

LOST IN TRANSITION: THE IMPLICATIONS OF SOCIAL CAPITAL FOR HIGHER EDUCATION ACCESS

*Omari Scott Simmons**

The dearth of college counseling in the nation's public schools derails many students as they transition between high school and college. Compared to their more privileged peers with similar academic qualifications, low-income, minority, first-generation, and other vulnerable students are less likely to attend college. When these vulnerable students pursue higher education, they are more likely to attend vocational schools, community colleges, for-profit universities, and less selective four-year colleges. This phenomenon highlights a sorting process in the act of choosing among higher education options that further perpetuates socioeconomic inequality and limits the nation's global competitiveness.

Generally, policymakers employ two approaches to promote college access among vulnerable students: (i) focusing on K–12 academic preparation to close achievement gaps that have a downstream impact on college access; and (ii) preserving college discretion for diversity admissions as well as providing

© 2011 Omari Scott Simmons. Individuals and nonprofit institutions may reproduce and distribute copies of this article in any format, at or below cost, for educational purposes, so long as each copy identifies the author, provides a citation to the *Notre Dame Law Review*, and includes this provision in the copyright notice.

* Associate Professor of Law, Wake Forest University School of Law; Executive Director, Simmons Memorial Foundation, Inc.; LL.M., University of Cambridge, Pembroke College; J.D., University of Pennsylvania; B.A., Wake Forest University. I wish to give special thanks to Wendy Parker; Michael Olivas; Ronald Wright; Jennifer Collins; Sarah L. Watts; Dorothy Brown; Kwasi Asare, Associate Director of Education Technology, U.S. Department of Education; Willie Pearson, Jr., Georgia Tech School of History Technology & Society; Eileen Parsons, UNC School of Education; Charles Wright, Portfolio Manager, Bill & Melinda Gates Foundation; Ilona Holland, Harvard Graduate School of Education; Damon Hewitt, Director, Education Practice Group, NAACP Legal Defense Fund; Shavar Jeffries, School Board Chairman, Newark, New Jersey Public Schools; Danielle Holley-Walker; Eboni Cohen; Earl Smith; and Kami Simmons for their insights and comments. I would like to thank Sally Irvin, Tiffany Chadwick, Gregory Kupka, Matthew Turetzky, Landon Medley, Emile Thompson, and Jon Gasior for their valuable research assistance. Finally, I wish to give special thanks to all of the Simmons Memorial Foundation participants over the past twelve years whose inspiration and achievements made this Article possible.

financial aid to needy students. These approaches, however, yield only marginal returns because they fail to address social capital deficits (SCDs). Social capital reflects the ability of individuals to secure benefits through familial and extra-familial networks. Vulnerable students overwhelmingly lack access to social networks that provide valuable information to navigate the complex college admissions and financial aid processes. And the nation's public schools exacerbate this problem by not providing adequate college counseling support to their most needy students. Nationwide there are approximately 460 students for every high school counselor. In larger school districts, this ratio can rise to more than 700 students per counselor. These alarming statistics threaten to undermine the Obama administration's goal to lead the world in college graduates by 2020. Reaching this ambitious target inevitably depends on increasing the college-going rates of vulnerable students.

In order to address the SCDs that limit higher education access for vulnerable students, this Article proposes an important solution that has been ignored by legal scholars—reforming the college counseling function in American public schools. This Article provides a framework to guide future legislation and reforms targeting SCDs, particularly the future reauthorization of the No Child Left Behind Act.

INTRODUCTION	208
I. SOCIAL CAPITAL AND HIGHER EDUCATION ACCESS	213
A. <i>Under-examined Higher Education Access Challenges for Vulnerable Students</i>	213
1. The Inadequate K–16 Bridge Between Secondary School Academic Achievement and College Enrollment	213
2. College Under-Matching Among High Achieving Vulnerable Students.....	215
a. Lessons from Chicago Public Schools.....	218
b. Lessons from North Carolina Public Schools ..	219
3. The Higher Education Sorting Pattern	222
B. <i>The Significance of Social Capital</i>	225
1. Defining Social Capital.....	225
a. Sources of Social Capital	225
b. Relationship to Other Forms of Capital	227
2. The Impact of SCDs on Vulnerable Student College Choice	228
II. LIMITATIONS OF EXISTING LEGAL APPROACHES.....	230
A. <i>A Critical Strategy and Policy Gap</i>	230
B. <i>Legislation and Programs Targeting College Access for Vulnerable Students</i>	234
1. The Pathways to College Act	235

- 2. The Coaching Our Adolescents to College Heights Act (COACH Act) 236
- 3. TRIO Programs 237
- III. A VITAL SOLUTION: REFORMS TAILORED TO ADDRESS SOCIAL CAPITAL DEFICITS 239
 - A. *Enhancing College Counseling Capabilities in Public High Schools Nationwide* 239
 - 1. Existing Impediments to Effective College Counseling 241
 - a. Counseling Resource Restraints 241
 - b. Competing Counselor Roles 242
 - c. Counselor Professional Development and Expertise 243
 - 2. An Integrated Self-Standing College Counseling Function 244
 - B. *College Access Data Tracking and Reporting* 247
 - C. *Complementary College Advising* 249
 - D. *Tapping Additional Pipelines: Community Colleges and Beyond* 250
- CONCLUSION 250

I want all our children to go to schools worthy of their potential—schools that challenge them, inspire them, and instill in them a sense of wonder about the world around them. I want them to have the chance to go to college—even if their parents aren’t rich. And I want them to get good jobs: jobs that pay well and give them benefits like health care, jobs that let them spend time with their own kids and retire with dignity.

President Barack H. Obama¹

1 Barack Obama, *What I Want for You—and Every Child in America*, PARADE MAG., Jan. 18, 2009, at 4, available at <http://www.parade.com/news/2009/01/barack-obama-letter-to-my-daughters.html>; see also Grutter v. Bollinger, 539 U.S. 306, 331–32 (2003) (“[D]iffusion of knowledge and opportunity . . . must be accessible to all individuals regardless of race or ethnicity. . . . Effective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized.”); see also George H.W. Bush, Remarks at a White House Ceremony Commemorating the 25th Anniversary of the Civil Rights Act (June 30, 1989), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=17235#axz z1YiYoMzzJ> (“It is time now to move forward on a broader front, to move forward into the century’s final decade with a civil rights mission that fully embraces every deserving American, regardless of race—whether women, children, or the aged; whether the disabled, the unemployed, or the homeless.”).

INTRODUCTION

The dearth of college counseling in the nation's public schools derails many students as they transition between high school and college. Compared to their more privileged peers with similar academic qualifications, low-income, minority, first-generation, and other vulnerable students are less likely to attend college. When these vulnerable students pursue higher education, they are more likely to attend vocational schools, community colleges, for-profit universities, and less selective four-year colleges.² This phenomenon highlights a sorting process in the act of choosing among higher education options that further perpetuates socioeconomic inequality and limits the nation's global competitiveness.³

Existing legal and regulatory methods of addressing higher education disparities among vulnerable students, although helpful, merely preserve the status quo because they fail to adequately address structural inequality.⁴ Generally, policymakers employ two approaches to promote college access for vulnerable students: (i) focusing on K–12 academic preparation to close achievement gaps that have a downstream impact on college access; and (ii) preserving college discretion for diversity admissions as well as providing financial aid to needy students. These approaches, however, fail to provide an adequate bridge between high school and college because their effectiveness depends on the happening of a single act—the submission of an application for college admission—which should not be taken for granted. More specifically, existing approaches inadequately address social capital deficits (SCDs).

2 For purposes of this Article, “vulnerable students” is an umbrella term that refers to students who face one or more risk factors that may limit their chances of success. These risk factors include, but are not limited to: lower socioeconomic status, historical disenfranchisement, geographic isolation (e.g., rural and urban), minority status and ethnicity, and limited parental educational attainment. Vulnerability has both prospective and retroactive dimensions. See MCKINSEY & CO., *THE ECONOMIC IMPACT OF THE ACHIEVEMENT GAP IN AMERICA'S SCHOOLS 12* (2009), available at http://www.mckinseysociety.com/downloads/reports/Education/achievement_gap_report.pdf (finding that out of 170,000 freshman attending “Tier 1” elite colleges, only nine percent represent the entire bottom half of the socioeconomic status spectrum). This discussion does not suggest that various higher education alternatives lack value, but only to recognize the disparity.

3 See NICHOLAS LEMANN, *THE BIG TEST* 6 (1999) (“A thick line runs through the country, with people who have been to college on one side of it and people who haven't on the other. This line gets brighter all the time.”); *infra* Part I.A.2. (discussing the correlation between higher education and increased economic outcomes).

4 See discussion *infra* Part II.

Social capital reflects the ability of individuals to secure benefits through familial and extra-familial networks.⁵ Vulnerable students overwhelmingly lack access to social networks that provide valuable information to navigate the complex college admissions and financial aid processes. Yet the nation's public schools exacerbate this problem by not providing adequate college counseling support to their most needy students, particularly academically successful students who demonstrate college potential. Nationwide there are approximately 460 students for every high school counselor.⁶ In larger school districts, this ratio can rise to more than 700 students per counselor.⁷ These alarming statistics threaten to undermine the Obama administration's goal to lead the world in college graduates by 2020. Reaching this ambitious target inevitably depends on increasing the college-going rates of vulnerable students.⁸ Existing academic reform propos-

5 Definitions of social capital vary, but all agree that the concept describes what one accumulates based on the relationships that he or she has built with others. See, e.g., NAN LIN, *SOCIAL CAPITAL* 19 (2001) (defining social capital as “investment in social relations with expected returns in the marketplace”); ROBERT D. PUTNAM, *BOWLING ALONE* 296 (2000) (“A considerable body of research dating back at least fifty years has demonstrated that trust, networks, and norms of reciprocity within a child’s family, school, peer group, and larger community have wide-ranging effects on the child’s opportunities and choices and, hence, on his behavior and development.”); Alejandro Portes, *Social Capital: Its Origins and Applications in Modern Sociology*, 24 ANN. REV. SOC. 1, 2 (1998) (defining social capital as the positive consequences for the individual and the community created by involvement and participation in groups); see also Pierre Bourdieu, *The Forms of Capital*, in HANDBOOK OF THEORY AND RESEARCH FOR THE SOCIOLOGY OF EDUCATION 241, 248–49 (J.E. Richardson ed., 1986) (“Social capital is the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalized relationships of mutual acquaintance and recognition—or in other words, to membership in a group—which provides each of its members with the backing of the collectivity-owned capital, a ‘credential’ which entitles them to credit, in the various senses of the word.” (endnote omitted)); James S. Coleman, *Social Capital in the Creation of Human Capital*, 94 AM. J. SOC. S95, S98 (Supp. 1988) (“Social capital . . . is not a single entity but a variety of different entities, with two elements in common: they all consist of some aspect of social structures, and they facilitate certain actions of actors—whether persons or corporate actors—within the structure.”); L.J. Hanifan, *The Rural School Community Center*, 67 ANNALS AM. ACAD. POL. & SOC. SCI. 130, 130 (1916) (defining social capital as “goodwill, fellowship, mutual sympathy and social intercourse among a group of individuals and families who make up a social unit”).

6 JEAN JOHNSON ET AL., *PUB. AGENDA, CAN I GET A LITTLE ADVICE HERE?* 3 (2010), available at <http://www.publicagenda.org/files/pdf/can-i-get-a-little-advice-here.pdf>.

7 *Id.*

8 See MCKINSEY & CO., *DETAILED FINDINGS ON THE ECONOMIC IMPACT OF THE ACHIEVEMENT GAP IN AMERICA’S SCHOOLS* 67 (2009), available at http://www.mckinseyonsociety.com/downloads/reports/Education/detailed_achievement_gap_findings.pdf (finding that ethnic minorities are estimated to become the majority of U.S.

als targeting college readiness, as reflected in curriculum enhancements and test scores, will only have a modest impact if significant numbers of vulnerable students either fail to attend college or select higher education settings that do not match their academic potential.⁹

U.S. Secretary of Education Arne Duncan acknowledges that college access disparities “are actually worsening.”¹⁰ Only a fraction of students from the bottom half of the socioeconomic distribution attend the nation’s top colleges.¹¹ Even “[s]tudents from low-income families who score in the top testing quartile are no more likely than their lowest-scoring peers in the wealthiest quartile to attend college.”¹² In addition, Duncan notes, “gaps in college participation by ethnic [and racial] groups have grown wider, rather than shrinking

school-age children by 2030, a benchmark that has already been reached in California and Texas). This demographic shift “enhances the relevance of the achievement gap.” *Id.*; see also WILLIAM G. BOWEN ET AL., *CROSSING THE FINISH LINE* 9 (2009) (“It will not do to concentrate efforts on improving outcomes of college-bound upper-class white students, who already have a much higher rate of educational attainment than do other students—if for no other reason than that there are not going to be enough of them.”).

9 See e.g., ALLIANCE FOR EXCELLENT EDUC., *MEANINGFUL MEASUREMENT* 1–8 (L.M. Pinkus ed., 2009), available at <http://www.all4ed.org/files/MeaningfulMeasurement.pdf> (recommending reforms targeting college and career readiness); U.S. DEP’T OF EDUC., *A BLUEPRINT FOR REFORM* 7–12 (2010) (discussing the need for student college and career readiness as reflected in curriculum alignment and test performance).

10 Arne Duncan, U.S. Sec’y of Educ., *Crossing the Next Bridge: Remarks on the 45th Anniversary of “Bloody Sunday” at the Edmund Pettus Bridge, Selma, Alabama* (Mar. 8, 2010), available at <http://www2.ed.gov/news/speeches/2010/03/03082010.html>; see also KATI HAYCOCK, EDUC. TRUST, *PROMISE ABANDONED* 5 (2006) (finding that only nine percent of students from the bottom socioeconomic status (SES) quartile acquire a bachelor’s degree before age twenty-four, compared to seventy-five percent of students in the top SES quartile); Alex Richards, *Census Data Show Rise in College Degrees, but Also in Racial Gaps in Education*, CHRON. HIGHER EDUC., Jan. 23, 2011, available at <http://chronicle.com/article/Census-Data-Reveal-Rise-in/126026/> (examining 2009 U.S. Census Bureau data and concluding that “28 percent of Americans 25 and older had at least [a] four-year degree” while “the rate for black Americans was just 17 percent, and for Hispanic Americans only 13 percent”).

11 See Anthony P. Carnevale & Stephen J. Rose, *Socioeconomic Status, Race/Ethnicity, and Selective College Admissions*, in *AMERICA’S UNTAPPED RESOURCE* 101, 106 (Richard D. Kahlenberg ed., 2004) (finding that only three percent of students at selective colleges and universities come from the bottom socioeconomic quartile, compared to seventy-four percent from the richest quartile); Karin Fischer, *Top Colleges Admit Fewer Low-Income Students*, CHRON. HIGHER EDUC., May 2, 2008, at A1 (finding that “the proportion of financially needy undergraduates” actually dropped between 2004–2005 and 2006–2007 at the best-endowed public flagship and private campuses in the nation).

12 Duncan, *supra* note 10.

[over the past two decades].”¹³ This stratification is both a function of general college attendance rates among various demographic groups and the type of higher education setting in which students enroll. These disparities in higher education outcomes form a significant dimension of the achievement gap that cannot be ignored.¹⁴

In order to address the SCDs that limit higher education access for vulnerable students, this Article proposes a vital solution that has been ignored by legal scholars—reforming the college counseling function in American public schools.¹⁵ Specifically, this Article provides a framework to guide future legislation and reforms targeting SCDs, especially reauthorization of the Elementary and Secondary School Act, otherwise known as the No Child Left Behind Act (NCLB).¹⁶ If effectively implemented alongside extant reform efforts, this Article’s proposed reforms will function as a catalyst, markedly expanding higher education access among vulnerable students.

Part I of this Article explores the vital connection between social capital and higher education access. First, this Part examines higher education access challenges facing vulnerable students, namely: (i) the inadequate K–16 bridge, (ii) college under-matching among vulnerable students, and (iii) the higher education sorting pattern. Second, this Part explores the significance of social capital and how the failure to address social capital deficits limits vulnerable students’ access to selective higher education institutions and to higher education altogether.

13 *Id.* A recent study by the Education Trust found that sixty percent of white students who enter college earn a bachelor’s degree within six years compared to only forty-nine percent of Latino students and forty percent of black students. Press Release, Educ. Trust., Reports Reveal Colleges with the Biggest, Smallest Gaps in Minority Graduation Rates in the U.S. (Aug. 9, 2010), *available at* <http://www.edtrust.org/dc/press-room/press-release/reports-reveal-colleges-with-the-biggest-smallest-gaps-in-minority-gradu>.

14 The achievement gap has been assessed in various contexts, but is normally associated with the comparison of academic success and educational attainment between minority and non-minority students or between low-income and more affluent students. The concept has also been extended to chart discrepancies between domestic students and students from foreign nations. Closing achievement gaps between groups is just one of multiple educational goals.

15 *But see* JOHNSON ET AL., *supra* note 6, at 3; Mary Beth Marklein, *Coaching Can Help Qualified Students Aim Higher*, USA TODAY, June 30, 2010, *available at* http://www.usatoday.com/news/education/2010-06-30-betteradvising30_CV_N.htm; Jacques Steinberg, *Graduates Fault Advice of Guidance Counselors*, N.Y. TIMES, Mar. 3, 2010, at A20.

16 No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified as amended in scattered sections of 20 U.S.C.).

Part II examines how existing reforms inadequately address SCDs, weakening their effect on higher education stratification. First, this Part describes a critical legal strategy and policy gap. Existing legal reforms promoting college access are focused either at the K–12 or the college level, an approach which fails to provide a comprehensive K–16 bridge. This piecemeal approach makes it especially difficult for vulnerable students to convert academic achievement into college access and completion. Second, this Part analyzes proposed federal legislation and existing government programs targeting college access for vulnerable students, including: (i) the Pathways to College Act,¹⁷ (ii) the Coaching Adolescents to College Heights Act¹⁸ (COACH Act), and (iii) Federal TRIO Programs. These proposals and programs, although beneficial, are insufficient without broader reform efforts.

Part III proposes a core solution to address SCDs that impede higher education access for vulnerable students—reforming college counseling within public schools. The nation’s public schools must have an integrated self-standing college counseling apparatus to address the college planning and selection needs of vulnerable students. Next, this Part proposes key supplemental reforms to further enhance college access for vulnerable students, namely: (i) college access data tracking and reporting, (ii) complementary college advising, and (iii) tapping additional student pipelines such as community college students. These proposed reforms offset SCDs by providing multiple layers of support for vulnerable students.

Finally, this Article concludes by prompting legal observers and policymakers to make college access and the elimination of SCDs a priority in the broader education reform discussion. Specifically, this Article calls upon lawmakers to adopt its proposals and principles in any future reauthorization of NCLB or other piecemeal reform efforts.

17 Pathways to College Act, S. 3326, 110th Cong. (2008).

18 Coaching Our Adolescents for College Heights Act, S. 3027, 110th Cong. (2008).

I. SOCIAL CAPITAL AND HIGHER EDUCATION ACCESS

A. *Under-examined Higher Education Access Challenges for Vulnerable Students*

1. The Inadequate K–16 Bridge Between Secondary School Academic Achievement and College Enrollment

Each year a significant number of students who could attend a four-year college within the U.S. do not. Among students who qualify for college, those from vulnerable backgrounds are “less likely to apply to and enroll in four-year colleges than their more advantaged peers.”¹⁹ A study by Christopher Avery and Thomas Kane comparing Boston public school students participating in the College Opportunity and Career Help (COACH) program with students from suburban Boston area high schools lends insight.²⁰ The COACH program places students from Harvard University in Boston public high schools to assist high school seniors with future plans and navigating the college and financial aid application process.²¹ Approximately nineteen percent of the COACH students in the study had a parent who was a college graduate compared to eighty-three percent of the suburban students.²² Notably, forty-seven percent of the suburban students had a parent with a graduate degree.²³

Avery and Kane’s study found only mild disparities in terms of college aspirations between the COACH students and the suburban students, yet found significant differences in how the more vulnerable COACH students pursued steps in the college selection and application process.²⁴ Compared to their suburban counterparts, COACH

19 MELISSA RODERICK ET AL., UNIV. CHI. CONSORTIUM ON CHI. SCH. RESEARCH, FROM HIGH SCHOOL TO THE FUTURE: MAKING HARD WORK PAY OFF 31 (2009), available at <http://ccsr.uchicago.edu/publications/Making%20Hard%20Work%20Pay%20Off.pdf>.

20 See Christopher Avery & Thomas J. Kane, *Student Perceptions of College Opportunities: The Boston COACH Program*, in COLLEGE CHOICES 355, 356 (Caroline M. Hoxby ed., 2004).

21 See *id.* at 361 (“In 2001–2002, a total of thirty-four coaches worked with a total of 282 high school seniors in three schools, with each coach working with the same set of students throughout the academic year.”).

22 *Id.* at 363.

23 *Id.*

24 See *id.* at 364–65. Avery and Kane found the following disparities:

While more than 97 percent of the [suburban] students had already taken the SAT by October of the senior year, less than one-third of COACH students had taken the test. While more than half of the [suburban] students had spoken with a guidance counselor four or more times over the past year, less than 20 percent of COACH students had done so. While 83 percent of

students began completing milestones in the application process (e.g., standardized tests, college visits, etc.) at a much later stage, that is, fall of their senior year.²⁵ Not surprisingly, the different approaches to the application process had a profound impact on college outcomes among the two groups of students. Although “nearly two-thirds of the COACH students stated at the start of the academic year that they intended to enroll in a four-year college in 2002–2003, less than 25 percent of all COACH students did so”; instead, twenty-one percent “either did not graduate from high school or decided not to continue education at all in 2002–2003.”²⁶ On the other hand, approximately ninety-three percent of the suburban students “who stated initially that they wanted to enroll in a four-year college did so.”²⁷ These discrepancies in outcomes cannot adequately be explained by differences in academic qualifications, because even “among [COACH] students with at least a 3.0 grade point average (meaning that they probably could be admitted to one of the public four-year colleges in Massachusetts), only 65 percent of those who originally intended to go to a four-year college did so.”²⁸

The COACH study sought to provide the inner city students with the same level of college guidance that the suburban schools provided and measure the effect of this guidance on increasing college-going rates among the inner-city students.²⁹ The Harvard students spent one hour a week for eight months counseling the high school seniors, helping them select colleges, write college essays, arrange campus visits, and file for financial aid.³⁰ By the third year of the program, the number of COACH students attending postsecondary institutions had risen from sixty percent to seventy-seven percent at one of the high schools studied.³¹ The study acknowledges the potential of both early and later remedial intervention during the senior year to help academically qualified vulnerable students close college admissions and

[suburban] students had visited a college and 91 percent had the application for the institution they were “most likely to attend,” only 35 percent of COACH students had visited a college, and just slightly more than half had the application for the institution they were most likely to attend.

Id. at 364–66.

25 *See id.* at 387.

26 *Id.* at 366–67.

27 *Id.* at 367.

28 *Id.* at 356.

29 *See* Stephen Burd, *Bridging the Gap*, CHRON. HIGHER EDUC., Aug. 9, 2002, available at <http://chronicle.com/article/Bridging-the-Gap/25524/>.

30 *Id.*

31 *See id.*

enrollment gaps between themselves and more affluent suburban students.³²

The Boston COACH study also reflects a systemic failure in the U.S. educational system—the failure to provide vulnerable students with information and resources concerning the college application and selection process, making these students less likely to achieve higher education outcomes that match their academic potential.

2. College Under-Matching Among High Achieving Vulnerable Students

Even when vulnerable students do apply to college, they often “under-match” in the admissions process. In this context, “matching” describes whether a student enrolls in a college with a selectivity level matching the selectivity level of the type or category of colleges “the student would likely have been accepted to, given his or her high school qualifications.”³³ Steering vulnerable students toward more selective colleges and universities that match their potential is important because studies reveal that student prospects of success may be constrained when attending a less selective institution.³⁴ For example, students of all racial backgrounds are more likely to obtain a degree on time by attending a selective institution compared to similarly qualified students who attend less selective institutions.³⁵ Attending a

32 See Avery & Kane, *supra* note 20, at 387–89 (finding that students who attended several COACH sessions were able to “catch up” on the admissions process with minimal effects despite an initial setback).

33 MELISSA RODERICK ET AL., UNIV. CHI. CONSORTIUM ON CHI. SCH. RESEARCH, FROM HIGH SCHOOL TO THE FUTURE: POTHOLES ON THE ROAD TO COLLEGE 5 (2008). This concept does not suggest that “every student should attend the most selective institution for which he or she might qualify,” see BOWEN ET AL., *supra* note 8, at 100, but that match is one important component to consider in college selection, see RODERICK ET AL., *supra*, at 71.

34 See WILLIAM G. BOWEN & DEREK BOK, THE SHAPE OF THE RIVER 128 (1998) (reviewing longitudinal studies that found that the economic payoff of attending a selective institution is significant, even after attempting to control for student ability); *id.* at 118, 129 (finding that students likely benefit from selective colleges because they “tend to have more resources, better facilities, more generous financial aid, and more faculty members who have strong reputations in their fields,” in addition to the value of having “classmates of exceptional ability, who set high standards of intellectual excellence and offer challenging examples to emulate”).

35 See Sigal Alon & Marta Tienda, *Assessing the “Mismatch” Hypothesis: Differences in College Graduation Rates by Institutional Selectivity*, 78 SOC. EDUC. 294, 305 (2005). Research indicates that college match has a particularly significant effect on minority, low-income, and first generation college students. See RODERICK ET AL., *supra* note 19, at 53; Alon & Tienda, *supra*, at 309 (“Minority students’ likelihood of graduation increases as the selectivity of the institution attended rises.”). While under-matched

more selective school may also yield other important benefits, such as: (i) economic premiums in the labor market, (ii) elevating student career ambitions as a result of having access to exceptional alumni and peers, (iii) helping students gain access to graduate and professional schools (i.e., often top-tier programs), (iv) increasing civic engagement, and (v) building social capital.³⁶ These benefits are often heightened for vulnerable students.³⁷ Therefore, discrepancies in higher education outcomes are not merely a product of whether a student attends college overall, but also of what type of higher education environment one enters—selective four-year, less selective four-year, for-profit, community college or vocational schools. Higher education outcomes have both qualitative and quantitative dimensions that cannot be overlooked.

Notably, discrepancies in higher education outcomes are even significant among high-achieving vulnerable students, who participate in rigorous Advanced Placement (AP) and International Baccalaureate (IB) curricular programs.³⁸ Generally, these rigorous top-tier cur-

students attending less selective schools may tend to attain a moderately higher class rank than similar students at highly selective schools, the combination of higher graduation rates and future career benefits afforded to students of highly selective schools may make for an advantageous trade-off. See BOWEN ET AL., *supra* note 8, at 108; *supra* note 34 and accompanying text.

36 See BOWEN & BOK, *supra* note 34, at 129; Dominic J. Brewer et al., *Does It Pay to Attend an Elite Private College? Cross-Cohort Evidence on the Effects of College Type on Earnings*, 34 J. HUM. RESOURCES 104, 114 (1999) (finding that graduates of elite private colleges earned almost forty percent more per year than graduates of less selective public colleges); Eric Eide et al., *Does It Pay to Attend an Elite Private College? Evidence on the Effects of Undergraduate College Quality on Graduate School Attendance*, 17 ECON. EDUC. REV. 371, 371–72 (1998) (finding that attending an elite college significantly increases the probability of pursuing graduate study at a prestigious research institution).

37 Economic returns for minorities at selective universities have been found to be up to several times greater than those for white students, leading Bowen and Bok to conclude that “providing opportunities for minority students at high-quality institutions has been a good investment.” BOWEN & BOK, *supra* note 34, at 128; see also Stacy Berg Dale & Alan B. Krueger, *Estimating the Payoff to Attending a More Selective College: An Application of Selection on Observables and Unobservables*, 117 Q.J. ECON. 1491, 1524–25 (2002) (suggesting that increasing the amount of vulnerable students at selective institutions “may raise national income, as these students appear to benefit most from attending a more elite college”).

38 Students are identified as high achieving if they are enrolled in Advanced Placement courses or International Baccalaureate programs. See RODERICK ET AL., *supra* note 19, at 2. The Advanced Placement program is administered by The College Board and offers college-level courses in the high school setting in a variety of subject areas. See DIANE RAVITCH, *EDSPEAK* 14 (2007). The International Baccalaureate program is described as “[a] rigorous international program of study that originated in Switzerland and has spread to more than 100 nations.” *Id.* at 124. High

ricular programs enhance the likelihood that students are both prepared for and will apply to a selective college or university.³⁹ And these rigorous programs, to a certain extent, signal to colleges that a student is college material.⁴⁰ Yet many of these high achieving students are not able to capitalize on the potential benefits of selective colleges, irrespective of their academic ability, because they are not able to overcome their SCDs and knowledge deficits concerning the complex college selection process. Strong qualifications do “not alter the reality that these students often come from families and neighborhoods that are less able to provide concrete support and knowledge about the college admissions process.”⁴¹ Although high achieving students, in theory, are “in a position to conduct wider college searches that include more selective colleges, many do not understand the broad range of colleges to which their qualifications afford them access.”⁴² A national study by Pallais and Turner indicates that low-income students are less likely than their more advantaged peers with the same SAT scores to apply to private institutions, flagship public universities, and especially to top-tier liberal arts colleges.⁴³ Low-income, first-generation, black, and Latino students often “lack the structured support necessary to navigate the application process for [more selective top-tier] colleges that tend to have more complicated and specialized application procedures.”⁴⁴ Moreover, vulnerable students may fail to secure the financial aid for which they qualify because they lack sufficient knowledge of personal finance and financial aid opportunities.⁴⁵

school students in either program may earn college credit by scoring on a proficient level on a final examination. *See id.* at 14, 124.

39 *See* RODERICK ET AL., *supra* note 19, at 10. Vulnerable students are under-represented in these advanced programs. *See, e.g.,* MCKINSEY & CO., *supra* note 8, at 32 (finding that less than one percent of black and Latino students are taking reading and math at an advanced level by twelfth grade).

40 *See* RODERICK ET AL., *supra* note 19, at 10.

41 *Id.* at 3.

42 *Id.* Thirty-eight percent of IB students studied did not enroll in a four-year college, even though nearly all were likely to have been accepted. *Id.* at 32.

43 *Id.* at 38 (citing Amanda Pallais & Sarah Turner, *Opportunities for Low-Income Students at Top Colleges and Universities: Policy Initiatives and the Distribution of Students*, 59 NAT'L TAX J. 357 (2006)).

44 *Id.* at 3. Unlike the majority of institutions, many top-tier colleges “have strict application deadlines in January or February,” “have a range of application options—Priority and Early Decision, Early Action, or Fast Track options—that are not common among the typical colleges,” and “have very early financial aid deadlines.” *Id.* at 40. This is problematic because college planning guidance “is more likely to be organized around the typical time frame rather than this accelerated one.” *Id.*

45 *See id.* at 3, 47, 50.

These outcomes are troubling because they are not simply a product of underperforming students unable to take advantage of college opportunities, but of highly qualified students slipping through the cracks. New groundbreaking research indicates under-matching among high achieving vulnerable students is a problem of national significance. Recent studies of Chicago and North Carolina public high school students illustrate how highly qualified vulnerable students suffer “[i]n the absence of structured support or guidance from adults at their schools or from other role models who could shepherd them through the postsecondary process” and consequently “struggle to complete . . . basic step[s] toward four-year college enrollment.”⁴⁶ These studies further reveal that college selection is not the mere purchase of a commodity product, but a decision where the institutional setting—vocational school, community college, less selective four-year college, selective four-year college—may bring about quite divergent outcomes.⁴⁷ In broader terms, these studies reveal a disturbing trend in American higher education—the formation or reinforcement of two distinct higher education systems, that is, a selective higher education market serving the privileged and a less selective market serving the underprivileged.⁴⁸

a. Lessons from Chicago Public Schools

In 2009, the Consortium on Chicago School Research published research highlighting under-matching by vulnerable Chicago Public School (CPS) students.⁴⁹ The CPS study addressed the experiences of CPS students generally, and more specifically, the experience of students with strong academic qualifications.⁵⁰ The CPS study found that less than fifty percent of students from academically advanced programs actually enroll in colleges that match their qualifications.⁵¹

46 *Id.* at 32.

47 *See id.* at 53; *supra* notes 34–36 and accompanying text.

48 *See* Anthony P. Carnevale and Jeff Strohl, *Our Economically Polarized College System: Separate and Unequal*, CHRON. HIGHER EDUC., Sept. 25, 2011, available at <http://chronicle.com/article/Our-Economically-Polarized/129094/>.

49 *See* RODERICK ET AL., *supra* note 19.

50 *See generally* JENNY NAGAOKA ET. AL., CTR. FOR AM. PROGRESS, BARRIERS TO COLLEGE ATTAINMENT 4 (2009), available at <http://www.studentclearinghouse.org/highschools/pdfs/ChicagoSchools.pdf> (discussing ways human and social capital have affected efforts to bridge the gap between students’ goals and results); RODERICK ET AL., *supra* note 19 (analyzing the schools that certain students are qualified to attend and where they actually apply and enroll); RODERICK ET AL., *supra* note 33 (analyzing student qualifications, such as grades and test scores, and their role in shaping access to college).

51 *See* RODERICK ET AL., *supra* note 19, at 52.

In lieu of attending a more selective college, these students default to traditional feeder patterns for CPS (i.e., the six most popular colleges for CPS students), which tend to be less selective.⁵² Equally surprising is the number of students with strong academic qualifications who fail to even apply to a four-year college: “approximately 10 percent make an early decision not to attend a four-year college, and approximately one-fifth never apply to one.”⁵³

The CPS study contends that the under-matching phenomenon among vulnerable students is, in part, the result of knowledge deficits concerning college admissions and highlights the need to build a knowledge base among high achieving first generation and low-income students to make their “hard work pay off.”⁵⁴ These information gaps are, in large part, attributable to SCDs. Knowledge concerning various types of college environments, however, is only part of the problem. According to the CPS study, it is the lack of an understanding of a complex admissions and financial aid process where students fall short.⁵⁵ In light of these gaps, the CPS study identifies the need for reform at both the high school and college levels to assist in post-secondary student transition.⁵⁶

b. Lessons from North Carolina Public Schools

In their recent book *Crossing the Finish Line*, Bowen, Chingos, and McPherson share the results of their study analyzing application and college enrollment trends among North Carolina public high school seniors in 1999.⁵⁷ Their study employs similar methodology as the CPS study and shows the same pattern of “under-matching” among students who would presumptively be admitted to selective state universities. Bowen, Chingos, and McPherson studied 6217 students with GPA and SAT score combinations that made them presumptively eligi-

52 *See id.* at 3.

53 *Id.* at 31–32.

54 *See id.* at 57 (“[S]tudents need one final set of skills—what some have termed ‘college knowledge’—to make this hard work pay off. For these students and their families, successfully participating in college search, application, and choice requires technical knowledge and expertise. Building a sophisticated knowledge base in first-generation college students requires that high schools do more than simply set expectations that students go to college: they must also fill the gaps in students’—and their parents’—understanding of college search, application, and selection.”).

55 *See id.* at 39, 47, 50.

56 *See, e.g., id.* at 58 (listing the types of support schools can provide to students navigating the admissions and financial aid process).

57 The data pool consisted of 60,000 seniors who attended more than 300 high schools. BOWEN ET AL., *supra* note 8, at 93.

ble (i.e., a ninety percent likelihood) for admission at North Carolina's most selective state universities—the University of North Carolina at Chapel Hill and North Carolina State University.⁵⁸ Of these highly qualified students, more than forty percent did not attend selective state universities. Instead thirty percent of these students enrolled at a less selective four-year college, one percent attended a historically black college or university (HBCU), three percent attended a two-year college or community college, and nine percent did not attend college altogether.⁵⁹ Under-matching cannot be explained by cost because all state institutions in North Carolina have relatively low tuition.

Parental education and family incomes are strongly correlated with under-matching.⁶⁰ Students from better educated and more affluent families generally attended more selective universities. For students with families in the top income quartile, the under-match rate was only twenty-seven percent, meaning nearly three-fourths attended a selective college.⁶¹ Similarly, two-thirds of the students from families with a parent holding a graduate degree attended a selective college.⁶² On the other hand, the data for students from low-income families and those from families with no previous experience with higher education is alarming. Students from families in the bottom income quartile under-matched at a rate of fifty-nine percent, whereas students from families with no previous higher education experience under-matched at a rate of sixty-four percent.⁶³ The study further reveals that the socioeconomic status (SES) factors of parental education and family income, when controlling for other factors, had independent effects on under-matches. For example, parental education and family income were more important than characteristics of the high school a student attended with respect to under-matching.⁶⁴

Similar to the CPS study, the North Carolina Public School (NCPS) study identified differences in college graduation rates for students attending the more selective state universities. Students who under-matched to less selective colleges were fifteen percent less likely to graduate in six years.⁶⁵ Most importantly, for purposes of this Arti-

58 *See id.* at 101–02.

59 *Id.* at 102.

60 *See id.* at 103.

61 *Id.* at 104.

62 *Id.*

63 *Id.*

64 *See id.* at 105–06.

65 *Id.* at 107; *cf.* RODERICK ET AL., *supra* note 19, at 52–54 (compiling various studies regarding the effect of college matching on graduation rates).

cle, the study found the under-match problem concentrated at the application stage where only thirty-six percent of students who under-matched even applied to UNC-Chapel Hill or NC State.⁶⁶ Also in accordance with the CPS study, the NCPS study cites the lack of information, planning, and encouragement as potential factors in under-matching.⁶⁷

The CPS and NCPS findings are undoubtedly disturbing and reveal a large scale national issue. They are, however, paradoxically promising because they suggest the under-matching phenomenon can be curtailed by strategic interventions to address information deficits resulting from SCDs.⁶⁸ Simply put, all students “should be made aware of the full range of higher educational opportunities available to someone with his or her credentials and then encouraged to reach for the most challenging opportunity that is a realistic option for the student.”⁶⁹ Match is simply one aspect of college choice and there are certainly legitimate reasons to consider a “safer” and “more comfortable” less selective institution.⁷⁰ But, according to the growing volume of studies, the college decisions of vulnerable students tend to be more ad hoc and haphazard.⁷¹ Consequently, nationwide efforts are needed to improve the process by which students are sorted into higher educational settings that often fail to encourage them to realize their full potential.⁷² Reforming public school and college counseling is a key element to address achievement gaps in college access and completion.⁷³

66 BOWEN ET AL., *supra* note 8, at 105. Twenty-eight percent who under-matched chose to attend a less selective school once they were already accepted at UNC-Chapel Hill or NC State, and eight percent of under-matched students were not offered admission to at least one of these universities. *Id.*

67 *See id.* at 104.

68 *See id.* at 104–05 (suggesting that the effective guidance is the key to “increas[ing] social mobility and augment[ing] the nation’s human capital”).

69 *Id.* at 101.

70 *See, e.g.,* WILLIAM C. SYMONDS, ROBERT B. SCHWARTZ, & RONALD FERGUSON, HARVARD GRAD. SCH. OF EDUC., *PATHWAYS TO PROSPERITY: MEETING THE CHALLENGE OF PREPARING YOUNG AMERICANS FOR THE 21ST CENTURY* (2011), available at http://www.gse.harvard.edu/news_events/features/2011/Pathways_to_Prosperty_Feb2011.pdf (promoting high quality vocational training as an alternative higher education pathway, in addition to four-year colleges).

71 *See* BOWEN ET AL., *supra* note 8, at 101.

72 *See id.* at 110.

73 *See* discussion *infra* Part III.A.

3. The Higher Education Sorting Pattern

The United States' higher education system is arguably the world's best from multiple vantage points. A greater proportion of American students enroll in higher education than do students in most other developed countries.⁷⁴ Moreover, students in the United States can ostensibly choose from an assortment of higher education institutional settings such as public universities, private universities, for-profit colleges, community colleges, and vocational schools.

Despite its strengths, however, the U.S. higher education system is characterized by a troublesome sorting pattern where vulnerable students cluster at less selective four-year colleges, community colleges, for-profit colleges, and vocational schools that may differentially empower them in socioeconomic terms; meanwhile, more privileged students cluster at selective four-year colleges.⁷⁵ Less selective higher education options are without question an important piece of the higher education access puzzle for vulnerable groups, but these options are not a panacea for addressing socioeconomic disparities. For example, there are serious questions concerning the relative labor market value of for-profit and community college degrees when compared to traditional four-year colleges.⁷⁶ Moreover, community college and for-profit college students are more likely to be minorities, tend to be less affluent, receive less grant-based financial aid, and finance a larger proportion of their higher education.⁷⁷

74 See NAT'L CTR. FOR PUB. POLICY & HIGHER EDUC., MEASURING UP 2008, 5–6 (2008). Yet, the United States' historical edge has been steadily declining. *Id.*

75 Although vulnerable students have shown the greatest increase in the *desire* to attain a bachelor's degree, they remain much more likely to ultimately end up attending a two-year college, a for-profit college, or no college at all when compared to better-situated students who shared the goal of attending a four-year college. See NAGAOKA ET AL., *supra* note 50, at 4.

76 See STAFF OF S. COMM. ON HEALTH, EDUC., LABOR & PENSIONS, 111TH CONG., EMERGING RISK? 11 (2010) (finding that the combination of poor student outcomes and high loan default rates of for-profit institution graduates "calls into question the taxpayers return on their multi-billion-dollar investment, and leaves many unanswered questions with regard to whether a sufficient number of students receive an education that provides them with the knowledge and skills they need to obtain jobs to repay their student debt"); Elizabeth Monk-Turner, *The Occupational Achievements of Community and Four-Year College Entrants*, 55 AM. SOC. REV. 719, 724 (1990) (finding that students who first attend community college generally reach a lower occupational status than those who first attend a four-year college).

77 See MAMIE LYNCH ET AL., EDUC. TRUST, SUBPRIME OPPORTUNITY 2–3 (2010), available at http://www.edtrust.org/sites/edtrust.org/files/publications/files/Sub_prime_report_1.pdf ("The rapid rise of the for-profit industry has largely been driven by the aggressive recruitment of low-income students and students of color . . . [who]

Recently, for-profit institutions have come under scrutiny for alleged “predatory” practices.⁷⁸ Supporters of for-profit college education contend that they offer access opportunities and flexibility for underrepresented groups that traditional institutions fail to offer.⁷⁹ But significant problems may outweigh these purported benefits. For-profit institutions tend to be almost twice as expensive as state universities, they receive over twenty-seven billion dollars in federal financial aid, their degrees or certificates often have limited value in the marketplace, and two out of every five student loans are in default fifteen years into repayment.⁸⁰ Although only seven percent of all college students attend for-profit schools, their students account for half of all loan defaults.⁸¹ This pattern of leading low-income individuals into borrowing money they cannot repay to purchase an apparently overpriced asset is generating well-deserved attention from lawmakers and state attorney generals.⁸² In the summer of 2011, the Obama adminis-

make up 50 and 37 percent of students at for-profits, respectively.” (endnote omitted)).

78 See *id.* at 1 (comparing “underregulated for-profit colleges that value double-digit stock growth and shareholder returns over student success” to subprime mortgage lenders because the schools’ “aggressive recruitment tactics . . . encourage students to take on debt beyond their means in exchange for the promise of ‘choice’ and ‘opportunity’”); see also Melanie Hirsch, Recent Development, *What’s in a Name? The Definition of an Institution of Higher Education and Its Effect on For-Profit Postsecondary Schools*, 9 N.Y.U. J. LEGIS. & PUB. POL’Y 817, 821–22 (2006) (“[S]eventy-four percent of institutional fraud cases over the past six years have involved proprietary schools. Critics . . . cite a litany of abuses, including ‘admitting unqualified students, inflating graduation and job-placement rates, lying about accreditation, [and] paying bonuses to employees for signing up new pupils.’” (last alternation in original) (quoting Samuel G. Freedman, *Tucked in Katrina Relief, a Boon for Online Colleges*, N.Y. TIMES, Oct. 12, 2005, at B8)). One arguably exploitative strategy involves intensely recruiting the homeless, who “are desirable because they qualify for federal grants and loans, which are largely responsible for the prosperity of for-profit colleges,” but may have increased difficulty managing educational debt because they “are more likely to suffer from mental illness and substance abuse than the general population.” Daniel Golden, *The Homeless at College*, BLOOMBERG BUSINESSWEEK (Apr. 30, 2010, 11:00 AM), http://www.businessweek.com/magazine/content/10_19/b4177064219731.htm.

79 See Bill Pepicello, Letter to the Editor, *For-Profit University*, N.Y. TIMES, Feb. 18, 2007, at C11.

80 See Sam Dillon, *Troubles Grow for a University Built on Profits*, N.Y. TIMES, Feb. 11, 2007, at A1; Claudio Sanchez, *Morning Edition: For-Profit Colleges Fight Limits on Student Loans* (NPR radio broadcast June 9, 2010) (transcript and audio recording available at <http://www.npr.org/templates/story/story.php?storyId=127586513>).

81 See Sanchez, *supra* note 80.

82 See Program Integrity: Gainful Employment, 75 Fed. Reg. 43,616 (proposed July 26, 2010) (to be codified at 34 C.F.R. pt. 668) (proposing regulations that would restrict the flow of taxpayer money to for-profit colleges); Michael L. Lomax, Comment to *For-Profits and New Regulations*, NAT’L J. ONLINE (June 21, 2010, 7:35 AM),

tration issued new Gainful Employment Regulations that aim to curb abuse in the for-profit industry.⁸³

As state budgets decrease, vulnerable students attending community colleges also have reasons for concern because community college funding and resources will likely be cut in greater proportion than four-year public universities due to the inability to offset costs by charging higher tuition to out-of-state students as well as the proclivity of legislators to appease middle and upper class voters, who presumably favor four-year colleges.⁸⁴ By opting for community college in a down economy, where more selective options are available and attainable, vulnerable students may curtail their own socioeconomic advancement.

Although the existence of a higher education sorting pattern has been recognized, the processes that contribute to this outcome have remained less clear. The ensuing discussions of SCDs and the dearth of college counseling in the nation's public schools fill this important

<http://education.nationaljournal.com/2010/06/forprofits-and-new-regulations.php#1595663>; Michael Barbaro, *New York Attorney General Is Investigating Trump's For-Profit School*, N.Y. TIMES, May 20, 2011, at A18 (noting that the New York Attorney General has opened investigations into at least five for-profit education companies in that state); Tom Loftus, *State Sues For-Profit College*, LOUISVILLE COURIER-JOURNAL, Sept. 28, 2011, at A1 (reporting that the Kentucky Attorney General has brought his third suit in three months against for-profit colleges); Press Release, The Office of Attorney General Lori Swanson, Attorney General Lori Swanson Brings Lawsuit to Recover Taxpayer-Financed Student Financial Aid Paid to Two For-Profit Colleges in Minnesota (Sept. 22, 2011), available at <http://www.ag.state.mn.us/Consumer/PressRelease/110922StudFinAid.asp> (describing recent litigation brought by the Attorney Generals of Minnesota, Florida, Indiana, Kentucky, Illinois, and California, against EMC, the second largest for-profit college company in the nation).

83 See Program Integrity: Gainful Employment—Debt Measures, 76 Fed. Reg. 113, 34386, 113, 34386 (June 13, 2011) (to be codified at 34 C.F.R. pt. 668).

84 See OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2012, at 71 (2011) (proposing a \$264 million budget cut to “Career and Technical Education and Tech Prep”); Sara Hebel, *Unequal Impact*, CHRON. HIGHER EDUC., May 30, 2003, at A21 (discussing why community colleges feel the brunt of budget cuts to higher education). This practice may also crowd out vulnerable in-state students at selective universities during economic recessions and periods of budget shortfalls. See, e.g., Kelly Field, *House Republicans’ Spending Bill for Remainder of 2011 Would Cut Pell Grant by 15 Percent*, CHRON. HIGHER EDUC., Feb. 13, 2011, available at <http://chronicle.com/article/House-Republicans-Spending/126356/> (“Republicans in the U.S. House of Representatives have unveiled a spending bill for the remainder of the 2011 fiscal year that would . . . trim the maximum Pell Grant by 15 percent . . . [reducing the amount of assistance given] to the neediest students . . . and make 1.7 million students ineligible for Pell grants [at all]. . . . If enacted, the reductions would be the largest cut in student-aid funds in the history of the Pell Grant program.”).

gap in the legal literature. Moreover, the following discussion will illustrate that it is not sufficient to explain the differential higher education outcomes among privileged and underprivileged students merely in terms of family or student preferences because “[t]he cause for our preference is not the same thing as the reason why we *should* prefer it.”⁸⁵

B. *The Significance of Social Capital*

1. Defining Social Capital

Today, the popularity of social networking sites such as Facebook, LinkedIn, and Twitter reflect the power of social capital.⁸⁶ Although social capital has a multiplicity of definitions,⁸⁷ the emerging consensus definition centers on “the ability of actors to secure benefits by virtue of membership in social networks or other social structures.”⁸⁸ Similarly, this Article employs the social capital concept to help explain the higher education benefits accruing to individuals by virtue of their participation in social networks.⁸⁹

a. Sources of Social Capital

Social capital is a value-neutral concept derived from a range of sources—strong ties to family and communities as well as weaker extra-familial ties with organizations, groups, and individuals.⁹⁰ Famil-

85 JOHN DEWEY, *EXPERIENCE AND EDUCATION* 34 (Simon & Schuster 1997) (1938).

86 But the influence of social capital is not a recent phenomenon; it has a unique place in American history. Alexis de Tocqueville acknowledged the existence of social capital long before it emerged in the social science literature:

Americans of all ages, all conditions, and all minds are constantly joining together in groups. In addition to commercial and industrial associations in which everyone takes part, there are associations of a thousand other kinds: some religious, some moral, some grave, some trivial, some quite general and others quite particular, some huge and others tiny. . . . Nothing, in my view, is more worthy of our attention than America’s intellectual and moral associations.

ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 595, 599 (Arthur Goldhammer trans., Library of America 2004) (1835); *see also* MARTHA MINOW, *IN BROWN’S WAKE* 159–62 (2010) (discussing the role of social capital and networking in building a sense of commonality among groups).

87 *See supra* note 5 and accompanying text.

88 Portes, *supra* note 5, at 6.

89 *See id.* at 3. A review of the sociological literature “distinguish[es] three basic functions of social capital, applicable in a variety of contexts: (a) as a source of social control; (b) as a source of family support; (c) as a source of benefits through extrafamilial networks.” *Id.* at 9.

90 *See id.* at 12, 15.

ial SCDs place vulnerable youth at greater risk of securing less favorable higher education outcomes.⁹¹ Individuals may, however, compensate for the lack of “strong” family or community ties geared toward higher education with “weaker” extra-familial ties and vice versa.⁹² It is helpful to conceptualize each individual as possessing an allocation of social capital both positive and negative. The ratio of positive versus negative social capital among individuals and groups varies. The appropriate question is not simply whether an individual has social capital, but whether someone has sufficient positive social capital to offset the negative.

Consider the following illustration in the higher education context: Student A has negative social capital characterized by limited higher education emphasis and knowledge within their home and limited access to college information via immediate family relationships. On the other hand, Student B, although having familial SCDs with respect to higher education comparable to Student A, also has positive social capital characterized by extra-familial ties with school counselors, teachers, college access programs, students, and mentors who emphasize higher education attainment and provide a mechanism through which student B can acquire valuable college information. Here, Student B’s positive social capital derived from extra-familial networks can offset other SCDs.

A wealth of social science research demonstrates the importance of extra-familial relationships (or outside networks) on higher education outcomes, the job market, and beyond.⁹³ Yet youth from poor urban and isolated rural communities often lack social connections beyond their immediate family and community that would enable them to acquire information regarding valuable educational and career prospects.⁹⁴ In the urban context, the flight of middle-class families has significantly drained social capital from inner city populations.⁹⁵ And even where certain ethnic and cultural enclaves might

91 For example, youth from single parent households tend to have lower social capital due to the absence of a second at-home parent and more frequent residential changes, leading to fewer ties to adults in the surrounding community. *See id.* at 11; *see also* Coleman, *supra* note 5, at S110–11 (asserting that social capital is greatest in homes where one parent is able to make child rearing his or her primary task).

92 *See* Portes, *supra* note 5, at 14.

93 *See id.* at 12.

94 *See id.* at 13–14.

95 *See id.* at 14 (asserting that the populations who remain in the inner city experience “extremely high levels of unemployment and welfare dependency”); Loïc J.D. Wacquant & William Julius Wilson, *The Cost of Racial and Class Exclusion in the Inner City*, 501 ANNALS AM. ACAD. POL. SOC. SCI. 8, 22–23 (1989) (“[N]ot only do residents of extreme-poverty areas have fewer social ties but also . . . they tend to have ties of

serve as vital resources for community members seeking to establish a business, such ties are often limited in geography and scope and may not extend to higher education goals.⁹⁶ Similarly, rural geographic isolation, which is sometimes greater than urban isolation, contributes to SCDs.⁹⁷ These circumstances inevitably contribute to less desirable higher education outcomes among vulnerable students.⁹⁸ In theory, reforms targeting SCDs could serve as a proxy for family and other valuable connections.⁹⁹ Public schools have the potential to function as social networking stations where students and parents receive valuable information enabling them to convert their academic preparation into college admission. But neither the nation's public schools nor the existing policy framework adequately address the impact of SCDs on higher education access.

b. Relationship to Other Forms of Capital

Most modern social science explanations for discrepancies in academic success, leaving controversial genetic explanations aside, revolve around "capital deficiency" theories.¹⁰⁰ Social capital is valuable in isolation, but is particularly important for its relationship and function as a catalyst to securing other valued forms of capital such as human capital, financial capital, and cultural capital.¹⁰¹ Although

lesser social worth, as measured by the social position of their partners, parents, siblings, and best friends.").

96 See Portes, *supra* note 5, at 13 (explaining that in areas such as New York's Chinatown, Miami's Little Havana, and Los Angeles's Koreatown, contacts may provide resources such as "start-up capital . . . tips about business opportunities, access to markets, and a pliant and disciplined labor force").

97 See Rachel E. Durham & P. Johnelle Smith, *Nonmetropolitan Status and Kindergarteners' Early Literacy Skills: Is There a Rural Disadvantage?*, 71 RURAL SOC. 625, 633 (2006) (listing factors that encumber academic attainment in rural populations).

98 See *id.* at 628 ("[E]ducational attainment of adults living in rural areas has consistently lagged behind their urban counterparts.").

99 See discussion *infra* Part III.

100 See DOUGLAS S. MASSEY ET AL., *THE SOURCE OF THE RIVER* 5 (2003) (describing capital deficiency as the theory that poor academic performance is caused by "lack [of] resources needed for academic success").

101 Human capital is "the skills, abilities, and knowledge possessed by . . . individuals. Education itself is a form of human capital, and years of schooling is its most common indicator." *Id.* (citation omitted). College educated parents, "who themselves possess large quantities of human capital[,] are in a better position to supervise and manage its acquisition by others" because "[t]hey understand the process of schooling better, are less deferential to teachers and school authorities, and take a more active role in monitoring how their children are being taught." *Id.* at 5–6.

Financial capital, the most recognized form of capital, includes: "income, assets, and various monetary instruments that together comprise a household's economic

social capital is more intangible in character than other forms of capital such as human or financial capital, it is not less important.¹⁰² Social scientists describe the important catalyst function of social capital as follows:

People gain access to social capital through membership in networks and institutions and then convert it into other forms of capital (such as education) to improve or maintain their position in society. When children are connected through ties of kinship or friendship to people who can help them prepare for college—socially, psychologically, culturally, and academically—then those ties constitute a source of social capital.¹⁰³

Thus, social capital networks are particularly important in the education context because students can receive information that will enable them to capture other forms of capital helpful for higher education success and beyond.

2. The Impact of SCDs on Vulnerable Student College Choice

Legal measures to promote equity in higher education access among vulnerable groups often fail to address SCDs.¹⁰⁴ Policymakers

resources.” *Id.* at 5. Without question, students from more wealthy families possess key advantages in the college preparation and selection process. These students’ parents can purchase an array of high quality academic inputs—“not simply good schooling, private tutoring, and extracurricular training, but comfortable housing, good nutrition, and access to intellectual stimuli.” *Id.* Additionally, wealthy parents may employ “an army of specialists to help their offspring overcome whatever learning disabilities they face.” *Id.*

Cultural capital “refers to a knowledge of the norms, styles, conventions, and tastes that pervade specific social settings and allow individuals to navigate them in ways that increase their odds of success.” *Id.* at 6. These cultural advantages may enable privileged students to navigate college and professional environments with greater ease. One longitudinal study revealed that students at elite colleges are more comfortable and confident when they are well versed in Euro-American high culture. *See id.* Black Americans are less likely to be conversant in Euro-American fine arts than white Americans, which may lead to black students feeling alienated at selective universities. *See id.*; Paul DiMaggio & Francie Ostrower, *Participation in the Arts by Black and White Americans*, 68 *SOC. FORCES* 753, 761, 772–73 (1990). But these cultural claims can be controversial and should be approached with caution because of the difficulty discerning where cultures begin and end, the process of cultural syncretism, and the danger of stereotypical categorization. *See generally* William Darity, Jr., *Intergroup Disparity: Why Culture Is Irrelevant*, 29 *REV. BLACK POL. ECON.* 77 (2002) (arguing against cultural determinism—the notion that some groups produce economic success at greater rates than others because of beneficial cultural attributes).

102 *See* Portes, *supra* note 5, at 7.

103 MASSEY ET AL., *supra* note 100, at 6 (citations omitted).

104 *See* Portes, *supra* note 5, at 4.

and legal scholars often underemphasize the role of social context or “organic factors” in shaping individual achievement. Earnestly addressing SCDs requires softening romanticized notions of individual merit “that in a free society each individual will rise to the level justified by his or her competence,” a perspective that “conflicts with the observation that no one travels that road entirely alone.”¹⁰⁵ When vulnerable students who demonstrate early academic potential do not develop college expectations to the level justified by their ability, a “talent loss” occurs.¹⁰⁶ This talent loss is most prevalent among low-SES individuals and students of color.¹⁰⁷

Making matters worse, high school counselors generally tend to recommend less selective community colleges or vocational schools at high schools where most graduates enter the workforce as opposed to seeking a four-year degree.¹⁰⁸ Meanwhile, counselors are more likely to encourage students of higher SES to attend more selective four-year universities.¹⁰⁹ High school counselor influence (or the lack thereof) is particularly troubling because research indicates that vulnerable students are more reliant on high school counselors and teachers in the college selection and search process than their more privileged peers.¹¹⁰ Consequently, ineffective counseling steers vulnerable students into a stratified higher education system that may differentially empower them in economic, social, cultural, and career terms.¹¹¹

The college choices of vulnerable students are complex and framed by an array of social, economic, and environmental constraints.¹¹² Social capital theory is a useful tool for examining the role

105 Glenn C. Loury, *A Dynamic Theory of Racial Income Differences*, in *WOMEN, MINORITIES, AND EMPLOYMENT DISCRIMINATION* 153, 176 (Phyllis A. Wallace & Annette M. LaMond eds., 1977). Due to differences in social capital, “absolute equality of opportunity . . . is an ideal that cannot be achieved.” *Id.*

106 See Sandra L. Hanson, *Lost Talent: Unrealized Educational Aspirations and Expectations Among U.S. Youths*, 67 *SOC. EDUC.* 159, 159 (1994).

107 See *id.* at 178–80 (finding that lower SES youths were more than twice as likely to experience talent loss as their upper SES counterparts were); Stephen B. Plank & Will J. Jordan, *Effects of Information, Guidance, and Actions on Postsecondary Destinations: A Study of Talent Loss*, 38 *AM. EDUC. RES. J.* 947, 949 (2001).

108 See Laura W. Perna et al., *The Role of College Counseling in Shaping College Opportunity: Variations Across High Schools*, 31 *REV. HIGHER EDUC.* 131, 134 (2008).

109 See *id.*

110 See RODERICK ET AL., *supra* note 33, at 45; Perna et al., *supra* note 108, at 132.

111 See ANDY FURLONG & FRED CARTMEL, *HIGHER EDUCATION AND SOCIAL JUSTICE* 1–2 (2009).

112 See Laura W. Perna, *Studying College Access and Choice: A Proposed Conceptual Model*, in *HIGHER EDUCATION* 99, 113 (John L. Smart ed., 2006) (finding that these

of networks on college access and explaining certain aspects of the achievement gap.¹¹³ Relationships with family members and extra-familial institutional agents such as counselors, teachers, social service workers, clergy, and even other students play a pivotal role in the college application and selection process.¹¹⁴ Social capital's influence on student post-secondary educational choices is manifested in the following ways:

Discussions between parents and child[ren] about school events, encouragement from parents to prepare for the Scholastic Aptitude Test (SAT) or American College Testing program (ACT), conversations between parents and school personnel about a student's post-secondary plans, assistance from the school to a student in preparing college applications, [conversations with other college-going students, participation in non-profit college access programs,] and parents' [as well as students'] use of information sources to learn about financial aid [and scholarship] opportunities.¹¹⁵

The above examples illustrate how the transmission of knowledge through networks helps prevent talent loss among vulnerable students.¹¹⁶

II. LIMITATIONS OF EXISTING LEGAL APPROACHES

A. *A Critical Strategy and Policy Gap*

Existing legal strategies and reform efforts to enhance higher education access for vulnerable groups, although helpful, are unlikely to significantly change the status quo because such measures often fail to address SCDs.¹¹⁷ These existing legal approaches to college access generally occur at the K–12 and college levels.

Common examples of K–12 reforms include: (i) school integration, (ii) adequacy lawsuits, (iii) school choice mechanisms, and (iv)

constraints shape how each individual “subconsciously define[s] what is a ‘reasonable’ [higher education] action”).

113 See Plank & Jordan, *supra* note 107, at 950; see also Perna, *supra* note 112, at 112 (describing competing views that social capital's role is either “in communicating the norms, trust, authority, and social controls that an individual must understand and adopt in order to succeed,” or in working as a “mechanism that the dominant class uses to maintain its dominant position”).

114 See Plank & Jordan, *supra* note 107, at 950–51.

115 *Id.* at 951.

116 See *id.* at 974.

117 The difficulty measuring social capital should in no way diminish its importance or explanatory power. See, e.g., Loury, *supra* note 105, at 153.

accountability reforms such as No Child Left Behind.¹¹⁸ Generally, these K–12 approaches assume that improving student test scores, curriculum, school integration, and overall student academic performance will inevitably and adequately address existing higher education disparities. But, as a wealth of studies illustrate, K–12 inputs do not necessarily equal higher education outcomes among vulnerable students.¹¹⁹ Policymakers must ask an important question: What is the return on K–12 investments in academic preparation, testing for academic proficiency, college readiness standards, and other curriculum enhancements if students ultimately pursue less selective or no higher education options altogether? To a degree, some observers have overestimated the impact of free-market-inspired reform measures such as school competition and high-stakes testing to address downstream higher education disparities. And they have forgotten to build a bridge for vulnerable students to cross between secondary school and college.¹²⁰ A regulatory framework that fails to account for intra-school and sub-institutional factors such as SCDs is unlikely to address

118 See DIANE RAVITCH, *THE DEATH AND LIFE OF THE GREAT AMERICAN SCHOOL SYSTEM* 8, 15 (2010) (discussing the No Child Left Behind Act); Kimberly Jenkins Robinson, *The Case for a Collaborative Enforcement Model for a Federal Right to Education*, 40 U.C. DAVIS L. REV. 1653 (2007) (same). See generally James Forman, Jr., *The Rise and Fall of School Vouchers: A Story of Religion, Race, and Politics*, 54 UCLA L. REV. 547 (2007) (discussing school choice plans); Goodwin Liu, *Education, Equality, and National Citizenship*, 116 YALE L.J. 330 (2006) (same); Michael Heise, *Adequacy Litigation in an Era of Accountability*, in *SCHOOL MONEY TRIALS* 262 (Martin R. West & Paul E. Peterson eds., 2007) (discussing adequacy litigation); Wendy Parker, *Connecting the Dots*: Grutter, *School Desegregation, and Federalism*, 45 WM. & MARY. L. REV. 1691 (2004) (discussing school integration); Kimberly Jenkins Robinson, *The Constitutional Future of Race-Neutral Efforts to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools*, 50 B.C. L. REV. 277 (2009) (same); James E. Ryan, Brown, *School Choice, and the Suburban Veto*, 90 VA. L. REV. 1635 (2004) (discussing school choice plans); James E. Ryan, *The Limited Influence of Social Science Evidence in Modern Desegregation Cases*, 81 N.C. L. REV. 1659 (2003) (discussing the convergence of school integration and adequacy litigation); James E. Ryan, *The Perverse Incentives of the No Child Left Behind Act*, 79 N.Y.U. L. REV. 932 (2004) [hereinafter Ryan, *Perverse Incentives*] (discussing the No Child Left Behind Act); James E. Ryan, *Schools, Race, and Money*, 109 YALE L.J. 249 (1999) (discussing school integration); James E. Ryan, *Standards, Testing, and School Finance Litigation*, 86 TEX. L. REV. 1223 (2008) (discussing adequacy litigation); James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 YALE L.J. 2043 (2002) (discussing school choice plans); James E. Ryan, Comment, *The Supreme Court and Voluntary Integration*, 121 HARV. L. REV. 131 (2007) (discussing school integration).

119 See discussion *supra* Part I.A.2.

120 See RAVITCH, *supra* note 118, at 149–61 (asserting that normal educational tools become warped when reshaped for determining free-market-style success or failure, through such methods as high-stakes testing).

structural inequities and may actually heighten higher education disparities.

Common examples of college level access-related reforms include: (i) preferential diversity admissions, (ii) Ten Percent and related admissions plans, (iii) federal financial aid programs, and (iv) progressive college-sponsored financial aid programs.¹²¹ Generally, these college level approaches suffer from two potential issues—an applicant pool issue and a selection issue. With regard to the former pool-related issue, college level approaches often assume that when colleges have ample discretion to build a diverse class of students or when significant financial aid is available this will lead to desirable higher education outcomes for vulnerable students. Yet sufficient numbers of vulnerable students are not in college applicant pools and even if they decide to apply to college they tend to target less selective institutions that differentially empower them compared to their more privileged peers.¹²² The latter selection-based issue with college level

121 See generally Danielle Holley & Delia Spencer, *The Texas Ten Percent Plan*, 34 HARV. C.R.-C.L. L. REV. 245 (1999) (discussing the Texas Ten Percent plan); Mexican Am. Legal Def. & Educ. Fund, *Blend It, Don't End It: Affirmative Action and the Texas Ten Percent Plan After Grutter and Gratz*, 8 HARV. LATINO L. REV. 33 (2005) (same); Michael A. Olivas, *Constitutional Criteria: The Social Science and Common Law of Admissions Decisions in Higher Education*, 68 U. COLO. L. REV. 1065 (1997) (discussing diversity admissions); Michael A. Olivas, *The Political Economy of the DREAM Act and the Legislative Process: A Case Study of Comprehensive Immigration Reform*, 55 WAYNE L. REV. 1757 (2009) (discussing state legislative initiatives creating college financial aid programs that benefit undocumented immigrant students); Lani Guinier, Comment, *Admissions Rituals As Political Acts: Guardians at the Gates of Our Democratic Ideals*, 117 HARV. L. REV. 113 (2003) (discussing diversity admissions); Karin Fisher, *Top Colleges Admit Fewer Low-Income Students*, CHRON. HIGHER EDUC., May 2, 2008, at A1 (discussing progressive institutional financial aid programs). Regarding federal financial aid, Title IV of the Higher Education Opportunity Act supplies grants, loans, and work-study programs based on financial need, academic merit or specialized field of study. Higher Education Opportunity Act, Pub. L. No. 110-315, 122 Stat. 3078, 3188 (2008) (codified as amended in scattered sections of 20 U.S.C.). For examples of progressive college-sponsored financial aid programs see *Financial Aid Office*, HARVARD, <http://www.fao.fas.harvard.edu/icb/icb.do> (last visited Sept. 23, 2011) (providing, inter alia, admitted students whose families earn less than \$60,000 receive a full, need-based scholarship); *Who Qualifies for Aid?*, PRINCETON, http://www.princeton.edu/admission/financialaid/how_it_works/who_qualifies/ (last visited Sept. 23, 2011) (providing generous grants on a sliding scale where “[e]very student application is reviewed individually and many financial factors, not only income, are considered”); *Financial Aid & Costs*, WELLESLEY COLLEGE, <http://web.wellesley.edu/web/Dept/SFS> (last visited Sept. 23, 2011) (“meet[ing] 100 percent of each student’s demonstrated need,” with an average scholarship grant that is “one of the most generous in the country”).

122 See Anthony P. Carnevale & Stephen J. Rose, *Socioeconomic Status, Race/Ethnicity, and Selective College Admissions*, in AMERICA’S UNTAPPED RESOURCE 101, 136 (Richard D.

reforms concerns greater social stratification and elite-self-replication.¹²³ College level reforms often operate on the assumption that institutional good faith alone will prompt universities to consider diversity and changing demographics when rendering admissions and financial aid decisions.¹²⁴ A danger with this perspective, however, is that the lack of transparency concerning diversity admissions could also become the enemy of access for vulnerable populations when diversity becomes an “aesthetic fad” or “a fig leaf to hide a commitment to the status quo.”¹²⁵ Rhetorical commitments to diversity, in its many forms, do not always match reality. For example, an already low proportion of low-income students (i.e., usually much less than ten percent) at the nation’s best endowed public flagship and private uni-

Kahlenberg ed., 2004) (“[A]s many as 300,000 [students] with the apparent potential to achieve relatively high SAT-equivalent scores do not attend a four-year college.”).

123 See Guinier, *supra* note 121, at 196; see also C. WRIGHT MILLS, *THE POWER ELITE* 62–70 (1956) (discussing the role of elite educational institutions as custodians and curators for the traditions of the wealthy, ensuring the smooth transfer of social and political power to the sons and daughters of the privileged); MITCHELL L. STEVENS, *CREATING A CLASS* (2007) (arguing that elite colleges are a mechanism through which upper class parents transfer social positions to their children); Goodwin Liu, *Race, Class, Diversity, Complexity*, 80 NOTRE DAME L. REV. 289, 301 (2004) (“Whether out of institutional habit or conscious policy, institutions like Harvard have little incentive—indeed, a disincentive—to admit a large number of poor or middle-class students.”). But see Richard H. Fallon, Jr., *Affirmative Action Based on Economic Disadvantage*, 43 UCLA L. REV. 1913, 1927 n.47 (1996) (describing affirmative action based on economic disadvantage as a race-neutral method for ameliorating elite self-replication).

124 See Guinier, *supra* note 121, at 197; see also Charles R. Lawrence III, *Two Views of the River: A Critique of the Liberal Defense of Affirmative Action*, 101 COLUM. L. REV. 928, 950 (2001) (explaining liberal defense of affirmative action).

125 Guinier, *supra* note 121, at 196; see also Eboni S. Nelson, *Examining the Costs of Diversity*, 63 U. MIAMI L. REV. 577, 602 (2009) (“[A]dherence to racial preferences in order to achieve diversity goals represents . . . a status quo that has relied upon racial integration and minority representation to fulfill the promise of *Brown*. While such reliance has indeed provided educational access for many minority students, it has not been tremendously successful in providing equal educational opportunities for the vast majority of minority students.” (footnote omitted)). See ROBERT J. STERNBERG, *COLLEGE ADMISSIONS FOR THE 21ST CENTURY* (2010). Perspectives vary on the Court’s acknowledgment of the need for diversity. Compare Guinier, *supra*, at 196 (“There is a caution . . . voiced by the very different dissents of Justices Ginsburg and Thomas [in *Grutter*]. . . . that elite self-replication is the problem, not affirmative action. In this sense, sponsored mobility will be co-opted by elites in the same way contest mobility was.”), with Goodwin Liu, *Brown, Bollinger, and Beyond*, 47 HOW. L.J. 705, 742–43 & n.214 (2004) (noting “*Grutter*’s keen awareness of the contemporary social context that gives education its importance,” as exemplified in the Court’s acknowledgment that “the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints” (quoting *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003))).

versities actually decreased between 2004–2005 and 2006–2007.¹²⁶ These decreases in the proportion of low-income students ironically coincided with the increased adoption of progressive financial aid grant programs to assist low-income students.¹²⁷

Collectively, extant reform efforts at the K–12 and college levels are without question helpful; however, they do not provide an adequate bridge between high school and college. The effectiveness of these approaches is usually contingent upon the happening of a single act—the submission of an application for college admission—which should not be taken for granted. This blind spot highlights a significant policy gap that ignores how vulnerable students are unable to convert high school achievement into college enrollment. Providing a bridge through the proposals provided herein would enhance the overall effectiveness of existing reform efforts.

*B. Legislation and Programs Targeting College
Access for Vulnerable Students*

Although education reform is largely state driven, the federal government plays a key role. The federal government has several important tools at its disposal to influence education reform at the state and local levels, namely: (i) funding through formulas, competitive grant programs, and other mechanisms; (ii) collaboratively shaping legislation with non-federal actors; (iii) using its “pulpit” to articulate standards and to influence the broader adoption of reform proposals; and (iv) more extreme measures such as litigation.

A number of federal legislative proposals and programs specifically target college access for vulnerable students. These innovative proposals and programs attempt to address SCDs, but, standing alone, are unable to address the significant knowledge and resource gaps

¹²⁶ See Karin Fischer, *Top Colleges Admit Fewer Low-Income Students*, CHRON. HIGHER EDUC., May 2, 2008, at A1.

¹²⁷ See *id.*; see also *supra* note 121 (citing examples of progressive financial aid programs). Meanwhile, legacies make up approximately ten to twenty-five percent of the student body at selective institutions. See Michael Hurwitz, *The Impact of Legacy Status on Undergraduate Admissions at Elite Colleges and Universities*, 30 ECON. EDUC. REV. 480, 484 (2011); Richard D. Kahlenberg, *10 Myths About Legacy Preferences in College Admissions*, CHRON. HIGHER EDUC., (Sept. 22, 2010), available at <http://chronicle.com/article/10-Myths-About-Legacy/124561/>. Additionally, a recent study found that legacy applicants have an admissions edge of over twenty percentage points at highly selective institutions. See *id.*

between vulnerable students and their privileged counterparts. Examples of these proposals are provided below.¹²⁸

1. The Pathways to College Act

In July 2008, Senator Richard Durbin (D-IL) introduced the Pathways to College Act, in order to increase the college-going rates of all students.¹²⁹ This legislation targets the role of the high school counselor and the structural barriers to quality counseling with a competitive grant program that allows eligible schools to use grant funds to provide: (i) professional development for high school counselors related to postsecondary advising; (ii) one-on-one counselor-student meetings and the development of a postsecondary plan for each student; (iii) information for students and parents on the college applications process, financial aid, and preparing for college; and (iv) a school wide plan to enhance the college-going culture within schools.¹³⁰ The legislation also requires grant recipients to track data that leads to increased college-going rates (e.g., college applications sent, Federal Application for Free Student Aid (FAFSA) forms completed, AP tests taken, etc.) and externally verified school-wide college enrollment data.¹³¹ Passage of the Pathways to College Act would be a step in the right direction. However, competitive grant programs such as the Obama administration's Race to the Top initiative¹³² have been criticized for not reaching large numbers of needy students or the neediest school districts compared to programs whose funds are distributed on a formula basis.¹³³ But, on the other hand, these com-

128 The following reforms are not an exhaustive list. Other reforms such as the College Access and Completion Innovation Fund under the Student Aid and Fiscal Responsibility Act (SAFRA), Pub. L. No. 111-152, §§ 2101–2213, 124 Stat. 1029, 1071–81 (2009) are omitted for brevity purposes.

129 See Pathways to College Act, S. 3326, 110th Cong. (2008). The bill has been introduced during the past two Congressional sessions, but has failed to make it out of committee.

130 See *id.*; see also NAT'L ASS'N FOR COLL. ADMISSION COUNSELING, TALKING POINTS: THE PATHWAYS TO COLLEGE ACT (2008), available at http://www.nacacnet.org/LegislativeAction/Recommendations/Documents/Talking%20Points_Pathways.pdf (explaining the Pathways to College Act).

131 See S. 3326, § 3(i)–(j).

132 American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, §§ 14005(d)(4)(A), 14006(a)(1), 123 Stat. 115, 282–83.

133 Seven leading civil rights groups combined forces to oppose competitive grants, stating:

If education is a civil right, children in “winning” states should not be the only ones who have the opportunity to learn in high-quality environments. . . . [T]he Race to the Top Fund currently impacts only 2.5% of the

petitive grant programs promote cooperative federalism, which recognizes the need for greater collaboration and interaction between federal, state, and local actors in achieving meaningful reforms.¹³⁴ Also, the competitive grant funding mechanism has the potential to promote democratic experimentalism whereby states, districts, and schools serve as laboratories for innovation, share results, and help identify college counseling best practices that later could serve as the basis for a national reform model.¹³⁵

2. The Coaching Our Adolescents to College Heights Act (COACH Act)

Another relevant legislative proposal concerns a federal effort to place recent college graduates into low- and middle-income schools to act as college counselors and to create a college-going culture. These “coaches” would address the risk of talent loss among high achieving

students in the United States eligible for free and reduced lunch, 3% of the nation’s Black students, and less than 1% of Latino, Native American, and Hmong students. . . . If states with large communities of color such as California, Louisiana, Mississippi, and Texas are left behind in any competitive grant process . . . the majority of low-income and minority students will be left behind and, as a result, the United States will be left behind as a global leader.

LAWYERS COMM. FOR CIVIL RIGHTS UNDER LAW ET AL., *FRAMEWORK FOR PROVIDING ALL STUDENTS AN OPPORTUNITY TO LEARN THROUGH REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT 4–5* (2010), available at <http://www.otlcampaign.org/sites/default/files/resources/CivilRights%20framework-FINAL7-25-10.pdf> (citation omitted); see also Monica Teixeira de Sousa, *A Race to the Bottom? President Obama’s Incomplete and Conservative Strategy for Reforming Education in Struggling Schools or the Perils of Ignoring Poverty*, 39 STETSON L. REV. 629, 672–73 (2010) (asserting that poverty-stricken schools cannot be “fixed” simply by “dangl[ing] financial incentives in front of states,” and calling for “broader and more progressive vision for the federal government”); Marc Pilotin, Comment, *Finding a Common Yardstick: Implementing a National Student Assessment and School Accountability Plan Through State-Federal Collaboration*, 98 CALIF. L. REV. 545, 572–73 (2010) (noting that competitive grant programs are not structured in a way that encourages states to share ideas or compare results, therefore stalling the implementation of nation-wide reform); Diane Ravitch, *The Big Idea—It’s Bad Education Policy*, L.A. TIMES, Mar. 14, 2010, at A21 (asserting that empirical evidence suggests programs relying “on the power of incentives and competition. . . . may well make schools worse, not better”).

134 See, e.g., Kami Chavis Simmons, *Cooperative Federalism and Police Reform: Using Congressional Spending Power to Promote Police Accountability*, 62 ALA. L. REV. 351 (2011).

135 See Orly Lobel, *The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, 89 MINN. L. REV. 342, 345–46 (2004).

and college eligible students within low-resource schools.¹³⁶ In 2008, former U.S. Senator Hillary Rodham Clinton (D-NY), introduced the COACH Act to create a pilot AmeriCorps program to address differences in college going rates.¹³⁷ “Coaches” under this program would work with high-achieving students to fill their knowledge gaps concerning college admissions and the financial aid process, as well as connect them with college prep work and summer internships.¹³⁸

Although the COACH Act valiantly attempts to address SCDs that vulnerable students experience, it falls short of fully integrating a college counseling function into high schools on a broader scale. The COACH Act would function as a complementary volunteer-based AmeriCorps program operating alongside school staff. Consequently, the COACH model could encounter institutional impediments including limited continuity, teacher and administrator buy-in, and resources. The COACH Act would, however, have a dual impact creating public service opportunities for college students while promoting college access among vulnerable populations. Although Congress did not pass the COACH Act, its model has nonetheless been implemented with some success in certain parts of the country.¹³⁹ If passed, the COACH Act could provide an additional layer of support supplementing the broader proposal for college counseling discussed herein.

3. TRIO Programs

Another complementary approach to increase college-going rates among vulnerable students is the provision of college advising to vulnerable students outside of standard school hours. The existing federal framework already provides for such outreach. TRIO programs are student outreach programs that provide education-related services for low-income middle and high school students.¹⁴⁰ Created over four

136 154 CONG. REC. S4284, S4285 (2008) (statement of Sen. Clinton). To demonstrate the need for college access reform for which the Act was created, Sen. Clinton relied upon the CPS study discussed *supra* at Part I.A.2.a.

137 See Coaching Our Adolescents for College Heights Act, S. 3027, 110th Cong. (2008), at 2.

138 154 CONG. REC. S4284, S4285 (statement of Sen. Clinton); see S. 3027.

139 See, e.g., NATIONAL COLLEGE ADVISING CORPS, <http://www.advisingcorps.org/> (last visited Sept. 23, 2011) (providing services to 65,000 high school students in 13 states).

140 See *Federal TRIO Programs*, U.S. DEP'T EDUC., <http://www2.ed.gov/about/offices/list/ope/trio/index.html> (last visited Sept. 23, 2011).

decades ago as part of the Higher Education Act,¹⁴¹ TRIO consists of eight different programs providing student services.¹⁴² Upward Bound and Talent Search are longstanding TRIO programs that provide college access assistance.¹⁴³ New research suggests that these programs, although helpful, are unable to counterbalance the lack of family support and resources.¹⁴⁴ Some observers have proposed cutting funding for Upward Bound and Talent Search in light of enduring racial and class gaps in college achievement.¹⁴⁵ But cutting funding for these programs is premature, especially given the lack of an integrated college counseling function within schools. In many cases, TRIO programs have been the only college counseling vulnerable students receive. Even at their current funding level, Upward Bound and Talent Search combined are only able to extend services to around three percent of all low-SES students.¹⁴⁶

141 Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 (codified as amended in scattered sections of 20 U.S.C. (2001)).

142 See *History of the Federal TRIO Programs*, U.S. DEP'T EDUC., <http://www2.ed.gov/about/offices/list/ope/trio/triohistory.html> (last visited Sept. 23, 2011).

143 See *Talent Search Program*, U.S. DEP'T EDUC., <http://www2.ed.gov/programs/triotalent/index.html> (last visited Sept. 23, 2011); *Upward Bound Program*, U.S. DEP'T EDUC., <http://www2.ed.gov/programs/trioupbound/index.html> (last visited Sept. 23, 2011).

144 Originally envisioned to help students overcome social capital deficits, a recent study found that "SES and family composition continue to have statistical significance . . . in the lives and future choices of students, regardless of the [TRIO] programs provided by the federal government." Rachael Walsh, *Helping or Hurting: Are Adolescent Intervention Programs Minimizing Racial Inequality?*, 43 EDUC. & URB. SOC'Y 370, 382 (2011), available at <http://eus.sagepub.com/content/early/2010/11/06/0013124510380419>. This does not mean that the initiatives are without value, however—the same study also found that "program participation enables low-SES African American students to attend college at a rate equivalent to average-SES White students," an indication that the programs "can benefit African American and Hispanic students immensely when properly implemented." *Id.* at 383, 388.

145 The Bush administration proposed dismantling both Upward Bound and Talent Search in 2005, then again in 2006, calling the programs "ineffective." Kelly Field, *Are the Right Students 'Upward Bound?'*, CHRON. HIGHER EDUC., Aug. 17, 2007, at A20. After proposing only to level-fund TRIO programs last year, the Obama administration's latest budget makes a show of support, increasing the TRIO budget by \$67 million. See OFFICE OF MGMT. & BUDGET, *supra* note 84; Kelly Field, *Higher-Education Programs Are Among Targets of Planned Federal Budget Freeze*, CHRON. HIGHER EDUC., (June 8, 2010), <http://chronicle.com/article/Higher-Education-Programs-Are/65810/> (last visited Sept. 23, 2011).

146 See Walsh, *supra* note 144.

III. A VITAL SOLUTION: REFORMS TAILORED TO ADDRESS SOCIAL CAPITAL DEFICITS

The Obama administration's goal to lead the world in the number of college graduates by 2020 is both ambitious and pragmatic. For the benefits of K–12 educational investment to truly be realized from an individual and societal standpoint, broad numbers of students must attend and complete college. High schools today must enhance college readiness through academic instruction and provide meaningful support to ensure students actually convert academic achievement into college enrollment. Addressing the former issue without the latter, will lead to, at best, modest results.¹⁴⁷ Vulnerable students facing SCDs are more reliant on counselors and teachers for college selection decisions; yet they often do not receive adequate support.¹⁴⁸ For students lacking family-based social capital, extra-familial relationships with counselors, teachers, administrators, students, and other school officials become extremely important.¹⁴⁹ Accordingly, lawmakers should address gaps in student knowledge concerning the college selection process.¹⁵⁰ In order to ensure that many vulnerable students are not lost in the transition between secondary school and college, future education reforms should include the following elements: (i) a self-standing college counseling function in public schools, (ii) college access data collection and reporting, (iii) complementary college advising, and (iv) college access pathways for additional segments of the U.S. population such as community college students and adults.

A. *Enhancing College Counseling Capabilities in Public High Schools Nationwide*

College access and completion are among a number of extremely important educational metrics (e.g., test scores, teacher evaluations, etc.) that reflect how well the nation's schools perform. From a societal standpoint, higher education outcomes better reflect the return on investment in K–12 education than narrow and snap-shot-like testing metrics.¹⁵¹ And the abysmal higher education outcomes for vulnerable students illustrate that, as a nation, we need to revamp our investment strategies. The dearth of meaningful college counseling for vulnerable students underscores a critical gap in education policy, namely, the inability of existing reform efforts to build an adequate

147 See RODERICK ET AL., *supra* note 19, at 3.

148 See RODERICK ET AL., *supra* note 33, at 103; Steinberg, *supra* note 15.

149 See, e.g., NAGAOKA ET AL., *supra* note 50, at 11.

150 See RODERICK ET AL., *supra* note 19, at 57.

151 See RAVITCH, *supra* note 118, at 166–67.

bridge of access between public schools and colleges. Moving beyond the status quo requires more thoughtful steps than simply leading vulnerable students into a dense forest and leaving them to fend for themselves.

Instead of exacerbating the aforementioned problems, public high schools have the potential to serve as social networking stations that ameliorate SCDs and information deficits. A wealth of social science and education research underscores how structured college counseling and support for vulnerable students could have a significant impact on college access and completion outcomes for low-income, rural, urban, first generation students, and students of color.¹⁵² Although some of these studies do not specifically label student information deficits in social capital terms, SCDs are indeed implicated as an important factor in higher education discrepancies. Policymakers often overlook the importance and potential of effective college counseling for addressing SCDs, promoting college access, and limiting higher education stratification. This oversight is surprising especially in light of the relative ease and potential to address college counseling issues compared to other intractable educational issues.¹⁵³ Until now, the education reform debate especially among legal scholars, lacked a deeper analysis concerning the role of high

152 See PATRICIA M. McDONOUGH, CHOOSING COLLEGES 4 (1997). See generally PATRICIA GÁNDARA & DEBORAH BIAL, NAT'L POSTSECONDARY EDUC. COOP., PAVING THE WAY TO POSTSECONDARY EDUCATION (2001) (exploring effectiveness of programs designed to promote post-secondary education); JACQUELINE E. KING, COLL. BD., THE DECISION TO GO TO COLLEGE (1996) (collecting surveys finding access to college counseling important in decision to go to college); ANDREA VENEZIA ET AL., STANFORD UNIV., BETRAYING THE DREAM (2002) (providing recommendations that organizations can follow to better prepare students for college); Patricia M. McDonough, *Counseling Matters: Knowledge, Assistance, and Organizational Commitment in College Preparation*, in PREPARING FOR COLLEGE 69 (William G. Tierney et al. eds., 2004) (analyzing the "history, role, effectiveness, and needs for college counseling in high schools"); Plank & Jordan, *supra* note 107; James E. Rosenbaum et al., *Gatekeeping in an Era of More Open Gates: High School Counselors' Views of Their Influence on Students' College Plans*, 104 AM. J. EDUC. 257 (1996) (investigating how counselors view their roles in leading students toward college).

153 See Patrick O'Connor, *Inadequate Counsel*, DIVERSE: ISSUES IN HIGHER EDUC., Dec. 23, 2010, at 17. Furthermore, expanding the counseling function would provide integral support to a wide spectrum of education policy goals. Compare *infra* Part III.A.2 (arguing that all high schools should have an integrated self-standing college counseling function), with HARV. GRADUATE SCH. OF EDUC., *supra* note 70, at 26–28 (asserting that high schools should place less emphasis on a four-year college education as a goal for all students and more emphasis on career training, which would require reform to America's "wholly inadequate" current counseling framework in order to be effective).

school counseling on higher education attainment. Legal scholars can no longer afford to ignore this critical dimension of the college access dilemma for vulnerable students.

1. Existing Impediments to Effective College Counseling

a. Counseling Resource Restraints

In most of the nation's public schools, the college counseling function is performed by high school counselors.¹⁵⁴ Disturbingly, research reveals severe resource constraints on the availability of high school counselors to provide effective college counseling:

Although professional groups such as the American School Counselor Association say that a student-counselor ratio of 250 to 1 is optimal, this is far from the typical state of affairs in most public schools. In California, the ratio is closer to 1,000 students for every counselor available. In Arizona, Minnesota, Utah and the District of Columbia, the ratio is typically more than 700 to 1. Nationwide, the average is 460 to 1.¹⁵⁵

The average school counselor nationwide spends thirty-eight minutes per year on each student for college advising.¹⁵⁶ The scarcity of college counseling resources reflected in counselor-to-student ratios requires counselors to rely on large group guidance in order to reach the largest number of students. Yet studies reveal that students, parents, and teachers all agree more direct college counseling services are needed.¹⁵⁷

Another significant finding is the degree of variation across and within school districts. Private, independent, and more affluent public schools are more likely to have organized college counseling services.¹⁵⁸ Meanwhile, public schools—especially urban, rural, and those with predominately low-income and minority students—are less likely to have adequate college counseling resources.¹⁵⁹ Due to school

154 See Perna et al., *supra* note 108, at 132.

155 JOHNSON ET AL., *supra* note 6, at 3; see PATRICIA M. McDONOUGH, NAT'L ASS'N FOR COLL. ADMISSIONS COUNSELING, COUNSELING AND COLLEGE COUNSELING IN AMERICA'S HIGH SCHOOLS 10 (2004), available at http://www.nacacnet.org/PublicationsResources/Research/Documents/WhitePaper_McDonough.pdf.

156 McDONOUGH, *supra* note 155.

157 See Perna et al., *supra* note 108, at 134.

158 See *id.*; see also McDONOUGH, *supra* note 155, at 14 (finding that public school counselors tend to spend more time on psychological counseling and routine class selection, as opposed to private school counselors who can focus on college counseling).

159 Schools that primarily serve vulnerable students suffer counseling services unequal in both quantity and quality. See U.S. DEP'T EDUC., NAT'L CENTER FOR EDUC.

district resource restraints, counseling activities may be geared toward meeting the needs of the average or most needy student.¹⁶⁰ This focus on the average or most needy students displaces more specialized services for other college eligible students who attend high schools where going to college is not the norm.¹⁶¹ In low resource schools, the focus is often ensuring that students graduate from high school rather than college enrollment.¹⁶² Thus, “students who do not proactively seek contact with counselors and/or attend a high school where college enrollment is not the norm are less likely to receive sufficient college counseling.”¹⁶³ Simply put, students who have the greatest need for college counseling often “face the greatest structural barriers” to receiving quality counseling.¹⁶⁴ On the other hand, high resource schools are more likely to have counseling staff who provide the hands-on and targeted approach to college counseling that facilitates student access to a broader range of colleges and universities.

b. Competing Counselor Roles

The barriers to effective college counseling lie not only in counselor-to-student ratios; they also stem from priorities and diversification.¹⁶⁵ High school counselors perform an assortment of roles, including scheduling, school discipline, testing, college counseling, psychological development, and administrative support.¹⁶⁶ These diverse college and non-college related roles often compete for priority.¹⁶⁷ The division of focus among non-college related tasks inevita-

STATISTICS, THE CONDITION OF EDUCATION 262 (2010) (finding that high-poverty schools (those with seventy-six to one-hundred percent free or reduced-priced lunch eligible students) averaged 2.8 counselors per school, while low-poverty schools (those that did not participate in free or reduced-priced lunch) averaged 3.4 counselors per school); O'Connor, *supra* note 153 (noting that public school counselors “do not receive any meaningful training in college admission counseling,” while “[a]ffluent private high schools often hire former admissions officers from well-known colleges to serve as their college admission counselors”).

160 *See id.* at 142.

161 *See id.*

162 *See id.* at 143.

163 *Id.* at 154.

164 *Id.*

165 *See id.* at 140.

166 *See* McDONOUGH, *supra* note 155, at 7–8.

167 *See id.* (discussing the conflict that can arise when a principal directs a counselor to focus less on college counseling and more on discipline, proctoring tests, and other administrative duties). The emphasis placed on college counseling may be both a function of the characteristics of the particular student body attending a school and the attributes of the school district where the school is located. *See* Perna et al., *supra* note 108, at 143.

bly limits the amount of time spent on college counseling.¹⁶⁸ Counselors often struggle to adequately provide all of these functions.¹⁶⁹ Moreover, high school counselors' responsibility for college counseling has sometimes been the subject of "acrimonious debate."¹⁷⁰

c. Counselor Professional Development and Expertise

Even assuming high school counselors have ample time to provide college counseling and the ability to focus their exclusive attention on college counseling, most counselors remain ineffective because they have little college-related counseling expertise. Research indicates that high school counselors would benefit from professional development in college access and selection.¹⁷¹ Although many states have counselor certification requirements, counselors normally do not receive intensive college counseling training nor do they benefit from specialized academic programs targeting college access. Although 466 colleges offer graduate training for counselors, fewer than forty-five of these programs offer a course on the college selection process.¹⁷² The constantly changing college selection market requires knowledge of up-to-date admissions and financial aid trends and data. But many counselors lack the requisite specialized knowledge and the institutional support to secure such knowledge and related expertise.¹⁷³

Ineffective college counseling, when coupled with other obstacles, inevitably places vulnerable students—without degree-holding parents, without higher education exposure opportunities, and with low incomes—at a distinct disadvantage in navigating the college selection process.¹⁷⁴ In order for vulnerable students to receive a

168 See Perna et al., *supra* note 108, at 133; McDONOUGH, *supra* note 155, at 7–8.

169 See McDONOUGH, *supra* note 155, at 7–8.

170 *Id.* at 6. A counselor's role in college advising has occasionally been perceived as unseemly salesmanship, as the simple dissemination of college planning materials, as being "in conflict with counselors' identities as mental health agents," or as being elitist in its use of "disproportionate institutional resources" for the section of the student body who is college bound. *Id.* at 7. The latter critique is especially suspect when considering that "almost nine out of ten students now say they plan on going to college." *Id.*

171 See *id.*

172 O'Connor, *supra* note 153. Furthermore, only one of the 466 graduate counseling programs has made college admissions counseling a required course. *Id.*

173 See Perna et al., *supra* note 108, at 148 (finding apprehension among counselors about financial aid expertise).

174 See *id.* at 133 ("The availability of college counseling is also limited by the . . . short-term duration of interactions between counselors and students, and barriers

return on their educational investments, high schools must provide “college knowledge” that enhances student and parent understanding of the college admissions process and financial aid process.¹⁷⁵ And the dissemination of such knowledge should begin much earlier than the twelfth grade.¹⁷⁶

Applying to and selecting a college is not synonymous with the purchase of a commodity product. It requires technical knowledge, expertise, and an informed strategy to navigate a sophisticated process. In order to improve the quantitative as well as qualitative college access outcomes for vulnerable students, public schools must address the knowledge deficits that first generation, low-income, and other vulnerable students face in a competitive higher education market. Otherwise, students from privileged backgrounds, equipped with better information, better strategies, and better networks, will continue to have an enormous advantage in the higher education marketplace. Meanwhile, less privileged students will be channeled into less selective higher education options and a stratified higher education system.¹⁷⁷ Even more disturbing is the fact that a significant number of these students will not attend college altogether. Addressing these deficits requires not only the dissemination of information, but more proactive, ongoing, and interactive public school support.¹⁷⁸

2. An Integrated Self-Standing College Counseling Function

The availability of college counseling varies across state, district, and school lines.¹⁷⁹ Variations are manifested “in differences . . . in the number of students per counselor, as well as in differences in the availability of a dedicated college and career coordinator and

that limit the development of ‘trusting’ relationships between counselors and students, especially working-class minority students.”).

175 See *supra* notes 54, 56 and accompanying text.

176 See McDONOUGH, *supra* note 155, at 4 (suggesting that “counselors begin actively supporting students and their families in middle school” for college preparation).

177 See JOHNSON ET AL., *supra* note 6, at 9 (“The results are sobering Students who are poorly counseled are less likely to go directly from high school into a college program—a step that research shows is highly correlated with dropping out of college.”).

178 It has been suggested that colleges and universities can also play a role in expanding access; however, this is beyond the scope of this article. See RODERICK ET AL., *supra* note 19, at 58 (suggesting that universities themselves could directly provide financial aid guidance to first-generation families as part of a targeted recruiting practice).

179 See Perna et al., *supra* note 108, at 153.

center.”¹⁸⁰ Seventy-seven percent of private high schools employ a position dedicated to college counseling assistance, compared to only twenty-one percent of public schools nationwide that do so.¹⁸¹ In order to address further stratification in the higher education system, policymakers should either mandate¹⁸² or at least strongly encourage the formation of an integrated self-standing college counseling function in the nation’s public high schools, particularly the neediest school districts.¹⁸³

The provision of ancillary college counseling support should occur alongside academic instruction in a school environment that manifests a college-going culture. The current federal and state focus on college readiness standards has limited value if large numbers of vulnerable students either fail to enroll in college or undermatch in their choices.¹⁸⁴ College counseling departments should be staffed with competent, experienced, and well-trained professionals, who are exclusively focused on college related activities.¹⁸⁵ In order to be effective, college counseling departments must have visibility, standing, continuity, and ample resources to assist students and parents effectively. In addition, these departments must engage and even deputize teachers as well as administrators in the college counseling process.¹⁸⁶ The permanence of the high school college counseling function contributes to the creation of a college-going culture among teachers, administrators, and the student body as a whole (not only proven high-achieving seniors).¹⁸⁷ Today, existing technology offers

180 *Id.*

181 *Id.*; NAT’L ASS’N FOR COLL. ADMISSIONS COUNSELING, STATE OF COLLEGE ADMISSION 2006, at 55 (David A. Hawkins & Melissa Clinedinst eds., 2006), available at <http://www.nacacnet.org/PublicationsResources/Research/Documents/06StateofAdmission.pdf>.

182 See Perna et al., *supra* note 108, at 152 (noting that thirty states and the District of Columbia already mandate general school counseling for ninth through twelfth grade students).

183 See David A. Hawkins & Melissa Clinedinst, NAT’L ASS’N FOR COLL. ADMISSIONS COUNSELING, COLLEGE ACCESS AGENDA FOR THE 111TH CONGRESS (2010), available at <http://www.nacacnet.org/LegislativeAction/Recommendations/Documents/College%20Access%20Agenda.pdf>; McDONOUGH, *supra* note 155, at 4, 7–8, 13.

184 See *supra* Part I.A.2.

185 See Perna et al., *supra* note 108, at 143.

186 Although teachers in most schools have a limited role in direct college counseling, there are tasks that could be incorporated into the classroom to complement a college going culture; for example, having students “write a college application essay in their English classes” or complete a portfolio of high school projects. *Id.* at 148.

187 The college counseling function provides programming to engage students in college access related activities starting with the ninth grade. Such early intervention would enhance a number of admissions related outcomes such as better standardized

the potential to minimize the cost and time school personnel spend monitoring student progression through the college selection process as well as to promote greater engagement of parents and students in that process.¹⁸⁸

The future reauthorization of NCLB offers a rare opportunity for the federal government to address the dearth of college counseling in public schools.¹⁸⁹ Although this Article focuses on federal reform efforts, an effective approach to implementation should embrace principles of cooperative federalism and democratic experimentalism.¹⁹⁰ Pragmatically, the implementation of college counseling reforms may require a mixture of formula-based and competitive grant programs. Moreover, budget and political hurdles may require that implementation occur in phases. In an initial phase, competitive grant programs could promote college counseling reforms among states, districts, schools, and non-state actors.¹⁹¹ This process would identify best practices that could eventually, in a later phase, serve as models for broader, national, and systemic reforms. Ultimately, a meaningful college counseling reform strategy requires federal, state agency, and school district level commitments of support in terms of funding, standard setting, and training.¹⁹² College counseling reforms must also leverage the expertise and resources of non-governmental organizations (e.g., National Association for College Admission Counseling and Gates Foundation) as well as higher education institutions, particularly in training college counselors of the future.

test outcomes, rigorous course selection, and navigating more specialized admissions processes (e.g., early decision, ROTC, etc.). See McDONOUGH, *supra* note 155, at 4.

188 Some states and large school districts already utilize such technological tools. See, e.g., CHOOSE YOUR FUTURE, <http://chooseyourfuture.org/> (last visited Sept. 23, 2011) (Chicago Public Schools); COLLEGE IN COLORADO, <http://collegeincolorado.org/> (last visited Sept. 23, 2011). Technology could also streamline the college application and financial aid process and thereby level the playing field for vulnerable students. Lawmakers and colleges should consider moving toward a paperless, consolidated college and financial aid application format to ease student transition from high school to college. The role of technology in college advising should be complementary and not a substitute for meaningful human contact.

189 See NAT'L ASS'N COLL. ADMISSIONS COUNSELING, *supra* note 183.

190 See discussion *infra* Part III.B.1.

191 The Department of Education's Race to the Top Initiative and Investing in Innovation Fund promotes state, district, and school reforms as well as promotes public-private collaboration. See U.S. DEP'T OF EDUC., RACE TO THE TOP PROGRAM EXECUTIVE SUMMARY (2009) available at <http://www2.ed.gov/programs/racetothetop/executive-summary.pdf>. The challenge with such competitive grant programs as opposed to formula grants will be ensuring that large numbers of students in the neediest schools receive college counseling.

192 See Perna et al., *supra* note 108, at 150, 154.

B. College Access Data Tracking and Reporting

In addition to providing funding to enhance college counseling in the nation's high schools, Congress should create additional incentives for states, districts, schools, and counselors to bridge college enrollment gaps through data management and reporting requirements. Current federal reporting requirements do not require states to track the number of high school graduates enrolling in post-secondary schools or eventually graduating from college.¹⁹³ Proposed reform of NCLB would require reporting these data.¹⁹⁴ Some states now collect data on college readiness, which has led to calls for an enhanced federal effort to require reporting quantitative and qualitative higher education outcomes.¹⁹⁵ The federal government and states could rely on these data to identify issues within schools and reward improvement (i.e., positive accountability) rather than labeling or penalizing already troubled school systems (i.e., punitive accountability).¹⁹⁶

The overall NCLB accountability framework should be expanded beyond the narrow metric of test scores to include college access data.¹⁹⁷ In order to ensure the credibility of NCLB's current accountability measures, other meaningful measures such as college enrollment and college graduation rates among various demographic subgroups must be combined with test scores. The integration of downstream post-secondary entry information with K-12 academic achieve-

193 Under the current Elementary and Secondary Education Act, states must report only on state academic achievement standards and graduation rates of secondary schools. See 20 U.S.C. § 6311 (2006).

194 See U.S. DEP'T EDUC., A BLUEPRINT FOR REFORM 8-9 (2001), available at <http://www2.ed.gov/policy/elsec/leg/blueprint/blueprint.pdf>.

195 Twenty-one states track the percentage of high school graduates who go to college, fourteen states track college GPA, credit attainment, or other academic indicators for students from individual high schools, and nine states track one year college retention rates. U.S. DEP'T EDUC., COLLEGE- AND CAREER-READY STUDENTS 4 (2010), available at <http://www2.ed.gov/policy/elsec/leg/blueprint/college-career-ready.pdf>. The increasing number of states that track college readiness data indicates "both that States see the importance of such data in judging school quality and that they have already laid the groundwork for including such indicators in public reporting and accountability systems." *Id.*

196 See Ryan, *Perverse Incentives*, *supra* note 118, at 934-36 (describing problems with absolute standards and proposing a value-added assessment system); see also LAWYERS COMM. FOR CIVIL RIGHTS UNDER LAW ET AL., *supra* note 133, at 3-5 (arguing that the federal government should "shift the [f]ocus from [c]ompetitive [g]rants for a [f]ew [s]tates to [i]ncentives for [a]ll [s]tates to [e]mbrace [s]ystemic [r]eform" to more effectively assist vulnerable student populations).

197 This requirement should apply to all schools receiving federal funding or operating pursuant to NCLB. It should also apply to charter and alternative schools.

ment data and graduation measures will provide a more accurate picture of student success. This holistic approach recognizes student needs beyond mere academic instruction.¹⁹⁸ Whereas two schools may have similar student bodies with similar aggregate test scores, stark differences in higher education outcomes could signal SCDs, ineffective college counseling, and the lack of a college-going culture within a school. Higher education outcomes, from college admission to college graduation, are an important metric for high school performance and also reflect the downstream return on investment from both an individual and societal standpoint.¹⁹⁹ Furthermore, detailed higher education outcomes can serve as important “valued-added” performance benchmarks that better reflect the nature of the school rather than the student body.²⁰⁰

The importance of college access data underscores the need for longitudinal data systems that link K–12 data with data sets from higher education and beyond. The federal government’s Race to the Top program makes the expansion and adaptation of statewide longitudinal data systems one of its priorities.²⁰¹ Existing technologies make the data collection function more efficient and less costly for schools to implement. Moreover, the recent above-mentioned CPS and NCPS studies evidence that such data collection can be done effectively.²⁰² States, districts, and schools should collect college access data from both qualitative (e.g., selective four-year college, non-selective four-year college, public or private university, community college, vocational school, or for-profit institution) and quantitative (e.g., number of applications completed and FAFSA completion rates) vantage points. These data should be disaggregated and cross-tabulated, showing how various student sub-groups—low-income, minority, non-minority, first-generation—fare in terms of higher education outcomes; for example, selective four-year college, less selective four-year college, vocational school, community college, or no college. This college access data should be made available to various

198 See Memorandum from the NAACP Legal Def. & Educ. Fund, Inc. to the S. Comm. on Health, Educ., Labor & Pensions (May 7, 2010) (on file with author).

199 See Aspen Inst. Educ. & Soc’y Program, Core Principles for New Accountability in Education 8 (Nov. 2009) (working draft), available at http://www.aspeninstitute.org/sites/default/files/content/docs/pubs/Core_Principles_April2010.pdf.

200 See Ryan, *Perverse Incentives*, *supra* note 118. A similar construct could apply to measurement of higher education outcomes focused on achievement gains in higher education outcomes over time for individuals or groups of students.

201 See *supra* note 191.

202 See discussion *infra* at Part I.A.2.a.–b.

stakeholders (e.g., lawmakers, school officials, parents, researchers) in a manner consistent with existing federal and state privacy laws.²⁰³

In addition to having government imposed incentives encouraging schools to develop and maintain effective college counseling and data collection capabilities, the public reporting of college access data would create incentives for schools to provide effective college counseling. Similar to school district or school level test scores (e.g., SAT, National Assessment of Educational Progress (NAEP), etc.), parents may use higher education outcome data as a proxy for school quality, or at least as a proxy for a college-going culture, when choosing a school for their child or deciding where to move. States and localities are not blind to factors that make schools and locales attractive to sought after companies and employees.²⁰⁴ Empirical data suggests a relationship between housing prices and test benchmarks.²⁰⁵ But test scores remain an imperfect metric for school quality.²⁰⁶ Unfortunately, NCLB's singular focus on testing has narrowed the definition of a good school while crowding out other meaningful measures such as higher education outcomes.

C. Complementary College Advising

In addition to the above-mentioned core college counseling and data collection measures, complementary counseling approaches should be considered. TRIO programs and the COACH Act are examples of complementary college advising that supports vulnerable students.²⁰⁷ The presence of a self-standing college counseling apparatus within schools, however, would not make such programs obsolete, but only more effective. A belt-and-suspenders approach is needed to address the substantial support and knowledge gaps of vulnerable students. Therefore, Congress should expand funding for complementary college advising programs in upcoming fiscal years in order to provide another layer of support for vulnerable students.

203 See, e.g., Family Education Rights and Privacy Act, 20 U.S.C. § 1232(g); Family Educational Rights and Privacy, 34 C.F.R. § 99 (2002).

204 See Ryan, *Perverse Incentives*, *supra* note 118, at 955–56 (addressing the fact that “suburbanite” neighborhoods are often perceived as having “good” schools and therefore will attract residents).

205 See *id.* (analyzing property values in corresponding Florida schools showing that localities that receive an “A” grade for test scores witness an eight percent increase in property value as opposed to those school districts that receive a “B” grade).

206 See generally RAVITCH, *supra* note 118 (arguing that using test scores as accountability metrics is flawed).

207 See discussion *supra* at Part II.B.2–3.

D. Tapping Additional Pipelines: Community Colleges and Beyond

Even if the above-mentioned integrated and complementary modes of college counseling were made widely available to public high school students nationwide, the enhancement of college-going rates among the existing high school population may not be enough for the U.S. to maintain the international advantage that accrues from having a college-educated workforce. Additional bold steps are needed to meet the demand for college educated workers. Thus, lawmakers should consider improving college access pathways for additional segments of the U.S. population (e.g., adults, non-traditional students, community college students, and immigrants). Future college access efforts must address the growing needs of adults and community college students who desire a four-year degree. A longitudinal study comparing community college transfer students and successful degree completion rates shows that low-income community college transfer students had a better chance of degree completion than their low-income peers who started at four-year colleges across all selectivity levels.²⁰⁸ Yet low-income community college students are highly unlikely to transfer to selective colleges and universities.²⁰⁹

CONCLUSION

Today, our nation stands at a crucial juncture where the expansion of higher education access to vulnerable populations will determine its future economic, social, and civic vitality. Even with the mountain of issues that plague K–12 education, higher education access must be a top priority for policymakers. As one reformer asserted a century ago:

[W]e must begin with the higher [education] institutions, or we can never succeed with the lower; for the plain reason, that neither knowledge nor water will run up hill. No people ever had, or ever can have, any system of common schools and lower seminaries worth any thing [sic], until they first founded their higher institutions and fountains of knowledge from which they could draw supplies of teachers for the lower.²¹⁰

208 See TATIANA MELGUIZO & ALICIA C. DOWD, *THE STUDY OF ECONOMIC, INFORMATIONAL, AND CULTURAL BARRIERS TO COMMUNITY COLLEGE STUDENT TRANSFER ACCESS AT SELECTIVE INSTITUTIONS* 36–37 (2008), available at http://www.jkcf.org/assets/files/0000/0196/Section_I.pdf.

209 See *id.*

210 J.B. TURNER, *A PLAN FOR AN INDUSTRIAL UNIVERSITY FOR THE STATE OF ILLINOIS* 8 (1851).

In order for the Obama administration to meet its goal of leading the world in college graduates by 2020, significantly more vulnerable students must attend and graduate from college. As approximately seventy-million baby boomers retire and if current trends continue, the U.S. will face a shortage of fourteen-million college-educated workers in 2020.²¹¹ By that time, six out of ten jobs in the U.S. economy are projected to depend on highly trained workers with college degrees.²¹² Thus, meeting future workforce demand requires expanding college access for vulnerable students.

If college counseling for vulnerable students does not become a meaningful part of the overall education reform debate, existing investments in reform efforts at the K–12 and college levels will not yield significant returns. The inability to address SCDs is a key weakness in the existing two-tiered approach to college access and illustrates the critical need to reassess and expand the capabilities of the nation’s public schools. Earnestly addressing vulnerable student needs requires a more expansive vision of schools as social networking stations where students receive ancillary services such as college counseling alongside academic instruction. This Article’s college counseling proposals targeting SCDs—particularly the creation of an integrated college counseling function in the nation’s high schools and data collection—have significant empirical and anecdotal support.²¹³ And, if properly implemented alongside extant reforms, these reforms will function as a K–16 bridge, allowing vulnerable students to convert K–12 academic achievement into college enrollment and completion. Therefore, NCLB and other piecemeal legislation should be amended to include the above-mentioned proposals or, at a minimum, embody the principles articulated herein.

211 See ANTHONY P. CARNEVALE ET AL., GEORGETOWN UNIV. CTR. ON EDUC. & THE WORKFORCE, HELP WANTED: POSTSECONDARY EDUCATION AND TRAINING REQUIRED 25 (2009), available at http://www9.georgetown.edu/grad/gppi/hpi/cew/pdfs/help_wanted.pdf; ANTHONY P. CARNEVALE ET AL., HELP WANTED: PROJECTIONS OF JOBS AND EDUCATION REQUIREMENTS THROUGH 2018, EXECUTIVE SUMMARY 1 (2010), available at <http://cew.georgetown.edu/jobs2018/> (follow “Executive Summary” hyperlink).

212 CARNEVALE ET AL., *supra* note 211, at 1.

213 Notably, the Chicago Public Schools and Geoffrey Canada’s Harlem Children’s Zone Project (HCZ) have implemented several of the above-mentioned reforms surrounding college access programming and data tracking and may provide a template for other jurisdictions. See generally PAUL TOUGH, WHATEVER IT TAKES (2009) (describing the various reform experiments in Central Harlem); RODERICK ET AL., *supra* note 19 (studying Chicago Public School students); NAGAOKA ET AL., *supra* note 50 (same).

The tangible and intangible benefits of higher education for society and individuals are well documented.²¹⁴ Society and individuals pay a significant price by ignoring the effects of SCDs on higher educational outcomes. Higher education access is not solely a class-based or minority issue, but a broader issue inextricably linked to the nation's need for "all the trained talent it can marshal."²¹⁵ Nearly a century ago, John Dewey observed the dangers of social stratification that could prevent interaction between groups, stifle the diversity of thought, and thwart social advancement; he highlighted the role of schools in countering social stratification and promoting social advancement.²¹⁶ Dewey further acknowledged that society "must see to it that intellectual opportunities are accessible to all on equitable and easy terms."²¹⁷ The proposals articulated herein still capture the essence of Dewey's observations nearly a century ago; that is, the nation's need to develop potential on its periphery.

214 See generally HOWARD R. BOWEN, INVESTMENT IN LEARNING 16–17 (John Hopkins Univ. Press 1997) (1977) (describing the chief products of higher education); WALTER W. MCMAHON, HIGHER LEARNING, GREATER GOOD (2009) (examining the private and social benefits of higher education).

215 BOWEN ET AL., *supra* note 8, at 161–62.

216 See JOHN DEWEY, DEMOCRACY AND EDUCATION 101, 114 (1916); see also MINOW, *supra* note 86, at 138 (discussing the important social networking function schools can serve).

217 DEWEY, *supra* note 216, at 101–02.