 ranked 20th nationally on per-pupil spending.⁹¹ Lawson suggested that the specific use of these funds, such as for increased administrative staff, rather than direct teaching staff, may be part of the reason such increases have not been effective at addressing concerns related to student achievement.⁹²

Other speakers offered alternative explanations. Kerstin Sjoberg urged caution when looking at reports or data that claim that there are higher expenditures in urban districts, or those that show higher expenditures without a change in student outcomes, particularly given Dr. Parrish's findings regarding the lack of complete or accurate state level data.⁹³ Stephen Dyer of Innovation Ohio illustrated that even if funding is increased, gains will necessarily be limited if that funding is not adequate to provide for necessary interventions and improvements.⁹⁴ Dr. Fleeter pointed out that Ohio may require more funding per student than average, because the state has very challenging demographics: it has more large urban areas than any other state except Texas and California; it also has a very large very poor rural area in Appalachia.⁹⁵ He noted that most states have only one or two of these challenging areas.⁹⁶ Fleeter also noted that the base adjustment the Ohio Department of Education does for "disadvantaged" students is 10%, while national research

⁸⁷ Aldis Testimony, *Cleveland Transcript*, p. 30 line 18 – p. 31 line 23.

⁸⁸ Aldis Testimony, *Cleveland Transcript*, p. 35 line 4 – p. 36 line 4.

⁸⁹ Lawson Testimony, *Cleveland Transcript*, p. 61 line 21 – p. 63 line 6; *see also*: Andrew J. Coulson, *State Education Trends: Academic Performance and Spending over the Past 40 Years*, Cato Institute, March 18, 2014.

⁹⁰ Lawson Testimony, *Cleveland Transcript*, p. 68 line 20 – p. 69 line 4; *see also*: Howard Fleeter, *20 Years of School Funding Post-DeRolph*, Ohio Education Policy Institute, August 2018.

⁹¹ Lawson Testimony, *Cleveland Transcript*, p. 70 lines 2-11.

⁹² Lawson Testimony, *Cleveland Transcript*, p. 72 lines 10-16; p. 73 lines 9-22.

⁹³ Sjoberg Testimony, *Cleveland Transcript*, p. 262 line 24 – p. 263 line 18.

⁹⁴ Dyer Testimony, *Cleveland Transcript*, p. 57 lines 7-15

⁹⁵ Fleeter Testimony, *Cleveland Transcript*, p. 275 lines 3-22.

⁹⁶ Fleeter Testimony, *Cleveland Transcript*, p. 275 lines 3-22.

suggests about 30% is what the real additional costs are.⁹⁷ When taking such expenditure needs into account, Fleeter calculated that major urban districts actually spend about \$2,000 *less* per pupil than the Typology 6 [wealthy, suburban] districts.⁹⁸

4. *Prioritizing evidence-based spending*

Regardless of the specific funding approach or priorities, nearly all speakers agreed that using evidence to determine student need, then funding that need at an adequate level that isn't overly reliant on property taxes is necessary in Ohio and across the country.⁹⁹ Evidence-based programs such as pre-k, extended school days, summer learning, lowered student/teacher ratios, enrichment activities, and parent/community engagement should be considered in any funding plan.¹⁰⁰ Quolke argued that any new funding formula should be able to withstand a bad economy,¹⁰¹ and include all possible sources of revenue/taxation.¹⁰² Najera testified that the effects of poverty are non-linear, and suggested applying a multiplier to the base cost of student education as the concentration of poverty goes up.¹⁰³ Najera also noted that all new funding formulas or proposals should be tested to ensure they produce the intended outcomes, and actually drive the necessary resources to those students with greatest need.¹⁰⁴ Further discussion of a number of alternative funding models and proposals is included in the final section of this report.

D. Private, Religious, and Community (Charter) Schools

Ohio families who do not wish to send their children to traditional, public neighborhood schools have the legal right to select among a network of alternatives, including private and religious institutions as well as a series of public community (charter) schools.¹⁰⁵ The Committee heard

⁹⁷ Fleeter Testimony, *Cleveland Transcript*, p. 257 line 20 – p. 259 line 13.

⁹⁸ Fleeter Testimony, *Cleveland Transcript*, p. 257 line 20 – p. 259 line 13.

⁹⁹ Dyer Testimony, *Cleveland Transcript*, p. 56 line 25 – p. 57 line 6; p. 42 line 16 – p. 43 line 7; p. 52 line 24 – p. 55 line 21; p. 94 line 17 – p. 95 line 1; Aldis Testimony, *Cleveland Transcript*, p. 39 lines 7-13; Fleeter Testimony, *Cleveland Transcript*, p. 196 lines 3-16; Najera Testimony, *Columbus Transcript*, p. 12 lines 26-36.

¹⁰⁰ Fleeter Testimony, *Cleveland Transcript*, p. 259 line 17 – p. 261 line 19; Dyer Testimony, *Cleveland Transcript*, pp. 54-55; 81-83.

¹⁰¹ Quolke Testimony, *Cleveland Transcript*, p. 252 line 24 – p. 253 line 8.

¹⁰² Quolke Testimony, *Cleveland Transcript*, p. 253 lines 9-21.

¹⁰³ Najera Testimony, *Columbus Transcript*, p. 10 lines 10-15.

¹⁰⁴ Najera Testimony, *Columbus Transcript*, p. 9 line 37 – p. 10 line 15; p. 12 lines 10-25; p. 22 lines 8-18.

¹⁰⁵ Community schools, which are often called charter schools nationally and in other states, are public schools created by Ohio law; are independent of any school district; and are part of the state's education program.

testimony regarding the merits of some of these “choice” schools, as well as some related civil rights concerns.

1. *Private and religious-based schools*

State funding opportunities provide scholarships for some students to attend private and religious based schools, offering families choices they may otherwise not be able to afford.¹⁰⁶ Students residing in failing public school districts, and those with demonstrated financial need, can receive EdChoice Scholarships¹⁰⁷ from the state to attend private and religious schools from Kindergarten through 6th grade.¹⁰⁸ Students with special needs can receive funding through the Jon Peterson Scholarship and the Autism Scholarship program.¹⁰⁹

Dr. Vincent de Paul Schmidt of the Archdiocese of Toledo praised these programs, noting that they have helped increase Catholic school enrollment in the state;¹¹⁰ but more importantly, they have offered choices to families who may not otherwise have high quality educational opportunities in their region.¹¹¹ Dr. Schmidt testified that the Archdiocese places its schools in “the area of some of the greatest needs,”¹¹² and boasts a 98% graduation rate as well as 92% college attendance.¹¹³ He credited small class sizes, specialty tutoring and training, flexible programming, robust social services, family engagement, and a positive school culture with these successes.¹¹⁴

Community schools are public schools of choice and are state and federally funded. These learning institutions are public, nonprofit, nonreligious schools that receive state and federal funds but are independent of traditional school districts. “Community Schools,” *Ohio Department of Education*, accessed July 13, 2019 <http://education.ohio.gov/Topics/Community-Schools>.

¹⁰⁶ Schmidt Testimony, *Cleveland Transcript*, p. 108 line 9 – p. 113 line 2.

¹⁰⁷ Also known as school choice “vouchers.” “EdChoice Scholarship Program,” *Ohio Department of Education*, accessed July 13, 2019, <http://education.ohio.gov/Topics/Other-Resources/Scholarships/EdChoice-Scholarship-Program>; see also: Schmidt Testimony, *Cleveland Transcript*, p. 165 line 24 – p. 166 line 12.

¹⁰⁸ See also: Schmidt Testimony, *Cleveland Transcript*, p. 107 line 24 – p. 108 line 3.

¹⁰⁹ “Jon Peterson Special Needs Scholarship Program,” *Ohio Department of Education*, accessed July 13, 2019, <http://education.ohio.gov/Topics/Other-Resources/Scholarships/Special-Needs-Scholarship>; “Autism Scholarship Program,” *Ohio Department of Education*, accessed July 13, 2019 <http://education.ohio.gov/Topics/Other-Resources/Scholarships/Autism-Scholarship-Program>; see also: Schmidt Testimony, *Cleveland Transcript*, p. 108 lines 4-8.

¹¹⁰ Schmidt Testimony, *Cleveland Transcript*, p. 108 lines 14-19.

¹¹¹ Schmidt Testimony, *Cleveland Transcript*, p. 108 line 22 – p. 109 line 7.

¹¹² Schmidt Testimony, *Cleveland Transcript*, p. 109 line 14 – p. 110 line 2.

¹¹³ Schmidt Testimony, *Cleveland Transcript*, p. 110 lines 3-12.

¹¹⁴ Schmidt Testimony, *Cleveland Transcript*, p. 109 line 14 – 112 line 3; p. 141 lines 7-22.

Schmidt noted that providing these additional supports increases the operational costs of the schools.¹¹⁵ He reported that 90% of the students in the Archdiocese' lowest economic schools are EdChoice students, not Catholic.¹¹⁶ EdChoice vouchers provide approximately \$6,000 to the schools, compared to what Schmidt estimated to be a \$9,000 or \$10,000 actual cost of education.¹¹⁷

Dr. Schmidt noted that private schools, including religious institutions, that accept EdChoice students must meet the same requirements as public schools for data reporting and standardized testing.¹¹⁸ He testified that the Catholic diocese in Toledo reports timely, accurately, and follows up with any subsequent questions.¹¹⁹ He also noted, however, that the state has continued to change graduation requirements, which has posed serious challenges for the schools.¹²⁰ He described such requirements as “arbitrary” and explained that sometimes the schools are not even aware of the requirements until half way through the school year.¹²¹ Schmidt also described the state's testing requirements as a “hinderance,”¹²² noting that while accepting EdChoice scholarships has allowed the schools to open their doors to many families who would not otherwise be able to afford to attend, it has also hindered teachers' abilities to focus on the teaching methods and school culture that has given them so much success.¹²³

Jan Resseger of the Heights Coalition for Public Education¹²⁴ raised some additional concerns about the use of public funding, through the EdChoice program, to support private school tuition. She pointed to a study¹²⁵ by sociologist Sean Reardon of Stanford University that found that society has re-segregated, with an income-inequality achievement gap that now surpasses the

¹¹⁵ Schmidt Testimony, *Cleveland Transcript*, p. 112 lines 4-10.

¹¹⁶ Schmidt Testimony, *Cleveland Transcript*, p. 147 lines 5-18.

¹¹⁷ Schmidt Testimony, *Cleveland Transcript*, p. 147 lines 5-18.

¹¹⁸ Schmidt Testimony, *Cleveland Transcript*, p. 163 line 7 – p. 164 line 11; p. 164 line 22 – p. 165 line 15.

¹¹⁹ Schmidt Testimony, *Cleveland Transcript*, p. 135 lines 15-22.

¹²⁰ Schmidt Testimony, *Cleveland Transcript*, p. 158 line 24 – p. 161 line 13.

¹²¹ Schmidt Testimony, *Cleveland Transcript*, p. 158 line 24 – p. 161 line 13.

¹²² Schmidt Testimony, *Cleveland Transcript*, p. 163 line 7 – p. 164 line 11; p. 164 line 22 – p. 165 line 15.

¹²³ Schmidt Testimony, *Cleveland Transcript*, p. 164 line 22 – p. 165 line 15.

¹²⁴ Heights Coalition for Public Education: <http://chuh.net/coalition/meeting-agendaminutes/> (last accessed July 15, 2019).

¹²⁵ Reardon, Sean, and Bischoff, Kendra. *Growth in the Residential Segregation of Families by Income, 1970-2009*. November 2011, Stanford University: <https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report111111.pdf> (last accessed July 15, 2019).

black-white achievement gap.¹²⁶ This gap is growing,¹²⁷ leaving “disadvantaged” children clustered in the same schools.¹²⁸ She further testified that real estate companies have been promoting neighborhoods with failing schools as a way for families to secure EdChoice vouchers, a practice she referred to as “educational redlining.”¹²⁹ Resseger testified that EdChoice vouchers take more money from the school district than the child’s per-pupil state aid, so the district loses local levy money on top of state aid for every voucher a child takes to a religious school.¹³⁰ She reported that EdChoice funding has expanded from \$337,700 in FY 15 to \$2,256,000 in FY 17, concluding: “The rapid expansion of this program is fiscally unsustainable for our school district ... eventually EdChoice vouchers will consume all of the district’s state aid and more.”¹³¹

Finally, Kerstin Sjoberg raised concerns that children who use EdChoice vouchers, and students with disabilities who accept money from the Ohio Autism Scholarship or the Jon Peterson Scholarship, are required to waive their right to a “free and appropriate public education,” and other civil rights protections, when they accept these funds for use at a private school.¹³² From a civil rights perspective, the denial of these protections raises concern regarding the appropriateness of using public funds in such private educational settings.

2. Community (charter) schools

Some public community (charter) schools are high-performing and may offer positive options for families in otherwise low performing or failing districts.¹³³ John Zitzner of Breakthrough Schools,¹³⁴ a local network of community schools in Cleveland, noted that community schools are

¹²⁶ Resseger Testimony, *Cleveland Transcript*, p. 286 lines 17-25.

¹²⁷ Resseger Testimony, *Cleveland Transcript*, p. 287 lines 1-7.

¹²⁸ Resseger Testimony, *Cleveland Transcript*, p. 287 line 14 – p. 288 line 1.

¹²⁹ Resseger Testimony, *Cleveland Transcript*, p. 287 line 22 – p. 288 line 2; p. 289 lines 2-12; p. 313 lines 2-14; p. 314 line 8 – p. 315 line 14.

¹³⁰ Resseger Testimony, *Cleveland Transcript*, p. 289 lines 19-25.

¹³¹ Resseger Testimony, *Cleveland Transcript*, p. 290 lines 1-13.

¹³² Students attending community (charter) schools retain these rights. *See*: Sjoberg Testimony, *Cleveland Transcript*, p. 238 line 5 – p. 240 line 5; p. 240 line 25 – p. 241 line 15.

¹³³ Zitzner Testimony, *Cleveland Transcript*, p. 117 lines 11-14.

¹³⁴ “About Breakthrough Schools,” *Breakthrough Schools*, accessed July 14, 2019, <https://breakthroughschools.org/about-us/>.

accountable to their districts,¹³⁵ must provide student data upon request,¹³⁶ and must accept any student who applies, as long as they have openings.¹³⁷ Zitzner reported that Breakthrough schools outperform all of the eight major school districts in Ohio, both on the performance index and the value-added rankings.¹³⁸ Zitzner also reported that in Cleveland, 71% of top quartile k-8 schools are charters.¹³⁹ Zitzner noted these successes despite expressing concern that community schools in Ohio reportedly receive just 3/5 the funding of district schools,¹⁴⁰ leaving the schools with fewer resources to meet students' needs.¹⁴¹ Zitzner testified, "Asking philanthropists to continue to fund public education is irrational, unfair, and unsustainable."¹⁴² He concluded that if community schools received even 80% of what the districts received, such funding would be sufficient; however "at 60%, it's not working."¹⁴³

Despite the successes of some community schools, several speakers raised serious concerns about the ability of community schools to meet public education needs:

- Steve Dyer of Innovation Ohio noted that overall, according to state report cards,¹⁴⁴ just 5.4% of public charter schools receive a standard report card rating of A or B on student performance growth measures, compared with 13.2% of neighborhood public schools in Ohio.¹⁴⁵
- Dyer also stated that Ohio transfers more state per-pupil money from school districts to charters than the state would provide a district for the same student, leaving districts to

¹³⁵ Zitzner Testimony, *Cleveland Transcript*, p. 116 lines 2-7.

¹³⁶ Zitzner Testimony, *Cleveland Transcript*, p. 133 line 22 – p. 134 line 18.

¹³⁷ Zitzner Testimony, *Cleveland Transcript*, p. 168 lines 12-22.

¹³⁸ Zitzner Testimony, *Cleveland Transcript*, p. 117 lines 11-14.

¹³⁹ Zitzner Testimony, *Cleveland Transcript*, p. 117 line 19 – p. 118 line 3; p. 120 lines 17-22.

¹⁴⁰ Zitzner Testimony, *Cleveland Transcript*, p. 118 lines 5-9; p. 119 lines 2-7.

¹⁴¹ Zitzner Testimony, *Cleveland Transcript*, p. 119 line 18 – p. 120 line 6; p. 129 lines 3-23.

¹⁴² Zitzner Testimony, *Cleveland Transcript*, p. 120 lines 7-9.

¹⁴³ Zitzner Testimony, *Cleveland Transcript*, p. 151 lines 14-22.

¹⁴⁴ Dyer Testimony, *Cleveland Transcript*, p. 92 lines 5-6.

¹⁴⁵ Dyer Testimony, *Cleveland Transcript*, p. 49 line 7 - p. 52 line 16. Note: Response from John Zitzner of Breakthrough Schools "I do dispute the allegation that "most charters don't perform as well as district schools" or some such wording. I believe if the commission compared apples to apples: brick and mortar urban charters vs. brick and mortar urban district schools, they would find quite a difference. The ONLY place charters can open are in distressed or failing districts... It isn't a fair comparison to contrast charters performance with all district schools around the state."

backfill that lost state revenue with local revenue.¹⁴⁶ He noted that some districts don't raise enough local revenue to cover the lost state revenue to charters so their kids get less overall revenue; in 2017 Innovation Ohio calculated that local school districts had to subsidize state funding losses to Ohio charter schools by \$222.1 million.¹⁴⁷

- Dr. Anne Galletta of the College of Education and Human Services at Cleveland State University testified that the establishment of charter schools in low income neighborhoods often relies on the closing or replacement of traditional district schools.¹⁴⁸
- Dr. Galletta also noted that according to the Fordham Institute, 8% of the state's community school sponsors were rated "poor", and 62% rated "ineffective" for the 2015-2016 school year.¹⁴⁹ She pointed out that Ohio received \$71 million in federal funds to expand and improve charters from 2015-2020; in April 2017, the state superintendent returned \$22 million of this money because only 5 of the 65 sponsors in the state received "effective" or "exemplary" scores.¹⁵⁰
- David Quolke of the Cleveland Teacher's Union pointed out that ECOT, the Electronic Classroom of Tomorrow, was a charter school closed in a scandal that cost an estimated \$6 million per year; he also noted that the operator of the school had contributed \$2 million to the legislators who wrote the charter school legislation.¹⁵¹

3. *Relationship to neighborhood public schools*

While no speaker argued against the merits of allowing families choices regarding their children's education, several did raise concern regarding the diversion of already limited/inadequate public

¹⁴⁶ Dyer Testimony, *Cleveland Transcript*, p. 51 line 19 - p. 52 line 7.

¹⁴⁷ Dyer Testimony, *Cleveland Transcript*, p. 52 lines 8-16; see also *The Ohio Charter School Accountability Project*, October 2017 Report: Know Your Charter, How Ohio Charter Schools Are Performing. Available at https://knowyourcharter.com/wp-content/uploads/2017/10/CharterReport_Oct2017.pdf (Note: The Ohio Charter School Accountability Project is a joint venture of the Ohio Education Association and Innovation Ohio.

¹⁴⁸ Galletta Testimony, *Cleveland Transcript*, p. 280 lines 10-13.

¹⁴⁹ Galletta Testimony, *Cleveland Transcript*, p. 282 line 23 – p. 283 line 5; See also Churchill, A., O'Leary, J., & Aldis, C. (2017). *On the right track: Ohio's charter reforms one year into implementation*. Technical report. Columbus, OH: Thomas B. Fordham Institute, p. 18. Retrieved from <https://fordhaminstitute.org/ohio/research/right-track-ohios-charter-reforms-one-year-implementation>.

¹⁵⁰ Galletta Testimony, *Cleveland Transcript*, p. 283 lines 9-15, See also O'Donnell, P. (2017, March 21). Ohio will forego \$22 million of its \$71 million federal charter school grant. *The Plain Dealer*. Retrieved from https://www.cleveland.com/metro/2017/04/ohio_will_forego_22m_o.html.

¹⁵¹ Quolke Testimony, *Cleveland Transcript*, p. 225 lines 14-24.

funds to schools that sit outside the traditional network of district-based neighborhood public schools. Dr. Galletta testified that school choice may exacerbate racial segregation and socioeconomic isolation in the traditional public schools.¹⁵² Representatives of public, community, and private schools alike agreed that community and private schools may not be equipped to serve all students the way that neighborhood public schools are required to be.¹⁵³ Quolke noted that many private and charter schools serve fewer children with disabilities and limited English proficient students than their neighborhood public schools.¹⁵⁴ Dr. Galletta noted that community and private schools may have variations in curriculum, services for children with disabilities, teacher philosophy, parent contracts, and behavior requirements that not all students and their families are able to meet.¹⁵⁵ Robert Heard, Senior Vice Chair of the Cleveland Metropolitan School District Board of Education, pointed out that unlike private schools and community schools, neighborhood public districts cannot close every school and start back up again.¹⁵⁶ He noted that district attempts to shut down a few schools and restart them that have shown mixed results, concluding “there is no ‘silver bullet’ to fix the schools.”¹⁵⁷

Some speakers argued that when public funds are used to support the transfer of some students to “choice” schools, schools within the public system often find themselves with even fewer resources, along with a higher proportion of students with the greatest need, which they are, nonetheless, required to serve.¹⁵⁸ While some speakers felt that the resulting competition would improve educational options,¹⁵⁹ Resseger concluded that competition is not the way to solve this problem: “we need to rise to the occasion and support an adequate and equitably distributed public system of funding.”¹⁶⁰

¹⁵² Galletta Testimony, *Cleveland Transcript*, p. 315 line 19 – p. 316 line 14; p. 316 line 20 – p. 317 line 11.

¹⁵³ Schmidt Testimony, *Cleveland Transcript*, p. 173 lines 4-23; Heard Testimony, *Cleveland Transcript*, p. 175 line 1 – p. 176 line 20.

¹⁵⁴ Quolke Testimony, *Cleveland Transcript*, p. 225 line 25 – p. 226 line 4.

¹⁵⁵ Galletta Testimony, *Cleveland Transcript*, p. 281 lines 10-20.

¹⁵⁶ Heard Testimony, *Cleveland Transcript*, p. 143 lines 1-6.

¹⁵⁷ Heard Testimony, *Cleveland Transcript*, p. 143 lines 1-6.

¹⁵⁸ Heard Testimony, *Cleveland Transcript*, p. 175 line 1 – p. 176 line 20.

¹⁵⁹ Baumgartner Testimony, *Cleveland Transcript*, p. 300 lines 2-15; Kilo Testimony, *Cleveland Transcript*, p. 305 line 19 – p. 306 line 1.

¹⁶⁰ Resseger Testimony, *Cleveland Transcript*, p. 305 lines 15-18.

E. School Accountability and Culture

1. Accountability

Accountability measures are often tied to education funding, with schools receiving financial incentives for meeting or exceeding certain accountability markers, or potentially facing losses or even closure for failing to meet them. Yet, several speakers raised concern regarding the effectiveness and impact of some of the most common accountability markers. Dr. Galletta testified that school closures based on test scores have led to confusion and instability, and exacerbated racial isolation.¹⁶¹ Robert Heard noted that lawmakers are usually not educators and may not be well positioned to understand the impact of the standards they set.¹⁶² When accountability measures come in the form of repeated standardized tests, teachers end up focusing on “teaching to the test” rather than broader student learning. This poses even further challenges when standardized tests, or testing requirements, frequently change.¹⁶³ Meryl Johnson shared her experience that constant testing makes it difficult for teachers to develop trusting relationships with students.¹⁶⁴ She testified that teachers leave the profession because they are being evaluated and punished for test scores.¹⁶⁵ This is particularly challenging because, as Johnson noted, teachers are responsible for just 20-30% of what happens in a student’s life; there is so much that goes on outside of the classroom that can affect student performance.¹⁶⁶ Finally, Johnson lamented that excessive testing results in less play time, music, arts, and creative programming for students.¹⁶⁷

Besides the direct impact on teachers and students, David Quolke noted that school report cards (based on student test results) may not identify progress even when schools are showing improvement. Very low performing schools can show significant gains but still receive “failing” grades.¹⁶⁸ Heard similarly testified that a school that improves graduation rates from 50% to 75% will still receive a “failing” score by state standards.¹⁶⁹

¹⁶¹ Galletta Testimony, *Cleveland Transcript*, p. 310 line 18 – p. 311 line 23; p. 315 line 19 – p. 316 line 14.

¹⁶² Heard Testimony, *Cleveland Transcript*, p. 162 line 24 – p. 163 line 4.

¹⁶³ Heard Testimony, *Cleveland Transcript*, p. 161 line 18 – p. 163 line 4.

¹⁶⁴ Johnson Testimony, *Cleveland Transcript*, p. 215 lines 1-4.

¹⁶⁵ Johnson Testimony, *Cleveland Transcript*, p. 215 lines 5-10.

¹⁶⁶ Johnson Testimony, *Cleveland Transcript*, p. 266 line 22 – p. 267 line 13; *see also*, Najera Testimony, *Columbus Transcript*, p. 13 lines 9-33; p. 14 lines 1-14.

¹⁶⁷ Johnson Testimony, *Cleveland Transcript*, p. 215 lines 11-25.

¹⁶⁸ Quolke Testimony, *Cleveland Transcript*, p. 269 line 14 – p. 270 line 13; p. 272 lines 2-18.

¹⁶⁹ Heard Testimony, *Cleveland Transcript*, p. 126 lines 2-23.

2. School Culture

Several speakers agreed that school culture is just as important and may be more important to student “success” than academics.¹⁷⁰ Dr. Schmidt said, “you don’t plan to that achievement, you plan to culture and culture breeds our achievement”¹⁷¹ In the spirit of building a better school culture, Robert Heard suggested focusing on teaching students *how* to learn, through project-based learning, rather than focusing on test-taking.¹⁷² Meryl Johnson suggested incorporating trauma informed practices into the classroom; she testified that addressing student trauma can elevate achievement, reduce aggressive outbursts, build student self-regulation and social skills, and support a sense of belonging.¹⁷³ Dr. Najera also recommended incorporating trauma-informed and restorative justice practices to avoid removing children from the classroom,¹⁷⁴ and mental health services to support students through trauma and other crises that teachers are not equipped to handle.¹⁷⁵ Though these and similar practices are not strictly focused on academic needs, speakers agreed they are critical to student success and should be supported as such.

In a step toward improving some concerns regarding school climate and culture, David Quolke noted that House Bill 318¹⁷⁶ provides for additional social-emotional learning opportunities, and includes \$2 million in competitive grants to help fund them.¹⁷⁷ Kerstin Sjoberg noted that Senate Bill 246,¹⁷⁸ also known as the “SAFE Act” would eliminate out of school suspension for the youngest students, kindergarten – 3rd grade, and require that in school suspension have a learning component.¹⁷⁹ Reducing out of school suspensions and requiring that in school suspensions have a learning component may be especially helpful for certain groups--Dr. Najera testified that

¹⁷⁰ Schmidt Testimony, *Cleveland Transcript*, p. 140 lines 1-15; p. 141 line 23 – p. 142 line 14; Heard Testimony, *Cleveland Transcript*, p. 153 line 8 – p. 156 line 14.

¹⁷¹ Schmidt Testimony, *Cleveland Transcript*, p. 140 lines 1-15.

¹⁷² Heard Testimony, *Cleveland Transcript*, p. 162 lines 1-23.

¹⁷³ Johnson Testimony, *Cleveland Transcript*, p. 219 lines 10-16.

¹⁷⁴ Najera Testimony, *Columbus Transcript*, p. 18 lines 15-33.

¹⁷⁵ Najera Testimony, *Columbus Transcript*, p. 17 line 36 – p. 18 line 14.

¹⁷⁶ Sub. H.B. 318, 132nd General Assembly (Ohio 2018) (enacted) <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-318>.

¹⁷⁷ Quolke Testimony, *Cleveland Transcript*, p. 271 lines 5-15.

¹⁷⁸ Sub S.B. 246, 132nd General Assembly (Ohio 2018) <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-246>.

¹⁷⁹ Sjoberg Testimony, *Cleveland Transcript*, p. 272 line 23 – p. 273 line 7.

suspensions and expulsions vary greatly by race, ethnicity, gender, and SES and may disproportionately impact children of color and boys.¹⁸⁰

Meryl Johnson noted that in 2018 the State Board of Education came up with alternatives to test taking for students to graduate, including graduating based on GPA, attendance, community service, and/or a capstone project. Johnson reported that graduation rates went up as a result.¹⁸¹ The State Board of Education recommended to extend these choices into the 2019/2020 school year; but, the legislature chose not to do so.¹⁸² Currently students are back to testing as the only option.¹⁸³ Johnson urged reconsideration, noting that having such options is a better way to evaluate students and determine accountability for teachers and schools.¹⁸⁴

F. Alternative Funding Proposals

1. *Cupp-Patterson and DeWine Plans*

Dr. Najera of the Children's Defense Fund-Ohio provided a brief overview of two education funding reform proposals: one presented by Representatives Bob Cupp (R – Lima) and John Patterson (D – Ashtabula); the other proposed by Governor Mike DeWine (R). Najera noted that both the DeWine and Cupp-Patterson plans address non-instructional needs of children, especially for economically disadvantaged children and those experiencing trauma; but, the Cupp-Patterson plan is not necessarily about new funding.¹⁸⁵

Najera explained that under Governor DeWine's plan:

- 122 of 610 school districts with the highest concentrations of low-income students would receive maximum benefit; the proposal includes non-instructional supports like after school programs, vision screening, health services, and mental health counseling.¹⁸⁶

¹⁸⁰ Najera Testimony, *Columbus Transcript*, p. 24 lines 21-40.

¹⁸¹ Johnson Testimony, *Cleveland Transcript*, p. 267 line 14 - p. 269 line 13.

¹⁸² Johnson Testimony, *Cleveland Transcript*, p. 268 line 19 - p. 269 line 6.

¹⁸³ Johnson Testimony, *Cleveland Transcript*, p. 267 line 14 - p. 269 line 13.

¹⁸⁴ Johnson Testimony, *Cleveland Transcript*, p. 267 line 14 - p. 269 line 13.

¹⁸⁵ Najera Testimony, *Columbus Transcript*, p. 19 lines 3-18.

¹⁸⁶ Najera Testimony, *Columbus Transcript*, p. 6 lines 1-12.

- The DeWine plan directs additional funding to most vulnerable children, but does not alter the base funding, instead maintaining it at 2019 levels.¹⁸⁷
- The DeWine plan maintains special education funding at 2019 levels.¹⁸⁸

Najera described the Cupp-Patterson Plan as a “rational input based full funding methodology that determines critical components of an adequate education” and provides funding based on that.¹⁸⁹

Najera noted:

- the plan “... commits a study to determine desirable academic social and emotional services that should be provided for those children living in poverty and the cost of those plans ...”¹⁹⁰
- the plan does not have a special education component in the formula but does call for an additional study to be done on the cost of special education.¹⁹¹

Najera further noted that Ohio has operated with funding guarantees for 30 years to ensure that wealthy districts do not lose money as the funding formulas change.¹⁹² Eighty-two percent of Ohio schools currently have such a guarantee, representing over 500 districts.¹⁹³ The Cupp-Patterson proposal decreases some of these guarantees. But under the plan 20% of the districts with the highest concentration of poverty still receive no additional funding.¹⁹⁴ As such, Najera pointed out that the Cupp-Patterson formula did not necessarily yield the anticipated outcomes, leaving some of the poorest districts with no additional funding.¹⁹⁵ She suggested that it might not make sense to try to fit all 610 districts into the same formula.¹⁹⁶ She also highlighted the importance of testing

¹⁸⁷ Najera Testimony, *Columbus Transcript*, p. 6 lines 29-37; p. 20 lines 7-12.

¹⁸⁸ Najera Testimony, *Columbus Transcript*, p. 21 lines 27-28.

¹⁸⁹ Najera Testimony, *Columbus Transcript*, p. 7 lines 2-12; p. 20 lines 13-22.

¹⁹⁰ Najera Testimony, *Columbus Transcript*, p. 7 lines 20-30.

¹⁹¹ Najera Testimony, *Columbus Transcript*, p. 21 lines 17-25.

¹⁹² Najera Testimony, *Columbus Transcript*, p. 8 lines 13-22.

¹⁹³ Najera Testimony, *Columbus Transcript*, p. 8 lines 13-22.

¹⁹⁴ Najera Testimony, *Columbus Transcript*, p. 8 lines 13-28; p. 9 lines 13-20.

¹⁹⁵ Najera Testimony, *Columbus Transcript*, p. 20 lines 18-22.

¹⁹⁶ Najera Testimony, *Columbus Transcript*, p. 21 line 35 – p. 22 line 7.

the efficacy of *any* new formula to determine whether or not the formula actually provides more funding to the districts in most need.¹⁹⁷

2. *The Cleveland Plan*

The Cleveland plan is a current initiative in the city of Cleveland to “transition from a traditional, single-source school district to a new system of district and charter schools that are held to the highest standards and work in partnership to create dramatic student achievement gains for every child.”¹⁹⁸ Robert Heard of the Cleveland Metropolitan School District noted that the plan allows principals to determine and budget for their individual schools’ needs for the year.¹⁹⁹ The plan is reviewed periodically throughout the year, and adjustments are made as necessary.²⁰⁰ Heard described the plan as successful,²⁰¹ and noted that the plan is able to “supply the supports that those buildings need to be successful.”²⁰² Heard recalled that before the Cleveland Plan, resources were often distributed to individual school buildings without input from the principal, or regard for the individual school building’s needs.²⁰³ Involving such stakeholders in the decision making process has allowed the district to establish more positive accountability for improving results.²⁰⁴

The Cleveland plan was supported by other speakers as well; Quolke credited the plan with uniting the city to pass a tax levies to support the schools in 2012 and again in 2016, after nearly 20 years without increases.²⁰⁵ Robert Kilo of Breakthrough Schools also noted that the Cleveland Plan has brought people together across traditional political divides, and prioritized student needs.²⁰⁶

¹⁹⁷ Najera Testimony, *Columbus Transcript*, p. 9 line 37 – p. 10 line 15; p. 12 lines 10-25; p. 22 lines 8-18.

¹⁹⁸ “The Cleveland Plan,” *Cleveland Metropolitan School District*, accessed July 19, 2019, <https://www.clevelandmetroschools.org/Page/532>.

¹⁹⁹ Heard Testimony, *Cleveland Transcript*, p. 154 line 14 – p. 156 line 14.

²⁰⁰ Heard Testimony, *Cleveland Transcript*, p. 143 lines 7-14.

²⁰¹ Heard Testimony, *Cleveland Transcript*, p. 155 lines 8-14.

²⁰² Heard Testimony, *Cleveland Transcript*, p. 155 lines 8-14.

²⁰³ Heard Testimony, *Cleveland Transcript*, p. 155 line 15 – p. 156 line 14.

²⁰⁴ Heard Testimony, *Cleveland Transcript*, p. 155 line 15 – p. 156 line 14.

²⁰⁵ Quolke Testimony, *Cleveland Transcript*, p. 230 line 22 – p. 231 line 5.

²⁰⁶ Kilo Testimony, *Cleveland Transcript*, p. 292 line 21; p. 307 line 9 – p. 308 line 1.

3. *Pathway to Student Success (PASS): An Evidence Based Model*

Between 2009 and 2011 the State of Ohio implemented what became known as the Evidence Based Model²⁰⁷ for education funding reform. Steve Dyer testified that this effort was in response to the Ohio Supreme Court's call for a systemic overhaul that reduces the need for property tax to pay for schools,²⁰⁸ and he noted that the second year of the initiative was the only year on record that the state provided more money for schools than local taxpayers.²⁰⁹ The model considered specific, research-based interventions to improve student achievement and then fully funded those interventions.²¹⁰ For example, the model required and paid for a 15:1 student teacher ratio in grades K-3 as well as all day kindergarten.²¹¹ It also considered the educational attainment of parents when calculating challenges districts face,²¹² and implemented family and community engagement teams.²¹³ It provided enrichment activities such as reading programs and museum trips for families with less educated parents and students who may not have had those opportunities.²¹⁴

Dyer noted that the plan received the Frank Newman Award in 2010 from the Education Commission of the States for being the country's most "bold, courageous, non-partisan" education reform in 2009.²¹⁵ He pointed to studies showing that small classes led to significant improvements in reading and math, with the greatest benefits reaching students who started in small classes early.²¹⁶ He also noted that an estimated 19% of an all-day kindergartner's startup cost can be saved down the road because less intervention will be needed later on in that student's career.²¹⁷ The model was not continued; but, Dyer noted that the state of Wyoming implemented a very

²⁰⁷ "Pathway to Student Success (PASS) Form," Ohio Department of Education, Revised March 29, 2010, <https://education.ohio.gov/getattachment/Topics/Finance-and-Funding/State-Funding-For-Schools/Financial-Reports/District-Payment-Reports/PASS-Summary-FY10-11v2.pdf.aspx> (last accessed July 11, 2019).

²⁰⁸ Dyer Testimony, *Cleveland Transcript*, p. 52 line 24 – p. 53 line 3.

²⁰⁹ Dyer Testimony, *Cleveland Transcript*, p. 53 lines 10-16.

²¹⁰ Dyer Testimony, *Cleveland Transcript*, p. 52 line 24 – p. 55 line 21.

²¹¹ Dyer Testimony, *Cleveland Transcript*, p. 54 lines 6-9.

²¹² Dyer Testimony, *Cleveland Transcript*, p. 54 line 25 – p. 55 line 12.

²¹³ Dyer Testimony, *Cleveland Transcript*, p. 55 lines 16-21.

²¹⁴ Dyer Testimony, *Cleveland Transcript*, p. 81 line 7 – p. 83 line 11.

²¹⁵ Dyer Testimony, *Cleveland Transcript*, p. 52 line 24 – p. 53 line 9.

²¹⁶ Dyer Testimony, *Cleveland Transcript*, p. 56 lines 1-11.

²¹⁷ Dyer Testimony, *Cleveland Transcript*, p. 56 lines 15-24.

similar model in 2005 and has since doubled its per-pupil funding commitment, reduced reliance on local property tax, and risen to the 7th rated school system in the country.²¹⁸

4. *Educational Savings Accounts*

Greg Lawson on the Buckeye Institute argued that establishing individual Educational Savings Accounts (ESAs) for each child, and allowing parents to take that money to whatever school they wish—public, charter, or private,²¹⁹ ---would allow parents to have more control over their children’s education.²²⁰ He and others argued that such mobility would allow increased competition within the education system, purporting that such competition is a healthy way to improve education services.²²¹ Lawson cautioned that ESAs must also address poverty, housing, jobs, and other non-academic needs of the families.²²²

FINDINGS AND RECOMMENDATIONS

Among their duties, advisory committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.²²³ The Ohio Advisory Committee heard testimony that the State’s allocation of education funding resources are insufficient to meet the state’s constitutional requirement to provide a “thorough and efficient” system of common schools. Additionally, this inadequacy may create and/or exacerbate disparities in educational access and outcomes on the basis of several federally protected categories, including race, color, national origin, and/or disability status.

Ohio offers a mosaic of education opportunities to its students, including students from disadvantaged backgrounds. They include traditional public schools, private schools including religious schools, community or charter schools, magnet schools, and schools with special

²¹⁸ Dyer Testimony, *Cleveland Transcript*, p. 57 line 16- p. 59 line 6.

²¹⁹ Lawson Testimony, *Cleveland Transcript*, p. 76 line 11 – p. 77 line 8.

²²⁰ Lawson Testimony, *Cleveland Transcript*, p. 63 line 16 – p. 64 line 14.

²²¹ Baumgartner Testimony, *Cleveland Transcript*, p. 300 lines 2-15; Kilo Testimony, *Cleveland Transcript*, p. 305 line 19 – p. 306 line 1.

²²² Lawson Testimony, *Cleveland Transcript*, p. 84 line 8 – p. 85 line 14.

²²³ 45 C.F.R. § 703.2.

educational programs. Nonetheless, despite improvements, disparities continue to exist, and they need to be forthrightly addressed.

The Committee acknowledges that funding is but one component in the quest to improve student outcomes,²²⁴ but it remains an essential element in providing a constitutionally required “thorough and efficient system of common schools.”

Below, the Committee offers the Commission a summary of concerns identified throughout the Committee's inquiry. Following these findings, the Committee proposes for the Commission's consideration several recommendations that apply both to the State of Ohio and the nation as a whole.

A. Findings

1. The Ohio Supreme Court previously ruled that the State legislature has a constitutional obligation to fund a “thorough and efficient system of common schools,”...an obligation it has yet to fulfill.²²⁵
2. The current state education funding formula in Ohio is based on the available state budget, rather than on an objective measure of student need. The state does not collect/maintain the necessary data to accurately evaluate or determine student need.
3. Inadequate resources have the most significant impact on impoverished school districts, districts predominantly serving students of color, and students with disabilities.
4. Overreliance on property taxes to fund public education increases the disparity between wealthy and lower income districts. Tax cuts, including business tax abatements and incentives, and corporate income tax elimination, may exacerbate challenges to fund education adequately in the state, and it may also contribute to generational poverty and inequalities.

²²⁴ See, for example, the study discussion the role of the family in understanding the problem of school suspensions. Nicholas Zill & W. Bradford Wilcox, *The Black-White Divide in Suspensions: What is the Role of the Family?*. Institute for Family Studies, November 19, 2019. <https://ifstudies.org/blog/the-black-white-divide-in-suspensions-what-is-the-role-of-family?> On the other hand, actual school suspension policies may contribute to serious social problems. See Lorelei Laird, “Students of color with disabilities are being pushed into the school-to-prison pipeline, study finds.” ABA Journal, July 24, 2019.

²²⁵ The Committee notes that some effort is being made in the Ohio legislature to address the problem and urges that more vigorous action needs to be pursued. See “Ohio House Speaker Larry Householder proposed changing Ohio’s education funding system Wednesday,” Cleveland Plain Dealer, November 21, 2019.

5. State funding opportunities provide scholarships for many poor and minority students in low income districts to attend private and religious based schools, offering families choices they may otherwise not be able to afford. But:
 - a) by accepting such funding, non-public schools are required to adhere to state regulations and standards, such as standardized testing, that may limit their ability to respond to student needs in the way that they would like;
 - b) publicly funded scholarships, or “vouchers,” may increase racial, ethnic, and socioeconomic segregation in Ohio schools; they may also deplete funding available for traditional public schools;
 - c) in some circumstances, by accepting public scholarships, students with disabilities must waive their right to certain federal protections against discrimination and segregation in educational settings.
6. Community schools, also known as “charter” schools, have had a mixed record with respect to improving student achievement. While some community schools may provide a high-quality educational opportunity to families that could not afford to attend private school, some data suggest that most community schools perform the same or worse than traditional neighborhood public schools regarding student achievement.
7. Private schools and community schools may not be equipped to accommodate all students, such as students with disabilities and English Language Learners, in the same way that traditional neighborhood schools are required to be.
8. School accountability measures, particularly those that tie funding to student achievement, may unfairly penalize schools already struggling to serve the highest needs students. Such measures may also exacerbate racial and socioeconomic segregation in schools.
9. Implementing project-based learning; using trauma informed teaching and discipline practices; eliminating or reducing suspensions and expulsions; and instituting additional support services, such as increasing mental health practitioners, may help to provide more equitable educational opportunity.
10. Proposed alternative funding formulas may or may not actually increase funding for schools in the greatest need. Any new funding formula should be tested to ensure that additional funding is directed to the districts in greatest need.
11. The state of Ohio implemented funding reforms between 2009 and 2011 that reduced dependence on property taxes, while fully funding and implementing a series of research-based interventions in the schools. The reforms correlated with significant improvement in student achievement. While the initiative was not continued, a comparable initiative implemented in Wyoming showed similar success.

B. Recommendations

1. The U.S. Commission on Civil Rights should conduct a study to review the impact of the U.S. Supreme Court's *San Antonio v. Rodriguez* decision. The Commission's study should specifically consider the impact of the Court's declaration that: (a) education is not a fundamental right, and (b) poverty is not a suspect category for equal protection purposes.
2. The U.S. Commission on Civil Rights should urge the Ohio Supreme Court to establish a task force to report on how to address the lack of a remedy for concerns regarding the constitutional right to equal education associated with the final *DeRolph* decision.
3. The U.S. Commission on Civil Rights should urge the U.S. Congress to:
 - a) incentivize states (including Ohio) to adopt equitable public-school finance systems;
 - b) increase federal funding to supplement state funding with a goal to provide meaningful educational opportunity on an equitable basis; and,
 - c) promote the collection, monitoring, and evaluation of school spending data and make it available to the public.
4. The U.S. Commission on Civil Rights should urge the Ohio Legislature to:
 - a) commission an independent study to more accurately evaluate the amount of funding necessary to meet all students' needs, particularly those in underperforming districts;
 - b) seek to reduce reliance on property taxes for public education funding in any new funding formula it establishes;
 - c) commission an independent study to determine the impact of directing public funds to private schools and community schools, particularly on (i) student achievement outcomes, (ii) racial and economic segregation in public schools, (iii) integrated educational opportunities for students with disabilities.
5. The U.S. Commission on Civil Rights should urge the Ohio Department of Education to:
 - a) incentivize schools, particularly those in underperforming districts, to implement evidence-based practices such as project-based learning, trauma informed teaching and discipline practices, and increased mental health services, by fully funding such interventions;
 - b) incentivize districts to expand initiatives like the Cleveland Plan that seek to provide more autonomy to individual schools in determining and prioritizing their students' needs.

APPENDIX

- A. Cleveland Agenda
- B. Speaker Bios (Cleveland)
- C. Meeting Transcripts
 - i. September 14, 2018, Cleveland OH
 - ii. April 16, 2019, Columbus OH (Community Forum)
- D. Speaker Presentations (Cleveland) (PPT)
 - i. Chad Aldis
 - ii. Howard Fleeter
- E. Written Testimony
 - i. Breakthrough Schools
 - ii. Dyer Written Testimony
 - iii. Fitch Written Testimony
 - iv. Fleeter Written Testimony
 - v. Frank Written Testimony
 - vi. Galletta Written Testimony
 - vii. Gibson Written Testimony
 - viii. Jagers Written Testimony
 - ix. Lawson Written Testimony
 - x. Najera Written Testimony
 - xi. Quolke (supporting documents)
 - xii. Resseger Written Testimony
 - xiii. Sjoberg Written Testimony and supporting documents
 - a. Parrish Report, included in *Sjoberg Written Testimony*, pp. 121-135
 - b. Hehir Report included in *Sjoberg Written Testimony*, pp. 85-120
 - xiv. Steinglass Written Testimony

Documents available at:

Cleveland OH, September 14, 2018:

<https://www.facadatabase.gov/FACA/apex/FACAPublicCommitteeDetail?id=a0zt0000000j71GAAQ>

Columbus OH, April 16, 2019:

<https://www.facadatabase.gov/FACA/apex/FACAPublicCommitteeDetail?id=a0zt0000001Ll8EAAS>

COMMITTEE MEMBER STATEMENTS

1. David Forte, Concurring
2. Lee Strang, Concurring
3. Mark Strasser, Concurring

David Forte, concurring.

I associate myself with the concurrence by Lee Strang, and I add these further observations.

Although most of the findings and the recommendations of the Committee are appropriate, its attempt to place pressure on the courts to change two significant precedents is beyond the proper role of the Committee. Treating judicial decisions as political determinations and approaching the courts not as a party but as a political pressure group is disrespectful to the rule of law.

In *San Antonio Independent School District v. Rodriguez*,¹ a precedent established nearly half a century ago, the United States Supreme Court determined that, for purposes of the Equal Protection Clause of the United States Constitution, education is not a fundamental right and that poverty (however defined) is not a suspect classification. This meant that the constitutional legitimacy of school funding schemes would be scrutinized on a rational basis standard. The Court recognized the “infinite variables affecting the educational process,”² making the issue clearly beyond the competency of the judicial branch. The Court also noted “the unsettled and disputed question whether the quality of education may be determined by the amount of money expended for it.”³ The conflicting testimony that the Committee received during its investigation of the funding mechanism in Ohio demonstrate the validity of the Court’s judgment.

In its recommendations, the Committee asks that the United States Civil Rights Commission study the impact of the decision of the Court in *Rodriguez*. This is just a backhanded attempt to place political pressure on the Court to make a policy decision. In effect, it asks the Court to step out of its judicial role and issue a political declaration. Such an attitude is contrary to the respect we should evince to the separation of powers.

The same considerations apply to the Committee’s attitude towards the *DeRolfe* litigation before the Ohio Supreme Court. The Report notes that the Ohio Supreme Court “granted the State a writ of prohibition in 2003 barring any further judicial review of the case, stating that ‘the duty now lies with the General Assembly to remedy an education system that has been found by the majority in *DeRolph IV* to still be unconstitutional.’”⁴ In my opinion, that is where the remedy should lie. In our legal system, the “rights” that we enjoy are negative rights, that is, they are immunities from abridgement by the government. As such, they are appropriate subjects for judicial determination. But the right “to a thorough and efficient system of common schools,”⁵ is a positive right, that is a right to favorable governmental action. Such positive rights, like the right to safety, are not easily reducible to judicial determination, as their complexity, contingency, and variability are more appropriately placed in the political branches. The very contradictory rulings and findings in the *DeRolfe* litigation demonstrate that taxation and school funding are not ripe subjects for judicial determination. I believe that the recommendation that the Ohio Supreme “establish a task force to report on how to address the lack of a remedy for concerns regarding the constitutional right to equal education associated with the final *DeRolph* decision” is misplaced. In fact, the Ohio Constitution specifically lodges the responsibility in providing “a thorough and efficient system of common schools” in the Assembly. That is where it should remain.

¹ 411 U.S. 1 (1953)

² *Id.*, at 24.

³ *Id.* at 23-24.

⁴ *Report, infra*, at 4.

⁵ Ohio Const., Art VI, Sec. 2.

Lee J. Strang, concurring. I associate myself with the concurrence by David Forte, and I add these further observations that show that the Committee's report does not adequately identify the many positive contributions of charter and private schools, and vouchers.

The Ohio Advisory Committee's report, *Education Funding and Civil Rights in Ohio*, arose out of the Committee's decision, in early 2017, to study student educational funding in Ohio. This decision, in turn, was the product of Ohio's diverse educational offerings for its citizens and their children, its constitutional commitments to support education and to protect religious liberty, and the case-law (both in Ohio and federal courts) on those topics. Ohio has hundreds of thousands of its young people educated in charter, private, and religious schools. It also has one of the first and one of the largest voucher programs in the nation. And yet, the Committee's report is by turns blind to and one-sided against charter, private, and religious schools.

The report evinces an asymmetry between its treatment of traditional public schools and charter and private schools. The report (rightly) identifies many of the challenges facing traditional public schools, including funding. However, when the report turns to charter and private schools, it does not identify the challenges faced by them—many of which, including funding, are similar. Moreover, for some of the criticisms leveled against charter and private schools, such as charter schools perform less well than traditional public schools on state report cards, there is no parallel criticism of the poor academic performance of many traditional public schools.

The Committee revealed special hostility to identifying the positive contributions of religious and charter schools. In instances when language was proposed that would identify some of the many ways in which charter and religious schools provide value to Ohio families, the Committee voted to reject that language. For example, the Committee rejected language that would have provided a more-balanced account of vouchers and the private schools that benefit from them, and for unsound reasons. The report currently finds that vouchers may cause a variety of harms. (29.) Language was proposed that would have balanced the report's unflaggingly-negative assessment: "vouchers may also alleviate segregation by providing students with opportunities to attend schools with different demographic make-ups." This finding was supported by testimony in the record. The Committee rejected the proposed language because this evidence was "not persuasive." There was no counter evidence identified to show why the testimony was unpersuasive, nor was this free-ranging "not persuasive" standard employed against other findings or testimony.

The Committee's hostility to private and religious schools was so powerful that it even rejected a proposal to merely *study* the impact of vouchers on students' and parents' constitutional rights to religious liberty and of parents to rear their children. This, despite recommending study on the potential *harms* caused by vouchers! It was then a foregone conclusion that the Committee would also reject proposed language to increase charter and private school funding to support parents' and students' constitutional rights.

In the end, the Committee's report is ironic. The Committee chose school funding in part because of Ohio's robust charter and private school offerings and voucher program, and yet the Committee's report identifies only harm caused by them and ignores their value to countless Ohio families.

Mark Strasser, Concurring

I support several of the recommendations here. However, I cannot support a recommendation that a study be performed on the effects of San Antonio Independent Schools District v. Rodriguez. There, the Court did not change current law, so the decision allowed existing financing disparities to continue. What would have happened if the Court had issued a different decision? That would be very difficult to figure out without knowing what the Court would have said and what the rationale would have been. Even if, for example, the Court had held that there is a fundamental right to education under the United States Constitution, it would be difficult to predict what the states would have done. In Ohio, where a right to an education has been recognized under the Ohio Constitution, we have not had as much change as might have been hoped, so it would at best be speculative to guess what would have occurred had a different decision been issued by the United States Supreme Court. Certainly, studies can be performed to find out which education funding policies adopted by different states have proven most effective, but that can be done without invoking San Antonio. The recommendation about San Antonio is not only a distraction but, if taken seriously, would involve the use of resources that might be directed in other ways more likely to promote better education in Ohio.

My greater worry involves some of the recommendations that were not put forward. Students should not be forced to have their faith tradition (whether traditional or nontraditional) undermined as a price of getting a better education. In *Zelman v. Simmons-Harris* where the Cleveland school voucher system was at issue, Justice Souter pointed out in his dissent that “almost two out of three families using vouchers to send their children to religious schools did not embrace the religion of those schools.” *See* 536 U.S. 639, 704 (2002). Such a statistic at least suggests that parents and students were choosing *between* getting a good education and having their faith tradition affirmed. By the same token, students should not have to choose between having their sexual orientation or identity affirmed and getting a good education. In *Zelman*, Justice Souter pointed out that over 85% of the schools receiving vouchers were religiously based. *See Zelman*, 536 at 703 (Souter, J., dissenting). Religiously based schools might take any number of approaches with respect to making sure that all students who attend feel welcome and affirmed. (When I asked one of our speakers in writing how students with nontraditional sexual orientations or identities were made to feel welcome, I received no response.) When the Legislature considers ways to improve educational outcomes, it should adopt approaches that do not require individuals to sacrifice essential elements of self in order to receive a better education. The United States Supreme Court has already suggested that the state need not turn a blind eye to school practices discriminating against groups. *See Bob Jones University v. United States*, 461 U.S. 574 (1983). The Ohio Legislature should keep that in mind.

We heard testimony that urban schools may require more funding per student to achieve educational gains. When the Legislature considers ways to achieve more equitable funding of the schools, it should consider these differing costs when deciding how funds should be allocated. The Ohio Legislature should be commended for seeking to find ways to better education in Ohio and should be urged to take into account some of the nonobvious barriers to quality education that are too often underappreciated.

**Ohio Advisory Committee to the
United States Commission on Civil Rights**



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