

# STATES' INTERVENTION IN SCHOOL DISTRICTS' FINANCES



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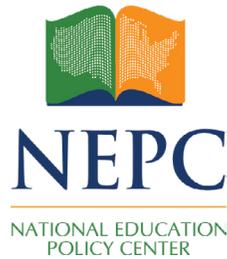
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## Executive Summary

Each state has laws that enable it to intervene in school districts' finances. These laws shape important governance relationships as well as the allocation of educational resources, yet we know relatively little about them. This lack of knowledge is troubling because these state policies create systems that have important implications for the balance of state and local control over education. Under certain conditions, for example, states can replace a locally selected superintendent with a state-appointed manager, or require a school district to dissolve or go through bankruptcy. The limited published research focuses primarily on case studies of ad hoc or extreme interventions in large urban districts in a handful of states; additionally, research on potential state fiscal interventions into other local government types (beyond school districts) is thin and of limited relevance to districts.

Accordingly, this research brief presents an examination of *what* state fiscal powers over districts already exist across the country, which is a necessary foundation for policymakers and researchers to understand *how* states might best address districts' financial conduct and difficulties going forward. Specifically, our research addresses the following three questions: First, in what ways do state statutes provide the bases and means for state intervention into local district finances? Second, what patterns emerge among these state statutory provisions, and do any such patterns suggest a useful typology of system design across states? Third, if a typology results, does the classification of states in this way suggest correlations between a state's potential for fiscal intervention and other major areas of education policy?

We answered these questions by identifying and analyzing 449 state statutory provisions, which together contain 1,068 individual potential interventions. Our analysis identified significant patterns and features of the statutory terrain, including the following:

- States' authorization of strong fiscal interventions is a relatively new phenomenon with a remarkably steep chronological curve.

- A handful of states authorize the majority of potential interventions.
- States focus most heavily on providing technical transparency, oversight, and support such as planning or budget assistance; however, more intrusive and directive interventions follow closely behind, including state takeover.
- States clearly favor school districts' specific acts, events, or omissions, such as an improper expenditure from a fund, as the primary type of trigger for potential intervention.
- States often vest enforcement power in state educational authorities, such as the state superintendent or board; still, some laws task wholly non-educational actors, for example a treasury department, with enforcement authority.

We conceptualize states' fiscal intervention policy systems by considering both their breadth—as indicated by frequency, or the number of ways the state may intervene—and their depth—as indicated by intensity, or the potential invasiveness of state interventions. The resulting typology enables us to make comparisons among and between states and also to consider connections between states' approaches to fiscal intervention and other leading education policy issues. To begin the work of identifying connections, we overlay our proposed typology with state-specific student demographic data, *Education Week's* school finance grades, and charter school enrollment numbers. We found that higher intensity potential state interventions in local school districts' finances are:

- Inversely related to the percentage of white students in a state (this is also true for higher frequency potential interventions);
- Directly related to a state's charter school enrollment; and
- Inversely related to one rating of the equity and adequacy of a state's finance system.

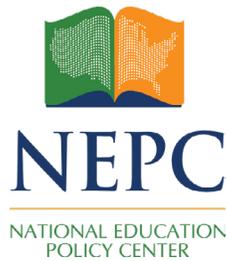
These correlations are merely suggestive and offer no evidence of causality. But they might serve as hypotheses for future research.

Our analyses and findings lead us to offer the following recommendations:

1. Using our baseline data and typology, national organizations such as the Education Commission of the States and the National Conference of State Legislatures should convene state policymakers and researchers to facilitate policy learning and policy transfer about these issues.
2. Beginning with our coded data, state governors or state legislatures' education committees should evaluate their system of potential interventions into districts' finances and also implementation. They also should ask how that system interacts with other statutory systems such as those regulating school funding and enabling charter schools, and how implementation could impact school districts with varying racial/ethnic composition.
3. Researchers should make use of our data to explore connections between a state's ar-

ticulated power over school districts' finances and other core aspects of a state's fiscal power over education. These other aspects include school funding (de)centralization of school funding and adequacy, as well as charter school permissiveness. Exploring the existence of connections with states' partisan politics also may help illustrate connections between or among these policies.

4. Researchers should further investigate the connections we suggest between potential fiscal interventions, students' race, and charter permissiveness. Researchers also should test correlation and causation between (a) the systems we identify and (b) racial, ethnic, and socioeconomic diversity *within* and *among* districts.



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## Introduction

The United States has roughly 13,500 traditional public school districts that together receive and spend more than \$650 billion annually.<sup>1</sup> Although states have devolved primary fiscal authority to school districts, states retain the power to intervene in school districts' finances under certain circumstances, and in some cases to take over a district's governance and finances entirely. Research into this area of law consists mostly of case studies of actual interventions, and our knowledge about the universe of policies that permit potential interventions is extremely limited. Particularly given the unprecedented growth in laws regulating districts' financial authority since 2000 and the dramatic consequences of noncompliance for some districts, including complete state takeover, a more thorough understanding of states' power in this area is needed.

With the goal of establishing a baseline of information about the policy systems regulating states' interventions into local districts' finances, we asked three questions: In what ways do state statutes provide the bases and means for state intervention into local district finances? What patterns emerge among these state statutory provisions, and do they suggest a useful typology of state law? And, does classifying and comparing states in this way reveal correlations between a state's potential for fiscal intervention and other major areas of education policy?

By surveying the statutory terrain, identifying patterns among all relevant state statutes, and proposing a typology of state policy systems in this area, we make several contributions. We establish a foundation for comparative research into state fiscal intervention policy systems and the contextualized study of state fiscal intervention policy implementation. We also provide preliminary suggestive correlations to begin to test connections between this area and other key areas of education policy. And, because we describe the range of policy instruments states currently can use to intervene in districts' finances, we illustrate options policymakers in a particular state may not have considered.

## Review of the Literature

Despite the conventional wisdom that education is a matter for local control, over time, states' authority over education policy has grown—including states' ability to intervene in school districts' finances.<sup>2</sup> State statutes articulate how much power a state chooses to delegate and when, how, and to what extent the state can choose to take local power back.<sup>3</sup> A group of related state statutes creates a policy system; these systems are the focus of our research. Although policy systems are distinct from policy implementation, the two are inextricably linked because the terms of a system's design specify the circumstances under which implementation (here, actual interventions) may occur. Additionally, a system's design incorporates assumptions about the causes of and responsibility for the "problem" the policy seeks to address—in this case, school districts' fiscal distress.<sup>4</sup>

The literature concerning states' interventions in school districts' finances addresses common questions: the proper scope of state power, and the impact of politics on related decisions. It consists mostly of nuanced case studies that examine the implementation and impact of specific policies. For example, in a study of Michigan school district takeover law from 1990 through 2012, one of us (Bowman) found that due to substantial local resistance to takeover, the state should balance additional support with local involvement in reform efforts.<sup>5</sup> White, Martin, Scorsone, and Bowman argued that an appropriate fiscal distress early warning system might be used to achieve the desired balance.<sup>6</sup> When they later analyzed a proposed monitoring system, however, they concluded that the state's chosen predictors of fiscal distress failed to align well with actual incidents.<sup>7</sup> Arsen and Mason examined one iteration of Michigan's emergency manager law that was justified as necessary to local "accountability"; they found that the measure actually reduced accountability, functioning instead to shift power to the state.<sup>8</sup>

*We seek to complement the existing literature by establishing a broad baseline of state policy systems regulating school districts' finances and detailing potential interventions.*

Morel's work is anchored in a case study of New Jersey's takeover of the Newark school district and includes analysis of the roughly 100 state takeovers that have occurred nationwide, through 2016.<sup>9</sup> Morel contends that we cannot understand takeovers without understanding politics, in particular the political (dis)empowerment of African American communities. He builds on Burns' regime theory framework, and his arguments about disenfranchisement are consistent with Andersen's work about municipalities.<sup>10</sup> When Arsen examined similar relationships in Michigan, he found that, among fiscally distressed school districts, the few subject to takeover were "significantly blacker and poorer" and "significantly worse off... by at least two important measures" of fiscal health.<sup>11</sup>

We seek to complement the existing literature by establishing a broad baseline of state policy systems regulating school districts' finances and detailing potential interventions—including, but not limited to, state takeovers. In doing so, we build on Bowman's prior 50-state survey that determined which states statutorily permitted school districts to file for bankruptcy and under what circumstances.<sup>12</sup> We also draw on related literature focusing on general-purpose local governments (municipalities). This work analyzes the role states have

played in severe municipal financial distress, together with states' efforts to monitor municipal financial health, and it sets the stage for thoughtful, contextualized policy borrowing.<sup>13</sup> Scorsone's work in particular has strongly informed our approach; his close survey of 16 states with municipal fiscal emergency laws posits that a thorough understanding of state fiscal intervention policy requires attention to *what* local actions or conditions the state intervention seeks to address, by *whom*, *when* and *how*.<sup>14</sup> Other, similar work supports Scorsone's framework.<sup>15</sup>

## Current Research

### Data Collection and Analysis

We employed Westlaw to systematically search each state's statutory code, following a protocol that specified relevantly titled sections; each section identified was then individually assessed for inclusion in our data set.<sup>16</sup> We included statutory sections that apply to traditional public school districts, constituted and operated according to state law and providing education directly to eligible children. However, we excluded legislation applicable only to statewide districts, such as the Achievement School District in Tennessee, and all schools in Hawaii and in the District of Columbia. We also excluded intermediate or regional school districts that are composed of local municipal or county school districts and/or that lack direct general education student enrollment.<sup>17</sup> Finally, because of wide variance in state charter school law, we excluded legislation applicable to charter schools only, although we acknowledge the importance of this regulatory area and its potential to interact with state policy on fiscal intervention in school districts.<sup>18</sup>

We define a potential state fiscal intervention as state action directed toward a local school district meeting three criteria. Specifically, it: (1) involves an identified *fiscal subject matter* otherwise within local control, (2) is *triggered* by the district's act or omission regarding local finance or by attainment of a specified local financial condition, and (3) provides a state entity with *enforcement authority* over district finances beyond the "business-as-usual" relationship. For example, if a statute permits the state superintendent to appoint an emergency manager in place of a school district's superintendent when the school district is in deficit, the fiscal subject matter is governance (replacing the district's chief executive), the trigger is a financial condition (the deficit), and the enforcement agency is the state's department of education (through its chief executive officer, the superintendent).<sup>19</sup>

Each of these three criteria has several constituent elements, and we developed codes for each element using several sources. From existing literature, we drew common and significant factors influencing when, how and why states have responded to local governments' fiscal distress.<sup>20</sup> We also drew on prior knowledge of Michigan's highly aggressive approach, which includes a wide array of interventions, triggers, and enforcement mechanisms.<sup>21</sup> Finally, we used our criteria and coding in a pilot study of potential fiscal intervention statutes of several diverse states. The results confirmed both the robustness of the three key criteria, and, with relatively minor descriptive modification, each criterion's set of codes.<sup>22</sup>

We coded each element of each potential intervention. Each coded record was twice re-

viewed for errors, omissions and more recent amendments. The final data set consisted of 449 records current to June 1, 2017, representing 1,068 potential interventions across 49 of the 50 states.<sup>23</sup> (Appendix 2 provides more detail about the collection and availability of our data.)

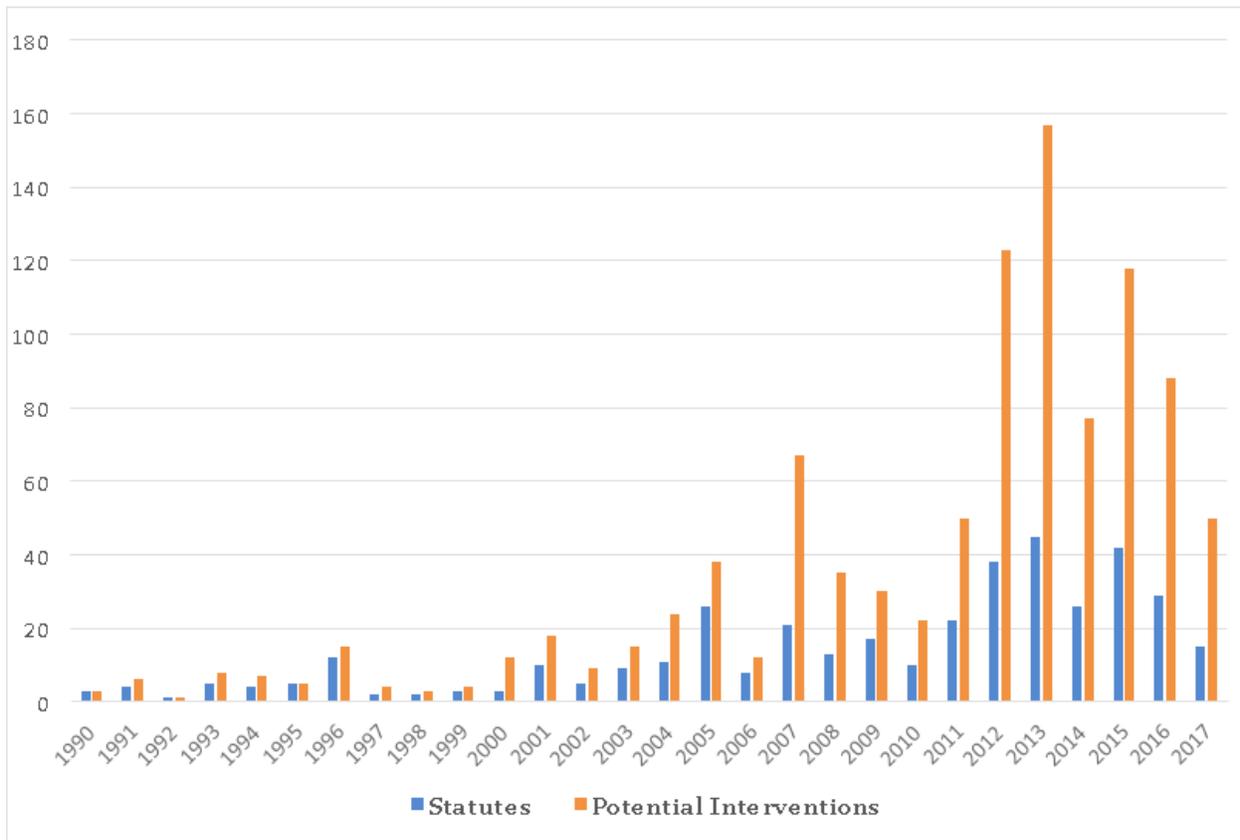
## Descriptive Findings and Discussion

Our research establishes a comprehensive baseline of state policies, while also enabling the identification of inter-state patterns and trends over time.

### *Potential Interventions by Date of Enactment*

Beginning with national aggregates, Figure 1 displays total newly enacted statutory sections or most recent amendments, and corresponding total potential interventions, by year. State legislative action increases sharply over time, especially since 2000. Of the 449 statutory sections, 88% have been enacted since 1990, 78% since 2000, and 51% since 2010. Similarly, of the 1068 potential interventions these statutory sections comprise, states enacted 94% since 1990, 88% since 2000, and 64% since 2010.

**Figure 1. Total New State Statutory Sections and Potential Fiscal Interventions by Year (1990-2017)**



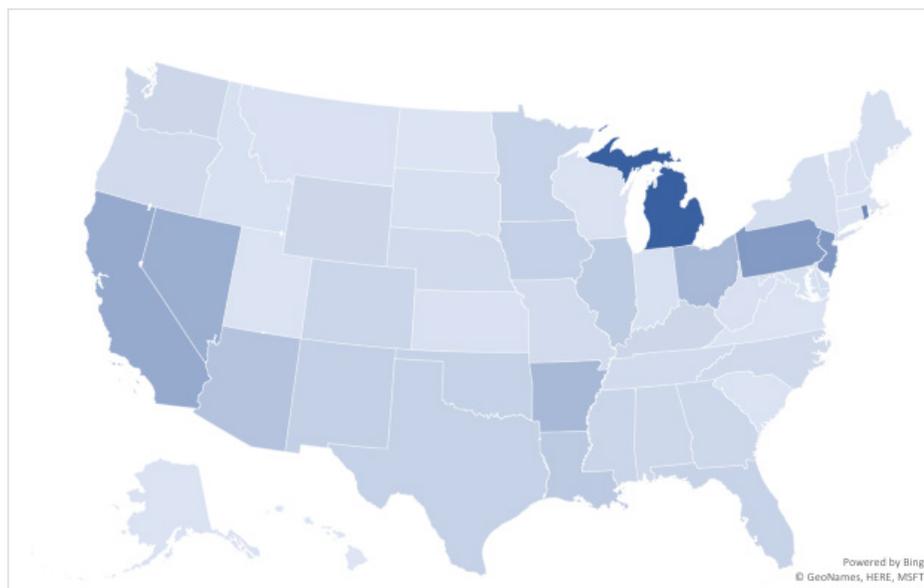
Note: Six statutory sections—two in each of three states—are not represented because the years of their respective enactments or amendments could not be determined.

States' authorization of strong fiscal interventions is a relatively new phenomenon with a remarkably steep chronological curve. At first, this trend appears unsurprising as it is consistent with increased state and federal involvement in education policy, which began to accelerate in the 1980s,<sup>24</sup> and more recently with some states' responses to the Great Recession and its aftermath.<sup>25</sup> However, since the main spike is recent and concentrated in a few states, it is perhaps driven more by state-specific political factors, potentially including the presence and outcome of school finance litigation, as Morel contends.<sup>26</sup> Additionally, prior economic downturns have not resulted in similar or proportionate legislative activity.

### *Potential Interventions by State*

Legislative activity also varies by state and region, with potential interventions concentrated (or not) across the nation, as Figure 2 vividly shows with respect to total current statutory sections enacted in each state (see also Figures 3-4, below):

**Figure 2. Concentration of Potential Interventions in Statutory Sections by State**



Note: Potential interventions range from two or fewer (lightest: AK, CT, HI, ND, SC, UT, VA) to 137 (darkest: MI).

Just as the volume of potential interventions is concentrated in the new millennium, potential interventions seem concentrated in a handful of states. Although about 70% of states have 23 or fewer potential interventions each, Michigan and Rhode Island together authorize 234 potential interventions. More generally, six states (CA, MI, NJ, NV, PA, RI), each with 57 or more interventions, together comprise nearly half of all potential interventions. These states seem a geographically and demographically diverse group, although at least three (CA, MI, PA) have struggled significantly in recent years with the problem of school districts' fiscal crises. Thus, the spike in legislation in at least some of these states seems intertwined with state politics.

Furthermore, Deep South and Midwestern states, especially those along the Mississippi River, are likely to have more potential interventions than upper South, Northeastern, and Rocky Mountain states. This pattern could suggest that state fiscal intervention policy related to school districts reflects regional political culture or dynamics, and also that policy diffusion in these areas is concentrated regionally.

### *Potential Intervention Subject Matter*

Each potential intervention has a subject matter—an area of local fiscal decision-making or action that the state’s action targets. Understanding the subject matter of a potential intervention is necessary to understanding how the intervention can change the balance of power between the state and a school district.

Overall, potential interventions focus most heavily on providing technical transparency, oversight, and support; state involvement in these areas includes such elements as planning and budgeting assistance, and external audits, investigations and reviews. However, more intrusive potential interventions involving governance, funding, spending, and personnel interventions follow closely behind. In contrast, few states have authorized interventions that address major costs such as contracts, including collective bargaining agreements; employee benefits, insurance or retirement costs or contributions;<sup>27</sup> or districts’ property.

**Table 1. Potential Interventions by Subject Matter of State Action**

<b>Potential Intervention Subject Matter Type</b>	<b>All</b>
SMT1 = School district fiscal governance structure and controlling authority	154
SMT2 = School district fiscal administration and personnel (incl individual persons/positions)	139
SMT3 = School district fiscal planning and budgeting (incl implementation, e.g. spending)	199
SMT4 = School district CBAs and related labor relations matters	37
SMT5 = School district funding sources/levels (incl state aid/apportionment)	162
SMT6 = School district borrowing/indebtedness	52
SMT7 = School district goods and services contracts and similar obligations	13
SMT8 = School district property (incl facilities)	12
SMT9 = School district legacy costs/benefits	0
SMT10 = School district fiscal intervention exit/termination requirements/conditions/events	49
SMT11 = School district imposed self-monitoring/reporting	81
SMT12 = School district external fiscal investigation/review/report (incl evaluations, recommendations, status declarations)	175
<b>Total</b>	<b>1068</b>

The data also show substantial variation of potential intervention subject matter within individual states: of the 48 states authorizing two or more interventions, all but three authorize intervention into multiple subject matter types. This substantial variation may relate

to state fiscal and political climates, particularly those around public education, or to other historical-cultural characteristics, such as the degree of urbanization and income stratification, or a tradition of local control. For example, while Michigan is known for the long-running fiscal (and educational) crisis in Detroit, an unprecedented number of districts across the state were in deficit in recent years—the most in any state the nation since the Great Recession. This contributed directly to Michigan’s recent experimentation with a range of policies to assist districts, as manifest through substantial and ongoing legislative activity.<sup>28</sup> Similarly, the variation within states could be temporal, reflecting changing approaches to the balance of state-school district power over time and the accumulation of newer approaches alongside older ones.

State-specific counts of subject matter, along with those of triggers and enforcement agency types, are available in online material as Consolidated Table A.

### *Triggers for State Action*

The breadth and depth of potential state fiscal intervention policies are also reflected in the kinds of triggers of state action. Clear triggers put school districts on notice about when they may be subject to state oversight or involvement.

States clearly favor districts’ specific acts, events, or omissions as the primary trigger type, such as a school district’s failure to file its budget with the designated state agency or the school district improperly transferring monies from one fund to another. This trigger type is present in nearly 60% of all potential interventions, nearly three times as often as the next most prevalent trigger type.

**Table 2. Potential Interventions by Triggers for State Action**

Potential Intervention Trigger Type	All States
TT0 = none/silent	42
TT1 = general classes of school district events/acts/ omissions	161
TT2 = specific school district acts/events/omissions	436
TT3 = school district status or condition	142
TT4 = TT1 + TT2	66
TT5 = TT1 + TT3	63
TT6 = TT2 + TT3	107
TT7 = TT1 + TT2 + TT3	51
<b>Total</b>	<b>1068</b>

Again, variation within states is high—of 48 states with two or more potential interventions, 45 use a variety of trigger types. The specific distribution of triggers within a given state may indicate different levels of legislative activity around different policy approaches or experiences with their districts. That said, there also is consistency among states: a trigger based on a local district’s specific act or omission—say, failing to timely file a financial statement—almost always results in a focused potential intervention aimed at obtaining compliance. On

the other hand, if a district’s status or condition triggers state action—for example, running budget deficits—then potential interventions usually involve more comprehensive and intrusive state actions.

### *Enforcement Agency by State*

Finally, enforcement power, a defining feature of all law, may indicate how policymakers frame a problem. For example, if policymakers conceive of a district’s fiscal crisis as a financial management issue, the state treasurer may be viewed as the appropriate enforcement agency; however, if financial problems are seen as a question of which educational opportunities are provided, the state superintendent may be a more likely fit. Moreover, depending on a state agency’s mission, capacity, and leadership, the selection of enforcement authority may largely determine the likelihood of effective implementation.

**Table 3. Potential Interventions by Enforcement Agency**

Potential Intervention Principal Enforcement Agency Type	All States
EAT0 = None/silent	112
EAT1 = Legislature or legislative body	34
EAT2 = Governor	15
EAT3 = State board of education and/or state supt of ed/ed commissioner	325
EAT4 = Regular state executive department or office (incl depts of ed, treasury/revenue, attorney general)	238
EAT5 = Other state independent or special use board/agency (incl state auditor)	88
EAT6 = Other official or entity empowered by state on case-by-case basis	256
<b>Total</b>	<b>1068</b>

States often vest enforcement power in state education authorities, such as the state superintendent or state board of education. Still, some assign wholly non-education actors—ranging from a state legislative agency to the state auditor—intervention responsibilities. As usual, national totals cloak state variation, which may be due in part to how states organize their fiscal oversight and educational bureaucracies. Enforcement agency choices are especially state-specific because the same or similar agency names (for example, state auditor or legislative auditor) may mask significant differences in agency resources, mission, and enforcement approach. Many states nonetheless appear to recognize the singularity of education governance and finance, with the possible exception of school districts’ severe fiscal distress or crisis.

### **Proposed Typology of States**

Analyzing states’ potential fiscal interventions as we have provides important information about specific characteristics of policy systems. We pursued further understanding by analyzing state policies along two more general dimensions: the breadth and depth of potential state interventions into local districts’ finances. Quantitative measures in these two areas

provide the base for a typology of state policy systems.

*Frequency* reflects the breadth of a state’s approach; it is the total number of potential fiscal interventions a state has enacted (see Appendix 1). *Intensity* reflects the depth of a state’s approach; it represents the degree of intrusiveness into local financial matters. During our research, broad categories of state interventions emerged that seemed to employ common policy tools. These categories form a ladder of state power, with each level assigned a number of “points” representing increasing intensity.

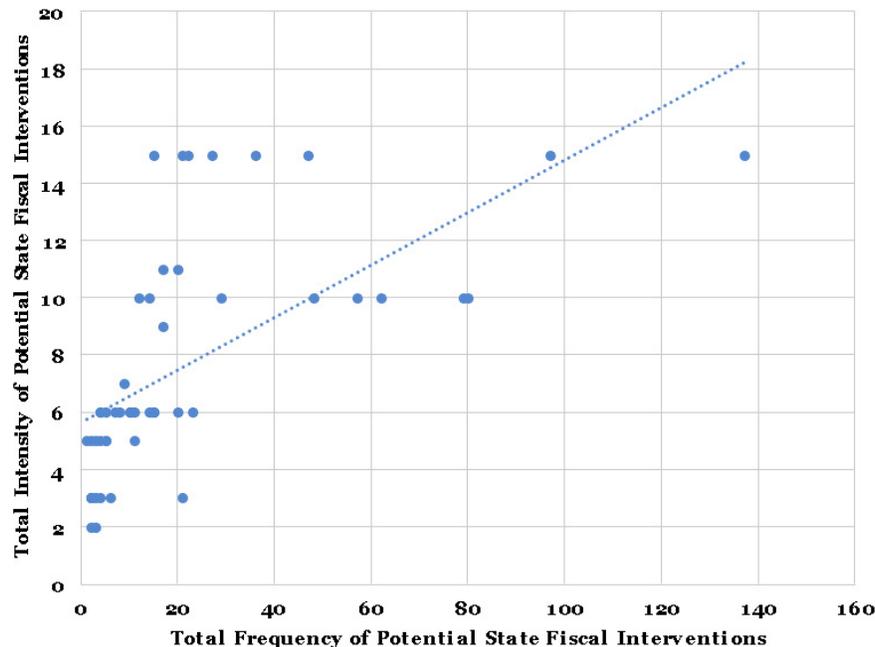
**Table 4. Levels of Potential Intervention Intensity**

Level	Description of Intensity Level
1	State monitoring or investigation of school district fiscal information
2	State potential fiscal intervention to deter or penalize school district non-compliance and coerce compliance of state fiscal mandate
3	State authorization/review/approval of mandated school district fiscal action
4	State direct take-over determines/ controls/ imposes fiscal action(s) on school district
5	State determination to dissolve, annex/consolidate/reconstitute or permit/require school district bankruptcy

We attributed points to a state for each level at which it has authorized at least one fiscal intervention. A state’s point total measures its intensity of potential intervention (see Appendix 1). The minimum intensity is 1 point for level 1 only, and the maximum intensity is fifteen for all five levels’ points together = 1 + 2 + 3 + 4 + 5.<sup>29</sup>

Figure 3 plots each state’s frequency and intensity measures to show the results of our exploratory analysis.

**Figure 3. Scatterplot of States by Potential Fiscal Intervention Frequency and Intensity**



The scatterplot suggests a strong positive correlation between potential intervention frequency and intensity across states. It also suggests three clusters of states that may indicate similarities in intervention policy systems within each cluster.

To explore this possibility, we computed the mean intensity (7.7) and frequency (21.8) across all states and then compared each state's measures to each corresponding mean. The result of applying this process of comparison forms the following four-square typology.

**Figure 4. Typology of Potential State Fiscal Intervention Policy Approaches**

<p style="text-align: center;"><b>Quadrant I</b> <i>Narrow Intervention Potential</i> (high intensity, low frequency)</p> <p style="text-align: center;">AL, <b>CO</b>, FL, MS, NC, TX, WA (7 States)</p>	<p style="text-align: center;"><b>Quadrant II</b> <i>Strong Intervention Potential</i> (high intensity, high frequency)</p> <p style="text-align: center;">AR, AZ, <b>CA</b>, IA, IL, LA, MI, NJ, NV, OH, PA, RI (12 States)</p>
<p style="text-align: center;"><b>Quadrant IV</b> <i>Weak Intervention Potential</i> (low intensity, low frequency)</p> <p style="text-align: center;">AK, CT, DE, GA, ID, IN, KS, KY, MA, MD, <b>ME</b>, MN, MO, MT, ND, NE, NH, NY, OK, OR, SC, SD, TN, UT, VA, VT, WI, WV, WY (29 States)</p>	<p style="text-align: center;"><b>Quadrant III</b> <i>Broad Intervention Potential</i> (low intensity, high frequency)</p> <p style="text-align: center;"><b>NM</b> (1 State)</p>

Notes: (1) Forty-nine states are represented; single-district Hawaii and the District of Columbia are excluded. (2) The state abbreviation shown in bold, italicized font is the representative state from each quadrant. (3) State-specific results are shown in Appendix 1.

Our proposed typology shows that 29 states (almost 60%) have what we label “Weak Intervention Potential” because they allow for substantial local fiscal control, even in times of fiscal crisis. The seven states with “Narrow Intervention Potential” have fewer than average potential intervention opportunities, but nonetheless authorize strong interventions if local fiscal matters sufficiently worsen. Twelve states with “Strong Intervention Potential” are statutorily prepared to intervene often and potentially to a great degree. Only New Mexico has what we call “Broad Intervention Potential,” because the range of possible state interventions is great, but the potential interventions do not go all that far in diminishing local school districts’ control.

Perhaps as a legacy of local control, because of less experience with districts’ fiscal crises, or as Morel contends, due to “puzzles concerning American race, state, and urban politics,”<sup>30</sup>

most states have authorized a relatively light fiscal touch on their districts, leaving districts largely in control, at least until substantial fiscal distress arises. And even then, potential interventions may be provided only on an ad hoc or sporadic basis.

### Typologically Representative States

To more readily compare the groups of states, we selected a representative state from each quadrant of our proposed typology by identifying the state with frequency and intensity measures numerically closest to the respective quadrant means (Quadrant I, Colorado; Quadrant II, California; Quadrant IV, Maine, see Figure 4 and Appendix 1). We did not include New Mexico (Quadrant III) for several reasons. New Mexico enacted nearly all of its statutory provisions, including the vast majority of potential interventions, between 1978 and 2007; it enacted one in 2015. The fact that New Mexico is the sole state in Quadrant III suggests that other states have in effect rejected its policy approach or that its intensity and frequency measures are so close to the Quadrant IV states as to be indistinguishable in practice. (Table 5 contains more detail about each representative state.)<sup>31</sup>

**Table 5. Coded Elements of Potential Fiscal Interventions by Representative States**

Potential Intervention Subject Matter Types	CA QII	CO QI	ME QIV
SMT1 = School district fiscal governance structure and controlling authority	8	1	1
SMT2 = School district fiscal administration and personnel (incl individual persons/positions)	6	2	1
SMT3 = School district fiscal planning and budgeting (incl implementation, e.g. spending)	10	2	1
SMT4 = School district CBAs and related labor relations matters	4	1	0
SMT5 = School district funding sources/levels (incl state aid/apportionment)	9	2	3
SMT6 = School district borrowing/indebtedness	2	4	0
SMT7 = School district goods and services contracts and similar obligations	0	0	0
SMT8 = School district property (incl facilities)	0	1	0
SMT9 = School district legacy costs/benefits	0	0	0
SMT10 = School district fiscal intervention exit/termination requirements/conditions/events	2	0	0
SMT11 = School district imposed self-monitoring/reporting	9	0	1
SMT12 = School district external fiscal investigation/review/report (incl evaluations, recommendations, status declarations)	12	4	0
<b>Subject Matter Type Totals</b>	<b>62</b>	<b>17</b>	<b>7</b>

<b>Potential Fiscal Intervention Trigger Types</b>	<b>CA QII</b>	<b>CO Q1</b>	<b>ME QIV</b>
TT0 = none/silent	3	0	1
TT1 = general classes of school district events/acts/omissions	4	5	1
TT2 = specific school district acts/events/omissions	53	3	2
TT3 = school district status or condition	0	1	0
TT4 = TT1 + TT2	2	3	3
TT5 = TT1 + TT3	0	0	0
TT6 = TT2 + TT3	0	1	0
TT7 = TT1 + TT2 + TT3	0	4	0
<b>Trigger Type Totals</b>	<b>62</b>	<b>17</b>	<b>7</b>

<b>Principal Enforcement Agency Types for Potential Fiscal Interventions</b>	<b>CA QII</b>	<b>CO QI</b>	<b>ME QIV</b>
EAT0 = None/silent	0	4	1
EAT1 = Legislature or legislative body	0	1	0
EAT2 = Governor	0	0	0
EAT3 = State board of education and/or state supt of ed/ed commissioner	19	3	5
EAT4 = Regular state executive department or office (incl depts of ed, treasury/ revenue, attorney general)	0	6	1
EAT5 = Other state independent or special use board/agency (incl state auditor)	5	0	0
EAT6 = Other official or entity empowered by state on case-by-case basis	38	3	0
<b>Enforcement Agency Type Totals</b>	<b>62</b>	<b>17</b>	<b>7</b>

A comparison of the potential intervention subject matter types in Table 5 predictably shows that the high-frequency state (Quadrant II, California) contains more subject matter types than the low-frequency states. Yet, some potential intervention subject matter types are more invasive than others. For example, California has a large lead, both in typically in-depth potential interventions, such as those involving local governance, personnel, and funding, and in less intrusive potential interventions, such as district self-monitoring and state investigations. Among the representative states, only California has a comprehensive fiscal crisis intervention system, including explicit requirements a school district must satisfy to regain a pre-intervention level of fiscal autonomy. No other state codifies these exit requirements.

Interestingly, both Quadrant II California (4) and Quadrant I Colorado (1) employ potential interventions related to collective bargaining, which can be a deep intervention into local workforce control and personnel costs. Yet, California's provisions largely protect existing collective bargaining agreements and employment contracts, while Colorado's permits unilateral, if proportional, reductions in employee salaries and work hours. This variation illustrates the influence of state-specific political and economic policy contexts. On the other hand, both California and Colorado, which occupy adjacent quadrants based on intensity (Quadrants II and I, respectively), are within one in the range of potential intervention types (9 and 8 out of 12 possible). Quadrant IV Maine only utilizes 4/12 subject matter types of

potential fiscal interventions.

With respect to trigger types, the representative states are more consistent with one another as to the nature of district-level events that can elicit fiscal intervention. Indeed, apart from Quadrant I Colorado's somewhat greater use of two combination triggers, the representative states have enacted the same range of trigger types. This consistency contrasts sharply with the substantial variation in the breadth and depth of intervention subject matter types discussed above and may be due to the outsized prevalence of one trigger type (specific district events, acts, or omissions), as compared to the lack of such clear dominance among the types of potential intervention subject matter. In any event, the implication is that local (mis) behavior, in kind if not magnitude, may elicit various ranges of potential state intervention responses.

Regarding principal enforcement agency types, the three representative states all rely substantially on education agencies, whether the state board, state superintendent, or state department of education. Where Maine (Quad IV) taps only education agencies for enforcement, Quadrant I Colorado's enforcement agencies also include non-education actors such as the state auditor and state treasurer. Although Colorado also empowers the education commissioner to appoint ad hoc "state review panels" for the scrutiny of local district finances, only California (Quad II) has authorized the application of much heavier hands: independent state fiscal agencies and specially empowered fiscal actors with significant authority over districts' finances. At least among the representative states, the more far-reaching a state's involvement is, the less likely it is to leave enforcement solely in education agencies.

## **Connections with Other Aspects of Education Policy**

In our findings and discussion so far, our goal has been to establish a descriptive baseline for state fiscal intervention policy systems—an important indicator of how power is distributed between a state and its school districts. We invite researchers to continue to develop a robust and nuanced foundation and to build on that foundation.

Two significant questions often follow the creation of such a baseline: first, how are states implementing the policy? And second, how do states' statutory frameworks in this area connect with other aspects of education policy? The first question is already the subject of some research, as discussed above, and we hope much future research will include the use of our work to contextualize other scholars' own analyses. The second question is one we now engage, briefly and through preliminary suggestive correlations only. We seek to illustrate how the fiscal intervention aspect of state power over education may be connected to other aspects, such as the race/ethnicity of a state's students, charter school enrollment, and the equity and adequacy of school finance systems.

First, using 2015 data from the National Center for Education Statistics, we assigned states to quartiles based on the percentage of white students in public elementary and secondary schools; 49% of all public elementary and secondary school students in the United States are white (see Appendix 1).<sup>32</sup> Of the 10 states with 75% or more white students, nearly all (nine) were "Weak Intervention" states (low intensity, low frequency). Of all "Weak Intervention"

states (29), nearly three-quarters (23) had more than 50% white students. Additionally, both of the states with <25% white students (CA and NM) are high intervention states, though in different quadrants.

Next, using the same data set, we assigned states to groups based on the percentage of students in charter schools: no charter law, <1%, 1-4.9%, 5-9.9%, and 10%+ (see Appendix 1).<sup>33</sup> All seven of the states with no charter law in 2015 were in the “Weak Intervention” category. Of the states with lower charter enrollment (<1-4.9%), nearly all were in low frequency states. States with 5% or more of students in charter schools comprised a disproportionately high share of states in the high-intensity states, accounting for two-thirds of the “Strong Intervention” states and, by contrast, only one-fifth of the “Weak Intervention” (low intensity, low frequency) states.

Finally, *Education Week’s* 2018 evaluation of states’ school finance systems is also based on 2015 data. We employ its rankings of states as a proxy for the equity and adequacy of school funding so that we can consider the relationship between school funding and states’ approaches to potential fiscal interventions (see Appendix 1).<sup>34</sup> According to *Education Week’s* assessment, the average grade among states is “C.” Six of the seven “Narrow Intervention” (high intensity, low frequency) states received a D, D+, or D-. Similarly, the high intensity states constitute a greater percentage of D range grades (42%) than did the low intensity states (20%). Grades in the B and C ranges are distributed relatively proportionately between the “Strong Intervention” and “Weak Intervention” states. Only one state (Wyoming, Quadrant IV) received a grade in the A range.

These descriptive patterns lead us to offer three hypotheses that may help guide future research: (1) The greater proportion of a state’s student population that is white, the more hands-off state potential fiscal intervention policies are. This is consistent with Morel’s work.<sup>35</sup> We also suggest that (2) states’ charter school enrollment is proportional to the intensity of states’ potential fiscal interventions. This could be explained by deregulation on the front end coupled with stronger state oversight on the back end. However, an alternative interpretation could be that a state first creates fiscal instability by permissive authorization charters, only to use that instability to justify greater potential fiscal interventions. Finally,

*We look forward to future scholarship that extends, confirms, or refutes the tentative correlations we suggest in this brief.*

we suggest that (3) the less equitable and adequate its school finance system, the more amenable the state is to high-intensity potential fiscal interventions. This possibility is consistent with Arsen’s and Bowman’s independent analyses of one state’s substantial contributions to school districts’ fiscal crises and its enactment of high-intensity, high-frequency potential fiscal interventions, partially in response to the crises.<sup>36</sup>

Of course, we offer these hypotheses with many caveats. Importantly, we do not claim anything like causal connection. Other variables such as a state’s degree of urbanicity or relative wealth, properly controlled for, may better explain the preliminary correlations. We also acknowledge that a binary classification of “white” and “non-white” students is crude; it cannot reflect the range of diversity within individual states or the country. Additionally, the charter school hypothesis does not compare two policy systems, but rather relates policy

implementation (actual enrollment) to a policy system (potential fiscal intervention). And, any criticism of *Education Week's* school finance methodology inures to our reliance on its conclusions.<sup>37</sup> Finally, we note that blunt distinctions of quartiles and groups across all three variables necessarily limit our analysis. Nonetheless, we propose that such hypotheses may stimulate more sophisticated and telling research, and we look forward to future scholarship that extends, confirms, or refutes the tentative correlations we suggest in this brief.

## Conclusion and Recommendations

At its core, our research focuses on the explicit power of the state over school districts' finances. We identify where this power resides, and when the power shifts, why it does so, where it goes, and who makes the call. The baseline we have established allows policymakers and researchers to contextualize one state's choices, or the choices of a group of states, within the universe of approaches adopted by all states. The typology we have proposed offers a manageable way to conceive of states' different approaches in this area of policy. Furthermore, it enables analysis of how states' choices regarding policy in this area intersect with other key education policy issues; to that end, we have offered three hypotheses based on preliminary analysis, along with an invitation for researchers to engage these questions.

Accordingly, our analyses and findings lead us to offer the following recommendations:

1. Using our baseline data and typology, national organizations such as the Education Commission of the States and the National Conference of State Legislatures should convene state policymakers and researchers to facilitate policy learning and policy transfer about these issues.
2. Beginning with our coded data, state governors or state legislatures' education committees should evaluate their system of potential interventions into districts' finances and also implementation. They also should ask how that system interacts with other statutory systems such as those regulating school funding and enabling charter schools, and how implementation could impact school districts with varying racial/ethnic composition.
3. Researchers should make use of our data to explore connections between a state's articulated power over school districts' finances and other core aspects of a state's fiscal power over education. These other aspects include school funding (de)centralization of school funding and adequacy, as well as charter school permissiveness. Exploring the existence of connections with states' partisan politics also may help illustrate connections between or among these policies.
4. Researchers should further investigate the connections we suggest between potential fiscal interventions, students' race, and charter permissiveness. Researchers also should test correlation and causation between (a) the systems we identify and (b) racial, ethnic, and socioeconomic diversity *within* and *among* districts.

## Appendix 1

### Frequency, Intensity, Quadrant Membership, Racial Demographics, and Education Policy Patterns by State

State	Total Frequency	Total Intensity	Typology Quadrant	% White Students by Quartile (1 = low) and % (2015)	Grouped by % of Public School Students in Charters (2015)	School Finance Grade, Education Week (2018)
AK	2	5	IV	2 (48%)	1-4.9% (4.8)	B
AL	14	10	I	3 (56%)	<1% (0)	D+
AR	47	15	II	3 (62%)	1-4.9% (4.9)	C-
AZ	36	15	II	2 (40%)	10%+ (16.0)	D-
CA	62	10	II	1 (24%)	5-9.9% (9.2)	C-
CO	17	11	I	3 (54%)	10%+ (12.1)	D+
CT	2	3	IV	3 (56%)	1-4.9% (1.7)	B+
DE	9	7	IV	2 (46%)	10%+(10.1)	B-
FL	20	11	I	2 (40%)	5-9.9% (9.7)	D+
GA	14	6	IV	2 (41%)	1-4.9% (4.1)	D+
IA	22	15	II	4 (78%)	<1% (0.1)	C
ID	5	5	IV	4 (76%)	5-9.9% (6.6)	D-
IL	27	15	II	2 (49%)	1-4.9% (3.2)	B-
IN	5	6	IV	3 (69%)	1-4.9% (3.8)	C-
KS	4	3	IV	3 (65%)	<1% (0.7)	C
KY	15	6	IV	4 (78%)	n/a	C-
LA	29	10	II	2 (46%)	10%+ (10.3)	C-
MA	3	5	IV	4 (63%)	1-4.9% (4.2)	B
MD	5	5	IV	2 (39%)	1-4.9% (2.4)	B
ME	7	6	IV	3 (90%)	<1% (0.9)	B
MI	137	15	II	3 (67%)	5-9.9% (9.8)	C
MN	20	6	IV	3 (69%)	5-9.9% (5.9)	C+
MO	10	6	IV	3 (72%)	1-4.9% (2.4)	C-
MS	17	9	I	2 (45%)	<1% (<.1)	D+
MT	4	6	IV	4 (79%)	n/a	C-
NC	12	10	I	2 (50%)	5-9.9% (5.3)	D
ND	1	5	IV	4 (79%)	n/a	B
NE	11	5	IV	3 (68%)	n/a	C
NH	4	5	IV	4 (87%)	1-4.9% (1.7)	B-
NJ	80	10	II	2 (46%)	1-4.9% (3.0)	B+

NM	23	6	III	1 (24%)	5-9.9% (6.6)	C-
NV	57	10	II	2 (34%)	5-9.9% (7.5)	D-
NY	8	6	IV	2 (45%)	1-4.9% (4.3)	B+
OH	48	10	II	3 (71%)	5-9.9% (6.9)	C
OK	21	3	IV	2 (50%)	1-4.9% (2.9)	D
OR	11	6	IV	3 (63%)	5-9.9% (5.4)	C-
PA	79	10	II	3 (68%)	5-9.9% (7.7)	B
RI	97	15	II	3 (60%)	5-9.9% (5.2)	B+
SC	2	2	IV	3 (52%)	1-4.9% (3.9)	C-
SD	6	3	IV	3 (75%)	n/a	D+
TN	10	6	IV	3 (64%)	1-4.9% (2.9)	D
TX	21	15	I	2 (29%)	5-9.9% (5.4)	D+
UT	2	3	IV	3 (75%)	10%+ (10.4)	D-
VA	2	3	IV	3 (51%)	<1% (0.1)	C
VT	3	3	IV	4 (91%)	n/a	B+
WA	15	15	I	3 (56%)	<1% (0.1)	C
WI	3	2	IV	2 (71%)	5-9.9% (5.1)	C+
WV	4	6	IV	4 (91%)	n/a	C+
WY	15	6	IV	4 (78%)	<1% (0.5)	A-
Means	21.8	7.7	n/a	49%	5.7%	C
Totals	1068	376	49			

Note: n/a = not available

## Appendix 2 – Authors’ Notes

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### Authors’ Note on Data Collection and Database Population

The data analysis presented in this brief rests upon data collected, entered into and maintained as records in a Microsoft Access database specially created and populated for this project. The data for entry were collected through a systematic Westlaw search of each state’s statutory code for every statutory section involving a potential state fiscal intervention and meeting the inclusion criteria discussed in the brief. A separate database record was made for each identified statutory section (which had been organized and saved in a Westlaw folder system). Each record includes identifying statutory information, such as the relevant state, section number, short title, and date of enactment or most recent amendment. In addition, the statutory data (text) specifying each of the three elements (subject matter, enforcement agency, trigger) of each potential intervention in each statutory section/record was coded and summarized for entry into the database. The completed database consists of 449 records current to June 1, 2017 that represent 1068 potential interventions across 49 of the 50 states.

### Authors’ Note on Third-Party Access to the Database

To provide access to the data on which this brief is based, the authors intend to post certain outputs from the Microsoft Access database specially created for this project on a Michigan State University website. In addition, the authors are considering the possibility of sharing access to the database itself. In the meantime, the authors welcome email inquiries of interest directed to the corresponding author, Kristine L. Bowman, J.D., Associate Dean of Academic and Student Affairs, College of Education, and Professor of Law, College of Law, Michigan State University, [klbowman@msu.edu](mailto:klbowman@msu.edu).

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- 17 We did include local school “departments” nominally within municipal governments, where they effectively have independent governance and control over their own fiscal affairs.  
  
Under some state-established school funding systems, county or municipal general governmental units and non-local “districts” play a role in the processing of district or department revenues and expenditures. Any action by these actors that is *pro forma* or occurs in the ordinary course is excluded from our definition of “potential state intervention”; included, however, are statutes where a local fiscal action or condition will or may trigger enhanced, state-conferred or delegated authority to these intermediate units to intervene in local district finances.
- 18 Where state law covered both included and excluded districts or schools, we collected the relevant data, but coded, described, and analyzed it only with respect to included districts.
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22 Since each set of codes included a "silent" and/or "other," all potential interventions in any record/section have their intervention type, trigger, and enforcement codes and descriptions linked by section or sub-section number.

23 Again, Hawaii was excluded from the beginning as a single, statewide district.

24 Jacobsen, R., & Saultz, A. (2012). Poll trends—Who should control education? *Public Opinion Quarterly*, 76(2), 379-390.

25 Bowman, K. (2011). Before school districts go broke: A proposal for federal reform. *University of Cincinnati Law Review*, 79, 895-966.

26 Morel, D. (2018). *Takeover: Race, education, and American democracy*. New York, NY: Oxford University Press.

27 We included a code for state interventions in district employee retirement benefits, however, the code proved insignificant, presumably because teacher retirement benefits are state-managed, with the local districts' roles limited to making the required contributions set by the state. A district's failure to timely make such a contribution is statutorily treated (and so we coded) like the failure to make other mandated payments like the payment of wages, not by an intervention into, say, the legacy costs/benefits or personnel systems, but into budgeting and expenditures.

28 Bowman, K. (2017). The failure of education federalism. *University of Michigan Journal of Law Reform*, 51, 1-53.

- 29 We realize that our intensity measure may over-simplify by using equal intervals between levels and by awarding “points” for a single statutory intervention in a level. Nevertheless, as discussed below, the resulting typology seems to group states in four meaningful categories.
- 30 Morel, D. (2018). *Takeover: Race, education, and American democracy*. New York, NY: Oxford University Press.
- 31 Because Quadrant III has only one state, New Mexico, which for all intents and purposes is barely distinguishable from the large number of Quadrant IV states, it is not really “representative” of a distinct group. Further, because comparing New Mexico on an equal basis with the other truly representative states may be misleading, the discussion that follows only compares, alphabetically, California (Quad II), Colorado (Quad I), and Maine (Quad IV).
- 32 National Center for Education Statistics (2018a). Table 203.70. Percentage distribution of enrollment in public elementary and secondary schools, by race/ethnicity and state or jurisdiction: Fall 2000 and Fall 2015. Retrieved May 2, 2019 from [https://nces.ed.gov/programs/digest/d17/tables/dt17\\_203.70.asp](https://nces.ed.gov/programs/digest/d17/tables/dt17_203.70.asp)
- 33 National Center for Education Statistics (2018b). Public charter school enrollment, Figure 2. Percentage of all public school students enrolled in public charter schools, by state: Fall 2015. Retrieved May 7, 2019 from [https://nces.ed.gov/programs/coe/pdf/coe\\_cgb.pdf](https://nces.ed.gov/programs/coe/pdf/coe_cgb.pdf);
- National Center for Education Statistics (2017). Table 216.90. Public elementary and secondary charter schools and enrollment, by state: Selected years, 2000-01 through 2015-16. Retrieved May 7, 2019 from [https://nces.ed.gov/programs/digest/d17/tables/dt17\\_216.90.asp](https://nces.ed.gov/programs/digest/d17/tables/dt17_216.90.asp)
- 34 Education Week (2018a). Quality counts 2018: Finance, a user’s guide to the grading and methodology. Retrieved May 8, 2019, from <https://www.edweek.org/ew/articles/2019/06/05/a-users-guide-to-the-grading-and.html>;
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- 35 Morel, D. (2018). *Takeover: Race, education, and American democracy*. New York, NY: Oxford University Press;
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- 36 Arsen, D. & DeLuca, T. & Ni, Y. & Bates, M. (2016). Which districts get into financial trouble and why: Michigan’s story. *Journal of Education Finance*, 42(2), 100-126;
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- 37 Education Week (2018a). Quality counts 2018: Finance, a user’s guide to the grading and methodology. Retrieved May 8, 2019, from <https://www.edweek.org/ew/articles/2019/06/05/a-users-guide-to-the-grading-and.html>