

**STATE TAKEOVER IN SOUTH CAROLINA: AN INADEQUATE MEANS TO
ACHIEVING “MINIMALLY ADEQUATE” EDUCATION**

Lyndsey K. Ebener*

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I. INTRODUCTION

South Carolina’s constitution mandates that the legislature provide and support a system of free public schools open to all children in the state.¹ Beyond this requirement, there are no explicit guidelines for the schools’ general adequacy or education quality. The South Carolina Supreme Court, however, has construed a “minimally adequate” standard for public

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1. S.C. CONST. art. XI, § 3.

education.² The court defined a minimally adequate education as “providing students adequate and safe facilities in which they have the opportunity to acquire” fundamental academic knowledge.³ Most notably, the court emphasized that this duty “rests on the legislative branch of government.”⁴ The court underscored the legislature’s constitutional duty while recognizing it is not the judiciary’s place to decide how the state delivers educational opportunities.⁵

A year before the “minimally adequate” ruling, the South Carolina General Assembly began focusing its efforts on improving education through accountability measures.⁶ The Education Accountability Act (EAA) of 1998 defined education accountability as “acceptance of the responsibility for improving student performance and taking actions to improve classroom practice and school performance by the Governor, the General Assembly, the State Department of Education, colleges and universities, local school boards, administrators, teachers, parents, students, and the community.”⁷ This explicitly expanded the arena of individuals and entities on whom the responsibility for educational outcomes rests.⁸

The EAA adopted specific standards for student achievement and implemented annual “report cards” to rate schools based on performance indicators.⁹ If a school received a rating of “Below Average” or “Unsatisfactory” and improvement plans failed after review from an external team, the principal, district superintendent, and school board must meet with the State Board of Education to determine if a “state of emergency” should be declared in the school.¹⁰ The State Superintendent then had the authority to either “(1) furnish continuing advice and technical assistance in implementing the recommendations of the State Board of Education; (2) declare a state of emergency in the school and replace the school’s principal; or (3) declare a state of emergency in the school and assume management of the school.”¹¹ Similar provisions in the EAA also allowed the state to assume management of a “Below Average” district.¹²

2. *Abbeville Cnty. Sch. Dist. v. State*, 335 S.C. 58, 68, 515 S.E.2d 535, 540 (1999).

3. *Id.*

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

5. *See id.*

6. *See* S.C. CODE ANN. § 59-18-100 (1998).

7. *Id.*

8. *See id.*

9. *Id.* § 59-18-900(B)(1).

10. *Id.* § 59-18-1520.

11. *Id.*

12. *Id.* § 59-18-1580.

The state exercised this power over Allendale County School District in 1999 to remedy low test scores and ineffective leadership.¹³ The state maintained control of the school district from 1999 to 2007 and took control again in 2017.¹⁴ While the district saw some improvement in test scores following the 1999 takeover, its schools' report card ratings remained in the bottom tier.¹⁵ The state also exercised this takeover power in the Williamsburg County School District in 2018 after the district failed to meet state standards.¹⁶

Despite existing law allowing the state to exercise control over underperforming school districts, the General Assembly recently enacted a new "state takeover" statute.¹⁷ The statute is titled "State-of-education emergency declarations for districts" and allows for a shift in school governance from the local school board to state control if the district has been deemed underperforming for three consecutive years or is in a fiscal emergency.¹⁸ Now, the Department of Education has the power to dissolve the school boards of districts that have been defined as "underperforming" and replace them with new Governor and State Board appointed actors.¹⁹

However, if the statute is meant to remedy inadequacies that still exist in South Carolina schools, it has incorrectly identified the problem at hand. The takeover statute merely replaces the school board. It does not address, nor does it attempt to resolve, the fundamental issues that hinder student achievement. Therefore, state takeover is an inadequate means to remedy South Carolina's failure to meet its constitutional duty. There are several major determinants of education quality in which the districts subject to takeover are lacking.²⁰ It is unclear how state takeover is to address many of these major determinants—including poverty levels, extent of racial

13. Joseph O. Oluwole & Preston C. Green, III, *State Takeovers of School Districts: Race and the Equal Protection Clause*, 42 IND. L. REV. 343, 390 (2009).

14. *See State Again to Take Over Failing Allendale School District*, BLUFFTON TODAY (June 19, 2017), <https://www.bluffontoday.com/story/news/jasper-sun-times/2017/06/19/state-again-take-over-failing-allendale-school-district/14021280007/> [<https://perma.cc/BB2H-GB8J>].

15. *See id.*

16. *State Takeover of Williamsburg Co. Schools to Enter 3rd Year*, LIVE 5 NEWS (June 1, 2021), <https://www.live5news.com/2021/06/01/state-takeover-williamsburg-co-schools-enter-rd-year/> [<https://perma.cc/G2ML-Y473>].

17. S.C. CODE ANN. § 59-18-1640.

18. *Id.* § 59-18-1640(A)(1)–(4). The statute also allows takeover if the district's accreditation is denied or if the State Superintendent determines the district's turnaround plan results are insufficient.

19. *Id.* § 59-18-1640(C)(1)–(2).

20. *See infra* Section III.B.

segregation, funding, teacher quality, and school discipline—when many are largely unrelated to, or uninfluenced by, district management alone.²¹

Part II of this Note will provide information explaining state takeover, discussing how state takeovers impact education quality and achievement outcomes generally, and the major determinants of education quality. Part II will also give an overview of South Carolina’s state takeover statute.

Part III will start by establishing what South Carolina’s duty regarding education is and how the state is falling short in meeting it. Then, Part III will analyze state takeover as a remedy to improve underperforming school districts. Part IV will conclude by arguing that state takeover with no clear plan to address the major determinants of education quality is an inadequate remedy.

II. BACKGROUND

A. *What is State Takeover?*

State takeover is a blanket term for a shift in governance from local school districts to state authorities.²² State takeover can take various forms; some states have implemented state takeover statutes that completely replace the school district’s school board and superintendent, while others keep the school board and superintendent in place as advisors.²³ In cities such as Boston and Chicago, for example, the state gives authority over the district to the mayor.²⁴

New Jersey was the first to initiate takeovers of what the state deemed failing urban school districts in 1988.²⁵ In its decision to take over the Newark City School District, the State Board of Education noted the “right of the students of Newark to a constitutionally adequate education” and criticized “the tired excuses and promises to do better in the future which the Newark board is now offering”²⁶ The State Board argued that poor academic performance, mismanagement, and dismal facilities riddled Newark schools.²⁷

21. *See infra* Section III.B.

22. Domingo Morel, *The Effects of Centralized Government Authority on Black and Latino Political Empowerment*, 69 POL. RSCH. Q. 347, 348 (2016).

23. TODD ZIEBARTH, EDUC. COMM. STATES, STATE TAKEOVERS AND RECONSTITUTIONS 1, 3 (2002), <https://files.eric.ed.gov/fulltext/ED473720.pdf> [<https://perma.cc/MM4Y-LXWD>].

24. *Id.*

25. Jeffrey R. Henig, *Mayors, Governors, and Presidents: The New Education Executives and the End of Educational Exceptionalism*, 84 PEABODY J. EDUC. 283, 287 (2009).

26. *Contini v. Bd. of Educ. of Newark*, 668 A.2d 434, 446 (N.J. Super Ct. App. Div. 1995); DOMINGO MOREL, TAKEOVER, RACE, AND AMERICAN DEMOCRACY 35 (2017).

27. Peter Burns, *Regime Theory, State Government, and a Takeover of Urban Education*, 25 J. URB. AFFS. 285, 291 (2003).

Since then, there have been over one hundred state takeovers of local school districts nationwide.²⁸ State takeovers were initially concentrated in urban school districts, including Jersey City, Washington D.C., Detroit, Chicago, and Cleveland.²⁹ Before state takeovers peaked in the mid-1990s, most states cited fiscal mismanagement as their reasoning for state takeovers.³⁰

More recently, poor academic performance has been a common justification.³¹ Proponents of state takeover allege that local school districts are unable to improve their schools' achievement outcomes.³² These supporters cite the "failure of local boards and persistent underperformance of schools"³³ and the "perceived denial of responsibility for problems in minority-dominated, urban school systems."³⁴

Concerns about academic performance coincided with a rise in standards-based reforms, which "emphasize[d] local accountability for the *results* of schooling, rather than inputs, such as money or other resources."³⁵ For example, South Carolina looks to school report card ratings in determining whether a takeover is warranted.³⁶ School report card ratings are primarily based on a school's performance relative to state achievement standards.³⁷

Proponents also argue that state takeover improves accountability and efficiency by placing district control into the hands of a smaller group of decisionmakers.³⁸ Supporters also claim school board elections are "hopelessly politicized" such that board members prioritize politics over improving education quality.³⁹ They view takeover as "a necessity in the case

28. MOREL, *supra* note 26, at 51.

29. Robert L. Green & Bradley R. Carl, *A Reform for Troubled Times: Takeovers of Urban Schools*, 569 ANNALS AM. ACAD. POL. & SOC. SCI. 56, 57 (2000).

30. Kenneth K. Wong & Francis X. Shen, *Measuring the Effectiveness of City and State Takeover as a School Reform Strategy*, 78 PEABODY J. EDUC. 89, 93 (2003).

31. Richard O. Welsh, *Recovery, Achievement, and Opportunity: A Comparative Analysis of State Takeover Districts in Louisiana, Tennessee, and Georgia*, 54 URB. EDUC. 311, 314 (2019).

32. See Green & Carl, *supra* note 29, at 59.

33. Richard O. Welsh et al., *Right Cause, Wrong Method? Examining the Politics of State Takeover in Georgia*, 55 URB. AFFS. REV. 703, 708 (2019).

34. Green & Carl, *supra* note 29, at 59.

35. Kathryn A. McDermott, "Expanding the Moral Community" or "Blaming the Victim"? *The Politics of State Education Accountability Policy*, 44 AM. EDUC. RSCH. J. 77, 81 (2007).

36. See S.C. CODE ANN. §§ 59-18-1615(1)(a), -1640(A)(1).

37. See *id.* § 59-18-900(E); see *infra* Section II.C.1.

38. Green & Carl, *supra* note 29, at 59 ("Rather than having a 7-, 9-, or even 11- member board of education and its appointed superintendent, the notion of having one person or a control board of smaller size holds great appeal to takeover proponents.")

39. *Id.*; see also Beth E. Schueler & Joshua F. Bleiberg, *Evaluating Education Governance: Does State Takeover of School Districts Affect Student Achievement?*, 41 J. POL'Y ANALYSIS & MGMT. 162, 164 (2022).

of persistent underperformance, financial mismanagement, noncompliance, or safety concerns, given that states have a constitutional obligation for providing public education.”⁴⁰

While state takeover for fiscal mismanagement tends to have greater public support because it replaces those who are mismanaging resources,⁴¹ there are considerable arguments against state takeover for academic achievement reasons. One point of criticism involves the criteria that policymakers use to justify takeover: standardized test scores.⁴² Critics posit that standardized tests are too narrow and ignore more complex processes of learning.⁴³

Additionally, standardized test scores tend to vary based on differences in social inequality.⁴⁴ Variations in standardized test scores among students have previously revealed a perfect correlation with the percent of impoverished students at a school, demonstrating that a student’s environment is a greater explanation for achievement outcomes than any other factor.⁴⁵

In addition to concerns about the criteria measurements used for state takeover, state takeover opponents are wary of state takeover’s infringement on local control.⁴⁶ State takeover opponents argue that (1) state-level leaders are too distant from students and have limited capacity for directly running educational organizations; (2) local decision-makers are better; and (3) state takeover usurps transparent, local, democratic decision-making.⁴⁷

Finally, there is significant criticism of state takeover’s relationship to race. As of 2016, nearly 85% of the state takeovers have occurred in districts where the majority of the population is Black and Latino.⁴⁸ Critics see the proposed centralized authority as often negatively impacting political empowerment among racial minorities.⁴⁹ Districts subject to takeover are

40. Schueler & Bleiberg, *supra* note 39, at 164 (citations omitted).

41. *Id.*

42. Wong & Shen, *supra* note 30, at 96.

43. *Id.*; Linda Darling-Hammond, *The Implications of Testing Policy for Quality and Equity*, 73 PHI DELTA KAPPAN, 220, 220 (1991) (“Because of the way the tests are constructed, they ignore a great many kinds of knowledge and types of performance that we expect from students, and they place test-takers in a passive, reactive role, rather than engage their capacities to structure tasks, generate ideas, and solve problems.”).

44. Eric Grodsky, *Testing and Social Stratification in American Education*, 34 ANN. REV. SOCIO. 385, 386 (2008).

45. See David C. Berliner, *Our Impoverished View of Educational Research*, 108 TCHRS. COLL. REC. 949, 962, 971 (2006) (analyzing fourth and eighth grade mathematics and science scores from the 2003 TIMMS exam).

46. See Welsh et al., *supra* note 313, at 733; McDermott, *supra* note 35, at 86.

47. See Schueler & Bleiberg, *supra* note 40, at 164.

48. Morel, *supra* note 22, at 348.

49. See MOREL, *supra* note 26, at 64; Burns, *supra* note 27, at 289 (“Racial and ethnic minorities tend to oppose state takeovers party because state government . . . usually intervenes in cities with significant African American and Latino populations.”).

often primarily run by people of color, so when mostly white state-level authorities take over the district, it appears to disenfranchise communities of color.⁵⁰ Despite formidable arguments against the practice, many states maintain state takeover as a solution to “failing” schools and districts.⁵¹

B. Effects of State Takeover

1. Student Achievement

Leaders justify state takeover by claiming that it can improve persistent underperformance in a school district.⁵² However, “[r]esearch on state takeovers has not kept pace with the expansion of the policy.”⁵³ There is varying data regarding whether state takeover has any positive impact on student achievement.⁵⁴ A 2003 study found improvements in elementary grade levels on state standardized tests in Boston and Chicago.⁵⁵ But the results also indicated a growing inequality in achievement by race, and less than 50% of high schoolers were scoring at proficient levels.⁵⁶ Overall, takeover had a greater impact on achievement gains in lower grade levels than in upper grade levels.⁵⁷

A more recent study on the effects of takeover in the Recovery School District (RSD) in Louisiana revealed a greater percentage of proficient standardized test scores, but other factors created doubt about whether takeover caused the improvement.⁵⁸ For one, after Hurricane Katrina, there was a substantial change in the demographics of New Orleans schools because of the displacement of minority families and people who did not own homes.⁵⁹

50. McDermott, *supra* note 35, at 96–97; Schueler & Bleiberg, *supra* note 39, at 164; Oluwole & Green, III, *supra* note 13, at 386 (discussing Cleveland Teachers’ Union member referring to takeover as “white colonialism”).

51. Wong & Shen, *supra* note 30, at 91–92.

52. Welsh et al., *supra* note 33, at 703.

53. Welsh, *supra* note 31, at 315.

54. MOREL, *supra* note 26, at 16 (“At best, research on the effects of state takeovers on education outcomes during the period when takeovers grew as a policy option was mixed and inconclusive.”); Burns, *supra* note 27, at 296 (“Mixed evidence exists concerning the extent to which [Newark’s] reorganization led to improved academic performance.”); ZIEBARTH, *supra* note 23, at 5 (citing positive and negative impacts of state takeover); Wong & Shen, *supra* note 30, at 102 (finding examples of improvements in student performance and counterexamples of declining performance after takeover).

55. Wong & Shen, *supra* note 30, at 106.

56. *Id.* at 103.

57. *Id.* at 107.

58. Welsh, *supra* note 31, at 330–32.

59. ELIZABETH DEBRAY & HURIYA JABBAR, NAT’L EDUC. POL’Y CNTR., REVIEW OF TWO PRESENTATIONS ON THE PORTFOLIO SCHOOL MODEL 4 (2013),

Further, Louisiana had recently redefined what was considered a failing school, which resulted in the RSD including higher-performing schools that otherwise would not have been included.⁶⁰

A 2022 study analyzed the effects of state takeover from 2011 to 2016 and found no evidence that state takeover improved academic achievement.⁶¹ While there was some improvement in Math scores, the increases were not statistically significant.⁶² Roughly half of the districts saw negative effects in English Language Arts (ELA) scores, while several experienced no changes at all.⁶³

It is also difficult to attribute changes in academic performance following state takeover to the takeover alone.⁶⁴ This is because many factors contribute to education quality and academic performance. Evaluating these factors is a holistic process that cannot be done in a vacuum. However, there are a few factors that weigh heavily, including: (1) poverty and racial segregation,⁶⁵ (2) funding and fiscal management,⁶⁶ (3) school discipline,⁶⁷ and (4) availability of high-quality teachers.⁶⁸ If state takeover is unable to address major educational inputs, impact on academic achievement will remain minimal.

2. *Poverty and Race Segregation*

Scholars identify state takeover as “the wrong prescription based on an incorrect diagnosis” due to its minimal impact on student achievement.⁶⁹ This is partly because state takeover plans often lack any comprehensive strategy

<https://nepc.colorado.edu/sites/default/files/ttr-portfolio-recovery.pdf> [https://perma.cc/QYW4-HC6S].

60. KRISTEN L. BURAS, NAT’L EDUC. POL’Y CNTR., REVIEW OF THE LOUISIANA RECOVERY SCHOOL DISTRICT: LESSONS FOR THE BUCKEYE STATE 7 (2012) <https://nepc.colorado.edu/thinktank/review-louisiana-recovery-buckeye> [https://perma.cc/2CWZ-MVL2].

61. Schueler & Bleiberg, *supra* note 39, at 175.

62. *Id.* at 177–79.

63. *Id.* at 181.

64. Robert Garda, *The Politics of Education Reform: Lessons from New Orleans*, 40 J.L. EDUC. 57, 98 (2011) (“Disparate funding also makes assessment of school performance scores a futile apple to oranges comparison and creates uncertainty as to whether it is the state takeover, or disparate funding, that leads schools to fail or succeed.”).

65. *See infra* Section II.B.2.

66. *See infra* Section II.B.3.

67. *See infra* Section II.B.4.

68. *See infra* Section II.B.5.

69. Monte Piliawsky, *Chapter Seventeen: Educational Reform of Corporate Agenda? State Takeover of Detroit’s Public Schools*, 218 FUTURE EDUC. STUD. 265, 276 (2003).

to address the effects of poverty or racial segregation on student achievement outcomes.⁷⁰

Poverty and racial segregation are correlated factors that greatly impact education quality.⁷¹ Courts have recognized since *Brown v. Board* that segregated schools are inherently unequal.⁷² Segregation in schools “intensifies group stratification by creating resource-rich educational environments for white students and resource-poor educational environments for black students.”⁷³ This “intensified group stratification” results from overall disparities among race when it comes to wealth and income, employment rates, poverty levels, and levels of educational attainment.⁷⁴ A 2013 study further recognized that even if “schools themselves were equal in terms of funding, teachers, curriculum, and so on, segregation still is inherently unequal because it concentrates advantages and disadvantages that emanate outside of school.”⁷⁵

Poverty is a key factor in conceptualizing these advantages and disadvantages.⁷⁶ Research reveals that many “symptoms” of low socioeconomic status relate to education quality and achievement outcomes, including poor health, low birth weight, limited access to high quality preschool options, less participation in summer activities, limited access to books and computers at home, and difficulty finding stable housing.⁷⁷

Scholars also proffer an institutional factors theory regarding poverty, where schools with high poverty levels are associated with lower quality

70. *See id.* (noting that Detroit’s school takeover plan failed to make “even passing reference to inequality or segregation”).

71. *See* Rachelle J. Brunn-Bevel & W. Carson Byrd, *The Foundation of Racial Disparities in the Standardized Testing Era: The Impact of School Segregation and the Assault on Public Education in Virginia*, 39 HUMAN. & SOC’Y 419, 424, 430 (2015).

72. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (holding that segregated public schools are inherently unequal despite having equal tangible factors like buildings, curricula, and teacher salaries and qualifications).

73. Dennis J. Condrón et al., *Racial Segregation and the Black/White Achievement Gap, 1992 to 2009*, 54 SOCIO. Q. 130, 132 (2013) (“[S]chools with higher percentages of racial minority students are disadvantaged relative to predominantly white schools in terms of class sizes, school facilities, funding, and curricula.”).

74. *Id.*

75. *Id.* at 149.

76. *See* Helen F. Ladd, *Education and Poverty: Confronting the Evidence*, 31 J. POL’Y & MGMT. 203, 204 (2012).

77. *Id.* at 204, 206 (arguing that “current policy initiatives are misguided because they either deny or set to the side a basic body of evidence documenting that students from disadvantaged households on average perform less well in school than those from more advantaged families” and that “such policies have the potential to do serious harm”).

teachers, less involved parents, and less rigorous curricula.⁷⁸ Many high-poverty schools struggle with attracting and retaining “good” teachers because teachers with strong credentials generally do not gravitate toward schools with high concentrations of disadvantaged students.⁷⁹ Thus, a resource-based perspective provides a solution to the institutional factors theory by positing that society can mitigate the negative effects of poverty on education if students are given high-quality resources.⁸⁰

Bruce Biddle, education researcher and author of *The Unacknowledged Disaster: Youth Poverty and Educational Failure in America*, argues that “although research confirms that some of poverty’s evil effects can be reduced modestly by innovative curricula, dedicated teaching, and inspired school leadership,” these strategies cannot alleviate the burdens that poverty places on students.⁸¹ Poverty’s negative impact on education quality must be understood in a broader context than the existence of resources; its negative impact lies more in the “ability to convert those resources into their intended benefits.”⁸²

Broadening the perspective on poverty and education reveals that “the value of a proposed resource is judged to be lower when an individual does not have the capability to make use of the resource being presented to her.”⁸³ Though factors like teacher quality or subject-matter knowledge are important to improving achievement outcomes, standardized test scores for American students have also revealed a perfect correlation with the percent of poor students at a school.⁸⁴ Thus, it makes more sense for school reformers to address the root of the problem—by making poor families less poor—rather than continuing to plant in “poor soil.”⁸⁵

Historically, unsuccessful reform strategies “have isolated educational, regulatory, or financial aspects of reform from the social context of poverty

78. Douglas Lee Lauen & S. Michael Gaddis, *Exposure to Classroom Poverty and Test Score Achievement: Contextual Effects or Selection?*, 118 AM. J. SOCIO. 943, 946 (2013); David J. Armor et al., *The Impact of School SES on Student Achievement: Evidence from U.S. Statewide Achievement Data*, 40 EDUC. EVAL. & POL’Y ANALYSIS 613, 615 (2018).

79. GARY ORFIELD & CHUNGMEI LEE, CIV. RTS. PROJ.: HARV. UNIV., WHY SEGREGATION MATTERS: POVERTY AND EDUCATIONAL INEQUALITY 17 (2005); Ladd, *supra* note 76, at 206.

80. Jimmy Scherrer, *The Role of the Intellectual in Eliminating the Effects of Poverty: A Response to Tierney*, 43 EDUC. RESEARCHER 201, 202 (2014).

81. BRUCE J. BIDDLE, *THE UNACKNOWLEDGED DISASTER: YOUTH POVERTY AND EDUCATIONAL FAILURE IN AMERICA* 2 (2014).

82. Scherrer, *supra* note 80.

83. *Id.* at 203.

84. Berliner, *supra* note 45, at 962.

85. *Id.* at 972.

and race”⁸⁶ These aspects are exactly what state takeover seeks to address.⁸⁷ Accountability reforms in the 1990s—that included state takeover—did not impact achievement outcomes among minority or low-income students.⁸⁸ Educational disparities and achievement gaps remained significant.⁸⁹ State takeover cannot improve achievement outcomes in schools in isolation from the effects of poverty and racial segregation.

3. *Funding and Fiscal Management*

Although it seems unlikely that state takeover can remedy the effects of poverty on student outcomes, it could affect education funding and fiscal management. The existence of resources cannot break down the barriers that poverty poses to academic achievement,⁹⁰ but funding and fiscal management are still important factors in education quality.

States cannot achieve education equity by providing the same resources to schools with high poverty rates as those with low poverty rates.⁹¹ Funding must be adjusted for poverty levels to ensure poor schools receive adequate resources.⁹² Schools with higher poverty rates require *more* resources because students with “substantively different educational needs requir[e] different programs and services”⁹³ In other words, schools require different financial inputs “to equalize [students’] opportunit[ies]” to achieve the same outcomes.⁹⁴ Ascertaining how much more “it cost[s] to achieve national average outcomes in a district with high poverty levels”⁹⁵ allows for a more comprehensive understanding of poverty’s effect on education quality.

When per-pupil expenditures are adjusted for districts’ respective poverty levels, data shows that many states spend significantly less on students in less affluent districts to achieve average outcomes.⁹⁶ A school district with high

86. *Id.* at 952 (referencing Jean Anyon’s argument that schools will struggle to educate children regardless of how well they are organized and run).

87. See Schueler & Bleiberg, *supra* note 39, at 162–63.

88. Jaekyung Lee & Kenneth K. Wong, *The Impact of Accountability on Racial and Socioeconomic Equity: Considering Both School Resources and Achievement Outcomes*, 41 AM. EDUC. RSCH. J. 797, 821 (2004).

89. *Id.*

90. See BIDDLE, *supra* note 81, at 2.

91. See Scherrer, *supra* note 80, at 202.

92. See BRUCE D. BAKER ET AL., RUTGERS UNIV., EDUC. L. CNTR., *THE REAL SHAME OF THE NATION: THE CAUSES AND CONSEQUENCES OF INTERSTATE INEQUITY IN PUBLIC SCHOOL INVESTMENTS* 6 (2018), <https://www.shankerinstitute.org/sites/default/files/The%20Real%20Shame%20of%20the%20Nation.pdf> [<https://perma.cc/UB2M-ZDSG>].

93. *Id.*

94. *Id.* at 7.

95. *Id.* at 9, 39.

96. *Id.* at 39.

poverty levels may receive the same amount of funding as a more affluent district, but poor school districts require significantly more funding to reach the same achievement outcomes.⁹⁷

It appears easier to impact school district finances than to impact student achievement.⁹⁸ Districts in “fiscal crisis” have received financial assistance through takeover statutes, including districts in Detroit, Highland Park, and Muskegon Heights.⁹⁹ A 2000 study that examined the impacts of takeover also found that “from a financial-management standpoint, most of the different intervention strategies tend to be successful . . . however, these intervention strategies have not consistently turned around academic results.”¹⁰⁰

Other studies give mixed results regarding takeover’s impact on funding allocations and fiscal management.¹⁰¹ A study of the Newark takeover revealed some improvement in test scores but also found “elusive” results in defined priorities and leadership.¹⁰² More recent studies did not reveal any strong evidence that takeover influenced per-pupil expenditures.¹⁰³

Overall, while the results are mixed regarding takeover’s historical impact on funding, takeover has a greater capacity to impact fiscal management because it replaces board members who may be mismanaging district funds. However, there is a difference between state takeover for academic underperformance and state takeover for fiscal mismanagement. It is unclear what impact a state takeover for academic underperformance (like the takeover at issue in South Carolina) would have on district funding and finances.

4. Discipline

A meaningful state takeover should also address school discipline by decreasing the number of suspensions and expulsions, which negatively impact education quality and achievement. Many schools expel or suspend students for misconduct, and low-income and urban schools do so at significantly higher rates.¹⁰⁴ Despite this, studies show that expulsion and

97. *Id.* at 16.

98. See Kristi L. Bowman, *State Takeovers of School Districts and Related Litigation: Michigan as a Case Study*, 45 URB. L. 1, 4 (2013); Wong & Shen, *supra* note 30, at 96.

99. Bowman, *supra* note 98, at 18.

100. Wong & Shen, *supra* note 30, at 96 (alteration in original).

101. *Id.*; Schueler & Bleiberg, *supra* note 39, at 165.

102. Wong & Shen, *supra* note 30, at 96.

103. See Schueler & Bleiberg, *supra* note 39, at 183; Lee & Wong, *supra* note 88, at 821.

104. Amity L. Noltemeyer et al., *Relationship Between School Suspension and Student Outcomes: A Meta-Analysis*, 44 SCH. PSYCH. REV. 224, 225, 234–35 (2015) (“This suggests that students who may experience heightened risk from the outset may be doubly disadvantaged by their schools’ use of disciplinary practices that may further exclude them from instruction that they need to progress educationally and alienate them from the school setting.”).

suspension have adverse effects on graduation rates and achievement outcomes.¹⁰⁵ Statistically, the higher a school's suspension rate, the lower its academic achievement rates will likely be.¹⁰⁶

It makes sense that absence from school impacts a student's ability to succeed, but there are additional factors that shed light on the effects of school discipline on achievement outcomes.¹⁰⁷ Schools that frequently discipline students create "negative reactions, including resentment, opposition, fear, or disillusionment" within the student body.¹⁰⁸ A school's harsh response to misbehavior negatively affects students' perceptions of authority, which may cause students with no previous behavioral issues to misbehave.¹⁰⁹ This contributes to a negative school climate that adversely affects academic achievement across the student body.¹¹⁰

There are great implications for students attending schools with high suspension rates. Proponents of school suspension assert that the practice benefits non-suspended students.¹¹¹ However, a highly punitive educational environment breeds "anxiety, distrust, and uncertainty, even for students who do nothing wrong."¹¹² Further, the "threat and constancy of punishment . . . hinder[s] the academic performance of otherwise well-behaved students."¹¹³ Frequent suspension also disrupts school communities and creates "unstable, socially fragmented environments."¹¹⁴ High suspension rates foster an environment that is detrimental to academic achievement and negatively impacts the entire student body.¹¹⁵

Therefore, a state takeover that reduces suspensions and expulsions in districts that regularly utilize these punishments will make strides in improving achievement outcomes. However, after state takeover in New Orleans, schools in the state takeover school district suspended Black girls at

105. *See id.* at 224, 234–35.

106. *Id.* at 234.

107. *See* Derek W. Black, *Reforming School Discipline*, 111 NW. U. L. REV. 1, 47–49 (2016).

108. *Id.* at 49.

109. *See id.*

110. *Id.* at 50–51 ("[N]egative climates seemingly combine with escalating student misbehavior to drive down the academic achievement of 'innocent bystanders.' . . . Tracking student suspensions and math achievement across years, researchers find that high levels of exclusionary discipline negatively affect the academic achievement of nonsuspended students.").

111. Brea L. Perry & Edward W. Morris, *Suspending Progress: Collateral Consequences of Exclusionary Punishment in Public Schools*, 79 AM. SOCIO. REV. 1067, 1071 (2014).

112. *Id.*; *see* Black, *supra* note 107, at 49–50.

113. Perry & Morris, *supra* note 111, at 1083.

114. *Id.* at 1071, 1083 (comparing the "pervasive movement of suspended students in and out of classrooms" to mass incarceration).

115. Noltemeyer et al., *supra* note 104, at 234–35; Black, *supra* note 107, at 47–50; Perry & Morris, *supra* note 111, at 1083–84.

nearly two times the citywide average.¹¹⁶ Additionally, because the majority of districts subject to takeover are largely minority,¹¹⁷ there is concern that the “do-or-die method of education reform accountability has encouraged administrators to resort to practices that lead to the disproportionate discipline of [B]lack students”¹¹⁸ Accountability reform efforts often posit an assumption that “removing the troublemaking students will improve the schooling environment[;]” this does not have empirical support and is counterintuitive to achievement outcomes.¹¹⁹ Thus, a state takeover that focuses on increasing academic accountability will likely lead to more suspensions and expulsions, which negatively impact education quality and achievement.

5. *Availability of High-Quality Teachers*

State takeover must also address the number of high-quality teachers a school has because high-quality teachers are a major determinant of education quality and achievement outcomes. Many factors go into teacher quality, including teaching experience, certification status, and knowledge of teaching and learning.¹²⁰ A knowledgeable and skillful teacher can be a powerful, positive influence over student learning.¹²¹ This is evidenced by an analysis of 900 Texas school districts that revealed, even after controlling for socioeconomic status, differences in teacher expertise could account for the variation in test scores.¹²²

The availability of high-quality teachers also impacts both a school’s capacity to offer high-quality curricula and their students’ ability to succeed in those classes.¹²³ Although high-quality curricula may have developed as a response to more “advanced” student’s needs, ideas about advanced course enrollment have since “diversified in response to reform pressures to raise

116. Steven L. Nelson et al., *Continued Disparate Discipline: Theorizing State Takeover Districts’ Impact on the Continued Oppression of Black Girls*, 57 URB. EDUC. 1230, 1245 (2022).

117. Morel, *supra* note 22, at 348.

118. Steven L. Nelson, *Racial Subjugation by Another Name? Using the Links in the School-to-Prison Pipeline to Reassess State Takeover District Performance*, 9 GEO. J.L. & MOD. CRIT. RACE PERSPS. 1, 17 (2017).

119. *Id.*

120. Linda Darling-Hammond, *Teacher Quality and Student Achievement: A Review of State Policy Evidence*, 8 EDUC. POL’Y ANALYSIS ARCHIVES 1, 5–9 (2000).

121. LINDA DARLING-HAMMOND, NAT. COMM. ON TEACHING & AM.’S FUTURE, DOING WHAT MATTERS MOST: INVESTING IN QUALITY TEACHING 8 (1997).

122. Linda Darling-Hammond, *The Flat Earth and Education: How America’s Commitment to Equity Will Determine Our Future*, 36 EDUC. RESEARCHER 318, 323 (2007).

123. *See id.* at 324.

academic standards in high schools and close achievement gaps.”¹²⁴ The idea is essentially that students who are not considered “academically advanced” can still benefit from their school having advanced course offerings.¹²⁵

A greater availability of high-quality teachers also allows for smaller class sizes. Smaller class sizes have produced substantial improvement in early learning and the achievement of minority children.¹²⁶ The effects of smaller class sizes can be particularly positive on the achievement of children with a lower socioeconomic status.¹²⁷

Thus, high-quality teachers are important to education quality and achievement outcomes.¹²⁸ However, accountability reforms, like state takeover, can have a negative impact on teachers because of the pressure to “teach to the test.”¹²⁹ Teachers in districts eligible for takeover in New Orleans viewed the threat of state takeover as creating a culture where the sole focus was on test scores and those students who were “just above and just below thresholds for passing benchmark exams.”¹³⁰

Although the threat of takeover may have a negative impact on teacher morale, if takeover impacts spending equity, it may result in a more equitable distribution of teacher quality.¹³¹ Many districts subject to takeover lack high-quality teachers because teachers with strong credentials, generally, do not gravitate toward schools with high concentrations of disadvantaged students.¹³² A state takeover that focuses on enticing more teachers to come to disadvantaged schools, whether through pay raises or other means, could result in greater achievement outcomes because of a larger availability of high-quality teachers.

C. *South Carolina’s State Takeover Statute*

South Carolina’s state takeover statute, or the “state-of-education emergency” statute, allows the State Superintendent of Education to seek a

124. Kristin Klopfenstein & Kit Lively, *Dual Enrollment in the Broader Context of College-Level High School Programs*, 158 *NEW DIRECTIONS HIGH. EDUC.* 59, 60–61 (2012).

125. See Patrice Iatarola et al., *Determinants of High Schools’ Advanced Course Offerings*, 33 *EDUC. EVALUATION & POL’Y ANALYSIS* 340, 356 (2011).

126. Frederick Mosteller, *The Tennessee Study of Class Size in the Early School Grades*, 5 *FUTURE CHILD*. 113, 119 (1995).

127. Berliner, *supra* note 45, at 971.

128. DARLING-HAMMOND, *supra* note 121.

129. Darling-Hammond, *supra* note 122, at 326.

130. Welsh et al., *Acing the Test: An Examination of Teachers’ Perceptions of and Responses to the Threat of State Takeover*, 31 *EDUC. ASSESS. EVAL. & ACCOUNTABILITY* 315, 336 (2019).

131. Joshua F. Bleiberg et al., *State Takeover of School Systems and Within-District Fiscal Equity*, 41 *J. EDUC. HUM. RES.* 172, 172 (2023).

132. See Ladd, *supra* note 76, at 206.

“state-of-education emergency declaration” for a district that is identified as “underperforming”¹³³ for three consecutive years, has its accreditation denied, has a “turnaround plan” with insufficient results, or is in a “fiscal emergency status.”¹³⁴ If the State Board of Education approves the declaration,¹³⁵ the Superintendent dissolves the locally elected district board of trustees and replaces it with an interim board to serve for a minimum of three years.¹³⁶ The interim board would include a governor-appointed member, a local legislative delegation-appointed member, and three Superintendent-appointed members.¹³⁷

The statute only includes a minimum for how long the interim board is to serve.¹³⁸ Further, the state-of-education emergency ends only after an affirmative vote by the State Board of Education.¹³⁹ In terms of specific action, the statute only provides guidelines for dissolving and replacing the locally elected board with an interim board.¹⁴⁰ It does not include any specific actions for the interim board to take, any additional resources the district may receive, or any recommendations on remedying underperformance.

The 2022 state school report cards reveal that four school districts will qualify for state takeover due to underperformance if trends continue for two more years: Allendale, Colleton, Jasper, and McCormick.¹⁴¹ There are also several other districts that fall just under the 65% or more “underperforming” mark.¹⁴² However, testing limitations presented by the COVID-19 pandemic prevented the state from issuing report card ratings in 2020 and 2021, so it will take a few years to have a more accurate depiction of trends.

133. A district is considered “underperforming” if 65% or more of the schools in the districts have an overall rating of unsatisfactory or below average on their annual school report card for three years or more. S.C. CODE ANN. § 59-18-1615(4). State report card ratings are largely based on overall academic achievement, college and career readiness, and graduation rate.

134. S.C. CODE ANN. § 59-18-1640(A)(1)–(4).

135. For State Board approval, the Superintendent must “cite the circumstances justifying that the district has failed to satisfactorily address circumstances [that have led to takeover]. The State Board of Education must meet within ten days of the [Superintendent’s] request to approve or disapprove the declaration.” *Id.* § 59-18-1640(B).

136. *Id.* § 59-18-1640(E)(1).

137. *Id.* § 59-18-1640(E)(2)(a).

138. *Id.*

139. *Id.* § 59-18-1640(F)(1).

140. *Id.* § 59-18-1640(E)(2).

141. S.C. DEP’T OF EDUC., ANNUAL SCHOOL AND DISTRICT REPORT CARD SYSTEM FOR SOUTH CAROLINA PUBLIC SCHOOLS AND SCHOOL DISTRICTS 2021–2022, <https://ed.sc.gov/data/report-cards/sc-school-report-card/> [https://perma.cc/U5BU-REC5] [hereinafter REPORT CARDS DATA 2021–2022]. Barnwell 19, Bamberg 2, and Florence 4 also qualified as “underperforming,” according to the most recent state report card data. They are not included in this analysis because they consolidated with neighboring districts in July 2022.

142. *Id.* These districts include Lee, Marion, Marlboro, and Williamsburg.

As this Note's Analysis will show, each of the districts subject to takeover have high poverty indexes, and many remain largely segregated.¹⁴³ Revenue per-pupil in these districts, when adjusted for poverty characteristics, is significantly lower than necessary to achieve average achievement outcomes.¹⁴⁴ Additionally, most of these districts fall short in other areas that have a strong bearing on educational quality.¹⁴⁵

Because districts identified as “underperforming” for three consecutive years are subject to takeover under the statute, it is important to establish how “performance” is measured in South Carolina.¹⁴⁶ A district is underperforming when 65% or more of the district's schools have an overall rating of “unsatisfactory” or “below average” on their annual school report card.¹⁴⁷ Therefore, South Carolina school report card ratings are determinative of whether a district is subject to takeover for academic reasons.¹⁴⁸

The report card ratings are largely based on the school's performance relative to state benchmarks.¹⁴⁹ The ratings evaluate the school's performance on a 100-point scale; a school earns points across various indicators, depending on whether it is an elementary, middle, or high school.¹⁵⁰ Indicators for elementary and middle schools include: Academic Achievement (40), Student Progress (40), Preparing for Success (10), School Climate (10), and English Learners' Progress (if applicable).¹⁵¹ Indicators for high schools include: Academic Achievement (30), Preparing for Success (5), School Climate (10), Graduation Rate (30), and College & Career Readiness (25).¹⁵² “Excellent” and “Good” rated elementary schools range from 53–100 points, while “Below Average” and “Unsatisfactory” rated elementary schools range from 0–41 points.¹⁵³

On the elementary and middle school level, the Academic Achievement indicator score comes from academic achievement test scores for ELA and

143. *See infra* notes 199, 225.

144. *See infra* Section III.B.1.

145. *See infra* Section III.B.2.

146. S.C. CODE. ANN. § 59-18-1640(A)(1).

147. *Id.* § 59-18-1615(4).

148. *See id.* § 59-18-1640(A)(1).

149. *See id.* § 59-18-900(E).

150. *See id.* § 59-18-900(B)(2); S.C. DEP'T OF EDUC. & S.C. EDUC. OVERSIGHT COMM., ACCOUNTABILITY MANUAL FOR THE ANNUAL SCHOOL AND DISTRICT REPORT CARD SYSTEM FOR SOUTH CAROLINA PUBLIC SCHOOLS AND SCHOOL DISTRICTS 17–18 (2022), [https://www.eoc.sc.gov/sites/eoc/files/Documents/Act%20Manual%2021%2022/FINAL%20AccountabilityManual%20FY%202021-22%20with%20corrections%20\(2022%2009%2016\).pdf](https://www.eoc.sc.gov/sites/eoc/files/Documents/Act%20Manual%2021%2022/FINAL%20AccountabilityManual%20FY%202021-22%20with%20corrections%20(2022%2009%2016).pdf) [<https://perma.cc/U4H4-GFEF>] [hereinafter ACCOUNTABILITY MANUAL].

151. *Id.* at 18. Maximum points for Academic Achievement and Student Progress are lower if a school has a population of at least twenty English Learners (ELs), so the report card has a separate indicator for EL Progress.

152. *Id.*

153. *Id.*

Mathematics on the SC READY and SC ALT.¹⁵⁴ Essentially, the proportion of eligible students meeting, or exceeding expectations, is converted to the overall indicator.¹⁵⁵ On the high school level, the Academic Achievement indicator comes from scores on the English 1 and Algebra 1 end-of-course exams (EOCEP).¹⁵⁶

The Preparing for Success indicator is derived from the Science academic achievement test at the elementary school level and the Biology 1 and U.S. History EOCEP tests at the high school level.¹⁵⁷ Thus, on the elementary and middle school level, indicators derived directly from test scores account for 50% of a school's overall performance rating.¹⁵⁸ At the high school level, indicators derived directly from test scores account for 35% of a school's rating.¹⁵⁹ However, since the College & Career readiness indicator is also composed of academic achievement data from the ACT, SAT, AP exams, IB assessments, WorkKeys, and ASVAB, test scores likely account for more than 50% of the schools' overall performance rating.¹⁶⁰

Weighing test scores too heavily in the report card ratings presents an issue, in part, because the tests tend to be narrow assessments that do not account for more complex learning processes.¹⁶¹ Standardized tests “ignore a great many kinds of knowledge and types of performance that we expect from students, and they place test-takers in a passive, reactive role, rather than engage their capacities to structure tasks, generate ideas, and solve problems.”¹⁶² There is also concern that social inequalities are the most likely explanation for variation in standardized test scores,¹⁶³ which may indicate biases in the tests against students who are poor and/or nonwhite.¹⁶⁴

154. *Id.* at 20.

155. *See id.*

156. *Id.* at 24.

157. *Id.* at 28, 32.

158. *Id.* at 18, 20, 28. Forty out of one hundred total points correlate to Academic Achievement, and ten out of one hundred overall points correlate to Preparing for Success. As stated above, Academic Achievement scores are calculated based on test scores for ELA and Mathematics on the SC READY and SC ALT and Preparing for Success scores are calculated from the Science academic achievement test at the elementary school level. Therefore, fifty out of one hundred points (50%) are calculated based on standardized testing.

159. *Id.* at 18, 24, 32. Thirty out of one hundred total points available correlate to Academic Achievement, and five out of one hundred overall points correlate to Preparing for Success. As stated above, Academic Achievement scores are calculated based on test scores on English I and Algebra I end of course exams (EOCEP) and Preparing for Success scores are calculated from scores on the Biology I and US History EOCEP at the high school level. Therefore, thirty-five out of one hundred total points (35%) are calculated based on standardized testing.

160. *Id.* at 46–47.

161. Green & Carl, *supra* note 29, at 60; Darling-Hammond, *supra* note 43, at 220.

162. Darling-Hammond, *supra* note 43, at 220.

163. Grodsky, *supra* note 44, at 386.

164. Green & Carl, *supra* note 29, at 60.

Standardized test scores having the greatest weight in overall performance ratings in South Carolina is problematic because a district's test scores end up being a key factor in whether the district is subject to takeover under the statute.¹⁶⁵ Although the state report cards—at least on the elementary and middle school level—also account for student progress, absolute achievement has greater weight in the overall performance rating.¹⁶⁶

III. ANALYSIS

A. *South Carolina's Duty Regarding Education*

The South Carolina constitution 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.”¹⁶⁷ In *Abbeville County School District v. State*, the South Carolina Supreme Court addressed the duty this provision imposed on the General Assembly.¹⁶⁸ The court held that the constitution's education clause requires the General Assembly to “provide the opportunity for each child to receive a minimally adequate education.”¹⁶⁹

The court further defined the “minimally adequate” standard as providing students with adequate and safe facilities where 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.”¹⁷⁰ Most importantly, the court emphasized that this constitutional duty rests on the legislature.¹⁷¹

In *Abbeville II*, the court again outlined the legislature's constitutional duty and found that a measure of both “inputs” (learning and resources provided to the districts—including money, curriculum, teachers, and programming) and “outputs” (success of students in the districts as demonstrated by test scores and graduation rates) was necessary to determine opportunity for minimal adequacy.¹⁷² The *Abbeville II* court held that there

165. See S.C. CODE. ANN. § 59-18-1615(4).

166. See ACCOUNTABILITY MANUAL, *supra* note 150, at 18.

167. S.C. CONST. art. XI, § 3.

168. *Abbeville Cnty. Sch. Dist. v. State*, 335 S.C. 58, 66, 515 S.E.2d 535, 539 (1999).

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

170. *Id.*

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

172. *Abbeville Cnty. Sch. Dist. v. State (Abbeville II)*, 410 S.C. 619, 634, 767 S.E.2d 157, 164 (2014).

was a disconnect between the state's intentions to address critical aspects of public education, particularly with regard to spending, and student performance.¹⁷³

The *Abbeville II* court also discussed the negative impact of racial segregation and poverty on student achievement.¹⁷⁴ The court cited *Brown*, noting the intangible factors that play a large role in achievement outcomes.¹⁷⁵ Ultimately, the record in *Abbeville II* “unequivocally” supported the conclusion “that poverty accounts for the fact that students in some districts perform better than students in others,” and a focus on poverty would likely “yield higher dividends than a focus on perhaps any other variable.”¹⁷⁶ Finally, the Court held that both the defendants and the plaintiff school districts were required to cooperate to design a strategy to address critical concerns, but ultimately stated that “it is [the legislature] who must take the principal initiative, as they bear the burden articulated by our State’s Constitution”¹⁷⁷

The *Abbeville II* court found the plaintiff districts inadequate by looking to the districts’ “outputs” as evidence that “the [d]efendants provided insufficient inputs to educate students in their districts.”¹⁷⁸ The court noted that while the “inputs” (funding, curriculum, teachers, and programs) “appear[ed] at the very least minimally adequate,” student performance indicated that they did not translate to “outputs” (test scores and graduation rates).¹⁷⁹ The dismal student performance that the court used as evidence of a constitutional violation in *Abbeville II* persists in the relevant districts today.¹⁸⁰

Abbeville II declared Allendale, Dillon 2, Hampton 2, Jasper, and Lee school districts inadequate based, in part, on consistent state report card ratings of “Below Average” or “Unsatisfactory.”¹⁸¹ In 2022, this is still the case. The remaining districts subject to takeover are producing similarly dismal outputs, indicating that there is still a disconnect between the state’s actions to address critical aspects of public education and performance.¹⁸² Because the South Carolina constitution mandates a minimally adequate standard for education, the mentioned districts continuing to operate below this level violates the constitution.

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

174. *Id.* at 653–54, 767 S.E.2d at 174–75.

175. *Id.*

176. *Id.* at 654, 767 S.E.2d at 175.

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

178. *Id.* at 634, 767 S.E.2d at 164.

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

180. *See infra* Section II.C.

181. *Abbeville II*, 410 S.C. at 640, 767 S.E.2d at 168.

182. *See* REPORT CARDS DATA 2021–2022, *supra* note 141.

B. State Takeover as an Inadequate Remedy

The South Carolina General Assembly passed a state takeover statute in 2021.¹⁸³ State takeover purports to replace inefficient and insufficient district management with a hand-selected interim school board—one governor-appointed member, one local legislative delegation-appointed member, and three Superintendent-appointed members.¹⁸⁴ According to former Superintendent of Education Molly Spearman, in districts where the Board of Education declared a state of emergency, “there was negligence by some of the school board members, and those same members continued to be a distraction while [the Board of Education] were there working.”¹⁸⁵ Therefore, dissolving those school boards seemed like a viable solution.¹⁸⁶

However, the districts discussed here are subject to takeover because of their academic performance, not mismanagement. Therefore, state takeover in the legislature’s purported capacity mislabels the cause of inadequacy because it merely puts a new school board in place and does not address the fundamental issues hindering student achievement in South Carolina’s most vulnerable districts. Research reveals that the potentially impacted school districts fall short in several categories that determine education quality.¹⁸⁷ These deficiencies result from factors that extend beyond mismanagement or inadequate school board leadership.¹⁸⁸ Rather, deficiencies are the result of a myriad of factors, ranging from poverty levels and demographics to school climate, teacher quality, and curriculum offerings.¹⁸⁹

If the state is not going to use state takeover to provide the necessary “pieces of the puzzle” for educational achievement in these school districts, all it accomplishes with state takeover is hiring someone else to manage failing schools. The factors that are causing the schools to fail will continue to persist; more than a mere change in management is needed to address this. In other words, if the state’s takeover plan does not address the factors that educational researchers—and even South Carolina’s own Supreme Court—have identified as important for educational quality, then state takeover will not remedy the underperforming districts’ shortcomings.

183. *See* S.C. CODE ANN. § 59-18-1640.

184. *See id.*

185. *New Law Lets SC Education Chief Fire Boards After Takeover*, AP NEWS (May 31, 2021), <https://apnews.com/article/laws-government-and-politics-education-b0555801d9f3ce49618ef61f6454e824> [<https://perma.cc/7YZP-X424>].

186. *See id.*

187. *See infra* Section III.B.1–B.2.

188. *See infra* Section III.B.

189. *See infra* Section III.B.

1. District Finances

As noted, it costs school districts with higher poverty rates more money to reach average achievement outcomes.¹⁹⁰ The below chart represents current per-pupil spending in each district, poverty index relative to the state average, the approximate cost of national average outcomes, and the gap between current spending and the amount needed to reach average outcomes. The 2018 study *The Real Shame of the Nation* calculated the funding that it would take for districts in each poverty quintile nationwide to reach national average outcomes.¹⁹¹ The study used a National Education Cost Model to factor in the differences in labor costs across states and the impact of child poverty, population density, and other conditions on achievement outcomes.¹⁹² The study does not focus on the spending necessary to close “achievement gaps,” but instead focuses on the spending necessary for a district to reach average outcomes.¹⁹³ Because the study is from 2018, and the per-pupil expenditure data is from the 2021–2022 school year, the gap in dollar amounts may not be precisely representative of today.¹⁹⁴ However, the 2018 cost of national average outcomes is still useful to gauge how district spending generally compares to what is necessary to reach average outcomes in 2023.

The per-pupil spending data reflects that all four districts that currently qualify as “underperforming” are operating at spending levels well below what it takes to reach national average outcomes.¹⁹⁵ The largest spending gap is in Colleton, where the spending per-pupil is \$4,740 less than what is needed to reach national average outcomes.¹⁹⁶ The spending gaps in Allendale and Jasper are also notable. Even though the underperforming school districts appear to spend more money per pupil than other districts in South Carolina, they are still spending less than what is necessary for the success of the students they serve.¹⁹⁷ The deficits in which these districts continue to operate severely hinders education quality and achievement outcomes.

190. BAKER ET AL., *supra* note 92, at 16.

191. *Id.* at 1.

192. *Id.* at 5.

193. *Id.* at 5–6.

194. See REPORT CARDS DATA 2021–2022, *supra* note 141.

195. S.C. DEP’T OF EDUC. REPORT CARDS DATA ADDITIONAL INFO FOR 2021–2022, <https://screportcards.com/files/2022//data-files/> [https://perma.cc/YC4E-TZ5P] (download “Report Cards Data Additional Info for 2021–2022” from the list of files; within the file, click the tab labeled “Financial Data Page”); see *supra* tbl. 1.

196. *Id.*

197. *Id.*

Table 1: Per-Pupil Spending Data¹⁹⁸

“Underperforming” Districts Subject to Takeover				
District (# of students)	Current Total Per-Pupil Spending ¹⁹⁹	Poverty ²⁰⁰ Index (poverty quintile)	Approximate Cost of National Average Outcomes	Gap Between Current Spending and Amount Needed to Reach Overage Outcomes
Allendale (959)	\$14,097	94.3 (highest)	\$17,742	\$3,645
Colleton (5,007)	\$13,002	85 (highest)	\$17,742	\$4,740
Jasper (2,679)	\$12,852	79.8 (high)	\$14,946	\$2,094
McCormick (612)	\$17,403	80.7 (highest)	\$17,742	\$339

“Higher-Performing” Districts ²⁰¹				
District (# of students)	Current Total Per-Pupil Spending ¹⁹⁹	Poverty ²⁰⁰ Index (poverty quintile)	Approximate Cost of National Average Outcomes	Gap Between Current Spending and Amount Needed to Reach Overage Outcomes
Dillon 3 (1,471)	\$9,987	72.2 (high)	\$14,946	\$4,959
Saluda (2,422)	\$11,489	77.3 (high)	\$14,946	\$3,457
Williston (732)	\$13,378	78.8 (high)	\$14,946	\$1,568

The South Carolina legislature controls school funding through the Education Finance Act.²⁰² The state allocates annual funds to each school district by using a formula that includes district enrollment numbers, a “base student cost” (which the General Assembly establishes annually), and relative cost differences between programs to be “distributed on the basis of pupil

198. *Id.*

199. REPORT CARDS DATA 2021–2022, *supra* note 141. The state-wide percentage of pupils in poverty is 61.18%. *See infra* note 227. Districts with more than 61.18% of pupils in poverty are in the high or highest poverty quintile. Districts with less than 61.18% of pupils in poverty are in the low or lowest poverty quintile. *See BAKER ET AL., supra* note 92, at 48. The “high” poverty quintile in South Carolina would need to spend \$14,946 per pupil to achieve national average outcomes. The “highest” poverty quintile in South Carolina would need to spend \$17,742 per pupil to achieve national average outcomes. REPORT CARDS DATA 2021–2022, *supra* note 141.

200. REPORT CARDS DATA 2021–2022, *supra* note 141. The statewide percentage of pupils in poverty was 61.18%. Districts with more than 61.18% of pupils in poverty are in the high or highest poverty quintile. Districts with less than 61.18% are in the low or lowest poverty quintile.

201. These districts are meant to provide a baseline to compare underperforming districts. The districts were chosen because they are similarly sized and have the most similar rates of poverty to the underperforming districts out of the South Carolina districts with no schools rated below average. REPORT CARDS DATA 2021–2022, *supra* note 141; BAKER ET AL., *supra* note 92, at 48.

202. *See* S.C. CODE ANN. § 59-20-30.

needs.”²⁰³ This number combines with a percentage of local property taxes within the district.²⁰⁴

Thus, the school boards in these underperforming districts—which state takeovers seek to dismantle—do not have any impact on the funding formula that largely contributes to the districts’ inability to deliver satisfactory outcomes. Given that school boards have no control over the amount of money their district receives, replacing school boards through state takeover without addressing insufficiencies in school funding will not remedy the school districts’ shortcomings.

School boards do control, to some extent, *how* their district’s funding is spent. The below chart represents average teacher salaries, average administrator salaries, and percent of expenditures for instruction in the relevant districts.²⁰⁵ The difference in the underperforming districts and higher-performing districts’ average teacher salaries is minimal.²⁰⁶ And the differences can likely be accounted for through other factors, such as cost of living and further advanced degrees.

The more notable differences in the financial data are in the percentage of expenditure for instruction. Except for Colleton County, all the underperforming school districts are spending less on instruction than the higher-performing districts.²⁰⁷ It is important to note the *Abbeville II* court’s mention of district size’s impact on administrative cost.²⁰⁸ The plaintiff districts in *Abbeville II* consisted of small, rural school districts with “administrative costs which are disproportionate to the number of students served by that district, and which divert precious funding and resources from the classroom.”²⁰⁹ Because Colleton is the largest district included in the data, it makes sense that they would have more money to spend on instruction because the district’s administrative costs are lower relative to the number of students in the district’s schools.

However, when comparing the underperforming districts to similarly sized districts, the underperforming districts are still spending less on instruction.²¹⁰ Jasper County spends about 12% less on instruction than Dillon and Williston, while Allendale spends about 10% less and McCormick spends about 5% less.²¹¹

203. *Id.* § 59-20-40(1).

204. *Id.* § 59-20-40(1)(e).

205. *See infra* tbl. 2. This table is derived from REPORT CARDS DATA 2021–2022, *supra* note 141.

206. *See infra* tbl. 2.

207. *Id.*

208. *Abbeville Cnty. Sch. Dist. v. State*, 410 S.C. 619, 639, 767 S.E.2d 157, 173 (2014).

209. *Id.* at 639, 767 S.E.2d at 173–74.

210. *See supra* tbl. 2.

211. *Id.*

Table 2: Other Financial Data²¹²

“Underperforming” Districts Subject to Takeover			
District	Avg. teacher salary	Avg. administrator salary	% of expenditure for instruction
Allendale (959)	\$49,472	\$88,217	45.9
Colleton (5,007)	\$49,697	\$85,287	52.2
Jasper (2,679)	\$53,532	\$94,200	42.7
McCormick (612)	\$53,576	\$95,227	49.6

“Higher-Performing” Districts			
District	Avg. teacher salary	Avg. administrator salary	% of expenditure for instruction
Dillon 3 (1,471)	\$49,664	\$74,353	54.9
Saluda (2,422)	\$51,251	\$92,653	51.6
Williston (732)	\$51,963	\$83,229	54.7

Because state takeover replaces people who have some control over the fiscal management of the district, it could result in meaningful change. However, the justification for takeover within these districts would be academic performance, not fiscal mismanagement. Nevertheless, replacing those who do have control over fiscal management would not change the fact that these districts are already operating with less than what is needed to achieve average outcomes. Additionally, there is varying evidence regarding whether state takeover has, in fact, impacted fiscal management.²¹³

A state takeover that does not address the insufficiency in funding and expenditures will not overcome the districts’ shortcomings in achievement outcomes. Even if state takeover influences *how* the funding is spent, it still will not solve the issue of there not being enough of it. The legislature must instead articulate a more rational approach to school finance systems that better accounts for the districts’ needs. This would more accurately identify the cause of inadequacy in these districts and be a step toward a remedy.

2. *High-Quality Teachers, Student Discipline, and Segregation*

Other characteristics of the underperforming and at-risk school districts further reveal that the legislature has inaccurately identified the cause of inadequacy in these districts. The below chart reveals teacher data from the

212. *Id.*

213. Wong & Shen, *supra* note 30, at 96; Schueler & Bleiberg, *supra* note 39, at 165.

relevant districts.²¹⁴ This includes the percentage of inexperienced teachers teaching in core classes, the percentage of teachers with advanced degrees, student-teacher ratio in core subjects, and the percentage of teachers returning from previous years.²¹⁵ The data shows that, on average, underperforming districts have higher percentages of inexperienced teachers teaching in core classes and lower percentages of teachers returning from the previous school year.²¹⁶

Table 3: Teacher Data²¹⁷

“Underperforming” Districts Subject to Takeover				
District	% of inexperienced teachers teaching in core classes	% of teachers with advanced degrees	Student-teacher ratio in core subjects	% of teachers returning from the previous year
Allendale	15	48.7	18.4 to 1	71.8
Colleton	18.4	57.8	28.8 to 1	81.6
Jasper	17.4	64.2	22.1 to 1	64.2
McCormick	12.5	66.7	22.6 to 1	77.8

“Higher-Performing” Districts				
District	% of inexperienced teachers teaching in core classes	% of teachers with advanced degrees	Student-teacher ratio in core subjects	% of teachers returning from the previous year
Dillon 3	6.5	64.3	24.0 to 1	87.2
Saluda	27.4	53.7	23.7 to 1	80.6
Williston	9.1	64.4	20.3 to 1	79.2

As noted, teacher quality is a major determinant of education quality and academic achievement.²¹⁸ While there are a few outliers, the underperforming districts have higher percentages of inexperienced teachers teaching in core classes and lower percentages of teachers with advanced degrees. Except for Saluda County, the percentage of inexperienced teachers teaching in core classes is lower in the higher-performing districts than in the underperforming districts.²¹⁹ There are also higher percentages of teachers with advanced degrees in Dillon 3 and Williston than in each of the underperforming districts.²²⁰ Saluda County’s percentage is only lower than one

214. See *infra* tbl. 3. This table is derived from REPORT CARDS DATA 2021–2022, *supra* note 141.

215. See *infra* tbl. 3.

216. *Id.*

217. *Id.*

218. See Darling-Hammond, *supra* note 120, at 23.

219. REPORT CARDS DATA 2021–2022, *supra* note 141.

220. *Id.*

underperforming district: Colleton.²²¹ There are not many meaningful differences in the student-teacher ratios. Although Williston’s student-teacher ratio is better than all the underperforming districts besides Allendale, Dillon 3 and Saluda’s student-teacher ratios only fare better than Colleton’s.²²² Therefore, student-teacher ratios from the relevant districts do not appear to speak to student achievement.

Finally, there are greater percentages of teachers returning from the previous year in each of the higher-performing districts.²²³ The greatest difference is between Jasper, which had only 64.2% of teachers returning from the previous year, and Dillon 3, with 90% of teachers returning from the previous year.²²⁴ Because quality teachers are essential to education quality and achievement outcomes, an adequate state takeover must address underperforming districts’ ability to attract and maintain quality teachers.

There are notable differences in the remaining district data, including differences in demographics, enrollment in gifted and talented classes, and suspension rates. The below chart includes data from the relevant districts regarding demographics, advanced course offerings and passage rates, percentage of students served by gifted and talented programs, and the number of students with out-of-school suspensions.²²⁵ As established in Part I of this Note, these can all influence achievement outcomes. The underperforming districts fall short in several of these areas.

Table 4: Other District Data²²⁶

“Underperforming” Districts Subject to Takeover					
District (# of students)	Demographics ²²⁷	AP Exams (# of students who took the exam and % of passage)	Dual Enrollment (% enrolled and percent to complete six hours with a C or higher)	% of students served by gifted and talented programs	Students with out-of-school suspensions

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

225. *See supra* tbl. 4. This table is derived from REPORT CARDS DATA 2021–2022, *supra* note 141.

226. REPORT CARDS DATA 2021–2022, *supra* note 141.

227. S.C. DEP’T OF EDUC., 180–DAY ACTIVE HEADCOUNT: DISTRICT HEADCOUNT BY GENDER, ETHNICITY, AND PUPILS IN POVERTY 2021–22 (2022), <https://ed.sc.gov/data/other/student-counts/active-student-headcounts/> [https://perma.cc/JWF9-JZSB] (locate the “2021–2022” heading, under 180–Day Active Headcount, click and download the file titled “District Headcount by Gender, Ethnicity, and Pupils in Poverty 2021–22.”).

Allendale (959)	91% Black 4% White 2.5% Hisp./Latino	9; 0	33.3; 13.5	2.6	313 (33%)
Colleton (5,007)	48% Black 39% White 7% Hisp./Latino	N/A	22.6; 16.4	10.4	986 (20%)
Jasper (2,679)	49% Black 7% White 42% Hisp./Latino	N/A	19.1; 17.3	0.1	288 (11%)
McCormick (612)	77% Black 18% White 0.9% Hisp./Latino	N/A	31.8; 23.5	2.1	147 (24%)

“Higher-Performing” Districts					
Dillon 3 (1,471)	34% Black 55% White 4% Hisp./Latino	1; 0	6.5; 1.6	10.2	222 (15%)
Saluda (2,422)	21% Black 33% White 43% Hisp./Latino	71; 14.3	33.7; 24.4	10.0	159 (7%)
Williston (732)	62% Black 30% White 2% Hisp./Latino	N/A	40.8; 26.5	9.6	92 (12.5%)

While there are only slightly higher percentages of teachers with advanced degrees in higher-performing districts and teachers returning from the previous year, the number of advanced courses and passage rates can also be indicative of the number of quality teachers in a district. The availability of high-quality teachers gives a school the capacity to offer more advanced courses, such as Advanced Placement (AP) and dual enrollment. Allendale is the only underperforming school district where students took an AP exam.²²⁸ However, Saluda is also the only higher-performing district where students passed an AP exam.²²⁹ Dual enrollment rates are minimally higher in higher-performing districts (except Jasper), and passage rates are also slightly higher in Saluda and Williston.²³⁰ Thus, a school’s ability to offer AP classes and dual-enrollment courses appears to be a less important piece of the puzzle for student achievement in these districts.

Nevertheless, there is a stark difference in the percentage of students in gifted and talented programs between underperforming and higher-performing districts.²³¹ Although Colleton has a higher percentage of students served by gifted and talented programs than all other districts, the remaining underperforming districts have significantly lower percentages.²³²

228. REPORT CARDS DATA 2021–2022, *supra* note 141.

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

School district management can influence course offerings in schools, so state takeover may improve this factor. However, the problem is more complex than merely adding more advanced course offerings, because not all schools have the resources to do so. The availability of quality teachers and sufficient funding enables a district to provide more advanced courses and allows students to be successful in them. Thus, a state takeover that moves toward an adequate remedy must work to increase the number of quality teachers and funding, which will enable schools to have a greater number of, and success with, advanced course offerings.

Further, out-of-school suspension rates in the underperforming school districts are higher overall than rates in the higher-performing districts.²³³ The suspension rates are more than two times higher in Allendale and substantially higher in Colleton and McCormick.²³⁴ This is significant because research shows that using school suspension to discipline students has a negative impact on education quality—including the education quality of students without disciplinary issues.²³⁵ Additionally, the time spent out of class by suspended students negatively impacts their education and achievement.²³⁶ Disciplinary policies are within the control of the school board.²³⁷ Although student expulsion warrants a hearing before the school board, individual student suspensions are typically only reviewed by the individual school's administration.²³⁸ It is unclear whether replacing district management would lead to more discretion for administrators in using out-of-school suspensions, or if it would even address school discipline at all. However, there is evidence to suggest that accountability reform policies, like state takeover, negatively impact school discipline.²³⁹

Finally, the above charts reveal that minority populations and students living in poverty are heavily concentrated in the underperforming districts.²⁴⁰ There are also significant minority populations in both Saluda and Williston (roughly 60%), but Allendale County's minority population is over 90%, and Jasper and McCormick County's is over 70%.²⁴¹ Poverty segregation is even more notable, as every underperforming school district has at least 80% of their students living in poverty.²⁴²

233. *Id.*

234. *Id.*

235. Perry & Morris, *supra* note 111, at 1083.

236. Black, *supra* note 107, at 47–48.

237. S.C. CODE ANN. § 59-63-210.

238. *See id.* § 59-63-217(B).

239. *See generally* Nelson et al., *supra* note 116, at 1247.

240. REPORT CARDS DATA 2021–2022, *supra* note 141; *see supra* tbl. 1; *see also supra* tbl. 4.

241. *Id.*

242. *Id.*

Poverty and racial segregation have a negative impact on achievement outcomes and higher levels of segregation can influence education quality.²⁴³ Such significant levels of segregation in these districts are problematic “because [they] concentrate[] advantages and disadvantages that emanate outside of school.”²⁴⁴ Researchers continually point to poverty as a major factor that hinders student achievement.²⁴⁵ The South Carolina Supreme Court has also recognized that poverty is a major factor that hinders student achievement.²⁴⁶ In *Abbeville II*, the defendants noted that “except for the factor of poverty, there is little difference between schools in the plaintiff districts and other public schools.”²⁴⁷

Here, the underperforming districts and the higher-performing districts do have similar poverty rates, even though poverty rates are still higher in the underperforming districts.²⁴⁸ Thus, the data presents some challenges in determining what is really going on in these districts. On the one hand, the underperforming districts are operating with less money than what is needed to reach average outcomes, but the higher-performing districts also operate at similar deficits. However, there are differences in how the districts spend their money. Despite being similarly sized, the higher-performing districts spend less on administrative costs and more on student instruction.²⁴⁹ This has a positive impact on achievement outcomes in these districts because there is more money going toward classroom resources and curricula.

Additionally, the higher-performing districts appear to have a greater capacity for attracting and maintaining high-quality teachers than the underperforming districts, which also impacts achievement outcomes. Further, the difference in the out-of-school suspension rates in the underperforming districts and higher-performing districts also helps to explain the gaps in education quality. Finally, the lack of students served by gifted and talented programs in the underperforming districts is also telling regarding student achievement.

The fact that the underperforming districts fall short in these areas helps explain why they are failing to produce the “Average,” “Good,” and “Excellent” outcomes that the higher-performing districts produce. However, it is important to note that similarly situated districts having the capacity to produce better outcomes does not make the high poverty rates in underperforming districts irrelevant regarding achievement. Out of twenty-seven similarly situated districts, the chosen “higher performing districts”

243. *See supra* Section II.B.2.

244. Condrón et al., *supra* note 73, at 149.

245. *See supra* Section II.B.2.

246. *Abbeville Cnty. Sch. Dist. v. State*, 410 S.C. 619, 654, 767 S.E.2d 157, 175 (2014).

247. *Id.*

248. REPORT CARDS DATA 2021–2022, *supra* note 141.

249. *Id.*

were the only three districts that did not have any schools rated “Below Average” or “Unsatisfactory.”²⁵⁰ Many other similarly situated districts’ ratings barely miss meeting the qualifications for takeover—these districts include Dillon 4, Florence 5, Lee, Lexington 4, McCormick, Marion, Marlboro, and Williamsburg.²⁵¹ Even though some larger school districts may also have several “Below Average” or “Unsatisfactory” rated schools, the districts themselves are not targeted for takeover because their shortcomings are less obvious; there are enough better-performing schools in these districts to outweigh the schools that also may not be providing adequate educational opportunity.²⁵²

Conversely, smaller districts have no room to fail, even though they may have fewer “Below Average” or “Unsatisfactory” schools than a larger district. Smaller districts that have the added disadvantages of poverty and race segregation face an even greater struggle, especially when they also fall short in several other areas that are determinative of education quality. Importantly, the justification for takeover in these districts would be based on academic performance, not mismanagement.²⁵³ While state takeover replaces district management, district management has little influence on any of the factors that impact education quality and academic performance.²⁵⁴ Thus, replacing district management through takeover will not alleviate the factors that negatively impact education quality in these districts. A state takeover that fails to address poverty and race segregation, funding and fiscal management, availability of high-quality teachers, and discipline is unlikely to result in meaningful improvements in academic performance.

IV. CONCLUSION

State takeover does not address the fundamental issues that failing districts in South Carolina face. Instead of providing a targeted plan to address major determinants of education quality, like poverty levels, poverty and racial segregation, finances, availability of high-quality teachers, and discipline, takeover simply places a new figurehead in charge. In state takeover’s purported capacity, it is a controversial means of seeking to remedy the failing school districts that distracts from the fundamental issues South Carolina’s most vulnerable school districts face. Further, the rhetoric surrounding state takeover in South Carolina makes it appear that the threat of state takeover itself is supposed to foster improvement without considering

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.*

254. *See supra* Section III.B.

the policy behind what takeover could accomplish. Politicians tout takeover as a means to ensure that local school boards are acting responsibly. But, if the school boards themselves are not the driving force behind underachieving schools, replacing them is not an effective solution.

If the state's goal is really to improve achievement outcomes—which will require great work in equalizing education opportunity and improving education quality in these districts—the legislature must begin with addressing the factors that influence education opportunity and education quality. Currently, the state is utilizing takeover as a solution to an inaccurately identified problem: mismanagement by local school boards. However, Allendale, Colleton, Jasper, and McCormick would qualify for takeover based on academic achievement, not mismanagement. An accurate identification of the problem would acknowledge the high rates of poverty these districts face and the surrounding factors that hinder academic achievement. The inaccurate identification of the cause of these school districts' inadequacy makes it nearly impossible for state takeover to have any meaningful role in the improvement of these districts. Remedying inadequate education in these districts will instead require a focus on the factors that research shows have a positive impact on the education quality that vulnerable populations receive.