

Student Note

Falling Short of “Minimally Adequate”: How South Carolina’s Low Standard for Education Must Be Reinterpreted

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INTRODUCTION

South Carolina’s public education system is broken. The education requirements of the state have been too low for too long. South Carolina fails to compete nationally when it comes to education, leaving students in South Carolina at a severe disadvantage after leaving high school to pursue higher learning or employment elsewhere.¹ South Carolina’s failure to set an adequate standard for education has created disparities between the haves and the have-nots; school districts with the resources to go beyond the state’s inadequate standard are able to achieve success while those in lower income areas fall further and further behind.

But deficiencies in the state’s public education system exist beyond disparate funding—many underachieving school districts in South Carolina implement overly punitive discipline and arrest practices, setting their students on a pathway to incarceration rather than graduation.² For South Carolina’s public school system to fulfill its promise of an adequate education to its youth, it must expand its definition of a “minimally adequate education” to provide funding to bridge the divide between school districts and to include guidelines to prevent overly punitive disciplinary and arrest practices.

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1. *Education Rankings: Measuring how well states are educating their students*, U.S. NEWS & WORLD REP., <https://www.usnews.com/news/best-states/rankings/education> (last visited Apr. 16, 2022, 3:34 PM) [hereinafter *Education Rankings*].

2. *2019 DJJ Data Resource Guide*, S.C. DEP’T JUV. JUST. 44 (2019), <https://djj.sc.gov/sites/default/files/Documents/Resource%20Guide%202019-Final%20Draft.pdf>; *OJJDP Statistical Briefing Book*, U.S. DEP’T JUST. OFF. JUV. JUST. & DELINQ. PREVENTION (Nov. 16, 2020), <https://www.ojjdp.gov/ojstatbb/crime/qa05103.asp?qaDate=2019&text=yes>.

I. SOUTH CAROLINA’S “MINIMALLY ADEQUATE EDUCATION” STANDARD

In November of 1993, roughly half of South Carolina’s school districts at the time filed a complaint against the state for the state’s failure to provide their students with an adequate education.³ These school districts, most of which from areas with low-income and high-minority rates,⁴ alleged that this failure violated provisions of the South Carolina constitution’s education clause,⁵ state and federal equal protection clauses, and the South Carolina Education Finance Act of 1977.⁶ On April 22, 1999, the Supreme Court of South Carolina affirmed the trial and appellate court holdings dismissing the school districts’ action for failure to state a claim regarding the equal protection and statutory claims.⁷ Regarding the state constitutional challenge, the court held that “the South Carolina Constitution’s education clause requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education.”⁸ The court went on to define a minimally adequate education to include:

3. *Abbeville Cnty. Sch. Dist. v. State (Abbeville I)*, 335 S.C. 58, 515 S.E.2d 535 (1999). The school districts that were party to the suit were Abbeville County School District, Allendale County School District, Bamberg County School District 1, Bamberg County School District 2, Barnwell County School District 19, Barnwell County School District 29, Barnwell County School District 45, Berkeley County School District, Chesterfield County School District, Clarendon County School District 1, Clarendon County School District 2, Clarendon County School District 3, Dillon County School District 1, Dillon County School District 2, Dillon County School District 3, Florence County School District 1, Florence County School District 2, Florence County School District 3, Florence County School District 4, Florence County School District 5, Hampton County School District 1, Hampton County School District 2, Jasper County School District, Laurens County School District 55, Laurens County School District 56, Lee County School District, Lexington County School District 4, Marion County School District 1, Marion County School District 2, Marion County School District 3, Marion County School District 4, Marlboro County School District, McCormick County School District, Orangeburg County School District 1, Orangeburg County School District 2, Orangeburg County School District 3, Orangeburg County School District 6, Orangeburg County School District 8, Saluda County School District, and Williamsburg County School District. *Id.* at 58, 515 S.E.2d at 535.

4. Laura Callaway Hart, *Abbeville County School District v. State of South Carolina: How Did We Get Here and What Happens Now?*, S.C. SCH. BDS. ASS’N SCH. L. CONF. (Aug. 2015), <https://www.scsba.org/training/2015-school-law-handout-hart.pdf>.

5. S.C. CONST. art. XI, § 3.

6. *Abbeville I*, 335 S.C. at 58, 515 S.E.2d at 535; South Carolina Education Finance Act of 1977, S.C. CODE ANN. §§ 59-20-10 to -80 (LEXIS through 2022 Reg. Sess. Act No. 268).

7. *Abbeville I*, 335 S.C. at 58, 515 S.E.2d at 535.

8. *Id.* at 68, 515 S.E.2d at 540.

[P]roviding students adequate and safe facilities in which they have the opportunity to acquire: 1) the ability to read, write, and speak the English language and knowledge of mathematics and physical science; 2) a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and 3) academic and vocational skills.⁹

Accordingly, the court found that the school districts' complaint did state a claim of inadequate educational opportunity.¹⁰ However, the court refused to set guidelines for how to deliver adequate educational opportunities to these disadvantaged districts, citing the importance of separation of powers and their fear of being viewed as "super legislatures or super-school boards."¹¹

In short, the court established a severely low standard for public education, recognized that roughly half of the school districts in the state did not receive educational opportunities to meet even this low standard, and then balked on providing guidelines for how these opportunities were to be delivered. As such, nothing changed. Even with an established standard, South Carolina continued to do little to address the disparities in their education system.

A. Subsequent History of *Abbeville*

Article XI, § 3 of the South Carolina constitution, entitled "System of free public schools and other public institutions," mandates that "[t]he General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the state and shall establish, organize and support such other public institutions of learning as may be desirable."¹² The court in *Abbeville I* found that this constitutional requirement required the legislature to provide children with a minimally adequate education, but unfortunately, the legislature

9. *Id.*

10. *Id.* at 69, 515 S.E.2d at 541.

11. *Id.*

12. S.C. CONST. art. XI, § 3.

failed to do so then and continues to fall short of its constitutional obligation today.¹³

After the ruling by the Supreme Court of South Carolina in *Abbeville I*, the case was remanded to the trial court to determine one singular issue: “Are the students in the Plaintiff Districts being provided the opportunity to acquire a minimally adequate education in adequate and safe facilities as defined by the South Carolina Supreme Court?”¹⁴ To show their lack of educational opportunities, the underprivileged school districts examined the relationship between their available resources and the school districts’ and their students’ performances.¹⁵ The school districts asserted that their examination proved that the state was not affording their students an opportunity to receive a minimally adequate education.¹⁶

However, counsel for the state argued that “the resources placed into the system provided the opportunity for students to obtain a minimally adequate education, and some students chose to take advantage of the opportunity, while others did not.”¹⁷ Unfortunately, the defense counsel’s strategy of blaming students¹⁸ for their districts’ inability to provide them with adequate resources proved largely convincing to the trial court. The trial court determined that the facilities in the plaintiff school districts were safe and adequate and that South Carolina Curriculum Standards were sufficient.¹⁹ The trial court also found that the state’s inputs into the public education system mostly satisfied the requirements of the South Carolina constitution.²⁰ The only area where the trial court ruled that the state failed to meet its constitutional requirements was regarding the low levels of funding for early childhood intervention programs, reasoning that:

The child born to poverty whose cognitive abilities have largely been formed by the age of six in a setting largely

13. *Abbeville I*, 335 S.C. at 68, 515 S.E.2d at 535.

14. *Abbeville Cnty. Sch. Dist. v. State (Abbeville II)*, 410 S.C. 619, 627, 767 S.E.2d 157, 161 (2014).

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* (Many of whom were minorities and from low-income families.).

19. *Id.*

20. *Id.*

devoid of printed word, the life blood of literacy, and other stabilizing influences necessary for normal development, is already behind, before he or she receives the first word of instruction in a formal education setting. It is for this reason that early childhood intervention at the pre-kindergarten level and continuing through at least grade three is necessary to minimize, to the extent possible, the impact and the effect of poverty on the educational abilities and achievements of these children.²¹

As such, the trial court ruled that the state did not meet its constitutional requirement due to its failure to adequately fund early childhood intervention programs.

Accordingly, both the state and the school districts appealed, and the Supreme Court of South Carolina heard oral arguments in June of 2008 and re-arguments in September of 2012.²² On appeal, the state claimed that the entire issue had become moot due to substantial changes that had taken place since the trial court's ruling on remand.²³ The state pointed out that the only constitutional violation noted by the trial court was the failure to fund early childhood development programs, and the General Assembly created an early childhood intervention program in 2007.²⁴ However, the school districts asserted that the case was not moot because the inadequacies in the education system that led to the state's constitutional violation still existed.²⁵ The Supreme Court of South Carolina agreed with the school districts that the case was not moot and examined "whether the trial court erred in finding that children in the Plaintiff Districts were denied the opportunity for a minimally adequate education in accordance with *Abbeville I.*"²⁶

The Supreme Court of South Carolina re-examined the case on November 12, 2014.²⁷ Twenty-one years after South Carolina's underprivileged school districts filed their initial claim in *Abbeville I.*,

21. *Id.* at 627–28, 767 S.E.2d 157 at 161.

22. *Id.* at 628, 767 S.E.2d 157 at 161.

23. *Id.* at 627–28, 767 S.E.2d 157 at 161.

24. *Id.*

25. *Id.*

26. *Id.* at 629, 767 S.E.2d 157 at 163.

27. *Id.*

the Supreme Court of South Carolina once again addressed whether the state afforded these underprivileged school districts sufficient educational opportunities in accordance with the South Carolina Constitution.²⁸ Although the South Carolina constitution requires there be a system of free public schools that afford each student the opportunity to receive a minimally adequate education, the plaintiff school districts²⁹ alleged that the state was still failing to meet its constitutional obligation.³⁰

Citing Chief Justice John Marshall’s famous statement in *Marbury v. Madison*, “[I]t is emphatically the province and duty of the judicial department to say what the law is,”³¹ the Supreme Court of South Carolina found “that judicial intervention [was] both appropriate and necessary in this instance.”³² They examined the funding, curriculum, teachers, and programs at work in the plaintiff districts and determined that they were both present and appeared to be “at the very least minimally adequate.”³³

However, the court agreed with the plaintiff districts that the funding and programs provided by the state did not, in turn, provide their students with the constitutionally required opportunity because the inputs of the state did not translate into outputs.³⁴ The court measured the “outputs” of the plaintiff districts based on their district and student achievements, including test scores, and found them to be “troubling,” noting that “student performance in the Plaintiff Districts demonstrates an apparent disconnect between intentions and performance.”³⁵

As such, the Supreme Court of South Carolina held that “South Carolina’s educational funding scheme is a fractured formula denying students in the Plaintiff Districts the constitutionally required opportunity.”³⁶ However, the court asserted that the principle of

28. *Id.* at 623, 767 S.E.2d 157 at 159.

29. The Supreme Court of South Carolina reduced the number of plaintiff districts in *Abbeville II* to eight: Allendale, Dillon 4 (previously Dillon 2), Florence 4, Hampton 2, Jasper, Lee, Marion 7, and Orangeburg 3. *Id.* at 623, 767 S.E.2d 157 at 159.

30. *Id.* at 624, 767 S.E.2d 157 at 159.

31. *Id.* at 632, 767 S.E.2d 157 at 163 (citing *Marbury v. Madison*, 5 U.S. 137, 138 (1803)).

32. *Id.* at 633, 767 S.E.2d at 164.

33. *Id.* at 638, 767 S.E.2d at 167.

34. *Id.* at 639, 767 S.E.2d at 167.

35. *Id.*

36. *Id.* at 651, 767 S.E.2d at 173.

separation of powers prevented them from implementing major educational policy choices, stating: “[W]e refuse to provide the General Assembly with a specific solution to the constitutional violation. However, the Defendants may find the remedies fashioned by other states’ courts instructive.”³⁷

The court ultimately held in favor of the plaintiff districts but held that “[t]he Defendants and the Plaintiff Districts must identify the problems facing students in the Plaintiff Districts, and can solve those problems through cooperatively designing a strategy to address critical concerns and cure the constitutional deficiency evident in this case.”³⁸ Their words were vague, leaving much to be interpreted by the legislature.

In June of 2016, seven bills were proposed by the South Carolina state legislature to address the violations of the state constitution, four of which passed.³⁹ The dismal outputs of the state failed to improve. H.4936 listed broad educational goals for the state’s public schools, H.4938 instructed the State Department of Education to survey college students majoring in education about their willingness to serve economically challenged school districts, H.4939 established a new committee to assess federal education requirements, and H.4940 set up a new “Office of Transformation” to provide technical assistance to underperforming school districts.⁴⁰ After all of the litigation surrounding the Abbeville cases, these were the only substantive pieces of legislation passed.

According to the official record, since the Abbeville ruling, 206 pieces of legislation concerned with education were introduced in the General Assembly and 28 were passed into law.

Of the 28, few were . . . *transformative*. There were laws related to school nutrition, sports eligibility, school

37. *Id.* at 656, 767 S.E.2d at 176.

38. *Id.* at 662, 767 S.E.2d at 180.

39. Oran Smith, *Abbeville: A Post-Session Update*, PALMETTO PROMISE INST. (July 20, 2016), <https://palmettopromise.org/abbeville-a-post-session-update/>; *School District of Abbeville vs. State of South Carolina: South Carolina General Assembly Responds*, S.C. SCH. BDS. ASSOC. (July 2016), <https://scsba.org/wp-content/uploads/2016/07/160718-abbeville-flyer.pdf>.

40. *Id.*

board prayers, HPV vaccines, CPR instruction, teaching contract deadlines, teacher evaluation privacy, snow day closings, rights of adult students with disabilities, and school start dates.⁴¹

Very little, if anything, has changed since the supreme court’s ruling in 2014. The “outputs” analyzed by the court remain troubling, and the legislature has yet to implement any solutions to correct what the court found to be a constitutional violation.

II. IDENTIFYING THE PRESENT PUBLIC SCHOOL FUNDING DISPARITIES

South Carolina fails to compete on a national scale when it comes to public education. In a 2022 study that accounted for performance, funding, class size, and instructor credentials in determining the highest-quality public school systems in the country, South Carolina was ranked forty-second out of fifty states and the District of Columbia.⁴² This ranking is the lowest on the East Coast; below bordering states North Carolina⁴³ and Georgia,⁴⁴ and well below most other states in the Southeast.⁴⁵ Without reinterpreting its standard for education and implementing real change to achieve improvement, South Carolina will continue to deny its students a minimally adequate education and remain one of the least educated states in the nation.

A. The Wealth Gap & Its Effect on Quality of Education

Some South Carolina schools have overcome the poor standard of the state and perform at a high level. In 2018, five South Carolina schools were recognized as “Exemplary High Performing Schools” by

41. Smith, *supra* note 39.

42. Adam McCann, *States with the Best & Worst School Systems*, WALLETHUB (July 25, 2022), <https://wallethub.com/edu/e/states-with-the-best-schools/5335>.

43. *Id.* (reporting that North Carolina ranks thirtieth in the nation in quality of public education).

44. *Id.* (reporting that Georgia’s public school system ranks thirty-eighth on this list).

45. *Id.* (reporting that Virginia ranks fourth, Florida ranks fifteenth, Kentucky ranks twenty-second, and Tennessee ranks twenty-seventh).

the National Blue Ribbon Schools Program and honored by the U.S. Department of Education at an awards ceremony in Washington, D.C.⁴⁶ All of these schools come from high-performing school districts⁴⁷ located in some of the wealthiest counties in the state.⁴⁸

A 2022 study, taking into account factors such as state test scores, college readiness, graduation rates, SAT/ACT scores, and teacher quality, ranked Fort Mill School District, Lexington-Richland School District 5, and Lexington County School District 1 as the top three school districts in the state of South Carolina.⁴⁹ Fort Mill, South Carolina is located in York County, the fourth wealthiest county in the state based on median household income.⁵⁰ Lexington County ranks third-wealthiest, with Richland County not far behind at eighth.⁵¹

Another study ranks the top cities and towns in South Carolina based on access to quality school systems.⁵² All of the top ten cities and towns (Tega Cay, Mount Pleasant, Isle of Palms, Sullivan's Island, Fort Mill, Clemson, Surfside Beach, Due West, Chapin, and Murrells Inlet) have well above average median levels of income.⁵³ Of these ten cities, three are listed in the top 10 of wealthiest cities in the state,⁵⁴ and four are listed in the top 10 of safest cities in South Carolina.⁵⁵

High-performing school districts in South Carolina have access to the resources necessary to succeed. These districts can take advantage of the additional funds they receive from taxpayers to provide an education that goes beyond the low standard set by the state legislature

46. *Five South Carolina Schools recognized as 2018 National Blue Ribbon Schools*, S.C. DEP'T EDUC. (Oct. 2, 2018), <https://ed.sc.gov/newsroom/news-releases/five-south-carolina-schools-recognized-as-2018-national-blue-ribbon-schools/>.

47. *2022 Best School Districts in South Carolina*, NICHE, <https://www.niche.com/k12/search/best-school-districts/s/south-carolina/> (last visited Apr. 16, 2022, 2:01 PM).

48. WORLD MEDIA GROUP, LLC., *South Carolina Median Household Income County Rank*, USA.COM, <http://www.usa.com/rank/south-carolina-state--median-household-income--county-rank.htm> (last visited Apr. 16, 2022, 2:07 PM).

49. *2022 Best School Districts in South Carolina*, *supra* note 47.

50. WORLD MEDIA GROUP, LLC., *supra* note 48.

51. *Id.*

52. *South Carolina Public School Ratings*, NEIGHBORHOODSCOUT, <http://www.neighborhoodscout.com/sc/schools> (last visited Apr. 16, 2022, 2:11 PM).

53. WORLD MEDIA GROUP, LLC., *supra* note 48.

54. Chris Kolmar, *The 10 Richest Cities In South Carolina For 2022*, HOMESNACKS (Apr. 4, 2022), <https://www.homesnacks.com/richest-places-in-south-carolina/>.

55. Chris Kolmar, *The 10 Safest Cities in South Carolina For 2021*, HOMESNACKS (Dec. 15, 2020), <https://www.homesnacks.com/cities/safest-places-in-south-carolina/>.

and interpreted by the supreme court. Other schools are not so lucky. Because South Carolina school districts receive local revenue primarily from property taxes,⁵⁶ schools in low-income areas suffer disproportionately from inadequate state funding for expenditures such as teacher salaries and instructional resources.⁵⁷ While wealthier school districts in South Carolina have the resources necessary to provide their students with an adequate education, many school districts in lower-income areas have suffered from a lack of resources for decades.

The majority of the plaintiff school districts in *Abbeville I* belong to counties located in what is known throughout South Carolina as the “Corridor of Shame.”⁵⁸ The Corridor of Shame, deemed as such after a revealing documentary with the same title aired in April 2005,⁵⁹ refers to a stretch of school districts along Interstate-95, which runs parallel to the coast and about seventy miles inland.⁶⁰ The populations of the counties located in the corridor are overwhelmingly poor, rural, and 88% minority (compared to the state average of 44% in South Carolina).⁶¹

In 2007, while on the campaign trail, then-Senator Barack Obama toured J.V. Martin Middle School in Dillon County after the school was brought to his attention by the “Corridor of Shame” documentary.⁶² At

56. Donald R. Tetreault & Daniel Chandler, *Public School Finance Programs of the United States*, NAT'L CTR. EDUC. STATS., <https://nces.ed.gov/edfin/pdf/StFinance/SouthCa.pdf> (last visited Apr. 16, 2022, 2:33 PM).

57. Derek W. Black & Axton Crolley, *Legacy of Jim Crow still affects funding for public schools*, UNIV. S.C. (Apr. 19, 2022), <https://www.sc.edu/uofsc/posts/2022/04/conversation-jim-crow.php#.ZBtNP-zMKeA>.

58. Shelby Bowers, *South Carolina's Corridor of Shame*, ARCGIS STORYMAPS (Apr. 19, 2021), <https://storymaps.arcgis.com/stories/a57474f36c7144b3a42932a4e37abd6c>.

59. DVD: CORRIDOR OF SHAME: THE NEGLECT OF SOUTH CAROLINA'S RURAL SCHOOLS (Charles Traynor “Bud” Ferillo Jr. 2005) (on file with the University of South Carolina Library); see also Alan Richard, *What's Happened in the Rural School District Obama Fought to Save*, PBS NEWS HOUR (Aug. 10, 2016), <https://www.pbs.org/newshour/education/rural-school-district-obama-fought-save#:~:text=%E2%80%9CWe%20have%20a%20lot%20of%20students%20in%20one%20class.%E2%80%9D&text=Bud%20Ferillo%20is%20a%20preppy,shown%20on%20public%20television%20statewide>.

60. Anya Kamenetz, *One Student Tries to Help Others Escape a 'Corridor of Shame'*, NPR (May 31, 2016), <https://www.npr.org/sections/ed/2016/05/31/473240474/corridor-of-shame>.

61. *Id.*

62. Richard, *supra* note 59; see also Kimberly Johnson, *Verdict Looms for Education in 'Corridor of Shame'*, AL JAZEERA AM. (Aug. 11, 2014), <http://projects.aljazeera.com/2014/south-carolina-schools/>.

the time of his trip, the middle school building still had a furnace fueled by coal.⁶³ J.V. Martin had the lowest ratings possible on its state report card for achievement and improvement that year and nearly half of its students scored “below basic” on the state’s English language arts exam.⁶⁴ But as Douglas Ray Rogers, superintendent of Dillon County School District 4, put it, “It’s not just here in Dillon County. It’s across the state. There’s a lot of very tough situations where kids go to school.”⁶⁵

In 2011, South Carolina’s superintendent at the time reported that about 38% of the state’s fourth-graders were functionally illiterate and nearly three-quarters of them read below grade level.⁶⁶ Today, there continues to be schools throughout the Corridor of Shame with crumbling buildings and low performances.⁶⁷ And while the graduation rates of schools located in the corridor have gone up, as of 2016, just half of Dillon’s new graduates enrolled in two- or four-year colleges compared to 70% statewide.⁶⁸

At North Middle/High School (North) in Orangeburg County, high school graduation rates rose to 85% in 2016—but “only 10% of students who took the ACT met college-ready benchmarks in English, and only 2.5% in math.”⁶⁹ As a result, many students who graduated from North and pursued two to four-year colleges eventually returned without completing degrees or finding jobs.⁷⁰ Orangeburg County School District 4 Superintendent Jesse Washington cited a lack of quality teachers, especially at the middle and high school levels in math and science, due to a lack of funding as one of the reasons for North’s struggles.⁷¹ “Salary-wise . . . they can’t compete with Columbia, 30 miles north.”⁷²

Allendale School District, Dillon School District 4, Florence School District 4, Hampton School District 2, Jasper School District, Lee

63. Richard, *supra* note 59. This continued to be the case until 2012, when the school moved into a newer building across the street. *Id.* However, the old building still houses Dillon County School District 4 offices, including the office of the superintendent. *Id.*

64. Richard, *supra* note 59.

65. Johnson, *supra* note 62.

66. *Id.*

67. *Id.*; Bowers, *supra* note 58.

68. Richard, *supra* note 59.

69. Kamenetz, *supra* note 60.

70. *Id.*

71. *Id.*

72. *Id.*

School District, Marion School District 7, and Orangeburg School District 3—the eight plaintiff school districts in *Abbeville II*—all belong to the Corridor of Shame.⁷³ Allendale County is the poorest county in the state of South Carolina, with a median annual household income of \$25,495.⁷⁴ Dillon comes in as the fourth poorest county in the state, followed by Marion at fifth, Lee at sixth, and the others not far behind.⁷⁵

These school districts simply do not have the same access to educational resources as more privileged school districts in the state. Since the COVID-19 pandemic began and schools were forced to leave the classroom for online learning, the disparities in resources available to school districts have become even more of a concern.⁷⁶

Former South Carolina Superintendent of Education Molly Spearman addressed the digital divide—the ability for students to access the technology and internet needed for online learning—as “one of the biggest obstacles” currently faced by South Carolina’s public education system.⁷⁷ Students in underprivileged school districts are less likely to have homes with access to internet and technology sufficient to attend classes virtually than students in better-funded districts.⁷⁸ Additionally, underprivileged school districts are less equipped than most high-performing school districts to issue their students technology such as laptops or tablets that they can use to access virtual classes.⁷⁹

In the summer of 2020, about one in three public school students taking summer classes were able to take a device home from the school

73. Bowers, *supra* note 58; see also *Verdict Looms For Education In ‘Corridor of Shame’*, *supra* note 62.

74. WORLD MEDIA GROUP, LLC., *supra* note 48.

75. *Id.*

76. Lindsay Street, *Digital Divide Among Chief Concerns Before Fall Semester*, CHARLESTON CITY PAPER (May 18, 2020), <https://charlestoncitypaper.com/digital-divide-among-chief-concerns-before-fall-semester/>; Jenna Schiferl, *Educational Equity in Charleston Area Schools Remains an Issue, Survey Finds*, POST & COURIER (Dec. 13, 2021), https://www.postandcourier.com/news/educational-equity-in-charleston-area-schools-remains-an-issue-survey-finds/article_b8501e40-cdcf-11ea-abf2-1f171b6f6e60.html.

77. Street, *supra* note 76.

78. *Id.*; Meg Kinnard & Maryclaire Dale, *School shutdowns raise stakes of digital divide for students*, PBS (March 30, 2020), <https://www.pbs.org/newshour/education/school-shutdowns-raise-stakes-of-digital-divide-for-students>.

79. Street, *supra* note 76; Frank Knaack, *South Carolina Must Ensure Equal Educational and Privacy Rights During COVID-19 (AND BEYOND)*, ACLU S.C. (May 8, 2020), <https://www.aclusc.org/en/news/south-carolina-must-ensure-equal-educational-and-privacy-rights-during-covid-19-and-beyond>.

for virtual learning.⁸⁰ Districts that could not provide virtual classes were forced to go to “paper-packet education,” an alternative where students are required to handle two weeks of material at a time.⁸¹

Close to two-thirds of public school students in South Carolina are considered to be in poverty.⁸² In 2019, the United States Census Bureau estimated that 290,601 South Carolina households were without internet access.⁸³ Without regular, reliable access to the internet, virtual learning becomes a nearly impossible feat.⁸⁴ North Charleston community activist Elvin Speights explains, “A lot of kids live in hotels, and a lot of kids don’t have Wi-Fi if they live in rural areas. Some families don’t have access to these things. Those kids are gonna suffer.”⁸⁵

B. Steps Taken to Address the Disparity

What has South Carolina done to address these massive issues? In 2017, the Supreme Court of South Carolina voted 3-2 to end oversight of the state legislature’s spending in the Corridor of Shame, arguing that it is not the role of the court to determine how the legislature spends its money.⁸⁶ In a statement to the Associated Press, former House Speaker Jay Lucas claimed that “[t]he General Assembly can now focus solely on our children’s education needs rather than compliance with the arbitrary standard [of the supreme court].”⁸⁷

What is being done in the legislature currently to solve these disparities in the public education system? The short answer is not much. In January of 2023, the South Carolina Senate passed S.39, a bill to establish “Education Scholarship Accounts” that would give families public dollars to send their children to private schools and pay for

80. Street, *supra* note 76.

81. *Id.*

82. *Id.*

83. *Id.*

84. Jenna Schiferl, *Educational Equity in Charleston Area Schools Remains an Issue, Survey Finds*, POST & COURIER (Dec. 13, 2021), https://www.postandcourier.com/news/educational-equity-in-charleston-area-schools-remains-an-issue-survey-finds/article_b8501e40-cdcf-11ea-abf2-1f171b6f6e60.html.

85. *Id.*

86. Daarel Burnette II, *S.C. Supreme Court Ends Funding Oversight of ‘Corridor of Shame’*, EDUC. WK. (Nov. 22, 2017), <https://www.edweek.org/education/s-c-supreme-court-ends-funding-oversight-of-corridor-of-shame/2017/11>.

87. *Id.*

related costs.⁸⁸ S.39 passed along party lines, with no Democratic support.⁸⁹ Republican Senator Greg Hembree, chair of the Senate Education Committee, claimed that “[t]here will be children whose lives will be changed for the better because of this bill.”⁹⁰ However, concerns exist regarding the diversion of public funding to private schools.⁹¹ As Democratic Senator Ronnie Sabb explains, “I’m not against any South Carolinian that’s trying to better themselves and trying to make a provision for their family. I think the fundamental question is not that. I would submit that the fundamental question is whether or not we use public funds to support private schools.”⁹²

The South Carolina Senate passed a second school voucher bill, S.285, in March of 2023.⁹³ This bill seeks to expand the “Academic Choice in Education” program, which encourages private investment to fund scholarships to send certain kids to private schools.⁹⁴ These scholarships are currently only available to special education students, but S.285 would allow homeschooled students and students with a family income below a certain level access to these scholarships as well.⁹⁵ Both S.39 and S.285 are currently under consideration in the House of Representatives.⁹⁶

An “open enrollment” bill is currently being drafted by the South Carolina House of Representatives.⁹⁷ H.3843 would allow students to attend any public school in the state, regardless of their home address.⁹⁸

88. Mary Green, *SC Senate approves school voucher bill, next headed to House of Representatives*, WIS NEWS 10 (Jan. 21, 2023), <https://www.wistv.com/2023/02/01/sc-senate-approves-school-voucher-bill-next-headed-house-representatives/>. See S.39, 145th Gen. Assemb., Reg. Sess. (S.C. 2023).

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. Mary Green, *SC Senate passes second school voucher bill in as many months*, WCSC NEWS 5 (March 17, 2023), <https://www.live5news.com/2023/03/16/sc-senate-passes-second-school-voucher-bill-many-months/>. See S. 285, 145th Gen. Assemb., Reg. Sess. (S.C. 2023).

94. *Id.*

95. *Id.*

96. *Id.*

97. Mary Green, *Open-enrollment bill would allow students to attend any public school across SC*, WCSC NEWS 5 (Feb. 17, 2023), <https://www.live5news.com/2023/02/18/open-enrollment-bill-would-allow-students-attend-any-public-school-across-sc/>. See H. 3843, 145th Gen. Assemb., Reg. Sess. (S.C. 2023).

98. *Id.*

However, the bill comes with caveats—“schools, classes and programs can’t get overcrowded and choice students would have to find their own transportation.”⁹⁹ Instead of providing support to struggling districts, this bill seemingly offers a life raft to students who are lucky enough to have access to reliable transportation and can find space in higher performing schools’ classrooms.¹⁰⁰

Another alternative was offered by former House Speaker Lucas. Lucas proposed a bill in 2019 that called for small school districts to merge together and would require the state to step in when schools and districts consistently produce poor test results.¹⁰¹ Other states have attempted actions such as this with limited success.¹⁰² However, research shows that the biggest gains that come from this kind of legislation are from low-performing schools that race to improve their results to avoid a takeover right before the state steps in.¹⁰³ Rather than offering solutions to the disparities in today’s public education system, the legislature has proposed alternatives that would arguably worsen the current situation.

The steps taken by the legislature highlight the need for the court system to step in and reinterpret South Carolina’s standard for education. Increasing school vouchers and diverting public funding to private schools will not fix the state’s inadequate public education system. Without equitable access to funding to go towards educational technology, teacher salaries, adequate transportation for students, sufficient learning environments, and professional development, underprivileged school districts will continue to be unable to provide their students with anything close to resembling an adequate education.

C. Poverty and Race in South Carolina

99. Jeffrey Collins, *SC Lawmakers, Educators Find Common Ground in School Choice*, ASSOCIATED PRESS (Feb. 2, 2022), <https://apnews.com/article/education-south-carolina-school-choice-4f4bd2e9cf4416cbbe153b3c19dae94c>; H. 3843, 145th Gen. Assemb., Reg. Sess. (S.C. 2023). See Green, *supra* note 97.

100. *Id.*

101. Thad Moore, *6 Questions About South Carolina’s Education Overhaul Bill, Answered*, POST & COURIER (Dec. 28, 2022), https://www.postandcourier.com/news/6-questions-about-south-carolinas-education-overhaul-bill-answered/article_3a34ca98-345a-11e9-8d36-af3fa55c6d8c.html.

102. *Id.*

103. *Id.*

The Supreme Court of South Carolina has refused to examine the existing racial disparities in the public education system, despite their finding that students in underprivileged school districts are less likely to be able to read or do math at grade level.¹⁰⁴ In *Abbeville II*, the court refused to examine the topic of racial discrimination.¹⁰⁵ Instead, the court forced the plaintiffs’ attorneys to focus their arguments on poverty.¹⁰⁶ However, it was the state’s argument and the supreme court’s conclusion that poverty explains why students in some districts perform better than students in other districts.¹⁰⁷ The state presented expert analysis “which ‘factored out’ the characteristics of poverty from other inputs in the educational process. The results of the analysis revealed that, except for the factor of poverty, there is little difference between schools in the Plaintiff Districts and other school districts.”¹⁰⁸

The argument that the state legislature is doing everything it can to give school districts in South Carolina equal access to education and cannot control the effects of poverty on school districts’ performances is a deceptive misrepresentation of the situation. While poverty is a major factor, it is well within the capabilities of the court system and state legislature to decrease the ill effects of poverty by providing underprivileged school districts with adequate resources to even the playing field.

In *Abbeville II*, the plaintiff districts presented their own expert analysis to demonstrate that “due to poverty, many children are behind in abilities that they need to succeed in school before schooling even begins.”¹⁰⁹ The Child Development Education Pilot Program (CDEPP), created by the South Carolina General Assembly to correct this constitutional violation, focused on the “development and learning preparation young children need for school, and to incorporate parental education.”¹¹⁰ However, while the CDEPP initially appeared to have

104. Kamenetz, *supra* note 60; *Abbeville II*, 410 S.C. 619, 767 S.E.2d 157 (2014). *See also Cradle to Prison Pipeline Factsheet – South Carolina*, CHILD.’S DEFENSE FUND (Mar. 2009), <https://www.childrensdefense.org/wp-content/uploads/2018/08/cradle-prison6-pipeline-south-carolina-2009-fact-sheet.pdf>.

105. *Abbeville II*, 410 S.C. 619, 767 S.E.2d 157.

106. Johnson, *supra* note 62.

107. *Abbeville II*, 410 S.C. at 654, 767 S.E.2d at 161.

108. *Id.*

109. *Id.*

110. *Id.* at 654–55, 767 S.E.2d at 176.

moderate success, a program report for the 2011–2012 school year revealed that funding limitations inhibited the program’s success:

Because the EIA limited appropriations to CDEPP, the full per pupil funding amount of \$4,218 was reduced to \$3,670 per pupil. No funding for professional development or supplies and materials was given. Any further per pupil reductions could result in districts discontinuing the program. The [Department of Education] has also not re-negotiated services with contracted personnel due to budgetary constraints, thus reducing the amount of technical assistance provided.¹¹¹

If adequate funding is not provided to underprivileged school districts so that they can implement the few effective programs that the state legislature has passed attempting to even the playing field, the disparities in the public education system will continue to persist.

In January of 2002, President George W. Bush signed the No Child Left Behind Act into law.¹¹² This act implemented annual testing requirements for states that “showed for the first time glaring achievement gaps among white students and Black and Latino students, among wealthy, middle-income and low-income students, as well as among students with disabilities and English learners.”¹¹³ In December of 2015, Congress and the Obama administration replaced No Child Left Behind with the Every Student Succeeds Act, which gave states and school districts the flexibility to develop their own education standards, but retained the NCLB’s annual testing requirement.¹¹⁴ However, “In April 2020, the South Carolina Department of Education (SCDE) informed the United States Department of Education (USED)

111. *Id.*

112. No Child Left Behind Act of 2001, H.R. 1, 107th Cong. (2001–2002). See Alyson Klein, *No Child Left Behind: An Overview*, EDUC. WK. (Apr. 10, 2015), <https://www.edweek.org/policy-politics/no-child-left-behind-an-overview/2015/04>.

113. *Education Rankings*, *supra* note 1.

114. Lauren Camera, *No Child Left Behind Has Finally Been Left Behind*, U.S. NEWS & WORLD REP. (Dec. 9, 2015), <https://www.usnews.com/news/articles/2015/12/09/congress-replaces-no-child-left-behind-shifts-power-to-states>.

that it intended to suspend all end-of-year assessments, as required by the Every Student Succeeds Act (ESSA).¹¹⁵

In attempting to solve the inequitable access to quality education in South Carolina, race can no longer be overlooked. In the words of the lead plaintiff attorney in *Abbeville II*, Carl Epps, “In this case, race and poverty are indistinguishable.”¹¹⁶ Epps went on to explain that students attending schools located in the Corridor of Shame “are in the situation they’re in because they’ve been poor and [B]lack for many, many generations. The reality is these kids are products of fathers and forefathers. They all lived in these isolated counties for generations. It’s generational poverty.”¹¹⁷ The standard for education in South Carolina must change to finally recognize the history of racial inequality in the state so that real steps can be taken to bridge the gap in education.

III. ADDRESSING THE PUBLIC EDUCATION SYSTEM’S HAND IN THE SCHOOL-TO-PRISON PIPELINE

Not only does South Carolina’s public education system rank forty-second in the nation in terms of quality of education, but it also ranks fifty-first out of fifty states and the District of Columbia when it comes to safety in public schools.¹¹⁸ Factors used in determining the safety rating of public school systems included the presence of adopted and enacted laws addressing school disciplinary incidence rates and youth incarceration rates.¹¹⁹ While the Supreme Court of South Carolina has at least acknowledged funding disparities as a factor contributing to the state’s below-adequate education, it has failed to address the equally significant factor of overly punitive disciplinary and arrest practices in South Carolina schools. Without confronting these issues head-on, South Carolina will continue to fail in providing students across the state with “adequate and safe” learning environments necessary for a minimally adequate education.¹²⁰

115. *Every Student Succeeds Act (ESSA)*, S.C. DEP’T EDUC. (Oct. 21, 2020), <https://ed.sc.gov/newsroom/every-student-succeeds-act-essa/>.

116. Johnson, *supra* note 62, at 4.

117. *Id.*

118. McCann, *supra* note 42.

119. *Id.*

120. *Abbeville I*, 335 S.C. at 68, 515 S.E.2d at 540.

A. Unduly High Arrest Rates in South Carolina Public Schools

A report released in 2019 by the Office of Juvenile Justice and Delinquency Prevention ranked South Carolina ninth in the nation for the most juvenile arrests per capita.¹²¹ More than 13,000 cases involving juveniles were processed in South Carolina in 2017, while only 20% of those cases resulted in juvenile incarceration.¹²² This is, in large part, because of the significant number of disturbing schools and public disorderly conduct cases.¹²³

Until the law in South Carolina was amended in May of 2018, students could be charged with the crime of disturbing schools.¹²⁴ This charge was described by many as “a major source of the school-to-prison pipeline, which has caused grievous and lifelong harm to students across South Carolina.”¹²⁵ Sheriff Leon Lott of Richland County, an outspoken critic of the law before it was ruled unconstitutional, put it simply: “If you’re chewing gum, and I told you to take the gum out and we’re in a classroom and you don’t take it out, you could be arrested for disturbing school. But are you really disturbing school?”¹²⁶ This may sound like an outlandish assertion, but something similar occurred at a South Carolina school in the very recent past.

October 26, 2015, started as a normal morning for Niya Kenny, a then-18-year-old senior at Spring Valley High School in Columbia, South Carolina.¹²⁷ Things changed shortly after she walked into her first class of the day. She noticed a teacher talking with a student next to

121. *OJJDP Statistical Briefing Book*, U.S. DEP’T JUST. OFF. JUV. JUST. & DELINQ. PREVENTION (Nov. 16, 2020), <https://www.ojjdp.gov/ojstatbb/crime/qa05103.asp?qaDate=2019&text=yes>. See *South Carolina ranked 9th in the nation for most juvenile arrests, report says*, WSAV (Aug. 26, 2019), <https://www.wsav.com/crime-safety/south-carolina-ranked-9th-in-the-nation-for-most-juvenile-arrests-report-says/>.

122. *Id.*

123. 2019 DJJ Data Resource Guide, *supra* note 2.

124. Sarah Hinger, *South Carolina Legislature Repeals Racist ‘Disturbing School’ Law for Students*, NAT’L JUV. JUST. NETWORK (June 28, 2018), <https://www.njjn.org/article/south-carolina-legislature-repeals-racist-disturbing-school-law-for-students>.

125. *Id.*

126. Kat Chow, *Two Years After A Violent Altercation At A S.C. High School, Has Anything Changed?*, NPR (Oct. 24, 2017), <https://www.npr.org/sections/ed/2017/10/07/548510200/what-s-changed-in-south-carolina-schools-since-violent-student-arrest>.

127. *Id.*; see *Kenny v. Wilson*, 586 F. Supp. 3d 447 (D.S.C. 2021).

her.¹²⁸ The teacher asked the student to give up her cell phone.¹²⁹ After the student was unwilling to do so, the teacher called an administrator, who then radioed one of the school resource officers.¹³⁰ Once the resource officer arrived in the classroom, Kenny urged her classmates to take out their phones and start filming.¹³¹ As one of the videos makes apparent, the officer asked the student to get out of her seat as he approached her.¹³² When she refused, he flipped her desk over and threw her out of her seat and across the floor.¹³³

Kenny, who was outraged by what had taken place, began to shout, “What did she do? She didn’t do anything! Are we really going to let this happen?”¹³⁴ As a result, the resource officer also placed Kenny under arrest.¹³⁵ Kenny spent the day at a local detention center.¹³⁶ Both Kenny and the student who was thrown from her desk, another Black girl that chose to remain unnamed, were charged with disturbing schools, although both charges were later dropped.¹³⁷ The school resource officer was fired soon after this case but faced no criminal charges for his actions.¹³⁸

In response to the student resource officer’s actions at Spring Valley High School, the American Civil Liberties Union (ACLU) and the ACLU of South Carolina filed a lawsuit in 2016 on behalf of Kenny and other student plaintiffs challenging this controversial law.¹³⁹ Evidence presented to the district court revealed over 5,000 juveniles in South Carolina were arrested for disorderly conduct between the 2015–2016

128. Chow, *supra* note 126.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Deputy Who Tossed a S.C. High School Student Won’t Be Charged*, N.Y. TIMES (Sept. 2, 2016), <https://www.nytimes.com/2016/09/03/afternoonupdate/deputy-who-tossed-a-sc-high-school-student-wont-be-charged.html>.

138. *Id.*

139. *Kenny v. Wilson*, 586 F. Supp. 3d 447, 449 (D.S.C. 2021); *Federal District Court Strikes Down “Disturbing Schools” Law Previously Used To Criminalize Students*, AM. CIV. LIBERTIES UNION S.C. (Oct. 12, 2021), <https://www.aclusc.org/en/news/federal-district-court-strikes-down-disturbing-schools-law-previously-used-criminalize-students>.

and 2019–2020 school years, 70% of which occurred in schools.¹⁴⁰ The court also found that a disproportionate number of these arrests were students of color and students with disabilities, and Black students across South Carolina were more than six times more likely than white students to be targeted under the law and arrested for being “disorderly” or “boisterous.”¹⁴¹

As such, the court held that criminalizing disorder and boisterous behavior at school was unconstitutional, and law enforcement and schools can no longer use these laws to criminalize or charge students.¹⁴² The court reasoned that the crime of disturbing schools:

[E]ncourage[d] if not cause[d] arbitrary and discriminatory enforcement, as reflected by the undisputed record, because they provide[d] law enforcement with no standard for application. The record further demonstrates that the charge itself, even absent a conviction, carries long lasting and deleterious effects. The State is capable of fashioning its law enforcement tools to address specifically for the school context what conduct it would criminalize and the standard by which the prohibition should be applied, and our Constitution requires no less.¹⁴³

B. The Effect of Overly Punitive Disciplinary Policies on Quality of Education

While the holding in *Kenny v. Wilson* is a step in the right direction, fully addressing South Carolina’s unduly high school arrest rates will require more than a district court ruling. According to the ACLU, the three primary indicators of incarceration are poverty, race, and educational attainment.¹⁴⁴ If South Carolina truly desires to provide students with a minimally adequate education, the state must strive to

140. *Kenny*, 586 F. Supp. 3d at 460.

141. *Id.* at 460, 463.

142. *Id.* at 471.

143. *Id.*

144. Mary C. Garvey, *The School-to-Prison Pipeline and Implications for South Carolina*, INST. FOR CHILD SUCCESS 1 (May 2021), <https://www.instituteforchildsuccess.org/wp-content/uploads/2021/05/ICS-Mary-C.-Garvey-preschool-suspension-expulsion-Prisma-Rome-visiting-professorship-FINAL.pdf>.

provide all students with an equal opportunity to attain a high school diploma. The current disciplinary and arrest practices in South Carolina schools deny students across the state a minimally adequate education and increase their likelihood of becoming repeat offenders in the prison system.¹⁴⁵

Studies reveal that charges and arrests increase the odds that students will drop out of high school.¹⁴⁶ Further, a “first-time arrest during high school nearly doubles the odds of high school dropout.”¹⁴⁷ Even when those arrests do not lead to convictions, research shows that juveniles with prior arrests are likely to earn less money by the time they turn twenty-five than their peers.¹⁴⁸ South Carolina’s current constitutional requirements regarding disciplinary enforcement in school districts fail to address these negative impacts on educational attainment.¹⁴⁹

The South Carolina Code of Regulations Chapter 43, Article 20 details the minimum standards of student conduct and disciplinary enforcement procedures to be implemented by local school districts.¹⁵⁰ This regulation classifies student misconduct into three different levels: behavioral misconduct, disruptive conduct, and criminal conduct.¹⁵¹ “As the levels increase in seriousness, the severity of possible disciplinary consequences and/or sanctions increases.”¹⁵² However, the regulation makes clear that the punishments outlined are merely the minimal requirements, declaring that “[a] local school board, in its discretion, may authorize more stringent standards and consequences than those contained in this regulation.”¹⁵³

145. See Tamar R. Birckhead, *Delinquent by Reason of Poverty*, 38 WASH. U. J.L. & POL’Y 53, 97 (2012).

146. Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 JUST. Q. 462, 463 (2006); David S. Kirk & Robert J. Sampson, *Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood*, 86 SOC. EDUC. 36, 37 (2010).

147. Sweeten, *supra* note 146, at 473.

148. Gary Fields & John R. Emshwiller, *For More Teens, Arrests by Police Replace School Discipline*, WALL ST. J. (Oct. 20, 2014), <https://www.wsj.com/articles/for-more-teens-arrests-by-police-replace-school-discipline-1413858602>.

149. See S.C. CONS. ANN. art. XI, § 3; see also S.C. CODE ANN. REGS. § 43-279 (2021).

150. § 43-279.

151. *Id.*

152. *Id.* § 43-279(III)(C).

153. *Id.* § 43-279(III)(E).

Behavioral misconduct is defined in the regulation as “activities engaged in by student(s) which tend to impede orderly classroom procedures or instructional activities, orderly operation of the school, or the frequency or seriousness of which disturb the classroom or school.”¹⁵⁴ If, however, a student is found to have engaged in behavioral misconduct three or more times, the student’s actions can be reclassified as disruptive conduct.¹⁵⁵

Disruptive conduct is defined as actions by students “which are directed against persons or property, and the consequences of which tend to endanger the health or safety of oneself or others in the school.”¹⁵⁶ The regulation points out that some instances of disruptive conduct may overlap with criminal offenses, “justifying both administrative sanctions and court proceedings.”¹⁵⁷ Examples listed that fall within the category of disruptive conduct include the use of an intoxicant, fighting, stealing, abusive language to staff, the possession of an unauthorized substance as defined by the law or a local school policy board, and plagiarism.¹⁵⁸

Criminal conduct is the most severe classification listed in South Carolina Regulation 43-279, and is defined as:

[T]hose activities engaged in by student(s) which result in violence to oneself or another’s person or property or which pose a direct and serious threat to the safety of oneself or others in the school. When school officials have a reasonable belief that students have engaged in such actions, then these activities usually require administrative actions which result in the immediate removal of the student from the school, the intervention of the School Resource Officer or another law enforcement authorities, and/or action by the local school board.¹⁵⁹

154. *Id.* § 43-279 (IV)(A)(1).

155. *Id.* § 43-279 (IV)(B)(1).

156. *Id.*

157. *Id.*

158. *Id.* § 43-279 (IV)(B)(2).

159. *Id.* § 43-279 (IV)(C)(1).

Examples of actions that classify as criminal conduct include extortion, theft, vandalism, and the illegal use of technology.¹⁶⁰ The South Carolina Code of Laws requires school administrators to contact law enforcement:

[I]mmediately upon notice that a person is engaging or has engaged in activities on school property or at a school sanctioned or sponsored activity which may result or results in injury or serious threat of injury to the person or to another person or his property as defined in local board policy.¹⁶¹

The over-inclusive language used in both the current South Carolina Code of Laws and the South Carolina Code of Regulations requires school administrators to contact law enforcement and report student misconduct even when the misconduct might not classify as criminal outside of school grounds.¹⁶²

The law in South Carolina forces school districts to involve law enforcement in situations where administrators could otherwise use their discretion to address through in-house methods such as guidance counseling and referrals to the principal’s office. This policy is responsible for South Carolina’s disturbingly high juvenile arrest rates and contributes to the state’s low levels of education. While the juvenile court is designed to rehabilitate, “[C]hildren exposed to juvenile court reoffend at higher rates and are stigmatized in the process.”¹⁶³

The South Carolina Department of Juvenile Justice reports that public disorderly conduct is one of the most frequent offenses associated with delinquency referrals to family court.¹⁶⁴ During the 2018–2019 fiscal year, 857 juvenile public disorderly conduct cases were referred to family courts in South Carolina.¹⁶⁵ This accounted for the second most frequent offense associated with delinquency referrals to the family

160. *Id.* § 43-279 (IV)(C)(2).

161. S.C. CODE ANN. § 59-24-60 (2013).

162. *Id.*; § 43-279(IV)(C)(1).

163. Birkhead, *supra* note 145, at 8.

164. 2019 DJJ Data Resource Guide, *supra* note 2, at 4.

165. *Id.*

court that year.¹⁶⁶ As I mentioned earlier, the district court in *Kenny v. Wilson* presented evidence that the vast majority of these referrals arose from conduct at school.¹⁶⁷ Further, roughly 75% of those referrals were regarding the behavior of Black children.¹⁶⁸

But it is not just school policies that involve law enforcement that harm juveniles and have disproportionate effects. Students who come from low-income households “are more likely to receive out-of-school suspensions and to be expelled than their middle- and upper-middle class counterparts, particularly if they are children of color.”¹⁶⁹ In South Carolina, Black students are more than three times as likely as their white classmates to be suspended from school.¹⁷⁰ Research shows that students who are suspended or expelled are more likely than their peers to drop out of school altogether.¹⁷¹ After a juvenile drops out of high school, they become almost half as likely to find a job than a recent high school graduate.¹⁷² Further, 68% of the inmates in the United States prison system are high school dropouts.¹⁷³ To provide a minimally adequate education, South Carolina must eliminate overly punitive disciplinary practices that set students up for failure and implement policies that keep students in school.

IV. PROPOSITION TO REDEFINE A “MINIMALLY ADEQUATE EDUCATION”

A “minimally adequate education” is a low standard to begin with, but the Supreme Court of South Carolina’s current interpretation of this standard continues to allow students in public schools throughout the

166. Assault and battery in the third degree were first with 1,881 cases. *Id.*

167. *Kenny v. Wilson*, 586 F. Supp. 3d 447, 460 (D.S.C. 2021).

168. *Id.*

169. Birchead, *supra* note 145, at 4.

170. *Cradle to Prison Pipeline Factsheet – South Carolina*, *supra* note 104, at 2.

171. Elizabeth Pufall Jones, *The Link Between Suspensions, Expulsions, and Dropout Rates*, AM.’S PROMISE ALL. (Sept. 5, 2018), <https://web.archive.org/web/20220325022921/https://www.americaspromise.org/opinion/link-between-suspensions-expulsions-and-dropout-rates>.

172. *Employment and Unemployment of Recent High School Graduates and Dropouts*, U.S. BUREAU LAB. STATS. (July 2015), https://www.bls.gov/careeroutlook/2015/data-on-display/dod_q4.htm.

173. Mallory Kiley, *Dropout or Delinquent: An Ecological Analysis of High School Attrition Rates in Correlation to Criminal Behavior*, UNION COLLEGE DIGITAL WORKS (June 2018), <https://core.ac.uk/download/pdf/229606327.pdf>.

state to receive inadequate educational services. For South Carolina’s public school system to fulfill its promise of an adequate education to its youth, it must expand its definition of a “minimally adequate education” to provide funding to bridge the divide in access to resources among school districts and to provide faculty training programs to prevent overly punitive disciplinary and arrest practices. This would be a major step in the right direction in improving South Carolina schools and breaking the school-to-prison pipeline.

A. Funding to Bridge the Divide Between School Districts

The legislative enactments that occurred after the *Abbeville* litigation do not address the failing education system. The only real action the Supreme Court of South Carolina took after acknowledging the unconstitutional disparities between the state’s public school districts was to oversee the legislature’s efforts to provide adequate funding to the plaintiff school districts located within the Corridor of Shame.¹⁷⁴ However, the court ended to their oversight of the legislature’s spending in 2017 without presenting any evidence that the legislature had actually taken steps to provide adequate resources for the underprivileged districts as was required of them after *Abbeville II*.¹⁷⁵

Chief Justice Donald Beatty, who dissented in the court’s decision to end their oversight of the legislature’s spending, asserted that the least the court should do should be to wait for the legislature to release a study to determine how much funding should be allocated to provide the plaintiff districts with a minimally adequate education.¹⁷⁶ In the words of Chief Justice Beatty, “our Court has lost the will to do even the minimal amount necessary to avoid becoming complicit actors in the deprivation of a minimally adequate education to South Carolina’s children.”¹⁷⁷

The words of Chief Justice Beatty rang true when he responded to the court’s decision to end oversight of the legislature’s spending in 2017, and they ring true today. The Supreme Court of South Carolina

174. Burnette II, *supra* note 86.

175. *Abbeville II*, 410 S.C. 619, 627, 767 S.E.2d 157, 161 (2014); Burnette II, *supra* note 86.

176. Burnette II, *supra* note 86.

177. *Id.*

has recognized the failure of the state to provide underprivileged school districts in South Carolina a minimally adequate education. By ending their oversight of the legislature's spending without any evidence that the legislature has taken steps to provide adequate resources for the underprivileged districts, the court has become complicit in the state's continued denial of these districts' constitutional rights. This must change.

Article XI, § 3 of the South Carolina constitution, entitled "System of free public schools and other public institutions," mandates that "[t]he General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the state and shall establish, organize and support such other public institutions of learning as may be desirable."¹⁷⁸ The Supreme Court of South Carolina's current interpretation of this section requires the General Assembly "to provide the opportunity for each child to receive a minimally adequate education."¹⁷⁹ The Supreme Court of South Carolina's current interpretation of a minimally adequate education is inadequate. The state has continued to fail to provide underprivileged school districts with the resources necessary for an adequate education.

As such, the Supreme Court of South Carolina should expand their interpretation of a minimally adequate education to provide students in underprivileged school districts with the resources available to compete with other districts throughout the state so that they may be afforded an equal opportunity of educational attainment.

In addition to establishing the requirement of an equal opportunity of educational attainment, the court must ensure that this opportunity is actually offered to students in underprivileged districts. This begins with renewing the Supreme Court of South Carolina's oversight over the legislature's funding for underprivileged school districts. To provide students in South Carolina with a minimally adequate education as required by the state constitution, the Supreme Court of South Carolina must step in and reinstate their oversight of the legislature's funding to underprivileged districts. The legislature has proven time and again that they will not address the disparities between South Carolina public schools unless they are forced to do so.

178. S.C. CONST. art. XI, § 3.

179. *Abbeville I*, 335 S.C. 58, 68 S.E.2d 535, 540 (1999).

B. Guidelines to Prevent Overly Punitive Disciplinary and Arrest Practices

If South Carolina’s public school system is to improve, the state’s overly punitive disciplinary and arrest practices in public schools must also be confronted. To truly address South Carolina’s concerning high juvenile arrest rates, more needs to be done to ensure that the state can fulfill its promise of “adequate and safe facilities”¹⁸⁰ for its students. This will provide children across South Carolina with a better opportunity to overcome the primary indicators of incarceration through educational success.¹⁸¹

There have been several attempts outside of South Carolina to combat the detrimental impacts of arrests on juveniles and the disproportionate rate at which Black students are charged. The juvenile court in Clayton County, Georgia worked in tandem with the public school system, local police departments, and the Georgia Department of Juvenile Justice to draft a protocol agreement to decrease the number of school-based referrals.¹⁸² The protocol agreement established that “[m]isdemeanor type delinquent acts” would lead to a warning upon a student’s first offense and a referral to a School Conflict Diversion Program after their second offense.¹⁸³ A student is only charged with a misdemeanor and sent to juvenile court when the student is found to have committed their third or subsequent delinquent act.¹⁸⁴ After this protocol was implemented, school misdemeanor referrals dropped 87%.¹⁸⁵ Similar programs have been put into effect by school districts in Florida, Colorado, and Texas, all with similar results.¹⁸⁶

180. *Abbeville I*, 335 S.C. at 68, 515 S.E.2d at 540.

181. *See* Garvey, *supra* note 144, at 4.

182. COOPERATIVE AGREEMENT BETWEEN THE JUVENILE COURT OF CLAYTON COUNTY, THE CLAYTON COUNTY PUBLIC SCHOOL SYSTEM, THE CLAYTON COUNTY POLICE DEPARTMENT, THE RIVERDALE POLICE DEPARTMENT, THE JONESBORO POLICE DEPARTMENT, THE FOREST PARK POLICE DEPARTMENT, THE CLAYTON COUNTY DEPARTMENT OF FAMILY & CHILDREN SERVICES, THE CLAYTON CENTER FOR BEHAVIORAL HEALTH SERVICES, ROBERT E. KELLER, DISTRICT ATTORNEY, AND THE GEORGIA DEPARTMENT OF JUVENILE JUSTICE 3–4 (2004), <https://sph.lsuhscc.edu/wp-content/uploads/2016/07/SOLibrary1.pdf> [hereinafter CLAYTON CNTY. COOPERATIVE AGREEMENT].

183. *Id.* at 10.

184. *Id.*

185. Fields & Emshwiller, *supra* note 148, at 3 (from 1,147 in 2003 to 154 in 2013).

186. *Id.*

New Mexico has adopted legislation that South Carolina should use as a reference for how to implement policies that keep students who have been arrested, expelled, or otherwise removed from class on track to graduate. New Mexico Statute § 22-12A-14 gives students who return to school after having been removed priority placement in classes necessary for graduation.¹⁸⁷ An adequate education should include programs such as this one to keep students on a path towards graduation instead of casting them aside after one too many school-based offenses.

South Carolina's very own Senate Select Committee on Raise the Age report presented to the Senate on September 1, 2020 can also serve as guidance in creating policies to prevent overly punitive school disciplinary practices.¹⁸⁸ Recommendations in this report include establishing petition requirements for misdemeanor school-based offenses, limiting unnecessary referrals to law enforcement by reducing the school-to-prison pipeline, limiting collateral consequences of juvenile justice system involvement at school, and prohibiting automatic placement of students in alternative schools upon release from the Department of Juvenile Justice.¹⁸⁹ These recommendations come as a response to the committee's finding that several sections of the South Carolina criminal code, especially those that criminalize certain conduct at school, disproportionately affect children.¹⁹⁰ A minimally adequate education requires amending current state laws and regulations that overly involve law enforcement in school-based offenses.

For students across South Carolina to have access to a minimally adequate education, the Supreme Court of South Carolina must expand upon the "adequate and safe facilities" language used in their definition of a minimally adequate education.¹⁹¹ This definition must include environments free from discriminatory and overly punitive disciplinary and arrest practices. But it will not be enough to simply include these goals in a definition—the Supreme Court of South Carolina must exercise oversight of the legislature until comprehensive plans are in place to replace the current laws and regulations regarding school

187. N.M. STAT. ANN. § 22-12A-14(C).

188. SOUTH CAROLINA SENATE SELECT COMMITTEE ON RAISE THE AGE REPORT TO THE SENATE (2020).

189. *Id.* at 29–32.

190. *Id.*

191. *Abbeville I*, 335 S.C. 58, 68, 515 S.E.2d 535, 540 (1999).

disciplinary enforcement procedures with a statewide guideline that encourages school-based offenses to be dealt with at school while keeping students in school. The legislature should look to the Clayton County Protocol Agreement¹⁹², New Mexico Statute § 22-12A-14,¹⁹³ and the South Carolina Senate Select Committee on Raise the Age report¹⁹⁴ for guidance in drafting these reforms. This change would go towards preventing future instances similar to *Kenny v. Wilson* and decreasing the number of arrests in South Carolina public schools.

V. CONCLUSION

South Carolina’s educational requirements have proven to fall short of “minimally adequate.” For public schools in South Carolina to truly offer an adequate education to their students, the Supreme Court of South Carolina must expand its definition of a “minimally adequate education” to provide funding to bridge the divide between public school districts and provide guidelines that prevent overly punitive disciplinary and arrest practices. Adequately funded, safe environments that promote student success should not be a luxury reserved for privileged students, but rather a right provided to all students through South Carolina’s promise of a minimally adequate education.

192. CLAYTON CNTY. COOPERATIVE AGREEMENT, *supra* note 182.

193. N.M. STAT. ANN. § 22-12A-14.

194. SOUTH CAROLINA SENATE SELECT COMMITTEE ON RAISE THE AGE REPORT TO THE SENATE (2020).