

Equity ≠ Equality

What Is the Legal Distinction between Equity and Equality

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Why Does This Even Matter?

"A uniform system of free public schools *sufficient* for the education of, and open to, all the children of school age in the state shall be established and *maintained*."

N.M. Constitution, Article XII, Section 1



2008 American Institutes for Research Study

- ❑ “An Independent Comprehensive Study of New Mexico Public School Funding Formula.”
 - ❑ January 17, 2008
 - ❑ To the NM Legislative Council Service:
 - ❑ “What is the cost of providing all New Mexico public school students with a *sufficient* education and how should the state *equitably* distribute these resources so that all students have the opportunity to meet the goals set for the by the public and the state?”
 - ❑ Normal language: What is the cost of a sufficient education in NM?

2008 American Institutes for Research Study

- ❑ The Bottom Line
 - ❑ “The bottom line estimates derived from this study suggests that the state support for public schools should increase by 14.5 percent (or \$334.7 million in 2007-08 dollars) to achieve *sufficiency* in New Mexico.”

2008 Legislative Education Study Committee

- ❑ Adopted the AIR Study guidelines

FUNDING FORMULA STUDY TASK FORCE

- Public School Funding Formula: Amend statute to phase in a new public school funding formula that:
 - incorporates four measures of student need, namely poverty, English language learners, special education, and mobility;
 - recognizes costs associated with school district size and school size; and
 - is based on the concept of educational sufficiency in that it enables schools and districts to provide a comprehensive instructional program designed to meet the needs of all students.

Then, the Legislative Education Study Committee...

- ❑ Promoted:
 - ❑ Pre-Kindergarten Act of 2005
 - ❑ K-3 Plus pilot program of 2007
 - ❑ Full-Day Kindergarten
- ❑ Reported:
 - ❑ 55% of schools failed to make Adequate Year Progress in SY 2007/2008
 - ❑ 47% of schools failed to make AYP for two or more years in a row



Legislative Actions

- ❑ 2003 – New Mexico Indian Education Act
 - ❑ Equitable and culturally relevant learning opportunities
- ❑ 2004 – Bilingual Multicultural Education Act
 - ❑ Creates education opportunities through introduction of bilingual multicultural education programs
- ❑ 2010 – New Mexico Hispanic Education Act
 - ❑ Goal was to close the opportunity gap and increase graduation rates among Hispanic Students
- ❑ **DID NOT** increase funding as recommended by the AIR Study



Yazzie/Martinez Lawsuits

WG

Yazzie Lawsuit

- ❑ Filed in March 2014: D-101-CV-2014-02224.
- ❑ Plaintiffs:
 - ❑ 5 Plaintiff families (lead family was Yazzie).
 - ❑ 6 school districts: Rio Rancho, Gallup-McKinley, Lake Arthur, Moriarty, Santa Fe and Cuba.
- ❑ Defendants:
 - ❑ State of New Mexico, NM Public Education Department and the Secretary of Education.
- ❑ Claim: The Defendants have violated the NM Constitution (funding has been insufficient).

Martinez Lawsuit

- ❑ Filed in April 2014: D-101-CV-2014-00793.
- ❑ Plaintiffs:
 - ❑ 51 parents and children across New Mexico.
 - ❑ Represented by the Mexican American Legal Defense and Education Fund (MALDEF).
- ❑ Defendants:
 - ❑ State of New Mexico, Secretary Designate of Education, NM Public Education Department.
- ❑ Claim: Defendants have violated the NM Constitution (insufficient education for low-income, English Language Learners and Special Education students).

Yazzie/Martinez Consolidated Case

- ❑ January 2015 – Judge Singleton combines the two cases.
 - ❑ Motion by the State
- ❑ June 2017 – August 2017
 - ❑ Trial – but no immediate decision
- ❑ July 20, 2018
 - ❑ Judge Singleton issues decision (76 pages!).
 - ❑ Overall holding: State of New Mexico violated student's fundamental rights by failing to provide a sufficient public education as required by the NM Constitution.

Yazzie/Martinez Consolidated Case

- ❑ Focus was on “at-risk” students:
 - ❑ Low-income – 71.6% of students
 - ❑ English Language Learners – 14.4 %
 - ❑ Native Americans – 10.6%
 - ❑ Special Education – 14.8%
- ❑ “These at-risk students are the school children whose lives ... are directly affected by New Mexico’s education system and its funding decisions.”
Decision and order, 7/20/2018, pg. 3.

Yazzie/Martinez Consolidated Case

- ❑ “Contrary to the Defendants’ argument, current funding through the at-risk formula and Title I does not provide the money needed to educate at-risk students and to offer [needed] programs.” Decision, pg. 30.
- ❑ “The at-risk students are still not attaining proficiency at the rate of non at-risk students, and the programs being lauded by PED are not changing this picture.” Decision pg. 43.
- ❑ “It is not a sufficient answer to this system problem of poor outcomes by at-risk students to urge, as Defendants do, that the problems are caused by socio-economic factors not attributable to the school system. While the initial cause of poor outcomes may not be the schools, steps can be taken by the educational system to overcome the adverse impacts of a student’s background.” Decision, pgs. 44-45.

Yazzie/Martinez Consolidated Case

- ❑ “The overall appropriation is insufficient to fund the programs necessary to provide an opportunity for all at-risk students to have an adequate education.” Decision, pg. 53
 - ❑ Defendants – No more \$\$ available
 - ❑ Court – Not a defense to providing constitutional rights.
- ❑ “There may be ways for the districts to more effectively and efficiently spend their funds, but PED fails to exercise its authority over the districts to require that the money that is allocated is used for programs known to advance the educational opportunities for at-risk students.” Decision, pgs. 53-54.

Yazzie/Martinez Consolidated Case

- ❑ It is the legislature's function to find the funding.
- ❑ It is the PED's function to ensure that money is spent appropriately.

Legislative and PED Responses

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Legislative Response

- ❑ More Funding!
 - ❑ More funding for teacher salaries
 - ❑ More funding for programs
 - ❑ More funding for....

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Public Education Response

- ❑ October 22, 2019, PED Memo – each district must:
 - ❑ Establish Equity Councils.
 - ❑ Implement a culturally and linguistically responsive framework to guide resources (due June 30, 2020).
 - ❑ Prepare Readiness Assessment plans (what works for students).
 - ❑ Prepare 1 annual and 2 90-day plans to build leadership capacity-NMDASH.
- ❑ November 22, 2019 PED Memo
 - ❑ Equity Councils



Public Education Response

- ❑ 2022 Comprehensive Strategic Plan:
 - ❑ “NMPED is committed to meeting the needs of all students. The department also acknowledges the past systemic failure to address the historic inequities that exist in serving ‘at-risk’ students, namely Native American students, students with disabilities, economically disadvantaged students, and English Learners.”
 - ❑ 4 Pillars for district success:
 1. Educator EcoSystem
 2. Whole Child and Culturally Responsive Education
 3. Profiles & Pathways (graduation outcomes)
 4. Asset-Based Supports & Opportunities (equitable access to supports)

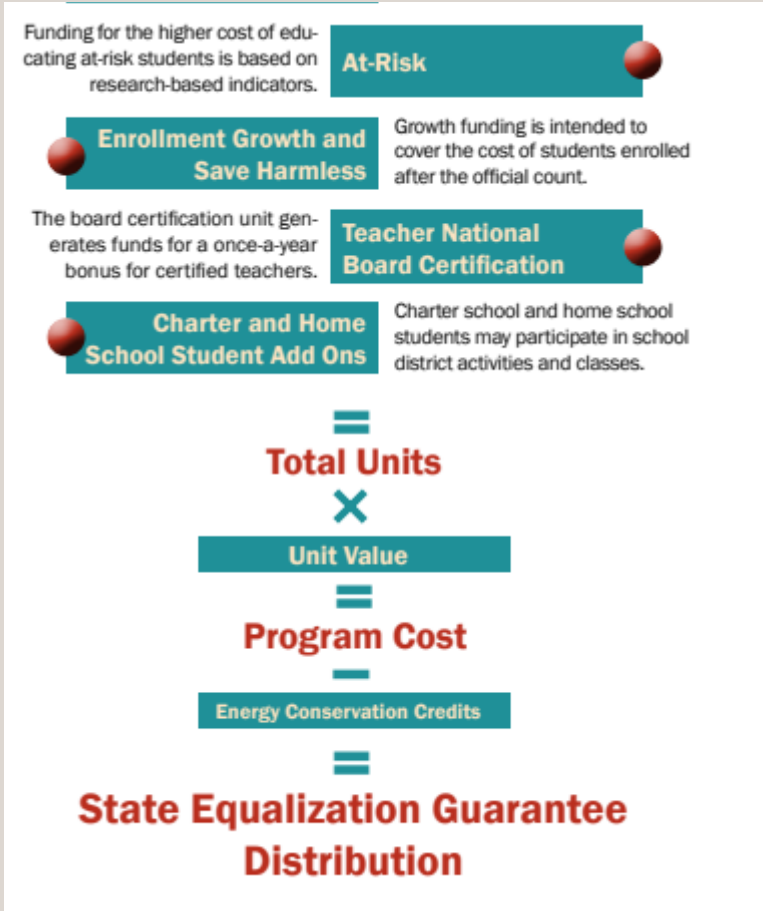
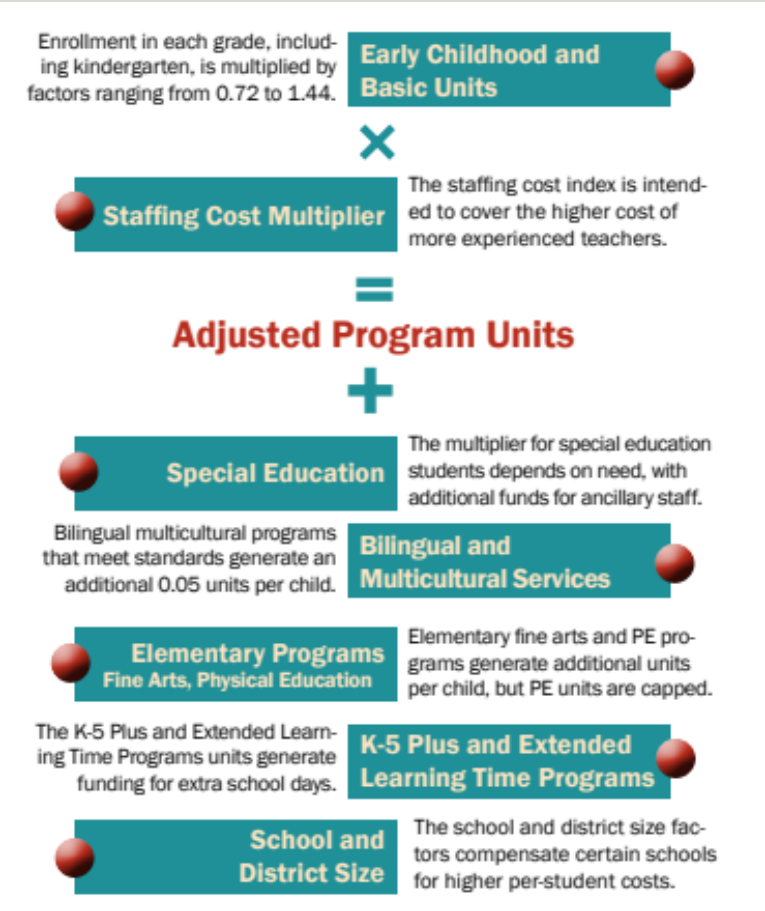


What Is Your Response?

- ❑ Focus on student groups:
 - ❑ Low-income, economically disadvantages students;
 - ❑ Special Education Students;
 - ❑ Native American Students;
 - ❑ English Language Learners.
- ❑ Key: These students don't start at the same level. Goal is to level the playing field.



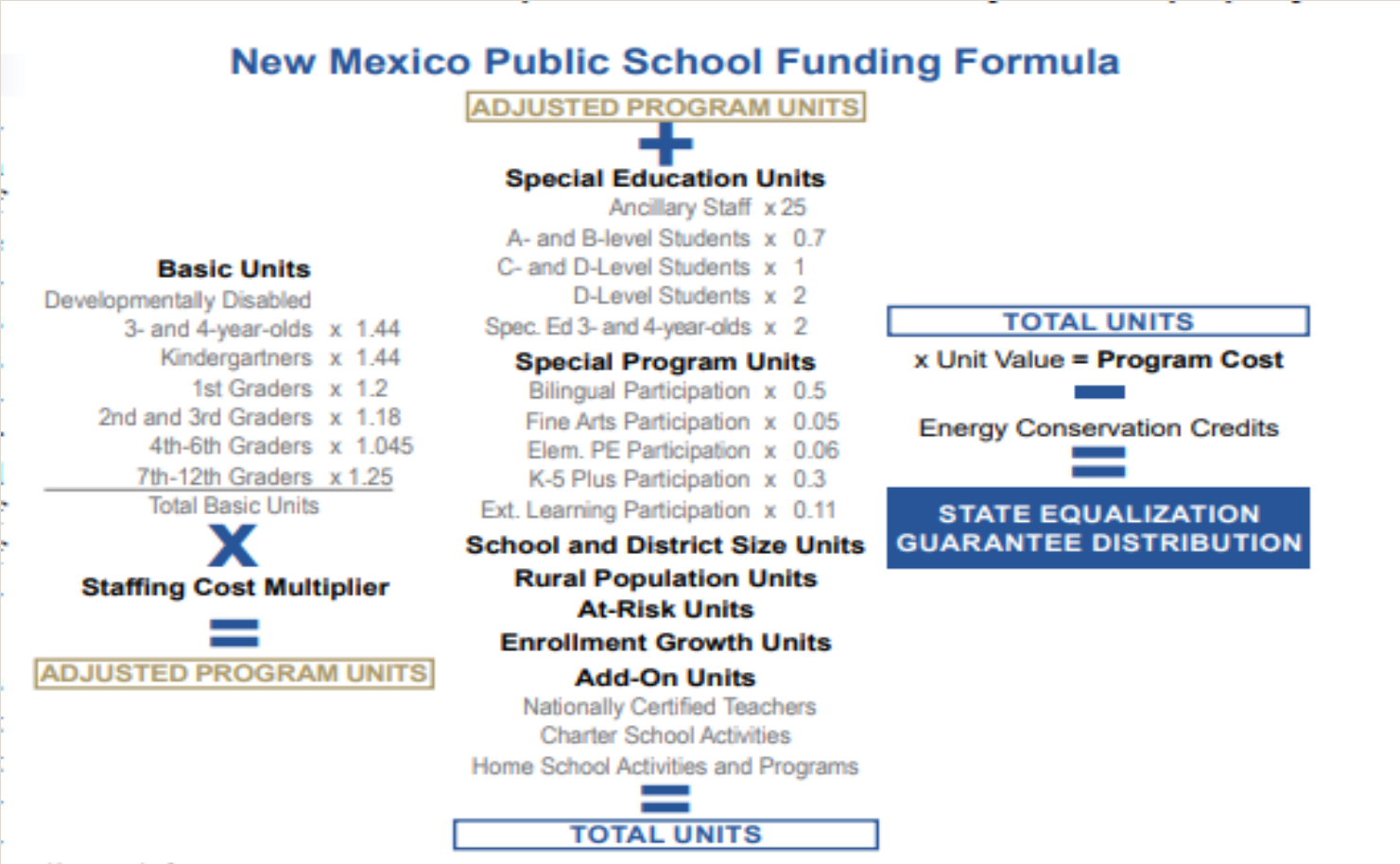
SEG Calculation



Source: Legislative Education Study Committee Primer on Public School Funding Formula, May 2021



SEG Calculation



Source: Legislative Finance Committee, April 2021 Public School Funding Formula



Allocating District Funds

- ❑ Not all students are treated equally in the SEG calculation.
 - ❑ Why?
- ❑ *Yazzie/Martinez* cases are not about equality.
 - ❑ Equality was the reason for the lawsuit.
 - ❑ Goal is Equity.
- ❑ Legislation is not about equality.
 - ❑ New Mexico Indian Education Act
 - ❑ Bilingual Multicultural Education Act
 - ❑ New Mexico Hispanic Education Act



Allocating District Funds

- ❑ From Education Note, New Mexico Legislative Finance Committee
 - ❑ September 23, 2022
 - ❑ “Legislative appropriations have surpassed the AIR benchmarks for public school funding.”
 - ❑ Educator compensation increases have led to reduced vacancy rate and smaller class sizes.
 - ❑ “School district and charter school cash balances and administrative spending have grown more quickly than spending on instruction or student support services.”
 - ❑ Although funding has increased, there is no corresponding increase for counselors, social workers, and other non-instructional staff that are especially critical for at-risk students.



A lesson from Civil Rights Cases

Lau v. Nichols, 414 U.S. 563 (1974)

Ninth Circuit

Every student brings to the starting line of his educational career different advantages and disadvantages caused in part by social, economic and cultural background, created and continued completely apart from any contribution by the school system. ... However commendable and socially desirable it might be for the School District to provide special remedial educational programs to disadvantaged students in those areas, or to provide better clothing or food to enable them to more easily adjust themselves to their educational environment, we find no constitutional or statutory basis upon which we can mandate that these things be done.

U.S. Supreme Court

[T]here is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.

A lesson from Civil Rights Cases

- ❑ Equal Education Opportunity Act of 1974
 - ❑ 20 U.S.C. § 1703(f)
- ❑ *Issa v. School District of Lancaster*, 847 F.3d 121 (2017)
 - ❑ Refugee students placed in alternative education program intended to serve at-risk students
 - ❑ Problem: The school district did not assess in any measurable way whether the alternative program helps students.

A lesson from Civil Rights Cases

- ❑ *Issa v. School District of Lancaster*, 847 F.3d 121 (2017)
 - ❑ Three part test:
 1. Is the District using a program recognized as legitimate by some experts in the field or at least deemed a legitimate experimental strategy;
 2. Is the practice actually used reasonably calculated to implement effective educational theory adopted by the school; and
 3. Does the strategy produce results indicating barriers are being overcome.

New Mexico Civil Rights Cases

- ❑ *Chavez v. Board of Education of Tularosa Municipal Schools*
 - ❑ Federal Court Case: CIV 05-380 JB/RLP
 - ❑ Student would not attend school due to disability.
 - ❑ Court: School and NMPED had to prove that his failure to attend was for reasons other than his disability.
 - ❑ Plaintiffs do not need to show intentional discrimination to demonstrate a violation under the law.

New Mexico Civil Rights Cases

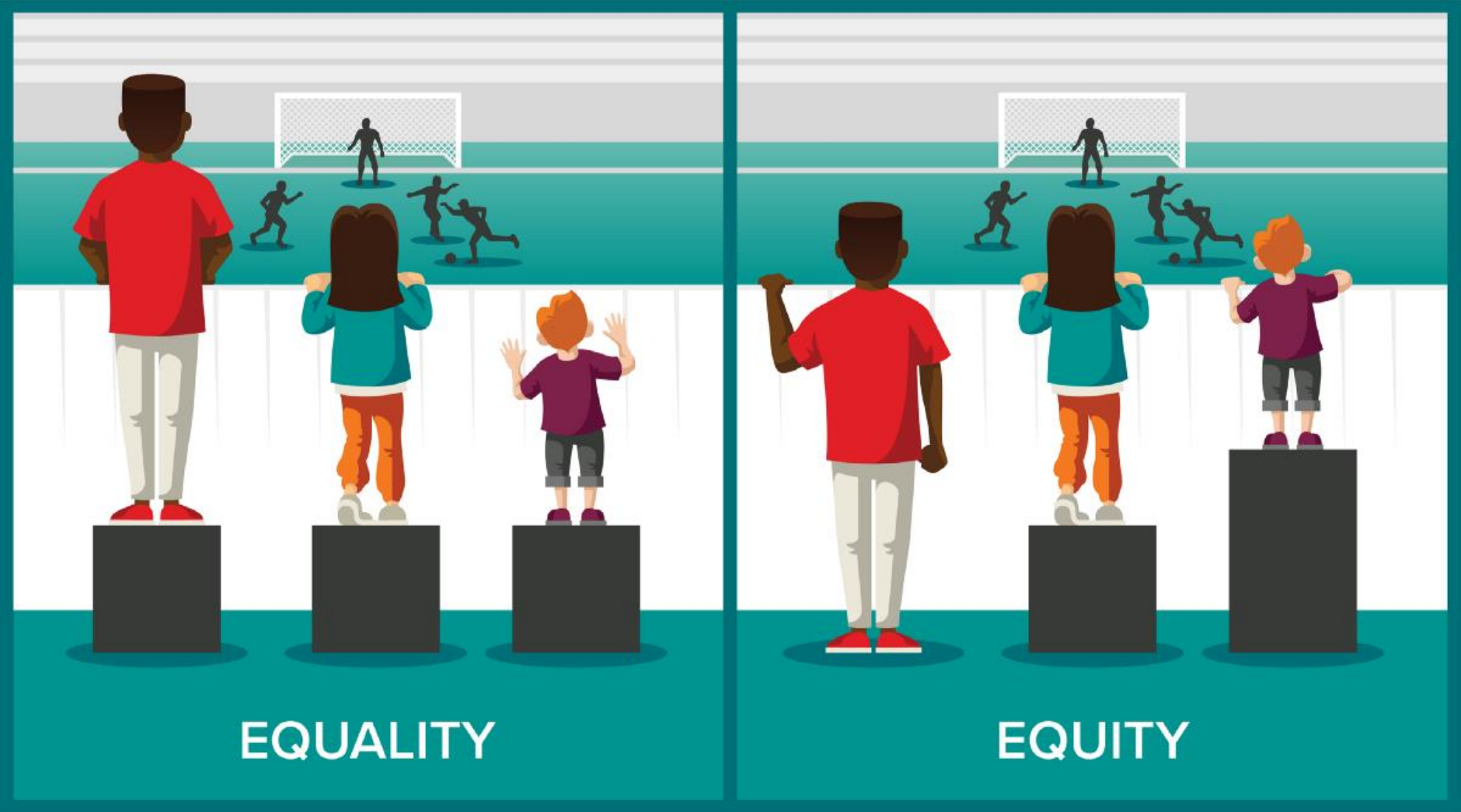
- ❑ *Serna v. Portales Municipal Schools*
 - ❑ Federal Court Case: 499 F.2d 1147 (1974)
 - ❑ Students with Spanish surnames had lower achievement level than their Anglo-American counterparts, and a higher percentage of school dropouts.
 - ❑ Notwithstanding this knowledge Portales Schools “neither applied for funds under the federal Bilingual Education Act ... nor accepted funder for a similar purpose when offered by the State of New Mexico.”
 - ❑ Court: “Spanish surnamed children do not have equal education opportunity and thus a violation of their constitutional right to equal protection exists.”
 - ❑ Court: “Portales school district failed to institute a program which will rectify language deficiencies so that these children will receive a meaningful education.”



Equity Doctrine

- ❑ **Equality** fund allocation starts with the premise that:
 - ❑ All students are treated the same.
 - ❑ All programs are equally available to all students.
 - ❑ Maintains status quo through parity.
- ❑ **Equity** fund allocation starts with the premise that:
 - ❑ Not all students start at the same place.
 - ❑ Allocates more funds for “at-risk” students.
 - ❑ Targets specific programs for specific students.

Equity Doctrine



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