



# Assemblée générale

Distr. générale  
14 avril 2025  
Français  
Original : anglais

## Conseil des droits de l'homme

### Cinquante-neuvième session

16 juin-11 juillet 2025

Point 3 de l'ordre du jour

**Promotion et protection de tous les droits de l'homme,  
civils, politiques, économiques, sociaux et culturels,  
y compris le droit au développement**

## Visite aux États-Unis d'Amérique

### Rapport de la Rapporteuse spéciale sur le droit à l'éducation, Farida Shaheed\*

#### Résumé

La Rapporteuse spéciale sur le droit à l'éducation, Farida Shaheed, s'est rendue aux États-Unis d'Amérique du 29 avril au 10 mai 2024. L'objectif de cette visite était de recueillir des informations de première main sur l'exercice et la réalisation du droit à une éducation gratuite, de qualité et inclusive pour tous, de nouer un dialogue à ce sujet avec le Gouvernement et d'autres parties prenantes et de leur faire des recommandations.

La Rapporteuse spéciale a examiné de quelle façon le Gouvernement fédéral et les gouvernements des États fédérés s'efforçaient de garantir à tous, en particulier aux groupes sociaux les plus marginalisés, un accès non discriminatoire à une éducation de qualité. Elle s'est aussi intéressée à l'exercice de la liberté académique au sein des établissements d'enseignement à tous les niveaux et à la question de la sécurité en milieu scolaire.

La Rapporteuse spéciale félicite les États-Unis pour leur cadre juridique solide, qui prévoit un système complet de garanties en matière de droits civils et confère aux tribunaux un rôle important dans la protection de l'accès équitable à l'éducation en dépit du fait que le droit à l'éducation n'est pas expressément reconnu par la Constitution. L'un des atouts majeurs du système éducatif américain est qu'il se caractérise par une diversité et une flexibilité remarquables : il propose une vaste gamme de programmes et de voies de formation répondant à un large éventail d'intérêts, de styles d'apprentissage et d'objectifs professionnels, ce qui permet aux étudiants d'adapter leur cursus en fonction de leurs besoins individuels.

L'examen du système éducatif met toutefois en évidence des inégalités systémiques en matière d'accès à l'éducation et de qualité de l'enseignement, dont sont victimes en particulier les communautés à faibles revenus et marginalisées, ce qui se traduit par des inégalités de financement liées à la perception des taxes foncières locales, par des mesures disciplinaires punitives qui touchent de façon disproportionnée les élèves noirs et les élèves métis et par un recours excessif aux épreuves normalisées. La privatisation croissante de l'éducation menace l'intégrité de l'enseignement public, alors que l'insuffisance de

\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le corps du rapport, annexé au résumé, est distribué dans la langue de l'original seulement.



l'accompagnement psychologique, la pénurie d'enseignants et les mauvaises conditions de travail nuisent au bien-être des étudiants et aux résultats d'apprentissage. Les ingérences politiques, les lois de censure discriminatoires, les interdictions de certains ouvrages et d'autres atteintes à la liberté académique restreignent encore l'accès à la diversité des points de vue et à la réflexion critique, ce qui crée un effet d'intimidation dénoncé par divers interlocuteurs. Les participants aux manifestations d'étudiants font de plus en plus souvent l'objet de poursuites, d'une surveillance et de mesures disciplinaires, ce qui a pour effet d'étouffer la liberté d'expression et la participation citoyenne. À moins d'une réforme systémique en matière de financement, de gouvernance et d'évaluation, les problèmes relevés continueront de porter atteinte à l'égalité d'accès à l'éducation et de compromettre le rôle fondamental de l'éducation dans la promotion de la démocratie et du progrès social.

## Annexe

### **Rapport de la Rapporteuse spéciale sur le droit à l'éducation, Farida Shaheed, sur sa visite aux États-Unis d'Amérique**

#### **Introduction**

1. The Special Rapporteur on the right to education, Farida Shaheed, carried out an official visit to the United States of America from 29 April to 10 May 2024, at the invitation of the Government. The Special Rapporteur visited Washington, D.C., and the States of Colorado and Indiana.
2. In Washington, D.C., the Special Rapporteur engaged with a wide range of federal Government officials from: the United States Department of State ; the Department of Education and its Office for Civil Rights ; the Department of Justice and its Educational Opportunities Section ; the White House Domestic Policy Council ; and a staff member of the United States Senate Committee on Health, Education, Labor and Pensions.
3. In Indiana, the Special Rapporteur met the Indiana Secretary of Education, representatives of the Office of Education Innovation of the Office of the Mayor of Indianapolis and the Chair of Education Committee of the Indianapolis City-County Council. It was unfortunate that the Special Rapporteur was expressly not allowed to visit any traditional public schools run by the Indianapolis Public Schools. This is contrary to the principle of freedom of inquiry of special rapporteurs during country visits and the spirit of cooperation with human rights mechanisms that the officials of the United States otherwise extended.
4. In Colorado, the Special Rapporteur met the Governor, the Commissioner of Education and representatives of Colorado Department of Education, the Office of School Safety and the Colorado Association of School Boards.
5. In both States, she visited public schools, including public charter schools, providing education at the diverse levels, from kindergarten and elementary to middle and high school. She spoke with students, parents, teachers and staff, school principals, school district superintendents and school board members.
6. The Special Rapporteur also had informative and fruitful discussions with academics, university students and faculty, representatives of youth associations, librarian and teachers unions and a host of other civil society actors. Those meetings, some held online, provided first-hand insights on the realization of the right to education in other States, including Alabama, California, Connecticut, Florida, Idaho, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New York, Ohio, South Carolina, Texas and Washington.
7. The Special Rapporteur expresses her gratitude to the Government for its invitation and the full cooperation extended throughout the visit. She appreciates having received useful comments on her preliminary observations on the visit from the State Department, the Department of Education and the Department of Justice. She thanks all stakeholders for their insights, time and availability.

## **II. General context and legal framework**

8. Education in the United States comprises a complex landscape of cascading authority, with decision-making powers exercised in a devolved, often hyper-local, manner. The federal Government has limited jurisdiction regarding education, with most functions concentrated at the level of the individual States, which allocate funding, set assessment and curriculum standards and oversee licensing for public (including charter) and private schools and for teachers. States establish compulsory attendance laws and control their curricula, regulating graduation requirements in key subjects.

9. Autonomy cascades further down to the nearly 14,000 school districts governed by school boards, most elected by their communities through direct voting. School boards develop their own annual budgets to run the school systems, set school policies and hire and evaluate superintendents. School districts develop and implement curricula and select textbooks, with degrees of flexibility varying by State. School principals report to the superintendent but have a degree of decision-making autonomy in managing the daily operations of individual schools.

10. Education is divided into three levels: elementary (kindergarten through grades 5/6) ; secondary (middle and high school, grades 6/7 through grade 12) ; and post-secondary (colleges and universities). The importance of quality pre-school education is recognized at the federal level, although access to such education is limited, especially for children from low-income backgrounds, English-language learners and children with disabilities.<sup>1</sup>

## A. Federal competencies in education

11. Because the federal Constitution does not specify a right to education or mention education as a federal responsibility, education is the remit of State and local governments under the tenth amendment.<sup>2</sup> As noted in the landmark 1954 Supreme Court decision, *Brown v. Board of Education*, education exists as a “function of state and local governments”, administered through the public school system. States are therefore primarily responsible for establishing and maintaining all aspects of public education. The federal Government influences education through national assessment, conditional funding, civil rights enforcement and programmes tied to federal laws, ensuring a level of consistency and equity across States.

12. A number of federal laws establish mandatory non-discrimination standards for all education programmes or activities that receive federal funding, including:

(a) Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, colour and national origin ;

(b) Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex. Supreme Court caselaw has interpreted this to also safeguard against discrimination on the basis of sexual orientation and gender identity,<sup>3</sup> although this interpretation may change in view of recent executive orders ;<sup>4</sup>

(c) Americans with Disabilities Act of 1990 prohibits discrimination on the basis of disability ;

(d) Age Discrimination Act of 1975 prohibits age-based discrimination.

13. The Department of Education is the agency of the federal Government that establishes policy for, administers and coordinates most federal assistance to education. It assists the President in executing his education policies and in implementing laws enacted by Congress.<sup>5</sup>

14. The Office for Civil Rights of the Department of Education enforces federal laws by issuing regulations as well as guidelines and letters reminding local authorities of their legal obligations. It also considers and carries out investigations either proactively or in response to complaints received. The Office receives approximately 19,000 communications annually.

<sup>1</sup> See <https://www.ed.gov/sites/ed/files/2024/02/24-0042-OESE-Early-School-Success-DCL-final-2.26.2024.pdf>.

<sup>2</sup> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved for the States, respectively, or to the people.

<sup>3</sup> See *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020).

<sup>4</sup> Executive Order No 13988 of 20 January 2021, “Preventing and combating discrimination on the basis of gender identity or sexual orientation”, was rescinded by President Trump on 20 January 2025.

<sup>5</sup> See <https://www.ed.gov/about/ed-overview/an-overview-of-the-us-department-of-education--pg-1>.

These may result in resolution agreements with school districts or universities.<sup>6</sup> In addition, the Department of Justice can initiate lawsuits to hold entities violating federal non-discrimination laws to account. This may result in a consent decree monitored by a judge.

15. The federal Government provides about 8 per cent to 9 per cent of funding for elementary and secondary education, including targeted support for low-income schools through Title I funding and the Every Student Succeeds Act (2015).

16. The federal Government also provides funding for specific needs, such as enabling children from low-income families below the age of compulsory school attendance to attain school readiness under the Head Start Act,<sup>7</sup> or providing school lunches for low-income individuals and families through the federal Supplemental Nutrition Assistance Program, administered by the Department of Agriculture, which annually serves over 40 million people.<sup>8</sup> The federal Government pledged to fund 40 per cent of the excess cost of assistance for students with disabilities under the Individuals with Disabilities Education Act. In practice, however, only around 15 per cent of the excess cost is provided.<sup>9</sup>

17. Another targeted federal programme addresses homelessness by providing funding and support for housing, education and other essential services established under the 1987 McKinney-Vento Homeless Assistance Act, which targets homeless children and youth, including those in temporary housing, motels, trailer parks or campgrounds, due to housing loss or economic hardship. Federal law allows children to enrol in public schools without a permanent address<sup>10</sup> and traditional public schools make a significant effort to include them. However, districts require extensive paperwork and may investigate residency through surveillance, landlord contacts or home visits, delaying enrolment and adding stigma for homeless children.

18. In addition, the American Rescue Plan (2021), passed by the United States Congress in the wake of the coronavirus disease (COVID-19) pandemic, supported equitable recovery and child poverty reduction, allocating \$130 billion to schools for safe reopening, addressing the learning loss and social and emotional needs of students impacted by the pandemic, including students of colour, English-language learners and students with disabilities. It provided immediate relief and stabilized education, although its long-term impact depends on how States and districts sustain those investments.

19. In addition to funding, the federal Government also influences education through guidance and research. The Department of Education collects and disseminates educational data to inform policy and practice, issues policy recommendations and shares best practices for States and local districts, which, while not mandatory, are binding when tied to federal funding.

20. The proposal of President Trump to eliminate the Department of Education, while requiring congressional approval beyond a simple majority,<sup>11</sup> risks cutting targeted funding for low-income students, weakening civil rights enforcement and disrupting higher education, leading to increased loan defaults and reduced college access. In addition, key functions could be dismantled through executive action. The loss of federal oversight could deepen inequities, harm marginalized students and undermine social mobility.<sup>12</sup>

<sup>6</sup> For a recent example, see <https://palestinelegal.org/news/2025/1/23/success-department-of-education-office-for-civil-rights-states-george-washington-university-may-have-discriminated-based-on-palestinian-national-origin>.

<sup>7</sup> Public Law 110-134, “Improving Head Start for School Readiness Act of 2007”, 12 December 2007.

<sup>8</sup> See <https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program>.

<sup>9</sup> See <https://www.specialneedsalliance.org/blog/full-funding-of-the-idea-critical-for-our-children/>.

<sup>10</sup> The United States Supreme Court case *Plyler v. Doe* (1982) guarantees equal education for undocumented children, a principle also relevant to homeless children facing access barriers.

<sup>11</sup> Members of Congress have introduced related bills, including the “Returning Education to Our States Act” (S.5384) and “To terminate the Department of Education” (H.R.899).

<sup>12</sup> See <https://tcf.org/content/commentary/how-gutting-the-u-s-department-of-education-would-hurt-students-and-their-families/> and <https://www.theguardian.com/us-news/2025/jan/21/trump-education-department>.

## B. State-level legal framework

21. The constitutions of all States in the United States mention education, albeit with wide variations.<sup>13</sup> All 50 States have compulsory attendance laws requiring that children be educated.<sup>14</sup> The right to education in State constitutions is often framed as an obligation of the State to provide a “free and adequate” education to all children within its borders. Some constitutions mandate a “thorough and efficient” education system or a “sound basic education.” Some States, like Florida and Illinois, explicitly recognize the right to a “high-quality” education. Other States have more general requirements, simply mandating the creation and maintenance of a public school system.

22. Courts have frequently interpreted these provisions, particularly in cases challenging school funding inequities.<sup>15</sup> Many State courts have ruled that the right to education necessitates equitable and sufficient resources for all students. However, the standards for what constitutes adequacy or quality can vary, leading to significant disparities between and within States.

23. While no State law can contravene federal non-discrimination provisions, the information received throughout the visit indicates that, in practice, an intricate web of interrelated discrimination continues to affect the most marginalized and vulnerable communities, perpetuating harmful cycles of inequality.

## C. School choice

24. School choice, a term for education options that allow students and families to select alternatives to assigned public schools, is a defining feature of the education system in the United States, although it remains a subject of heated debate. Supporters of school choice value the flexibility to select schools that best fit children’s learning styles, interests and needs and believe that it encourages competition that can improve school quality, in addition to offering low-income students access to better educational opportunities. Critics argue that, on the financial side, school choice programmes, such as vouchers, divert essential funding from public schools, potentially weakening the system. Concerns have been expressed about religious schools receiving public funds, the risk of increased educational inequality owing to selective admissions and the potential fragmentation of community traditionally fostered by public education.<sup>16</sup>

25. The right of parents to direct the care and custody of their children is considered one of the oldest fundamental interests safeguarded by the Constitution.<sup>17</sup> In *Washington v. Glucksberg* (1997), the federal Supreme Court declared that the Constitution, and specifically

<sup>13</sup> See <https://www.minneapolisfed.org/~media/assets/articles/2020/education-clauses-in-state-constitutions-across-the-united-states/education-clauses-in-state-constitutions-across-the-united-states.pdf>.

<sup>14</sup> National Center for Education Statistics, “State Education Practices” (2017), available at [https://nces.ed.gov/programs/statereform/tab5\\_1.asp](https://nces.ed.gov/programs/statereform/tab5_1.asp).

<sup>15</sup> See, for example, *Campaign for Fiscal Equity v. State of New York* (State’s school-spending system denied New York City children their right to a “sound, basic education”, as guaranteed by the State constitution); *Rose v. Council for Better Education* (Kentucky Supreme Court declared the State’s entire education system unconstitutional because of the great disparity of local tax efforts, requiring funding reforms to ensure access to an adequate education for all students); *Hoke County Board of Education v. North Carolina* (North Carolina Supreme Court ordered to address funding differences between wealthy and poor districts and to reform the State education system to assure that all schoolchildren, no matter where they may live in the State, receive adequate educational opportunities).

<sup>16</sup> See, for example, <https://www.publicschoolreview.com/blog/the-ongoing-debate-over-school-choice>.

<sup>17</sup> In *Meyer v. Nebraska* (1923), the United States Supreme Court held that the “liberty” protected by the due process clause includes the right of parents to “establish a home and bring up children” and “to control the education of their own.” In *Pierce v. Society of Sisters* (1925), the Supreme Court held that the “liberty of parents and guardians” includes the right “to direct the upbringing and education of children under their control.” In *Prince v. Massachusetts* (1944), the Supreme Court confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children.

the due process clause of the fourteenth amendment, protects the fundamental right of parents to direct the care, upbringing and education of their children. Many States have reconfirmed parental rights as a fundamental right in their laws.<sup>18</sup>

26. Nationwide, 90 per cent of students in elementary and secondary education attend public schools, of which 7 per cent attend public charter schools.<sup>19</sup> Parents can send their children to the public school designated for their home address (69 per cent of students are enrolled in assigned public schools) or, State laws permitting, may choose other options in the public school system, including charter, innovation and magnet schools. In States with open enrolment, parents may apply to enrol their children in other public schools within or outside their designated school district. In total, 19 per cent of students are enrolled in public schools other than those in their designated school district.<sup>20</sup>

27. Moreover, parents can choose to send their children to private schools, which may be religious or non-sectarian, or elect to homeschool their children. The liberty of parents to choose private education has been safeguarded by the fourteenth amendment and recognized by United States courts since 1925.<sup>21</sup> It should be noted that the Supreme Court upholds the right of parents to choose private education but not to control public school curricula or to demand exemptions.<sup>22</sup> Lower courts consistently reject such claims on the grounds that these create an unworkable burden on public school systems.

28. While all 50 States guarantee a parent's right to choose a private education, noting that compulsory school attendance can be realized in private schools,<sup>23</sup> specific school choice programmes are available in 33 States and in Washington, D.C.<sup>24</sup> There are 81 diverse educational choice programmes across the United States catering to approximately 1.2 million students. These programmes include education savings accounts, tax-credit education savings accounts, school vouchers, tax-credit scholarships, refundable tax credits and individual tax credits and deductions.<sup>25</sup>

29. All States regulate non-public education,<sup>26</sup> while the Office of Non-Public Education provides non-regulatory guidance for State and local education authorities.<sup>27</sup> The challenge for State legislators in regulating private schools is to draft legislation that: (a) respects the fundamental right of parents to direct the education of their children ; (b) protects the State's interest in having an informed citizenry but avoids interference with religious beliefs unless compelling interests are at issue, and then only in the least restrictive manner ; and (c) avoids excessive regulation of private education that would essentially deprive parents of any choice in education and erase the distinction between private and public schools.<sup>28</sup> Furthermore, since 80 per cent of private schools in the United States are religious institutions, any regulation of such schools must conform to the guarantee of the free exercise of religion under the first amendment.

<sup>18</sup> See <https://parentalrights.org/states/>.

<sup>19</sup> See [https://www.pewresearch.org/short-reads/2024/06/06/us-public-private-and-charter-schools-in-5-charts/sr\\_24-05-07\\_schooltypes\\_2/](https://www.pewresearch.org/short-reads/2024/06/06/us-public-private-and-charter-schools-in-5-charts/sr_24-05-07_schooltypes_2/).

<sup>20</sup> See [https://nces.ed.gov/programs/schoolchoice/ind\\_01.asp](https://nces.ed.gov/programs/schoolchoice/ind_01.asp).

<sup>21</sup> United States Supreme Court, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

<sup>22</sup> V.E. Hamilton, *The conflict over parents' rights* (National Education Policy Center, 2024).

<sup>23</sup> See <https://www.ed.gov/birth-grade-12-education/school-choice/selected-us-supreme-court-rulings-related-private-and-home-schools>.

<sup>24</sup> See <https://www.edchoice.org/wp-content/uploads/2025/01/2025-ABCs-of-School-Choice.pdf>.

<sup>25</sup> Ibid.

<sup>26</sup> See <https://www.ed.gov/birth-grade-12-education/school-choice/state-regulation-of-private-and-home-schools> and <https://www.edchoice.org/wp-content/uploads/2024/06/EdChoice-School-Starter-Checklist.pdf>.

<sup>27</sup> See <https://www.ed.gov/birth-grade-12-education/school-choice/frequently-asked-questions-non-public-education>.

<sup>28</sup> See <https://www.ed.gov/birth-grade-12-education/school-choice/selected-us-supreme-court-rulings-related-private-and-home-schools>.



### III. Specific achievements and challenges relating to the right to education in the United States

#### A. Systemic inequalities and their manifestations in education

30. Systemic inequalities in the education system remain a persistent challenge, deeply rooted in historical, social and economic factors. Disparities in access, resources and opportunities disproportionately affect students from marginalized communities, including low-income families, racial and ethnic minorities, English-language learners, children with disabilities and children with special learning needs. These inequalities stem, first and foremost, from unequal school funding, often tied to urban planning and property taxes, resulting in stark contrasts between well-resourced schools in affluent neighbourhoods and underfunded schools in economically disadvantaged areas. In many underfunded schools, teachers are overworked, often managing larger class sizes with limited resources and increased responsibilities without adequate support or compensation. This leaves underperforming students without the extra support they need.

31. Test-based accountability strategies also negatively affect educational equity. Data from the National Assessment of Educational Progress carried out by the National Center for Education Statistics reveal that white students consistently outperform all other groups on standardized tests,<sup>29</sup> demonstrating the underlying issues of inequities in terms of quality education for all. In addition, racial biases in disciplinary practices further widen the educational gap.

##### 1. Inequitable funding

32. In the 2020–21 school year, data show that total revenues for public elementary and secondary schools in the United States amounted to \$954 billion.<sup>30</sup> Of that amount, 11 per cent came from federal sources, 46 per cent from State sources and 44 per cent from local sources. Public schools received \$124.9 billion, or \$2,536 in federal funds, per student. Hence, nearly 90 per cent of funding was derived from non-federal sources. More recent data suggest that total funding for elementary and secondary public education from federal, State and local governments has decreased, to \$878.2 billion, with 13.6 per cent funded by the federal Government,<sup>31</sup> an increase which can be attributed to emergency federal assistance during the COVID-19 pandemic.<sup>32</sup>

33. Public school funding thus depends primarily on State and local governments. On average, elementary and secondary public schools spend \$17,277 per pupil, with States contributing \$7,738 per student and local governments contributing \$7,562 per student. However, annual spending per pupil can be as low as \$9,387, in Idaho, and as high as \$33,437, in New York.<sup>33</sup>

34. Local governments contribute a significant share, primarily through property taxes. Relying on local property taxes leads to disparities, with schools in affluent areas often better resourced than those in lower-income districts.<sup>34</sup> Moreover, States with a higher percentage of low-income students spend less per student.<sup>35</sup> Schools with larger populations of Black,

<sup>29</sup> See <https://nces.ed.gov/nationsreportcard/pdf/studies/2009455.pdf>.

<sup>30</sup> See <https://nces.ed.gov/programs/coe/indicator/cma/public-school-revenue>.

<sup>31</sup> See <https://educationdata.org/public-education-spending-statistics>, as of 17 February 2025.

<sup>32</sup> See [https://usafacts.org/answers/what-percentage-of-public-school-funding-comes-from-the-federal-government/country/united-states/?utm\\_source=chatgpt.com](https://usafacts.org/answers/what-percentage-of-public-school-funding-comes-from-the-federal-government/country/united-states/?utm_source=chatgpt.com).

<sup>33</sup> See <https://educationdata.org/public-education-spending-statistics>, as of 17 February 2025.

<sup>34</sup> Inequality in Public School Funding: Key Issues & Solutions for Closing the Gap, American University School of Education, 10 September 2020.

<sup>35</sup> *The other school funding divide: States with more poor students tend to spend less, creating hard-to-fix disparities*, Chalkbeat, 31 July 2019.



Latino or Native American students, on average, receive 16 per cent less per student from all sources combined.<sup>36</sup>

35. Reliance on local property taxes, combined with chronic underfunding of education systems, as highlighted by many interlocutors during the visit,<sup>37</sup> perpetuates a cycle whereby educational opportunities for children in wealthier areas continuously improve while those for children in lower-income areas are limited. Students in affluent districts often perform better academically, have higher graduation rates, superior arts and sports opportunities and enjoy more support for college preparation compared to students in poorer districts, who often have greater needs in terms of performance rates, special education requirements and mental health support but have to cope with fewer resources.

36. There have been efforts to address these disparities,<sup>38</sup> including in Colorado, where attempts have been made to distribute funds more equitably among school districts and to use State funding to cover deficits in districts with exceptionally low tax rates,<sup>39</sup> In California, there have been suggestions to replace an initial property-tax-based solution by a funding scheme that relies more heavily on State (as opposed to district) revenue<sup>40</sup> and for land-use and housing reform to address school segregation.<sup>41</sup> However, such efforts do not meet the required financial needs and are consistently faced with opposition.

37. Educational needs are often identified using socioeconomic proxies like zip codes, free or subsidized lunches, disability and English-language learner status, which can reinforce deficit-based assumptions that attribute poor achievement to student characteristics rather than systemic biases. Weighted student funding formulas attempt to address disparities by assigning additional weights to high-need student categories, but these weights are often determined by political and financial considerations rather than actual educational determinants. Even when schools with high-need students receive more funds, the impact may be undermined by cost-cutting practices, such as assigning less experienced teachers to those students, resulting in more unmet educational needs.<sup>42</sup>

## 2. Diverting public funds from traditional public schools

38. As consistently underscored by the mandate, the right to education requires States to deliver free, quality, public education for everyone.<sup>43</sup> The freedom of parents to choose private schools for their children other than those established by public authorities is meaningless without universal access to public schooling. In four reports on the issue,<sup>44</sup> the mandate has stressed the critical importance of investing in universally accessible quality public education and the danger of privatization supplanting public education instead of supplementing it.<sup>45</sup>

39. The extension of public funding for private schools through vouchers is the subject of a complex debate. Originally, vouchers were designed to enable parents to freely choose the schools their children attend with a view to improving public education through competition.<sup>46</sup> The aim was to enable public schools to operate more like private entities, to be more agile and responsive to student needs, free from the constraints of union bargaining

<sup>36</sup> *School Districts That Serve Students of Color Receive Significantly Less Funding*, The Education Trust, 8 December 2022.

<sup>37</sup> See also

<https://nepc.colorado.edu/sites/default/files/publications/Newsletter%20school%20spending.pdf>.

<sup>38</sup> See <https://files.eric.ed.gov/fulltext/ED626080.pdf>.

<sup>39</sup> See <https://www.cde.state.co.us/cdedepcom/schoolfinancecost-modelingadequacystudyexecutivesummary>.

<sup>40</sup> Following *Serrano v. Priest* holding that California's method of funding public education because of district-to-district disparities, "fails to meet the requirements of the equal protection clause of the Fourteenth Amendment of the United States Constitution and the California Constitution".

<sup>41</sup> See <https://nepc.colorado.edu/sites/default/files/publications/PB%20Siegel-Hawley.pdf>.

<sup>42</sup> See Joshua E. Weishart, "Democratizing education rights", *William and Mary Bill of Rights Journal*, vol. 29, No. 1 (2020), see also <https://scholarship.law.wm.edu/wmborj/vol29/iss1/2>.

<sup>43</sup> A/HRC/53/27, para. 52.

<sup>44</sup> A/HRC/29/30; A/HRC/41/37; A/69/402; and A/70/342.

<sup>45</sup> A/69/402, para. 38.

<sup>46</sup> <https://www.tandfonline.com/doi/abs/10.1080/09645299700000026>.

agreements and State and local regulations, and to oblige them to compete for students and for the funding that follows them.<sup>47</sup>

40. The upshot is that private schools, often with selective admissions criteria,<sup>48</sup> may receive public money through vouchers and other school-choice mechanisms, without being subjected to the same requirements of transparency and oversight as public schools, contrary to international recommendations.<sup>49</sup> Moreover, the threshold for qualifying for vouchers has been lowered in some cases, potentially allowing families with higher incomes to access public funds for private education, despite their ability to pay for tuition without assistance. The question that arises is whether public money is truly serving the public interest in the best way possible when directed towards private institutions.

41. Charter schools, while privately managed, are considered to be public schools. They operate on the basis of a charter agreement with a local school district or another authority. Although bound by federal non-discrimination civil laws, charter schools often apply for certain waivers that limit their obligations to serve all students equally, in particular those requiring special education services. For example, they may adopt enrolment application forms and lotteries, lack collective bargaining for teachers or provide less public transparency.

42. Furthermore, there is no uniformity in the authorization of charter schools, which can be authorized by the State, by district school boards and sometimes by universities. Indiana, for example, has nine different public charter school authorizers. This lack of consistent standards leads to “forum shopping”, with school owners looking for the best option, which may result in deteriorating quality and lack of accountability.

43. Financial accountability is another matter of concern. Interlocutors pointed out that a significant number of charter schools that receive starter grants close within a few years with no apparent accountability for the public money spent. Studies indicate that 40 per cent of such schools close within 10 years.<sup>50</sup> The challenge is to ensure that charter schools do not end up “hollowing out” the traditional public school system, which continues to provide education to the vast majority of students, including the most marginalized.

44. The diversion of public funds from traditional public schools to private and charter schools appears to be exacerbating educational inequalities and undermining the fundamental right to free, quality public education for all. As public resources are redirected to institutions with selective admissions processes, the most marginalized students, often from low income and racial and ethnic minority backgrounds, are left behind. Moreover, the lack of uniform oversight further compromises educational quality and equity.

### 3. Test-based assessment of learning

45. The 2002 No Child Left Behind Act, which standardized testing in math and reading, required that all States achieve 100 per cent proficiency and penalized schools failing to meet their yearly targets. In 2015, Every Student Succeeds Act replaced the No Child Left Behind Act, easing some punitive measures but retaining annual testing requirements for grades 3 through 8 and once in high school.<sup>51</sup>

46. Used as a tool for ensuring “accountability” in education, standardized test scores often influence the distribution of educational resources. This can deepen educational inequities as schools in wealthier areas, which have greater access to academic support, tend to perform better and receive more funding, while underfunded schools in disadvantaged communities struggle to improve academic results without the needed extra resources. The emphasis on test scores has created a punitive environment for both schools and teachers, as

<sup>47</sup> <https://www.forbes.com/sites/mikemcshane/2024/06/21/private-schools-keep-them-private/>.

<sup>48</sup> J. F. Mead and S. E. Eckes, “How school privatization opens the door for discrimination”, National Education Policy Center (2018).

<sup>49</sup> The Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education (2019).

<sup>50</sup> See <https://networkforpubliceducation.org/brokenpromises/>.

<sup>51</sup> See <https://www.usnews.com/education/k12/articles/opting-out-of-standardized-testing-what-to-know>.

well as a vicious cycle, within which lower performance leads to decreased enrolment rates, resulting in less funding, less able test candidates and an overall decline in the quality of education.

47. In addition, the punitive nature of standardized testing leads to consistent discrepancies between State-administered testing and the National Assessment of Educational Progress, which tends to find larger achievement gaps than State assessments. In 2024, much lower percentages of students scored “proficient” on National Assessment of Educational Progress tests than on standardized exams organized by many States.<sup>52</sup> Results also differed among States, which experts attribute to different methods of measurement rather than to actual differences in achievement.<sup>53</sup>

48. Excessive focus on testing has narrowed curricula, with math and reading being prioritized at the expense of science, civics, history, art and social-emotional learning. It has reduced teacher autonomy, forcing educators to “teach to the test” rather than adapt instruction to students’ needs. The pressure to meet benchmarks has led to teacher demoralization, lower school enrolment and a decline in overall education quality. Moreover, assessing schools and teachers solely by standardized test results disregards student diversity, including English proficiency, learning disabilities and socioeconomic barriers, thus reinforcing systemic inequalities.

49. Standardized testing can be an important assessment tool, but overuse is detrimental as it detracts from a holistic, student-centred education that fosters and assesses critical thinking, creativity and the real-world skills needed to navigate the complexities of adulthood. This is only possible if teachers have the necessary autonomy and time to cultivate the capacities of individual students, support the implementation of instructional practices and conduct meaningful performance assessments.

#### **4. Securitization of schools and discriminatory disciplinary practices**

50. There is an excessive securitization of schools and use of discriminatory disciplinary practices, including an increased presence of law enforcement in schools, strict surveillance and zero-tolerance discipline policies mandating automatic and severe punishments for specific infractions, regardless of the context, intent or individual circumstances of the student involved.

51. These measures have led to the criminalization of student behaviour, particularly among students of colour,<sup>54</sup> with disabilities and from low-income backgrounds. Harsh disciplinary measures, including suspensions, expulsions and school-based arrests, often fail to address the root causes of behavioural challenges while exacerbating educational disparities. Instead of fostering safe and supportive learning environments, these practices undermine the academic success of vulnerable students and reinforce broader patterns of social and economic exclusion.

52. A significant issue is the presence of school resource officers. It is estimated that country-wide there are approximately 24,900 sworn law enforcement officers employed by local police forces to ensure school safety.<sup>55</sup> They possess arrest powers, can carry firearms and are authorized to use force in specific situations. In schools, their role often includes enforcing State and local laws, responding to criminal activity, patrolling school facilities, responding to incidents in the classroom and sometimes providing security or engaging in student outreach. Given this expansive mandate, the training and conduct of the officers, especially on issues of children’s rights and child protection, often come into question.<sup>56</sup>

<sup>52</sup> See <https://www.future-ed.org/the-new-naep-scores-highlight-a-standards-gap-in-many-states/>.

<sup>53</sup> See [https://nces.ed.gov/pubs2008/2008474\\_1\\_1.pdf](https://nces.ed.gov/pubs2008/2008474_1_1.pdf).

<sup>54</sup> J. Scott, M.S. Moses, K.S. Finnigan, T. Trujillo and D. D. Jackson, “Law and order in school and society: how discipline and policing policies harm students of color, and what we can do about it” (National Education Policy Center, 2017).

<sup>55</sup> See <https://www.ohchr.org/en/documents/country-reports/ahrc54crp7-international-independent-expert-mechanism-advance-racial> (A/HRC/54/CRP.7).

<sup>56</sup> Training is offered by the National Association of School Resource Officers and by the States, see <https://www.nasro.org/training/training-courses/>.

Some initiatives, such as comprehensive training programmes in States like Colorado<sup>57</sup> and the introduction of online case management systems for threat assessment and suicide prevention, show promise. Nevertheless, it remains to be seen how effective these measures will be in practice and divided opinions among students underscore the complexity of the issue.

53. Reports of inappropriate arrests, handcuffing (or thumb-cuffing) of children as young as 5 years old, excessive use of force against children, including in response to non-violent infringements of school codes of conduct, and even involuntary psychiatric confinement of children with special needs or socio-emotional issues are all cause for serious concern.

54. Reportedly, school resource officers contribute to the criminalization of misbehaviour by minors, disproportionately affecting Black and brown students, a systemic racism issue recognized by the Department of Education.<sup>58</sup> Under Titles IV and VI, schools must ensure racially non-discriminatory discipline and cannot evade responsibility by outsourcing security.<sup>59</sup> Schools remain accountable for discrimination by school resource officers and other security personnel.

55. Such criminalization is often referred to as the school-to-prison, and sometimes deportation, pipeline, by which education and public security policies push children and young people into the criminal justice system. Many of these children are Black or brown, have disabilities or histories of poverty, abuse or neglect, who would benefit from additional support and resources but instead are punished and pushed out of the school system. This perpetuation of the harmful cycle of exclusion and marginalization has a negative long-term impact on society as a whole.

56. Although some students felt reassured by the presence of school resource officers, they were nevertheless scared by the sight of visible weapons. Many students from marginalized communities were vehemently opposed to the presence of school resource officers or police officers, pointing out that while they might reduce some forms of violence they had failed in instances to prevent school shootings<sup>60</sup> and may often cause more harm, citing reports of incidents of sexual harassment.<sup>61</sup> Their presence often correlates with the intensified use of suspension, expulsion, police referral and arrest of students ; cases are consistently highest among Black and brown students, male students and students with disabilities.<sup>62</sup>

57. Evidence shows that well-funded prevention initiatives, such as mental health support and community-based violence interventions, are more effective in reducing violence than punitive approaches.<sup>63</sup> Data reveal that lack of safety, chronic absenteeism and mental health issues are often interconnected.

58. Alternative safety approaches that have been deployed include school safety officers, anonymous reporting hotlines, like “Safe to tell”, and community school models,<sup>64</sup> all of which emphasize belonging, student well-being, workforce diversity and positive discipline, in line with the 2023 Guiding Principles for Creating Safe, Inclusive, Supportive and Fair School Climates advanced by the Department of Education.<sup>65</sup>

<sup>57</sup> See <https://www.cde.state.co.us/dropoutprevention/sromodelpolicy>.

<sup>58</sup> See <https://www.ed.gov/laws-and-policy/civil-rights-laws/race-color-and-national-origin-discrimination/dear-colleague-letter-nondiscriminatory-administration-of-school-discipline>.

<sup>59</sup> Ibid.

<sup>60</sup> See <https://www.aclu-wa.org/story/school-resource-officers-when-cure-worse-disease>.

<sup>61</sup> “Abused by the badge”, an investigation by the *Washington Post* found hundreds of law enforcement officers in the United States have sexually exploited kids. Many avoid prison time, 12 June 2024.

<sup>62</sup> See <https://onlinelibrary.wiley.com/doi/abs/10.1002/pam.22498>.

<sup>63</sup> See <https://www.americanprogress.org/article/frequently-asked-questions-about-community-based-violence-intervention-programs/>.

<sup>64</sup> See <https://www.americanprogress.org/article/building-community-schools-systems/>.

<sup>65</sup> See <https://www.ed.gov/sites/ed/files/policy/gen/guid/school-discipline/guiding-principles.pdf>.

## B. Mental health and well-being of students

59. The impact of the COVID-19 pandemic cannot be overstated. Mental health was flagged by numerous interlocutors, who expressed concern at persistent absenteeism and rising student anxiety, despite ongoing efforts to support well-being. While 69 per cent of public schools offer social and emotional learning programmes, their effectiveness in addressing students' social and emotional needs is uncertain and many students struggle to access adequate mental health support, highlighting the need for stronger and more accessible interventions.

60. Social isolation, trauma and violence in the community exacerbates existing mental health challenges. Social media, while offering connectivity, often amplifies feelings of inadequacy and loneliness among students, compounded by the omnipresence of mobile phones. Experts, who believe the rise of phone-based childhoods has contributed to increasing anxiety, depression and social isolation among children, advocate for play-based childhood, emphasizing free play, in-person interactions and real-world experiences as essential for healthy emotional and cognitive development.<sup>66</sup>

61. Students confirmed that constant testing is a significant source of pressure, which they rated as 8 out of 10 on the stress scale. In parallel, while the new tendency to encourage students to pursue dual degrees or obtain college credits while at school may potentially benefit future careers, it adds to students' anxiety.

62. Many students expressed a desire to talk to someone they can trust and confide in, without fear of judgment or breach of confidentiality. Schools that struggle financially are often unable to increase access to mental health support. There is a glaring shortage of psychologists in schools. Typically, in schools, there may be a team of eight school social workers and counsellors serving 2,000 students. Reportedly, each student is allocated 20 min with a mental health professional per month and even that is often not available due to overbooking. In addition, it was reported that school psychologists often lack the appropriate language or cultural understanding necessary to address and assist students with their mental health issues.

63. Students in traditional public, charter and magnet schools all reported that breaks and recesses are too short, depriving children of much-needed opportunities for rest, play and even eating properly. While the provision of a free breakfast and lunch is a good practice, some students reported receiving food that was half-frozen or mouldy ; others said that they could not get any lunch owing to excessively long queues or the cafeteria running out of food.

## C. Teachers

64. The teaching profession in the United States was reported as being challenged by severe teacher shortages, the politicization of unions,<sup>67</sup> hostile work environments, academic censorship and salary disparities. These issues contribute to low teacher retention rates and make it harder for public schools, particularly those serving marginalized communities, to provide quality education. There is a high attrition rate, with nearly 45 per cent of teachers leaving the profession within the first five years.

65. Teacher shortages are particularly severe in subjects such as languages, sciences, special education and dual language instruction. In some districts, where schools facing acute shortages have resorted to recruiting teachers from abroad, the need for expediting visa and work permit processes was highlighted.

66. There is no country-wide guarantee of a minimum salary for public school teachers. Salaries in the traditional public schools are negotiated between school districts and teachers' unions, leading to significant pay disparities. In addition, teachers reported being

<sup>66</sup> Jonathan Haidt, *The Anxious Generation: How the Great Rewiring of Childhood is Causing an Epidemic of Mental Illness*, New York, Penguin Press (2024).

<sup>67</sup> See <https://ocpathink.org/post/independent-journalism/reports-teacher-unions-prioritize-politics-over-work-issues>.



undervalued and underpaid, with many obliged to juggle multiple jobs to make ends meet. They also spoke of overregulation, lack of autonomy, lack of professional support and thoughtful management of the teaching workforce, for example, least experienced new teachers in the lowest performing schools often having to handle the most challenging situations. While public school teachers are required to complete professional training for license renewal (in Colorado, for example, the requirement is 90 hours over the course of the 7 years preceding the renewal request), the shortage of substitute teachers affects the ability of teachers to participate in professional development.

67. Lack of diversity among teachers, which does not reflect the diverse demographics of the student body, deprives students of relatable role models and also reduces the richness of perspectives within the classroom. The absence of scholarships and support mechanisms for aspiring teachers from underrepresented backgrounds reinforces existing disparities within the teaching profession.

#### **D. Discriminatory censorship laws and “book bans”**

68. Following the Black Lives Matter protests in 2020, many institutions expanded diversity, equity and inclusion initiatives to address systemic racism. In 2020, the Trump administration’s executive order “Combating Race and Sex Stereotyping” set the stage for State-level “divisive concepts” laws, restricting discussions on race and gender. As a result, in 2021, hundreds of educational gag orders were instituted, escalating to book bans and surveillance of educators in 2022. By 2023, the focus shifted from individual censorship to dismantling institutional diversity, equity and inclusion programmes, with States like Texas and Florida defunding such offices and restricting diversity in hiring and college admissions.<sup>68</sup> Following the 2024 elections, the new Trump administration has intensified these efforts, revoking affirmative action policies, shutting down federal diversity offices, suspending minority- and women-focused contracting programmes and investigating companies with diversity, equity and inclusion programmes,<sup>69</sup> affecting millions of educators and students nationwide. The President’s 2025 executive orders, including the revocation of affirmative action policies dating back to 1965, mark a historic shift toward dismantling institutional commitments to racial and gender equity.

69. Censorship laws restricting classroom discussions on race, gender identity and other “divisive concepts”, limit students’ access to critical knowledge, suppress inclusive education and create hostile learning environments.<sup>70</sup> These laws take different forms, including bans on specific topics, especially critical race theory.<sup>71</sup> For example, the “Stop WOKE Act” (HB 7) in Florida prevents educators from discussing systemic racism ; the House Bill HB 437 in Mississippi seeks to exclude “divisive concepts” from curricula ; and House Bill HB 377 in Idaho prohibits students from personally accepting or adhering to prohibited concepts. This effectively limits the scope of discussions that challenge systemic or historical inequities.

70. Since 2021, there has been a surge in educational gag orders across the country: 45 States have introduced 307 restrictive bills, 40 of which have become law in 22 States. This has been accompanied by a dramatic rise in book bans.<sup>72</sup> Florida alone recorded over 4,500 book bans in the 2023–24 school year.<sup>73</sup>

71. Censorship laws undermine freedom of expression in public education, foster fear and exclusion and encourage the spread of misinformation. Educators and students from marginalized backgrounds face heightened risks, including professional sanctions, social

<sup>68</sup> See <https://www.washingtonpost.com/politics/2023/06/29/affirmative-action-supreme-court-ruling/>.

<sup>69</sup> The <https://www.washingtonpost.com/business/2025/01/23/trump-dei-affirmative-action/>.

<sup>70</sup> J. Feingold and J. Weishart, “How discriminatory censorship laws imperil public education” (National Education Policy Center, 2023).

<sup>71</sup> See <https://crtforward.law.ucla.edu/>.

<sup>72</sup> See <https://www.theguardian.com/us-news/2024/jan/11/florida-schools-ron-desantis-ban-books-sexual-content>.

<sup>73</sup> See <https://pen.org/reports/>.

ostracization and even financial penalties. For instance, House Bill HB 18 in Kentucky proposed fines of up to \$100,000 per violation for discussing prohibited topics.

72. Academic freedom and freedom of expression are also eroded by the increased use of surveillance measures. Many States now require teachers to post lesson plans online for parental review and some States have introduced “tip lines” for reporting educators. The result is widespread self-censorship,<sup>74</sup> with teachers avoiding critical discussions for fear of repercussions. A wide diversity of interlocutors repeatedly used the term “chilling effect” to describe the impact of these measures. This trend weakens the basis for promoting democratic values in education as it discourages open inquiry, fosters distrust and promotes exclusionary narratives.

73. The backlash against inclusive education is considered to be part of a larger, well-funded and well-coordinated effort by think tanks and activists,<sup>75</sup> aimed at reversing the progress made since the 2020 Black Lives Matter protests and the increased visibility of LGBTQ+ communities.<sup>76</sup> Policies targeting diversity, equity and inclusion programmes have expanded, shifting from censorship of individual educators to structural changes in academic institutions, which reportedly create near-unworkable conditions for educators and librarians who face professional penalties, such as suspension, termination, loss of license, financial distress, emotional anguish verbal and physical threats even for baseless complaints.<sup>77</sup>

74. In this context, it is concerning that federal bills like the Fight Book Bans Act and the Right to Read Act have struggled to gain bipartisan support, while State-level initiatives, such as Colorado’s library protection bill, have stalled. Before the functions of the Department of Education were reduced, victims were able to file complaints with the Office of Civil Rights, but even then, unclear book-challenge procedures would often lead to arbitrary censorship.

75. Academic freedom is also being curtailed in higher education, where some States have introduced laws weakening accreditation processes and tenure protections while banning diversity, equity and inclusion programmes. For example, Florida and Texas have enacted policies eliminating diversity, equity and inclusion offices and restricting diversity considerations in hiring and curriculum development. These changes threaten the integrity of higher education by undermining the academic freedom necessary for critical research and inclusive learning environments.

76. An education system that encourages freedom of expression by developing critical thinking, civic engagement and diverse perspectives is the foundation of a strong democracy. For this, education must be participatory, inclusive and reflective of students’ lived experiences. Policies such as book bans and content restrictions silence marginalized voices, preventing students from accessing a full and accurate understanding of history and social dynamics and from acquiring essential critical thinking skills. These bans violate fundamental human rights principles enshrined in international treaties ratified by the Government of the United States (for example, articles 2, 19, 24 and 26 of the International Covenant on Civil and Political Rights).<sup>78</sup>

## **E. Unequal treatment of students and faculty voicing political opinions**

77. The visit of the Special Rapporteur coincided with nationwide student protests following the 7 October 2023 Hamas attack on Israel and the consequent military offensive by Israel.

78. At the time of the visit, students had established encampments at nearly 40 universities in more than 25 States. Students and faculty expressing solidarity with Palestinian people and opposing their universities’ financial ties to corporations linked to Israeli military operations in Gaza faced mass arrests, violent police interventions and disciplinary actions. Over

<sup>74</sup> See <https://pen.org/report/educational-intimidation/>.

<sup>75</sup> Isaac Kamola, *Manufacturing Backlash: Right-wing Think Tanks and the Legislative Attack on Higher Education, 2021–2023*, American Association of University Professors (2024).

<sup>76</sup> See <https://www.washingtonpost.com/education/2023/05/23/lgbtq-book-ban-challengers/>.

<sup>77</sup> See <https://academyedstudies.files.wordpress.com/2023/03/jayakumarkohlfinal.pdf>.

<sup>78</sup> See CCPR/C/USA/CO/5.



2,000 students and professors, were detained following armed police raids on university campuses, charged with trespassing, failure to disperse and refusal to comply with police orders. Many faced suspensions, expulsions, eviction from housing, cancellation of food support and even deportation in the case of international students.

79. Furthermore, in the wake of the demonstrations, universities have significantly increased surveillance on campuses through facial recognition using high-resolution cameras, drone monitoring, social media tracking, monitoring of university emails and investigations into students suspected of planning to participate in protests, creating a climate of fear and intimidation.

80. Law enforcement and private entities have reportedly photographed and filmed protesters, raising concerns about the retention and sharing of personal data. Allegations suggest that universities provided intelligence to law enforcement agencies and private businesses offering job opportunities, effectively blacklisting students involved in activism. The lack of transparency on data collection and usage further exacerbates concerns over violations of privacy rights protected under article 17 of the International Covenant on Civil and Political Rights ratified by the United States.

81. Disciplinary measures such as suspensions, expulsions, campus bans and actions preventing students from graduating have been deployed to silence particular viewpoints. Interlocutors stressed that students of colour seemed to have been specifically targeted, with international students being particularly vulnerable due to the risk of deportation. Many students described the sanctions as designed to silence dissent by threatening their future prospects. Consequently, students reported a growing sense of fear, leading to reluctance to engage in activism and express themselves.

82. The Special Rapporteur, together with other mandate holders, has consistently expressed her serious concerns in allegation letters sent to the Government of the United States<sup>79</sup> and in public statements.<sup>80</sup> A multitude of other international human rights mechanisms have called on the United States to respect and guarantee the rights to freedom of expression, peaceful assembly and academic freedom and to provide opportunities for dialogue to address the concerns of the demonstrators.<sup>81</sup> International non-governmental organizations, such as Human Rights Watch and Amnesty International, have also issued condemnatory statements.<sup>82</sup>

83. As reported by multiple actors, pro-Palestinian protesters were disproportionately targeted, often accused of antisemitism even when they were Jewish or belonged to Jewish student associations. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression criticized the practice of equating advocacy for Palestinian rights with terrorism or antisemitism, calling it a disproportionate response that may reflect institutional racism.<sup>83</sup> The Special Rapporteur on the rights to freedom of peaceful assembly and association found that students participating in pro-Palestinian solidarity protests have been targeted by severe stigmatizing narratives, both online and offline, and reiterated that limits of freedom must be content-neutral, reasonable, necessary and proportionate.<sup>84</sup>

<sup>79</sup> See communications USA 9/2024, USA 12/2024 and OTH 71/2024. All communications mentioned in the present report are available at <https://spcommreports.ohchr.org/TMsearch/TMdocuments>.

<sup>80</sup> See <https://www.ohchr.org/en/press-releases/2024/07/usa-free-speech-campus-needs-be-protected-not-attacked-say-experts> and <https://www.ohchr.org/en/press-releases/2024/05/un-expert-alarmed-violent-crackdown-peaceful-student-protests-across-us>.

<sup>81</sup> “IACHR (Inter-American Commission on Human Rights): United States must respect peaceful protest and academic freedom on campuses”, 9 May 2024; see also A/79/319; and <https://www.un.org/unispal/wp-content/uploads/2024/10/20241004-stm-sr-association.pdf>; and <https://news.un.org/en/story/2024/04/1149181>.

<sup>82</sup> See <https://www.aclu.org/press-releases/universities-should-protect-students-right-to-protest-end-crackdown-on-peaceful-protests>; and <https://www.amnestyusa.org/press-releases/amnesty-international-usa-condemns-university-administrations-responses-to-campus-protests>.

<sup>83</sup> A/79/319, para. 72.

<sup>84</sup> A/79/263, para. 61.

84. Pressure on universities and scholars to take specific positions on student protests has further undermined academic freedom. The Special Rapporteur has expressed deep concern over the coercion faced by academic institutions and scholars, warning that such pressures contribute to self-censorship and repression of free speech. The right to peacefully express one's views on campus is a core part of academic freedom that is explicitly recognized in the Principles for Implementing the Right to Academic Freedom, annexed to the 2024 annual report of the Special Rapporteur.<sup>85</sup>

85. Anticipating further student protests in the 2024-2025 academic year, universities implemented a range of measures to prevent and control demonstrations, including restricting access to certain campus areas.<sup>86</sup> The Special Rapporteur reaffirms that States have a responsibility to protect academic freedom and ensure that universities remain autonomous spaces for free expression and debate, free from external political interference.

## IV. Conclusions and recommendations

86. The Special Rapporteur congratulates the United States of America on its robust legal framework and the role of courts in protecting equitable access to education, despite the absence of an express constitutional right to education. Key strengths include diverse and flexible programmes and learning pathways that cater to a multitude of interests, learning styles and career goals that empower students and fit individual needs. In addition, the growing implementation of socio-emotional learning programmes, safety and mental health initiatives and efforts to address funding inequities in certain States demonstrate a willingness to consider holistic student well-being, despite structural challenges. Finally, the culture of engagement among the Federal Government and State governments, educators, parents and civil society helps maintain an environment conducive to collective action.

87. The Special Rapporteur offers the following recommendations, which are addressed to the federal Government, unless otherwise stated.

### General recommendations

88. The Special Rapporteur strongly encourages the federal Government and all States to consider expressly recognizing education as a fundamental human right for everyone, regardless of their background or identity, level of income, place of residence or other personal circumstances. Ratifying the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights would reinforce the legal framework and provide technical assistance for its recognition and progressive implementation, through the work of the respective committees.

89. The Special Rapporteur urges the United States to stop the dismantling of the federal Department of Education. Its unifying, supporting and guiding role should be recognized, especially as a federal agency coordinating the implementation of international obligations and political commitments expressed by the United States as a federal State with a fairly decentralized education system. Dismantling the Department may lead to protection gaps and diluted accountability for inadequacies in the implementation of the right to education. A central coordinating role is essential for effective national educational reforms that are data-driven, evidence-based and designed for the long term, extending beyond election cycles to ensure lasting, systemic change.

90. Moving forward, a significant improvement in education accessibility and quality would require a fundamental change of mindset from traditional top-down educational reforms to a new social contract for education, as suggested in the

<sup>85</sup> See <https://www.ohchr.org/en/documents/thematic-reports/ahrc56crp2-principles-implementing-right-academic-freedom-working-group> (A/HRC/56/CRP.2).

<sup>86</sup> Anticipating Fall Protests, Colleges Adopt a Range of Approaches (Inside Higher Education, 16 August 2024).

landmark report by the International Commission on the Futures of Education.<sup>87</sup> Rather than imposing policies, a collaborative, participatory approach, with strong home-school connections and partnerships with local organizations, is recommended whereby education is co-constructed by communities, educators, students and other stakeholders, ensuring that it is inclusive, context-specific, focused on life-long learning and sustainability for all.

#### **Treat education as a public good**

91. Education is not and should not be treated as a commodity. Education benefits society as a whole: more quality education for everyone is more valuable than quality education only for some. While funding is currently heavily reliant on local property taxes, this does not mean that public schools and the education they provide are “owned” exclusively by local taxpayers. Public schools should not be obliged to compete with each other or with private and semi-private options, as they perform a fundamental role of educating the whole nation, especially the most marginalized, for a public good. This requires a change of mindset and collective action across all sectors.

92. Ultimately, it is the responsibility of the federal Government to ensure the provision of free, quality public education, accessible to everyone under its jurisdiction, regardless of the extent of decentralization of State functions. Although the liberty to choose alternatives to public schools is part of the right to education, it should not be at the expense of universal access to public education. Public funds should serve the interest of the public in all its diversity by strengthening high-quality public schools, rather than contributing to a fragmented, inequitable and exclusionary educational landscape.

93. The Government should assess the risks of privatization supplanting rather than supplementing public education, while States should consider replacing the multiple authorizer policy for charter schools, leading to the fragmentation of legal framework and “forum shopping”, with universal State-wide authorization standards.

#### **Towards equitable access to education for all**

94. The education system should ensure that quality education is affordable and accessible for every child, regardless of background and location. Families should not have to bear heavy debt burdens or high out-of-pocket costs to pursue education at any level, including early childhood education, primary and secondary education, higher education, apprenticeships and workforce development.

95. The Special Rapporteur recommends adopting a rights-based approach to education that ensures equitable access for all students, regardless of socioeconomic background, while focusing on reaching those left further behind first and to:

(a) Prioritize investing in traditional public primary and secondary education, allocating urgent additional support to underperforming schools in low-income areas, inner-city schools and those with a high number of Black and brown students, English-language learners and migrant children ;

(b) Address systemic inequities in educational funding by reconsidering the reliance on local property taxes ; increasing federal support to address funding gaps ; and providing additional funding to less wealthy districts through equalization or compensatory measures. Useful tools to consider include weighted funding formulas or education equity funds based on student need that allocate more resources to schools serving low-income students, English-language learners and students with disabilities ; increased State and federal contributions ; federal legislation that sets minimum standards for equitable funding across all States ; and land-use and housing reforms.

(c) Reinforce policies ensuring equitable access of homeless children and children living in extreme poverty to public schools ;

<sup>87</sup> See <https://unesdoc.unesco.org/ark:/48223/pf0000379707>.

(d) **Adopt financial, institutional and organizational measures to ensure that children with special educational needs and children with disabilities receive necessary services, regardless of cost, and guarantee disbursement of the 40 per cent pledged in the Individuals with Disabilities Education Act, so that schools can offer equitable educational opportunities regardless of district wealth.**

**Reevaluate the role of law enforcement in schools and invest in mental health and restorative practices to create a safer and more supportive learning environment**

96. **Punitive disciplinary measures in education should be replaced by fair and transparent policies, developed through community engagement and data-driven approaches, emphasizing accountability, empathy, healing and restorative justice. Prioritizing mental health support over policing recognizes the link between safety, absenteeism and behavioural challenges.<sup>88</sup>**

97. **The Special Rapporteur recommends that the federal Government and relevant State authorities:**

(a) **Promote a wider implementation of the Guiding Principles for Creating Safe, Inclusive, Supportive and Fair School Climates advanced by the Department of Education and the Resource on Confronting Racial Discrimination in Student Discipline of the Departments of Justice and Education to address the disproportionate effect of punitive discipline on Black and brown students, students with disabilities and low-income students ;**

(b) **Issue guidance to police chiefs on how to recruit, train and monitor resource officers and invest in training to safeguard against sexual abuse by school police officers ;**

(c) **Remove police presence and consider, through genuine societal dialogue, how to improve safety in schools ; school discipline should not be the remit of law enforcement officers – creating positive school environment is a matter of pedagogy and well-being. Evidence-based alternatives include sufficient qualified counsellors, social workers, mental health professionals, positive behavioural interventions and support ;**

(d) **Where school resource officers remain in place, they must be trained in the rights of the child, racial equality, implicit bias, non-discrimination standards, trauma-related behavioural responses and the prevention of child abuse and sexual misconduct ; the use of restraints and arrests should only be employed as a last resort ; tiered response systems should be instituted for incidents involving children, focusing on de-escalation, safe spaces and the deployment of trained counsellors before the involvement of law enforcement ;**

(e) **Develop and implement national and State-wide strategies to combat race-bias and other identity-based hate and extremism, preventing radicalization before it escalates to violence ;**

(f) **Consider reinstating affirmative action in college admissions in both State and federal law, in line with article 2(2) of the International Convention on the Elimination of All Forms of Racial Discrimination ; universities should take all legal steps to mitigate the impact of the relevant findings of the Supreme Court on affirmative action in college admissions, which do not cancel the responsibility to enforce anti-discrimination laws.**

98. **School districts, with help of targeted State funding, should:**

(a) **Expand and strengthen mental health support in schools, including by increasing the number of school-based mental health professionals and setting State standards on minimum ratio per student in order to ensure that every student has access to a counsellor or psychologist, including sufficient time for meaningful support ;**

<sup>88</sup> Consider general recommendations on school safety contained in the 2025 thematic report of the Special Rapporteur (future A/HRC/59/41).

- (b) Recruit and train culturally and linguistically competent mental health staff to address the diverse needs of students ;
- (c) Focus on destigmatizing mental health support by integrating it into curricula to normalize discussions around anxiety, stress and emotional well-being ;
- (d) Explore alternative practices through community partnerships, community school models and peer support programmes to provide students with trusted, confidential spaces for emotional support ;
- (e) Address the impact of social media and promote play-based childhoods by instituting tech-free school hours, outdoor unstructured play and education on healthy digital habits, including critical assessment of the content, and by offering engaging physical activities to support social interaction, creativity and emotional well-being ;
- (f) Mandate longer recess and lunch breaks to allow students adequate time to eat and socialize ;
- (g) Establish strict food quality controls to prevent substandard or inedible meals and ensure that all students receive nutritious, well-prepared food ; and reduce cafeteria wait times by implementing staggered lunch periods or increasing food service capacity.

#### **Recognize teachers as a key component in quality education**

99. It is imperative to prioritize the well-being and professional development of teachers at all levels to ensure retention and quality education. Systemic issues such as inadequate compensation and lack of diversity, should be addressed.

100. Systematic action is required at federal, State and local levels to urgently address teacher shortages, including by ensuring adequate salaries and proper working conditions, including reduced class sizes, institutional support and workload management. Non-monetary incentives of teacher retention include fostering a positive collaborative school culture and environment and creating clear career advancement pathways and leadership opportunities. In this regard, the 2024 United Nations Educational, Scientific and Cultural Organization (UNESCO) global report on teacher shortages and their root causes provides useful guidance.<sup>89</sup>

101. To attract young people, practical components in teacher education should be strengthened, promoting evidence-based pedagogical practices and specific training in areas such as special education, English-language learning and trauma-informed teaching. Since new teachers need support from both institutions and their peers, mentorship should be incentivized.

102. At the university level, tenure needs to be protected as essential for ensuring academic freedom and strengthening due diligence in cases of termination.

#### **Rethink assessment practices**

103. The Special Rapporteur recommends that all actors at their respective levels rethink current assessment practices in order to prioritize genuine learning and individual growth over standardized testing. It is important to have a robust and meaningful societal dialogue on this matter and, in particular, to involve educators.

104. A shift in policy from standardized testing to a more holistic approach with reduced academic pressure for students and teachers is recommended and needs to be supported at the federal level to ensure that all States are on the same page regarding assessments.

105. It is recommended that both national and State-based primary and secondary school assessments are reformed in order to:

<sup>89</sup> See also general recommendations in A/78/364.

(a) Reduce the emphasis on test participation rates and exam preparation and revise the frequency of standardized testing to reduce excessive stress on students ;

(b) Prioritize well-rounded education that encompasses art, music, creativity, critical thinking, design thinking, problem solving and socio-emotional learning, which are harder to measure but will remain essential for the twenty-first century, which will be dominated by artificial intelligence ;<sup>90</sup>

(c) Recognize that a certain degree of learning happens within the community and equip students with the skills they need to navigate the complexities of adulthood ;

(d) Promote alternative assessment methods, such as in-class or project-based assessments and competency-based evaluations that allow students to demonstrate skills without high-stakes pressure ; use frequent, low-stakes assessments to monitor student learning and adjust instruction accordingly ;

(e) Make education more relevant by connecting learning to the lived experiences and interests of students ; this might involve incorporating real-world examples, current events, cultural traditions and local community issues into the curriculum.

106. At the college enrolment stage, the reduction of reliance on standardized testing for admissions, which has been shown to unfairly disadvantage many students from marginalized communities, is recommended.

**Recognize and protect academic freedom and eliminate censorship policies and practices**

107. All actors, at federal, State and local levels, need to implement comprehensive measures that support academic freedom, institutional autonomy and free inquiry while fostering safe learning environments that encourage critical thinking and respect the dignity of all school community members. The principles for implementing the right to academic freedom<sup>91</sup> can provide useful guidance in designing national, State and institutional policies aimed at shielding academic activities from political and commercial interests.<sup>92</sup>

108. To that end, the Special Rapporteur recommends that:

(a) The federal Department of Education provide legal guidance for educators and intervene to protect the civil rights of students and educators by creating a streamlined complaint mechanism to protect the right to a safe learning environment, free from race-based and sex-based harassment ;

(b) States enact legislation prohibiting the removal of materials because of partisan or doctrinal disapproval and promote diverse and inclusive pedagogy and curriculum ;

(c) School districts ensure that measures intended to prevent propaganda do not inadvertently stifle critical debate or marginalize vulnerable groups and that every student has the right to access a wide range of ideas and perspectives, free from censorship and restriction ;

(d) Civil society groups continue to provide legal support to targeted educators, develop new litigation strategies to challenge discriminatory censorship laws and prepare and disseminate curricular materials that enable educators to teach targeted topics, without violating the law ;

(e) Universities support tenure and faculty governance structures that enable faculty to teach, research and express ideas without outside interference.

<sup>90</sup> See A/79/520.

<sup>91</sup> See <https://www.ohchr.org/en/documents/thematic-reports/ahrc56crp2-principles-implementing-right-academic-freedom-working-group> (A/HRC/56/CRP.2).

<sup>92</sup> See also recommendations contained in A/HRC/56/58.

**Ensure fair treatment and due process for all participants in student protests**

109. All public authorities should refrain from penalizing students for participating in peaceful protests and not vilify peaceful protesters by labelling them as “supporters of terrorism”.

110. Universities should not face pressure, particularly through limits on accreditations or public funds, owing to their approach to peaceful protests. Political pressure and public attacks seriously undermine university autonomy and academic freedom.

111. Hate speech is unacceptable. All specific incidents of hate speech should be properly addressed by targeting specific individuals or groups involved, applying the six-part threshold established by the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

112. In addressing student protests, universities and other academic institutions should take proactive steps to create a safe and supporting environment for exercising the rights of peaceful assembly, association, opinion and expression. These responsibilities also apply to private academic institutions and their donors, in line with the Guiding Principles on Business and Human Rights.

113. In facilitating and managing student protests, universities should:

(a) Adhere to international standards ensuring that any restrictions are lawful, necessary and proportionate and do not create a chilling effect ;

(b) Guarantee the protection of fundamental rights of all participants in peaceful campus assemblies, regardless of their subject or location, and refrain from the imposition of sweeping discriminatory bans or blanket restrictions ;

(c) Consider recommendations for universities worldwide issued by the Special Rapporteur on the rights to freedom of peaceful assembly and of association on 2 October 2024 ;<sup>93</sup>

(d) Review, through a participatory process, internal regulations on hate speech, antisemitism and related issues to align with international human rights standards ;

(e) Establish transparent, independent processes for addressing complaints of rights violations, harassment or undue disciplinary sanctions against protest participants, with clear options for appeal and remedy ;

(f) Cease all surveillance and monitoring of students and staff engaged in peaceful protests, ensuring that digital data collection complies with privacy rights and does not serve to intimidate or suppress expression.

<sup>93</sup> See <https://www.un.org/unispal/wp-content/uploads/2024/10/20241004-stm-sr-association.pdf>.