REDUCING THE ACHIEVEMENT GAP:
THERE IS ONLY ONE REAL SOLUTION

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I. INTRODUCTION

The achievement gap among students is a persistent and serious problem in
the United States. The term “achievement gap” refers to the observed
disparity in student performance determined by numerous educational
measures. The gap is especially prevalent in groups defined by gender,
socioeconomic status, race, and ethnicity. The disparity between these groups of

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students—the gap—is illuminated when standardized test scores, grade point average, dropout rates, and college-enrollment rates are the tools used to measure education.¹

The gap became apparent in the 1960’s when several studies identified racial inequity in the outcome of student test scores. ² During the next two decades, there was marked success in reducing the achievement gap among students.³ “However, a closer examination of the data reveals that this earlier progress has been reversed since the late 1980’s.”⁴ The issue was largely ignored for roughly ten years until education reform became a contested issue at state and federal levels, ultimately culminating in the passage of the No Child Left Behind Act in 2002.⁵

Despite decades of awareness, educators have been unsuccessful in developing a remedy to this issue that would improve education and eliminate the achievement gap.⁶ Some states have experienced limited success in reducing the gap, but no state has done so for any significant number of students.⁷ Current reform proposals follow the traditional education model, requiring 180 learning days per school year.⁸ Failure to close the gap is a result of adherence to this model.⁹ Current gap-closing proposals include extending the length of the school year or increasing the hours in each school day, but these proposals fail to add the significant learning time necessary to ensure success for a large number of students.¹⁰

The focus of the current educational model is derived from compulsory education laws that require students to attend school for a set number of days per

¹ STRATEGIES FOR CHILDREN, EARLY CHILDHOOD EDUCATION: A STRATEGY FOR CLOSING THE ACHIEVEMENT GAP 1 (2005) [hereinafter EARLY CHILDHOOD EDUCATION], http://www.strategiesforchildren.org/eea/6research_summaries/07_AchievementGap.pdf.
³ EARLY CHILDHOOD EDUCATION, supra note 1, at 1-2.
⁴ Lee, supra note 2, at 3.
⁵ Id.
⁶ Id.
⁷ Id. at 585.
⁸ Id. at 582-83.
⁹ Id. at 586.
¹⁰ Id. at 585.
Most educators recognize the value of early childhood education and summer school, but these programs remain outside the basic educational model and are generally underfunded. The basic model garnishes support from state and local resources. Districts rarely have funds available to maintain supplementary programs. In cases where school districts fund resources to support additional programs, these programs are usually the first to go when budgets are reduced.

Without a doubt, the economy is facing difficult times in terms of funding education at both federal and state levels. We can expect massive reductions in all areas of federal funding as Congress attempts to reduce the deficit and balance the budget. At the state level, reduced revenues and an aversion to tax increases have resulted in similar cuts to educational funding. There is less funding for education overall, which makes change in educational structure even more difficult.

This article will examine states’ efforts to reduce the achievement gap. Although some states have experienced success, the achievement gap remains a concern for many students due to the adherence to the traditional education model. To begin, this article will examine the federal legislation that raised awareness of the achievement gap, and will explore states’ efforts to reduce the gap. Next, this article will review state standards for compulsory education. Finally, this article will demonstrate the importance of early childhood programs and the need to extend the school year by increasing the number of instructional days.

Mandatory summer school must be incorporated to improve the educational model. The gap is in existence when a student starts school. It is further exacerbated when a student spends time away from school during the summer months. Increasing access to education during these months can solve this problem.

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13 Id. at 584.
14 EARLY CHILDHOOD EDUCATION, supra note 1, at 1.
15 Id.; Biernat, supra note 7, at 589.
16 Biernat, supra note 7, at 589.
18 See generally 4 FED. ADMIN. PRAC., pt. 9, ch. 50A (West 2007).
20 Biernat, supra note 7, at 586.
21 See generally id.
22 Denton, supra note 17, at 7-8, 13.
II. THE IMPACT OF THE NO CHILD LEFT BEHIND ACT

The No Child Left Behind Act has been hotly debated since enactment, but to begin, it is important to note that “[t]he length of the school year and enforcement of compulsory education statutes vary from state to state.”23 In the beginning, and until recently, it was ironic that:

[S]tates were mainly concerned only that children be in school. There were few state requirements that the students had to demonstrate what they learned. Graduation requirements were based on students meeting the requisite number of hours in certain subjects, instead of on passing grades or successful completion of a test. “Seat time,” not knowledge, was the prerequisite to completing high school. In most instances, grading standards and specific curricular content were determined at the local, not state, levels. As a result, few states had uniform, statewide standards for all schools.

Nevertheless, the system worked well for the vast majority of American children. Many students performed well and went on to higher education. Other children would meet the minimal attendance standards for graduation and would complete high school. However, some students would graduate having learned very little. In addition, other students would put in the requisite amount of time before they were allowed to drop out of school without any sanctions.24

Significantly, the achievement gap continued to exist. Eventually, a number of concerns have developed, including:

[A] growing concern about the failure of public education to reach all segments of the population. . . . At the same time, there is a growing frustration that the academic standards in the schools are too low to be competitive in a global economy.

This dissatisfaction has led to a growing involvement by the federal government in public education, an area traditionally reserved to the states. The federal No Child Left Behind Act (NCLB)25 requires states, as a condition of receiving federal funds, to establish higher academic standards and periodic testing to measure the extent to which the standards are being met.

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23 Biernat, supra note 7, at 581 (footnote omitted). See Appendix A for a listing of the length of the school year for each state.

24 Id. at 582.

The NCLB served as a catalyst for states to restructure public education in order to improve accountability and to meet higher academic standards in the schools. Virtually all states have now established state standards, and some states now require passage of a standardized test as a requirement for receiving a high school diploma.[26] However, there is a fear that as standards increase, more children will be left behind. While at the same time, there is a concern that many students are well below even very low standards, and that states might drop their academic standards even further in an attempt to avoid possible sanctions under the NCLB.

The demand by the public for increased accountability has led to a more thorough examination of schools and the production of more statistical data that is available for the public. The NCLB requires that states publish test results so that parents are armed with the information needed to select a good school or identify those in need of remedial action. The Act also requires that test results be disaggregated by student demographic sub-groups to identify and compare the test results. These comparisons show a clear achievement gap between students from various income groups and between white students and students of color. Not surprisingly, many of the schools with the lowest test scores are located in large urban areas where the population of children of color and poverty levels are high.[27]

In response to this data, more attention is being given to students that reside in poor urban communities and those who do not speak English as their primary language. Yet, this increased attention has not translated into a significant reduction in the achievement gap. “Critics blame the schools for not meeting the needs of these children.”[29] In turn, the schools defend current practices by claiming many children come to school with problems that the school is not capable of addressing.[30] The schools argue, “poverty, and the problems associated with

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26 As an example, Minnesota requires public school students to pass a basic skills test in reading, mathematics, and written composition in order to receive a high school diploma. See MINN. STAT. § 120B.02 (2006). Washington has a similar requirement. See WASH. REV. CODE § 28A.655.060(3)(i)(i) (2000) (footnote quoted from original).

27 Biernat, supra note 7, at 582.

28 Id.

29 Len Biernat & Christine Jax, Limiting Mobility and Improving Student Achievement, 23 HAMLINE L. REV. 1, 2 (1999) [hereinafter Limiting Mobility].

poverty, are the most significant barriers to academic success, and that the schools do not have the resources to deal with the growing number of poor children and the associated risk factors.”

While it is evident that there is a link between poverty and unsatisfactory student performance, any causal connection between the two is uncertain. Cause is difficult to determine because some poor urban schools are very successful, while “[s]ome poor children are very successful within a school that is not performing well.” Some children from moderate or wealthy families do not do well in school, regardless of the school’s performance. Therefore, states need to focus on the individual students who fail, and not simply directing attention towards all students living in poverty.

There are many critics of NCLB who believe that the Act has been a failure and the goals, although laudable, will never be achieved. The goal of 100% proficiency by the year 2014 was certainly a great aspiration, but pragmatically, it is not attainable. As 2014 approaches, a growing number of schools will be faced with harsh punishment including the firing of teachers and principals, and possible closure of the school. There is also the concern that states will lower their standards and schools will only focus on preparation for tests in reading and math, thus ignoring other important subjects. For these reasons, the Obama Administration recently announced that “it will grant waivers to liberate states” from some of the harsh requirements of NCLB.

Examining the effectiveness of federal law is beyond the scope of this article. Nevertheless, NCLB is important because it has forced the states to focus on the achievement gap in order to meet the requirements of the law. Some states

31 Limiting Mobility, supra note 29, at 2.

32 Id. at 3; see CAMERON MCCARTHY, RETHINKING LIBERAL AND RADICAL PERSPECTIVES ON RACIAL INEQUALITY IN SCHOOLING: MAKING THE CASE FOR NONSYNCHRONY, IN FACING RACISM IN EDUCATION 35 (Hidalgo et al. eds., 1990); see The Children’s Defense Fund, The State of America’s Children (1994).

33 Limiting Mobility, supra note 29, at 3.

34 Id.


36 Id.; Matthew W. Burris, Mississippi & the School-to-Prison Pipeline, 3 WIDENER J.L., ECON. & RACE 1, 5 (2012).

37 Id. at 106-07.

have had some success in closing the gap for some students and at some schools, but no state is coming close to reducing the gap for most groups of students.

III. SOME SUCCESS IN REDUCING THE GAP

There have been varying efforts to close America’s achievement gap among white students and students of color, in particular African-American and Hispanic students. Some schools successfully decreased the gap by focusing on early childhood education. Generally, the traditional structure of education begins with kindergarten, and by this time, at risk students may have already fallen into the gap. These students are further disadvantaged by a long summer vacation without educational opportunities. Research has revealed some benefits to year round schooling, but readjusting the calendar without any additional changes may not be enough.

The National Center of Education identified four states that have had significant success in closing the achievement gap between white students and students of color. The National Assessment for Educational Progress (NAEP) provides the standardized data used to measure the achievement gap by comparing the difference between the average scores of two student subgroups. The study measured comparisons between ethnic groups, but specifically focused on the comparison of African-American students and Caucasian students in fourth through eighth grade. Improvements were recorded over four years and they

39 Biernat, supra note 7, at 581.
40 NATIONAL CENTER OF EDUCATION STATISTICS, TOP 4 STATES IN CLOSING ACHIEVEMENT GAPS 1 [hereinafter TOP 4 STATES], http://www.fldoe.org/asp/naep/pdf/Top-4-states.pdf.
41 EARLY CHILDHOOD EDUCATION, supra note 1, at 1.
42 Id.
43 Biernat, supra note 7, at 589-90.
44 Id. at 590, 593.
45 TOP 4 STATES, supra note 40, at 1 (measuring the achievement gap between 2003 and 2007). Florida, Delaware, Illinois, and New Jersey made the most progress in closing this achievement gap. See generally id.
included achievements in reading and mathematics. Notably, the study reflected an improvement among low-income students.

A. Delaware

Delaware has established clear goals and expectations when it comes to education. Delaware intends to empower and support failing schools by placing highly skilled teachers in schools with the most need. Specifically, Delaware’s goal is to decrease the achievement gap between black students and white students by 50%, and to have 55% of all students declared proficient or advanced. Delaware projects it will achieve this goal by the year 2015. As one of the most successful states in closing the achievement gap, Delaware has made significant progress towards meeting these goals. In 2005, their curriculum was aligned to statewide standards and teacher evaluations were revised based on the Danielson principles.

The Danielson principles “are a research-based set of instructional components grounded in a constructivist view of learning and teaching. These principles are aligned with the ten principles of the Interstate New Teacher Assessment and Support Consortium (“InTASC”). InTASC consists of state agencies that focus on the professional development of teachers. Delaware’s achievement plan includes rating teachers on their effectiveness with a direct correlation to student progress. Teachers are required to show student growth in order to receive an effective rating. Following the plan, in 2006, high school

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48 Id. at 3.
49 Id. at 4.
50 Id. at 3.
51 Id. at 6.
52 Id. at 3.
53 Id.
54 Top 4 States, supra note 40, at 1.
55 Again, The First State, supra note 47, at 4.
58 Danielson, supra note 56.
59 Id.
60 Again, The First State, supra note 47, 8-10.
61 Id. at 9.
graduation requirements were aligned with university entrance requirements. Additionally, in 2007, the “Delaware STARS rating system” for early childhood education centers began.

In recent years, Delaware schools have accomplished the following:

• Between 1997 and 2008, Delaware schools led the nation by improving eighth grade NAEP reading scores, and placed with the top four for overall fourth grade improvement;

• Between 1997 and 2008, Delaware ranked third nationally for improvement of fourth grade math scores and ranked sixth in eighth grade scale scores on NAEP;

• Between 2003 and 2007, Delaware ranked as one of the top four states in closing the achievement gaps in both mathematics and reading on NAEP, and finally

• NCES and Education Trust recognized Delaware as a leader “in driving improvements in closing the achievement gap.”

Delaware has made progress towards attaining their goals by focusing on a combination of early childhood development and post-graduation preparation. These modifications to their structure of education drastically increase instructional time for students.

B. Florida

Florida’s improvements to the state’s education system—giving consideration to the growing Hispanic and African-American student populations—have rendered positive results. As of 2009, Florida’s Hispanic students had the

62 Id. at 4.
64 AGAIN, THE FIRST STATE, supra note 47, 4.
65 Id. at 5.
66 Id.
67 Id.
68 Id.
69 Id. at 3, 7.
second-highest score nationally in reading, and African-American students scored fourth highest in the nation.\textsuperscript{71} This achievement is notable because Florida has improved despite the constraints of a limited education budget.\textsuperscript{72} “Florida is near the bottom of states in per-student spending, and their K-12 population is majority-minority and almost half is also free and reduced lunch-eligible. It did not take hundreds of millions in additional spending or require an affluent student population to radically improve student learning.”\textsuperscript{73} Florida’s strides are proof that the education system can be successfully reformed without an increased budget in financially challenged school districts.\textsuperscript{74}

Former governor Jeb Bush implemented a series of education reforms.\textsuperscript{75} The majority of these reforms were part of the “A+ Accountability Plan,” promulgated in 1999.\textsuperscript{76} Most significantly, the plan was responsible for the abrogation of social promotion.\textsuperscript{77} Social promotion refers to the practice of advancing a student to the next grade level, despite the student’s failure to fulfill the academic requirements of the prior grade.\textsuperscript{78} Governor Bush eliminated salaries based on tenure and instead tied pay incentives to performance.\textsuperscript{79} To measure progress, the governor instituted annual student testing for students from third to tenth grade, and ranked school achievements accordingly.\textsuperscript{80} Concerned parents of children in failing schools were issued vouchers to transfer the student to a passing school.\textsuperscript{81} Additional strategies to close the achievement gap focused on improving the quality of teachers. For example, the “Just Read, Florida!” program was designed to train teachers and reading coaches. Additionally, the state considered teacher progress when making retention decisions.\textsuperscript{82} In 2002, Florida voters approved a significant ballot initiative to provide state funding for pre-kindergarten programs, allowing children as young as four years old to participate.\textsuperscript{83} Florida has

\begin{flushleft}
\textsuperscript{71} Id.  \\
\textsuperscript{72} Id.  \\
\textsuperscript{73} Id.  \\
\textsuperscript{74} Id.  \\
\textsuperscript{76} Id. at 10.  \\
\textsuperscript{77} Id. at 2, 10.  \\
\textsuperscript{78} Id. at 10.  \\
\textsuperscript{79} Id.  \\
\textsuperscript{80} Id.  \\
\textsuperscript{81} Id.  \\
\textsuperscript{82} Id. at 11-12.  \\
\textsuperscript{83} Id. at 12.
\end{flushleft}
implemented a variety of tactics to improve student education, and has continued to show signs of success.84

C.  Illinois

Illinois has received a lot of attention regarding its “Golden Spike” schools. Golden Spike schools are defined as impoverished schools with high performing students.85 The pool of high poverty schools consists of schools with more than half of the students belonging to low-income families.86 A student receiving a free, or reduced federal lunch is defined as “low-income,” by Illinois’ standards.87 The Illinois’ definition of low income is used by the state to measure data and report on student achievement.88 At the time, in 2001, 919 schools in Illinois met the definition of a high poverty institution, accounting for approximately 25% of the state’s student population.89 The following study used a total sample size of fifty-nine schools, or 6.5% of the high poverty schools.90 Study results showed that there were commonalities in more than 90% of the Golden Spike schools, including:

• “Strong leadership advocating high learning standards and expectations for all;
• An emphasis on early literacy;
• Good teachers;
• More academic learning time; []
• Extensive parental involvement[;]”91 and
• Principals that were resourceful and lead their schools by example.92

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84 Id. at 18.
86 Id. at 6.
87 Id. at 19.
88 Id. (noting that this standard differs from the Federal Title I eligibility standard).
89 Id.
90 Id. at 20. The study was based on a selection of schools meeting the following criteria: 1) “[S]chools hav[ing] a total ISÁ[T] score of 66% or better the last three years.” 2) “Schools had to demonstrate an overall increase of 10% of the students meeting or exceeding standards on the combine ISAT and at least 66% of all students meeting or exceeding standards in 2001.” Id. at 19. These criteria exclude schools catering solely to gifted students. Id.
91 MCGEE, supra note 85, at 25.
92 Id. at 26.
The following was also evident in at least 50% of the Golden Spike schools:

- "Extensive use of data to drive instructional decisions;
- An internal capacity for accountability;
- High quality professional development (on a school wide basis);
- Ready access to early childhood education programs; and
- Attention to health and safety needs of students."\(^{93}\)

Additional strategies in place at all of the Golden Spike schools include uninterrupted academic learning time during the day, after-school programming, and a quality summer school program extending the traditional academic year by four to six weeks.\(^{94}\) For those students who were struggling, the summer school program provided a valuable extension to their learning experience.\(^{95}\)

D. New Jersey

New Jersey is the final of the four states praised for success in closing the achievement gap.\(^{96}\) The state’s success plan focused largely on early childhood education.\(^{97}\) New Jersey increased pre-kindergarten services for children that have been specifically identified as at risk, children from low-income households, and students struggling to improve from the lower levels of academic achievement.\(^{98}\) "New Jersey . . . has done more than perhaps any other state in the country to link these early learning investments with early literacy reforms in the K-12 system, creating a seamless, high-quality PreK-3\(^{rd}\) early learning experience for the state’s most disadvantaged youngsters."\(^{99}\) New Jersey’s education model identifies successful strategies to improving the academic achievement of those students in the gap. Highlights include:

- "Districts that focus on literacy, use data to inform instruction, and align standards . . . .\(^{93}\) Id. at 25.
- \(^{94}\) Id. at 31-32.
- \(^{95}\) Id. at 32.
- \(^{96}\) TOP 4 STATES, supra note 40, at 5.
- \(^{98}\) Id.
- \(^{99}\) Id.
• Strong state-level leadership is essential for implementing PreK-3rd reform and high-quality pre-K at scale.
• District leadership is essential to create high-quality, aligned Pre-K-3rd early learning experiences.
• There are real benefits to addressing pre-K expansion in conjunction with broader school reform agendas.
• States can build high quality, universal pre-K systems that include both public schools and community-based preschool and child care providers – but it requires a great deal of systemic support for both school districts and providers . . .
• Targeting pre-K by geography, rather than family income . . . for implementing quality programs on a smaller scale before moving toward universal pre-K.
• Translating PreK-3rd alignment . . . [in]to reality is difficult, requiring sustained commitment from educators and policymakers at all levels.”

New Jersey has made a significant investment in early childhood education in order to reduce the achievement gap. All four states have shown that focus on specific group populations, combined with the identification of specific barriers to achievement in the student body, is key to closing the achievement gap.101

E. Other Schools Making Progress

While little overall improvement was reported in the 1990’s, some states were able to make headway. Texas and Virginia, along with the Department of Defense (DOD) schools, continued to make significant progress.102 According to the Education Trust, eighth grade African-American students in Texas obtained equal or higher NAEP writing scores than the writing scores of white students in seven states.103 In Virginia, the achievement gap between Hispanic and white students is one of the nation's smallest.104 The state’s eighth-grade Hispanic students had the highest NAEP writing scores for Hispanic students in the nation.105

100 Id.
101 See Top 4 States, supra note 40.
102 Closing the Achievement Gap, supra note 46.
103 Id.
104 Id.
105 Id.
Department of Defense schools performed better on NAEP testing than their counterparts. DOD schools provide education to students of military families, who can be required to relocate frequently and oftentimes overseas. Headquartered in Arlington, Virginia, DOD schools yield a smaller achievement gap than most states. “Fourth-grade white students in DOD schools outscored their African-American counterparts by an average of 17 points on the NAEP reading test – a considerably smaller gap than the national average of 32 points.” On the 500-point scale, the DOD consistently scores lower than a 20-point gap, while the average national gap spanning fourth through eighth grade is 27.5 points.

Department of Defense schools can likely attribute their achievements to teachers’ high expectations of African-American and Hispanic students. “In a 1998 NAEP study, 85 percent of black students and 93 percent of Hispanic students . . . rated their teachers expectations for their performance ‘very positive.’” When compared to school districts nationwide, the numbers differ quite dramatically, with only 52% of black students and 53% of Hispanic students giving teacher expectations a “very positive” rating. One DOD teacher concluded that the difference between teaching African-American students at a DOD school and teaching them at another institution derives from the DOD teachers’ willingness to push all students towards success. Teachers in DOD schools do not accept a failing test score and refuse to “dumb down” test requirements in order to pass students.

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109 Id.

110 Id.

111 Id.


113 Id.

114 Id.

115 Id.

116 Id.
A study, conducted by psychologist Claude Steele at Stanford University, supports the conclusion that low expectations of African-American students result in unsatisfactory test results. This phenomenon is known as “stereotype threat.” Students affected by a “stereotype threat” may spend equal or more time preparing their work than their peers, but accomplish less. Steele’s study found that African-Americans, who were required to indicate their race when tested, scored poorly compared to their white peers, but when race undisclosed, African-Americans performance better than their white counterparts. Steele concluded that race identification promotes “stereotype threat.” Additionally, Steele found that African-American students performed equally as well as their white peers when they received prior notice that they were participating in a laboratory exam. In stark contrast to studies conducted with participation awareness, results indicate that African-American students perform poorly when told the exam was designed to test their abilities. Steele concluded that African-Americans students are affected by negative stereotypes when cognizant of the fact that their performance is being measured; the resulting performance conforms to the lower expectations. Other variables should be taken into consideration when discussing the success of African-American students at DOD schools. For example, almost all DOD teachers are experienced, licensed, and hold advanced degrees.

Texas high schools focus on both college preparation and teacher quality. The state requires high schools to perform college and career-ready assessments. The Houston Independent School District, one of several urban school districts formed in 1999, participates in data sharing to help reduce the achievement gap and increase student achievement overall. In Texas, school funding takes output into consideration, so funding is not solely dependent on enrollment. The state found that poor-performing schools often employed inexperienced teachers, and resolved to focus on teacher quality. In schools with greater than 90% minority student

117 Id.
118 Id.
119 Id.
120 Id.
121 Id.
122 Id.
123 Id.
124 Id.
125 Id.
127 Rothman, supra note 112.
128 CLOSING THE ACHIEVEMENT GAP, supra note 46.
129 Id.
population, “there is less than a 50% chance that students will have math or science teachers with both a teaching license and a degree in the subject they teach.”

The state's accountability system requires that schools test students annually and adhere to a minimum proficiency level (percent proficient) in each student subgroup. After the legislation had been in place for five years, “the percentage of African-American students passing statewide exams rose by 31%, and the percentage of Hispanic students passing the exam rose by 29%.” At the same time, the exam passage rate for white students only grew by 18%. “Mean[ing] the achievement gap in Texas closed by 13% and 11% for African-American and Hispanic students, respectively.”

Critics claim Texas’ progress is a mirage and the institution of annual testing caused an increase in the number of minority student dropouts. This increase in the number of low-performing students who dropped out caused the overall test scores to rise. In addition, the increase in Texas’ test scores were not reflected in statistics from other standardized tests.

Similar to Texas, Virginia’s high schools are career-themed. Virginia has also instituted alternatives to requiring traditional teaching licenses by specifically eliminating obstacles for those teachers who already have the required skills.

Virginia created private partnerships to train school administrators in how to better lead low performing schools. In addition, there were financial incentives from the state to improve college readiness. The state’s plan is tailored for advancement over several years and collects data on the progress of each child to


131 CLOSING THE ACHIEVEMENT GAP, supra note 46.

132 Id.

133 Id.

134 Id.

135 RAVITCH, supra note 35, at 96.

136 Id.

137 VA. DEP’T OF EDUC., ROUTES TO LICENSURE IN VIRGINIA 1 (Jan. 21, 2010), available at http://www.doe.virginia.gov/teaching/licensure/multiple_licensure_routes.pdf (pagination is identified by the PDF page number). Obstacles may include but are not limited to a requirement of additional course work. Id. at 2.


determine if they are falling behind.\textsuperscript{140} Additional resources will be available district wide to promote success for African-American, Hispanic, and lower income students.\textsuperscript{141} Virginia also utilizes Standards or Learning Assessments (SOLs).\textsuperscript{142} All students are held accountable for academic achievement regardless of race or ethnicity. The SOL testing is administered in the spring to determine the academic achievement, growth, and skills taught during the school year.\textsuperscript{143} All of these efforts have helped to lower the achievement gap within the state.

Nevertheless, the goal should be to eliminate, rather than reduce, the achievement gap. These high aspirations will not come to fruition until states change the current academic schedule and provide all students with more learning time, including early childhood education programs.

F. \textit{National Statistics}

The reading gap has remained relatively stagnant since 2007.\textsuperscript{144} In 2009, the eighth grade reading achievement gap between white and African-American students was twenty-six points, and the gap between white and Hispanic students was twenty-four points.\textsuperscript{145} Neither gap was measurably different from the corresponding gaps in 1992 or 2007.\textsuperscript{146} In 2009, the average NAEP reading scale scores for white, African-American, and Hispanic fourth graders were not measurably different from the scores in 2007, but the 2009 scores for each subgroup were higher than each groups’ scores from assessment years prior to 2007.\textsuperscript{147}

Math achievement gaps have also seen little improvement. In 2009, the mathematics achievement gap between white and African-American eighth graders was thirty-two points; this was not measurably different from the gap in 2007 or 1990.\textsuperscript{148} In 2009, the average NAEP mathematics scale scores for white, African-

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{140} \textit{ACCOUNTABILITY AND VIRGINIA PUBLIC SCHOOLS} 3-4, http://sbo.gilesk12.org/NCLB06/Accreditation%20&%20AYP_06-07.pdf.
\item \textsuperscript{141} \textit{Id.} at 5-7.
\item \textsuperscript{142} \textit{VA. DEP’T OF EDUC., VIRGINIA STANDARDS OF LEARNING & COMMON CORE STATE STANDARDS}, available at http://www.doe.virginia.gov/testing/common_core/index.shtml.
\item \textsuperscript{143} \textit{Id.}
\item \textsuperscript{144} \textit{NAT’L CTR. FOR EDUC. STATISTICS, THE CONDITION OF EDUCATION} 2011, supra note 2, at 44.
\item \textsuperscript{145} \textit{Id.}
\item \textsuperscript{146} \textit{Id.}
\item \textsuperscript{147} \textit{Id.}
\item \textsuperscript{148} \textit{Id.} at 48.
\end{itemize}
\end{footnotesize}
American, and Hispanic fourth graders were not measurably different from the scores in 2007, but the 2009 scores were higher than those from assessment years prior to 2007.\textsuperscript{149}

White fourth graders scored higher on average than African-American and Hispanic fourth graders on all assessments given since 1990.\textsuperscript{150} The achievement gap between African-American and white students in 2009 (twenty-six points), was not measurably different from the gap in 2007 (twenty-six points), but it was smaller than the gap in 1990 (thirty-two points).\textsuperscript{151} The twenty-one-point achievement gap between white and Hispanic fourth graders in 2009 was not measurably different from the gaps in 2007 or 1992.\textsuperscript{152} Despite such minimal reductions in the achievement gap, average mathematics scores amongst eighth graders in 2009, for all three subgroups of students, were higher than the mathematics scores on any of the previous assessments since 1990.\textsuperscript{153}

Similar to the statistics found among fourth graders, white eighth graders scored higher on average than African-American and Hispanic students on all NAEP assessments given since the initial assessment in 1990.\textsuperscript{154} All three subgroups have had academic growth, which has resulted in the achievement gap remaining virtually intact, as demonstrated by the corresponding gaps in 1990 and 2007.\textsuperscript{155}

While some states continue to see progress for some students at some schools, the overall achievement gap remains. For eighth graders in 2009, the white to African-American achievement gap was twenty-six points, and the white to Hispanic achievement gap was twenty-four points.\textsuperscript{156} In 2011, about 43\% of white, 13\% of African-Americans, and 20\% of Hispanic eighth graders performed at or above the nation’s standard of “proficient,” and 10\% of white, 3\% of Hispanic, and 1\% of African-American eighth graders performed at the “advanced level” on the NAEP mathematics assessment.\textsuperscript{157} While there was little change overall in the size of the achievement gap, there is continued progress for some students and schools, but the overall gap remains.

\textsuperscript{149} Id.
\textsuperscript{150} Id. at 182, 188.
\textsuperscript{151} Id. at 188.
\textsuperscript{152} Id.
\textsuperscript{153} Id.
\textsuperscript{154} Id.
\textsuperscript{155} Id. at 188.
\textsuperscript{156} Id. at 44, 182.
IV. COMPULSORY EDUCATION

A. In General

Compulsory education statutes—requiring the education of all children between certain ages for a fixed number of school days each year—have long formed the background of the educational system within the United States. Courts have consistently held that the promulgation of these statutes is valid exercise of the states’ power to ensure a well-educated citizenry. Enlightened citizens are necessary within our democratic form of government in order to preserve liberty and lead to the general happiness of all individuals.

Early education statutes required parents to ensure that their children were educated either by attending a school or by receiving instruction at home. Massachusetts was at the forefront of this movement, establishing the first such law in 1642. The law “required all parents and masters to provide an education both in a trade and in the elements of reading to all children under their care.” Nearly two-hundred years later, in 1852, Massachusetts adopted the first compulsory attendance law, requiring children between the ages of eight and fourteen to attend school for twelve weeks each year.

Toward the end of the nineteenth century, most states made school attendance compulsory, resulting in the development of a vast system of public education. Nevertheless, the public hotly debated the concept of compulsory education on ideological grounds resulting in only a limited enforcement of


159 Id. at 19.


162 Van Geel, supra note 158, at 18 (footnote omitted).

163 Id.

attendance laws. The lack of enforcement caused some to refer to compulsory education during this time as the “symbolic stage.”

Education is an important and compelling state interest, which gives the government the right to make reasonable laws relating to education, despite the objections of some parents. There are three sets of interests at work, which create actual or potential conflict: (1) those of the parent, (2) those of the child, and (3) those of the state. Even though parents are given a great deal of autonomy in bringing up their children, the state still has an interest in protecting the child, which is otherwise known as the common law doctrine of “parens patriae.” The common law doctrine of parens patriae creates a state guardian for those students with a disability or are in need of protection, and provides the foundation for compulsory education laws. Under this doctrine, the state has the inherent prerogative to provide for the state and individual welfare. As a result, this doctrine gives the legislature the power to establish reasonable laws that are for the good of the state and not repugnant to the constitution.

Public debates over the desirability of compulsory education no longer exist, and the courts have consistently upheld the enforcement of compulsory education as a proper government interest. The modern debate centers more specifically on the number of days per year that should be required.

B. Length of the School Year

As compulsory education evolved in this country, so did the conventional school year of nine months in school followed by a three months of vacation. This model was originally based on agricultural needs and it has remained largely
unchanged over time.\textsuperscript{176} The result is that students in the United States typically attend school six or seven hours a day, for approximately 180 days a year.\textsuperscript{177}

Appendix A provides a listing of the length of the school year for each state. Overall, the range is between 160 and 186 days, with the majority of states near or at 180 days.\textsuperscript{178} Minnesota is an exception, allowing local school districts to determine their own number of required school days.\textsuperscript{179} Despite the relative consistency among the states, the concern for whether this model allows enough time for students to reach their full potential remains.\textsuperscript{180}

In 1983, the seminal report, “A Nation at Risk,” noted the shortcomings of American public education and the need to improve expectations, content, and time.\textsuperscript{181} Specifically, the report stated that to compete effectively in the global economy, American students needed to spend considerably more time in school.\textsuperscript{182} The report recommended that the education system expand the school year from the 180-day norm to 200-220 days per year.\textsuperscript{183} The recommendation for extending instructional time raised public awareness, and thirty-seven states responded with plans to extend the school year.\textsuperscript{184} In effect, some states increased the school year to the status quo, but not one state increased the school year beyond 180 days.\textsuperscript{185}

In recent years, advocates for extending the school year and school day point to studies comparing the achievements of American students to other students internationally.\textsuperscript{186} The studies show that American students lag behind their counterparts in other industrialized nations.\textsuperscript{187} In addition, some of the studies


\textsuperscript{177} See infra App. A.

\textsuperscript{178} See infra App. A.

\textsuperscript{179} See infra App. A.

\textsuperscript{180} Altman, supra note 176.


\textsuperscript{182} Id.

\textsuperscript{183} Id.


\textsuperscript{185} Id.

\textsuperscript{186} Id. at 5.

\textsuperscript{187} Id.
indicate that students in nations with significantly longer school years outperform students in the United States.\textsuperscript{188}

The arguments for increasing the school day and school year assume more time in school will yield proportionally higher academic performance, however, the research does not always support the correlation between time and achievement.\textsuperscript{189} Critics suggest that the focus should be on the quality of time instead of the quantity of time.\textsuperscript{190} In addition, the research hints that the costs of extending the school year are disproportionately high compared to any expected gain in academic achievement.\textsuperscript{191}

There are multiple estimates of the potential cost to expand the school day. One estimate would cost states between $2.3 and $121.4 million for each additional day.\textsuperscript{192} Another study placed the overall cost of creating a national standard of 200 days between $34.4 and $41.9 billion annually.\textsuperscript{193} The prices are staggering and are beyond the resources of most state and local governments, effectively forcing states to continue the current 180-day school year.

Education critics argue that the school year should be expanded for all students, including those students who perform at higher levels and may not derive any benefit from additional state required school days.\textsuperscript{194} High-achieving students would be more likely to benefit from program enrichment if states have the necessary resources,\textsuperscript{195} however, it is essential for states to use their resources to ensure that all students can meet the basic state standards before diverting funds for enrichment programs.

The cost of expanding the school year for only those students needing additional help would be far less than expanding the school year for all students.\textsuperscript{196} The students requiring additional instruction—those who have no outside alternative for academic learning—would be the first to receive the benefit of the extra resources.\textsuperscript{197} Here, the educational benefit these students receive would be in proportion to the money spent.

\textsuperscript{188} Id.
\textsuperscript{189} Id. at 6.
\textsuperscript{190} Id.
\textsuperscript{191} Id.
\textsuperscript{192} Id. at 4.
\textsuperscript{193} Id.
\textsuperscript{194} A NATION AT RISK, supra note 181.
\textsuperscript{196} See generally ARONSON, supra note 184, at 4.
\textsuperscript{197} A NATION AT RISK, supra note 181.
Some states and districts have tried to improve academic achievement by altering their school calendars. Other states have restructured the school day to maximize educational time. Some states allow local districts to restructure the school year to make use of the building all year in order to avoid wasting money during long periods of time when the building is not in use. In these districts, students are still only required to attend 180 school days, but summer vacation is no longer sacrosanct. Under this plan, students have more vacation breaks, but those breaks are for shorter periods with the intention of decreasing the potential for learning loss. Over time, if these methods prove to be successful at decreasing the gap, they may become commonplace. Currently, these state efforts are minimal and there is no indication that these efforts reach the needs of those students below the gap. These students require more than a restructured school day; they need an expanded summer program and early education programs in order to escape the achievement gap.

C. The Politics in Changing the School Year

In 2009, President Barak Obama promulgated a plan that would increase the school year by one month in order to make the United States more competitive with other countries. In the words of President Obama, “‘[w]e can no longer afford an academic calendar designed when America was a nation of farmers who needed their children at home plowing the land at the end of each day.’” At the time the current school system was derived, the calendar had economic advantages. Now, the same educational calendar puts the United States at a disadvantage. “That calendar may have once made sense, but today, it puts us at a competitive

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199 Id.

200 Id.


202 Id.

203 Denton, supra note 17, at 3.


205 Id.

206 Id.
disadvantage. Our children spend over a month less in school than children in South Korea. That is no way to prepare them for a 21st century economy.\footnote{207}

Critics immediately met the President’s call for a longer academic calendar year. The critics took issue with potential and unintended consequences, including the cost increase necessary to add and run air-conditioners, major financial setbacks for the hotel, tourism, and summer camp industries, and a decrease in the workforce due to the lack of high school and college students seeking seasonal employment.\footnote{208}

There has not been any movement on President Obama’s proposal at either the state or federal level, and if the past is any indication, then future movement is unlikely. In 2000, the Minnesota Legislature added three additional teaching days to the school calendar by reallocating days previously scheduled for staff development.\footnote{209} Although increasing student instructional time motivated the legislative action, the modification faced strong objections from teacher groups.\footnote{210} After three years of lobbying from education establishments, the modification was revoked.\footnote{211} For several years, there were also proposals that would allow schools to commence the school year prior to Labor Day.\footnote{212} While various education groups supported these proposals, they were ultimately blocked by the state resort industry.\footnote{213} “The reviews suggest several areas of consensus and confusion. First, scholars generally agree that there is little good evidence that explicitly tests whether lengthening the school year or the school day leads to academic benefits for students.”\footnote{214} To examine the question of whether lengthening the school day or school year will have positive effects, scholars have relied on the correlation between various time constructs and achievement.\footnote{215} Some studies suggest that an

\footnote{207} Id.


\footnote{209} M.S.A. ch. 500, § 1 (2000) (current version at M.S.A § 120A.41 (2011)).

\footnote{210} Id.

\footnote{211} M.S.A, ch. 9, § 3 (2003) (current version at M.S.A § 120A.41 (2011)).


\footnote{213} Id.


\footnote{215} Id. at 430.
extended school year may benefit some students more than others. Poor and minority students are less likely than their more affluent peers to have educational resources outside of school and therefore may benefit more from increased school time.”

Various federal programs—recognizing this discrepancy—have generated interest in extended time programs. The No Child Left Behind Act, for instance, requires states to “provide supplementary education services to low-income students in low-performing schools.” Another federal program, 21st Century Community Learning Centers initiative, was “designed to provide expanded academic enrichment opportunities for children in low-performing schools through a wide range of services.” While these federal programs are available to fund extended learning time, state agencies have not fully utilized these federal services. The quality of the services that states provide through those federal programs also varies dramatically.

President Obama’s proposal to add school time has the potential to increase student achievement, but policymaker’s lack of activity on the proposal casts doubt on the proposal’s implementation. Thus, student learning will only improve with a combination of school-based instruction and out-of-school opportunities, such as early childhood programs and expanded summer school programs for students who do not meet educational standards.

D. Summer School and Early Childhood Education

Summer school has traditionally been an option available to local school districts to meet the remedial needs of students. Most states allow local school districts the discretion to operate these programs through various statutes. A state-by-state listing of regulations governing summer school programs (contained

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217 Id.
218 Id. at 1.
219 Id.
220 Id. at 12.
221 Id.
222 Silva, supra note 216, at 12.
223 Id.
224 Id.
225 See infra App. B.
in Appendix B) illustrates the considerable variation existing between the states. Very few statutes require students to attend these programs. Massachusetts and Louisiana, for example, both allow school districts to offer summer school programs, but Massachusetts prohibits a demand for mandatory adherence, while Louisiana allows parents to opt out of the requirement.\textsuperscript{226}

The extent of enforcement of compulsory summer school programs is unclear, possibly explaining the lack of direct challenges from critics. The acceptance of obligatory attendance may also be attributed to their recent origin, or the view that these new directives are a logical extension of a state’s authority to require students to attend school and meet certain educational standards.\textsuperscript{227} Additionally, most parents would prefer that their children attend school during the summer if they are in need of additional help, however, the increase in the number of mandatory summer school programs may lead to legal challenges from parents who believe these programs interfere with their rights to raise their children according to their wishes.\textsuperscript{228}

Nevertheless, because of new federal mandates under NCLB and the resulting state standards, schools are under considerable pressure to improve academic achievement in order to avoid remedial sanctions.\textsuperscript{229} One sanction the federal government may impose on a school failing to reach adequate yearly progress for three or more consecutive years is a mandate to extend the school year or school day.\textsuperscript{230} To avoid these sanctions, schools look at a variety of ways to improve student achievement, such as increasing the number of summer school programs, which is especially important in larger city schools where test scores tend to be very low.\textsuperscript{231}

The most significant barrier to establishing any type of summer program, either mandatory or voluntary, is cost. In most states, the costs associated with the institution of a summer program are borne primarily by fund allocation to the local district.\textsuperscript{232} Unfortunately, many school districts rarely have enough resources to

\begin{footnotesize}
\begin{enumerate}[\textsuperscript{226}]
\item See LSA-R.S 17:401.12 (B)(2)(a); MASS. GEN. LAWS ch. 71, § 28 (2007).
\item \textsc{Van Geel}, \emph{supra} note 158, at 19.
\item Scott Woodruff, \emph{Compulsory Threats to Education, Freedom}, WASH. TIMES, Apr. 7, 2011, \url{http://www.hslda.org/docs/news/washingtontimes/200104170.asp}.
\item Id. at 10. NCLB has been criticized for this remedial approach against failing schools. Id. at 13; \textit{see also} James E. Ryder, \textit{The Perverse Incentives of the No Child Left Behind Act}, 79 N.Y.U. L. REV. 932 (2004).
\item Denton, \textit{supra} note 17, at 4.
\end{enumerate}
\end{footnotesize}
operate during the regular school year and cannot divert any money to operate a
summer program.\textsuperscript{233} The sagging national economy in 2002 caused many school
districts to cut back or eliminate their summer school programs.\textsuperscript{234} In order to
remedy this significant barrier, summer school must become an integral part of
the overall educational system, with a consistent stream of revenue allocated to ensure
the program’s survival during difficult economic times.

One option to alleviate the financial strain on schools is for districts to
charge summer school tuition. The state of Washington allows districts to recover
the cost of summer school.\textsuperscript{235} Several school districts have sustained challenges to
charging tuition as a violation of equal protection; in each case, the court found no
violation because a summer school program was separate from the regular school
year and the district’s lack of funding was a rational basis for the tuition
requirement.\textsuperscript{236} A tuition charge, however, may serve as a barrier to the children
living in poverty who may have the most need for the program.

If summer school attendance is required by federal mandate for all failing
students, then it becomes part of the regular school year and charging tuition would
be problematic.\textsuperscript{237} If summer education is considered part of the regular school
year, then the responsibility shifts to state and local districts to fund those programs
under state compulsory education statutes.\textsuperscript{238} Remedial summer school should be
free to the student and not be subject to abrogation as a result of an unreliable
stream of resources. Students should not be charged for remedial education.

Even if the state is capable of funding valuable summer programs, the
programs are of little significance if the state cannot ensure student attendance.
Statistics from North Carolina from 1997 through 2000 indicated that 76,319
students attended summer school because they were not performing at grade level,
with 76\% (57,681) reaching grade level by the end of the program.\textsuperscript{239} Unfortunately,
165,196 students below grade level did not attend the summer program and were
retained from advancing to the next grade.\textsuperscript{240} Compulsory summer school

\textsuperscript{233} Id.
\textsuperscript{234} Ratner, supra note 229, at 12.
\textsuperscript{235} See infra App. B.
\textsuperscript{236} See Moore v. Bd. of Trs., 344 F. Supp. 682, 685 (D. S.C. 1972); Crim v. McWhorter, 252
\textsuperscript{237} But cf. McWhorter, 252 S.E.2d at 424 (inferring that mandatory state education is free,
but programs that fall outside the auspices of statutorily mandated education programs can assess a
charge to students).
\textsuperscript{238} Id. (the important distinction to be made is whether the addition of summer school
curriculum is to be considered part of the regular school year or separate from the regular school
year.).
\textsuperscript{239} Denton, supra note 17, at 6.
\textsuperscript{240} Id. (while it is not the subject of this paper, attendance in school programs may be better
addressed by truancy laws).
requirements are not synonymous with attendance; summer school cannot help students who do not attend.

V. VALUE OF SUMMER SCHOOL AND EARLY CHILDHOOD EDUCATION

In response to No Child Left Behind, states made it their priory to identify at-risk students early with the intent to address their needs during the regular school year. Early identification of at-risk students has had some success, and this additional assistance may help these students meet the required standards measured by the state achievement tests. For the lowest performing students, however, early identification may not be enough. Summer school may be the last resort for students hoping to avoid grade level retention, but some students may be too far behind to benefit from a brief summer program. Nevertheless, summer school could be a starting point for many.

Traditionally, the decision to provide summer-school programs is made at the local school district level. The quality and consistency of most of these programs has never been widely analyzed. The availability of summer school is normally a local option; so local resources must often fund it with little supplement from the state or federal governments. Consequently, it is frequently one of the first items to be sacrificed when resources are scarce. School districts cannot fully understand the significance of these programs due to the lack of research available regarding their effectiveness.

Most current studies examining the relationship between the quantity of required school time and student learning rely on correlational data. There has never been a controlled study or a study directly measuring an extended school year and the impact it has on student achievement. A comprehensive analysis of all available research on this subject is beyond the scope of this article. The focus, instead, is on the correlation between school districts providing summer school and

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241 Id. at 3.
242 Id.
243 Id.
244 Id.
245 Id. at 7.
246 Id. at 3-4.
247 Id. at 12.
248 See Denton, supra note 17, at 12-13.
249 See ARONSON, supra note 184, at 2.
250 Id.
the effect it has on the achievement gap. Whether summer school programs significantly reduce the achievement gap has yet to be determined.

Clearly, a three-month gap in formal education has an impact on student learning. It is, however, “increasingly apparent that a long summer vacation does not represent just a pause in student learning, but actually causes many students to forget what they have learned.”251 The “summer slide” most significantly impacts the poorer families, who rely primarily on schools to provide academic learning for their children; in contrast to middle-class children, who rely on school for only a portion of their learning and are more likely to receive intellectual stimulation during the summer.252 Thus, without summer school, the achievement gap between economic classes may grow wider during the summer.253

Recent research on summer learning loss and its impact on achievement test scores revealed that students taking the full summer off from studies, returned to school with an average of a one-month learning deficit compared to their peers who attended one month of in-class summer instruction.254 The study further revealed that summer learning loss was more pronounced in mathematics than it was for reading. A likely conclusion is the students found more opportunities to practice reading skills than they had to practice mathematics over the summer months.255

Another recent study demonstrated the impact of this phenomenon over a five-year period during the subject group’s elementary education.256 During the school year, the gains between the high socioeconomic (SES) group and the low SES group were less than five points in both reading and math.257 During the five summers without summer school, however, the high SES group gained forty-six points in reading comprehension and about twenty-five points in math.258 The lower SES groups showed no improvement in reading, and either gained or lost a little in math during the same five summers without summer school.259

Both SES groups made similar progress during the school year, but because the lower SES group began at a drastically lower achievement level, the achievement

251 Denton, supra note 17, at 8.
253 Id. at 16.
254 Denton, supra note 17, at 8.
255 Id.
257 Id. at 79.
258 Id.
259 Id.
gap actually widened by the end of the year.\textsuperscript{260} Although both groups are improving academically, the higher SES group progressed faster during the school year.\textsuperscript{261} The achievement gap between the two groups is exacerbated by the lack of summer education; the middle-class children continue to be stimulated, while the lower SES group’s growth is stalled.\textsuperscript{262}

There are multiple theories offered to explain the academic improvements of middle-class students over the summer break.\textsuperscript{263} First, in many instances, their parents understand how the learning process works, they have time to actively participate in the learning process, and they encourage activities that stimulate learning.\textsuperscript{264} Second, middle-class families often have disposable income to spend on learning supplements, including books, computers, travel, and tutoring.\textsuperscript{265} Additionally, entertaining family activities can reinforce education, but some lower-income households may not have as much family leisure time. Finally, because middle-class parents may have the time to be more active in their children’s lives than lower-income parents, they are better able to monitor progress and respond quickly if the children fall behind.\textsuperscript{266}

It is important to note that summer school is not the panacea for eliminating the achievement gap.\textsuperscript{267} Summer school is typically a short period, usually three to six weeks, and the gain for students of all socioeconomic levels is quite small based on standardized tests.\textsuperscript{268} The small increase for lower SES students does not sufficiently offset the greater summer increase made by the higher SES students.\textsuperscript{269} By the time these students reach high school, the gap becomes so large that adding a significant amount of time to the school year does little to narrow the gap.\textsuperscript{270}

A study of the Minneapolis-St. Paul, Minnesota eighth-grade summer program suggests that summer school has boosted the achievement test scores for

\textsuperscript{260} Id. at 77-79.
\textsuperscript{261} Id.
\textsuperscript{262} Id. at 79.
\textsuperscript{263} Boss & Railsback, supra note 252, at 8-9.
\textsuperscript{264} Id.
\textsuperscript{265} Id. at 9-10.
\textsuperscript{266} Id.
\textsuperscript{268} Id.
\textsuperscript{269} Id.
\textsuperscript{270} Id.
enrolled students by roughly six to nine percentage points.271 This was a minor accomplishment, however, because their scores were still twenty to twenty-five percentage points below the passing score.272 At this age, summer school alone does not compensate for the students’ lower achievement rates, thus additional intervention is needed.

For this reason, preschool programs should be adopted to increase the available learning time early in children’s lives. Studies indicate that there is a relatively small gap in children’s test scores based on family income when the students start first grade.273 Even if there is a gap, it is likely that it is smaller at this point than it will be later.274 It is imperative that educators reach these students while the achievement gap is still manageable. A child’s first five years of life are critical to development.275 At this early age, children develop basic learning patterns they employ for the rest of their lives.276 Lower-income children may suffer from a lack of stable, consistent, and nurturing relationships with parents and other caregivers.277 In addition, these children may also be hindered by poor nutrition, limited access to healthcare, and little or no exposure to age-appropriate learning activities.278 Early childhood programs are designed to lessen the effects of common hardships among lower-income children, and provide nurturing and stimulating environments at an early age.279 Research shows that high quality early childhood care and education are critical factors that will determine a child’s readiness to succeed in kindergarten.280 More importantly, these programs are essential to closing the achievement gap.

271 MARK L. DAVISON ET AL., A FEW WEEKS OF SUMMER: POST-SUMMER SCHOOL ACHIEVEMENT AMONG STATE-FUNDED STUDENTS WHO DO NOT INITIALLY PASS MINNESOTA’S HIGH SCHOOL GRADUATION TEST 19 (the Office of Educational Accountability at the University of Minnesota was contracted to prepare this by the Minnesota Department of Children, Families, and Learning), available at http://www.cehd.umn.edu/oea/pdf/afewweeksinsummer.pdf.

272 Id.


274 Id.

275 Id.

276 Id.

277 Id.

278 Id.

279 Id.

Children in poverty need high-quality preschool programs before they start first grade, and must have high-quality extended day and summer-school programs throughout their primary and high-school careers. Currently, many children do not attend kindergarten or early learning programs because they are not compulsory. Students showing signs of an academic disadvantage during their early years must be required to attend kindergarten or other early-learning programs.

VI. CONCLUSION

Every state has a legal obligation to ensure that its citizens not only receive a free education, but also become proficient in certain core subjects. Yet, despite the valiant efforts of many educators, there continues to be an achievement gap between and among various groups of students. Regardless of its shortcomings, No Child Left Behind has made the public keenly aware of the difficulties that states face in their effort to satisfy mandated state education standards for all students. With two years remaining, most states are not likely to meet the express goal of the NCLB; namely, that all students reach the escalating targets and become 100% proficient by the year 2014. Too many children are still falling behind.

Schools that do not have full compliance with the 100% proficiency level will face increasingly harsh sanctions under NCLB. This begs the question, what will happen to the students? Will they have a cause of action against the school district or state for failing to fulfill their legal obligation to ensure that no child was

281 Id.
283 NCLB, supra note 25, at § 6311.
286 For a critical review of the remedial sanctions of the NCLB, see Ratner, supra note 229, at 14-17.
left behind? Will there be an action against the federal government for devising an educational scheme without fully funding its operation? \(^{288}\)

The federal government should provide constructive remedies, rather than sanctions, for schools failing to meet the annual progress targets. Administrators at schools with high percentages of students failing to meet standards will need financial support and flexibility for new methods to improve student achievement. Formulating new methods will require additional research and financial support. The federal government should monitor and evaluate these programs in order to determine their effectiveness and publish the results. State governments do not have the resources to accomplish this task alone and it is the responsibility of the federal government to step in and provide support.

In April 2009, as part of the American Recovery and Reinvestment Act of 2009, programs under Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), \(^{289}\) received an additional ten billion dollars. \(^{290}\) Title I is specifically designed to eliminate the persistent achievement gap separating low-income and more advantaged students, and students of color and white students. \(^{291}\) Funding reached $14.5 billion dollars in fiscal year 2010. \(^{292}\) To maximize the effectiveness of this funding, this support should be designated for areas within the education system where the achievement gap is still small, before the gap widens, such as preschool, full-day kindergarten, and summer programs. \(^{293}\)

Additional state and federally supported preschool programs are necessary to close the gap. Currently, the bulk of federal support for preschool children comes from the Head Start Program (Head Start). \(^{294}\) Yet, this program currently provides support for just 42% of all eligible children, and has been a victim of 11% budget cuts between the 2003 and 2006 fiscal years. \(^{295}\) Under Head Start, states are required to provide limited support, at 20% of the overall cost of the program, but

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290 NCLB, supra note 25, at § 6301.


292 Id.


294 Id.

295 Head Start, DEPT. OF HEALTH AND HUMAN SERVICES, OFFICE OF ADMINISTRATION FOR CHILDREN AND FAMILIES, available at https://www.cfda.gov/index?s=program&mode=form&tab=step1&id=b52456754f1197 eb6304c7bf7a1b94da.
additional support is needed. The Head Start budget for the 2010 fiscal year was only $7.2 billion, but the program received a two billion dollar boost in funding as part of the American Recovery and Reinvestment Act of 2009. Unfortunately, this additional stimulus funding is available only for a short time and may be a target of future budget cuts.

Head Start may not be the sole solution in reducing the achievement gap, but it may be the only viable option. The program is well established and has a large structure that reaches many economically disadvantaged children. The federal government should provide full funding for this program and consider expanding it to reach all children. Additionally, federal funding should be provided to finance research into the effectiveness of the program.

Federal mandates, such as NCLB and Title I, have spawned several successful programs. Additional research should be conducted on the benefits realized by at-risk students or students already in the gap as a result of early-learning and extended-learning programs. Additional programs could reduce personnel costs, provide educational variety, and allow increased flexibility for scheduling student time.

Finally, the federal government should spearhead research on summer-school and extended-year programs, and should provide full funding to ensure these programs are not eliminated by budget cuts. Additional resources should be devoted to monitor the success and impact of these programs on overall student performance.

Summer school should be a mandatory and integral part of a year-round program structure, providing extra time and assistance to struggling students. It should not be viewed as an add-on program that is only offered when resources are available. The program design should respond to the individual needs of low-achieving students, and teachers should receive special training to increase their ability to help struggling students. “Research clearly shows that quality summer programs for struggling students are essential to closing the gaps.”

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296 Id.
297 Id.
299 Id.
300 Denton, supra note 17, at 18.
301 Id. at 6-7, 18.
303 Denton, *supra note 17*, at 12.
304 Alexander & Entwistle, *supra note 256*, at 82.
should be a time for meaningful learning and capitalizing on all available time will prevent students from falling further behind.

Although there should be an emphasis on math and reading, summer programs should not be limited to the traditional academics.\(^{305}\) Programs for disadvantaged children should also include physical activity and enrichment experiences that would be similar to the educational experiences available to students in higher socioeconomic classes in their daily lives with their families. To gain interest, summer-school programs should offer a variety of experiences to entice students to attend. Nevertheless, a state must ensure parental responsibility for their child’s attendance in these programs.\(^{306}\)

If adequate summer school programs are unavailable, then students will be unable to benefit and academically prosper. The programs cannot provide effective aid to students if these programs are not of the highest quality and are not tailored to meet the needs of individual students.\(^{307}\) In addition, providing summer-school programs to students is not a solution if students do not attend. Therefore, states should require mandatory attendance for all struggling students.

To avoid possible legal challenges, compulsory summer-school programs should be at the direction of the state. State mandates and a published notice of mandatory summer school attendance would clarify the existence of these programs as an integral part of the school year and as a component of existing compulsory education statutes. Publication of attendance standards must be completed well in advance of commencement. In order for these programs to succeed, the state must develop and employ appropriate enforcement mechanisms. Most importantly, to be successful, summer-school and extended-day programs must receive the necessary financial assistance from state and federal authorities.

\(^{305}\) Denton, supra note 17, at 12-14.

\(^{306}\) Id. at 10.

\(^{307}\) Id. at 14.
## APPENDIX A

Length of School Year – 2011 (Defined as classroom instruction hours or days)

<table>
<thead>
<tr>
<th>State</th>
<th>Minimum Length of School Year (days)</th>
<th>State Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>180</td>
<td>ALASKA STAT. § 14.03.030 (2007)</td>
</tr>
<tr>
<td>Arizona</td>
<td>180</td>
<td>ARIZ. REV. STAT. § 15-341.01(A) (LexisNexis 2007)</td>
</tr>
<tr>
<td>Arkansas</td>
<td>178 (See note 1)</td>
<td>ARK. CODE ANN. § 6-10-106, §6-10-108 (2007)</td>
</tr>
<tr>
<td>California</td>
<td>175</td>
<td>CAL. CODE REGS. tit. 5 § 2(i) (2007)</td>
</tr>
<tr>
<td>Colorado</td>
<td>160</td>
<td>COLO. REV. STAT. ANN. § 22-33-104(1)(b) (2007)</td>
</tr>
<tr>
<td>Connecticut</td>
<td>180</td>
<td>CONN. GEN. STAT. § 10-16 (2007)</td>
</tr>
<tr>
<td>Delaware</td>
<td>See note 2</td>
<td>DEL. CODE ANN. tit. 14, § 1049(a)(1) (West 2007)</td>
</tr>
<tr>
<td>Florida</td>
<td>180</td>
<td>FLA. STAT. ANN. § 1001.42(12)(a) (West 2011)</td>
</tr>
<tr>
<td>Hawaii</td>
<td>180</td>
<td>HAW. REV. STAT. § 302A-251(a) (West 2011)</td>
</tr>
<tr>
<td>Idaho</td>
<td>See note 3</td>
<td>IDAHO CODE ANN. § 33-512(1)(a) (West 2007)</td>
</tr>
<tr>
<td>Illinois</td>
<td>See note 4</td>
<td>105 ILL. COMP. STAT. ANN. 5/10-19 (West 2007)</td>
</tr>
<tr>
<td>Indiana</td>
<td>180</td>
<td>IND. CODE ANN. § 20-30-2-3 (West 2007)</td>
</tr>
<tr>
<td>Iowa</td>
<td>180</td>
<td>IOWA CODE ANN. § 279.10(1) (2007)</td>
</tr>
<tr>
<td>Kansas</td>
<td>See note 5</td>
<td>KAN. STAT. ANN. § 72-1106(a) (West 2006)</td>
</tr>
<tr>
<td>Kentucky</td>
<td>185</td>
<td>KY. REV. STAT. ANN. § 158.070(1) (LexisNexis 2007)</td>
</tr>
<tr>
<td>Maine</td>
<td>175</td>
<td>ME. REV. STAT. ANN. tit. 20A, § 4801(1) (2011)</td>
</tr>
<tr>
<td>Maryland</td>
<td>180 days and 1080 hours</td>
<td>MD. CODE ANN. EDUC. § 7-103 (a)(1)(i) (2007)</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>See note 6</td>
<td>603 MASS. CODE REGS. 27.03(2) (2007)</td>
</tr>
<tr>
<td>State</td>
<td>Hours</td>
<td>Citation</td>
</tr>
<tr>
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</tr>
<tr>
<td>New York</td>
<td>190</td>
<td>N.Y. Educ. Law § 3204(9)(4) (McKinney 2007)</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>See note 11</td>
<td>Okla. Stat. tit. 70, § 1-109(A) (West 2007)</td>
</tr>
</tbody>
</table>
(1) Uniform dates mark the beginning and the end of the school year.

(2) One thousand sixty hours are required for kindergarten through eleventh grade, and 1032 hours are required for twelfth grade.

(3) Eight hundred ten hours are required for grades one through three, 900 hours are required for grades four through eight, and 990 hours are required for grades nine through twelve.

(4) The school year must be scheduled for a minimum of 185 days by the school board to ensure 176 days of actual pupil attendance.

(5) One hundred eighty-six days are required for kindergarten through eleventh grade; 181 days are required for twelfth grade.

(6) The school committee for primary, middle, and secondary schools must schedule 185 days, and each school must be in operation for a minimum of 180 days each year.

(7) School districts must adopt calendars with at least as many student instruction days as the 1996-1997 year, which included 174 days.

(8) The minimum requirements of instructional hours are as follows: 720 hours for grades one through three and 1,080 hours for grades four through twelve. An exception exists for twelfth grade students allowing for a minimum of 1050 hours in some circumstances.
(9) One thousand thirty-two instructional hours are required for elementary grades other than kindergarten; 1080 instructional hours are required for high school grades.

(10) Grades one through six require 990 hours, and grades seven through twelve require 1080 hours.

(11) The school year is required to be 180 days in length; however, only 175 of the days are required for classroom instruction.

(12) The Board of Education shall promulgate rules setting the minimum number of hours for grades one through three; the minimum number of hours for grades four through twelve may not be less than 962.5 hours, excluding recess and/or lunch.
### APPENDIX B

**Summer School Programs 2011**

<table>
<thead>
<tr>
<th>State</th>
<th>State Legislation and Administrative Rules</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>ALA. ADMIN. CODE r. § 290-3-1-02(6)(b)(2)(i) (2007)</td>
<td>The public summer school shall be authorized by the local board of education.</td>
</tr>
<tr>
<td>Alaska</td>
<td>ALASKA ADMIN. CODE tit. 4, § 06.845(11) (2007)</td>
<td>As part of a school improvement plan, a school must incorporate, as appropriate, activities for students before school, after school, during the summer, and during any extension of the school year.</td>
</tr>
<tr>
<td>Arizona</td>
<td>ARIZ. REV. STAT. ANN. § 15-701(2)(b) (2011)</td>
<td>Students will not be promoted from third grade if their score drops below the third grade level. Remedial strategies developed by the state board shall include summer school reading instruction.</td>
</tr>
<tr>
<td>Arkansas</td>
<td>ARK. CODE. ANN. § 6-15-1602(a)(1) (West 2007)</td>
<td>Local school districts shall identify students of all grades who have been placed at risk of academic failure, and implement a personal education plan, which may include summer school, Saturday school, and extended days.</td>
</tr>
<tr>
<td></td>
<td>ARK. CODE ANN. § 6-16-701, 702(a)(1), 704-706(b) (West 2007)</td>
<td>Public schools are authorized to operate optional summer school programs. School districts should be authorized to charge a fee. Those districts not offering a summer program shall offer a remediation program during the regular school year to students, in kindergarten through third grade, that are not performing to grade level.</td>
</tr>
<tr>
<td>California</td>
<td>CAL. EDUC. CODE § 37252(a) (West 2007)</td>
<td>School district shall offer supplemental summer instructional programs to students in grades seven through twelve who are not demonstrating progress toward passing the high school exit exam.</td>
</tr>
<tr>
<td>State</td>
<td>Statute/Code</td>
<td>Summary</td>
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</tr>
<tr>
<td>California</td>
<td>CAL. EDUC. CODE § 305 (West 2007)</td>
<td>Public and charter schools, maintaining grades two through six, may offer supplementary instruction, including summer school, to pupils deficient in math, reading, and writing or who are at risk of dropping out.</td>
</tr>
<tr>
<td></td>
<td>CAL. EDUC. CODE § 37252.2(a) (West 2007)</td>
<td>School districts maintaining any or all of grades second through ninth, shall offer students supplemental instructional programs including summer school.</td>
</tr>
<tr>
<td></td>
<td>CAL. EDUC. CODE § 37253(a) (West 2007)</td>
<td>A school district may offer summer-school programs in core academic areas.</td>
</tr>
<tr>
<td></td>
<td>COLO. REV. STAT. § 22-23-106(1) (2007)</td>
<td>An educational program for migrant children may be operated during the summer.</td>
</tr>
<tr>
<td></td>
<td>COLO. REV. STAT. ANN. § 22-32-118(1) (West 2007)</td>
<td>A board of education may fix and collect a fee for summer-school programs.</td>
</tr>
<tr>
<td></td>
<td>COLO. REV. STAT. § 22-7-801(a) (2011)</td>
<td>Summer-school grants are available for public and charter schools providing intensive reading, writing, and math education services to students in fifth through eighth grade that performed unsatisfactorily in standardized tests.</td>
</tr>
<tr>
<td>Connecticut</td>
<td>CONN. GEN. STAT. ANN. § 10-74a (2011)</td>
<td>Local or regional board of education may establish summer schools for children on voluntary basis and may charge a reasonable fee.</td>
</tr>
<tr>
<td>Delaware</td>
<td>DEL. CODE ANN. tit. 14, § 153(d) (2007)</td>
<td>A third-, fifth-, or eighth-grade student who falls below the required performance on a standardized reading test will not advance in grade level unless their parents or guardians agree to an individual assessment program (which may include summer school). Summer school may be mandated if the student does not meet the set expectations for the following year. Mandatory summer school may not be forgiven more than twice due to extenuating circumstances.</td>
</tr>
<tr>
<td>State</td>
<td>Statute/Code/Reg.</td>
<td>Description</td>
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<tr>
<td>Florida</td>
<td>FLA. STAT. ANN. § 1003.413(3)(f) (LexisNexis 2007)</td>
<td>Districts shall implement policies, including summer school, for students needing intensive reading and math interventions or additional credits.</td>
</tr>
<tr>
<td></td>
<td>FLA. STAT. § 1003.428(4)(d) (LexisNexis 2007)</td>
<td>School districts may develop summer-school programs to aid students in graduating high school.</td>
</tr>
<tr>
<td>Georgia</td>
<td>GA. CODE ANN. § 20-2-168(d) (West 2007)</td>
<td>The governing board may adopt a summer-school program.</td>
</tr>
<tr>
<td></td>
<td>GA. CODE ANN. § 20-2-168(f) (West 2007)</td>
<td>Local boards of education must provide summer school for those children who have been retained in kindergarten through eighth grade or who have failed academic subjects in these grades. The session must be six weeks or more and free to the students.</td>
</tr>
<tr>
<td></td>
<td>GA. COMP. R. &amp; REGS. 160-4-2-.14(2)(a) (2007)</td>
<td>Each school system implementing the state-funded Instructional Extension Program shall provide instructional opportunities to eligible students who have low performances in academic subjects. This program shall not be charged to students and may include summer school.</td>
</tr>
<tr>
<td></td>
<td>GA. COMP. R. &amp; REGS. 160-4-2-.37(2)(a) (2007)</td>
<td>A local school board may provide a summer remedial program for students who have failed the high school graduation test.</td>
</tr>
<tr>
<td>Hawaii</td>
<td>(-)</td>
<td></td>
</tr>
<tr>
<td>Idaho</td>
<td>(-)</td>
<td></td>
</tr>
<tr>
<td>Illinois</td>
<td>105 ILL. COMP. STAT. ANN. 5/10-22.33B (2007)</td>
<td>Summer school shall be required of any student that is academically at risk in a critical subject area.</td>
</tr>
<tr>
<td>Indiana</td>
<td>IND. CODE ANN. § 20-3.1-13-1 (West 2007)</td>
<td>The school city must provide summer remediation services to students who do not meet state achievement standards.</td>
</tr>
<tr>
<td>State</td>
<td>Code/Regulation</td>
<td>Description</td>
</tr>
<tr>
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</tr>
<tr>
<td>Iowa</td>
<td>IOWA CODE ANN. § 282.6 (West 2007)</td>
<td>School districts may charge tuition for summer school.</td>
</tr>
<tr>
<td>Kansas</td>
<td>KAN. STAT. ANN. § 72-8237(a) (2007)</td>
<td>The school board in any district may establish, operate, and maintain a summer program for students.</td>
</tr>
<tr>
<td></td>
<td>KAN. STAT. ANN. § 72-7534(b) (West 2007)</td>
<td>School districts must provide intervention for students not making satisfactory progress in reading, which may include summer school.</td>
</tr>
<tr>
<td>Kentucky</td>
<td>704 KY. ADMIN. REGS. 3:390 (2012)</td>
<td>The rule extends school beyond the minimum term for those students in need of additional assistance.</td>
</tr>
<tr>
<td>Louisiana</td>
<td>LA. REV. STAT. ANN. § 17:24.4(G)(4)(a) (2011)</td>
<td>The governing body must establish a summer-school remediation program to all students who do not meet the minimum achievement level to be promoted to the fifth or ninth grade.</td>
</tr>
<tr>
<td></td>
<td>LA. REV. STAT. ANN. § 17:24.4(G)(4)(c) (2011)</td>
<td>School districts may require students who fail a required test to attend summer school before advancing to the next grade. Parents may refuse sending their child to summer school but only after they are told the consequences of their decision.</td>
</tr>
<tr>
<td></td>
<td>LA. REV. STAT. ANN. § 17:401.12(A)(1) (2011)</td>
<td>Each school district must have the ability to provide K-4 students with summer-enrichment classes for every student who needs extra instruction, reinforcement, or time on task to be able to achieve the basic skills of reading, math, and writing. Other students may attend if they pay tuition.</td>
</tr>
<tr>
<td>State</td>
<td>Code/Regulation</td>
<td>Description</td>
</tr>
<tr>
<td>-----------</td>
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</tr>
<tr>
<td>Maryland</td>
<td>MD. CODE REGS. 13A.03.02.05(B)(1) (2007)</td>
<td>Local school systems may provide summer school options for original and review credit based on what the students need.</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>MASS. GEN. LAWS ANN. ch. 71, § 28 (West 2007)</td>
<td>The school committee may maintain a summer-school program, but may not make it mandatory.</td>
</tr>
<tr>
<td>Michigan</td>
<td>(-)</td>
<td></td>
</tr>
<tr>
<td>Minnesota</td>
<td>MINN. STAT. § 120A.22(5)(b) (2011)</td>
<td>A school district may require its students to attend summer school.</td>
</tr>
<tr>
<td></td>
<td>MINN. STAT. ANN. § 120B.12(3) (West 2011)</td>
<td>A school district may require summer-school attendance of a first grade student who is reading below grade level.</td>
</tr>
<tr>
<td></td>
<td>MINN. STAT. § 123B.02(10) (2006)</td>
<td>A school board may establish summer sessions.</td>
</tr>
<tr>
<td>Mississippi</td>
<td>MISS. CODE ANN. § 37-3-59 (West 2007)</td>
<td>All school boards in every school district are authorized to establish a summer program for any kindergarten through eighth grade student making unsatisfactory progress.</td>
</tr>
<tr>
<td></td>
<td>MO. ANN. STAT. § 167.645(3) (2006)</td>
<td>Third graders who fall below grade reading level may be required to attend summer school.</td>
</tr>
<tr>
<td></td>
<td>MO. ANN. STAT. § 167.645(7) (West 2006)</td>
<td>Each school district is required to offer students a reading improvement plan and summer-school reading instruction. This may be accomplished by partnering with neighboring districts.</td>
</tr>
<tr>
<td></td>
<td>MO. ANN. STAT. § 167.640(2) (West 2006)</td>
<td>School districts may require summer school as a condition of grade promotion for students who fail to master skills and competencies.</td>
</tr>
<tr>
<td>State</td>
<td>Code Reference</td>
<td>Description</td>
</tr>
<tr>
<td>---------------</td>
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<td>---------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Montana</td>
<td>(-)</td>
<td>A district’s school board may require children six to fifteen years of age to attend summer school if they are making unsatisfactory progress and if it is believed the program will help them.</td>
</tr>
<tr>
<td>Nebraska</td>
<td>NEB. REV. STAT. § 79-536(3) (2006)</td>
<td>If a student is a habitual disciplinary problem, then the school may develop a plan of behavior. This plan may include summer school if voluntarily agreed on by the student and parents/guardians.</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>(-)</td>
<td>For eighth grade students failing to meet established examination standards, the local board of education shall provide for appropriate remediation in areas of demonstrated deficiency, which may include summer programs.</td>
</tr>
<tr>
<td>New Jersey</td>
<td>N.J. STAT. ANN. § 18A:7C-6.2 (West 2007)</td>
<td>Local school boards shall approve remediation programs that have been approved by the school district and academic-improvement programs, which may include summer school, to provide special instructional assistance to students in grades one through eight who fail to attain adequate yearly progress. Parents or guardians must bear the cost of summer school for students in ninth through twelfth grade unless they are indigent.</td>
</tr>
<tr>
<td>New Mexico</td>
<td>N.M. STAT. ANN. § 22-2C-6(B) &amp; (C) (West 2007)</td>
<td>Boards of cooperative educational services may provide academic and other programs and services in the school year on a cooperative basis, including summer programs and services.</td>
</tr>
<tr>
<td>State</td>
<td>Statute Reference</td>
<td>Description</td>
</tr>
<tr>
<td>---------------</td>
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</tr>
<tr>
<td>North Carolina</td>
<td>N.C. GEN. STAT. ANN. § 115C-105.41 (West 2007)</td>
<td>Local school administrators may develop a personal education plan for students at risk of academic failure, which may include summer school at no cost to the students.</td>
</tr>
<tr>
<td></td>
<td>N.C. GEN. STAT. ANN. § 115C-233 (West 2007)</td>
<td>Each local school administrator may establish and maintain summer schools.</td>
</tr>
<tr>
<td>Ohio</td>
<td>OHIO REV. CODE ANN. § 3317.029(J)(7)(c) (West 2007)</td>
<td>Districts may extend the school year, either by adding regular days of instruction to the school calendar, or by providing summer programs.</td>
</tr>
<tr>
<td></td>
<td>OHIO REV. CODE ANN. § 3313.608(B)(2) (West 2007)</td>
<td>A school district shall offer a summer-remediation program for students failing to achieve required test scores.</td>
</tr>
<tr>
<td></td>
<td>OHIO REV. CODE ANN. § 3313.641(A) (West 2007)</td>
<td>A city’s board of education may operate a summer school of its wish and charge tuition to students choosing to attend.</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>OKLA. STAT. ANN. tit. 70, § 3-153 (West 2007)</td>
<td>The state Board of Education does not need to provide prior approval of local summer schools.</td>
</tr>
<tr>
<td></td>
<td>OKLA. STAT. ANN. tit. 70, § 1210.508(E) (West 2007)</td>
<td>Third grade students may be required to attend summer school in order to achieve the required reading level for promotion to the fourth grade.</td>
</tr>
<tr>
<td>Oregon</td>
<td>OR. REV. STAT. ANN. § 343.830 (West 2007)</td>
<td>A school district may establish a summer program for migrant children.</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>(-)</td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>Citation</td>
<td>Description</td>
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</tr>
<tr>
<td>South Carolina</td>
<td>S.C. CODE ANN. § 59-18-500 (2006)</td>
<td>A student may be required to attend summer school if the student, in grades from three through six, lacks the skills to perform at grade level.</td>
</tr>
<tr>
<td>South Dakota</td>
<td>S.D. CODIFIED LAWS §13-26-2 (2007)</td>
<td>A school board may operate a special term during the summer months.</td>
</tr>
<tr>
<td>Tennessee</td>
<td>TENN. CODE ANN. § 49-6-601 (West 2007)</td>
<td>Credits earned in a summer-school program that has been state-approved may be transferred to other approved schools in the state.</td>
</tr>
<tr>
<td>Texas</td>
<td>TEX. EDUC. CODE ANN. § 29.088(A) (West 2007); TEX. EDUC. CODE ANN. § 29.090(a) (2007)</td>
<td>A school district may establish an intensive program for the summer to provide mathematics or science instruction to at-risk students.</td>
</tr>
<tr>
<td></td>
<td>TEX. EDUC. CODE ANN. § 29.060(a) (West 2007)</td>
<td>A school district may establish summer-school programs for students of limited English proficiency.</td>
</tr>
<tr>
<td>Utah</td>
<td>UTAH CODE ANN. §53 A-606 (b)(ii)(West 2011)</td>
<td>Students reading below grade level in grades one through three will be given remediation, including summer assistance as an option.</td>
</tr>
<tr>
<td>Vermont</td>
<td>VT. STAT. ANN. tit. 16, § 4001(9) (West 2007)</td>
<td>A public school may maintain summer school for its pupils.</td>
</tr>
<tr>
<td>Virginia</td>
<td>VA. CODE ANN. § 22.1-253.13:1(C) (West 2007); VA. CODE ANN. § 22.1-254.01 (West 2007)</td>
<td>Any student failing the Standards of Learning literacy tests in grades three, five, or eight, shall be required to attend a summer-school program, or to participate in another form of remediation. The superintendent may seek immediate compliance with this program under the compulsory school attendance laws.</td>
</tr>
<tr>
<td>State</td>
<td>Code/Annotation</td>
<td>Description</td>
</tr>
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</tr>
<tr>
<td>Washington</td>
<td>WASH. REV. CODE ANN. § 28A.320.500 (West 2007)</td>
<td>Every school district board of directors is authorized to establish summer programs. Attendance is voluntary. School districts may assess tuition and special fees as deemed necessary to offset program maintenance and operational costs, in whole or in part.</td>
</tr>
<tr>
<td>Washington, D.C.</td>
<td>D.C. CODE § 5-E2200.9(d) (2007)</td>
<td>If, by the end of the academic year, the student fails to meet the content standards, an intervention plan will be developed by the current teacher and implemented during the summer.</td>
</tr>
<tr>
<td>West Virginia</td>
<td>W. VA. CODE ANN. § 18-2E-3c(b)(7)(c) (West 2007); W. VA. CODE R. § 18-2E-3d(8)(c) (2007)</td>
<td>Any county that has received a competitive grant for a reading or math program should encourage any students not performing at grade level, in kindergarten through fourth grade, to attend summer school. The county may consider student attendance in this program as a factor in determining whether the child is eligible to be promoted to the next grade.</td>
</tr>
<tr>
<td></td>
<td>W. VA. CODE ANN. § 18-5-39(b) (West 2007)</td>
<td>Counties may charge tuition for summer school as long as families can have the fees reduced or waived if needed.</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>WIS. STAT. ANN. § 118.04 (West 2007)</td>
<td>Any school board may elect to operate summer classes or to permit pupils to attend summer classes operated by another school district, upon acceptance by the school district of operation.</td>
</tr>
<tr>
<td>Wyoming</td>
<td>WYO. STAT. ANN. § 21-13-334 (b)(f) (West 2011)</td>
<td>Summer-school programs eligible for financial assistance shall provide students the opportunity to receive remediation and intervention.</td>
</tr>
</tbody>
</table>

(-) No legislation regarding summer