I. INTRODUCTION

Gaming taxes are increasingly used to help fund education across the United States.1 Although lottery taxes have a history of funding education in many states, gaming taxes, such as casino gambling taxes and online sports-betting taxes, are new to most states.2 One state with a long history of gaming taxes is Nevada, where “wide open” gaming has been legal since 1931.3

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3 Greg Gemignani, History of Nevada’s Gaming Regulatory Structure, CANNABIS COMPLIANCE BD. TASK FORCE, https://tax.nv.gov/uploadedFiles/taxnvgov/Content/FAQs/NV-Gaming-History.pdf (last visited Oct. 15, 2022) (discussing how gaming was legal from 1869 to 1910 and then became legal as “wide-open” gambling in 1931).
Although Nevada’s modern gaming era started in 1931, gross gaming revenue was not taxed until 1945. The original tax on casinos was 1% of gross gaming revenue of more than $3,000, contributing roughly $100,000 to the State’s budget. Since then, gaming tax revenue has mostly gone into Nevada’s General Fund, which public schools have historically drawn from for at least some of their funding. Although Nevada has a long history of gaming taxes, unfortunately, it does not have a record of adequate funding in its public education system, which is one factor that has led to its ranking of 46 out of 50 states in Pre-K–12 education.

Nevada’s most recent gross gaming revenue tax increase was in 2003. Since then, two proposals to raise gaming taxes to remedy Nevada’s inadequate education funding have been introduced and have failed. Most recently in 2020, the Clark County Education Association (CCEA) proposed a gaming tax increase to 9.75% of gross gaming revenue over $250,000 for nonrestricted gaming licensees. But this initiative fell victim to a legislative compromise in which a less substantial tax on mining was passed in its place.

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4 Id.
5 Id.
8 Taxation on Tourism in Nevada: A Brief History, 3 Las Vegas Convention and Visitors Auth. Econ. Impact Series 1, 8 (2011) [hereinafter Taxation on Tourism in Nevada].
10 S-01-2020 Initiative, supra note 9.
Nevada struggles in education; consistently underperforming other states in student achievement, tax revenue, and class size. Further, Nevada’s funding of public education is consistently inadequate on a per-pupil basis. Nevada’s legislature struggles to support education through both tax revenue and its general funding structure. For half a century, the State followed the Nevada Plan, a problematic structure mostly based on fixed amounts linked to enrollment. In 2019, the Nevada Legislature finally passed a new school-funding formula called the Pupil-Centered Funding Plan (SB 543). Although this plan is still in its infancy, there has already been criticism that it does not solve Nevada’s funding and equity problems.

This note will argue that, when addressing education funding, Nevada’s legislature must fully consider the needs of Nevada’s most vulnerable students while including new revenue sources and providing accountability for previously approved ones. Part II of this note considers two states’ legislative schemes while Part III compares those schemes to those in Nevada. Part IV of this note will then discuss the history and use of gross gaming taxes in Nevada. By applying both jurisdictional comparison and analysis of Nevada’s funding structure and gaming


14 Hanson, supra note 7.


17 SB 543, 80th Sess. (Nev. 2019).

18 Loescher, supra note 15.
taxes, Part V of the note will address the need for additional funding through adequate gaming taxes and an effective school-funding formula.

II. EDUCATION FUNDING, GAMING TAXES, AND SUCCESS METRICS

Increased education funding relates to better education outcomes. In 1973 the Supreme Court, in *San Antonio Independent School District v. Rodriguez*, found that gross disparities in education funding across schools did not violate the United States Constitution. The decision shifted the responsibility to remedy gross disparities in education funding to the states and their constitutions—leading to a wave of school finance reforms. Using the variation in spending as a result of these reforms, a 10% increase in per-pupil spending each year for all twelve years of public school leads to 0.31 more completed years of education, roughly 7% higher wages, and a 3.2% reduction in the annual incidence of adult poverty. A 2018 study found a one-time $1,000 increase in per-pupil annual spending increased test scores by a rate between 0.12–0.24 standard deviations. Another study that looked at graduation rates found that seven years after finance reform, the highest poverty quartile in a treated state experienced between an 11.5%–12.1% increase in per-pupil spending and a 6.8%–11.5% increase in graduation rates.

Gaming tax revenue is often used to fund public education in states that have legalized gaming. United States federal law defers to the states to regulate

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22 Julien Lafortune et al., *School Finance Reform and the Distribution of Student Achievement*, 14 EDUC. FINANCE POLICY 31 (2019).

23 Evans, *supra* note 20 (referencing Christopher A. Candelaria & Kenneth A. Shores, *Court Ordered Finance Reforms in the Adequacy Era: Heterogeneous Causal Effects and Sensitivity*, 14 EDUC. FINANCE POL’Y 31 (2019)).

24 Michigan, New Hampshire, and New York are some states that dedicate gross gaming revenue from sports betting to education specifically, while California, Florida, Idaho, and Ohio are some states that dedicate revenue from the state lottery
gaming or to prohibit the practice within its borders. Types of legalized gaming vary by each state, but some commonly legalized types of gaming include casino-style gaming, horse racing, online gaming, sports betting, and lottery. Most states have, at minimum, a state lottery, and many of these lottery systems help fund public services, with a heavy emphasis on education.

Although lotteries are a more traditional way to collect gaming tax revenue, the increasing legalization of casino gaming, online gaming, and sports betting provides new opportunities to collect tax revenue. For example, the early nineties saw a boom in legalized riverboat gaming in a handful of states, increasing casino gaming revenue. As for online gaming, the Wire Act of 1961 used to oversee the online gaming sector, but it was passed before the internet existed and did not entirely apply to digital wagering. The Wire Act’s inapplicability prompted the United States Department of Justice to allow states to decriminalize online gaming in 2011, and several states quickly legalized it. In 2018, the Supreme Court overruled the Professional and Amateur Sports Protection Act of 1992 (PAPSA), finding that its provision prohibiting state authorization of sports gaming violates the anticommandeering doctrine under the Tenth Amendment. As of writing this note, online sports betting has
expanded to twenty-four states and the District of Columbia. This progression over the past thirty years of legalized gaming has brought in billions of dollars in tax revenue for specific programs, including education.

Many states have successfully funded public education through taxes on gaming, but some have not been so fortunate. States like New York have seen gains in gaming revenue, especially from sports betting, and are forwarding some of the taxed portion of this revenue to state funds that support public education. Meanwhile, states with established gaming histories like Nevada and Mississippi are struggling to direct multiple streams of gaming tax revenue into their respective education budgets.

A. Successful State: New York

New York is a state that is relatively successful at funding its schools. According to U.S. News and World Reports (USNWR) in 2023, New York is ranked the 8th state overall in Pre-K–12 education. Looking at more specific metrics, USNWR ranked New York first in the country in per-pupil education funding. New York’s funding formula is largely student based and assigns a

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34 See generally Lotteries, Casinos, Sports Betting, supra note 26 (discussing revenue trends in the last twenty years, with state and local revenue from non-sports gaming reaching $35 billion in 2020 alone).
37 Although New York appears to be a very different state than Nevada, New York was chosen for comparison not only for its high level of education funding, but because the geographic demographics of both states are similar in each category and the categories are similarly proportional to one another. See From the Public Elementary and Secondary Education Universe School Year 2015–16, NAT’L CTR. FOR EDUC. STAT., SELECTED STATISTICS (Dec. 2017), https://nces.ed.gov/pubs2018/2018052.pdf [hereinafter School Year 2015–16]; see discussion infra Part III.A.
38 Pre-K–12 Rankings, supra note 7.
cost to an education of a student called a base amount.\textsuperscript{40} About 39\% of school funding comes from State formula aid and grants, including those from the Commercial Gaming Revenue Fund.\textsuperscript{41} Ultimately, New York’s success with online gaming taxes and a strong educational funding scheme has benefitted the state’s students.

Turning first to its educational funding scheme, New York has the highest average median expenditure per student in the country at $25,359 per student.\textsuperscript{42} Its fixed-base per-pupil funding amount for 2021 was $6,835, but regional cost adjustments and additional allocations make the actual per-pupil amount much higher.\textsuperscript{43} New York relies on local funding for 55.3\% of its total tax revenue and state funding for 38.8\%.\textsuperscript{44} A unique feature of New York’s educational funding scheme is that school districts for the five largest cities rely exclusively on local tax revenue to fund schools.\textsuperscript{45}

Local and state funds are collected through different taxes. Local funding is usually collected from property taxes, consumer utility service charges and fees, and sales taxes imposed by other taxing authorities.\textsuperscript{46} About 88\% of state funding is collected from the General Fund with the remaining 12\% from lottery receipts, video lottery terminal (VLT) revenue, and commercial gaming funds.\textsuperscript{47} Money pulled from the General Fund is typically revenue from income taxes and sales taxes.\textsuperscript{48} School Tax Relief (STAR) revenue, a program intended to help ease the burden of property tax on local taxpayers, also adds to the General Fund.\textsuperscript{49}

New York’s funding formula considers what every student will need based on where they live, as well as the additional support certain populations require. The student-based funding calculated for each district is multiplied by a regional cost of living index.\textsuperscript{50} Then the funding is multiplied by a compound

\begin{itemize}
\item \textsuperscript{42} Gilligan, supra note 39.
\item \textsuperscript{43} FundED: New York, supra note 40.
\item \textsuperscript{44} Ranking of the States 2021, supra note 13; Average Class Size, supra note 13.
\item \textsuperscript{45} FundED: New York, supra note 40.
\item \textsuperscript{46} Id.
\item \textsuperscript{47} State Aid to Schools, supra note 41.
\item \textsuperscript{48} Although Nevada’s General Fund is also heavily funded by sales tax, Nevada does not have an income tax like New York. See State Aid to Schools, supra note 41; see also Nevada Budget Overview 2019-2021, GUINN CTR. 11 fig.2 (2019) (showing that Nevada’s largest contributor to the General Fund is sales tax and that income tax is not collected) [hereinafter Nevada Budget Overview 2019-2021].
\item \textsuperscript{49} See State Aid to Schools, supra note 41.
\item \textsuperscript{50} FundED: New York, supra note 40.
\end{itemize}
adjustment, called the Pupil Need Index, that considers concentrations of low-income students, concentrations of English language learners (ELLs), and the sparsity of school districts.\textsuperscript{51} Outside of these indices, New York applies a multiplier of 1.25 for students in grades 7–12.\textsuperscript{52} 

New York uses the Pupil Need Index as a basis for distributing funds to its most vulnerable students. The portion of the Pupil Need Index related to poverty adds together 65% of students in grades K–6 who are eligible for free or reduced-price lunch under the National School Lunch Program and 65% of the students from households below the federal poverty level.\textsuperscript{53} The result of this calculation is then divided by the total K–12 enrollment of the district.\textsuperscript{54} This percentage plus 1 becomes the multiplier that is applied to the district’s cost-adjusted formula funding to provide for students from low-income households.\textsuperscript{55} The portion of the Pupil Need Index related to ELLs multiplies the number of ELLs in the district by 0.5 and then divides the result by the total K–12 enrollment in the district.\textsuperscript{56} This percentage plus 1 becomes the effective multiplier that is applied to the district’s cost-adjusted formula funding, to provide for ELLs.\textsuperscript{57} There is no specific multiplier for sparse school districts, but the State provides per-pupil funding for these districts in an amount that corresponds to their levels of sparsity, additional funding for schools with fewer than eight teachers, and funds transportation by considering the density of students in the district.

To fund special education services, New York adds a multiplier of 2.41 to the per-student base amount for students with disabilities.\textsuperscript{58} New York considers the needs of students with disabilities when measuring the district’s level of per-pupil wealth, which factors into the calculation of the district’s ability to fund education with local funds.\textsuperscript{59} When counting students to measure the district’s level of per-pupil wealth, the State counts each student who learns in a special class setting 60% or more of the time as 2.7 students and students receiving special education services at least 20% of the time as 1.9 students.\textsuperscript{60} This adjustment affects the portion of the district’s formula amount that will be funded by state funds rather than local tax revenue.\textsuperscript{61} 

Because of New York’s reliance on local taxes, sizes of school districts and where the school districts are located are important factors when considering effective funding of school district operations. According to the most recent data

\begin{footnotes}
\item[51] Id.
\item[52] Id.
\item[53] Id.
\item[54] Id.
\item[55] FundED: New York, supra note 40.
\item[56] Id.
\item[57] Id.
\item[58] Id.
\item[59] Id.
\item[60] FundED: New York, supra note 40.
\item[61] See id.
\end{footnotes}
from the National Center on Education Statistics during the 2015–2016 school year, 45.4% of New York students attend school in a city, 36.8% in a suburb, 6.3% in a town, and 11.4% in a rural area. Out of 4,617 schools in New York, 2,037 of those are in cities, 1,484 are in suburbs, 352 are in towns, and 744 are in rural areas. Many of the 2,037 schools in cities are within the five largest cities in New York state and thus do not receive any state funding.

New York’s funding formula adjusts the per-pupil base amount for ELLs and students who receive special education services, so it is important to consider the percentage of these students within the general student population. In New York—in 2018—the percentage of ELLs made up 9.1% of students enrolled in public elementary and secondary schools. Between 2021–2022, 19% of New York public school students received special education services. This was far above the national average at 13% of students receiving special education services.

Looking at how gaming helps fund education in New York it is important to note that while gaming taxes only make up a percentage of state tax revenue dedicated to education, billions of dollars make up that percentage. New York’s finance law discusses the creation of the Gaming Revenue Fund and how the funds are allocated. The account consists of (1) revenues from all taxes and fees imposed by Article Thirteen of the pari-mutuel wagering and breeding law; (2) any interest and penalties imposed by the New York State gaming commission relating to those taxes; (3) the percentage of the value of expired gaming obligations; (4) and all penalties levied and collected by the commission. Eighty percent of the money in the fund is reserved for elementary and secondary education or real property tax relief.
In January 2022, mobile sports wagering became legal in New York and has since raised millions in tax revenue. The State had collected $542 million in mobile sports betting taxes by October 30, 2022. With an additional $200 million in licensing fees, more than $740 million were raised in just ten months. Most of this mobile sports tax revenue will be used for education. Even though the State recently began allowing mobile sports wagering, New York outperforms every other state in collecting this type of tax revenue. This may be because New York taxes gross revenue of mobile sports wagering at 51%.

Even before mobile sports wagering became legal, New York State’s Gaming Commission produced billions of dollars for the state’s K–12 schools. New York’s tax rate on slot machine gaming is between 37–45% of the gross gaming revenue depending on the region, and 10% of the gross gaming revenue on all other types of casino gaming. New York’s tax rate on land-based sports betting is also 10% of the gross gaming revenue. These tax rates helped bring in $3.59 billion in tax revenue to be used for education-specific aid from 2020–2021. The average revenue used for education-specific aid over the decade before was roughly $3.2 billion. The New York lottery was responsible for $2.5 billion in tax revenue during the 2020–2021 fiscal year, and VLT gaming was responsible for $417 million. This data shows that although gaming tax revenue is just a piece of New York’s educational funding, a substantial amount of money goes into just that portion. It is no surprise that New York leads the nation in education funding on a per-pupil basis.

71 See Governor Hochul Announcement, supra note 35.
73 Id.
74 Id.
75 Governor Hochul Announcement, supra note 35.
76 This has been a controversial decision but has undoubtedly increased tax revenue in the state. See id.; Steve Ruddock, Comparing Sports Betting Taxes by State, GAMBLING.COM (Dec. 26, 2022), https://www.gambling.com/us/news/comparing-sports-betting-taxes-by-state-3775500 (comparing New York’s 51% online sports betting tax rate with Nevada’s 6.75% online sports betting tax rate).
78 Id. at 7.
79 Year End Review, supra note 68.
80 See id. (averaging school aid received from fiscal year 2010–2011 to 2019–2020).
81 Id.
New York’s gaming taxes lead to even higher levels of funding, and this money can be allocated to class size reduction. The average class size for the 2017–2018 school year in primary schools in New York was 20.2 students in self-contained classrooms and 25.0 in departmentalized classrooms. These numbers were even better at the secondary level. The average class size in New York middle schools was 17.0 students in self-contained classrooms and 22.7 in departmentalized classrooms. The national averages were 12.0 and 24.9 students respectively. The average class size in New York high schools was 16.6 students in self-contained classrooms and 22.0 in departmentalized classrooms. In comparison, the national averages were 16.3 students in self-contained classrooms and 23.3 in departmentalized classrooms.

There is a limited correlation between smaller class sizes and higher standardized test scores. The largest continuous standardized test in K–12 education is the National Assessment of Education Progress (NAEP) that tests subjects such as math and reading. According to 2022 data from the Nation’s Report Card, the official report of NAEP results, the percentage of eighth graders nationwide who scored “at or above basic” on the NAEP in math was 60%, and the percentage of students who scored “at or above proficient” was 28%. In 2022, New York students met these exact percentages. In reading, the

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82 NCES Blog Editor, *Spotlight on American Education Week, Part 1: Celebrating U.S. Public Education with the National Teacher and Principal Survey (NTPS)*, NCES BLOG (Nov. 18, 2020), https://nces.ed.gov/blogs/nces/2020/11/18/default (explaining a self-contained classroom is a classroom in which all subjects are taught and a departmentalized classroom is subject-specific and rotates throughout the day); *Average Class Size, supra* note 13.

83 *Id.*

84 *Id.*

85 *Id.*

86 *Id.*

87 *Id.*


91 *Id.*
percentage of students nationwide who scored “at or above basic” was 68% while the average of students who scored “at or above proficient” was 29%. New York exceeded these percentages with 70% of students scoring “at or above basic” and 32% scoring “at or above proficient.”

New York’s strong education funding scheme and effective utilization of gaming tax revenue seemingly result in successful educational outcomes. With most of the gaming tax revenue going straight to education, the funding that school districts do receive from the State helps provide the highest per-pupil expenditure in the country. All this, plus New York’s performance on academic success metrics shows how adequate education funding can equal student success.

B. Unsuccessful State: Mississippi

Although there are other states that struggle to successfully use gaming taxes within their education funding schemes, Mississippi is one of the worst. Mississippi is 4th on the list of states with the lowest expenditures per student. As of 2023, it is also ranked number 44 out of 50 in Pre-K–12 education overall.

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92 Id.  
93 Id.  
94 See Gilligan, supra note 39.  
95 Mississippi was chosen for analysis because Nevada is ranked closely to Mississippi in average K-12 education funding and ranking, and, in both states, the majority of students in K-12 schools are children of color. The racial distribution among the students enrolled in public elementary and secondary schools as of Fall 2020 was 30% White in Nevada and 41.3% White in Mississippi, making White students a minority. In Nevada, the largest percentage of students were Hispanic with 43.4% of the student population identifying as such. In Mississippi, the largest percentage of students were Black with 47.7% of the student population identifying as such. The similarities in racial demographics are important because racial demographics can affect funding and performance due to inequity. See Pre-K–12 Rankings, supra note 7; see also Gilligan, supra note 39; see also Table 203.70 Percentage of Distribution of Enrollment in Public Elementary and Secondary Schools, by Race/Ethnicity and State Jurisdiction: Fall 2010, Fall 2019, and Fall 2020, NAT’L CTR. FOR EDUC. STAT. (Feb. 2021), https://nces.ed.gov/programs/digest/d21/tables/dt21_203.70.asp; see also Racial Justice and Educational Equity, NASSP, https://www.nassp.org/top-issues-in-education/position-statements/racial-justice-and-educational-equity/#:~:text=U.S.%20have%20reported,graduation%20rates%2C%20and%20postsecondary%20education%20(postvisited Feb. 2, 2024) (“Because many students have not been afforded equitable learning opportunities, reading scores and math scores on the National Assessment of Educational Progress have also been lower for students of color than their white peers since 1992.”).  
96 Gilligan, supra note 39.  
97 Pre-K–12 Rankings, supra note 7.
This is important because Mississippi’s spending and success metrics are not too different from Nevada’s.\footnote{See Gilligan, supra note 39; see also Pre-K–12 Rankings, supra note 7.}

When it comes to its education funding formula, Mississippi differs from New York because it is a pure hybrid formula.\footnote{See FundED: A Mississippi Report A Detailed Look at Mississippi’s Funding Policies, EDBUILD, http://funded.edbuild.org/reports/state/MS (last visited Jan. 13, 2023) [hereinafter FundED: Mississippi].} This means that the formula incorporates resource-based and student-based funding elements.\footnote{Id.} Like New York, Mississippi starts with a base amount and then provides additional funding to educate specific categories of students.\footnote{Id.} In Mississippi, the amount of funding that state revenue is expected to provide to schools is larger than the amount of funding that local revenue is expected to cover.\footnote{See Ranking of the States 2021, supra note 13, at 25–26.} This is different from New York, which expects localities to cover most public education expenses.\footnote{Id. at 28.}

Because Mississippi’s education system relies primarily on state funding, Mississippi must depend heavily on its General Fund to fund its schools.\footnote{Legislative Budget Report for Fiscal Year July 1, 2022- June 30, 2023, STATE OF MISSISSIPPI 16 (2022), https://www.lbo.ms.gov/PublicReports/GetBudgetRequestDetailReport/0?report=Intro&fiscalYear=2023 [hereinafter Legislative Budget].} Mississippi’s General Fund includes gaming tax revenue, but the gaming tax revenue is minimally utilized, making up only 2.16% of the fund.\footnote{State of the States, supra note 2, at 13.} Although Mississippi has a long history of gaming, its education funding formula and declining gaming tax revenue have helped lead to unsuccessful outcomes for Mississippi students.

Turning first to how Mississippi’s schools are funded, the state has one of the lowest average median expenditures per student in the country at $9,258 per student.\footnote{Gilligan, supra note 39.} Its fixed-base per-pupil funding amount for 2021 was even lower at $5,829.\footnote{FundED: Mississippi, supra note 99.} For the 2020–2021 fiscal year, Mississippi relied on local funding for 34% of overall education funding and state funding for 46.5%.\footnote{Rankings of the States 2021, supra note 13.} Interestingly, Mississippi policy states that the State should not contribute less than 73% of the funds to school districts that it has determined necessary to fund education.\footnote{FundED: Mississippi, supra note 99.} In practice, however, the State often falls far short of this number.\footnote{See id.} School districts themselves are also expected to contribute revenue to
the funding of public schools. The amount that school districts are required to fund is based on property values; $28.00 for every $1,000 assessed in local property.

The state-based funding that provides most of the funds for Mississippi schools derives from a rather complex budget. Mississippi has a budget that separates state support, which includes agencies funded through retail and income tax, and its general fund. This includes both a general fund and a state support fund. The General Fund makes up a majority of the budget and 84% of the tax revenue put into the General Fund is from income and retail taxes. The General Fund is used to fund K–12 public education, teachers’ salaries, and even higher education. Another important revenue stream that helps contribute to the General Fund is Mississippi’s “sin tax” revenue like tobacco, liquor, beer, wine, and gaming taxes. Notably, gaming taxes only make up 2% of the total General Fund.

As for the education funding formula, Mississippi uses the Mississippi Adequate Education Program Funding Formula (MAEP). To set the base cost, the State looks at districts found to be successful and efficient in four components. The four components are (1) the number of teachers per 1000 students; (2) administrator/staff ratio; (3) maintenance and operation spending and maintenance staff; and (4) librarians and counselors per 1,000 students. Districts that are within one standard deviation above and two standard deviations below the mean are considered efficient. Successful districts are determined by performance on state assessments. Districts that are both successful and efficient are used to calculate the average cost for each component. Then the average cost of each component is calculated using expenditure data from the second preceding year. To adjust for inflation, the State Department of Education multiplies 40% of the base student cost with the

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111 Id.
112 FundED: Mississippi, supra note 99.
113 Harrison, supra note 105.
114 Id.
115 Id.
116 Id.
117 Id.
118 Harrison, supra note 105.
120 Id. at 4.
121 Id. at 5.
122 Id. at 6.
123 Id. at 4.
124 Funding Formula, supra note 119.
125 Id.
current consumer price index. Adjustments are also made for pay raises, insurance, and retirement increases for staff.

Outside the complex base funding formula, Mississippi also provides increased funding for special education, gifted education, and career and technical education. Mississippi uses a resource-based formula to determine the amount of increased funding for these programs. Resource-based formulas consider the number of staff a given program needs in each district and calculate the average salary of the staff. Then the State multiplies the number of staff members needed by the average salary to determine the additional funds allocated to special education. Allocations for both gifted and career and technical programs have no use restrictions. Any remainder of the funds for special education goes toward specific programs.

Mississippi notably does not provide extra funding for some categories of students that New York does. First, Mississippi does not provide extra funding based on grade level. Second, Mississippi does not provide extra funding to ELLs. Mississippi provides extra funding to individual students based on poverty status but does not consider the concentration of students from low-income households in each district like New York. Instead, individual students are given a multiplier that increases funding based on whether they receive free lunch. Like New York, Mississippi gives additional funding to sparse school districts.

Looking at the number and location of schools and students in different geographical areas throughout Mississippi during the 2015–2016 school year, 10.7% of students attend school in a city, 14.0% in a suburb, 28.4% in a town, and 46.9% in a rural area. This student demographic is very different from New York which has a larger population of students in cities and suburbs. Out of 908 schools in Mississippi, 103 of those are in cities, 86 are in suburbs, 267 are in towns, and 452 are in rural areas. The high concentration of students in rural areas makes it even more surprising that Mississippi does not provide extra poverty funding based on the concentration of low-income students within a
given area. However, the high number of rural schools and school districts may explain why Mississippi only provides increased transportation funding to rural districts rather than transportation and per-pupil expenses like New York.141

Although Mississippi funds special education based on the number of special education teachers required, the number of teachers required is based on the number of students who receive special education services.142 Between 2020–2021, roughly 14% of Mississippi students in Pre-K–12 public schools received special education services.143 This number was slightly higher than the national average.144 Additionally, while ELLs do not receive additional funding in Mississippi, it is important to look at the percentage of ELLs within the general student population for comparison purposes. The percentage of ELLs among students enrolled in public elementary and secondary schools in Mississippi was only 3.2% compared to New York’s 9.1%.145

Gaming taxes at the state level do little to help support education in Mississippi. Gaming tax revenue only makes up about 2% of Mississippi’s General Fund.146 There is not another state fund that gaming tax revenue goes into.147 As of 2019, the State charged a 12% tax on gross gaming revenue for both casinos and mobile sports betting, with 8% going into the State General Fund and the remaining 4% being split between local governments and schools.148 It is surprising gaming tax revenue produces such a small share, as casino gambling has been legal in Mississippi for over thirty years.149 The addition of a state lottery and the legalization of retail sports betting in 2018 do not seem to have increased gaming tax revenue’s share of the General Fund either.150 In 2022, the total casino adjusted gross gaming revenue was just over $2.3 billion, down from just over $2.6 billion in 2021.151 For comparison, New

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142 See id. at 3.
144 Id. (The national average is 13%).
145 Table 204.20, supra note 65.
146 Harrison, supra note 105.
147 See Legislative Budget, supra note 104, at 16.
148 Perez, supra note 36.
149 See generally id.
York’s traditional lottery revenue by itself was responsible for $2.5 billion in tax revenue during those years.\(^{152}\) Meanwhile, sports betting in central Mississippi actually suffered a 15.38% loss, coastal Mississippi a 22.59% loss, and northern Mississippi an 18.11% loss by November 2022.\(^{153}\)

Mississippi’s allocation of gaming tax revenue could lead to disparate funding between school districts. Four percent of Mississippi’s gaming tax revenue goes to localities, benefitting schools in cities with a larger casino presence.\(^{154}\) In fact, of the 151 school districts in Mississippi, only the ones in the seven counties that have casinos benefit from local distribution.\(^{155}\) This type of local distribution can create significant inequality between school districts. In Biloxi, which has a large casino presence, the school district receives about $6 million a year from the tax on gross gaming revenue.\(^{156}\) It is not that other school districts do not receive any funds from gaming—all districts benefit from funding out of the General Fund that includes gaming tax revenue. It is merely that the added local distribution only benefits certain school districts while others can only rely on the General Fund to benefit from gaming revenue tax.

Where Mississippi’s funding structure may have benefits is the average class size. The average class size for the 2017–2018 school year in primary schools in Mississippi was 20.7 students in self-contained classrooms and 17.9 in departmentalized classrooms.\(^{157}\) The average class size in Mississippi middle schools was 4.7 students in self-contained classrooms and 21.0 in departmentalized classrooms.\(^{158}\) The average class size in Mississippi high schools was 6.9 students in self-contained classrooms and 20.8 in departmentalized classrooms.\(^{159}\) At every level, Mississippi’s class sizes were smaller than the national average.\(^{160}\) It is unclear if smaller class sizes are due to Mississippi’s smaller population compared to New York, or if it is due to resource-based funding. Resource-based funding focuses on funding staff, especially in special education.\(^{161}\)

\(^{152}\) *Year End Review, supra* note 68.


\(^{154}\) Perez, *supra* note 36.

\(^{155}\) Id.

\(^{156}\) Id.

\(^{157}\) *Average Class Size, supra* note 13.

\(^{158}\) Id. (noting that the average number of students in self-contained classrooms in middle schools in Mississippi has a coefficient variation between 30% and 50%, making the data potentially inaccurate).

\(^{159}\) Id.

\(^{160}\) Id.

\(^{161}\) FundED: Mississippi, *supra* note 99.
According to 2022 data from the Nation’s Report Card, the percentage of Mississippi eighth graders who scored “at or above basic” on the NAEP in math was roughly 54%, and the number of students who scored “at or above proficient” was roughly 18%. The percentage of eighth graders considered proficient in math was a full ten percentage points less than students in New York. In reading, the percentage of eighth graders in Mississippi who scored “at or above basic” was roughly 63% while the percentage of students who scored roughly “at or above proficient” was 22%. The percentage of Mississippi students considered proficient in reading at the eighth graders level was four percentage points less than students in New York. When compared to national numbers of eighth graders who scored “at or above proficient”, Mississippi was eight percentage points below the national average in math and six percentage points below the national average in reading.

There is no single culprit behind Mississippi’s struggles in education. But a funding scheme with a low base amount coupled with potentially inadequate additional funding could be one reason. Another could be an overreliance on state funding that in turn relies heavily on a general fund that is predominately made up of retail and property taxes. Additionally, the inequality created by some counties receiving local tax revenue from casinos can lead to even more disparity in resources, test scores, and thus success in education overall. Although New York’s test scores and funding far exceed Mississippi’s, Nevada and Mississippi are much more similar in test scores and funding.

III. HOW NEVADA COMPARES TO OTHER JURISDICTIONS IN EDUCATION FUNDING AND SUCCESS METRICS

Although Nevada’s demographics look more like New York, it is similar in success metrics and funding to Mississippi. According to USNWR in 2023, Nevada ranked 46th in K–12 Education. However, other rankings have

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162 Data Tools, supra note 90.
163 Id.
164 Id.
165 Id.
166 Id.
167 See generally Pre-K–12 Rankings, supra note 7; see generally Data Tools, supra note 90.
168 Pre-K–12 Rankings, supra note 7.
Nevada placed between 45th–49th.169 Mississippi, for comparison, is ranked 43rd according to USNWR but is ranked between 43rd–46th elsewhere.170 Nevada’s continual low performance in education rankings stems in part from its struggle to adequately fund education. The per-pupil expenditure in Nevada is the 6th lowest amongst the fifty states.171 One reason funding for schools is so low is that Nevada historically relied on the Nevada Plan formula for over fifty years despite the state’s growth and economic changes.172 Finally, lawmakers recognized this problem and passed the Pupil-Centered Funding Plan in 2019.173 Although the plan is still relatively new, there are doubts it has been or that it will be effective in improving education funding.174 The new Nevada state budget may be increasing education funding in the near future, but this may not be enough to improve the Nevada education system’s problems.175

A. Nevada’s Demographics and Success Metrics

Between New York and Mississippi, Nevada is most like New York in how its population is spread geographically. During the 2015–2016 school year 50.4% of students attended school in a city, 36% in a suburb, 7.5% in a town, and 6.1% in a rural area.176 Comparatively, New York has a slightly lower percentage than Nevada of students in cities and a slightly higher percentage in

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170 Pre-K–12 Rankings, supra note 7.
171 Gilligan, supra note 39.
172 See Clark County School District, Overwhelming Support for Education During Legislative Session, NEWSROOM, https://newsroom.ccsd.net/nevada-legislature-shows-overwhelming-support-for-education-priorities-to-benefit-ccsd-students (last visited Feb. 10, 2023) (discussing the Nevada Plan and mentioning that Nevada’s education funding plan had not changed in more than fifty-four years); Mary McKillip & Danielle Farrie, Nevada’s New Formula is an Opportunity Not to be Lost, EDUC. LAW CTR., https://edlawcenter.org/research/nevada/nevada-funding-formula.html (last visited Feb. 10, 2023).
173 McKillip & Farrie, supra note 172.
174 See generally Loescher, supra note 15.
176 See School Year 2015–16, supra note 37.
suburbs.\textsuperscript{177} New York also has a greater population of students in rural areas by over 5%.\textsuperscript{178} In 2015, out of 609 Nevadan schools, 260 of those were in cities, 173 were in suburbs, 71 were in towns, and 105 were in rural areas.\textsuperscript{179}

Nevada’s ELL and special education populations also impact education funding. The percentage of ELLs among students enrolled in public elementary and secondary schools in Nevada is 15.2%.\textsuperscript{180} This is greater than both New York and Mississippi, with the closest being New York at 9.1%.\textsuperscript{181} Between 2020 and 2021, 12% of public-school students received special education services.\textsuperscript{182} This was slightly below the Mississippi and national averages, as well as several percentage points below New York.\textsuperscript{183}

Turning to class size, Nevada has a larger average primary school class size than New York or Mississippi. The average class size for the 2017–2018 school year in primary schools in Nevada was 22.5 students in self-contained classrooms and 28.9 students in departmentalized classrooms.\textsuperscript{184} The average number of students in self-contained primary classrooms in Nevada is 3.9 points higher than in New York, 1.8 points higher than in Mississippi, and 2.7 points higher than the national average.\textsuperscript{185} The average number of students in departmentalized primary classrooms in Nevada is 2.3 points higher than in New York, 1.8 points higher than in Mississippi, and 1.6 points higher than the national average.\textsuperscript{186}

The data on class size in Nevada is more variable at the middle school level. The average class size in Nevada middle schools was 7.1 students in self-contained classrooms and 31.9 students in departmentalized classrooms.\textsuperscript{187} The average number of students in self-contained middle school classrooms in Nevada is 9.9 points lower than in New York, 2.4 points higher than in Mississippi, and 9.5 points lower than the national average.\textsuperscript{188} The average number of students in departmentalized middle school classrooms in Nevada is 9.2 points higher than in New York, 10.9 points higher than in Mississippi, and

\begin{itemize}
\item \textsuperscript{177} Id.
\item \textsuperscript{178} Id.
\item \textsuperscript{179} Id.
\item \textsuperscript{180} Table 204.20, supra note 65.
\item \textsuperscript{181} Id.
\item \textsuperscript{183} Id.; compare with Mississippi State Snapshot, supra note 143; compare with New York State Snapshot, supra note 66.
\item \textsuperscript{184} Average Class Size, supra note 13.
\item \textsuperscript{185} Id.
\item \textsuperscript{186} Id.
\item \textsuperscript{187} Id. (noting that the average number of students in self-contained classrooms in middle schools in Nevada has a coefficient variation between 30% and 50%, making the data potentially inaccurate).
\item \textsuperscript{188} Id.
\end{itemize}
7 points higher than the national average.\textsuperscript{189} Thus, while the self-contained classroom data trends positively, the number of students in departmentalized middle schools in Nevada is significantly higher than in New York, Mississippi, and the national average.\textsuperscript{190}

Nevada has a substantially larger average high school class size than New York or Mississippi. The average class size in Nevada high schools was 13.7 students in self-contained classrooms and 28.8 students in departmentalized classrooms.\textsuperscript{191} The average number of students in self-contained high school classrooms in Nevada is 1.7 points higher than in New York, 6.8 points higher than in Mississippi, and 2.6 points lower than the national average.\textsuperscript{192} The average number of students in departmentalized high school classrooms in Nevada is 6.8 points higher than in New York, 8 points higher than in Mississippi, and 5.5 points higher than the national average.\textsuperscript{193}

Large class sizes appear to have had a negative impact on Nevada’s test scores. According to 2022 data from Nation’s Report Card, the average of Nevada eighth graders who scored “at or above basic” on the NAEP in math was roughly 56% and the number of students who scored “at or above proficient” was roughly 21%.\textsuperscript{194} In reading, the average of eighth graders in Nevada who scored “at or above basic” was roughly 68% percent while the average of students who scored “at or above proficient” was 29%.\textsuperscript{195} When compared to national numbers, Nevada is four percentage points below the national average in math but is actually at the national average in reading.\textsuperscript{196} There is room to improve, as Nevada is still fourteen spots below New York in reading and sixteen spots below in math.\textsuperscript{197} In comparison to Mississippi, however, Nevada test scores are seventeen spots above Mississippi in reading and five spots above in math.\textsuperscript{198} Interestingly, Mississippi tends to have smaller class sizes.\textsuperscript{199} This could suggest formulas like Mississippi’s that include categorical funding, often focusing on specialized staff instead of other student resources, may not be the best for education funding.\textsuperscript{200}

Nevada’s public education system is struggling, but the reasons why are complex. There are many factors that contribute to the state of education in Nevada, but this note specifically looks at (1) the past and present funding formulas and (2) a source that Nevada has yet to make full use of: gaming taxes.

\textsuperscript{189} See Average Class Size, supra note 13.
\textsuperscript{190} Id.
\textsuperscript{191} Id.
\textsuperscript{192} Id.
\textsuperscript{193} Id.
\textsuperscript{194} Data Tools, supra note 90.
\textsuperscript{195} Id.
\textsuperscript{196} Id.
\textsuperscript{197} Id.
\textsuperscript{198} Id.
\textsuperscript{199} See Average Class Size, supra note 13.
\textsuperscript{200} See FundED: Mississippi, supra note 99.
B. Nevada’s Funding Formulas

For more than fifty years, changes in Nevada’s tax policy have affected the share of tax revenue that the government contributes to education. Historically, education has been funded primarily by Nevada’s General Fund. Nevada’s General Fund is fundamental to the state budget because money from the General Fund is diverted to the Department of Education, the Department of Health and Human Services, the Nevada System of Higher Education, the Department of Corrections, the Department of Public Safety, and other various departments. The largest share of the General Fund is allocated to the Department of Education at 34.2%. Of the remaining allocations, the Department of Health and Human Services accounts for 33.7%, the Nevada System of Higher Education accounts for 15.8%, the Department of Corrections accounts for 7.1%, the Department of Public Safety accounts for 1.7%, and all other departments account for 7.5%.

To help relieve the burden of education on the State’s General Fund, Nevada approved the creation of a Local School Support Tax (LSST) in 1967. The tax was added to the sales and use tax at a rate of 1%. Increases of the LSST in 1981 and 1991 followed to further relieve the burden on the General Fund. The Great Recession led to an increase of the LSST from 2.25% as set in 1991, to 2.60% to help fund education. While this tax rate was meant to sunset in 2011, the legislature extended the sunset date twice before making the 2.60% rate permanent in 2015.

In the time that the LSST rate was being extended, the legislature created a task force on K–12 public education to help determine a new method for funding public schools in the state. This was because the State’s existing funding formula, the Nevada Plan, was developed in 1967. There were fifty-four years from the time of the Nevada Plan’s passing until its replacement. Senate Bill 543 was passed during the 2019 Legislative Session to give Nevada’s
funding formula a much-needed update.\textsuperscript{214} This new funding formula is called the Pupil-Centered Funding Plan (PCFP).\textsuperscript{215} Despite not being in effect for long, the PCFP has already come under fire for failing to make meaningful changes to how Nevada schools are funded.\textsuperscript{216}

1. The Nevada Plan

The Nevada Plan was the state-wide education funding formula between 1967–2021.\textsuperscript{217} Under the Nevada Plan, the State developed a guaranteed amount of funding for local school districts and charter schools.\textsuperscript{218} The guaranteed funding contributed approximately 80\% of school districts’ general fund resources.\textsuperscript{219} The tax revenue that made up guaranteed funding was derived from state and local sources.\textsuperscript{220} Nevada Plan funding was made up of State support received through the Distributive School Account (DSA) and locally collected tax revenue from the LSST, and one-third of the proceeds from the seventy-five cent property tax.\textsuperscript{221}

Like in Mississippi and New York, a base per-pupil amount was established through the Nevada Plan.\textsuperscript{222} The legislature determined the base amount for each district in every legislative session based on each district’s demographics, operating and transportation costs, and wealth adjustment needs.\textsuperscript{223} Wealth adjustment, a practice used in New York, was determined by a district’s ability to generate revenues in addition to the guaranteed funding.\textsuperscript{224} The base amount was multiplied by the given district or charter school’s weighted apportioned enrollment.\textsuperscript{225} The State multiplied the number of three-and-four-year-old and Kindergarteners with disabilities by 60\% and added that number to the total number of all other students from 1st–12th grade to determine the weighted apportioned enrollment.\textsuperscript{226}

The difference between the total guaranteed support and seventy-five-cents is state aid, which was funded by the DSA.\textsuperscript{227} Revenue received by the school district from the LSST from in-state sales and from one-third of the

\textsuperscript{214} Id.
\textsuperscript{215} Id.
\textsuperscript{216} See Loescher, supra note 15; “Pupil Centered” Funding Plan, NEVADA STATE EDUC. ASS’N, https://www nsea-nv.org/node/1176 (last visited Apr. 9, 2023).
\textsuperscript{217} See Nevada Plan for School Finance, supra note 16, at 6.
\textsuperscript{218} Id. at 7.
\textsuperscript{219} Id.
\textsuperscript{220} Id.
\textsuperscript{221} Id.
\textsuperscript{222} Nevada Plan for School Finance, supra note 16, at 7.
\textsuperscript{223} See id.
\textsuperscript{224} Id.; FundED: New York, supra note 40.
\textsuperscript{225} Nevada Plan for School Finance, supra note 16, at 7.
\textsuperscript{226} Id. at 8.
\textsuperscript{227} Id. at 9.
proceeds from the seventy-five cent property tax was deducted from the district’s total basic support guarantee to determine the amount of state aid the district would receive. If local funding was less than anticipated, state aid was increased. If local funding was more than anticipated, state aid was decreased.

The DSA was primarily funded by state general fund appropriations, a share of the annual slot tax, investment income, federal mineral lease receipts, medical marijuana excise taxes, and license fees. Another source of revenue was Initiative Petition 1 (IP1) room taxes, which imposed an additional tax on the gross receipts from the rental of transient lodging in certain counties. School districts also received other local revenues that were considered “outside” the Nevada Plan because they were not built into the state guarantee. These revenues included a two-thirds proceeds from the seventy-five cent property tax, a share of basic governmental services tax, franchise tax revenue, interest income, tuition revenue, rent, and other local revenues. State aid was not increased or decreased based on these outside funds because they were not guaranteed.

Categorical funding also contributed to the funding of Nevada schools but was not included in the formula itself. Categorical funding primarily came from both federal and state sources. It is not mentioned in legislative materials where revenue for state categorical funding comes from. However, federal sources include Title I funding to benefit low-income students, special education funding under the Individuals with Disabilities Education Act (IDEA), and National School Lunch Program funding. State categorical funds were designated for class-size reduction, social worker grant programs, career and technical education, and gifted and talented education. Federal categorical funds were designated for special education, low-income students, school lunches, and other federal programs.

The process Nevada used to distribute federal special education funds changed just before the Nevada Plan’s demise. Prior to the passage of Senate Bill 508 in 2015 which updated the funding structure, state funding for special

228 Id.
229 Id.
231 Id.
232 Initiative Petition 1 (Nev. 2009).
234 Id.
235 Id.
236 Id.
237 Id. at 9, 11.
239 Id. at 9.
240 Id.
241 Id. at 8.
education was provided on a “unit” basis.\footnote{Id.} Beginning in 2017, state funding for special education was distributed proportionally to each school district and charter school based on the number of students with disabilities.\footnote{Id.} However, this funding was not to succeed 13\% of the total pupil enrollment for the district or charter school.\footnote{Id.}

The Nevada plan was highly criticized because it was ineffective given its purpose and the funding was often funneled elsewhere.\footnote{Id.} The IPI room tax was meant to supplement Nevada’s per-pupil spending.\footnote{Id.} However, that money was ultimately funneled into the General Fund during the recession.\footnote{Id.} The same thing infamously happened with Nevada’s recreational marijuana tax with the revenue ultimately being funneled into the State’s “rainy day fund.”\footnote{Id.}

Legislators finally decided to do something about the Nevada Plan when it passed Senate Bill 543 in 2019.\footnote{Id.} But is the pupil-centered formula created by Senate Bill 543 really better for Nevada students?

2. The Pupil-Centered Funding Plan

The PCFP was implemented during the 2021–2023 biennium.\footnote{See generally Jhone M. Ebert & Heidi Haartz, Nevada Department of Education 2021–2023 Budget K–12 Funding, NEV. DEP’T OF EDUC. (2020), https://www.leg.state.nv.us/App/NELIS/REL/81st2021/ExhibitDocument/OpenExhibitDocument?exhibitId=46420&fileDownloadName=K_12_Jhone%20Ebert_Overview.pdf.} The PCFP is organized somewhat differently than the Nevada Plan. Because all the previous funding sources are combined into the State Education Fund, the funding formula uses a tiered system for distribution.\footnote{Understanding the Pupil-Centered Funding Plan: What You Need to Know About Nevada’s New Education Funding Formula, NEV. DEP’T OF EDUC. 2 (2021), https://doe nv.gov/uploadedFiles/nedoenvgov/content/Boards_Commissions_Councils/Commission_on_School_Funding/FinalPupil-CenteredFundingPlanSummaryDocument2021.pdf. [hereinafter Understanding the Pupil-Centered Funding Plan].} Tier A is “State Administration”; this funding is allocated to the Nevada Department of Education to support statewide education programs.\footnote{Id.} Tier B is “School Operations”; this funding is allocated specifically to districts for food services, transportation and similar operations.\footnote{Id.} Tiers C and D are “Per-Pupil Spending”;
this funding is distributed based on estimated attendance, zone enrollment, cost of living, labor, and geography. Tier E is “Weighted Funding”; this funding is “above and beyond” the adjusted per-pupil base to meet the needs of students that are ELLs, low-income, or gifted and talented which is provided to the school district or charter school the students attend.

There is much more nuance to Tiers C, D, and E. For example, there is an adjustment to the per-pupil funding amount for public schools in areas with lower population density. Special education funding continues to have a statewide multiplier like the one established in 2015. The Commission on School Funding that was established as a part of the PCFP recommends insulating special education funding in a special account, but it is unclear if that has occurred under the Nevada Revised Statutes.

As for ELL weighted funding, this type of funding is only meant to be used for “Zoom” services, which include free Pre-K programs, reading skills centers, professional development for teachers and staff who work with ELLs, and incentives for hiring licensed educational personnel who work with ELLs, and support for families of ELLs. “Zoom” services also include summer academies, extended school days, or “any other service or program that has a demonstrated record of success for similarly situated pupils in comparable school districts.”

Similarly, weighted funding for “at-risk” (low-income) students can only be used for “Victory” services, which include many of the same things “Zoom” services do. Differences include additional instruction when school is not in session, professional development for teachers and staff who work with low-income students, incentives for hiring and retaining teachers who provide “Victory” services, employment of paraprofessionals who provide “Victory” services, and integrated student supports. Although both “Zoom” and “Victory” services are rather exhaustive lists, the limitations still run the risk of not providing these students with the services and resources they actually need.

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254 Id.
255 Id.
258 Understanding the Pupil-Centered Funding Plan, supra note 251, at 3; see NEV. REV. STAT. § 387.12445(4) (2021).
260 Id.
261 Under the Nevada Plan, “at-risk” meant low-income students who received free or reduced lunch, but under the PCFP the definition changed. NEV. REV. STAT. § 387.12445(7) & (10)(a) (2021); see ENN Staff, A Quiet Regulatory Change Could Hurt Nevada’s Most Vulnerable Students, EDUCATE NEV. NOW (Apr. 21, 2022), https://educatenevadanow.com/uncategorized/a-quiet-regulatory-change-could-hurt-nevadas-most-vulnerable-students (discussing how PCFP changed the definition of “at-risk”).
The PCFP tier system more closely resembles New York’s funding plan compared to Mississippi. Nevada now has a state-wide base per-pupil funding amount that is determined based on the projected enrollment of students for the state. The Nevada Plan determined the base amount for each district in every legislative session based on each district’s demographics, operating and transportation costs, and wealth adjustment. The additional funding added to the state-wide base amount is based on the needs of a given school district in the PCFP tier system. The Nevada plan considered categorical funding apart from the base formula and distributed it proportionally. Two significant differences that remain between New York and Nevada’s funding formulas are that New York has a gaming tax fund entirely separate from its General Fund, and a percentage of that fund is specifically earmarked for education.

Looking at funding revenue and accounts, one of the biggest changes between the Nevada Plan and the PCFP was the replacement of the DSA with the State Education Fund. Money that makes up this fund is made mostly made up of percentages of certain types of taxes. These taxes include interest from the State Permanent School Fund, tax on rental transient lodging, sales and use taxes, mineral taxes, proceeds from sales of abandoned properties, tax revenue from the lease of federal lands, criminal penalties for failing to pay an administrative fine, services taxes from each county, fees collected on motorboat length, and franchise tax. The fund is also made up of surplus deposited into the General Fund first as well as direct appropriations from the State General Fund.

The last data is from the 2019–2021 biennium, so it is unclear whether the General Fund still makes up the same percentage of Nevada Department of Education funding that it did under the Nevada Plan. Most of the tax revenue sources are split and mixed in with the General Fund which also indirectly helps fund the State Education fund. This sort of circular funding could potentially make it hard to track where the money comes from and where it goes.

Another major change between the Nevada plan and the PCFP was the creation of the School Stabilization Account (SSA). The SSA is within the State Education Fund, and each school district is expected to transfer some funds from the county school district fund into the SSA each year. Additionally, any balance remaining in the State Education Fund after June 30th on an odd-number

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264 See NEV. REV. STAT. § 387.1214(2) (2021).
266 Nevada Plan for School Finance, supra note 16, at 78.
269 NEV. REV. STAT. § 387.1212(2) (2023).
270 Id.
271 NEV. REV. STAT. § 387.1212(3) (2023).
272 See id.
fiscal year must be transferred to the SSA. The PCFP also codified that the amount determined each year by the legislature to fund the operation of public schools would not revert to the General Fund should there be a surplus at the end of the school year. Instead, the funding would remain in the State Education Fund and carry forward into the next year.

Despite improvements, there remain issues with the funding formula. For example, there are gaps in certain types of tax revenue. One such form of revenue is the marijuana tax. The fund includes any revenue remaining on the excise tax for recreational marijuana sales after revenues have been distributed to the Cannabis Control Board and local governments. This could mean that taxes that were voted for specifically to fund education may never get there.

Additionally, the way the formula functions and the amount of money being spent on education under the PCFP is unclear. The base per-pupil amount is inconsistently reported. The National Education Association reports the base per-pupil amount as $10,800, Nevada BDR 34-1169 reports it as $6,980, USNWR states it is $9,532, and the Nevada Department of Education reports it as $2,852 for 2023. The weighted amount to determine additional funding for ELLs is also inconsistently reported with Nevada BDR 34-1169 reporting the weighted amount as 0.23 and the Nevada Department of Education reporting the weighted amount as 0.20. Ambiguities like these can make it difficult for Nevadans to understand where their tax dollars are going which can create distrust in the public education system.

PCFP also redefined the “at-risk” criteria. The Nevada Plan defined at-risk students as low-income students who qualified for free or reduced lunch. When creating the PCFP, the State wanted to redefine “at-risk” to encompass more than just income-based need. To assist with this redefinition, the State hired a private company that developed a method to identify factors for

275 Id.
278 Despite the statute suggesting that marijuana excise tax revenue is not guaranteed and will only be distributed to education if leftover funds exist, the Nevada Department of Education seems to consider marijuana tax revenue as guaranteed funding. See Ebert & Haartz, supra note 250, at 18–20.
280 BDR 34-1169, 32nd Special Sess. 3 (Nev. 2020); compare with Ebert & Haartz, supra note 250.
281 See ENN Staff, supra note 261.
282 Id.
283 Id.
the new designation of “at-risk, but arbitrarily limited those factors.” Along with the Nevada Department of Education, the company made it so the State would not need to raise new revenue to implement the formula. Students eligible for additional funding dropped 75% after the passage of Senate Bill 543. The Commission for School Funding must address these issues to maximize the efficacy of the PCFP.

IV. HOW GAMING TAXES IN NEVADA AFFECT EDUCATION FUNDING

The PCFP made some positive changes in how funding is organized such as adding a tier system and the State Education Fund, but it did not increase funding. There are many sources of funding that Nevada could and should utilize, but the most important source may be one of Nevada’s key industries—tourism and gaming. Nevada has the highest gaming revenue in the country. With post-COVID revenues at an all-time high, Nevada has collected $14.8 billion in total gaming revenue in 2022. Although Nevada has been collecting record-breaking total gaming revenue, Nevada could benefit more from the tax on this revenue. Nevada’s gross gaming revenue tax rate remains notoriously low. Nevada has a tiered gaming tax structure. The tax rate is 3.5% on gross gaming revenue up to $50,000 a month and 6.75% on gross gaming revenue above $134,000. Nevada’s 6.75% tax rate applies to all gaming including casino gaming, sports betting, and mobile

284 Id.
285 Id.
286 See ENN Staff, supra note 261; Loescher, supra note 15.
287 See Ebert & Haartz, supra note 250, at 20 (detailing allocated revenue through the DSA for the 2021–2023 biennium that is no different from that in the Nevada Plan and showing that some of this funding will not be guaranteed for the 2023–2025 biennium).
292 Id.
sports betting. This tax rate is significantly lower than New York’s 51% gross gaming tax rate on mobile sports betting, 37%–45% gross gaming tax rate on slot machines, and 10% gross gaming tax rate for other casino gaming land-based sports betting. Nevada’s 6.75% gross gaming tax rate is also lower than Mississippi which taxes gross gaming on casinos and mobile sports betting at 12%. Lobbying groups and voters alike have tried to raise the gross gaming tax to help fund education at least two times within fifteen years. Nevada’s gaming industry is experiencing record highs while Nevada schools are struggling. By raising gross gaming taxes, the gaming industry can help struggling schools in the communities it often benefits from.

A. How Nevada has Historically Utilized Gaming Taxes

Despite its long history of legal gaming, Nevada did not tax gross gaming revenue until 1945. The tax rate began at 1% of gross gaming revenue of more than $3,000 and contributed roughly $100,000 to the State’s budget. By 1970, tourism had become Nevada’s largest industry. In 1975, gaming revenue exceeded $1 billion annually, contributing to 50% of Nevada’s budget. Gaming revenue reached nearly $2.5 billion a year in 1980, $6 billion a year in 1993, more than $9.5 billion a year in 2000, and $12.6 billion a year in 2006. Since 1945, gaming tax revenue has gone directly to the Nevada General Fund. Gaming taxes made up 17.4% of Nevada’s General Fund during the 2019–2021 biennium. This is good news; however, it is not quite clear if that money

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294 New York Gaming Regulations, supra note 77.
296 See Fair Share Initiative, supra note 9; S-01-2020 Initiative, supra note 9.
297 Taxation on Tourism in Nevada, supra note 8, at 1.
298 Gemignani, supra note 3.
300 Id.
301 Id.
302 See NEV. REV. STAT. § 387.1212 (2023).
303 Nevada Budget Overview 2019-2021, supra note 48.
304 Id.; Gemignani, supra note 3.
305 Nevada Budget Overview 2019-2021, supra note 48, at 26 fig.11.
makes it to school districts and how it gets spent. Nevada’s accounting is rather unclear, inconsistent, and difficult to find. Given the history of taxes such as marijuana taxes and IP1 room taxes going elsewhere, it is entirely possible that the intended funds are going elsewhere as well. Further, the General Fund supplies 62.2% of the Department of Education’s overall funding, making the Department of Education reliant on the General Fund.\textsuperscript{306} Considering gaming taxes make up a sizeable portion of the General Fund, even a modest raise in the gaming tax could provide significant funding for Nevada students.\textsuperscript{307}

B. Attempts at Raising the Gross Gaming Tax Percentage

Despite numerous attempts to raise the gaming tax, the last time it was raised was twenty years ago.\textsuperscript{308} In 2008, Nevada citizens introduced an initiative to amend the Nevada Constitution to increase the taxes on Nevada’s biggest casinos.\textsuperscript{309} The initiative proposed a tax raise from 6.75% to 22% on gaming revenue over $1 million.\textsuperscript{310} Of that revenue, 20% from the tax raise was to go toward teachers’ salaries, 35% to road improvements, 25% to alternative energy projects and water needs, 10% to the staff and salaries of state judges, and 5% to the Millennium Scholarship Fund.\textsuperscript{311} The initiative was ultimately rejected by the courts for violating the single-subject rule after a challenge from the Nevada Resort Association.\textsuperscript{312}

The most recent attempt at raising the gross gaming revenue tax was in 2019.\textsuperscript{313} The Clark County Education Association (CCEA) sponsored an initiative to raise the tax rate from 6.75% on all revenue over $134,000 to 9.75% on all revenue over $250,000.\textsuperscript{314} Because Nevada’s gross revenue gaming tax schedule has one tier at 3.5% on revenue up to $50,000, and a second at 6.75% on revenue above $134,000, the CCEA’s initiative would simply create a new tier.\textsuperscript{315} The initiative was meant to appear on the 2022 ballot as an “indirect initiated state statute.”\textsuperscript{316} A majority of Nevada voters (59%) were in favor of this tax increase.\textsuperscript{317} At the end of the 2021 legislative session, however, lawmakers struck a last-minute deal routing more mining tax revenue toward

\begin{thebibliography}{99}
\bibitem{306} Id. at 25 fig.10.
\bibitem{307} Id. at 11 fig.2.
\bibitem{308} Taxation on Tourism in Nevada, supra note 8.
\bibitem{309} Fair Share Initiative, supra note 9.
\bibitem{310} Id.
\bibitem{311} Id.
\bibitem{312} Id.
\bibitem{313} S-01-2020 Initiative, supra note 9.
\bibitem{314} Id.
\bibitem{315} Id.
\bibitem{316} Id.
\bibitem{317} Solis, supra note 11.
\end{thebibliography}
education.\textsuperscript{318} The CCEA pushed that compromise.\textsuperscript{319} As a part of the deal, lawmakers added language requiring all initiatives be withdrawn no later than ninety days before the election.\textsuperscript{320} After a legal battle between Secretary of State Barbara Cegavske and the CCEA, the initiative was withdrawn and did not appear on the 2022 ballot.\textsuperscript{321}

The gaming industry has always been the party responsible for pushback against these initiatives.\textsuperscript{322} In 2020, CDC Gaming Reports argued that raising the gaming tax through the 2022 initiative would be disastrous financially.\textsuperscript{323} It argued that COVID wreaked more havoc on Las Vegas’s economy than the Great Recession, 9/11, or the economic crash in the mid-eighties—so meaningful recovery would take a while.\textsuperscript{324} The Nevada Resorts Association followed suit with CDC Gaming Reports, warning that the tax hike would “further damage Nevada’s recovery efforts, create permanent job losses, and further jeopardize capital investment and future economic development.”\textsuperscript{325} CDC Gaming Reports also supported its position opposing a gaming tax hike by pointing out that while several states have higher gaming tax rates, Nevada does not have a diverse economy like other states.\textsuperscript{326}

There are two problems with the argument that a tax hike would damage economic recovery efforts. First, rather than the long recovery CDC Gaming Reports predicted, gaming revenue is currently at an all-time high. According to Forbes, Casinos across Nevada brought in $14.8 billion in gaming revenue in 2022.\textsuperscript{327} Gaming revenue increased by 10.5\% from 2021, a year that boasted Nevada’s previous revenue record of $13.4 billion.\textsuperscript{328} Second, Nevada’s economy is indeed diversifying. According to the Nevada Governor’s Office of Economic Development, there are six other key industries outside of tourism and gaming.\textsuperscript{329} The other key industries in Nevada are aerospace and defense, health,

\begin{itemize}
\item \textsuperscript{319} Id.
\item \textsuperscript{320} Id.
\item \textsuperscript{321} Id. (explaining Cegavske maintained that initiatives could not be withdrawn under the Nevada Constitution, so CCEA filed suit to block Cegavske’s attempt at preventing the withdrawal of its initiative); S-01-2020 Initiative, supra note 9.
\item \textsuperscript{322} See Fair Share Initiative, supra note 9 (discussing the challenge from the Nevada Resorts Association); Snyder & Valley, supra note 318; S-01-2020 Initiative, supra note 9.
\item \textsuperscript{323} See generally Stutz, supra note 291.
\item \textsuperscript{324} See id.
\item \textsuperscript{325} Id.
\item \textsuperscript{326} Id.
\item \textsuperscript{327} Yakowicz, supra note 290.
\item \textsuperscript{328} Id.
\item \textsuperscript{329} See Key Industries, supra note 288.
\end{itemize}
information technology, manufacturing and logistics, mining, and natural resource technologies. Diversity in industry protects Nevada financially by preventing economic reliance on the gaming industry.

In refusing to raise the gaming tax revenue, Nevada is losing out on a significant opportunity to improve education. In 2019, the gross gaming revenue tax generated $738.5 million. According to the Nevada Secretary of State, raising the gaming tax to 9.75% on revenue over $250,000 would have generated an additional $317.6 million based on gross gaming revenue reports from 2019. Because of Nevada’s struggles with education, this is funding our students cannot afford to go without.

V. HOW NEVADA COULD IMPROVE FUNDING AND WHAT GAMING CAN DO ABOUT IT

Nevada’s legislature can avoid the same mistakes it made with the Nevada Plan. The creation of the Commission for School Funding is a great start. But the Commission must do more to monitor the plan’s progress toward meeting its goal of adequate funding. The Nevada Plan operated as the State’s education funding formula with little to no adjustment, other than additional tax, for over fifty years. The PCFP must be updated to address issues related to adequate funding as soon as they are discovered.

The Commission for School Funding and the legislature must address the transparency issues with the PCFP. The Nevada Revised Statutes and the literature produced by the Nevada Department of Education must be consistent in describing how the PCFP operates. Nevada’s true base per-pupil funding must also be consistently reported, at least in legislative and Department of Education publications. If the base per-pupil amount is consistent and easy to find, it will likely be more accurately reported by other publications. Consistency not only will build trust, but it will also allow concerned citizens, educators, and lawmakers to track the improvements PCFP promises.

Another thing the Commission on School Funding can do is monitor and address the change in who qualifies for “at-risk” status. Although the legislature’s intention appears to have been to help “at-risk” students, the reality is that the change in definition reduced students eligible to receive this funding. This means there are fewer low-income students benefitting from the

330 Id.
332 S-01-2020 Initiative, supra note 9.
333 Id.
334 Loescher, supra note 15 (“Legislators have chosen not to fix the Nevada Plan.”); see Nevada Plan for School Finance, supra note 16 at 4–6; see Shay, supra note 15.
335 See ENN Staff, supra note 261.
programs and support extra funding provides. This change could be detrimental to schools that serve low-income areas, making inequities in education between students in those areas and those in wealthier areas even greater. The Commission of School Funding should advise a return to the originally proposed formula to calculate “at-risk” status by using the number of students who qualify for free or reduced lunch as a proxy. It will be expensive to implement the formula based on students who qualify for free and reduced lunch. When adjusting for students already receiving weight for receiving special education services and ELL services, over half the students in Nevada public schools qualify. To offset this cost, the legislature will have to increase existing revenue streams and allocate new sources of funding to the State Education Fund.

The PCFP did not add any new funding streams, and with Nevada being one of the most underfunded states in the country, it needs to. The legislature must commit to raising the gross gaming revenue tax. Although Nevada shares similarities with New York demographically, Nevada does not need to tax mobile sports betting gaming at 51%. Nevada can, however, increase its gross gaming revenue tax to a number closer to the 10% New York taxes on the gross gaming revenue of all casino gaming exclusive of slot machines. The 9.75% gross gaming revenue tax on revenue over $250,000 proposed by the CCEA is a reasonable increase. With Nevada voters in favor of raising these taxes to help fund education, the legislature could either create and consider a bill themselves or could push the decision to the ballot like the original petition was meant to.

The gaming industry in Nevada is collecting record revenue, making ineffective the usual excuse of potential economic struggle. With the gross gaming revenues increasing, the raise to 9.75% over $250,000 should only be the beginning. As revenue increases, so should the taxes on gaming. Alternatively, additional gross gaming tax revenue could be collected by taxing gross gaming revenue differently depending on the type of gaming. New York taxes slot machine gaming, other forms of casino gaming, sports betting, and mobile sports betting differently.

Routing some of the existing gross gaming tax revenue directly from the source to the State Education Fund without first mixing the funds with the General Fund could also be beneficial. A percentage of the gross gaming tax revenue could be directly assigned to the State Education Fund, or the legislature could create a separate fund where a certain percentage of gross gaming tax revenue is directed. This improves transparency and helps to avoid the issue that Nevada had with the marijuana tax. Between a gross gaming revenue tax increase and a direct allocation of a portion of this tax revenue to education, Nevada could increase per-pupil spending in a meaningful way.

336 See id.
337 See id.
338 New York Gaming Regulations, supra note 77.
339 Yakowicz, supra note 290.
340 See generally New York Gaming Regulations, supra note 77.
VI. CONCLUSION

Nevada’s education system has struggled for decades for a myriad of reasons—two of which are consistently low funding and unclear funding formulas. Nevada could develop a more effective funding formula, following the lead of New York and avoiding the pitfalls of Mississippi. Nevada can also increase education funding by raising the low gross gaming revenue tax. The gaming industry is by no means solely responsible for increasing education funding. As the State diversifies its industries, so do its tax options. But the gaming industry has specifically avoided paying its fair share for too long, and both the industry and the legislature must do something to make sure the futures of Nevada’s children do not get gambled away.