THE BROKEN PROMISE of BROWN v BOARD of ED

A 50-State Report on Legal Discrimination in Public School Admissions

April 2024

A nonpartisan watchdog defending equal access to public schools

The Broken Promise of Brown v Board of Ed
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in Public School Admissions
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STATE PROFILES

To read the state profiles, download the full report here.

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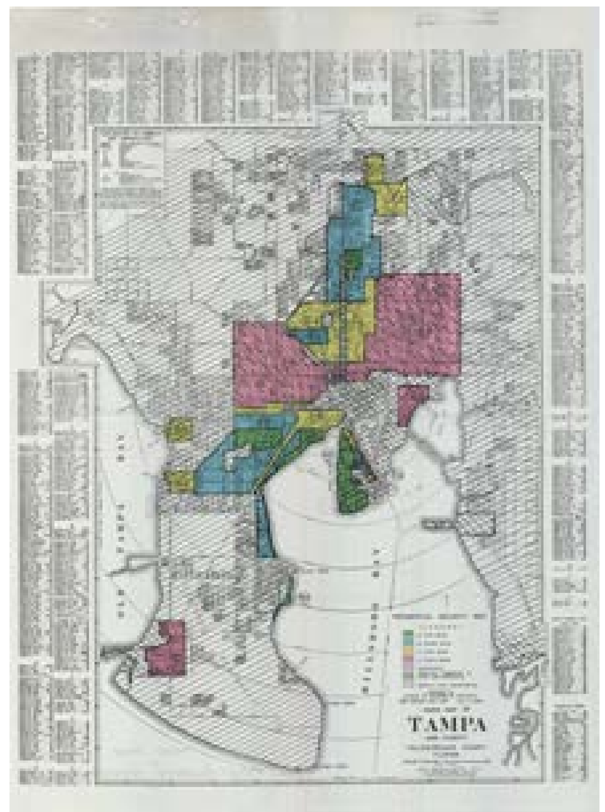
COVER: Nettie Hunt and her daughter Nikie on the steps of the U.S. Supreme Court after the Brown v Board of Education ruling. Photo: Carl Iwasaki/Life Images Collection/Getty Images

Introduction

This is a year of celebration. Seventy years ago this May, the Supreme Court outlawed racial segregation in the public schools. The court's ruling in *Brown v. Board of Education* made it illegal for states and school districts to turn African American children away from a public school because of their race, ending a shameful era of American history and reimagining our social contract.

But this is also a year of reckoning. Seven decades after *Brown*, low-income children—many of them children of color—are still systematically excluded from the very best public schools. The brutal truth is this: In 2024, Linda Brown wouldn't be turned away from a coveted public school because of her race, but it's likely she would still be turned away. And it's all perfectly legal.

How can a public school deny enrollment to a student in 2024? Usually because of their address. The vast majority of public schools still use exclusionary maps to determine who is or isn't eligible to enroll. These maps are reminiscent of the redlining era in the decades before *Brown*, when the federal government drew maps that determined who was or wasn't eligible for housing assistance. Certain neighborhoods were labeled "hazardous" because they had high concentrations of minorities or immigrants. Shading these areas red, the government marked those families as ineligible for valuable government services. Research has shown that, even today, the attendance zones of many coveted public schools mirror the patterns of those redlining maps and keep middle-income and low-income families locked out of the best public schools.



Our nation has a long history of using discriminatory maps that prevent low-income Americans, especially people of color, from accessing valuable government services. Above is a redlining map of Tampa, Florida produced by the Home Owners' Loan Corporation during the New Deal Era.

This educational redlining explains how neighboring schools like Lincoln Elementary and Manierre Elementary—two campuses serving Chicago's Old Town neighborhood—can end up so starkly different. At Manierre, where 98% percent of students are Black or Latino, not a single graduating eighth grader could read at grade level in 2023. Just a mile away at Lincoln, the school is majority white, and over 84% of eighth graders can read proficiently. The two populations are kept completely separated by an attendance zone line, drawn down the middle of North Avenue by the school district.

Layered on top of this geography-based exclusion are other types of discrimination, like those based on income. Believe it or not, many coveted magnet schools give enrollment preferences to wealthy families, trying to lure them away from their high-quality zoned schools. It is one of the great ironies of public education that magnet schools, created to reduce segregation and increase opportunities for low-income children of color, often now intentionally put those same children at a disadvantage. Linda Brown, in other words, might be legally turned away from a public school in 2024 because her family doesn't make enough money.

Or she might be turned away if she has a disability. In several states, it's perfectly legal for a school to deny a child an "open enrollment" seat if the child has a minor disability. The school just reports that the special education program is "full," and there's no way to verify that claim.

This is a failure of the law. Chief Justice Earl Warren, writing for a unanimous Supreme Court in 1954, had promised that henceforth the public schools would be "available to all on equal terms." But, in the years after Brown, the courts got tangled up in the very real and urgent problem of eradicating explicit racial segregation, especially in the Southern states. They never came back around to provide substantive and procedural protections that would have fulfilled the original promise of that ruling.

The Warren Court. U.S. Supreme Court Justices of the 1953 session.

Photo: Harris and Ewing/Library of Congress, Prints and Photographs Division

In the past 70 years, this issue has fallen through the cracks. The federal courts have consistently narrowed the scope of their scrutiny of public school enrollment practices, as school districts have stricken any mention of explicit racial segregation from their official policies. The state courts have largely deferred to school district bureaucrats and school staff, giving them tremendous discretion over enrollment policies, no matter how many kids are turned away. And, finally, our legislators have not passed the types of laws that would require the courts to protect American families and ensure that all children have equal access to the public schools.

This lack of oversight has persisted despite ample evidence that school staff frequently have strong incentives to be selective about which kids are admitted. "My theory is that he wasn't testing very well," says a mom from Tucson, Arizona whose son's "open enrollment" seat at a coveted public school was revoked after he was diagnosed with a disability. The school claimed that it didn't have room for him in the special education program, even though he was already enrolled in that program. "How a school performs is largely based on the test scores of the students who are attending," she observes, so the school may have had an incentive to move her son out of the school.

Kelley Williams-Bolar spent nine days in jail for using her dad's address to allow her daughters to attend a safe, high-quality public school in Ohio.

One former school administrator, speaking anonymously, told us, "There's this systemic pressure to sort of stack your school with kids who are easier to educate." And this pressure cuts across all the different segments of public schools. "This isn't a charter school thing, it's not a traditional public school thing, it's not a magnet school thing," she says. "It's a public education thing."

In this report, we survey the laws that govern public school admissions in all 50 states, plus the District of Columbia. Our research shows that this area of the law is in urgent need of reform and oversight, at both the state and the federal levels. We found that:

1. American families generally have very **weak legal protections** related to their children's access to individual public schools.

2. **Discrimination in admissions** is often explicitly allowed or even required by the law, and neutral, non-biased admissions procedures are required only in narrow circumstances or for certain types of schools.

3. Significant **inconsistencies and loopholes** in existing law can be exploited by school officials to control the makeup of a school's enrollment.

These gaps in the law represent a significant violation of the terms of our social contract. Reform is urgently needed so that the public schools can finally fulfill their sacred mission of being equally open to all families, giving all children equal access to the American dream.

Executive Summary

This report is meant to resolve a paradox. *Brown v. Board of Education* was supposed to open up the schools to all American children, but 70 years later the best public schools generally remain closed to all but the wealthiest families. Why is that?

We want to understand how each of the following can happen in 21st-century America, all under the cover of law:

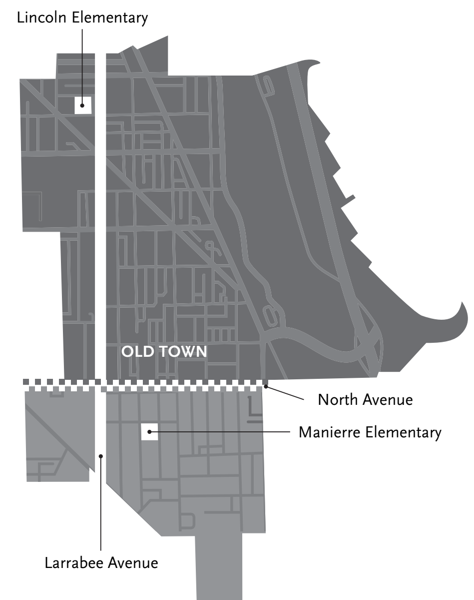
- School districts hire private detectives to spy on children after school, conduct residency checks, and sometimes prosecute parents for accessing the "wrong" public school.
- An 8-year-old boy with a disability in Tucson is told that he is no longer welcome at the school he is attending, and his "open enrollment" seat is being revoked because the special education program is full.
- A magnet school in Houston accepts $2 million in additional district funding every year for specialized programs, despite not admitting a single student from outside the school's attendance zone, a practice that the former superintendent of the Houston district calls being "magnet in name only."
- A scandal erupts in Philadelphia over a charter high school illegally using an admissions policy that gave privileged access to students from certain ZIP codes or preferred feeder middle schools. Meanwhile, the Philadelphia school district legally operates a similar system of over 240 schools using a default assignment system of feeder patterns based on the child's address.
- In Tampa, a failing school closes, requiring the district to find a new school for hundreds of low-income elementary students. But not a single one of these students is allowed to enroll in the A-rated schools that are minutes from their homes. Instead, they are bused to majority minority schools with much lower levels of student achievement.
- Schools in Atlanta, Dallas, and Chicago spend $10 million to $20 million to add capacity to coveted public elementary schools, despite thousands of empty seats at nearby elementary schools—just to preserve privileged access for families who bought homes in the attendance zone.

- Children in Roseville, California, are denied the opportunity to enroll in a brand-new Roseville elementary school just blocks from their home and instead are bused 20 minutes away to a school in the Center Joint Unified School District, because of an archaic, gerrymandered district line.
- A school board in a wealthy Connecticut suburb declines to participate in a pilot "open enrollment" program because it would have required them to admit just 16 kids from neighboring Norwalk, which has more middle-income and low-income students.

All of the above, except for the charter school's admissions policies, are legal under current federal and state law.

It is true, at least in theory, that every American child has access to the public school *system*: The system has been designed so that every child has one school that must accept them. But access to the system cannot guarantee equality of opportunity. Indeed, *Brown v. Board of Education* was not about access to the system, but about access to an individual public school. Linda Brown already had access to the public school system and attended a public school in Topeka. The NAACP, however, asked the courts to rule that it was a violation of the Equal Protection Clause of the Fourteenth Ammendment for Linda Brown to be denied access to a particular public school, Sumner Elementary. And the Supreme Court agreed.

Protecting equal access to individual public schools is absolutely necessary. Just look at those two schools that serve the Old Town neighborhood of Chicago. At Lincoln Elementary, 84% of graduating eighth graders can read proficiently. A mile away, at Manierre Elementary, not a single graduating eighth grader can read proficiently. If an Old Town child is forbidden to attend Lincoln but assigned to Manierre instead, he or she has effectively been "denied the opportunity of an education." Just like Linda Brown was when she was turned away from Sumner Elementary and sent to Monroe Elementary.

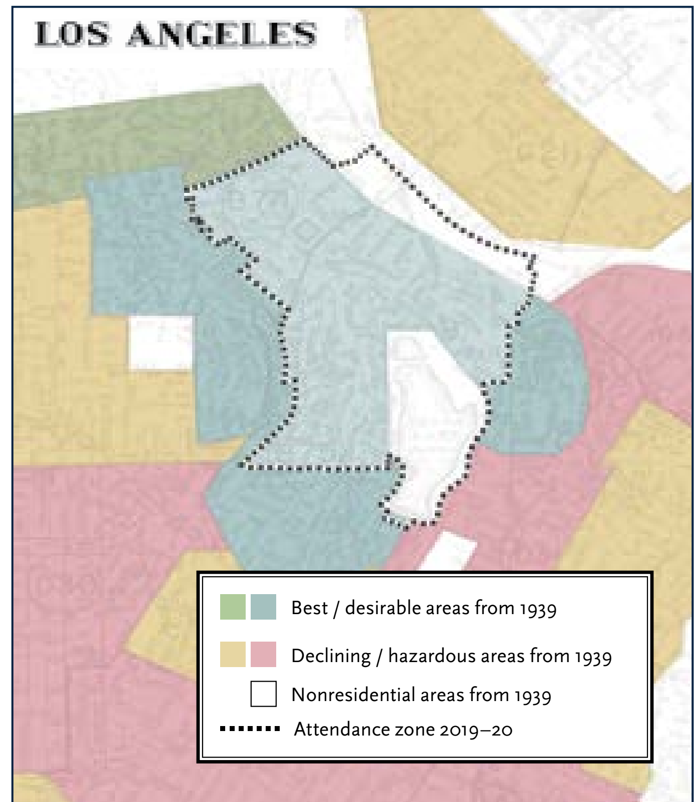


In Chicago, the student populations at Lincoln Elementary (a coveted public school) and Manierre Elementary (a failing school) are kept completely separate by a line drawn down the middle of North Avenue. The schools are only a mile apart.

The uncomfortable truth is that exclusion in our K-12 public schools is inevitable. A school like Lincoln must turn children away, because thousands of parents perceive—rightly or wrongly—that it is vastly superior to the other public schools in the neighborhood. These coveted public schools can be traditional public schools like Lincoln, or they can be charter schools or magnet schools. Since there just aren't enough seats in many of these schools, children cannot be guaranteed a seat in a specific public school. Indeed, we cannot find any examples of states that guarantee a child the right to attend the school that they are zoned for, and some specifically emphasize that children do not have a right to attend the zoned school.

What we can and should guarantee is an equal opportunity to enroll in a public school. The key questions are these: On what grounds can a school legally turn children away? Do families have legal protections, or does the school have a tremendous amount of discretion? Is the school required to use neutral, non-discriminatory criteria, or is it allowed to use geography or income or other non-neutral criteria to cherry-pick its students? How can we ensure that these schools remain public in nature and don't become quasi-private institutions, as many of these schools appear to have become?

School enrollment policies in the U.S. can only be understood in the context of decades of housing discrimination in the United States. Richard Rothstein's book, *The Color of Law*, shows how government policy—through redlining maps, the enforcement of racially restrictive covenants, and other methods—discriminated against people of color and helped ensure that neighborhoods would be racially segregated. Utilizing redlining maps published by the University of Richmond, Tim DeRoche, the president and founder of Available to All, wrote a 2020 book showing how the modern-day attendance zones of many coveted public schools mirror the racist redlining maps of the 1930s. And, in 2021, the Urban Institute published a rigorous report detailing how housing discrimination overlaps with exclusionary school boundaries: Dividing Lines: Racially Unequal School Boundaries in U.S. Public School Systems.



The attendance zone for coveted Ivanhoe Elementary School in Los Angeles excludes minority neighborhoods labeled "hazardous" or "declining" on the government's redlining map from 1939.

Source: Los Angeles Unified School District, U.S. Home Owners' Loan Corporation

Brown v. Board of Education was a narrow ruling in that it only outlawed school assignment based explicitly on race. Federal law still allows school assignment schemes that rely on variables that correlate with race—such as address or income level. And a system based primarily on geography will, by default, end up excluding most low-income children from attending the best public schools. (See our discussion of federal law on page 29.)

In this report, we will use the word "discrimination" to refer to any type of enrollment policy that is non-neutral on its face. Enrollment policies that give preference to students from certain geographic areas or families of a certain income level (whether high-income or low-income) are, by definition,

discriminatory. A lottery, on the other hand, is an enrollment procedure that attempts to be neutral and non-discriminatory. A policy of first come, first served would also be neutral and non-discriminatory on its face.

There is no utopian solution to the problem of public school admissions, and every possible enrollment system will pose the risk of abuse and difficult issues of implementation. That's why the law is so important: to establish the standard of equal access to the public schools and to provide for the enforcement of that standard. American families should have legal protections that safeguard their access to the public schools. The schools themselves should be required to have neutral, non-discriminatory enrollment practices. The laws should be robust and consistent, so that all schools play by the same set of rules. And the courts should be actively engaged in ensuring that the public schools remain open to all.

But none of this is true right now.

Linda Brown in 1964 outside the Sumner School, which had denied her enrollment in 1950.
Photo: Associated Press

FINDING #1-Weak legal protections for American families

American families generally have very **weak legal protections** related to their children's access to individual public schools. So, for example, when a child living in Old Town Chicago is told that they are ineligible to attend Lincoln Elementary, even though they live a mile away, the family has no legal recourse with the Chicago Public Schools (CPS). This is especially troubling, given (1) the perceived scarcity of high-quality public school options, and (2) the incentives that school staff have to select students who they believe will be easier to educate

American families generally have very weak legal protections related to their children's access to individual public schools.

As noted above, **federal protections are narrow**. Discrimination based on race, national origin, and religion are forbidden, but the courts have ruled that the Equal Protection Clause of the Fourteenth Amendment does not apply to other types of discrimination that might be correlated with these "suspect" classifications. A small number of federal statutes touch on issues of access to public schools, but these laws do not provide substantive or procedural protections for American families.

What's more, the **state constitutions also provide limited protections related to access to public schools.** Clauses in the state constitutions that could be seen to govern public school enrollment practices are primarily related to protected classes (race, religion, etc.), rather than procedural protections for all kids. Unfortunately, that means schools are allowed to discriminate based on factors that correlate with race, including both residential address and income level, so the majority of kids of color can still be legally excluded from the best public schools.

Half of the states have some constitutional language that could–in theory–be interpreted to protect the idea of equal access to the public schools more generally, including nine states whose constitutions promise that the public schools will be "open to all" and five states whose constitutions mandate "equality of educational opportunity." To date, however, the state courts have not yet taken up the question of whether these requirements put limitations on public school enrollment policies. Indeed, most state courts are reluctant to intervene in educational policy issues and are likely to perceive all of the nuances of enrollment as "legislative" or "administrative" in nature, and significant deference is shown to legislators and to rule-making agencies. So opportunities to pursue equal access to public schools via constitutional litigation are likely sharply limited.

Only two states have a substantive statute that addresses school access directly across the different types of public schools. Delaware and Florida each have a substantive law governing enrollment policies at all public schools in the state, and both laws have significant limitations. (See Delaware profile on page 69 and Florida profile on page 74.) A handful of other

states have general statutes that could be seen to protect equal access to public schools, guaranteeing "equal educational opportunity" or that the schools be "open to all," but the courts have not yet interpreted these clauses to put restrictions on school enrollment policies.

Finally, **there are very few reporting requirements and/or transparency standards for public school application and admissions procedures.** Policymakers are generally in the dark on these issues, since most states do not require the collection and publication of data. Very few states track the capacity of individual public schools in order to ensure that schools do not abuse capacity constraints as an excuse for keeping certain students out. (Florida is a significant exception to this with its Florida Inventory of School Houses or FISH.) No state currently requires public schools to report on acceptance/denial rates.

With few protections for families, districts and schools are free to establish admissions policies that are legally discriminatory and non-neutral.

School integration in Washington, D.C., 1955. Photo: Thomas J. O'Halloran/Library of Congress

FINDING #2-Legal discrimination and non-neutral enrollment practices

Geographic discrimination is the default system and is often built into state law. All 50 states and the District of Columbia allow or require school assignment to be based on the student's residential address, and there are two types of lines that play a role in this geographic discrimination—school district boundaries and attendance zones. School districts will often cite state law directly as justification for their policies that discriminate based on geography. The Texas Association of School Boards advises their members, based on state law, how and when they can charge tuition to transfer students who live outside the district.

Geographic discrimination is the default system and is often built into state law.

American law has typically achieved universal rights to public education by carving up state maps so that a particular entity—sometimes a municipality or county, but more typically an independent governmental agency known as a school district or school division—is responsible for educating the children who reside within the specified area. This is the system of school *district boundaries* and the governmental institutions that operate the schools within them.

In addition, empowered either implicitly or explicitly by state law, school districts typically draw attendance zones that determine which district residents are eligible (or ineligible) to attend a particular school. This system of residential assignment is the default system, and over 80% of American public school students attend their residentially assigned school. The geography-based system means that children in many jurisdictions typically have no procedural rights when they apply to a non-charter public school that isn't their zoned school.

Other types of discrimination are layered on top of the geographic system. Because wealthier families have privileged access to the best public schools via educational redlining, it is often difficult for other schools to attract these families. In an effort to recruit these wealthier, better-educated families, magnet schools will frequently give preferential enrollment to families above a certain income level or who live in certain ZIP codes that have higher income levels. These preferences are justified as a way for the school to meet its goal for racial integration, an objective that was built into the launch of magnet schools in the 1970s and 1980s. The irony is that these schools, created to increase educational opportunities for low-income children of color, now often give preferential enrollment to the most privileged families.

In most cases, charter schools are prohibited by state law from using such tactics, but charter schools may utilize selective marketing or administrative hurdles to accomplish similar ends. In addition, many states have open enrollment laws that allow or require districts to give students the opportunity to enroll in schools that are not their traditional zoned public school. But, in some states with strong open enrollment laws, such as Arizona and Wisconsin, districts are allowed to use unverified claims of capacity constraints to keep children with disabilities from enrolling.

Certain populations of kids are most at risk of not having equal access to the best public schools. The default system based on geography means that certain groups of at-risk children are vulnerable to being systematically excluded from the best public schools, including children who are (1) homeless, (2) migrant, (3) in foster care, (4) from a military family, or (5) imprisoned, as well as (6) middle-income and low-income children who live on the "wrong side of the tracks." Children with disabilities are at particular risk because they have no meaningful rights to gain access to schools other than the one assigned to them by their district of residence. Federal law does provide some specific, class-based protections for some of these groups, but these protections are generally highly targeted and do not protect the general principle of equal access. See the section on federal law on page 29.

Despite the breadth of these discriminatory policies, there is little consistency in the law.

Students in San Francisco recite the Pledge of Allegiance, shortly before the forced evacuation of Japanese-American families.
Photo: Dorothea Lange/Wikicommons

FINDING #3 - Inconsistency and loopholes

While geographic assignment is widespread in all 50 states and the District of Columbia, states have often passed particular bills that provide **exceptions or loopholes** in certain circumstances or for certain types of schools. The most obvious example is that all 50 states and the District of Columbia allow or require traditional public schools to operate attendance zones, while the vast majority of charter schools in these states are forbidden from doing the same. (The typical exception is charter schools that are conversions from typical public schools, which are often required to continue using the preexisting attendance zone.) This means that parents not only have to deal with discriminatory laws and policies, but they must navigate a confusing system where the rules seem to be different from school to school.

Open enrollment and public school choice laws, where they exist, are inconsistent and have significant loopholes. While many states have laws governing open enrollment for within-district transfers (28 states) or cross-district transfers (45 states), these are sharply constrained. Districts, for example, may have the legal ability to decline to participate in open enrollment. In 24 states, parents are, at least in some circumstances, forced to get the approval of their "home" district before enrolling their child in a better school outside the district. In others, parents must pay "tuition" for their child to attend a school outside their district of residence. And all existing Open enrollment laws reinforce the geographic system by allowing schools to opt out if they are "full," though there is no procedure for challenging such a claim.

Even in places with a significant amount of "public school choice," **individual public schools can be captured by interest groups or small groups of parents.** Look, for example, at Gorrie Elementary School in Tampa, Florida. Florida generally has strong public school choice, and families may have a number of options of different types of schools. But Gorrie Elementary, a traditional public school with an "A" rating from the Florida Department of Education, remains extremely exclusive, operating an attendance zone that mirrors the racist redlining map from 1936 and excluding many low-income kids who live within blocks of the school.

Parents not only have to deal with discriminatory laws and policies, but they must navigate a confusing system where the rules seem to be different from school to school.

Charter school laws typically have the strongest protections for equal access. Charter school laws may provide a model for states that seek to improve school access across the public school system, as these laws typically have a number of measures that protect equal access. For example, charter school statutes typically: (1) specify that a school must take applications

from all children, (2) require a lottery or other neutral admissions criteria to select students, if the school has more applications than seats, and (3) prohibit discrimination against applicants based on their address of residence. However, in 20 states, charter laws also carry forward strong elements of geographic discrimination, such as the common requirement that conversion charter schools (those that begin as traditional public schools) continue to operate the preexisting attendance zone. Given that these schools are often converted based on a local vote of parents, these enrollment preferences may be reasonable in some circumstances, but they also reinforce the idea that there can be a private right to attend a particular public school. Finally, though charter school laws hold these schools to high standards of openness, the processes for holding charter schools to the law may be lax.

States typically do not put any legal constraints on magnet school admissions, so magnets are often the Wild West of public school enrollment. While many states have specific statutes that govern charter-school admissions and a handful of states address enrollment policies in the traditional public schools, magnet schools are generally free from legal oversight and can discriminate based on any number of non-neutral criteria. Only five states have statutes that govern magnet school admissions, and these are generally weak and/or vague. In a state like Virginia, for example, the Fairfax County Public Schools can operate an elite, highly selective magnet school like Thomas Jefferson High School without any state oversight of its admissions policies, since Virginia has no statute providing guardrails for magnet admissions.

Magnet schools were, at least in part, created to support the voluntary reduction of racial divisions in the schools (what the courts call de facto segregation). By reducing racial divisions, supporters of magnet schools hoped to provide more integrated learning environments that would give low-income kids of color more educational opportunities. Many magnet schools, however, faced difficulties in recruiting higher-income white families to attend the school, which made it challenging for them to reduce the levels of segregation. These wealthier families generally had access to high-quality public schools as a result of educational redlining, so they were less likely to seek out other options such as magnets.

As a result, many magnet schools have adopted enrollment preferences for wealthier families that they presume are more likely to be white. Schools have enrollment preferences for children from higher income levels, or they have enrollment preferences for children who come from high-income ZIP codes. (Note: A smaller minority of magnet schools cater primarily to wealthier families, and these schools will often give enrollment preferences to lower-income children.)

Ironically, this means that schools originally designed to give more opportunities to low-income kids of color ended up discriminating against these very families in their admissions policies. The confusion and inconsistency of this area of the law is demonstrated by the fact that some public schools (charters) are forbidden to discriminate in favor of wealthy families, while other public schools (magnets) are explicitly empowered to do so.

Recommendations

It's a national tragedy that we left undone the primary work of the civil rights movement as it relates to public education. The first step is for legislators to take up this issue. As our state profiles show, the vast majority of states have confusing and inconsistent laws that govern access to public schools. Open enrollment is generally seen as a small program on the margin, serving a minority of families. These laws should be rewritten to provide meaningful protections for all families, ensuring that the public schools are truly available to all.

Congress or individual state legislatures may play a role in strengthening this neglected part of the law. At either the state or federal level, a strong statute that protects equal access to the public schools will do the following:

RECOMMENDATION #1:
Enact procedural protections for all American families to safeguard their access to public schools

We must guarantee every American child the **right to seek admission at any public school.** This simple procedural protection won't solve the problem of unequal access, but it will increase transparency. If a school denies a child enrollment, it should be required to provide a **formal letter of denial** to the family, including the **reason for denial.** In addition, if denied enrollment, families should have the **right to appeal to a neutral third party,** as they already do in 14 states. The state should establish (and advertise) a simple, anonymous process for citizens to report possible incidences of unfair enrollment practices.

For districts and schools, this would mean significant changes. Participation in open enrollment would **no longer be voluntary,** and every school would be required to accept applications from any student. Public schools would be **forbidden from charging tuition,** but a student's **public funding would follow that student across district boundaries.** If a school cannot accept all applicants due to a lack of capacity, the school would be **required to hold a lottery.** Such rules must apply to all public schools—traditional public schools, magnets, charters, and others.

RECOMMENDATION #2:
Require public schools to collect and report data on admissions and enrollment

In order to increase transparency and oversight, each individual public school should be **required to collect and report data on school access** to the state Department of Education. This would include:

- Physical capacity of the school
- Capacity of the school based on employed teaching personnel
- Number of applications
- Number of denials and reasons disaggregated by race and income
- Denial rate by reason type
- Number of students within zone/district vs. number of students outside of zone/district

Each state Department of Education should **make this data publicly available** in digital form. Schools that practice selective admissions based on academic excellence or specific competencies (e.g., performing arts) should be held to a higher standard of scrutiny, publishing data that allows the public to see what types of admissions screens they conduct and whether these are linked tightly to the skills necessary to succeed at the school.

Brown v. Board of Education National Historic Site Monroe Public School in Topeka, Kansas, was the basis of the Brown v. Board of Education *1954 U.S. Supreme Court decision on segregation schools. The Court ruled that U.S. state laws establishing racial segregation in public schools are unconstitutional, even if the segregated schools are otherwise equal in quality.*
Photo: Wikimedia Commons

RECOMMENDATION #3:
Reduce importance of geography and exclusionary maps

None of the above reforms will directly address the problem of educational redlining and the exclusionary maps that dominate the enrollment policies of our K-12 schools. States must pass reforms that reduce the ability of local school boards and/or district staff to use educational boundaries in order to preserve privileged access for certain political constituencies.

There are reasonable ways that we can **move toward a less exclusionary system** while minimizing the disruption to the current system. Specifically, three reforms hold promise to open up the most coveted schools to more students:

1. Every public school should be **required to reserve at least 15% of seats for kids who live outside of the zone or district.** If the school receives a surplus of applications for these seats, the school should be required to hold a lottery to determine which applicants will be allowed to enroll. Such a requirement would affect a relatively small number of schools, since most schools have excess capacity. However, it is the best and most coveted public schools that have been excluding outsiders based on capacity, so such a requirement could have a dramatic impact on educational opportunity in a state.

2. States should **decriminalize address sharing,** a common practice in K-12 education and one that is very selectively enforced. Many states maintain systems of threatening, fining, prosecuting, and even jailing parents who make efforts (such as using a relative's address) to become eligible as residents. Available to All has published a separate report on these statutes.

Arizona mom Karrie was devastated to learn that the school district could legally tell her son Brayden that he couldn't come back for second grade because of his disability. Their new home was "just slightly outside" the boundaries of the school district.

3. States should **require every school to provide an equal opportunity at enrollment to any child who lives within a three-mile radius of the school.** Such a reform would eliminate the power of the district to engage in educational gerrymandering, drawing exclusionary maps and turning away students who live on the wrong side of an arbitrary line.

Such laws could go a long way to restoring the public's trust in the K-12 public schools and upholding Justice Warren's promise that the public schools will be "available to all on equal terms."

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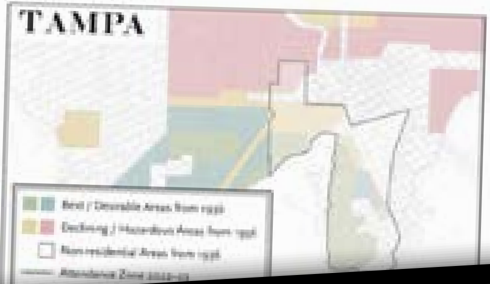

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A Tale Of Two Schools: Lincoln Gets An Annex; Manierre Gets Left Behind

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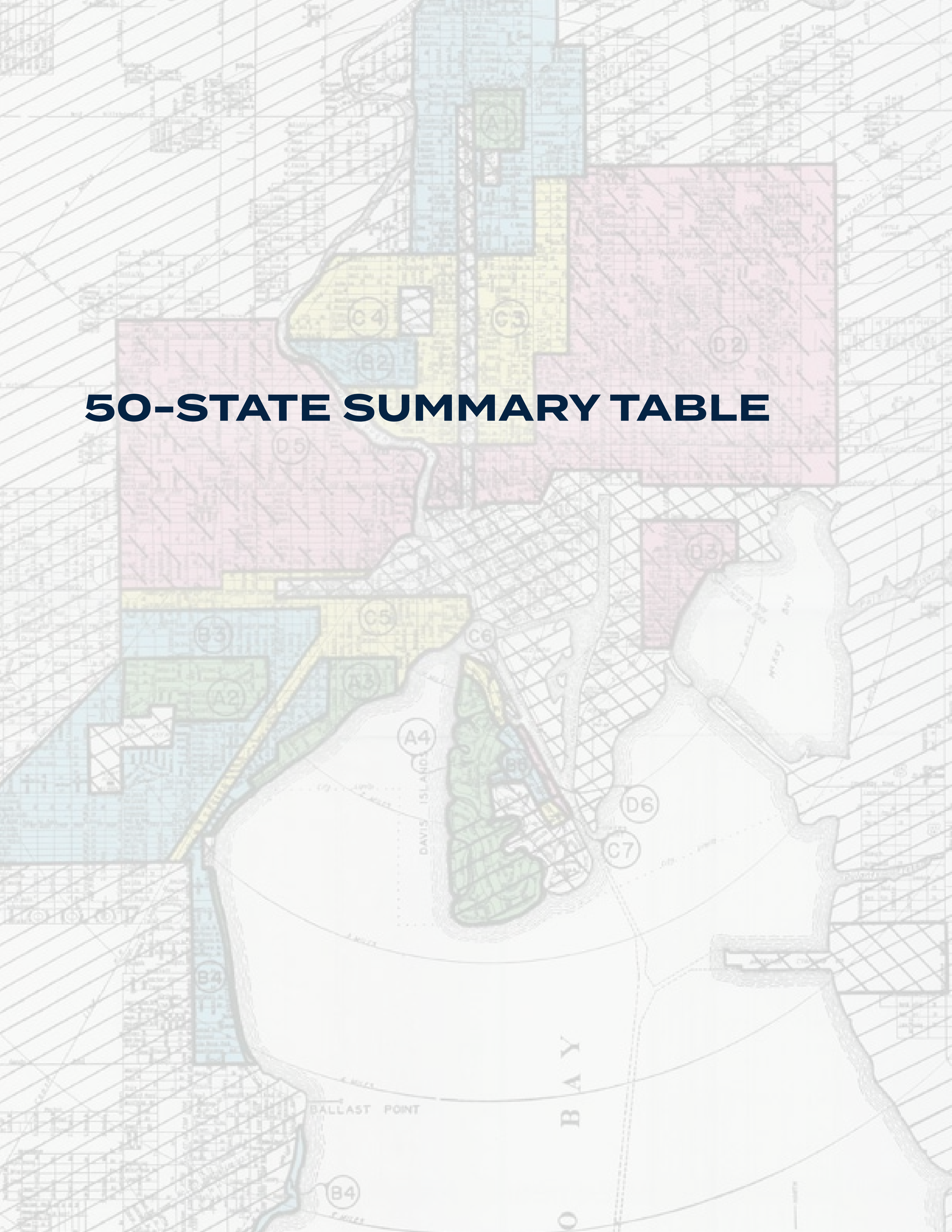
Affluent suburb rejects plan to take students from Norwalk

DARIEN, Conn. (AP) — A school board in an affluent Connecticut suburb has rejected a school choice plan that would have had it take in 16 students from the city of Norwalk.

50-STATE SUMMARY TABLE



Indicator	
A. Statewide laws	
A1. The state constitution protects an individual student's right to access	YES 0 ARGUABLY 25 NO 26
A2. General state statutes exist governing admissions for all public schools	YES 8 NO 43
B. Laws governing traditional public school enrollment	
B1. State law delegates power to districts to determine which schools students will attend	NO 2 YES 49
B2. School assignment is based on residence in a geographic zone	NO MENTION 2 PROHIBITS 0 ALLOWS 44 SOMETIMES REQUIRES 1 REQUIRES 4
B3. The state criminalizes address sharing	NO 1 MAYBE 26 YES 24
B4. There is an appeals process for families unhappy with their traditional public school assignment	YES 6 SOMETIMES 0 NO 45
C. Laws governing within-district open enrollment	
C1. State law addresses within-district open enrollment	YES 29 NO 22
C2. Districts are required to offer within-district open enrollment	ALL 17 SOME 4 NONE 8 N/A 22
C3. State requires schools/districts to reserve capacity for nonresident students	YES 0 NO 29 N/A 22
C4. Families can access a school without the approval of their "home school"	ALWAYS 21 SOMETIMES 4 NEVER 4 N/A 22
C5. Schools/districts are required to hold a lottery for within-district admission if demand exceeds available seats	YES 8 NO 21 N/A 22
C6. There is an appeals process if a student, who otherwise meets requirements, is denied enrollment in a district school	YES 7 SOMETIMES 2 NO 21 N/A 21

Indicator		
D. Laws governing cross-district open enrollment		
D1. State law addresses cross-district open enrollment	YES	45
	NO	4
	N/A	2
D2. Districts are required to participate in cross-district open enrollment	ALL	21
	SOME	8
	NONE	16
	N/A	6
D3. State requires schools/districts to reserve capacity for nonresident students	YES	0
	SOMETIMES	1
	NO	44
	N/A	6
D4. Schools are allowed to categorically turn away students with disabilities based on program capacity constraints	NO	14
	YES	31
	N/A	6
D5. Families can access a school regardless of whether their "home district" approves	ALWAYS	21
	SOMETIMES	11
	NEVER	13
	N/A	6
D6. Schools/districts are required to hold a lottery for cross-district admission if demand exceeds available seats	YES	15
	SOME	2
	NO	28
	N/A	6
D7. There is an appeals process if a student, who otherwise meets requirements, is denied enrollment at a school in a nonresident district	YES	15
	SOMETIMES	8
	NO	22
	N/A	6
D8. Cross-district open enrollment is tuition-free for families	ALWAYS OR NO MENTION	29
	NO MENTION	2
	SOMETIMES	12
	NEVER	2
	N/A	6
E. Laws governing charter school enrollment		
E1. Charter schools are required to enforce existing attendance zones	NONE	0
	SOME	4
	CONVERSIONS ONLY	15
	ALL	27
	N/A	5
E2. Charter schools may have selective admissions policies	PROHIBITS	21
	ALLOWS W/ RESTRICTIONS	1
	ALLOWS	6
	NO MENTION	19
	N/A	4

Indicator	
E. Laws governing charter school enrollment [cont.]	
E3. Charters may or must establish enrollment preferences or priorities	PROHIBITS 0 ALLOWS 17 NO MENTION 5 REQUIRES & ALLOWS 19 REQUIRES 6 N/A 4
E4. Charter schools are required to use a random process (e.g., a lottery) for admission if demand exceeds available seats	YES 43 YES W/ EXCEPTION 1 NO 3 N/A 4
F. Laws governing magnet school enrollment	
F1. State law addresses magnet school admissions	YES 5 NO 44 N/A 2
F2. Magnet schools may have selective admissions	PROHIBITS 0 ALLOWS W/ RESTRICTIONS 0 ALLOWS 1 NO MENTION 4 N/A 46

Methodology

This report seeks to answer the question, *To what extent is an individual student's right to access any specific public school protected by state laws?* We reviewed each state's education laws (constitutions, statutes, and significant court rulings) to classify them on 24 indicators grouped into six categories, described in detail in Table 1 below.

Note that we did not review additional materials, such as board or administrative rules or guidance documents. In cases where state law is silent or ambiguous, we acknowledge that the state board of education, state education agency, or school district may have created guidance or regulatory language. Those materials are not contemplated in this analysis.

After classifying each state's law within each indicator, we used a green-yellow-red color-coding system to denote whether a state's approach to that indicator protects or hinders students' right to equal access. A green rating means the state's approach to that indicator helps protect students' right to access public schools, while a red rating means the state's approach to that indicator hinders students' right to access public schools. A yellow rating means the state's approach neither fully protects nor fully hinders students' right to access public schools. Because each indicator has a distinct set of classification options with context-specific significance, the ratings are not comparable across indicators. For example, if a state receives a "yes" on indicator B1 (*State law delegates power to districts to determine which schools students will attend;* see Table 1), that is rated as red because giving districts power to assign students to schools hinders students' ability to access a different public school. On the other hand, if a state receives a "yes" on indicator B4 (*There is an appeals process for families unhappy with their traditional public school assignment:* see Table 1), that is rated as green, because requiring districts to establish a process for families to appeal a denied open enrollment application establishes transparency in the process and helps protect students' right to access public schools. Note that where state laws are classified with "no mention," that simply means that a state's statute is silent on that indicator. Where that may be ambiguous, we did not attempt to interpret that silence.

Table 1 provides the classification options and an explanation of which is rated green (helping to protect students' access).

Table 1. Indicator classifications and color-coded rating

Indicator	Classification Options	Rationale for "green" rating
A. Statewide laws		
A1. The state constitution protects an individual student's right to access*	Yes / Arguably / No	**Yes:** The state constitution has language that could be interpreted to explicitly protect a student's right to access public schools. This sets an important precedent for state law to protect the right to access.
A2. General state statutes exist governing admissions for all public schools	Yes / No	**Yes:** Statewide statutes governing admissions processes for all public schools ensures all public schools are held to a consistent standard.
B. Laws governing traditional public school enrollment		
B1. State law delegates power to districts to determine which schools students will attend	Yes / No	**No:** In order for a student's right to access to be protected, districts cannot have explicit power to assign students to schools.
B2. School assignment is based on residence in a geographic zone	Allows / Requires / Sometimes requires / Prohibits / No mention	**Prohibits:** Prohibiting school assignment based on geography helps protect students' right to access public schools.
B3. The state criminalizes address sharing	Yes / Maybe / No	**No:** Criminalizing address sharing is a major barrier to access.
B4. There is an appeals process for families unhappy with their traditional public school assignment	Yes/ Sometimes/ No	**Yes:** An appeals process for families helps protect a student's right to access public schools.

Table 1 [cont.]. Indicator classifications and color-coded rating

Indicator	Classification Options	Rationale for "green" rating
C. Laws governing within-district open enrollment		
C1. State law addresses within-district open enrollment	Yes/ No	**Yes:** State law addressing within-district open enrollment creates a process for students to access other schools within their district of residence and helps protect a student's right to access public schools.
C2. Districts are required to offer within-district open enrollment	All/ Some/ None	**All:** Requiring all districts to offer within-district open enrollment helps protect a student's right to access public schools within their district of residence.
C3. State requires schools/districts to reserve capacity for nonresident students	Yes / No	**Yes:** In order to protect access to schools for nonresident students via open enrollment, districts must be required to reserve capacity for them.
C4. Families can access a school without the approval of their "home school"	Always/ Sometimes/ Never	**Prohibits:** Prohibiting school assignment based on geography helps protect students' right to access public schools.
C5. Schools/districts are required to hold a lottery for within-district admission if demand exceeds available seats	Yes/ No	**Yes:** Holding a lottery ensures equal access to public schools when demand exceeds capacity.
C6. There is an appeals process if a student, who otherwise meets requirements, is denied enrollment in a district school	Yes/ No	**Yes:** An appeals process holds schools accountable for denials and supports students in accessing public schools.

Table 1 [cont.]. Indicator classifications and color-coded rating

Indicator	Classification Options	Rationale for "green" rating
D. Laws governing cross-district open enrollment		
D1. State law addresses cross-district open enrollment	Yes / No	**Yes:** State law addressing cross-district open enrollment creates a process for students to access other schools outside of their district of residence and helps protect a student's right to access public schools.
D2. Districts are required to participate in cross-district open enrollment	All/ Some/ None	**All:** Requiring all districts to offer cross-district open enrollment helps protect a student's right to access public schools outside of their district of residence.
D3. State requires schools/districts to reserve capacity for non-resident students	Yes / No	**Yes:** In order to protect access to schools for nonresident students via open enrollment, districts must be required to reserve capacity for them.
D4. Schools are allowed to categorically turn away students with disabilities based on program capacity constraints	Yes/ No/ No mention	**No:** Schools cannot deny enrollment to in-boundary students with disabilities because of capacity; thus they should not be able to deny open enrollment applications of students with disabilities because of capacity. Explicit prohibition of this in law ensures that districts must document a student's specific needs and the school's capacity constraints before denying enrollment to a child with an IEP.
D5. Families can access a school regardless of whether their "home district" approves	Yes / Maybe / No	**Always:** To protect a student's right to access public schools, they must be able to access a different public school without permission from their assigned district.

Table 1 [cont.]. Indicator classifications and color-coded rating

Indicator	Classification Options	Rationale for "green" rating
D. Laws governing cross-district open enrollment [cont.]		
D6. Schools/districts are required to hold a lottery for cross-district admission if demand exceeds available seats	Yes/ No	**Yes:** Holding a lottery ensures equal access to public schools when demand exceeds capacity.
D7. There is an appeals process if a student, who otherwise meets requirements, is denied enrollment at a school in a nonresident district	Yes/ Sometimes/ No	**Yes:** An appeals process holds schools accountable for denials and supports students in accessing public schools.
D8. Cross-district open enrollment is tuition-free for families	Always/ Sometimes/ Never/ No mention	**Always:** Providing cross-district open enrollment free of charge to families supports access.
E. Laws governing charter school enrollment		
E1. Charter schools are required to enforce existing attendance zones	All/ Some/ Conversions only/ None	**None:** In order to protect students' right to access, charter schools must be free to accept any student who applies.
E2. Charter schools may have selective admissions policies	Allows/ Allows with Restrictions/ Prohibits/ No mention	**Allows with Restrictions or Prohibits:** In order to protect students' right to access, charter schools cannot have admissions policies that prioritize one student over another.
E3. Charters may or must establish enrollment preferences or priorities	Always/ Sometimes/ Never/ No mention	**Prohibits:** In order to protect students' right to access, charter schools should minimize enrollment preferences that prioritize one student over another.
E4. Charter schools are required to use a random process (e.g., a lottery) for admission if demand exceeds available seats	Always/ Sometimes/ Never/ No mention	**Always:** Holding a lottery ensures equal access to public schools when demand exceeds capacity.

Table 1 [cont.]. Indicator classifications and color-coded rating

Indicator	Classification Options	Rationale for "green" rating
F. Laws governing magnet school enrollment		
F1. State law addresses magnet school admissions	Yes/ No	**Yes:** State law addressing magnet school admissions helps ensure admissions requirements are clear to families, which helps protect students' right to access.
F2. Magnet schools may have selective admissions	Allows/ Allows with Restrictions/ Prohibits/ No mention	**Allows with Restrictions or Prohibits:** In order to protect students' right to access, magnet schools should minimize admissions policies that prioritize one student over another.

** For indicator A1, a "yes" classification indicates that the state constitution or the state's Supreme Court holdings explicitly protect an individual student's right to access any public school. No states are classified as "yes" on this indicator, because, to our knowledge, the state courts have not yet been presented with this question.*

A classification of "arguably" indicates that a) the state constitution has language that could be interpreted to protect an individual's right to access (e.g., public schools are "open to all"; language around providing schools for "all"; language promising "equality of educational opportunity") and/or b) the constitution (via text or state Supreme Court holding) protects education as a fundamental right.

A classification of "no" indicates none of the green or yellow criteria is true. Most commonly, these are states where the constitution calls only for the legislature to establish and maintain a public school system.

States have adopted laws, known as "implementing statutes," that largely mirror certain federal laws that protect certain classes of students (see p.29) and/or that closely follow the requirements of federal funding opportunities, which has resulted in a great degree of uniformity in state laws governing access for these subgroups. Because of this uniformity and because of their quasi-mandatory nature, we do not include laws of this type in our analysis.

We also considered—and ultimately decided to exclude from our analysis—a set of topics that are deeply interwoven with the issue of access but that are complex enough to merit their own, separate analyses (which we do not attempt to undertake here). The first such topic is state approaches to desegregation as they relate to access to public schools. A number of states have districts with active desegregation orders in place, and many state laws related to open enrollment make explicit exceptions for districts when enrolling a student would violate an existing desegregation order or plan. There is important historical context in each state—and each district—related to school segregation and subsequent desegregation efforts, but we do not attempt to untangle that history nor its impact on broad questions of protecting student access.

The second topic we excluded from the analysis is school discipline. School discipline often includes the removal of students from schools for a period of time, and sometimes permanently. Students who are expelled from a school or district often have few options available to them, with many state laws allowing districts to deny enrollment to students expelled from other districts. This is a critically important topic for certain students and families, but it is not one we cover in this report.

Finally, we excluded from this analysis the topic of selective public schools – those that require a certain score on a test and/or an audition to qualify for enrollment. These schools, often designated as "magnet schools" even if they make no attempt to reduce racial divisions in the schools. More needs to be written about these schools, but we did not attempt to capture them in our review of state laws.

For each state or jurisdiction, we conducted a direct review of relevant statutes that we could find. In addition, we also consulted the following key sources: (1) *A Fine Line: How Most American Kids Are Kept Out of the Best Public Schools* by Tim DeRoche (Los Angeles: Redtail Press, 2020), (2) *State Laws on Weighted Lotteriesand Enrollment Practices* written by Lauren E. Baum and published by the National Alliance for Public Charter Schools in 2014, and (3) *Public Schools Without Boundaries* by Jude Schwalbach and published by the Reason Foundation in 2023.

Wherever possible, the information in the state profiles was reviewed and confirmed by a state Department of Education official involved in enrollment policies or open enrollment. Thirteen states responded to our request for review: Arkansas, Connecticut, Idaho, Iowa, Maine, Missouri, New York, North Dakota, Ohio, Oregon, Utah, Virginia, Washington, and West Virginia.

Federal Law

It is important to locate state laws within the federal context. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution states that the United States shall not "deny to any person within its jurisdiction the equal protection of the laws."[1] This was the basis for the Supreme Court's ruling in *Brown*, and the courts have used this clause to prohibit discrimination not only on the basis of race but also on the basis of other "suspect classifications," namely religion, national origin, and alienage.[2]

In the current environment, however, school assignment schemes based on geography or income level would likely not be vulnerable to challenge under federal law. This is because the courts apply a deferential standard called the "rational basis test" to evaluate government discrimination that (1) is not based on a "suspect classification" and (2) does not implicate a "fundamental right." Geography and income level are not regarded as suspect classifications, and the courts have ruled that education is not a fundamental right under the Constitution. So even the most egregious examples of injustice based on residential address or income level are unlikely to violate the Court's current understanding of the Equal Protection Clause.

A relevant federal statute is the Equal Educational Opportunities Act (EEOA) of 1974 – a set of federal laws that prohibit discrimination in schools on the basis of race, color, sex, or national origin.[3] This law goes one step further to legitimize geographic discrimination, stating, "… the neighborhood is the appropriate basis for determining public school assignment."[4] Neighborhood boundaries have long been the default method of assigning students to schools;[5] however having that approach solidified in law as the "appropriate basis" for assigning students to schools makes it even more difficult to challenge geographic assignment as a violation of federal law.

However, the EEOA does put strong limits on how districts draw these attendance zone lines, forbidding "the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin." It is likely that the attendance zones of many coveted inner-city elementary schools violate this provision of the EEOA.[6]

It is also important to note that federal law defines a charter school (among other requirements) as a school that "admits students on the basis of a lottery … if more students apply for admission than can be accommodated."[7] And federal law further clarifies that a charter school may "use a weighted lottery to give slightly better chances for admission to all, or a subset of, educationally disadvantaged students."[8] This law would seem to suggest that a charter school that did not comply with the language, even if it was in compliance with state requirements of charter schools, might not be eligible for federal charter school funding. There appear to be no similar constraints on magnet school enrollment policies.

Beyond these laws are a series of other specific federal education statutes, funding streams, and other activities that govern access to public schools for certain subgroups of students, including (but not limited to):

- **Students who are homeless:** The federal McKinney-Vento Act provides rights and services to children and youth experiencing homelessness, including requiring students to remain at their "school of origin" throughout their homelessness, regardless of whether they move outside of district boundaries.[9]

- **Students who are in foster care:** The Fostering Connections to Success and Increasing Adoptions Act of 2008 includes provisions to increase educational stability by allowing students to remain at their school of origin even if a new foster care placement moves them out of the school or district boundaries.[10] The Every Student Succeeds Act (ESSA) of 2015 includes similar "school of origin" protections.[11]

- **Students who are incarcerated:** ESSA also requires states to establish procedures to ensure timely re-enrollment of students released from secure facilities.[12]

- **Students in migrant families:** ESSA reauthorized the Migrant Education Program, which provides funding to states to develop and implement programs to support the education of migratory children both within states and across state lines.[13]

- **Students in military families:** An interstate compact coordinated by the Department of Defense and signed by all 50 states and the District of Columbia details efforts to mitigate the effect of frequent change in school enrollment on military families.[14]

- **Students attending "persistently dangerous" schools:** ESSA requires each state that receives Title I funds to establish and implement a policy that provides students attending "persistently dangerous" schools, or students who are victims of a violent criminal offense while on school grounds, to transfer to a safe school within the district.[15]

- **Students with disabilities:** The Individuals with Disabilities Education Act (IDEA) establishes requirements for serving students with disabilities, including provisions regarding the "least restrictive environment" and assuring a "free and appropriate public education (FAPE)," one or both of which may interact with students' ability to access schools.[16] (Note that indicator D4 in Table 1 looks only at whether states have policies in place to allow schools to reject open enrollment applications from students with disabilities if the school lacks capacity in the programming necessary to educate the student in accordance with their individualized education program.)

States have adopted laws, known as “implementing statutes,” that largely mirror these federal laws and/or that closely follow the requirements of federal funding opportunities, which has resulted in a great degree of uniformity in state laws governing access for these subgroups. Because of this uniformity and because of their quasi-mandatory nature, we do not include laws of this type in our analysis. However, these laws typically provide highly targeted protections, and these students are often still excluded from coveted public schools with no recourse under the law.

Endnotes

[1] “Fourteenth Ammendment,”Constitution Annotated, https://constitution.congress.gov/browse/amendment-14/section-1/

[2] “Suspect Classification,” Cornell Law School Legal Information Institute, https://www.law.cornell.edu/wex/suspect_classification

[3] https://www.congress.gov/bill/93rd-congress/house-bill/40#:~:text=Equal%20Educational%20Opportunities%20Act%20%2D%20Declares,basis%20for%20determining%20public%20school

[4] https://www.congress.gov/bill/93rd-congress/house-bill/40#:~:text=Equal%20Educational%20Opportunities%20Act%20%2D%20Declares,basis%20for%20determining%20public%20school

[5] Weinberg, “Race and Place: A Legal History of the Neighborhood School.” https://files.eric.ed.gov/fulltext/ED023751.pdf

[6] Tim DeRoche, “Public-School Attendance Zones Violate a Civil Rights Law,” Education Next, updated May 14, 2020, https://www.educationnext.org/public-school-attendance-zones-violate-civil-rights-law-equal-educational-opportunities-act-a-fine-line/

[7] https://uscode.house.gov/view.xhtml?req=(title:20%20section:7221i%20edition:prelim)

[8] https://uscode.house.gov/view.xhtml?req=(title:20%20section:7221b%20edition:prelim)

[9] https://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter119/subchapter6/partB&edition=prelim

[10] https://www.govinfo.gov/content/pkg/PLAW-110publ351/pdf/PLAW-110publ351.pdf sec 204

[11] https://www.congress.gov/114/plaws/publ95/PLAW-114publ95.pdf

[12] https://www.congress.gov/114/plaws/publ95/PLAW-114publ95.pdf

[13] “Results,” Migrant Education Program. https://results.ed.gov/

[14] “The Military Interstate Compact,” Department of Defense Education Activity. https://www.dodea.edu/education/partnership-and-resources/military-interstate-compact

[15] https://www.congress.gov/114/plaws/publ95/PLAW-114publ95.pdf

[16] https://sites.ed.gov/idea/statute-chapter-33

STATE PROFILES