School District Borders and the Pursuit of Educational Opportunity
It was the first week of spring in 1973, and education advocates were reeling from a stinging defeat. A lawsuit seeking to establish a federal right to equal education had made it all the way to the United States Supreme Court, but that case, *San Antonio v. Rodriguez*, had ended in disappointment: The Court declined to protect a federal right to education or to require that schools be funded fairly. The ruling halted a series of lower-court decisions that had used the federal Constitution to require fairer school funding. Just a few weeks later, though, a new avenue opened that offered some hope. In another case, the New Jersey Supreme Court handed down the first-ever ruling to find that a state’s school funding system violated its state constitution. It would be the first of many such decisions nationwide.

In the decades that followed, New Jersey’s ongoing school finance litigation produced one of the most generous school funding policies in the country. The state Supreme Court required the state to bring per-student spending in the low-wealth plaintiff districts up to par with those in the most affluent suburban districts. The court also ordered a series of unprecedented services for disadvantaged students, including full-day kindergarten, preschool for 3- and 4-year-olds, after-school programs, and summer school. Largely as a result of this litigation, New Jersey’s overall per-pupil funding levels are quite high by national standards.

Despite these efforts, though, New Jersey remains home to some of the nation’s starkest education funding inequities. The state contains sixty-eight especially divisive school district borders (those that divide neighboring districts with wide gaps in both funding and racial demographics). For example, Phillipsburg Town School District, which is 41% nonwhite, has a per-pupil funding level of $20,141. At first glance, that seems quite generous. But Pohatcong Township next door, which is just 10% nonwhite, has almost 50% more funding per pupil at $29,769. Salem City School District, where 86% of students are nonwhite, has a per-pupil funding amount of $22,346; one district over, Manning Township has an enrollment that is 69% white, and its per-pupil funding level is an astronomical $44,924. In other words, even New Jersey, which invests so much in its schools, falls far short of bringing its low-wealth districts up to parity.

Inequities like these persist because our school funding system works to split communities by wealth, and school district borders entrench these divides. In almost every state, a substantial portion of school funding is drawn from local property taxes—the tax revenues raised from the properties within each district’s borders. This sets off a vicious cycle: Districts with greater property wealth are usually able to provide their students with a better-resourced education than their neighbors, even at the same or lower tax rates. Families with the means to do so will gravitate towards these high-spending school
districts. The perception that these are "good" school districts and the investment of well-off families further boosts property values. Consequently, the tax base that yields funding for the district increases, perpetuating the cycle. School district borders, because they define both the student body and the property tax base for each district, are the greatest determinant of which kids have access to what resources.

School finance litigation has brought funding inequities to light around the country, and many states have implemented school funding formulas that seek to mitigate these disparities. These formulas send more state funding to school districts that are less able to raise their own local tax revenue and those that serve students with greater needs. Using these formulas, most states are able to distribute state funding in a progressive way, but they fall short of actually bringing about funding equity. In large part, this is because the formulas only govern the allocation of state dollars. With rare exceptions, states do not prevent high-spending districts from creating new funding gaps by ramping up local dollars past what the state provides for low-wealth districts. Funding inequity cannot be addressed by tackling only one half of the problem. In New Jersey and around the country, the best state efforts will continue to be outweighed by local funding disparities as long as school district borders support much greater funding levels in some districts than in others.

Our current approach to school funding addresses the symptom of funding inequity but not its root cause. It is the school district borders themselves, and the state policies that determine how they are drawn, that stand in the way of students' access to an equitable education. Better understanding these borders—how they came to be, and how they can be changed—is a first step towards attacking the problem at its source.
In 2016, Gardendale, a predominantly white suburb of Birmingham, Alabama, began making headlines. The town, which is a part of the county school district that serves Birmingham, had begun taking steps to form its own school district. The planned Gardendale City School district would have been much whiter and wealthier than the county school district, where a majority of students are nonwhite and close to a fifth live in poverty. Gardendale’s local leaders could not have been clearer about their reasoning. According to the mayor, the secession was about “keeping our tax dollars here with our kids, rather than sharing them with kids all over Jefferson County.” Gardendale’s leaders sought to secede because they understood the key fact about our school finance system: That our school district boundaries determine what resources students have access to. Gardendale’s secession was halted by the courts, but many other such efforts succeeded at splintering their school districts. In all, EdBuild has identified 128 cases of communities attempting to “secede” from their school districts since 2000.

School districts around the country

The way school districts are typically organized varies widely from region to region. In some northeastern states, like New Jersey, school district borders that follow town boundaries are common, while in the South, like in Florida, county school districts predominate. Finally, in some states, like Texas, school district borders are independent of city or county boundaries. As a consequence, while efforts to create more splintered school districts are more common in southern states with many county school districts, school districts in many northeastern states may be regarded as already fragmented; their narrow borders inherently create the inequities that school district secessions produce in other states.
School district secessions are not isolated incidents. Rather, they are motivated by the same incentives that have structured rest of our school district map. School district borders in the United States were not drawn to distribute resources equally or to guarantee students access to integrated schools—or in fact to achieve any coordinated policy aim. Instead, our patchwork of school district borders is the product of communities seeking to advance their own local interests, and of the school funding system that shapes these incentives.

Many contemporary school district borders are the product of efforts in the mid-twentieth century to consolidate tiny school districts into a more efficient system. But without requirements to ensure fairness, these efforts often worsened existing inequities. Consider Texas: In the early twentieth century, the state’s school districts were tiny and had little power of their own. They relied on counties to collect taxes and distribute funding. But in the 1940s, the state incentivized school districts to become “independent school districts” with their own taxing authority, a process that typically involved merging with other neighboring districts. In San Antonio, an area already segregated by socioeconomic status and race, similarly situated school districts flocked to one another, consolidating their advantages. Wealthy Alamo Heights, where racial covenants barred nonwhite homeowners, had already become “independent” of the county school district decades earlier. Meanwhile, Edgewood, a poor school district that served mostly Mexican-Americans who were prevented by segregative policies from living elsewhere, struggled to find partners for merger. With the advent of independent school districts, school district borders in Texas would be more determinative of funding than ever, and other San Antonio school districts had little reason to merge with Edgewood, which had the lowest per-pupil property wealth in the area. Within five years of becoming an independent school district on its own, Edgewood was in financial crisis, cutting classes to half-days. Because of the lack of rules to ensure equity in the consolidation process, the formation of independent school districts in Texas ultimately entrenched existing wealth disparities. The effects are still felt today: In Edgewood, the median property value is now just $64,200, while in Alamo Heights, the median home goes for $439,500.
Secession and consolidation are not the only ways to manipulate school district borders to serve hyperlocal interests. Communities found other methods, especially as borders took on even greater significance in the era of desegregation. One example is in the realm of city expansion. Many cities in the Midwest and West had long had school district borders that changed along with city boundaries—whenever cities grew, so would their districts. The implications of this link changed over time, however. While in the early twentieth century, joining a city school district meant gaining access to greater educational resources, in the 1950s and 60s, it came to mean the prospect of being included in racial integration efforts, which was anathema to many suburbanites. In Indianapolis, Indiana, local leaders in the early 1970s sought to secure a city-county merger in order to grow the city’s tax base and spur economic growth.\textsuperscript{xvi} When it became clear that the main hurdle to the plan was the prospect of suburban communities joining the city district, city officials made a trade: the city would grow, but the city school district would lose its right to expand along with it. In the decades since the city and school district separated, their fortunes have diverged as well. The city population has grown by 13% since the countywide merger, but Indianapolis Public Schools has lost three quarters of its students since 1968 and has had to shutter several schools.\textsuperscript{xvii} In a similar story, when desegregation reached Columbus, Ohio, the

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\includegraphics[width=\textwidth]{map1.png}
\caption{The city of Indianapolis, Indiana and its nine school districts}
\end{figure}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{map2.png}
\caption{The city of Columbus, Ohio and its sixteen school districts}
\end{figure}
School district leaders in midcentury San Antonio, midwestern city leaders in the era of school desegregation, and school district secessionists in Alabama all shared an accurate understanding of how school district borders shape students’ access to quality education.

city secured changes to state laws in order to keep certain city neighborhoods outside the city school district—and consequently, beyond the reach of desegregation orders. Today, Columbus remains fragmented between a central city school district and 15 suburban school districts, and the enclaves outside of the city school district remain especially desirable real estate markets.

These stories all differ in their particulars, but they have one central element in common. School district leaders in midcentury San Antonio, midwestern city leaders in the era of school desegregation, and school district secessionists in Alabama all shared an accurate understanding of how school district borders shape students’ access to quality education. When school funding depends on communities’ local property wealth, school districts have no reason to join together and share resources with their property-poor neighbors. Indeed, they have reason to splinter the district map further in order to wall in their resources and keep out high-need, expensive-to-educate students. And when suburbanites across the country found that they could exempt themselves from desegregation by placing a border between their neighborhoods and their majority-minority city school systems, they seized the opportunity to do so—even if they actually lived within the city lines.

These incentives remain in full force today. Research has found that socioeconomic disparities between neighborhoods are growing—and that this growth is occurring because of the movement of families with children. This confirms that the problem is driven largely by access to schools and school resources. These divides will continue to widen as long as state laws allow and incentivize the use of school district borders as a tool of division.
Findings: School District Border Law in the United States

Despite the importance of school district borders to educational equity, the state laws governing school district borders are poorly understood. Areas that have broken away from their school districts, or that have maintained exclusive borders even when contrary to the best interests of the wider community, have done so by taking advantage of laws that have long been on the books. By better understanding the legal landscape around school district borders, policy and legal advocates on the side of equity and integration can leverage these laws to work towards their goals. This research has compiled the important border-drawing laws in all states. Some of the notable findings to emerge from this survey include the following:

**Few states have explicit constitutional provisions.** The vast majority of states (forty-one) have no explicit constitutional provision regarding school district boundaries. Of those that do, the most common provision (present in six states) simply underlines the responsibility of the state to organize school district boundaries.

**School districts often do not align with other jurisdictional boundaries.** In nearly half of states (twenty-three), no school district boundaries are required by state law to align with any other jurisdictional boundaries, like city or county boundaries. In fourteen states (predominantly in the South), at least some school district boundaries are required to align with county boundaries. Seventeen states, including both northeastern and southern states, have some school districts that align with city boundaries.

**Requirements for school districts exist in many states, but they typically fail to address diversity or funding.** Twenty-nine states have some requirements that must be met by existing or new school districts, though some of these requirements are very limited. Where there are minimum requirements for school districts, states typically require that school districts be of a certain size, or serve a range of grade levels. Only two states have any requirements concerning racial or socioeconomic diversity, and each of these apply only to new school districts. Eight states require school districts to meet requirements concerning funding, but again, all of these requirements concern only the formation of certain types of new school districts. Students in existing school districts lack any of these protections.

**Some states do not require state approval for school district border changes.** The vast majority of states allow communities to make changes to school district boundaries. However, while these border changes almost always require local action, not all states require state approval for school district border changes: School district merger requires local action in forty-seven states, but mergers only require state approval in thirty-one states. School district secession requires local action in thirty-one states and requires state approval in twenty-six of these states.

In addition to summary findings, a full database of school border law is available on the companion website to this report. This includes information regarding state constitutional provisions around school district boundaries; the relationship between school district boundaries and other jurisdictional boundaries; minimum requirements for school districts to form and persist, including requirements
regarding population size, fiscal capacity, level of diversity, or grade levels served; and procedural requirements for different types of border changes, including school district mergers, secessions, and territory transfers. Visit edbuild.org/content/frontier to view this information, generate customized reports and tables, and download summary briefs.

School District Border Law: A Tool and A Target

Communities seeking to secede from their school districts have rallied considerable resources and political power to their cause. They have paid for feasibility studies and legal representation, unearthed decades-old statutes still on the books, and even secured legislation to pave the way for secessions.xx The information gathered in this report can help even the playing field for advocates, legislators, and organizations working towards greater educational equity. By better understanding the legal landscape around school district borders, those on the side of equity could seek border changes that enhance rather than hinder equity, reform existing state laws around school district borders, or target school district borders in public interest litigation.

Community Activism Example: Metropolitan or County Consolidation

Armed with an understanding of the legal landscape around school district borders, community advocates can use this tool to identify a range of legal provisions that can offer new opportunities for equity in their states. Communities seeking to alter school district borders in service of greater equity will be aided by the ability to access the procedural requirements for border changes. Understanding the criteria that approving entities must consider before authorizing such a change is particularly crucial in the case of border revisions that might dramatically shift the demographic or financial condition of the affected districts.

One promising avenue is for local activists to use school district border-drawing laws to pursue metropolitan school district consolidation. While some communities have attempted secession, EdBuild’s research has demonstrated that, by and large, students would benefit from a move in the opposite direction.xx By joining together and creating larger tax bases, districts can even out wealth disparities between neighborhoods and soften the impact of local economic changes. Many cities remain fragmented into a number of school districts. School districts like Edgewood Independent School District in San Antonio or Indianapolis Public Schools would benefit from a larger, more stable tax base if they were to become a part of city- or metro-wide school districts. For example, Edgewood students would receive $3,730 more apiece in local funding if the school district pooled its resources with even just its four immediate neighbors.xxxii

Community activists might also consider how students would benefit if their city school districts were joined with county school districts. It is true that a majority of states have a process in law through which communities may secede from their school district.xxxiii Yet a still larger majority of states offer a means by which school districts may consolidate with their neighbors, opening the door to a shift towards county
districts. Moreover, cities in some states may have an easier path towards countywide consolidation. In many southern states, counties are the default type of school district, but some cities continue to maintain their own districts. There are often significant resource disparities between these city school districts and their surrounding county districts. In these states, city school districts may join the county school district through a process that is distinct and typically less onerous than typical processes for school district merger. In these states, consolidation of city and county school districts could eliminate substantial divides between those school districts and dramatically affect the resources available to millions of students.

Table 1. Southern states with separate process for city/county school district merger

<table>
<thead>
<tr>
<th>State</th>
<th>Process to dissolve city school district</th>
<th>County approval required</th>
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<tbody>
<tr>
<td>Alabama</td>
<td>Agreement between city and county school boards and if voters petition, approval at a referendum (Ala. Code § 16-8-17)</td>
<td>Yes</td>
</tr>
<tr>
<td>Georgia</td>
<td>Voter petition and approval at a referendum in the independent school district (Ga. Code Ann. § 20-2-370)</td>
<td>No</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Action from board of independent school district, approval by the county school board, and if boards disagree, approval at a referendum (Ky. Rev Stat. Ann. § 160.041)</td>
<td>Yes</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Action from city school district, approval by the State Board of Education (N.C. Gen. Stat. Ann. § 115C-68.2)</td>
<td>No</td>
</tr>
<tr>
<td>Tennessee</td>
<td>Action from special school district, approval at a referendum in the special school district, and in some cases, approval by transition committee (Tenn. Code Ann. § 49-2-1002)</td>
<td>Sometimes</td>
</tr>
</tbody>
</table>
State-level reform example: Establishing minimum requirements

State laws around school district borders are, by and large, legacies of an earlier era. From the 1940s to the 1960s, many states, from New York to Kansas to California, pushed to merge thousands of school districts, many of which comprised one-room schoolhouses, into a more modern system. This push for consolidation produced the legal landscape under which school districts are currently organized. States have an opportunity to channel the ambition of this earlier wave of reforms in service of policies that are more responsive to school districts’ current realities. State legislators and advocates could revise processes for district border changes to encourage the drawing of fairer borders and to limit the ability of communities to exacerbate existing inequities through harmful border changes.

One path forward could involve establishing minimum requirements for school districts that reflect current priorities for the public school system. The last wave of systematic modifications to school district borders focused on consolidations to improve efficiency. As a consequence, the present legal landscape is largely indifferent to the questions of funding and diversity that dominate today’s public education discussions. To remedy that, state-level advocates could push for minimum school districts requirements that align with a commitment to equity. Though some states require school districts to include all grades K-12 or have at least a certain number of students, vanishingly few states require districts to meet financial requirements or have any minimum standard for maintaining diverse student bodies. States could enact legislation to mandate changes to current district borders that stand in the way of financial viability or integration. Failing that, states could require that all future voluntary boundary changes move our public school system towards greater equity—for example, states could ensure that territory transfers and, insofar as they exist, school district secessions are subjected to review by a higher-level entity to ensure that they do not have negative effects on district demographics or finances.

Table 2. Current minimum requirements

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Number of states with requirement for school districts generally</th>
<th>Number of state with specific requirement for new school districts</th>
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<tbody>
<tr>
<td>Population requirement</td>
<td>8 states (AZ, AR, CA, ID, KY, OR, SD, WA)</td>
<td>17 states (AL, AK, AZ, AR, IN, IA, ME, MO, NJ, NM, NY, OR, PA, TN, TX, UT, WY)</td>
</tr>
<tr>
<td>Grade level requirement</td>
<td>11 states (DE, ID, IA, ME, MN, NE, NM, NC, OH, OR, SD)</td>
<td>6 states (MT, NM, ND, OH, TN, WY)</td>
</tr>
<tr>
<td>Diversity requirement</td>
<td>No states</td>
<td>2 states (AR, CA)</td>
</tr>
<tr>
<td>Financial requirement</td>
<td>No states</td>
<td>8 states (AK, AZ, CA, NJ, NM, NY, TN, WY)</td>
</tr>
</tbody>
</table>
Ultimately, states are responsible, legally and morally, for ensuring that every student has a well-resourced education. When a community seeks to secede from its school district, or when a struggling district seeks out consolidation to achieve greater sustainability, it acts within the framework of its state's laws around school district borders. Forward-thinking advocates and legislators could reduce funding disparities and promote inclusive, highly effective classrooms by calling for school district borders to be drawn in a way that allows districts to effectively serve their student communities.

Impact litigation example: Challenging border arrangements that leave students behind

After years of advocates pursuing school finance reform in the courts by arguing that school funding amounts are either insufficient or inequitably allocated, there is renewed interest in fresh approaches to school finance litigation. For example, a federal court recently sided with plaintiffs in a "right to read" case that sought to establish a federal right to education on the grounds that poor educational conditions deprive students of the literacy necessary for political participation. As the legal community explores new avenues, school district borders should be considered a prime target for novel litigation efforts.

Since Rodriguez, school finance litigation at the state level has argued that state school funding systems stood in the way of students accessing the kind of public education guaranteed by their states’ constitutions. In the same way that an inequitable or inadequate school funding system may prevent a state from meeting students' constitutional rights, so too do school district borders that limit the ability of students to access funding. When borders define school districts with deeply unequal finances or limit districts to unsustainable tax bases, they deprive students of educational opportunity—and the remedy should involve changes to the borders themselves, or to the laws that govern them, rather than merely changes to school funding.

Many states fail to safeguard students against the kind of school district borders and border changes that have historically been detrimental to disadvantaged communities. In five states, communities may secede to create ever smaller and more inequitable school districts without the need for state approval. Fourteen states allow the transfer of territory between districts with only local action and no state review, potentially allowing affluent communities to move themselves—and their tax bases—to better-resourced districts, leaving their former school districts worse-off and without recourse. Finally, there
School district borders are not natural boundaries. They are political borders that reflect specific histories and policy choices, just like city lines or congressional districts, and they can work to divide communities. In the context of a school funding system rooted in local property taxes, these borders can entrench inequities or mitigate them. Moreover, the school district borders we have today are not immutable; they have been redrawn many times, both as part of broad, systematic efforts and in ways that serve the interests of specific communities. Changing our system of school district borders is both possible and, if we seek to build a more equitable school funding system, necessary.

All too often, arcane state laws on school district boundaries have been leveraged by those seeking an advantage for their local communities, often to the detriment of vulnerable students. This research offers tools to those working for educational equity instead, supporting efforts to reform the school district borders that determine the scope of possibility in education. Local community advocates can push for school district boundary changes that enhance equity. State lawmakers and education advocates can seek more systematic reforms to the laws that govern how school district borders are drawn. And public interest litigation organizations can develop innovative legal strategies that directly address the school district borders that create and entrench school funding inequities.

We’ve tried treating the symptoms for fifty years. It’s time to try for a cure.
APPENDIX: METHODOLOGY

Data Collection

EdBuild contacted state officials in fifty states to solicit guidance on the constitutional provisions and statutes relevant to school district borders. Using Lexis Advance as a research tool, EdBuild reviewed state constitutions, state statutes, administrative code, and state guidance relevant to requirements and changes to school district borders. This included:

- Any constitutional provisions relevant to school district borders
- Indications of the relationship between school district borders and county, city or town boundaries
- Any minimum requirements required to maintain an existing school district or to form a new school district through border change. This may include requirements to maintain a given student population size or to be located in an area with a sufficient general population size; to provide certain grade levels; and/or minimum diversity and funding requirements.
- The process required for any changes to school district boundaries, including consolidation and annexation, dissolution, territory transfer, and the formation of new school districts through secession.

Categorization

Constitutional provisions were included only if they explicitly pertained to school district boundaries. Provisions that mentioned municipal boundaries more generally were not included. Additionally, limitations on private or local laws regarding school district boundaries were not included. This is because these provisions may not have legal force distinguishable from those in other states, as more general state restrictions on private or local laws might also be construed to cover school district boundaries.

Categorizations concerning the relationship between school districts and other jurisdictional boundaries were based on requirements in state code, not on the alignment of school district boundaries with other boundaries in actuality.

Provisions were categorized as minimum requirements for school districts:

- If state law explicitly requires it.
- If state law indicates that school districts would be dissolved or attached to another district for failing to meet it. (Provisions to dissolve school districts that are already functionally nonoperational, such as requirements that the school district have a minimum level of resources}
to operate schools, were not considered to constitute minimum requirements.

- If state law indicates that school districts involved in a border change or school districts formed through border change must meet it. This includes requirements that provide a threshold that a border change must not fall below, e.g. worsening desegregation, even if defining the threshold is left to the approving entity.

Types of boundary changes were defined as follows:

- **Merger**: formation of one school district from multiple school districts, including but not limited to processes described in state law as consolidation, annexation, and dissolution

- **Secession**: formation of a new school district from part of an existing school district

- **Territory transfer**: the transfer of a part of a school district to another district

Changes to municipal boundaries were included as changes to school district borders if state law specified that a change to municipal boundaries would result in changes to school district boundaries.

Approval by a state entity may include approval by either an existing actor of the state government or a state-appointed body. Approval by a vote of the public includes both referenda at regularly scheduled or special elections and votes at town or school board meetings.

Criteria for consideration were included only if a state or regional entity were responsible for approving the border change and the criteria were those that could potentially change the decision of the approving entity. Criteria were not included if they are considered only for the resolution of logistical matters, such as the specific method of division of school district property, but cannot affect the decision as to whether the border change will go forward.
ENDNOTES

1 San Antonio v. Rodríguez, 411 U.S. 1 (1973)


13 EdBuild, Dividing Lines, 2020, edbuild.org/content/dividing-lines/main


15 EdBuild, Dividing Lines, 2020, edbuild.org/content/dividing-lines/main


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