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The *Williams* Complaint and the Role of the Learning Environment in Education Adequacy: "You Count; Do Well"

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THE *WILLIAMS* COMPLAINT AND THE ROLE OF THE LEARNING ENVIRONMENT IN EDUCATION ADEQUACY: "YOU COUNT; DO WELL"[1]

Abstract: Students attending under-resourced public schools are held to the same statewide standards as their peers in wealthier districts, but are attempting to learn under conditions of neglect. In most states, students lacking qualified teachers, safe classrooms, textbooks, and other learning resources have no power to change their learning environments. Due to the lack of a federal constitutional right to education, efforts to improve school conditions by invoking general state protections have had mixed success in enhancing the quality of education in the United States. In California in 2004, however, the *Williams v. State* student class action lawsuit set some of the first concrete requirements for public school conditions and created a comprehensive monitoring mechanism to involve students and parents in school oversight. The *Williams* complaint model should be modernized and adopted by other states to restore agency to students, empower teachers to engage in school reform, and ensure efficient use of state resources in addressing individual school site problems. Furthermore, establishing legal requirements for students' "minimal education needs" can delineate clear instances for court intervention in local policy, and set the groundwork for more ambitious education equity lawsuits in the future.

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[1] Expert Report of Thomas Sobol at 4, 9, Williams v. State, No. 312236 (Cal. Super. Ct. May 17, 2000), https://decentschools.org/expert_reports/sobol_report.pdf [https://perma.cc/LVQ7-FXP8] (calling for state monitoring of three essential school conditions—competent teachers, sufficient instructional materials, and safe facilities). Former New York Commissioner of Education Thomas Sobol identified the critical role of the learning environment in shaping students' identity and self-worth, and reasoned:

> [A]sking children to attend school in insulting environments where the plaster is crumbling, the roof is leaking, and classes are being held in unlikely places because of overcrowded conditions has an ongoing, repetitive undercutting effect, sending a message of diminished value to the children . . . . The constancy of these inhumane environments—the presence of rats or their feces in classrooms again and again, the dailiness of crumbling buildings—perpetuates a cumulative, ongoing, unending depressive effect of the total environment for the students. By contrast, sending children to school in adequate facilities sends the opposite message: You count; do well.

Id. at 9.

INTRODUCTION

Right now, over six million California public school students are already preparing for their end-of-year state assessments.[2] They are taking quizzes, turning in homework, and collaborating on group projects.[3] Most will sit for the same final exams, and will be required to meet certain benchmarks in order to progress to the next grade and eventually graduate.[4] These students, however, are preparing to meet the state of California's standardized academic expectations under very different circumstances.[5] Some students are being coached to take the state science exam by teachers with advanced biology and education degrees, while others are depending on instructors who lack basic state credentials.[6] Some students are benefiting from specialized programming to meet their language or emotional behavioral needs, while others who qualify for tailored instruction and support are struggling on their own to keep up with the general curriculum.[7] All students may walk into first period concerned about their game later, or their latest friend drama, or whether their teacher has

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[2] *Fingertip Facts on Education in California*, CAL. DEP'T EDUC. (Oct. 12, 2020), https://www.cde.ca.gov/ds/sd/cb/ceffingertipfacts.asp [https://perma.cc/FQ8X-AQZ7] (breaking down the demographics of the 6,163,001 students enrolled in California public schools in 2019); *see* Sonali Kohli, *Two-Thirds of California Students Didn't Meet Science Standards. Here's Why*, L.A. TIMES (Feb. 13, 2020), https://www.latimes.com/california/story/2020-02-13/california-science-test-scores [https://perma.cc/UK33-FWZ7] (reviewing California high school students' performance on the 2019 Smarter Balance Summative Assessments and Next Generation Science Standards, and identifying a persistent achievement gap in science).

[3] *See* Kohli, *supra* note 2 (noting the shift in the state promulgated curriculum toward test preparation through inquiry-based learning).

[4] *See* Expert Report of Michael Russell at 7–8, *Williams*, No. 312236, https://decentschools.org/expert_reports/russell_report.pdf [https://perma.cc/PLZ7-BMAJ] (outlining California's Academic Performance Index metric, which is used to evaluate annual school-wide achievement, with a single numerical "performance target" of eight hundred for all public schools in the year 2000). California ranks schools each year in terms of progress made from previous years, and overall performance. *Id.* at 8. Although school graduation and attendance data are also factors, test scores dominate the Academic Performance Index accountability metric. *Id.* at 11.

[5] *See id.* at iv, v (finding California's testing-centric school oversight model "incapable" of reflecting "which schools need help and how to help them"). Professor Russell characterized California's focus on standards and output accountability, over monitoring the quality of the learning environment and input tools provided to students, as "single-minded" and a barrier to meaningful education policy reform. *Id.* at vi.

[6] *Id.* at viii, ix, 55 (summarizing studies on the critical link between teacher quality and student success). The plaintiffs specifically alleged that California collected teacher credential data and knew which schools lacked proper staff, yet failed to intervene in schools with high proportions of uncertified teachers. First Amended Complaint for Injunctive and Declaratory Relief at 25–26, 68, *Williams*, No. 312236 [hereinafter *Williams* First Amended Complaint]; *see* Kohli, *supra* note 2 (highlighting the dearth of math and science teachers in California public schools, as well as a lack of laboratory or technical supplies for effective project-based learning).

[7] *See* Expert Report of Michael Russell, *supra* note 4, at xxiii (arguing that California should improve access to both school resources and qualified teachers for students learning English).

updated their grades yet.[8] Some students, however, also are hoping that the air conditioning will finally be on this week so that they will not feel dizzy from heat during class, or that they will be able to find a bathroom with soap and toilet paper.[9] Throughout the school day, a student's engagement with opportunities to learn may be overshadowed by more immediate issues of finding a seat or a workbook in overcrowded classes.[10]

Day in and day out, students expected to master the same material are forced to do so under very different conditions depending on where they live and where their school falls as a district and state priority.[11] The message this disparity sends to under-resourced students—that they are not a priority—is heard loud and clear.[12] In 2000, twelve-year-old Eli Williams really got the message.[13] So did his father, who felt he needed to take action to keep his son from falling behind after learning that Eli's middle school teacher could not assign homework because she did not have enough textbooks.[14] The Williams

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[8] *See* Expert Report of Thomas Sobol, *supra* note 1, at 6 (suggesting that unlike their better supported peers, students in underfunded and neglected public schools are impeded from reaching their potential as fully engaged learners).

[9] *See, e.g.*, Andrew J. Campa, *Complaint Alleges Monte Vista Elementary Students Lack Restrooms, Kindergartners Use Diapers*, GLENDALE NEWS-PRESS (Apr. 5, 2019), https://www.latimes.com/socal/glendale-news-press/news/tn-gnp-me-monte-vista-williams-20190405-story.html [https://perma.cc/P8NF-74FH] (summarizing recent *Williams* complaint allegations made by concerned California parents over health and safety violations).

[10] *See* Expert Report of Thomas Sobol, *supra* note 1, at 6 (questioning the status quo in which education policymakers tolerate conditions in poor schools that they would never accept for themselves or for their own children). *See generally Williams* First Amended Complaint, *supra* note 6 (alleging significant barriers to learning due to insufficient resources, as well as ongoing health and safety concerns, in eighteen California public school districts).

[11] *See* Expert Report of Thomas Sobol, *supra* note 1, at 11 (arguing that "top-down reform," where states rely on school metrics and testing achievement as a reform tool, has failed to improve education outcomes or to equalize opportunity among public schools).

[12] *See id.* at 9 (reasoning that students who spend day after day in unfit learning environments are being taught, in no uncertain terms, about their own worth to society and adults in power).

[13] *See Williams* First Amended Complaint, *supra* note 6, at 1, 12 (naming Eli Williams as the lead plaintiff in an action against California education officials); *see also* ELAINE ELINSON, ACLU N. CAL., LANDMARK VICTORY FOR CALIFORNIA STUDENTS 1 (2004), https://www.aclunc.org/sites/default/files/Fall%202004%20ACLU%20News.pdf [https://perma.cc/E2LN-DR9Q] (quoting Eli four years after the lawsuit bearing his name reached a settlement with the state of California). Eli described attending a crumbling, unsanitary San Francisco middle school, noting that he knew at the time that "conditions at my school were a lot worse than the conditions at schools in wealthier areas." Elinson, *supra*, at 1. Eli, and the forty-six other named plaintiffs, represented students in eighteen California public school districts with serious safety and resource problems. *Id.* The eventual implementation of the *Williams v. State* settlement would provide a remedy to over one million California students facing the same challenges as Eli. *Id.* As Eli prepared to graduate from high school, just as the settlement provisions were coming into effect, he noted that "I won't see the fruits of what's going to happen . . . but my little sister and cousins and nephews and nieces, they'll see it." Dashka Slater, *The Equalizers*, MOTHER JONES (Nov. 2004), https://www.motherjones.com/politics/2004/11/equalizers/ [https://perma.cc/S9MT-XE4Z].

[14] Slater, *supra* note 13 (recounting Eli's father's decision to move his family to San Francisco from American Samoa for the prospect of their receiving a quality education). The California public schools were worse than Eli's father ever could have imagined. *Id.* (quoting Eli's father, who was

family attended a parent meeting about the horrible conditions and unqualified instructors in some San Francisco schools, and decided to join the effort to make California reckon with the long ignored reality of attending an under-resourced public school.[15]

Students in under-resourced public schools all over the United States deal with similar neglect and deprivation, waiting for adults in power to act before their K–12 journey ends.[16] Thanks to Eli and his peers, California students now live in a state that provides a unique tool for them to confront their administrations regarding day-to-day school inadequacies and to force the state to take responsibility for unacceptable conditions.[17]

This Note evaluates the potential for administrative solutions—namely the California *Williams v. State* complaint process—to redress poor public school conditions, and the prospect of crafting minimum school quality requirements to build a framework for more ambitious legal challenges over education outcomes.[18] Part I of this Note explores student class action efforts to craft an implied right to education in the U.S. Constitution, and examines what is currently the only viable path for holding states accountable through state law.[19] Part II discusses the challenges faced by education advocates working to build notions of adequacy and substantive equity into a system that was designed to entrench, not overcome, gaps between rich and poor communities.[20]

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frustrated to find filthy, ill-equipped, and overcrowded schools in what he had expected to be "the land of opportunity").

[15] *Id.*

[16] *See, e.g.*, Valerie Strauss, *Teachers Quit in Florida, Citing "Toxic" Conditions and a "Testing Nightmare,"* WASH. POST (June 5, 2019), https://www.washingtonpost.com/education/2019/06/05/teachers-quit-florida-citing-toxic-conditions-testing-nightmare/ [https://perma.cc/7EVH-JR7S] (detailing mounting teacher frustration over administrators who prioritize test scores above the safety and needs of students); Bianca Vázquez Toness, *Boston's School Bathrooms Are a Big Mess*, BOS. GLOBE (Dec. 7, 2019), https://www.bostonglobe.com/metro/2019/12/07/school-bathrooms-are-first-class-mess/ZtG0ACuSPVgb0rPbyRKqlO/story.html [https://perma.cc/4GKR-87FE] (finding that the number and severity of unsafe or unsanitary bathroom conditions correlates with the proportion of low-income or non-white children in the student body in Boston public schools, based on data obtained from the Boston Public Health Commission and school site visits by *Boston Globe* investigative reporters). Teachers in under-resourced schools simply are trying to do their best, often supplying classrooms themselves. Strauss, *supra*; *see* Ari Odzer, *Liberty City Teacher Uses Grants to Keep Her Classroom Learning Tools Current*, NBC MIAMI (July 27, 2017), https://www.nbcmiami.com/news/local/this-liberty-city-teacher-uses-grants-to-keep-her-classroom-learning-tools-current/20405/?_osource=db_npd_nbc_wtvj_eml_shr [https://perma.cc/8VBM-BL8W] (describing a veteran elementary school teacher who relies on outside funding for basic supplies, clean clothes, and hygiene necessities for her students in one of the poorest areas of Miami).

[17] *See* CAL. EDUC. CODE §§ 35186(a), 60119 (West 2020) (establishing a complaint procedure and related oversight to enforce individual school compliance with the new minimum legal standards for "instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher vacancy or misassignment").

[18] *See infra* notes 26–223 and accompanying text.

[19] *See infra* notes 26–134 and accompanying text.

[20] *See infra* notes 135–167 and accompanying text.

Part II further explores students' various creative strategies (and related pitfalls) when attempting to build upon already-established education rights to force state or court intervention.[21] Part III argues that the *Williams* settlement, which established statewide baseline requirements for classroom and facility safety, teacher qualification, and learning material sufficiency, provides a national model for states to translate the broad promise of a right to public education into actionable requirements for the learning environment.[22] Part III also argues that the *Williams* complaint process, which can be monitored and enforced directly by parents and students, is a model for building community agency into traditionally top-down school reform policy, but should be updated with a more accessible reporting process and a clearer role for teacher advocacy.[23] Students and school communities cannot meet lofty state standards-based reform goals without the essential means and safe environment to do so.[24] Furthermore, education rights are meaningless if school quality metrics are not transparent, and if individual students and parents lack a practical enforcement mechanism to redress problems on an immediate school term timeline.[25]

I. The Fight for a Right to a Quality Public School Education

Although public school attendance is an opportunity most American citizens take for granted, the United States is one of the few countries in the world that does not explicitly grant children the right to an education in its national Constitution.[26] Despite decades of political activism and compelling lawsuits

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[21] *See infra* notes 135–167 and accompanying text.

[22] *See infra* notes 168–223 and accompanying text.

[23] *See infra* notes 168–223 and accompanying text.

[24] *See* Douglas E. Mitchell, *The Surprising History of Education Policy 1950 to 2010*, *in* Shaping Education Policy: Power and Process 3, 3–5, 21 (Douglas E. Mitchell et al. eds., 2011) (summarizing the shift in American school reform toward standardized testing as the critical metric of student achievement and school accountability).

[25] *See* Expert Report of Thomas Sobol, *supra* note 1, at 9, 14, 16 (emphasizing that individual students need immediate intervention, not gradual state-level policy adjustments).

[26] *See* Stephen Lurie, *Why Doesn't the Constitution Guarantee the Right to Education?*, The Atlantic (Oct. 16, 2013), https://www.theatlantic.com/education/archive/2013/10/why-doesnt-the-constitution-guarantee-the-right-to-education/280583/ [https://perma.cc/5C99-ZS7E] (calling for a constitutional amendment to enshrine a right to education and to improve the international standing of American public schools). *See generally* U.S. Const. (revealing that no explicit right to education exists in the U.S. Constitution). In international rankings, U.S. public schools consistently fall behind those in nations that guarantee education to their citizens. *See* Lurie, *supra* (recounting the United States' seventeenth place ranking out of forty national education systems in Pearson Publishing's 2012 "The Learning Curve" report). The U.S. Constitution does not mention the word "education," and the federal government never ratified the United Nations Convention on the Rights of the Child, which establishes the scope of education rights worldwide. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; *see* Alia Wong, *The Students Suing for a Constitutional Right to Education*, The Atlantic (Nov. 28, 2018), https://www.theatlantic.com/education/archive/2018/11/lawsuit-constitutional-right-education/576901/ [https://perma.cc/J8AE-LCY8] (reviewing recent student law-

on behalf of students, the Supreme Court of the United States has never interpreted the Constitution to hold such a guarantee.[27] Inherent variations in education policy across state lines have led to incredible disparity in educational experiences depending on where a student is enrolled in public school.[28] Without any national guarantee, education advocates have had to rely on state constitutions and state court lawsuits to carve out unique rights in each state.[29]

This Part examines the development of education rights through state court litigation.[30] Section A discusses the lack of a national right to education, the variation in education guarantees among individual states, and the efforts to articulate those rights through school financing litigation.[31] Section B explores the recent push to craft a more concrete right to safe and adequate school conditions, and the difficulty of drawing an enforceable baseline.[32] Section C introduces the *Williams* complaint process as a model student redress mechanism, and summarizes the typical defenses invoked by state governments to avoid blame for individual school failings.[33] Section D examines the importance of public awareness and community organizing to the success of settlement enforcement, and links the *Williams* framework to more ambitious recent education rights efforts.[34]

A. Crafting a Constitutional Right State by State

Although each state in the United States currently has its own constitutional education guarantee, the actual level of education quality and access var-

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suits that aim to overcome existing roadblocks to school funding lawsuits by tying education to the exercise of other established constitutional rights, such as voting).

[27] San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 35, 41 (1973) (finding no guarantee to an education in the U.S. Constitution); *see* Scott R. Bauries, *A Common Law Constitutionalism for the Right to Education*, 48 GA. L. REV. 949, 967–71 (2014) (summarizing the strategic move away from federal courts to state forums following *San Antonio Independent School District v. Rodriguez*); Wong, *supra* note 26 (same). Education policy traditionally is delegated to the states. Bauries, *supra*, at 969.

[28] *See* Wong, *supra* note 26 (explaining that the decentralized nature of public education in the United States makes local resources—or lack thereof—a critical determinant of school quality and oversight). Although the federal government oversees big picture initiatives and grant programs, education policy traditionally has been a realm of regional control, with school spending contingent on local wealth and priorities. *Id.*

[29] *See* Bauries, *supra* note 27, at 955 (summarizing the unique state-by-state case progression toward the establishment of an education guarantee through state court enforcement). Over the years, specific court orders, settlements, and targeted pieces of legislation have established student rights. *Id.*

[30] *See infra* notes 35–134 and accompanying text.

[31] *See infra* notes 35–51 and accompanying text.

[32] *See infra* notes 52–79 and accompanying text.

[33] *See infra* notes 80–117 and accompanying text.

[34] *See infra* notes 118–134 and accompanying text.

ies greatly.[35] Most state constitutions do not elaborate on the qualitative substance of public education beyond that it should be free to all children.[36] Furthermore, any state-recognized right to education typically is limited to a provision mandating the creation of a general system, without providing explicit terms to which individual students can claim a right.[37]

Any future attempt to establish a national constitutional right to a quality education will have to overcome the Supreme Court's 1973 decision in *San Antonio Independent School District v. Rodriguez*.[38] There, Texas public school students alleged that gaps in school funding between high- and low-income districts violated their Fourteenth Amendment Equal Protection rights.[39] Like most states, Texas funds its public schools with a combination of state financing and local taxes.[40] Large differences in local property values,

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[35] *See* Bauries, *supra* note 27, at 972–73 (explaining how student plaintiff victories, in holding their state governments accountable for education quality and funding, have manifested into unique state-level legislation). School funding schemes and income disparities, which vary widely among districts, largely determine the actual educational experience in any given school. *See id.* at 970–73 (summarizing state-level efforts to increase state funding contributions in communities with a lower tax base). This Note does not delve into the details of specific funding schemes, but focuses on the larger implications of funding disparities between richer and poorer communities. *See, e.g.*, R. Craig Wood, *Constitutional Challenges to State Education Finance Distribution Formulas: Moving from Equity to Adequacy*, 23 ST. LOUIS U. PUB. L. REV. 531, 532 (2004) (discussing the shift from students suing for basic, equal access to education to students suing over the quality of their school experience).

[36] *See* Robinson v. Cahill, 303 A.2d 273, 291, 294 (N.J. 1973) (holding that although exact spending need not be consistent, the state has an explicit, non-delegable duty to intervene when disparities in educational opportunity persist locally); *see also, e.g.*, City of Pawtucket v. Sundlun, 662 A.2d 40, 63 (R.I. 1995) (holding that the lack of substantive detail in the education clause of Rhode Island's state constitution had left interpretation in the hands of the legislature). *But see* McDuffy v. Sec'y of Exec. Office of Educ., 615 N.E.2d 516, 529, 548 (Mass. 1993) (discussing the historical importance placed on education in Massachusetts's history and finding that the state constitutional mandate was not merely aspirational but a concrete duty to prepare all children to become legitimate citizens).

[37] *See* Bauries, *supra* note 27, at 953 (characterizing established state education rights as providing "rhetoric," rather than meaningful, enforceable entitlements); *see also, e.g.*, *McDuffy*, 615 N.E.2d at 621 (interpreting the education clause in the Massachusetts Constitution as placing a concrete duty on the Commonwealth to provide public education to all children, "without regard to the fiscal capacity of the community or district in which" they live). The Massachusetts Constitution's education clause lays out a "duty . . . to cherish" education services in the state. MASS. CONST. pt. II, ch. V, § II.

[38] San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 40 (1973). This class action was brought on behalf of students of color and students living in a low-income school district. *Id.* at 5. The San Antonio District Court found that the state's school funding system violated the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 6; Rodriguez v. San Antonio Indep. Sch. Dist., 337 F. Supp. 280, 285 (W.D. Tex. 1971), *rev'd*, 411 U.S. at 1.

[39] *See* U.S. CONST. amend. XIV (guaranteeing due process and equal protection under the U.S. Constitution); *Rodriguez*, 411 U.S. at 6–7.

[40] *Rodriguez*, 411 U.S. at 6–7; *see* TEX. EDUC. CODE ANN. §§ 16.74–.78 (1969) (establishing a funding framework that relies on both local spending and state funding, via two funding schemes, including the Minimum Foundation Program which assumes a significant input from community property taxes). The plaintiffs asserted that, in practice, the Minimum Foundation Program was not adequately supporting schools with a less affluent tax base, and also claimed that the state had a duty

therefore, resulted in chronically under-resourced schools in poorer districts.[41] Despite emphasizing the foundational importance of public education, the Supreme Court refused to infer a fundamental right to education in the U.S. Constitution, and did not apply heightened scrutiny to lower-income communities as a suspect class.[42] Thus, the plaintiff-students were unable to successfully argue that insufficient school funding, and resulting school deficiencies, constituted an equal protection violation, effectively foreclosing federal intervention in local school funding.[43] A general lack of new Supreme Court precedent on education, outside of cases challenging segregation, further prompted post-*Rodriguez* student plaintiffs to pursue education rights in state court.[44]

Education rights lawsuits have found success on state law grounds, largely by targeting funding systems that perpetuate disparities between richer and poorer districts.[45] For example, in 1971, in *Serrano v. Priest*, the Supreme Court of California agreed with low-income students from California's largest and worst funded district that the state was denying them access to their right

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to step in and bridge the disparate funding gap between rich and poor districts. *Rodriguez*, 337 F. Supp. at 281–82, 286.

[41] *Rodriguez*, 411 U.S. at 8–9.

[42] *Id.* at 16, 22–24. Upon finding that a suspect class has been impacted, the Supreme Court applies a strict level of scrutiny to the state action in question. *Id.* at 16. Similarly, state action that infringes upon a fundamental right must be justified by the state. *Id.* Here, if the Supreme Court had deemed poor students to be part of a suspect class, or defined education to be a fundamental right, Texas would have been required to show a narrowly tailored approach to fulfill a compelling interest to legitimize a school funding system that allowed for such wealth disparities between districts. *Id.* at 16–17, 40. The Court noted that "Texas virtually concede[d]" that it would be unable to meet that strict scrutiny standard. *Id.* at 16. Upon finding no suspect class or fundamental right at issue, the *Rodriguez* Court applied rational basis review, merely asking Texas to show some legitimate state interest behind the school funding scheme. *Id.* at 44, 55.

[43] *See id.* at 22–24, 28 (finding insufficient evidence that all low-income districts were comprised of the poorest students, and holding that "the Texas system does not operate to the peculiar disadvantage of any suspect class"). The Court refused to design a new constitutional right, lacking a textual basis to protect education, and noted that even if education spending relates to a constitutional right, "the Equal Protection Clause does not require absolute equality or precisely equal advantages." *Id.* at 24–25, 35.

[44] *See* JENNIFER A. RIPPNER, THE AMERICAN EDUCATION POLICY LANDSCAPE 23–24 (2016) (discussing the recent return to impacting education policy through legislative reform rather than judicial intervention). For example, the Supreme Court did not issue any public education rulings between 2009 and 2014. *Id.* at 24.

[45] *See, e.g.*, Serrano v. Priest, 487 P.2d 1241, 1265 (Cal. 1971) (calling for California to "make available to all children equally the abundant gifts of learning" to meet its mandate under the California Constitution); *see also* McDuffy v. Sec'y of Exec. Office of Educ., 615 N.E.2d 516, 553–54 (Mass. 1993) (finding a public education financing system unconstitutional where annual state aid varied widely and was insufficient to support schools in low-income areas); Bauries, *supra* note 27, at 970 (discussing the rise of state court education litigation following the Supreme Court's answer to federal challenges in *Rodriguez*). Despite a loss in *Rodriguez*, student plaintiffs have succeeded in state courts using similar arguments rooted in state constitutional rights. *See* Bauries, *supra* note 27, at 970.

to an adequate education under the California Constitution.[46] California's local allocations of state education funding largely depended on property values, with poorer districts receiving substantially less support.[47] The *Serrano* court construed local wealth as a suspect classification, invoking strict scrutiny review, and found California's school funding system unconstitutional because it infringed upon low-income children's fundamental interest in their education.[48]

Ultimately, the *Serrano* court ordered the California Department of Education to develop a new funding scheme, even though there was no evidence of deliberate discrimination against poor or minority children.[49] This decision explicitly established an enforceable right to education under the California Constitution, which set the foundation for later student lawsuits against the state government.[50] Although an important first step in enshrining education as a right in California, *Serrano* left the exact scope of that right undetermined.[51]

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[46] *Serrano*, 487 P.2d at 1244, 1265. On remand, the students' constitutional equal protection claims were overturned following *Rodriguez*, but their victory based on state law was preserved. Serrano v. Priest, 557 P.2d 929, 958 (Cal. 1976); *see* Christopher R. Lockard, Note, *In the Wake of* Williams v. State*: The Past, Present, and Future of Education Finance Litigation in California*, 57 HASTINGS L.J. 385, 387–88 (2005) (summarizing the legislative changes implemented after *Serrano*, which include a formula that allows the state to intervene when per-student spending varies widely among school districts).

[47] *Serrano*, 487 P.2d at 1250 (recognizing a direct connection between the quality of education in California public schools, in terms of "educational expenditures," and the socioeconomic status of the student body).

[48] *Id.* at 1255–56. Although the federal government plays a limited role in school funding and policy, national organizations contribute to education reform lawsuits at the state level. Joshua M. Dunn & Martin R. West, *The Supreme Court as School Board Revisited*, *in* FROM SCHOOLHOUSE TO COURTHOUSE: THE JUDICIARY'S ROLE IN AMERICAN EDUCATION 1, 5–6 (Joshua M. Dunn & Martin R. West eds., 2009). The student victory in *Serrano* was a federally funded effort over a state policy issue. *Id.* The national Office of Economic Opportunity's Legal Services Program represented the plaintiffs. *Id.*

[49] *Serrano*, 487 P.2d at 1253–55, 1266. The *Serrano* court was unmoved by California's argument that any funding disparities were not purposeful. *Id.* Instead, the court found that a constitutional violation existed even without requiring the plaintiffs to show that the state purposefully had designed a funding system that disserved poor children. *Id.* at 1253–54. Further, the court held that the level of control orchestrated by the state over the public school system, through legislative design and ongoing administrative oversight, prevented the state from dismissing disparate impacts based on wealth as merely "de facto discrimination." *Id.* at 1254–55.

[50] *See* Lockard, *supra* note 46, at 388–93 (tracing the uphill battle that education activists still faced after the *Serrano* court held that education was a "fundamental interest" under state law). *Serrano* is inapplicable outside the state of California, given that the Supreme Court found no national constitutional right to an education in *Rodriguez*. *Id.* at 393. To establish an equal protection violation in other states, courts must interpret their state constitutions differently from the Supreme Court's reading of the U.S. Constitution in *Rodriguez*. *See* Elizabeth Cairns, Comment, *From the Proxy to the Principal: Disappointments in California's Education Finance Policy and the Benefits of a Human Rights Approach*, 48 SANTA CLARA L. REV. 709, 719, 723 (2008) (discussing the *Rodriguez* roadblock to national reform, and suggesting that, despite a seemingly monumental student victory in California, *Serrano* failed to usher in lasting change for students).

[51] *Serrano*, 487 P.2d at 1259, 1265–66. The *Serrano* court based its holding in part on the equal protection clause of the California Constitution, which has been superseded by a more specific consti-

B. School Conditions Litigation

Today, student lawsuits challenging the substance of public education typically aim to demonstrate how their state has failed to provide all students with the benefits and opportunities to which they are entitled.[52] A national wave of litigation in the 1970s and 1980s helped to cement an initial general acceptance of a state-level right to an education.[53] Between the 1973 *Rodriguez* decision and 2018, forty-seven states have been forced to defend against school funding inequity cases, with a majority of courts recognizing some baseline right to an adequate education in state constitutions.[54] Institutional litigation, however, has not worked out the details of the right to education, nor the mechanisms that would allow for students to address specific state failings.[55]

Establishing explicit education rights at the state level, and using those rights to achieve meaningful reform, often has required a series of lawsuits to push courts to articulate specifically what the state must provide to public school students.[56] Some of the most intensive court-ordered substantive re-

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tutional prohibition on racial discrimination by a "public institution." *See* CAL. CONST., art. I, § 31 (prohibiting discrimination "on the basis of race, sex, color, ethnicity, or nation origin in the operation of . . . public education"); Crawford v. Huntington Beach Union High Sch. Dist., 121 Cal. Rptr. 2d 96, 103–05 (Ct. App. 2002) (applying the California Constitution's provision barring discrimination, instead of the equal protection standard used in *Serrano*, to find a school transfer law denying student enrollment based on "racial balancing" formulas invalid).

[52] Bauries, *supra* note 27, at 973. One scholar characterized the state court litigation that followed *Rodriguez*, in which advocates of baseline education rights relied upon similar arguments, as "a state-level bite at the equal protection apple." *Id.* at 971; *see* Brown v. Bd. of Educ., 347 U.S. 483, 493–95 (1954) (articulating themes of equal opportunity for children and the critical importance of education that would echo beyond the desegregation movement in later school adequacy lawsuits). School "adequacy" challenges center around "non-relative" education quality, demanding that the state ensure that students are given what they are owed under the state constitution. Bauries, *supra* note 27, at 973–74. An education "equality" claim compares the resources provided by different schools or districts, and demands higher standards or more resources for certain students or schools in reference to what other students are receiving. *See id.*

[53] Bauries, *supra* note 27, at 973, 984–85.

[54] Class Action Complaint at 17, Cook v. Raimondo, No. 18-CV-00645 (D.R.I. Nov. 28, 2018); *see* McDuffy v. Sec'y of Exec. Office of Educ., 615 N.E.2d 516, 554 n.91 (Mass. 1993) (listing eleven states where the high court found that the respective school funding system either violated a state-level right to education or was in violation on an equal protection basis).

[55] Bauries, *supra* note 27, at 979; *see, e.g.*, McCleary v. State, 269 P.3d 227, 253, 258 (Wash. 2012) (upholding a finding that the state violated its duty under the Washington Constitution to support public schools "adequately," but neglecting to indicate how students could enforce their right to legislative appropriation). State courts often have discussed a constitutional right to education only in the context of granting standing to student plaintiffs, without further defining the terms of such a right or ruling on whether specific schools were delivering. Bauries, *supra* note 27, at 978–79.

[56] *See, e.g.*, Rose v. Council for Better Educ., 790 S.W.2d 186, 194–95, 212 (Ky. 1989) (recounting decades of efforts to reform school funding before establishing Kentucky's constitutional obligation to provide a public education). In *Rose v. Council for Better Education*, the court went further, identifying seven specific education needs that the state must support with enough programming and funding. *Id.* at 212. The *Rose* decision was followed by other state courts looking to issue clearly defined, enforceable rights to education. *See McDuffy*, 615 N.E.2d at 554 (finding that the state's

forms and funding requirements have been established in New Jersey.[57] In 1973, in *Robinson v. Cahill*, the New Jersey Supreme Court held that the state was failing in its obligation to provide equal education to all students because it allowed for significant differences in per-pupil spending between low- and high-income school districts.[58] Then, in 1985, in *Abbott v. Burke*, education activists convinced the same court to apply a more rigorous standard when evaluating whether New Jersey schools provided a "thorough and efficient" education to meet the state's constitutional mandate.[59] The successive efforts of plaintiff-students culminated in significant court orders requiring increased funding for underperforming schools and renewed investment in facilities and services for low-income students.[60]

New Jersey was not the only state facing renewed student efforts to enforce a state constitutional mandate to provide quality public education.[61] Between 1989 and 2010, litigation forced twenty states to rework their education funding schemes to remedy unconstitutional resource discrepancies among schools.[62] In states where baseline rights are already established, education

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public school funding scheme was unconstitutional, but deferring to the legislature for substantive details). For example, in summarizing the remedies applied by other state high courts following *Rose*, the court in *McDuffy v. Security Executive Office of Education* noted the usual decision to articulate the violation broadly and affirmed the state's education mandate. *Id.* at 554–55.

[57] *See, e.g.*, Abbott v. Burke, 495 A.2d 376, 380 (N.J. 1985) (calling for state intervention in low-income school districts to ensure that all students receive a comparable level of education, and finding existing practices unconstitutional); Robinson v. Cahill, 303 A.2d 273, 292, 297 (N.J. 1973) (finding that the existing dual school funding scheme violated the New Jersey Constitution).

[58] *Robinson*, 303 A.2d at 291. The New Jersey Supreme Court interpreted an 1875 state constitutional amendment calling for "a thorough and efficient system of free public schools" as requiring the state to intervene and bridge the funding gap when the local tax base was insufficient to support public education. *Id.* at 291, 297–98.

[59] *See Abbott*, 495 A.2d at 381 (challenging the funding scheme of New Jersey public schools, on state constitutional grounds, for continuing to deny the state's promise to students living outside property-rich districts). Even after the New Jersey Supreme Court declared the school financing scheme unconstitutional in *Robinson*, significant funding disparities persisted. *Id.* The court transferred the case to the Commissioner of Education to design an appropriate remedy to ensure that the state would act to address the resource gaps in low-income areas. *Id.* at 393–94.

[60] Lockard, *supra* note 46, at 395–96. As the *Abbott* litigation progressed in New Jersey, the state supreme court began ordering specific action at the district level, including new preschool services for low-income students and requirements that underperforming schools adopt best practices from other New Jersey schools. William S. Koski, *Achieving "Adequacy" in the Classroom*, 27 B.C. THIRD WORLD L.J. 13, 24 (2007).

[61] Dunn & West, *supra* note 48, at 5.

[62] *Id.* An increase in education adequacy lawsuits followed three initial state supreme court cases in 1989—the year in which Kentucky, Texas, and Montana interpreted adequacy guarantees in their state constitutions. *Id.* at 10; *see* Richard Briffault, *Adding Adequacy to Equity*, *in* SCHOOL MONEY TRIALS: THE LEGAL PURSUIT OF EDUCATIONAL ADEQUACY 25, 25–27, 30 (Martin R. West & Paul E. Peterson eds., 2007) (recounting the "waves" of student class action victories under different reform theories in states such as Vermont, Tennessee, New York, Ohio, and Arizona). Even after finding a right to an education, however, some state courts dismissed attempts to invoke specific student enti-

adequacy campaigns typically have moved past challenging general funding disparities among districts.[63] Instead, recent student class actions have focused on specific insufficiencies or oversights that affect learning, including teacher quality, sufficiency of instructional materials, and school health and safety.[64]

For example, in 1995, in *Campaign for Fiscal Equity v. State*, education activists successfully established minimum requirements for high school graduation preparedness.[65] There, the New York Court of Appeals upheld a student victory, despite the state's assertion that the responsibility to correct education inadequacies fell on individual cities and towns, not on the state itself.[66] The court eventually ordered New York to establish a local monitoring program to ensure that the settlement terms were actually being realized in poorer districts.[67] Although the plaintiff-students had aimed for a complete overhaul of New York's public school system, this ruling was limited to general oversight requirements and a small portion of additional spending.[68] Importantly, however, this decision recognized that students deserve "minimally adequate in-

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tlements, or hesitated to intervene in school funding beyond broadly calling for adjustments. *See* Briffault, *supra*, at 27.

[63] *See* Dunn & West, *supra* note 48, at 5 (identifying other 1989 plaintiff-student victories, namely *Rose v. Council for Better Education* in Kentucky, as the spark for renewed efforts to establish education rights under state law). *Rose* was one of the most comprehensive examinations of a state constitutional right to education. *See generally* 790 S.W.2d 186 (Ky. 1989). The *Rose* court laid out seven "capacities" that should be instilled in Kentucky's children by the time they graduate, including self-expression abilities, civics training, and career preparation. *Id.* at 212. The *Rose* opinion also outlined structural requirements for the state school system, calling for Kentucky public schools to be "substantially uniform," and for the state to support students irrespective of their socioeconomic status. *Id.* at 212–13; *see* Bauries, *supra* note 27, at 983–84 (tracing the impact of the *Rose* decision on the development of a substantive right to education by other states' courts, many of which invoked the seven *Rose* "capacities" as goals for their own school systems).

[64] *See, e.g.*, Lake View Sch. Dist. No. 25 v. Huckabee, 91 S.W.3d 472, 481, 500 (Ark. 2002) (reviewing student allegations of crumbling school infrastructure, and defining "equality of educational opportunity" with specific reference to the state's duty to provide comparable classroom resources and physical school conditions between rich and poor districts); Abbott by Abbott v. Burke, 693 A.2d 417, 439–40 (N.J. 1997) (ordering that the state undertake specific facilities and early education improvements to meet its constitutional mandate).

[65] Campaign for Fiscal Equity, Inc. v. State, 655 N.E.2d 661, 666 (N.Y. 1995) (noting that the goal of a public school education is for students to become "civic participants capable of voting and serving on a jury"). The court discussed the instruction of "essential skills," including literacy and mathematics, which must be supported by the state, and further required that the state provide "minimally adequate" physical classroom conditions to allow students to learn. *Id.*

[66] *Id.* at 670–91.

[67] *See* Campaign for Fiscal Equity, Inc. v. State, 801 N.E.2d 326, 348 (N.Y. 2003) (calling for New York to create "a system of accountability" to ensure that individual schools fulfill the state's promise of educational "basic opportunity" for all children).

[68] *See id.* at 345 (framing intensive judicial intervention as an inappropriate overreach, in response to the plaintiffs' request for a court-ordered revision of New York's school funding scheme); Lockard, *supra* note 46, at 398–99. The court suggested that New York education officials look to the national No Child Left Behind framework for new school oversight strategies. *Campaign for Fiscal Equity*, 801 N.E.2d at 347.

strumentalities of learning" and "minimally adequate physical facilities and classrooms," even though it did not establish specific requirements.[69]

Nationwide, individual public schools' resources are tied to larger statewide funding schemes; thus, student allegations of inequity in education are not addressed easily within individual communities as a discrete issue.[70] Education adequacy challenges require state courts to interpret or imply a constitutional guarantee, to evaluate if and how schools are meeting that standard, and, where appropriate, to determine what specific remedy the plaintiff-students are owed.[71] Remedying school funding disparities calls for changing an overarching state system, and courts often are more reluctant to interfere with education policy made at the highest level of state government.[72] Student plaintiffs face a significant hurdle in convincing courts to question the exercise

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[69] *Campaign for Fiscal Equity*, 655 N.E.2d at 666. The New York Court of Appeals expressly refrained from defining a "sound basic education." *Id.*

[70] *See* Koski, *supra* note 60, at 16, 25 (emphasizing the complicated nature of court interventions in education policy). Even if student plaintiffs successfully convince a court to delve into the workings of their state school system, designing a meaningful, workable remedy is highly complex. *See id.* at 22–23 (contrasting four approaches used to evaluate whether students are receiving an adequate education, and if not, what should be done to remedy it). Courts may reach different conclusions depending on how heavily they rely on student statistics, education experts, and economic models. *Id.* In contrast to statewide spending reforms, court orders to combat persistent school segregation can be issued to specific school districts, providing a more self-contained local remedy. Bauries, *supra* note 27, at 973; *see* Koski, *supra* note 60, at 24–25 (contrasting the court's role in dictating desegregation efforts, under traditional constitutional authority, with the current pressure on courts to negotiate complex relationships in school funding regimes). The related educational equity fight against de facto school segregation has continued long after *Brown v. Board of Education*. Bauries, *supra* note 27, at 973; Koski, *supra* note 60, at 24–25.

[71] Anne D. Gordon, *California Constitutional Law: The Right to an Adequate Education*, 67 HASTINGS L.J. 323, 353 (2016). Even when state courts find a school system inadequate, judges prefer to let the legislature make changes to the school system, or to defer to state policymakers' definition of an adequate education. *See, e.g.*, Hancock v. Comm'r of Educ., 822 N.E.2d 1134, 1152–53, 1158 (Mass. 2005) (reaffirming Massachusetts's duty "to provide a high quality public education to every child," even in low-income communities, but still deferring to the legislature for what is meant by that duty (quoting MASS. GEN. LAWS ANN. ch 69, § 1 (West 2020))). The Massachusetts Supreme Judicial Court declined to call for further intervention into the state school system, despite persistent student opportunity gaps, because Massachusetts has no duty to "guarantee" equal student achievement, and progress had been made since *McDuffy* to diminish funding disparities between rich and poor districts. *Id.* at 1138, 1160; *see* Lockard, *supra* note 46, at 401 (summarizing the court's fact intensive evaluation of demographics, conditions, services, and outcomes provided to students at four of Massachusetts's poorest school districts). The court's holistic review of whether the state was meeting poor students' needs led the court to call for new, early education services beyond the current K–12 programming. Lockard, *supra* note 46, at 418.

[72] *See* Koski, *supra* note 60, at 24–25 (highlighting a trend among courts of taking a step back and assuming a "coordinating role" in education policymaking, in contrast to the more assertive judicial interventions and prescriptive court oversight seen under desegregation orders). Courts are hesitant to question legislative expertise and discretion in decisions regarding school funding and standards. *See* Briffault, *supra* note 62, at 27, 45 (noting that, despite the success of some student lawsuits, at least nine state courts have rejected education funding lawsuits since 1989 and others have cited separation of powers concerns to avoid calling for specific changes).

of legislative discretion and allow their suit to proceed.[73] Moreover, a slow, expensive discovery process and ongoing negotiations may screen out or discourage valid student complaints, as a resolution to the immediate problem of an unqualified teacher or a dangerous classroom may become moot within the year when the individual plaintiff advances to the next grade.[74]

The complex nature of problems facing public schools tends to deter judges from calling for sweeping change, for fear of unanticipated consequences if the court demands reallocation of finite state resources.[75] Given this tension, lawsuits asserting state-based education rights to challenge specific school failings have made little progress in providing remedies to students who lack qualified teachers or safe classrooms because most state constitutions do not set a qualitative, uniform standard.[76] Student lawsuits must present particularly egregious, system-level disparities to survive a motion to dismiss as nonjusticiable policy matter, and even then typically end in settlement, with ongoing court oversight of the state's implementation of negotiated terms.[77] Some advocacy groups hope that setting enforceable metrics for basic school conditions could lay the groundwork for challenging more amorphous aspects of

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[73] Gordon, *supra* note 71, at 359–60. Courts face an unclear choice: to navigate uncharted waters beyond what the state legislature has mandated, or to avoid a "separation of power" debate by narrowly interpreting and enforcing whatever standards the legislature already has articulated. *See id.* (identifying future challenges to California education policy by activists who still are looking for enforceable qualitative elements to the right to education found in Article IX of the California Constitution). The California Constitution emphasizes that education is "essential to the preservation of the rights and liberties of the people," but only promises, in general terms, "a system of common schools by which a free school shall be kept up and supported" by the state legislature. CAL. CONST., art. IX, §§ 1, 5.

[74] *See* RIPPNER, *supra* note 44, at 23 (highlighting the slow pace of education litigation, which is in direct tension with students' immediate need for a remedy as their K–12 education journey progresses).

[75] Bauries, *supra* note 27, at 961; *see* Campaign for Fiscal Equity, Inc. v. State, 801 N.E.2d 326, 348 (N.Y. 2003) (reasoning that details of the state's budget allocation or determinations of relative state and local financing burdens are within the discretion of the state legislature).

[76] *See* Josh Kagan, Note, *A Civics Action: Interpreting "Adequacy" in State Constitutions' Education Clauses*, 78 N.Y.U. L. REV. 2241, 2243–44 (2003) (arguing for the development of practical adequacy standards, instead of "inconsistent" case-by-case interpretations of state constitutions, which allow state governments to avoid taking responsibility).

[77] *See* Bauries, *supra* note 27, at 960, 975–76 (arguing that, in following federal court analyses of existing constitutional rights to be free from government intrusion, state courts have limited their own remedial power over local education systems); Gordon, *supra* note 71, at 353 (highlighting the dismissal of a student class action over school quality, after the court determined the matter to be a political issue and thus inappropriate for judicial intervention); John Fensterwald, *Dissenting Judge Awaits Second Chance to Corral a Majority on School Funding Lawsuit*, EDSOURCE (Aug. 31, 2016), https://edsource.org/2016/justice-liu-awaits-second-chance-to-corral-a-majority-on-school-funding-robles-wong-california- [https://perma.cc/JKN4-BVX9] (summarizing the California Supreme Court's decision not to review a similarly dismissed case, which subsequently left specific school funding issues to the legislature). California Supreme Court Justice Goodwin Liu's dissent framed the judiciary's refusal to intervene in education policy as an abdication of a critical duty to guard student rights. Campaign for Quality Educ. v. State, No. S234901, 2016 Cal. LEXIS 8386, at *1–24 (Aug. 22, 2016) (Liu, J., dissenting).

public education, such as literacy and graduation readiness.[78] Plaintiff-students then would be able to have a judge read a qualitative standard into the generic right to an education found in most state constitutions, if they can first present some legal baseline for minimally adequate school conditions.[79]

C. The Williams *Settlement Model*

In 2000, the plaintiff-students in *Williams v. State*, a class action suit filed in California Superior Court, modeled a new, highly practical approach to education adequacy challenges.[80] The effort, led by the American Civil Liberties Union (ACLU) on behalf of low-income and minority students from poorly staffed, maintained, or equipped California public schools, sought to enforce "minimal educational essentials" under the then-undefined state constitutional guarantee.[81] At the time, California was ranked one of the lowest-performing states in the nation in terms of per-student spending compared to overall population wealth.[82] Instead of prioritizing comprehensive standards for the learning environment, the state's education policy was firmly focused on content and testing standards.[83] The plaintiff-students argued that no matter where they attended public school, they had the same right to receive a quality public education as any other child in California.[84] They further claimed that their state

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[78] Bauries, *supra* note 27, at 982–84.

[79] *See* Butt v. State, 842 P.2d 1240, 1247–52 (Cal. 1992) (holding that the state of California must intervene when public schools are failing to meet "prevailing statewide standards").

[80] *See Williams* First Amended Complaint, *supra* note 6, at 74–75 (requesting that the California state government intervene in under-resourced schools to ensure that students' immediate learning needs are being met and that students are physically safe). The class action included students from eighteen of the poorest districts in California based on per-pupil spending. *Id.* at 58.

[81] *See id.* at 7–8 (asserting that extensive state control over local funding and standards inherently requires holding high-level officials responsible for providing adequate public education to all students).

[82] Jeannie Oakes, Symposium, *Introduction to: Education Inadequacy, Inequality, and Failed State Policy: A Synthesis of Expert Reports Prepared for* Williams v. State of California, 43 SANTA CLARA L. REV. 1299, 1301 (2003).

[83] *See id.* (suggesting that California's single-minded emphasis on testing performance, combined with insufficient overall investment, was to blame for California public schools' low ranking in a nationwide study). Education policymakers characterize standards-based assessments, which evaluate schools based on student test scores, graduation rates, and other learning outcome metrics, as "output" focused school reform. *Id.* at 1367, 1371. In contrast, "input" focused school reform is an accountability model centered on the resources provided to students, the quality of their instruction, and the conditions of the learning environment. *Id.* at 1310, 1371. Standards-based assessments, which are objectively easier to measure and model, have become the dominant metric of school success over the last twenty years. *See* Koski, *supra* note 60, at 14–15 (summarizing the concept of standards-based education policy, which invokes incentives and consequences to hold schools to specific student achievement metrics).

[84] *Williams* First Amended Complaint, *supra* note 6, at 11.

government had a duty to provide the tools that they needed to learn.[85] To support their call for change, the plaintiff-students relied on the right to education established in *Serrano* and on a 1992 California State Supreme Court decision that placed the final responsibility for supporting local education upon the state government.[86] Instead of challenging the overarching state funding system or local property tax schemes, the *Williams* plaintiffs aimed to establish California's first concrete quality metrics for the actual day-to-day experience of public school students.[87] By focusing first on the "bare essentials" for success, and establishing a "floor" with more detail than the general education entitlement recognized in *Serrano*, the *Williams* class action hoped to substantiate what students knew was an otherwise empty promise in the California Constitution.[88]

The *Williams* plaintiffs made their case with exhaustive reports on the bleak reality of attending an under-resourced school and data compilations linking school funding to student outcomes, in order to demonstrate gross racial and economic disparities between districts.[89] Specifically, the plaintiffs

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[85] *Id.* The complaint argued that the minimally adequate school conditions enjoyed by most California public school students should not be denied to other students based on their zip codes and socioeconomic statuses. *Id.* It also aimed to set forth enforceable, minimum standards to prevent the state government from further neglecting schools in marginalized communities. *Id.*

[86] *See* Butt v. State, 842 P.2d 1240, 1256 (Cal. 1992) (holding that California as a state must act when its public schools lack enough local funding to provide "basic educational equality"); Serrano v. Priest, 487 P.2d 1241, 1244 (Cal. 1971) (establishing a fundamental right to an education under the California Constitution). The *Butt v. State of California* opinion, however, did not articulate the standard to which schools should be held, or the manner in which the state should intervene locally. *Butt*, 842 P.2d at 1256; *see* Gordon, *supra* note 71, at 355 (characterizing the *Butt* court's call for "basic equality of educational opportunity" as "vague" and difficult to enforce against specific schools (quoting *Butt*, 842 P.2d at 1251)).

[87] *Williams* First Amended Complaint, *supra* note 6, at 11–12; *see* Oakes, *supra* note 82, at 1301 (noting the low national ranking and "F" rating that *Education Week* has given the California public school system). The EdWeek Research Center uses federal data to rank states annually based on "Chance for Success" (which accounts for students' future education and employment outcomes), "School Finance" (which compares per-student spending and the connection between local wealth and school spending), and "K–12 Achievement" (which compares success markers, such as test scores, graduation rates, AP class placements, and poverty achievement gap reductions). *Sources and Notes: How We Graded the States*, EDUCATION WEEK (Jan. 21, 2020), https://www.edweek.org/leadership/sources-and-notes-how-we-graded-the-states/2020/01 [https://perma.cc/4RR7-2JAG].

[88] Expert Report of Michael Russell, *supra* note 4, at x, 5; Expert Report of Thomas Sobol, *supra* note 1, at 4–5; *Williams* First Amended Complaint, *supra* note 6, at 6–7, 74–75; *see* Jeannie Oakes & Martin Lipton, *"Schools That Shock the Conscience":* Williams v. California *and the Struggle for Education on Equal Terms Fifty Years After* Brown, 15 BERKELEY LA RAZA L.J. 25, 28–29 (2004) (summarizing the *Williams* complaint allegations). The complaint named "trained teachers, necessary educational supplies, classroom[] [seats] . . . and facilities that meet basic health and safety standards" as critical resources for which there should be a legal baseline. *Williams* First Amended Complaint, *supra* note 6, at 6.

[89] *See Williams* First Amended Complaint, *supra* note 6, at 66 (alleging significant negative correlations between unsafe learning conditions and students' achievement and sense of self-worth); Oakes, *supra* note 82, at 1316–19 (summarizing the plaintiffs' expert reports, which described the cumulative negative impact of the alleged school insufficiencies). The plaintiffs relied on expert anal-

focused on three areas in which California schools were failing to provide a quality education: teacher quality, availability of learning materials, and the health and safety of the physical school environment.[90] The plaintiff-students argued that the general right to education in the California Constitution necessarily prescribes baselines beneath which no child's school experience should fall.[91]

First, the students articulated a baseline for the education owed to them under state law, in terms of acceptable classroom conditions and materials, limits on class sizes, health and safety standards, and teacher certification requirements.[92] The plaintiffs then demonstrated how their schools were not meeting obligations in terms of these critical student learning and outcome factors.[93] Instead of engaging in a debate over where the line should be drawn, the plaintiffs focused on California's fundamental duty to maintain its education system, apart from any local resource issues, and whether the state poli-

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yses to demonstrate the holistic effects of unqualified teachers and unsafe classrooms, as well as the dire need for additional resources to meet California's high standardized testing standards. Oakes, *supra* note 82, at 1320, 1345. For example, an expert report by a professor of pediatrics and environmental health concluded that "school facility conditions do affect short term and long term health," and noted specific health threats posed by lead, pests, extreme temperatures, and classroom crowding. *See* Expert Report of Dr. Megan Sandel at 2–3, Williams v. State, No. 312236 (Cal. Super. Ct. Aug. 21, 2002) (illustrating the long- and short-term impacts of mold, pests, and extreme heat variations on students who spend years in poorly maintained or unsafe schools). The named plaintiff class represented elementary, middle, and secondary California public school students, and attested to similar stories of persistent insufficiencies and neglect. *Williams* First Amended Complaint, *supra* note 6, at 21.

[90] *See Williams* First Amended Complaint, *supra* note 6, at 21–22, 25–57 (identifying ten basic "educational necessities," and detailing the inferior learning conditions in the forty-six schools of the named plaintiffs). The specified "necessities" included sufficient and up-to-date textbooks, instruction by a permanent teacher with full state credentials, enough seats in safe and healthy classrooms, library and internet access, and maintained, accessible bathroom facilities. *Id.* at 21–22.

[91] *See id.* at 10–12 (outlining the scope of the California Constitution's education clause, which was previously interpreted as placing a binding duty on the state to address the shortcomings of individual schools); Oakes, *supra* note 82, at 1302, 1307. Middle schoolers, who attended lead plaintiff Eli Williams's school in San Francisco, were learning from decade-old history textbooks (if they even had access to their own copies), were accustomed to seeing rats and roaches in their classrooms, and were avoiding playing in their school gym for fear of falling ceiling panels. *Williams* First Amended Complaint, *supra* note 6, at 26–27. Elementary schoolers in Oakland were learning in noisy shared classrooms, divided from others only by bookshelves, and had limited access to bathroom facilities because of overcrowding. *Id.* at 34–35. Others at the same school had to move from classroom to classroom frequently as rain leaked through the roof. *Id.* at 34. High school classrooms in Cloverdale were reaching temperatures as hot as 110 degrees, without air conditioning, during warm months, and the Cloverdale schools did not have enough books for their students to take home for assignments. *Id.* at 36–37.

[92] *Williams* First Amended Complaint, *supra* note 6, at 6–8; Oakes, *supra* note 82, at 1308–09, 1319–20.

[93] *See Williams* First Amended Complaint, *supra* note 6, at 25–57 (recounting specific examples of unsafe or unfit learning environments from the forty-six schools represented by the named plaintiffs); Oakes, *supra* note 82, at 1309–15 (summarizing expert reports attesting to the impact of unsafe or ill-equipped schools on student wellbeing and achievement).

cies and procedures in place for addressing widespread inequities were meaningful and actively enforced.[94]

Extensive statistical analysis that paired student socioeconomic markers with data on teacher placement, classroom conditions, and resource allocation reflected a clear and disturbing trend—many California schools were so "fundamentally inferior" to other state public schools that "conditions . . . should shock the conscience of any reasonable person."[95] The detailed complaint described classrooms at twice their capacity, broken lab equipment, missing and outdated textbooks, rat infestations, extreme temperatures, and other unsafe conditions that undermined any student's ability to learn and grow.[96] In spite of existing state standards that theoretically applied to all schools, in reality, nearly a third of the teachers in schools with mostly minority students did not have the appropriate credentials to be teaching their subject matter.[97] The data showed that California schools with high levels of student poverty were more likely to be missing textbooks and other necessary classroom materials, and

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[94] *See Williams* First Amended Complaint, *supra* note 6, at 6–8 (emphasizing the state government's non-discretionary "ultimate responsibility" to provide an equal education as promised in the California Constitution); Oakes & Lipton, *supra* note 88, at 28–29 (summarizing the expert reports provided by the plaintiffs and the State).

[95] *Williams* First Amended Complaint, *supra* note 6, at 7, 10; *see* Oakes, *supra* note 82, at 1311 (discussing a study from the Public Policy Institute of California that found teacher qualification metrics to be "the strongest predictors of student achievement in a regression analysis").

[96] *See Williams* First Amended Complaint, *supra* note 6, at 26–57 (detailing the extent and severity of specific safety, staffing, and resource insufficiencies at the schools of each named plaintiff); Oakes & Lipton, *supra* note 88, at 32–35 (mapping out the increased likelihood of school overcrowding in majority non-white neighborhoods in Los Angeles County, and summarizing the correlation between staffing problems and insufficient learning materials in underfunded schools). The student plaintiffs recounted bundling up in unheated classrooms during winter months, locked or unsupplied student bathrooms, and textbooks that were over a decade old and insufficient for the current curriculum. TARA KINI, PUB. ADVOCS., INC., YOUR SCHOOLS, YOUR RIGHTS, YOUR POWER: A GRASSROOTS GUIDE TO EFFECTIVE *WILLIAMS* CAMPAIGNS 4 (2009), https://www.publicadvocates.org/wp-content/uploads/2016/03/your_schoolsyour_rightsyour_power_reduced.pdf [https://perma.cc/L4MM-MV55] (describing California school conditions reported to Public Advocates, a legal nonprofit that helps public school students file complaints against their schools).

[97] *See Williams* First Amended Complaint, *supra* note 6, at 58–63 (providing a statistical comparison of teacher qualification data and student demographics at each of the named plaintiffs' schools and within the state public school system as a whole); Oakes & Lipton, *supra* note 88, at 30 (identifying a significant negative correlation between the percentage of minority students enrolled in schools and the percentage of qualified teaching staff in California schools from 1997 to 2001). In the four years preceding the *Williams* class action, approximately just 4% of teachers were unqualified in schools with over 70% white students. Oakes & Lipton, *supra* note 88, at 30. Furthermore, teachers without any certifications or state-mandated specialty training were failing to meet the needs of English Language Learner students. *See id.* at 31 (mapping the high frequency of under-credentialed teachers in schools with majority Black and Latinx students in Los Angeles county); *Williams* First Amended Complaint, *supra* note 6, at 7, 21 (asserting that English Language Learners have a right to benefit from tailored instruction and specifically qualified teachers). In most of the schools where the named plaintiffs attended, over a third of the students were English Language Learners. *Williams* First Amended Complaint, *supra* note 6, at 7.

that impoverished students were most likely to attend school in unsafe or overcrowded facilities.[98]

The *Williams* plaintiffs concluded that schools lacking any of the three critical factors—teachers, resources, and facilities—were in violation of California's duty to provide these essential tools, without which students faced undue barriers in obtaining an education.[99] The complaint also emphasized the racially discriminatory impact on minority students, who were statistically more likely to attend an under-supported school, in violation of Title VI of the Civil Rights Act.[100] To avoid their specific school site inadequacy claims from being mired in a debate over what California owes to each individual student, the *Williams* plaintiffs presented specific school failings as larger state policy problems.[101] In emphasizing the indisputably inferior school conditions in poorer communities, the plaintiffs and their experts highlighted the powerful message being sent to students—that their school environment reflects their own worth and potential—echoing the rationale that convinced the Supreme Court to overturn separate but equal in *Brown v. Board of Education*.[102]

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[98] Oakes & Lipton, *supra* note 88, at 31–32. These expert findings were not a surprise to anyone familiar with the national disparities between public schools. *See id.* at 25 (framing the *Williams* class action within the larger struggle to achieve equal educational opportunity nationwide as a next step in providing quality education to students of all races "[i]n the spirit of *Brown*"). Although the reports demonstrated how each of these school factors should be addressed as violations of current state policy, the state lacked enforcement processes to identify and correct such failures systematically. *See id.* at 35 (noting that California already has applicable regulations, but lacked effective oversight to ensure that students were being taught by certified teachers in equipped, safe facilities).

[99] *Williams* First Amended Complaint, *supra* note 6, at 10–11. The *Williams* plaintiffs relied on the right to education under the California Constitution, first established in *Serrano*, and later affirmed in *Hartzell v. Connell*. *Id*. The complaint also emphasized the additional notion of school quality, with the California Supreme Court calling for schools to prepare students to become productive citizens. *See* Hartzell v. Connell, 679 P.2d 35, 38–40, 47 (Cal. 1984) (interpreting the promise of "free school" in the California Constitution to bar requiring fees from students wishing to participate in after-school activities, thereby protecting a critical enrichment opportunity for students in underprivileged schools); Serrano v. Priest, 487 P.2d 1241, 1258–59 (Cal. 1971) (establishing a concrete right to education for all students initially, and striking down a system of disparate community funding).

[100] *Williams* First Amended Complaint, *supra* note 6, at 72; *see* 42 U.S.C. § 2000d (prohibiting exclusion based on "race, color, or national origin" from programming, such as public schools, receiving federal funding). The plaintiffs alleged that California, which receives federal funding for its public schools, had failed to establish school accountability and had no mechanisms to address the ongoing disparate impact of insufficient resources on minority students. *Williams* First Amended Complaint, *supra* note 6, at 72.

[101] Order Granting Motion for Judgement on the Pleadings as to Second Cause of Action at *5, Williams v. State, No. 312236 (Cal. Super. Ct. July 10, 2003), 2003 Cal. Super. LEXIS 1063; *see* Lockard, *supra* note 46, at 413 (noting that the *Williams* plaintiffs centered their claims on California's poor supervision of school conditions).

[102] *See* Oakes, *supra* note 82, at 1309–10 (summarizing the expert testimony of a former New York State Commissioner of Education who attested to the life-long negative impact on students attending neglected schools); *see also* Brown v. Bd. of Educ., 347 U.S. 483, 494–95 (1954) (finding that the message communicated by a dual school system providing clearly unequal opportunity had an impermissible negative impact on Black children). In *Brown*, the Supreme Court struck down legal

In response, California initially attempted to dismiss the plaintiffs' claims as falling under the purview of preexisting administrative procedures and thus inappropriate for judicial review.[103] As the class action proceeded, California further tried to avoid liability by characterizing school funding schemes as a local problem, with arguments echoing past state actors' defenses to civil rights claims, and school districts' defense of local segregation in *Brown*.[104] The state blamed any school inadequacies on the external challenges that the plaintiffs faced as low-income and minority Californians, as well as on poor school management, which the state claimed was outside of its control.[105] The state argued that existing statewide facility and teacher qualification standards fulfilled its supervisory duty.[106] The state concluded that if the plaintiffs were experiencing violations in their schools, the students could sue their districts but not the state at large.[107] Finally, California alleged that student underperformance was due to the manner in which schools were using their resources, rather than the amount of resources allocated.[108] According to the state, the class action

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segregation and called for the dismantling of dual public school systems nationwide. 347 U.S. at 495. The *Brown* Court emphasized that "education is perhaps the most important function of state and local governments," and stated that state public school systems must make it "available to all on equal terms." *Id.* at 493. The argument that segregated schools supposedly provided the same facilities and opportunities to Black and white children did not dissuade the Court from finding separate schools to be "inherently unequal," and in violation of the Fourteenth Amendment. *Id.* at 495.

[103] Memorandum of Points and Authorities in Support of Demurrer of Defendant State of California to Plaintiffs' First Amended Complaint at 17–20, *Williams*, No. 312236 [hereinafter Memorandum of Points and Authorities].

[104] Oakes & Lipton, *supra* note 88, at 26; *see* Memorandum of Points and Authorities, *supra* note 103, at 16, 25 (asking the court to require that the *Williams* plaintiffs bring their grievances to local administrative offices before challenging the state education department); *see also Brown*, 347 U.S. at 494–95 (banning the widespread practice of segregated school facilities). The plaintiff-students sought to cut through a common refrain of state defendants—placing blame on local funding and mismanagement for school deficiencies. *See* Oakes, *supra* note 82, at 1372–75 (summarizing California's efforts to dodge responsibility for educational disparities at the local level).

[105] Oakes & Lipton, *supra* note 88, at 42–43. One state expert presented a study claiming that student success by the end of high school can be attributed almost entirely to "family background," with school experiences responsible for only 3% of students' education outcome. *Id.* The state's abdication of responsibility to ensure equal opportunity, and characterization of education as a unique realm in which courts should respect local discretion, invokes the common refrain of defendant education systems in early desegregation cases. *Id.* at 45. *Compare* Memorandum of Points and Authorities, *supra* note 103, at 3–6 (calling for the *Williams* plaintiffs to exhaust all administrative avenues available to them, and suggesting that the alleged school deficiencies are not appropriate for judicial review), *with Brown*, 347 U.S. at 494–95 (exemplifying an assertive judicial intervention into local school administration).

[106] Memorandum of Points and Authorities, *supra* note 103, at 16.

[107] *Id.*

[108] Memorandum of Defendant State of California in Opposition to Plaintiffs' Motion for Summary Adjudication Regarding Textbooks at 10, 32, *Williams*, No. 312236 (arguing that textbook allocation is a local management issue).

should have been dismissed if student plaintiffs could not show a direct relationship between increased state support and better student outcomes.[109]

After four years of litigation and extensive negotiations, the *Williams* plaintiffs and new Governor Arnold Schwarzenegger's administration announced a settlement on May 17, 2000.[110] The lawsuit successfully placed responsibility on the California state government to take specific remedial action, contingent on legislative enactment of agreed upon reforms.[111] The *Williams* settlement included an $800 million, multi-year school funding package, as well as new requirements for teacher qualification and classroom conditions.[112] The settlement reforms specifically targeted schools ranked in the bottom third of all California public schools and ended the unique, shorter school

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[109] *See id.* (asserting further that if the school system is functioning well as a whole, equity concerns over individual school funding and conditions are unnecessary and inappropriate for judicial review); Oakes & Lipton, *supra* note 88, at 39–40 (describing the defendants' emphasis on local discretion in spending state funds). The defendants alleged that if school districts were choosing to prioritize other needs over classroom maintenance or textbook quantities, then the state is not to blame for resulting insufficiencies. *See* Oakes & Lipton, *supra* note 88, at 39 (outlining California's emphasis on local management of school funds).

[110] Settlement Implementation Agreement at 1–2, *Williams*, No. 312236 [hereinafter Settlement Implementation Agreement]. The parties signed the final settlement agreement on August 12, 2004, with an agreement that the legislature would pass enactment legislation by October 2004. *Id.*

[111] *See generally id.* (detailing the state government's eventual concessions to student demands); Oakes, *supra* note 82, at 1373–75 (summarizing California's aggressive initial effort to avoid responsibility for educational disparities by blaming local spending discretion and mismanagement). New sections of the California Education Code have since implemented the settlement terms. CAL. CODE REGS. tit. 2, §§ 1859.300–.329 (2021); *id.* tit. 5, §§ 17101, 80331(a), 80335, 80339. Section 17002 was amended to define "good repair," "teacher misassignment," and "teacher vacancy," and has enforceable standards and oversight procedures for each these areas. CAL. EDUC. CODE § 17002 (West 2020). For example, an impermissible vacancy means there is no designated, credentialed instructor for a course at the beginning of a course term. *Id.* To be sufficiently resourced, each classroom must have one set of materials for every pupil's class and home use, and schools cannot meet this standard with photocopies. *Id.* § 60119; *see also* Williams *Settlement and the SARC*, CAL. DEP'T EDUC. (Mar. 12, 2020), https://www.cde.ca.gov/ta/ac/sa/williamsimpact.asp [https://perma.cc/6G9N-9S22] (explaining the changes made by *Williams* to the existing California public school oversight regulations).

[112] Settlement Implementation Agreement, *supra* note 110, at 6–7. The annual appropriation of the *Williams* fund, however, represented only a fraction of the total annual budget for education in California. Radhika Mehlotra, *K–12 Education and the New State Budget*, PPIC (July 15, 2019), https://www.ppic.org/blog/k-12-education-and-the-new-state-budget/ [https://perma.cc/ALK9-HE2Z] (tracking billions of dollars in primary school spending in California from 1988 to 2019). New rules for teacher certification and instructional materials defined "sufficient" and "qualified" to create enforceable rights, and focused on meeting the needs of English Language Learners specifically. CAL. EDUC. CODE §§ 60119, 35186; SALLY CHUNG, ACLU OF S. CAL., *WILLIAMS V. CALIFORNIA*: LESSONS FROM NINE YEARS OF IMPLEMENTATION 15 (2013), https://decentschools.org/settlement/Williams_v_California_Lessons_From_Nine_Years_Of_Implementation.pdf [https://perma.cc/XQK2-9AHQ]. For instance, textbooks or electronic curricula must be updated to current content standards. CAL. EDUC. CODE § 60119(c), (e). Relying on class sets, in which there are enough books for each class period but not enough for individual students to use outside of the classroom, is no longer acceptable. *Id.* Furthermore, when there is no full-time teacher assigned to a class or if a teacher is "misassigned" (i.e., unqualified to teach the subject matter or meet student language needs), students legally lack a qualified teacher. *Id.* § 35186(h)(2), (3).

calendar upon which some underperforming schools had relied in order to deal with classroom overcrowding.[113]

The settlement legislation set new inspection and compliance requirements for administrators, and created an accessible complaint mechanism for student enforcement.[114] The *Williams* complaint, backed by concrete legislative standards, allows students to seek redress for specific school violations under the new *Williams* standards.[115] This detailed addition to an existing Uniform Complaint Procedure established three types of complaints that students or community members can file regarding any California public school: teacher vacancy or misassignment, textbook and instructional material insufficiencies, and facility conditions.[116] The settlement also created a School Accountability

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[113] CHUNG, *supra* note 112, at 13, 58. Two of the largest California school districts immediately were forced to develop new calendar plans to ensure that they were not denying their students a full grade term as a band-aid fix for overcrowding. *Id.* at 13. When the *Williams* settlement was announced, approximately 255,000 California students were attending school for only 163 days per year, on a reduced Concept 6 calendar. *Id.* The settlement required all students to receive a full 180-day annual school term by 2012. Settlement Implementation Agreement, *supra* note 110, at 7. The additional instructional days have been linked to increased learning gains in underperforming schools. WILLIAM WELSH ET AL., POL'Y ANALYSIS FOR CAL. EDUC., POLICY BRIEF: NEW SCHOOLS, OVERCROWDING RELIEF, AND ACHIEVEMENT GAINS IN LOS ANGELES—STRONG RETURNS FROM A $19.5 BILLION INVESTMENT 1, 2 (2012), http://www.edpolicyinca.org/sites/default/files/pace_pb_08.pdf [https://perma.cc/W8ZU-WJPH] (linking school facility improvements and class size reductions between 2002 and 2008 to major learning gains for students from underperforming schools).

[114] *See* S.B. 550, 2004 Cal. Legis. Servs., 2003–2004 Reg. Sess. ch. 900 (Cal. 2004) (amending CAL. EDUC. CODE § 60119 to establish a complaint procedure for education adequacy claims in California). The father of the named plaintiff-student, Eli Williams, told reporters: "I couldn't be happier about this settlement." *ACLU and California Officials Reach Settlement in Historic Equal Education Lawsuit*, ACLU (Aug. 13, 2004), https://www.aclu.org/press-releases/aclu-and-california-officials-reach-settlement-historic-equal-education-lawsuit [https://perma.cc/LK6A-DAS2]. The regional ACLU director thanked the Governor for his commitment to the negotiations, announcing that the state's engagement with student concerns had led to "real results" for the children who were currently being denied a full and equal California public school education. *Id.*

[115] *See* Settlement Implementation Agreement, *supra* note 110, at 39–40 (articulating the negotiated terms to be implemented by the California legislature); *Williams* First Amended Complaint, *supra* note 6, at 74–75 (calling for a new "system of statewide accountability" that would both collect data on school insufficiencies and enforce an appropriate state response in individual schools).

[116] CAL. CODE REGS. tit. 5, § 4681 (detailing the required contents of a *Williams* complaint, which may be filed anonymously). Complaints must inform the school and the district of the location and "specific nature" of the violation or violations, but need not be submitted through an official form. *Id.*; *see* CAL. EDUC. CODE § 35186 (establishing a full complaint procedure and defining legal standards for "misassignment," "teacher vacancy," and "good repair"); CAL. EDUC. CODE § 17592.72 (detailing a new funding and response scheme for "emergency repair grants" for serious facilities hazards identified under *Williams* monitoring); CAL. CODE REGS. tit. 5, § 4683 (specifying the contents of an emergency *Williams* complaint specific to school facility health or safety). Misassignment occurs when a teacher lacks all necessary credentials for either the course subject matter, or does not meet the needs of the specific enrolled students, particularly English Language Learners. CAL. EDUC. CODE § 35186. Many under-resourced schools rely on rotating substitutes due to high teacher turnover, but following *Williams*, students without a full-time, permanent instructor at the beginning of a semester can bring a teacher vacancy complaint. *Id.*

Report Card (SARC) system to make *Williams*-mandated data available to the public and to keep parents updated about their children's learning environments and school performance.[117]

D. Williams *at Work: Beyond "Basic Necessities"*

The California laws that implemented the *Williams* settlement have now been in place for over sixteen years.[118] In 2013, the ACLU Foundation of Southern California, which served as co-counsel for the student class action, published a settlement effectiveness report highlighting the notable decrease in teacher misassignments and textbook shortages.[119] That same year, California enacted a new school financing scheme, and called for local districts to prioritize *Williams* compliance in deciding how to use their resources.[120] Funds promised in the 2004 settlement, however, had been delayed by California's budget deficit during the economic recession.[121] In 2013, thousands of facility violations were still awaiting repair.[122]

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[117] *See* CAL. EDUC. CODE § 33126 (requiring that schools publish School Accountability Report Cards (SARCs) in order to make *Williams* compliance data publicly available); Settlement Implementation Agreement, *supra* note 110, at 11–43 (outlining accuracy and oversight requirements for each school's publicly available SARC). The same Facility Inspection Tool (FIT) forms, developed by the California Office of Public School Construction for official school reviews, are available to students and parents to evaluate their school facilities. *See* CAL. EDUC. CODE § 17002(d)(1)–(2) (defining "good repair" standards evaluated under the FIT form). The comprehensive checklist differentiates between "good repair" and deficiencies of different seriousness levels, and covers school conditions from water and electrical systems to evidence of daily cleaning and bathroom conditions. *Id.* Although the mandated SARCs are publicly available, a report released a year after the *Williams* matter settled found that the major data dump in the SARCs was difficult to understand for many, and that the information did not necessarily translate into meaningful agency or choice for parents and students. *See* Koski, *supra* note 60, at 31; GABRIEL BACA ET AL., UNIV. OF CAL., GRADING THE REPORT CARD: A REPORT ON THE READABILITY OF THE SCHOOL ACCOUNTABILITY REPORT CARD (SARC) 4 (2005), http://www.idea.gseis.ucla.edu/publications/sarc/pdf/GradingSARCff-1.pdf [https://perma.cc/5JN7-ECEG] (examining the accessibility of published school performance metrics, such as test scores and data on teacher qualification and retention).

[118] *See* BROOKS M. ALLEN, ACLU OF S. CAL., THE *WILLIAMS V. CALIFORNIA* SETTLEMENT: THE FIRST YEAR OF IMPLEMENTATION 28–29 (2005), http://decentschools.org/settlement/WilliamsReportWeb2005.pdf [https://perma.cc/QX4F-ZVYF] (summarizing important deadlines for implementation of the settlement terms between 2004 and 2012). The new set of school regulations implemented new oversight measures fully by the spring term of the 2004–2005 school year. *Id.*

[119] *See generally* CHUNG, *supra* note 112 (recounting *Williams* compliance successes, but calling for further state investment and scaled-up oversight to remedy unresolved violations). Between 2004 and 2013, the percent of at-risk schools lacking enough textbooks decreased by 14%, while the number of misassigned or uncertified teachers decreased by 16%. *Id.* at 9–10.

[120] *See* CAL. CODE REGS. tit. 5, § 1549 (specifying the equation used to calculate school financing under the scheme); CHUNG, *supra* note 112, at 6 (discussing the California Department of Education's 2013 guidance letter, which affirmed *Williams* compliance as the utmost priority for individual districts adapting their budgets under the state legislature's new Local Control Funding Formula).

[121] *See* CHUNG, *supra* note 112, at 37–38 (identifying state budget freezes as the most significant problem blocking redress of valid *Williams* facilities and classroom complaints).

[122] *Id.* at 25.

Today, the most obvious success of the *Williams* settlement and complaint process is its visibility and accessibility.[123] Every public school classroom in California is required to post notices to students and their families regarding standards for teachers, instructional materials, and classroom conditions, as well as explanations of the rights of students and parents to complain of insufficiencies under *Williams*.[124] Although other state Departments of Education merely direct grievance letters to their central offices, an internet search for "California unsafe classroom complaint" results in numerous guides and pre-prepared forms, in multiple languages, explaining the guarantees under *Williams* and how to file a complaint against a school.[125] Students from schools represented in the *Williams* class action were likely acutely aware of how their schools compared to those in more affluent areas, but before *Williams*, they would not have known what they could do about it.[126]

As implemented, the *Williams* settlement legislation placed a renewed focus on state accountability, creating space for more specific education rights

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[123] *See* KINI, *supra* note 96, at 8–25 (compiling challenges and success stories from community efforts to enforce *Williams* requirements in Huron and Oakland, California). Initially, spreading the word about new school conditions laws was the biggest challenge for education advocates. *Id.* at 8. Public Advocates, a civil rights nonprofit organization, credited community trainings and parent-led action groups with ramping up *Williams* oversight to ensure that district and school administrations took the new laws seriously. *Id.* at 8–9, 14.

[124] CAL. EDUC. CODE § 35186 (West 2020); CAL. CODE REGS. tit. 5, § 4684(a). The complaint process by which students can formally address *Williams* violations is also known as the Uniform Complaint Process. WILLIAMS COMPLAINTS CLASSROOM NOTICE, SOUTHWEST HIGH SCHOOL 1, http://www.eaglesnet.net/documents/Williams-Complaints-Classroom-Notice.pdf [https://perma.cc/LS6X-4HXK].

[125] *See, e.g.*, *How to File a Complaint with Your School*, MY SCH. MY RTS.: KNOW YOUR RTS., https://www.myschoolmyrights.com/complaint-school/ [https://perma.cc/N3EE-AG9U] (outlining the straightforward process and timeline for filing a *Williams* complaint, and encouraging families to provide as much detail and documentation as possible for the violations that they want addressed). Additionally, easy-to-understand summaries and complaint how-to guides are made available by the California Department of Education and multiple non-profit organizations. *See, e.g.*, *Uniform Complaint Procedures*, CAL. DEP'T EDUC. (Sept. 22, 2020), https://www.cde.ca.gov/re/cp/uc/ [https://perma.cc/DKD7-ZWWF] (answering parent FAQs and providing timeline and contact information for Californians that are interested in filing a *Williams* complaint). Other states lacking such a clear procedural framework usually have a single webpage with a mailing address to the state department of education's office for grievance letters. *See, e.g.*, *File a Complaint*, FLA. DEP'T OF EDUC., http://www.fldoe.org/policy/cie/file-a-complaint.stml [https://perma.cc/6R6C-T3UN] (instructing public student complainants in Florida generally to "contact the Division of Public Schools," and providing Education Chancellor office phone numbers without further instructions).

[126] *See* KINI, *supra* note 96, at 8–9 (highlighting the importance of self-advocacy by students who understand their rights under *Williams* and demand school compliance). The *Williams* plaintiffs chose to take an assertive role in their educational experience, despite a history of minority communities being excluded from school governance. *See id.* at 14. As one parent activist, who later worked to enforce the settlement in Hayward, California, described, *Williams* complaints have a "domino effect" of engaging and empowering the community to speak out on behalf of their school children. *Id.*

challenges.[127] Since 2004, legal nonprofits have coordinated new student lawsuits and have helped guide student groups through the *Williams* complaint process, engaging some community groups in the school reform project for the first time.[128] In 2006, in *Valenzuela v. O'Connell*, low-income high school students sued the state of California for failing to give them the tools to successfully meet graduation requirements.[129] Their eventual settlement with the state used the *Williams* framework and added new oversight requirements regarding graduation readiness to the existing *Williams* complaint process.[130]

The *Williams* factors and oversight strategies have been incorporated by California schools in the state's No Child Left Behind School Program Improvement efforts.[131] The settlement also laid the groundwork for more ambitious student advocacy, invoking the *Williams* principles of state-level accountability and school quality baselines.[132] For example, *Ella T. v. State of California*, a student lawsuit claiming a constitutional violation in the state's

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[127] *See* CHUNG, *supra* note 112, at 14 (linking the *Williams* framework to later litigation that resulted in new oversight measures for student graduation readiness programming and additional education investment legislation).

[128] *See* KINI, *supra* note 96, at 8 (highlighting the efforts made by Public Advocates to teach individuals about the complaint process). Public Advocates has led hundreds of *Williams* trainings to teach students how to communicate problems to their school administrators, and how to properly file and appeal through the official complaint process. *Id.* The organization credits grassroots efforts in communities, including Huron, Hayward, and Oakland, for making the *Williams* settlement a workable solution and coming together to hold school administrators accountable. *Id.* at 12–19. Trained students have worked to educate fellow students about their rights and have compiled hundreds of complaints from their peers. *Id.* at 19. These students also have organized meetings with school administrators and interviews with local media. *Id.* at 11, 22. After identifying initial deficiencies, the student groups followed up to ensure full *Williams* compliance and transparency. *Id.* at 16.

[129] Coordinated Proceeding Special Title (Rule 1550(B)) California High School Exit Exam Cases at *1, Valenzuela v. O'Connell, 2006 WL 1749626 (Cal. Super. Ct. May 12, 2006) (No. JCCP-004468), *vacated in part by* O'Connell v. Superior Court, 47 Cal. Rptr. 3d 147 (Ct. App. 2006) [hereinafter Coordinated Proceeding Special Title (Rule 1550(B))]. The *Valenzuela* settlement created a mechanism for students to file complaints regarding the quality of their preparation for the California High School Exit Exam. *Id.* at *7. The injunction issued by the lower court, blocking the state from denying high school graduation diplomas based on test scores, was lifted on appeal because it was found to be too broad and overstepping the judiciary's limited role in education policymaking. *O'Connell*, 47 Cal. Rptr. 3d at 1482–83.

[130] Michael Heise, *Pass or Fail? Litigating High-Stakes Testing*, *in* FROM SCHOOLHOUSE TO COURTHOUSE: THE JUDICIARY'S ROLE IN AMERICAN EDUCATION 1, 153 n.79 (Joshua M. Dunn & Martin R. West eds., 2009).

[131] ALLEN, *supra* note 118, at 27; *see* Koski, *supra* note 60, at 27 (summarizing the standards-based school accountability and monitoring structures established under Title I of the No Child Left Behind Act, as renewed in 2001). A central tenet of the No Child Left Behind Act is the goal for schools to make enough annual progress toward benchmarks for annual student performance and school improvement. *See* Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified as amended in scattered sections of 20 U.S.C.) (amending the Elementary and Secondary Education Act of 1965); Koski, *supra* note 60, at 27–28 (outlining the content standards framework used to compare student achievement and target underperforming schools for intervention).

[132] *See* Coordinated Proceeding Special Title Rule (1550(B)), *supra* note 129, at *5 (advocating for additional changes related to the high school diploma process in the wake of *Williams* reforms).

failure to support literacy programming, was allowed to proceed to trial and culminated in a significant financial commitment for targeted reading intervention in the elementary schools that needed it most.[133] National education activists are now looking to California for education reform guidance, after other state courts have dismissed student efforts aiming to establish a right to literacy and related programming as non-justiciable policy matters.[134]

II. Challenges Facing Education Adequacy Activists

The trend in education rights litigation has evolved from equality and opportunity-based challenges, in the tradition of the Supreme Court's monumental call to end school segregation in 1954, toward a modern focus on the adequacy of the K–12 experience.[135] Education adequacy lawsuits typically chal-

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[133] *See* Ruling/Orders at 5, Ella T. v. State of California, No. BC685730 (Cal. Super. Ct. July 18, 2018), https://media2.mofo.com/documents/180718-ella-t-demurrer-court-order.pdf [https://perma.cc/4L5B-Z92V] (denying the State's motion for dismissal of the plaintiffs' "request [for] injunctive relief requiring Defendants to ensure that Plaintiffs have the opportunity to attain literacy" as a separation of powers violation). *See generally* Complaint, *Ella T.*, No. BC685730 (invoking a general right to education in California, specifically in relation to the duty to support students in underperforming schools as they learn to read, and alleging that "[a]n education that does not provide access to literacy cannot be called an education at all"). On February 20, 2020, the State reached a settlement with the student plaintiffs in which it agreed, pending legislative action, that it would invest fifty million dollars in the seventy-five elementary schools facing the greatest literacy challenges. Settlement Implementation Agreement, *Ella T.*, No. BC685730, https://media2.mofo.com/documents/200220-literacy-ca-ella-t-settlement-agreement.pdf [https://perma.cc/73PT-RT6V] [hereinafter *Ella T.* Settlement Implementation Agreement]; Beth Hawkins, *A Legal Right to Literacy: 10 Kids Sued California for Failing to Teach Them to Read. Could Their Settlement Set a Precedent for Other Struggling Schools?*, THE 74 (Mar. 3, 2020), https://www.the74million.org/article/10-schoolchildren-and-their-teachers-win-an-unprecedented-legal-settlement-that-links-literacy-to-democracy/ [https://perma.cc/ERC5-UQ6W].

[134] *See* Gary B. v. Snyder, 329 F. Supp. 3d 344, 365–67 (E.D. Mich. 2018) (granting the state defendants' motion to dismiss a class action brought on behalf of Detroit public school children), *aff'g in part, rev'g in part sub nom.* Gary B. v. Whitmer, 957 F.3d 616 (6th Cir.), *vacated*, 958 F.3d 1216 (2020). The U.S. District Court for the Eastern District of Michigan acknowledged the critical nature of literacy as a life skill and a means for civic engagement, but held that such importance does "not necessarily make access to literacy a fundamental right." *Id.* at 365. The lower court dismissed the class action, but the students' appeal was successful before the U.S. Court of Appeals for the Sixth Circuit initially, which did find a fundamental right to literacy. Gary B. v. Whitmer, No. 18-1855/1871, 2019 U.S. App. LEXIS 32544, at *12–13 (6th Cir. Oct. 29, 2019), *aff'd in part, rev'd in part by Gary B.*, 957 F.3d 616, *vacated*, 958 F.3d 1216 (2020). That victory, however, was illusory as the Michigan state government reached a settlement with the plaintiff class on May 14, 2020, just before the Sixth Circuit vacated the judgment finding a right to literacy. Mark Walsh, *Full Federal Appeals Court to Reconsider Ruling on Right of Access to Literacy*, EDUCATION WEEK (May 19, 2020), https://blogs.edweek.org/edweek/school_law/2020/05/full_federal_appeals_court.html [https://perma.cc/DFK9-WA73] (quoting the Michigan legislature's attorney, who noted, "the extent the plaintiffs and the governor were trying to lock in this ruling so there would be a guarantee of a minimum level of education, that has failed"). The student class action was dismissed following a settlement agreement, prior to the Sixth Circuit's rehearing of the case *en banc*. Gary B. v. Whitmer, No. 18-1855, 2020 U.S. App. LEXIS 18312 (6th Cir. June 10, 2020).

[135] *See* Briffault, *supra* note 62, at 44–47 (summarizing the perceived advantages of an adequacy approach over the prior equity model, namely the greater comfort afforded to courts with respect to

lenge how states allocate resources and support among districts, arguing for greater proportional investment in low-income areas.[136] This Part explores the legal and administrative strategies of activists and policymakers attempting to create meaningful public school reform.[137] Section A of this Part discusses the challenges inherent to introducing notions of adequacy into public education, and the struggle to establish objective baselines that can be measured and enforced by students and their families.[138] Section B summarizes the debate about where education reform should focus—resource allocation or student outcome metrics.[139] Although a quality education cannot be reduced to a pure dollar amount, these concerns are inextricably linked.[140] Resources and infrastructure dictate the terms of day-to-day school operations, and in many ways define a student's public school experience.[141]

A. The Debate Over "Adequacy"

The debate over what defines a state's duty to provide an "adequate" education is far from over, and *Williams v. State* does not provide a clear answer.[142] Funding scheme reform has dominated this debate, but focusing on district-level budget solutions may have obscured the critical qualitative ele-

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asking the legislature to take reasonable steps to oversee and enforce standards instead of demanding a vague equality promise for all children); Gordon, *supra* note 71, at 353 (articulating the multi-part analysis necessary to evaluate school adequacy under a state constitutional education guarantee). *Compare* Brown v. Bd. of Educ., 347 U.S. 483, 494 (1954) (applying an equity lens and declaring that segregated school systems are "inherently unequal," and in violation of the Fourteenth Amendment), *with* Serrano v. Priest, 487 P.2d 1241, 1254 (Cal. 1971) (emphasizing adequacy and calling for state intervention when local funding disparities would deny a comparable public education to students in poorer communities), *and* McDuffy v. Sec'y of Exec. Office of Educ., 615 N.E.2d 516, 554 (Mass. 1993) (utilizing an adequacy framework to interpret the "duty . . . to cherish" education clause in the Massachusetts Constitution as a binding mandate on the state as a whole).

[136] *See* Briffault, *supra* note 62, at 31 (describing the comprehensive nature of the inquiry and remedy for districts failing to provide an "adequate education"). Education adequacy activists typically focus on how state support manifests in the quality of school experience among schools or districts, instead of demanding equal spending per student under a more rigid, equity-based reform model. *Id.* at 27–28. Ideas of equity and adequacy, however, are blended in most judicial reviews of student legal challenges. *Id.*

[137] *See infra* notes 142–167 and accompanying text.

[138] *See infra* notes 142–154 and accompanying text.

[139] *See infra* notes 155–167 and accompanying text.

[140] *See* Robinson v. Cahill, 355 A.2d 129, 132 (N.J. 1976) (noting that courts should look beyond state budget allocations when comparing the quality of public school districts to resolve claims of unconstitutional disparities); Note, *Education Policy Litigation as Devolution*, 128 HARV. L. REV. 929, 936 (2015) [hereinafter *Education Policy Litigation*] (discussing the challenges associated with suing a state over school quality, as opposed to suing its overall funding structure).

[141] *Robinson*, 355 A.2d at 132; *Education Policy Litigation*, *supra* note 140, at 936.

[142] *See* Mitchell, *supra* note 24, at 3–5 (noting that, by the 1960s, increased division among education policymakers led to a priority shift from school "resources" and the learning environment to testing and accountability).

ment of improving students' daily experiences at school.[143] The quality of a student's education is difficult to measure and compare objectively.[144] At the same time, public school policymakers' priorities largely have shifted toward favoring standards-based measurements of education quality, as opposed to evaluating the school setting in which students are expected to meet those standards.[145] As policymakers grapple with different methods to improve the holistic learning environment in struggling schools, one approach is to set legally enforceable baselines for common issues faced by under-resourced schools.[146] Such baselines can avoid being mired in debate about what is or is not adequate if they focus on conditions that, to an ordinary observer, would "shock the conscience."[147]

Efforts to make struggling schools more like successful ones face a significant roadblock: structurally, public school systems lack inherent equalizing mechanisms, making the progressive rhetoric and big promises of mainstream reform movements ring hollow.[148] Any lawsuit alleging disparities among schools or districts is essentially asking the court to rely on general comparisons—despite a myriad of complicating local factors—and to create accounta-

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[143] *See* Dunn & West, *supra* note 48, at 10–11 (questioning the efficacy of school finance litigation victories that address school problems only on a broad economic level and may not achieve the stated goals).

[144] *See* Mitchell, *supra* note 24, at 5 (listing different strategies for assessing the quality of a student's education).

[145] *Id.* at 20–21. An emphasis on preparation for adulthood and citizenship in the early school reform efforts of the twentieth century took a back seat to the National Defense Education Act and its new focus on competitiveness and career readiness. *Id.* at 19–20. Student achievement in the fields of science, technology, engineering, and math drove federal grants and state-level policy priorities. *Id.*

[146] *See Williams* First Amended Complaint, *supra* note 6, at 6, 8 (calling for the state of California to establish and enforce "minimal educational norms" in public schools).

[147] *Id.* at 6, 26–57 (listing school inadequacies experienced by the named plaintiffs—including falling ceiling tiles, rodent infestations, missing supplies, and no permanent teachers—all of which should be unheard of in a twenty-first century public school).

[148] *See* Mitchell, *supra* note 24, at 20 (arguing that public education is, by design, difficult to change with adequacy lawsuits because equity "is a *redress* value, not an *address* value"). For example, Teach For America's (TFA) founding mission statement was "One Day, All Children," reflecting the organization's stated goal to end the "opportunity gap" and to provide high quality K–12 instruction for all children. *The Challenge*, TEACH FOR AM., https://www.teachforamerica.org/what-we-do/the-challenge [https://perma.cc/P3FR-AU9Y]. Today, TFA places thousands of teachers annually in fifty-one regions nationwide, but has been criticized for promising a revolution despite falling short of legitimate reform. *See* Peter Greene, *What Went Wrong with Teach for America*, THE PROGRESSIVE (Feb. 17, 2016), https://progressive.org/public-school-shakedown/went-wrong-teach-america/ [https://perma.cc/JXU4-LJHX] (summarizing alumni critiques of the TFA program as the organization celebrated its twenty-fifth year). Critics suggest that TFA provides schools with a revolving door of unsupported teachers—most of whom are temporary and require little financial investment from the district—thereby perpetuating a lack of both investment and legitimate reform in low-income and minority neighborhoods. *See* Olivia Blanchard, *I Quit Teach for America*, THE ATLANTIC (Sept. 23, 2013), https://www.theatlantic.com/education/archive/2013/09/i-quit-teach-for-america/279724/ [https://perma.cc/55FF-DJHD] (recounting a lack of support and training, intense teacher burnout, and a general "disconnect between [TFA's] public ideals and their actual effectiveness").

bility in a system that was not designed with equality in mind.[149] To help students craft a compelling relative adequacy case, some scholars analogize the right to education to the right to counsel.[150] As with effective representation, there is an essential connection between the enforcement of any meaningful education right and the adequacy of services provided to students, as the California Supreme Court recognized in *Serrano v. Priest* in 1971.[151]

Nationally, no state education guarantee has been established without some qualitative element, yet adequacy notions remain largely aspirational.[152] Recently, after a promising California education adequacy lawsuit was dismissed, a Public Advocates attorney suggested that a citizen-led ballot initiative may be necessary to bolster the California Constitution's education clause with a more concrete enforceable guarantee.[153] Although *Williams*-style classroom resource and safety requirements set a much-needed baseline for what state schools must provide, students will need more demanding school opportunity entitlements for courts to consider education quality holistically and enforce more than a bare minimum.[154]

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[149] *See* Mitchell, *supra* note 24, at 20 (linking the "redress" problem to the critical role that courts play in bringing meaningful change to a stagnant education system that otherwise would overlook the needs and concerns of marginalized students).

[150] *See* Gordon, *supra* note 71, at 349 (exploring a possible parallel between the right to effective legal representation and a similar qualitative right within education services provided by the state). Students in low-income districts challenging the adequacy of their public education make a similar argument to that of poor defendants asserting their right to counsel in spite of their inability to pay. *See id.* (advocating for school reform that centers on true adequacy, rather than economic redistribution fixes). Professor Anne Gordon reasons that a framework ensuring that all students receive a meaningful education can draw from established protections for criminal defendants and their right to "adequate legal assistance." *Id.* (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)).

[151] *See* Serrano v. Priest, 487 P.2d 1241, 1244, 1257 (Cal. 1971) (finding that the California Constitution's education clause mandates "more than access to a classroom").

[152] *See* Gordon, *supra* note 71, at 352 n.184 (surveying twenty-two states' interpretations of their respective constitutional education clauses). A large majority of states have found some right to public education in their state constitutions, with some "guarantee of quality." *Id.* at 352–53.

[153] *See* Campaign for Quality Educ. v. State, 209 Cal. Rptr. 3d 888, 921 (Ct. App. 2016) (Liu, J., dissenting) (suggesting that the state constitution's education clause is only a "paper promise" if the California Supreme Court refuses to define its terms or intervene when the state permits gross disparities in school quality); Fensterwald, *supra* note 77 (summarizing the California Supreme Court's decision not to review a student class action challenging the state school financing scheme as denying "minimally adequate education"). The California appellate court dismissed the suit, finding that courts should not decide school spending amounts for the legislature. Fensterwald, *supra* note 77. Public Advocates attorney John Affeldt hoped that a ballot initiative would "clarify that 'fundamental' requires a minimum level of quality; [and] would define what a student needs to get a decent education." *Id.*

[154] *See supra* note 153 and accompanying text.

B. Input v. Output: How Should We Measure Our Schools?

States, including California, have designed their current school evaluation models around testing and graduation standards, and thus claim that is the realm in which their oversight duties lie.[155] High-profile national initiatives, such as No Child Left Behind, which ties participation to grant money, further promoted standards-based reform as the most fair and objective way to expect results from schools, and to push them to deliver.[156] Some proponents see consistent statewide standards for all students as the best vehicle for promoting equity in education.[157] Critics argue that promising more resources contingent upon schools' meeting a target is backwards, and widens the gap between already high performing schools and underperforming schools that need extra resources to get up to par.[158] These critics further note that pushing school leadership to focus on high test score achievement may blind administrators to other critical responsibilities.[159]

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[155] *See* Koski, *supra* note 60, at 26–27 (summarizing the policy rationale for school standards-based reform—a model that is based upon establishing statewide mastery benchmarks and using assessment data to drive district reform); Oakes, *supra* note 82, at 1370–71 (discussing critiques of California's 1997 education policy agenda, which prioritized standards achievement over school conditions oversight).

[156] *See* Koski, *supra* note 60, at 26–28 (explaining the carrot-and-stick structure of No Child Left Behind's school accountability measures, which tie performance to federal funding). The No Child Left Behind Act created specific achievement goals for historically disenfranchised groups, and established accountability protocols for schools that continue to underperform. *See* Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified as amended in scattered sections of 20 U.S.C.) (amending the Elementary and Secondary Education Act of 1965). The No Child Left Behind Act also expanded the oversight role of the federal government in public schools, and particularly focused on monitoring school quality through national assessment of certain learning targets. 20 U.S.C. § 6301; Mitchell, *supra* note 24, at 21. Finally, the Act promoted investment in non-traditional school options, such as magnet and charter schools. 20 U.S.C. § 6301; Mitchell, *supra* note 24, at 21.

[157] *See* Koski, *supra* note 60, at 14–15 (summarizing the approach of standards-based education reformers, who advocate for raising expectations for schools that have underperformed in the past, while giving them flexibility in how to achieve state standards).

[158] *See id.* at 16 (questioning the wisdom of enforcing high standards for student achievement and considering "whether it is acceptable to hold students accountable for failing to learn without providing them the necessary opportunities to learn"). Other scholars have warned that states pursuing standards-centric school accountability may be encouraged to lower their expectations to make schools appear to be delivering a higher quality education without actual, rigorous oversight. Gordon, *supra* note 71, at 360.

[159] *See* Koski, *supra* note 60, at 28–29 (finding that standards-based school oversight largely has failed to create dramatic school "turnarounds," even when schools have extra support). School culture, staff retention and investment, and other intangible non-academic factors shape student learning and achievement greatly, but are not easily captured in a school's end-of-year data review. *See* Gordon, *supra* note 71, at 358–59 (arguing for a holistic approach to evaluating school quality—one that accounts for both intangible internal organization factors and school budgetary and testing metrics). Teachers largely have borne the burden of these shifting priorities, as many administrators push teachers to prioritize "teaching to the test" over their own values as educators. *See, e.g.*, Pedro da Costa, *'Schools Are No Longer Just Institutions of Learning—We Are the Primary Hub of Care Outside the Family*,*'* ECON. POL'Y INST. (May 24, 2019), https://www.epi.org/blog/schools-are-no-longer-just-

Today, the standards-based school assessment model has come to dominate conversations about education, posing a challenge to student groups that want to push for strict accountability at the state resource allocation stage.[160] Student and teacher proponents of a resource-focused effort argue that state oversight should be centered around improving learning conditions, and demand increased financial support for underperforming schools before the state can expect improved student outcomes.[161] Critics of resources-first reform characterize calls for increased initial investment as an over-compartmentalization of the public school experience, one that oversimplifies issues of efficiency, school leadership, and other factors that cannot be measured on the end-of-year budget.[162] When facing an education adequacy lawsuit, states argue that students cannot prove that court-ordered resource allocations will translate into improved student outcomes.[163]

It is true that student success is determined by far more than their experiences within the classroom, further obscuring the impact of per-student spending.[164] Even schools with robust programming and student support cannot change external socioeconomic and personal challenges.[165] With this in mind, some scholars suggest that the input/output debate is a false dichotomy.[166] Considering the intersectional nature of education challenges, it is both possible and necessary to consider each of these metrics of education quality.[167]

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institutions-of-learning-we-are-the-primary-hub-of-care-outside-the-family/ [https://perma.cc/9TT5-9TCL] (quoting a middle school educator's plea to state leadership to support teachers as they help their vulnerable students navigate life and do far more than just prepare students for tests). Many educators, particularly those working with younger students, have difficulties reconciling standards-centric education with their beliefs in community building and values-centric instruction as the best way to prepare young people for success. *See id.*

[160] Koski, *supra* note 60, at 28–29.

[161] *See* Gordon, *supra* note 71, at 358–59 (summarizing the typical concerns surrounding school input-based reform, namely that more state funds will not be the magic bullet for which activists hope).

[162] *Id.* State education officials or district superintendents may defend their school budget decisions by contending that school quality does not depend on funding alone. *Id.*

[163] *See id.* (summarizing the common state government refrain that student success comes from how schools manage and implement their resources, as opposed to the tools to which schools have access).

[164] *See* Dunn & West, *supra* note 48, at 11 (discussing the difficulty of measuring school effectiveness conclusively).

[165] *See id.* (acknowledging the enormous weight of external factors in determining individual students' success). It is often difficult for student plaintiffs to articulate to a court how a remedy will redress their claims because the cause-and-effect of policy or funding changes in education can be distorted by a myriad of external factors. *Id.* at 10–11.

[166] *See* Gordon, *supra* note 71, at 358–59 (cautioning against a reductive, spending-focused approach to school reform).

[167] *See id.* (encouraging a holistic approach to school oversight that provides necessary resources and is informed by non-economic data on student achievement and graduation preparedness); Koski, *supra* note 60, at 34 (arguing for a school oversight scheme of "reciprocal accountability" that blends state standards for student outcomes with community oversight of input learning environment conditions).

III. THE *WILLIAMS* COMPLAINT PROCESS: AN ACCESSIBLE AND EFFECTIVE TOOL FOR COMMUNITY ENFORCEMENT OF EDUCATION RIGHTS

All over the United States, arguments between state and local decisionmakers regarding how to fix school problems have largely shut out those who understand the necessary solutions best—students and community members.[168] Student-led litigation is one pathway to place responsibility affirmatively at the state level for neglected schools, but engaging community members through administrative pathways is crucial to hold all responsible parties' feet to the fire.[169] In most states, the absence of school oversight transparency creates a lack of awareness on the parts of parents, students, and teachers, as to what they are entitled to from the state and how to make change.[170] Furthermore, community members are unlikely to engage in the project of school improvement if they feel that their voices do not matter.[171]

This Part argues that all states should adopt a comprehensive, accessible complaint process, similar to the *Williams v. State* settlement framework, to share school oversight power with students, parents, and teachers.[172] Section A of this Part examines the power of community organizing around a complaint tool to address long-ignored health, safety, and learning environment problems in individual schools.[173] Section B emphasizes the need for detailed monitoring of school conditions in real-time, and suggests modern updates to the *Williams* protocol to better involve teachers in school improvement efforts and to empower students with digital access to the complaint and related school transparency data.[174] Finally, Section C links the *Williams* framework to a recent student class action, which hoped to build beyond "minimal educational needs" to establish a right to literacy education in California.[175]

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[168] *See* RIPPNER, *supra* note 44, at 24–26 (noting the increased power of state-level bureaucrats with respect to policy decisions at the local level). The blame can be put upon the President of the United States, the U.S. Secretary of Education, state governors, city mayors, school board members, appointed state officials, and even state employees, such as superintendents, administrators, and teachers. *Id.*

[169] *See* KINI, *supra* note 96, at 14–15 (crediting the success of the *Williams* complaint process to student-led community action).

[170] *See id.* at 26 (noting that two years after the *Williams* settlement, forty–two California districts had yet to receive a single complaint, thereby indicating a lack of awareness among students and parents regarding their rights).

[171] *Id.*; *see* Koski, *supra* note 60, at 34 (emphasizing the need to harness community activism for school improvement with "an accessible and user-friendly" complaint process).

[172] *See infra* notes 176–223 and accompanying text.

[173] *See infra* notes 176–183 and accompanying text.

[174] *See infra* notes 184–209 and accompanying text.

[175] *See infra* notes 210–223 and accompanying text.

A. Restoring Agency to Local Stakeholders

One of the major advantages of the *Williams* complaint mechanism for student redress is its immediate accessibility as a fixed process that includes a pathway for appeal and requires responses on the students' school year timeline.[176] Any effective and accessible student-enforced oversight mechanism should empower students to demand what is owed to them, without placing an undue burden on children to police their own education when they should be focused on learning.[177] Students cannot pause their K–12 education while they wait for litigation to resolve a grievance against their school, so an immediate redress mechanism is vital.[178]

The change catalyzed by an effective community campaign to collect *Williams* complaints may have a ripple effect outside of the target school.[179] For example, in the Huron School District, a Latinx parent group used *Williams* complaints to address the brown, foul-smelling water that students were forced

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[176] CAL. EDUC. CODE § 35186 (West 2020); CAL. CODE REGS. tit. 5, § 4632 (2021). A student or community member may appeal to the school board if unsatisfied with the school's response to a *Williams* complaint. CAL. EDUC. CODE § 35186; CAL. CODE REGS. tit. 5, § 4632; *see* Expert Report of Thomas Sobol, *supra* note 1, at 14 (calling for timely state intervention into underserved schools so that students do not continue to fall behind). Students may appeal directly to the State Superintendent of Public Instruction in the event of "emergency or urgent" *Williams* violations that pose health or safety risks. CAL. EDUC. CODE § 35186(c).

[177] *See* SANDRA J. STEIN, THE CULTURE OF EDUCATION POLICY 4–5 (2004) (explaining that education issues are inherently defined by policy decisionmakers' personal commitment to resolving problems faced by marginalized students). When power is centralized in state officials who lack firsthand experience with the schools that they are attempting to "fix," perceptions can be skewed. *Id.* Policymakers "typically stand far *outside* the communities in which the problem occurs." *Id.* at 5. The traditional decision-making process leaves out student voices, and may therefore overlook some important dimensions of school problems. *Id.*

[178] *Id.*; *see* Export Report of Thomas Sobol, *supra* note 1, at 14 (emphasizing the time-sensitive nature of school reform remedies); Slater, *supra* note 13 (interviewing Eli Williams as he prepared to graduate, just as the settlement improvements bearing his name came into effect). The *Williams* litigation likely could have dragged on longer had the new administration under Governor Schwarzenegger not wanted to reach a settlement during his first year in office. *Billion-Dollar Settlement Will Insure That Students Have Books and Schools Are Safe; Establishes Standards for School Materials and Teacher Qualification*, ACLU (Aug. 13, 2004), https://www.aclu.org/press-releases/aclu-and-california-officials-reach-settlement-historic-equal-education-lawsuit [https://perma.cc/3FFZ-6S6Z].

[179] *See* KINI, *supra* note 96, at 11–13 (describing how a parent-led campaign to improve the drinking water in a single elementary school resulted in a major investment in clean water infrastructure in Huron, California). Joining a strong advocacy network focused on education issues can empower families to speak out about other problems in their communities. *Id.*; *see* Elizabeth Jones, Note, *Drinking Water in California Schools: An Assessment of the Problems, Obstacles, and Possible Solutions*, 35 STAN. ENVTL. L.J. 251, 278–79 (2016) (recommending renewed efforts to leverage *Williams* complaints against persistent environmental injustice in California communities). As evidenced by this example, the *Williams* complaint process can be a more powerful administrative remedy in school settings than California's general health and safety laws. *See* Jones, *supra*, at 274–79, 290 (noting that the *Williams* settlement mandates that information regarding public school drinking water quality be made publicly available in the SARCs).

to drink.[180] Two years of community organizing resulted in new school water infrastructure, and was the impetus for a California Department of Public Health investment in a new drinking water treatment system across the city.[181] The clean water campaign also prompted additional inquiries into school conditions, including textbook insufficiencies and teacher misassignments.[182] This *Williams* success story highlights the importance of stakeholder awareness, which is typically only achieved through significant community organizing, and training inclusivity, namely by disseminating *Williams* resources in multiple languages.[183]

B. Placing the State's "Non-Delegable" Duties on a Strict Timeline

Unequal funding litigation has struggled to solve the root problem of inequities in students' day-to-day public school experiences.[184] In 1971, in *Serrano v. Priest*, the Supreme Court of California proclaimed one of the most robust education mandates nationwide by finding California's entire school funding system unconstitutional.[185] Fifty years later, however, students in most low-income California districts have yet to see the lasting change for which

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[180] KINI, *supra* note 96, at 8–9, 13. Padres Unidoes Mejores Escuelas (PUME), which translates to Parents United for Better Schools, brought together the Latinx community in the city of Huron, including migrant worker families who never before had been included in school initiatives. *Id.* at 10.

[181] *Id.* at 10–13. The multi-faceted *Williams* complaint form prompts parents and students to evaluate a wide range of school conditions, meaning that an inquiry into one *Williams* violation often can uncover and redress other violations. *See Williams Settlement*, YOLO CNTY. OFF. OF EDUC., https://ycoe-ca.schoolloop.com/williams [https://perma.cc/WQP2-4C5C] (providing an example of the *Williams* checklist that each California school district is required to make publicly available, in both English and Spanish, to students and their families). As one PUME community leader described it, *Williams* campaigns lead to "ordinary people achieving extraordinary things," once parents realize that their actions can give their children a better education and a better life. KINI, *supra* note 96, at 8.

[182] KINI, *supra* note 96, at 11. The complaint process brought parents before the school board for the first time, igniting a new dialogue between stakeholders and school administrators. *Id.*

[183] *Id.* at 15; *see* Andrew J. Campa, *Glendale Unified Agrees to Installation of Temporary Restrooms at Monte Vista Elementary*, L.A. TIMES (May 21, 2019), https://www.latimes.com/socal/glendale-news-press/news/tn-gnp-me-monte-vista-bathroom-update-20190521-story.html [https://perma.cc/N8Q8-D5SL] (describing a successful parent-led campaign to bring *Williams* complaints regarding school sanitation needs before a local school board). After hearing from concerned community members about the lack of accessible elementary school bathrooms, a school board member called for such health and safety concerns to be "proactively addressed" in the future. Campa, *supra*. Language barriers must be addressed to include all families in the school reform project. *See* KINI, *supra* note 96, at 10, 15 (highlighting the need for bilingual community trainings, and the importance of making *Williams* complaint forms available in Spanish). The settlement legislation requires that the state of California respond in Spanish to a *Williams* complaint filed in Spanish, though at least one Latinx parent group has had to follow up with a school district to receive an appropriate response. *Id.* at 16.

[184] Fensterwald, *supra* note 77.

[185] Serrano v. Priest, 487 P.2d 1241, 1266 (Cal. 1971).

activists fought.[186] The debate over school input versus output metrics has pushed policymakers to choose between past or future, despite the fact that student needs exist firmly in the present.[187] The *Williams* model provides a reality check by focusing on students' immediate classroom concerns, and expediting a response protocol on the school year timeline.[188]

During the *Williams* litigation, the state of California characterized the class action complaint as a "laundry list of highly specific problems" found only in some schools, and thus unfit for redress at the state policy level.[189] The defendants asserted that only allegations of system-wide education quality violations could trigger the California standards precedent established in *Butt v. State of California* and *Serrano*.[190] This defense strategy highlights the need to create specific remedies for students whose schools are not the norm—schools where a combination of factors and fault (both locally and at the state level) have created unacceptable learning environments for which no education official wants to accept responsibility.[191]

First, although the strength of the *Williams* remedy lies in its immediacy, a twenty-first century technology update could transform the complaint process into a truly accessible tool for students and teachers alike.[192] Past *Williams*

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[186] *See* Cairns, *supra* note 50, at 710 (discussing the issues left unresolved in California's school districts after the court's intervention in *Serrano* ostensibly solved the problem of unequal funding). The student victory against California school funding failed to address school deficiencies meaningfully, given that the *Serrano* opinion's abstract promise of education equality did not create specific classroom requirements. *Id.* at 709–10.

[187] *See* Gordon, *supra* note 71, at 359, 362 (suggesting that a false dichotomy exists between metrics of school success, and cautioning against an output-only reliance on testing). Students need support and redress mechanisms on an ongoing, practical basis to ensure that they are safe and provided for at school. *See* KINI, *supra* note 96, at 36–43 (providing a step-by-step action plan for students wishing to file a *Williams* complaint with their school, and including tips from past successful complaints).

[188] *See* Expert Report of Thomas Sobol, *supra* note 1, at 14 (emphasizing that students who currently attend inadequate schools, and are falling further and further behind each day, are not helped much by gradual improvement); Gordon, *supra* note 71, at 345 (arguing that a "basic education" must be defined clearly to guide courts toward meaningful enforcement).

[189] *See* Memorandum of Points and Authorities, *supra* note 103, at 13, 19 (alleging that the plaintiffs failed to invoke existing administrative remedies for textbook insufficiencies and facilities complaints). California further alleged that the plaintiffs were suing over a nonjusticiable state policy issue, unless they could articulate a specific "adequate minimal standard" for the court to apply to their claims. *Id.* at 13.

[190] *Id.* at 1–4 (citing Butt v. State, 842 P.2d 1240, 1252–53 (Cal. 1992)).

[191] *See id.* at 17–23 (minimizing individual school failings by arguing that even if the plaintiffs' complaints are true, they do not reflect the norm for most California public schools); Cairns, *supra* note 50, at 732–35 (arguing for reform that goes beyond merely meeting students' basic human needs). Education officials attempt to deflect calls for reform by asserting that ill-equipped or dangerous classrooms are rare; however, that does not change the fact that students still are being harmed by those conditions. Cairns, *supra* note 50, at 732–35.

[192] *See* KINI, *supra* note 96, at 8–24 (examining two case studies of students and parents who used community organizing to leverage the *Williams* complaint in Huron and Oakland). In spite of the fact that communication and documentation are critical to force a timely school response, the current

campaigns succeeded on the basis of students' extensive documentation of safety and health violations, but a new digital complaint process could place information and power fully in the hands of students and parents.[193] The process also should be updated to set out a clear role for teachers, who may not know how to speak up about health and safety problems in their workplace, or may not know how to advocate for their students to ensure they have what they need to learn.[194]

For teachers who spend more time than their students on school premises, deteriorating or unsafe surroundings may pose even greater health and safety

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Williams form does not foster collaborative reporting. *See id.* By allowing students to take advantage of social media and smartphone tools, the *Williams* complaint could be even more powerful fifteen years after it was first implemented. *Id.*; *see* EAB, RECRUITING THE DIGITAL NATIVE: ACTIONABLE INSIGHTS FROM OUR 2019 STUDENT COMMUNICATION PREFERENCES SURVEY 18–19 (2019), https://attachment.eab.com/wp-content/uploads/2019/09/36899-ES-DigitalNative-WP-web.pdf [https://perma.cc/N94B-9K42] (analyzing high school student social media use, and suggesting that online engagement is critical for universities looking to recruit and support minority and first-generation students).

[193] *See* CHUNG, *supra* note 112, at 50–51 (acknowledging that California school districts have made significant progress in making their *Williams* data available, but also calling for individual schools to empower parents with truly greater "[s]ite-level transparency"); Koski, *supra* note 60, at 43 (emphasizing that "local stakeholders must be apprised and aware of their rights," by referencing a California district in which a school itself admitted to multiple *Williams* violations between 2005 and 2006). Notably, in that district, no complaints were filed by the school community to force redress of those issues. Koski, *supra* note 60, at 43. A digital *Williams* complaint reporting tool could bolster claims by allowing students to gather and share evidence of school-site violations, and could simplify the complaint procedure. *See generally* CHUNG, *supra* note 112 (attributing successful *Williams* interventions to persistent community organizing and student collaboration). Students can provide necessary on-the-ground data to school administrators, who themselves assert that the biggest issues with *Williams* compliance are "the amount of time consumed by the monitoring process and the difficulty of having to conduct many site visits with limited staff." *Id.* at 59. A digital complaint form also could help the state prioritize intervention spending where it is needed most and could be synced with SARC data, so that students and parents can compare their schools' self-reported data with that of other schools around them. *See* KINI, *supra* note 96, at 40 ("Parents trust [the] district to give us accurate information. Before [*Williams*] we wouldn't have had the confidence to push back when they said every teacher was properly credentialed. But now we could say, 'Wait a minute, we looked it up' . . . .") (quoting a Bay Area parent).

[194] *See* KINI, *supra* note 96, at 20–23 (revealing that there is no clear role for teachers in the *Williams* complaint process and highlighting the need for communication and collaboration within each school). Teachers wary of retribution from their school administrations may file a *Williams* complaint anonymously. CAL. EDUC. CODE § 35186 (West 2020); CAL. CODE REGS. tit. 5, §§ 4680, 4685 (2021). The school, however, will not be required to send an individual response, following its investigation of an anonymous complaint, if no contact information or mailing address is provided. CAL. EDUC. CODE § 35186; CAL. CODE REGS. tit. 5, §§ 4680, 4685. Even after successfully filing a complaint, teachers may be hesitant to take advantage of their appeal options, which require them either to share their concerns publicly at a school board meeting or go directly to the office of the California State Superintendent. CAL. EDUC. CODE § 35186(c); CAL. CODE REGS. tit. 5, § 4687; *see* ASSOCIATED PRESS, *St. Paul Public Schools Settles Teacher Retaliation Lawsuit*, NBC NEWS (Sept. 19, 2019), https://www.nbcnews.com/news/nbcblk/st-paul-public-schools-settles-teacher-retaliation-lawsuit-n1056266 [https://perma.cc/VQ4D-QD6V] (recounting the retaliation claims that surfaced after a teacher spoke out against his district's leadership).

risks over the decades.[195] Moreover, it has become the harsh reality in most districts that teachers spend their own money to equip their classrooms with basic learning materials.[196] The recent proliferation of GoFundMe and DonorsChoose social media campaigns has spotlighted teachers who lack the most basic items—pencils, tissues, books, and lesson supplies—and who undoubtedly could use a direct administrative channel to get what they need in the classroom.[197] Even in California, where any member of the public can file a *Williams* complaint, the process lacks a clear role for teachers.[198] A truly effective oversight mechanism would invite teachers to advocate for safe working conditions, and would allow them to demand state support for the classroom resources that they currently bear the burden of providing.[199] Thus, complaint procedures should be updated to engage teachers alongside their students in efforts to improve learning and working conditions.[200]

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[195] *See* Kathleen Megan, *Teachers Report Mold, Rodents, and Excessive Heat in Schools Are Making Them, Their Students Sick*, CT MIRROR (Nov. 6, 2019), https://ctmirror.org/2019/11/06/teachers-report-mold-rodents-and-excessive-heat-in-schools-are-making-them-their-students-sick/ [https://perma.cc/4VJA-CT39] (quoting a frustrated teacher who noted that even "[dog] kennels have maximum temperature limits" regulated by the state, while Connecticut still lacks any regulations on extreme heat in public school facilities). Career teachers working in neglected schools are subjected to health and safety risks for decades due to the presence of mold, vermin, extreme temperatures, and poorly maintained buildings. *Id.*; Marjorie Cortez, *Salt Lake Education Association Members Walk Out 'for' Students and March to Capitol*, DESERET NEWS (Feb. 28, 2020), https://www.deseret.com/utah/2020/2/28/21157865/walk-out-teachers-salt-lake-education-association-members [https://perma.cc/PQ3Z-LGHS]. Ending unsafe and unsanitary school conditions has been a rallying cry in recent teachers strikes and related union organizing. Cortez, *supra*. Teachers working in under-resourced schools put their own health at risk, and bear the intense emotional burden of making do and motivating children in an environment of neglect. *Id.*

[196] *See* Odzer, *supra* note 16 (detailing a Florida teacher's grant writing campaign to ensure that her students have the tools they need to learn); Strauss, *supra* note 16 (recounting frustrations from teachers who resigned after years of purchasing school supplies for their classrooms and dealing with test score focused administrators who ignore their day-to-day needs).

[197] Odzer, *supra* note 16.

[198] *See generally* CAL. EDUC. CODE § 60119(c) (establishing the *Williams* complaint procedures). Teachers may fear retaliation from their school or district administrators if they call attention to poor conditions in their schools, even if they submit their *Williams* complaint anonymously. *See, e.g.*, ASSOCIATED PRESS, *supra* note 194 (describing a Minnesota public school teacher's wrongful termination lawsuit after he publicly criticized the superintendent and school board policy).

[199] *See* Emma García, *It's the Beginning of the School Year and Teachers Are Once Again Opening Up Their Wallets to Buy School Supplies*, ECON. POL'Y INST. (Aug. 22, 2019), https://www.epi.org/blog/teachers-are-buying-school-supplies/ [https://perma.cc/UE7F-CB7Y] (providing national and state-by-state statistics on teacher out-of-pocket classroom spending). Public school teachers serving in low-income communities tend to spend significantly more of their own salaries to meet their classroom and students' needs. *Id.* California public school teachers spent $664 on average in a 2011–2012 school year spending survey, while the national average was $459. *Id.*

[200] *See* Odzer, *supra* note 16 (recounting that a Florida teacher, lacking sufficient state support, sought private grants and alternative funding sources so that she could provide basic necessities for her students).

Second, the extensive administrative reporting mandated under *Williams* should be centralized to better inform interventions for struggling schools, and to help the state prioritize education funding.[201] Although students should not have to justify their need for clean drinking water and rat-free classrooms by producing higher test scores, syncing collected community-accountability data with school-standards data might reveal which *Williams* insufficiencies have a strong connection to student outcomes.[202] For example, some California schools already have documented improved student performance after making significant changes to implement the new, strict teacher assignment rules required by the *Williams* settlement legislation.[203] Some districts have taken steps to change their hiring practices, such as hiring only teachers with English Language Learner certification, in order to avoid noncompliance or teacher misassignment.[204]

Scholars in California already have identified a strong link between teacher credentials and experience and student achievement.[205] For instance, a landmark 2019 study identified "positive outlier" districts where students of color were outperforming historical and statistical expectations, despite a significant ongoing achievement gap in California public schools.[206] The study attributed the "outlier" schools' impressive achievement to their implementa-

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[201] *See* CHUNG, *supra* note 112, at 27, 34 (arguing for more clarity by the Commission on Teacher Credentialing and increased monitoring of school-reported compliance data for accuracy). Some states already have promising oversight processes in place for specific public school programming, such as special education, that potentially could be scaled up to include the general student body. *See* Koski, *supra* note 60, at 32–33 (commending a Texas public school's monitoring program, which mandates comprehensive reporting and procedures for schools that serve students with disabilities).

[202] *See* CHUNG, *supra* note 112, at 59 (recommending "real-time" digital monitoring of *Williams* compliance to help the state prioritize limited resources and make the most meaningful interventions); KINI, *supra* note 96, at 4 (quoting *Williams* plaintiff Alondra Jones, who contended that where she attends high school "is not an excuse" for the appalling conditions that she has had to endure).

[203] *See* CHUNG, *supra* note 112, at 39, 46–47 (highlighting the new screening step in some California districts, which checks that new teachers have credentials to support English Language Learner students).

[204] *Id.* One Orange County administrator credited the district's full compliance with the *Williams* teacher assignment criteria to the district's newly implemented strict screening protocol, which ensures that new hires are adequately credentialed. *Id.* at 47. Other districts, including Los Angeles and San Bernardino counties, have a policy of shielding teachers specifically with English Language Learner credentials from staff layoffs, thereby incentivizing veteran teachers to get certified. *Id.* at 49.

[205] *See* ANNE PODOLSKY ET AL., LEARNING POL'Y INST., CALIFORNIA'S POSITIVE OUTLIERS: DISTRICTS BEATING THE ODDS 16 (2019), https://learningpolicyinstitute.org/sites/default/files/product-files/Positive_Outliers_Quantitative_REPORT.pdf [https://perma.cc/H8DM-6FXM] (finding that "the percent of teachers holding substandard credentials is significantly and negatively associated with student achievement" based on a three-year study of testing outcomes from 435 of California's most racially diverse public school districts).

[206] *See id.* at 3–4, 8–10 (presenting student body demographics for fifty-four identified Positive Outlier Districts, in which students, on average, outperformed testing expectations based on community socioeconomic factors).

tion of "funding and accountability systems to support students of color."[207] The study found that teacher qualification was the strongest predictor of student academic success, aside from socioeconomic background.[208] The positive outlier study confirmed what the *Williams* plaintiffs knew: quality instruction matters, and it can measurably improve student outcomes if the state ensures that even traditionally underperforming schools have qualified teachers.[209]

C. A Building Block for Targeted Litigation

Education reform efforts repeatedly have run into roadblocks due to the reluctance of state courts to interfere with the judgment of another branch of government.[210] By creating baseline conditions, the *Williams* settlement prevented the state of California from further narrowing the field of school variables for which it is legally responsible and can be court ordered to address.[211]

In the fifteen years since the *Williams* settlement, education activists have targeted the overall California school funding scheme with mixed success.[212] One ambitious effort by the Campaign for Quality Education challenged the state for not bridging the funding gap between richer and poorer districts in violation of the *Serrano* mandate.[213] The lawsuit, which aimed to create a systematic solution to perpetual funding disparities, was dismissed as a legislative issue inappropriate for judicial intervention.[214]

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[207] *Id.* at 2. The Learning Policy Institute used testing data from 2013 to 2017, across all subjects of the California State Assessment, to compare the 435 school districts that have at least two hundred students of color. *Id.* at 12.

[208] *Id.* The study found a significant negative correlation between teachers with insufficient credentials or misassignments under *Williams* criteria, and the academic achievement of students of color. *Id.* at 16. As of 2016, the study found that nearly half of the teacher credentials issued by the state's Department of Education were substandard. *Id.* at 14. The national teacher shortage has led to more waivered and temporary instructors. *Id.*

[209] *Id.*

[210] *See* Dunn & West, *supra* note 48, at 7–8 (noting that this concern has led some plaintiff- students to take their cases to federal court). For example, in *Jenkins v. Missouri*, plaintiff-students who filed in federal court won a comprehensive funding overhaul order in a historically segregated district in which a local state judge likely would have been reluctant to issue such an order. 639 F. Supp. 19, 35 (W.D. Mo. 1985).

[211] Settlement Implementation Agreement, *supra* note 110, at 6–7. Incrementally building specific student rights can help clarify an appropriate role for the courts. *See id.*

[212] *See* Cairns, *supra* note 50, at 732–35 (arguing that the *Williams* legislation failed to usher in lasting change).

[213] *See* First Amended Complaint for Declaratory and Injunctive Relief for Violations of Article IX, Sections 1, 5, and 6; Article XVI, Section 8(a); Article I, Sections 7(a) and 7(b); and Article IV, Section 16(a) of the Constitution of the State of California at 16–17, Campaign for Quality Educ. v. State, 209 Cal. Rptr. 3d 888 (Ct. App. 2016) (No. RG10524770) (asserting a qualitative element to the California Constitution's education clause, as interpreted by the *Serrano* court, and alleging that "adequate funding" is an essential component of established education rights).

[214] *Campaign for Quality Educ.*, 209 Cal. Rptr. 3d at 903; *see* John Fensterwald, *California Kids Who Didn't Learn to Read to Get Day in Court*, EDSOURCE (July 26, 2018), https://edsource.org/

A recent student class action, *Ella T. v. State of California*, instead asked the California judiciary to intervene on a narrow issue, one that the legislature and Department of Education already had identified as a serious concern—literacy.[215] The *Ella T.* plaintiffs invoked the same "basic educational opportunities" promised under the California Constitution, just as the *Williams* students had done, but asked the state specifically to address the low quality of the reading programs offered in under-resourced schools.[216] The students and activists behind the *Ella T.* lawsuit aimed to build upon the *Williams* model by calling for new "parent involvement" initiatives and zeroing in on the connections between literacy and citizenship, the school to prison pipeline, and life-long mental health and personal achievement.[217] This challenge specifically called out the state for

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2018/california-kids-who-didnt-learn-to-read-to-get-day-in-court/600684 [https://perma.cc/CD59-VC99] (summarizing the state's defense that elected policymakers, not judges, should decide how to best support public education). The California First District Court of Appeal reasoned that the education provisions of the state constitution "do not allow the courts to dictate to the Legislature, a coequal branch of government, how to best exercise its constitutional powers" in creating and overseeing the public school system. *Campaign for Quality Educ.*, 209 Cal. Rptr. 3d at 903. The court further explained that the undisputed importance of education does not in itself create a constitutionally required "standard of achievement" or "particular level of education expenditures" that students can assert to challenge the funding of their schools. *Id.* at 902.

[215] Complaint, *supra* note 133, at 13–17 (alleging a "literacy crisis" in California public schools, and describing life-long challenges faced by students lacking critical reading and writing skills). After collecting extensive data on the reading levels of students at underperforming schools, California developed an intensive new literacy initiative but did not secure a federal grant to implement the initiative as planned. Fensterwald, *supra* note 214. On February 20, 2020, the *Ella T.* plaintiffs reached a fifty million dollar settlement with the state government. *Ella T.* Settlement Implementation Agreement, *supra* note 133, at 1. Following appropriation by the legislature, the settlement specifically will target the racial achievement gap in California. *Id.* The funds will be invested in the elementary schools currently ranked lowest on the annual state literacy exam. *Id.*

[216] Complaint, *supra* note 133, at 55–57. Both *Williams* and *Ella T.* rely specifically on Article I, § 7(a) and Article IV, § 16(a) of the California Constitution. *Id.*; *see Williams* First Amended Complaint, *supra* note 6, at 10–11 (summarizing the due process, equal protection, and education guarantee clauses of the California Constitution and citing the California Supreme Court's application of those provisions in previous student equal protection victories, such as *Butt v. State of California* and *Serrano*). The *Ella T.* complaint specifically called for practical, resource-based literacy instruction and related teacher support. Complaint, *supra* note 133, at 57–58. The plaintiffs demanded more than just teacher qualification standards, which the *Williams* settlement heightened, and called for teacher support and intervention to address the impact of "[h]igh teacher turnover and absence rates" as specifically detrimental to literacy instruction. *Id.* at 48–49. As the *Williams* plaintiffs successfully modeled, the *Ella T.* plaintiffs argued that they were a suspect class based on race (not wealth as in *Serrano*) and that disparate school conditions under California's public education system should be viewed through the lens of strict scrutiny. Ruling/Orders, *supra* note 133, at 3 ("Plaintiffs have sufficiently alleged class based on race."). In *Serrano*, the California Supreme Court instead treated wealth as a suspect class, given that the plaintiff-students' claims stemmed from disparate funding based on local property taxes. Serrano v. Priest, 487 P.2d 1241, 1250–51 (Cal. 1971).

[217] Complaint, *supra* note 133, at 15, 54. The plaintiff-students emphasized the severe, life-long disadvantages that they would face if not taught how to read and write effectively. *Id.*; Esmeralda Fabián Romero, *Only One Fourth-Grader at a California School Can Read at Grade Level. A New Lawsuit Claims the State Is Violating Students' 'Constitutional Right to Literacy*, 'THE 74 (July 19, 2018), https://www.the74million.org/article/only-one-fourth-grader-at-a-california-school-can-read-at-grade-level-a-

its oversights, including the monitoring exemptions for charter schools under the *Williams* settlement, as well as California's lax enforcement of learning materials and teacher qualification laws.[218] The *Ella T.* plaintiffs asked for renewed enforcement of standards for particularly impactful school conditions and related "timely and appropriate intervention" and "accountability."[219] Their recent settlement victory will allow individual schools to access literacy grants, using state funds to empower local initiatives.[220]

Having specific laws already on the books as a result of the *Williams* litigation gives students the ability to realize the general California constitutional education mandate.[221] The *Ella T.* plaintiffs used the importance of literacy to push this promise one step further, as part of an ongoing effort to put resources directly into the hands of teachers and students.[222] Each *Williams* complaint or lawsuit that pushes for zealous state oversight helps to establish a greater con-

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new-lawsuit-claims-the-state-is-violating-that-students-constitutional-right-to-literacy/ [https://perma.cc/4EGD-NJ29] (summarizing allegations that a lack of literacy programming in some California communities renders students unprepared for stable employment and civic engagement as adults).

[218] Complaint, *supra* note 133, at 50. Charter schools are exempt from *Williams* compliance unless they choose to opt in and become eligible for participation-tied funding. *Id.*; *see* Joseph O. Oluwole, *A National Lesson on the Dereliction and Declension of Educational Equality: The Cautionary Tale of California Charter Schools*, 41 CAMPBELL L. REV. 1, 43 (2019) (linking the high closure rates among California charter schools to "lack of stringent oversight" from the state); *Uniform Complaint Procedures Monitoring*, CAL. DEP'T EDUC. (Dec. 29, 2020), https://www.cde.ca.gov/re/cp/uc/ucpmonitoring.asp [https://perma.cc/2APU-2RHC] (explaining that charter schools may choose to not follow the *Williams* complaint and oversight procedures). The settlement specifically includes charter schools in the target group of elementary schools that need state funding and intervention to improve their literacy programming. *Ella T.* Settlement Implementation Agreement, *supra* note 133, at 1.

[219] Complaint, *supra* note 133, at 58. Building off of the *Williams* baseline requirements and block funding, the *Ella T.* settlement terms call for each recipient school to engage in "root cause analysis" prior to receipt of literacy investment. *Ella T.* Settlement Implementation Agreement, *supra* note 133, at 1–2 (calling for elementary schools to "examine school-level and [Local Education Agency] level practices or unmet needs, including school climate, factors related to social-emotional learning, and the experience of students who are below grade-level standard").

[220] *See* Hawkins, *supra* note 133 (quoting an expert witness for the *Ella T.* plaintiffs, who was hopeful that local initiatives would identify which literacy strategies are most impactful and which school attributes best set up students for success).

[221] *See* Settlement Implementation Agreement, *supra* note 110, at 1–4.

[222] *See* Ruling/Orders, *supra* note 133, at 5–6 (denying the State's motion for dismissal of the plaintiffs' "request [for] injunctive relief requiring Defendants to ensure that Plaintiffs have the opportunity to attain literacy" as a separation of powers violation). The California *Ella T.* class action was allowed to proceed to trial, unlike a very similar literacy-based learning adequacy suit in Michigan, which was dismissed as an issue to be resolved by the legislature. *See* Gary B. v. Snyder, 329 F. Supp. 3d 344, 364–68 (E.D. Mich. 2018) (finding that the U.S. Constitution does not set forth a right to literacy nor education, and granting the Michigan education officers' motion to dismiss the plaintiffs' federal due process and equal protection claims), *aff'g in part, rev'g in part sub nom.* Gary B. v. Whitmer, 957 F.3d 616 (6th Cir.), *vacated*, 958 F.3d 1216 (2020).

nection between education and actionable constitutional rights, toward the goal of cementing a national right to education.[223]

CONCLUSION

The *Williams* settlement model demonstrates how specific bright-line rules for classroom conditions across all public schools in a state can set the stage for larger education quality challenges. The California *Williams* complaint process and related school oversight mechanisms also provide for immediate, accessible enforcement by students on a timeline that will allow them to enjoy the benefits of state intervention. The education policy push for "local control" often overlooks student and parent engagement, and denies them meaningful agency in the process. In practice, school administrators and school boards get to be the primary decisionmakers while the rest of the school community lacks accountability measures to check them. A feeling of powerlessness shuts many parents and students out of their own educational experiences and the larger school reform project. As many schools work to redesign

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[223] *See, e.g.*, Class Action Complaint, *supra* note 54, at 17 (alleging that Rhode Island's insufficient public school instruction fails to prepare the state's youth for their civic duties, such as voting, and thus violates the established civic rights of children under the U.S. Constitution). In *Cook v. Raimondo*, the Rhode Island plaintiff-students cited to the Supreme Court's acknowledgement, in *San Antonio Independent School District v. Rodriguez*, of a potential equal protection violation when public schools are so poor that their students are denied an opportunity to exercise their already-established rights. *Id.* at 2, 16; *see* San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 38–37 (1973) (finding that disparate student spending, based on local property taxes under Texas's school funding model, did not invoke a fundamental interest nor a suspect class, but did hint at a potentially successful equal protection claim in an "absolute denial of educational opportunities"). The *Cook* plaintiffs argued that, since *Rodriguez*, a consensus has formed supporting a right to education as education adequacy lawsuits have pushed a majority of state courts to recognize (at least generally) the necessity of education for civic participation. *See* Class Action Complaint, *supra* note 54, at 17–18 (arguing that a consensus of thirty-two states reflects the need for a national right to effective civics education). Although the suit initially was dismissed, the plaintiffs made a compelling argument that the establishment of federal school quality baselines demonstrated a natural and necessary progression of efforts at the state level, and that *Rodriguez* did not foreclose all attempts to create a national right to education. Class Action Complaint, *supra* note 54, at 2, 17–18; *see* A.C. v. Raimondo, No. 18-645 WES, 2020 U.S. Dist. LEXIS 188769, at *53, *61 (D.R.I. Oct. 13, 2020) (finding that the plaintiff-students had standing and had presented a properly justiciable question, but ultimately dismissing the suit upon determining that there was no constitutional right to civics education). Judge William E. Smith's lengthy opinion highlighted the merits of the students' allegations, and closed by noting that although federal law currently "cannot provide the remedy Plaintiffs seek . . . the Court adds its voice to Plaintiffs' in calling attention to their plea. Hopefully, others who have the power to address this need will respond appropriately." *Raimondo*, 2020 U.S. Dist. LEXIS 188769, at *61. Judge Smith emphasized that the *Rodriguez* Court "was careful to leave the door open, if only a crack, to a future challenge to an education program that was totally inadequate . . . ." *Id.* at *40. The plaintiff-student class filed an appeal with the First Circuit on November 25, 2020. *RI District Court Reluctantly Dismisses Suit Seeking to Establish a Federal Constitutional Right to Education*, CTR. FOR EDUC. EQUITY (Oct. 14, 2020), https://educationalequityblog.org/2020/10/14/ri-district-court-reluctantly-dismisses-suit-seeking-to-establish-a-federal-constitutional-right-to-education/ [https://perma.cc/4AMK-ZWV2].

their disciplinary procedures to reflect principles of student agency and restorative justice, education policymakers finally are recognizing the power of the messages communicated to students by their daily lived experiences in school. *Williams* offers a critical lesson to other states looking to implement community-based monitoring of school conditions. Empowered students can use these tools to shed light on problems that have gone ignored in their districts and can harness the media spotlight to put pressure on their districts to act. Complaint procedures are effective only when students have the agency to follow up and appeal as necessary, and trust that their input matters.

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