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## **INTRODUCTION**

At the core of the plaintiffs' claims regarding segregation in New Jersey is the reality that our school districts are based on neighborhood schools and narrowly constructed attendance zones around those neighborhoods that generally do not allow students from one community to attend school in another community. In order to be effective, any remedy in this case must be able to pierce these historical school boundaries.

The Interdistrict Public School Choice Program is designed to allow students to cross the restrictive attendance zones that are at the heart of this matter. Interdistrict choice, unlike the Charter School Law, is designed to allow any student from any community in the State to attend a school in any other community in the State. In this way interdistrict choice breaks down the very attendance zones that surround the approximately 600 school districts in the State and lock in racial, ethnic and socioeconomic characteristics of the community in which the district schools are located. The choice program is a workable and viable remedy and has a track record of success, has been utilized by the State Department of Education and courts as a remedy in past litigation, and can be modified easily to provide more targeted and potent relief.

Amicus Curiae New Jersey Interdistrict Public School Choice Association seeks to bring to the Court's attention the potential for using the interdistrict choice program as a remedy in the matter before the Court.

## **INTEREST OF AMICUS CURIAE**

The New Jersey Interdistrict Public School Choice Association is a non-profit association that represents the needs of the 125 public school districts currently participating in the choice program. Membership in the Association is voluntary for any of the choice districts. The Association gives member schools up-to-date information about program timelines and policy

changes as well as legislative initiatives and news stories. It also promotes its member schools through statewide and local media coverage, a member website, and advocacy efforts with the Legislative and Executive Branches, including the Department of Education and other government agencies.

The Association believes that the interdistrict choice program can be used as a primary vehicle for achieving greater diversity in New Jersey schools. Although the Association will not take a position on the allegations in the complaint concerning the presence of unconstitutional levels of segregation in New Jersey school districts, it believes that interdistrict choice has, even in the limited way the program has been implemented in the past, a positive influence on equity and, if targeted and expanded, could have a substantial positive impact on diversity in New Jersey.

### **STATEMENT OF FACTS**

The Association will rely on the factual allegations set forth in the pleadings supplemented by the following information specific to the interdistrict choice program.

#### **Description Of The Program**

Interdistrict school choice allows parents to apply for enrollment of their child in a participating public school outside of the attendance zone prescribed by their local school district, thereby allowing students to travel across district boundaries to attend public schools. Crossing these attendance zone boundaries is very difficult in New Jersey given the historical development of our school systems, and the resulting high number of districts that are coterminous with municipal boundaries.

The goals of the program are set forth in the administrative code. *N.J.A.C. 6A:12-1.1* states that the choice program is “necessary” to:

1. “increase options and flexibility for parents and students in selecting a school that best meets the needs of each student...”
2. increase “the degree to which the education system is responsive to parents and students.”
3. enhance academic achievement and improve efficiency “through a voluntary redistribution of students from overcrowded to under-enrolled school districts.”
4. create “a healthy competition among school districts.”

The establishment of the interdistrict choice program in New Jersey is best seen in the context of a national trend of expanding public school choice options during the 1990s. New Jersey established Charter Schools in 1996 amid a push by former Governor Whitman to establish a private school voucher program. These policy initiatives to expand school choice options also resulted in the establishment of an experimental program authorizing interdistrict public school choice in 1999. The Interdistrict Public School Choice Program Act established a five-year pilot program to inform how best to expand public school choice that, if not reauthorized, was to expire on June 30, 2005. The pilot program contained a number of limitations designed to restrict the breadth of the program and prevent a negative impact on sending districts. These limitations capped the number of choice districts (a total of 21, with no more than one per county) and the number of students who can participate in the program.

A school’s decision to participate in the program is made by the local board of education through an application to the New Jersey Department of Education. Choice districts were able to limit their programs to a particular grade level or to specialized programs such as mathematics, science, or the arts and may establish reasonable selection criteria such as the student’s interest in the program. A choice district cannot discriminate in admissions policies, and if there are more applicants than there are seats available, the choice district must hold a lottery to select choice

students. Choice districts may give preference to siblings of enrolled students. The pilot also contained a provision that restricted other choice options in the choice district by prohibiting the enrollment of parent-paid tuition students.

Funding for students attending the choice district is complex, given the goal of providing assistance to both the sending and receiving (choice) districts. All choice districts receive a new categorical aid (school choice aid) for each enrolled choice student on a current year funding basis. The law provides that choice districts also receive all associated categorical aids such as special education aid on a per pupil basis. The sending district will also receive aid in order to minimize the impact of the loss of students. The choice district is responsible for transportation of choice students and will receive transportation aid. Finally, choice districts must create and implement a region-wide public information program and must establish a parent information center to assist parents during the student application process.

The pilot program was well received by school districts and ultimately 16 of New Jersey's 21 counties had at least one district participate in the choice pilot. In the first year of the pilot, 96 students participated. By 2006, the choice Pilot had grown to 1,006 student participants. The New Jersey Legislature made the program permanent in 2010 through the adoption of the Interdistrict Public School Choice Program Act of 2010. The 2010 Act kept much of the structure of the 1999 law, but also removed some of the limitations. Interested New Jersey school districts still must apply to the New Jersey Department of Education to become choice districts, but the limitations on the number of choice districts per county (and overall) were greatly expanded so that more students could take advantage of this program.

However, many of the problems with the original law were continued in the 2010 law. The funding system established in the 2010 law continued to provide sending districts with aid

for students who no longer needed to be educated by the district which continued to make the program very costly to operate from the State’s perspective. These cost considerations led the Christie Administration to cap student participation in the program in 2012-13, resulting in large waiting lists in the following years. In addition, the program continued a cumbersome application and approval process for both choice districts and students. For example, although families still are provided with assistance to participate, such as through information and transportation, the application process and determination of eligibility continues to be confusing given the need to engage both the resident and choice district. Finally, the law also provides that a sending district may adopt a resolution to limit the number of its students participating in the school choice program to a maximum of 10 percent per grade.

**Program Data Regarding Enrollment, Funding and Demographics**

The following tables provide evidence of the dramatic growth of the program over time until the enrollment caps were put into place. The following tables present enrollment, funding and racial breakdown for the program over time.

Table 1: Enrollment 2010 through 2015

<u>School Year</u>	<u>Number of Choice Districts</u>	<u>Total Program Enrollment</u>
2010-11	15	964
2011-12	67	2,156
2012-13	68	3,057
2013-14	105	4,692
2014-15	130	5,158
2018-19	124	5,046

Robert Zywicki, *An Investigation of the Impact of the New Jersey Interdistrict Public School Choice Program as Perceived by Participating School Superintendents* 43 (2015), <https://pqdtopen.proquest.com/doc/1685483367.html?FMT=AI&pubnum=3704216>.

Table 2: Funding 2010-2016

<u>Fiscal Year</u>	<u>Funding Amount</u>
2010-11	\$ 9,846,649
2011-12	\$20,604, 400
2012-13	\$33,001,800

2013-14	\$40,064,570
2014-15	\$49,255,900
2015-16	\$52,566,243

*Id.* at 45.

Tables 1 and Tables 2 demonstrate that the program has grown dramatically (embraced by over 20% of the school districts in the State) and absent the enrollment caps would continue to grow.

Table 2 provides evidence for the growth in the budgetary impact on the State.

Data regarding the racial and ethnic make-up of choice students is presented in Table 3 below and demonstrates that the program serves a diverse student demographic with Black students making up 12% and Hispanic students making up 17% of total choice students in the current year. This is remarkable given the lack of diversity in our statewide school system and given that the original intent of the choice program was not to desegregate school districts. The data suggests that the program could have an even greater impact on diversity if it was targeted to do so as discussed in Argument 3 below.

Table 3: Historical Enrollment Data by Race/Ethnicity

Race/Ethnicity	2004-05	2018-19
White	61%	62%
Black	10%	12%
Hispanic	12%	17%
Asian	10%	6%
Other	1%	3%
Not Reported	6%	NA

New Jersey Department of Education, *Interdistrict Public School Choice Program Annual Report 2003-2004 School Year* (2004),

[https://www.njleg.state.nj.us/OPI/Reports\\_to\\_the\\_Legislature/interdistrict\\_public\\_school\\_choice\\_2003\\_2004.pdf](https://www.njleg.state.nj.us/OPI/Reports_to_the_Legislature/interdistrict_public_school_choice_2003_2004.pdf) (Hereinafter “2004 DOE Report”); NJDOE Data, OPRA Request No. W140222 (Jan. 7, 2019).

However, in order to develop a further understanding of program diversity, the association sought to obtain enrollment data through a survey of each participating choice school district (which is discussed below). Over half of the choice districts (69 out of 124 districts, representing 4,002 choice students) have responded by telephone or email and this sample size will provide some relevant and important information to the Court. The results in the complete data set forth in Exhibit “A” of the Certification of Robert Garguilo.

The survey data allows us to look beyond the Statewide numbers and provides strong evidence of the impact of individual choice districts on diversity. The survey data reflects the success of predominately minority choice schools such as Englewood, Atlantic City, Bound Brook, Glassboro, Lindenwold, Salem, Wharton, and Wildwood to attract a more diverse study body. They have done this not through a quota system but by establishing specific specialized programs, for example, Atlantic City’s ROTC program, Glassboro’s partnership with Rowan to create the Performing Arts Academy, and the STEM Academies at Englewood.

In addition, 18 of the responding choice schools that were mostly white were able to increase diversity by attracting minority population through programs such as Upper Freehold’s Academies programs, Manchester Regional’s technical schools, Sterling High’s ROTC and technical programs, and Collingswood’s Media program. It is important to note that the program is especially effective at the high school level (about half of all choice schools are either Grades 7-12 or 9-12) where schools are able to use the choice funding to put in place highly specialized programs.

Another example of the choice program increasing diversity, is the rigorous academic program in a comprehensive high school available in the Springfield School District. Choice students must meet the same rigorous standards as in district students and admission is only

permitted during the freshman year. The program has attracted a significant number of minority students with 27 of 33 choice students currently being minorities.

One final note regarding the survey, most of the respondents lamented the fact that the program was being artificially limited and reported that they felt constrained by the enrollment caps, were unable to fill all of their open seats, and had large waiting lists.

## ARGUMENT

### I. THE INTERDISTRICT PUBLIC SCHOOL CHOICE PROGRAM CAN PROVIDE A REMEDY THAT IS SUFFICIENT TO ADDRESS THE ALLEGED CONSTITUTIONAL DEPRIVATION THAT IS BOTH WORKABLE AND FEASIBLE.

The interdistrict public school choice program has had a track record of success in allowing students to cross district attendance boundaries to increase both diversity and educational outcomes, and could be modified by the Court to accomplish more targeted diversity goals.

#### A. A Remedy Based on Interdistrict Choice Can Account for The Complexity Of Segregation In New Jersey.

As the Court evaluates possible remedies to increase diversity and lessen segregation, the choice program will address a number of challenges that are specific to New Jersey. Census data provides a context for understanding diversity in New Jersey and demonstrates that New Jersey is one of the most diverse states in the nation, but the diversity is not evenly distributed throughout the State. Table 4 below indicates that New Jersey schools are more diverse than the United States as a whole and that diversity has been growing from year to year. It may be easy to conclude from this data that New Jersey has a diverse system of public schools. However, New Jersey also has nearly 600 school districts, one of the highest number of school districts per student in the nation and it is, therefore, not surprising given this highly fragmented school system that the statewide numbers bear little relation to student demographics at the local level. Some one-third of Hispanics and African-Americans live in just a handful of communities (Newark, Jersey City, Elizabeth, Paterson, Trenton, Camden, Passaic, and East Orange) leading to large percentages of minority children being educated in just a handful of the nearly 600 school districts in the State.

The UCLA Civil Rights Project studied segregation in New Jersey Schools and concluded that “Housing segregation plays a major role in shaping the landscape of school segregation in the state. In areas, like New Jersey, with serious housing segregation in the absence of integration programs, or large choice programs with free transportation, housing deeply shapes school opportunity and tends to perpetuate inequality.” See Orfield, et al., *New Jersey’s Segregated Schools: Trends and Paths Forward* 15 (2017), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/new-jerseys-segregated-schools-trends-and-paths-forward/New-Jersey-report-final-110917.pdf>.

Segregation of African-Americans and Hispanics in a very small fraction of school districts will have a dramatic impact on the level of diversity in **all** school districts in the State. The UCLA Civil Rights Project Report indicates that "Throughout the past quarter century, the average white student has attended a school where an overwhelming majority of the student body is white. Although the white proportion of students in New Jersey schools was 46% in 2015, the typical white student attended a school where more than two-thirds of the total enrollment was white. *Id.* at 21.

Table 4: Statewide Enrollment by Race/Ethnicity: Fall 2004 and Fall 2014

	White	Black	Hispanic	Asian/PI	Other
2004					
NJ	57.1	17.7	17.7	7.2	0.2
US	58	17.2	19.1	4.5	1.2
2014					
NJ	47.1	16.1	25.7	9.5	1.5
US	49.5	15.5	25.4	5.2	4.2

National Center for Education Statistics, *Digest of Education Statistics: Percentage distribution of enrollment in public elementary and secondary schools, by race/ethnicity and state or jurisdiction: Fall 2004 and Fall 2014*, [https://nces.ed.gov/programs/digest/d16/tables/dt16\\_203.70.asp](https://nces.ed.gov/programs/digest/d16/tables/dt16_203.70.asp)

It is obvious from this data that, should this Court seek a remedy to increase diversity, the State will need to develop a mechanism and funding structure for moving children across district and municipal boundaries. Forced regionalization or consolidation of districts or the unilateral modification of attendance zones will be faced with political, legal, educational, public relations and operational challenges at the State and local level. Educational objectives must be clearly articulated with any remedy, designed to withstand scrutiny under the Equal Protection Clause, integrated with urban education reform initiatives, and reconciled with the pending debate on the State's entire school funding system, budgetary shortfalls, and other societal issues such as evolving affordable housing policies. The complexity of the situation facing proactive remedies is obvious and the need to develop strategies that can overcome the complexity is paramount.

Any strategy must address not only ways to achieve greater diversity but also to instill a commitment to value diversity through cultural changes in the school community that will allow for the advantages of a diversity-rich environment to be realized. Forced integration initiatives may not be able to accomplish these objectives and certainly not in a reasonable time frame. Interdistrict choice, however, by its very nature, is able to account for this complexity and for instilling community support for diversity. Not only is the program voluntary for all communities involved and based on parental decision-making of what is in the best interest of their children, it has a track record of success, and has a well understood framework.

The program provides the opportunity for families and communities to choose a school program that matches their children's interests. This choice component provides the vehicle for establishing common interests, affinity, and appreciation for the benefits of diversity as well as a common educational goal that can instill a sense of belonging and community that are crucial to

achieving diversity. Students and families will be able to form a new community based on these common interests and common school culture.

In this sense, focusing on the district as the point of change may very well be ineffective. The goal should not be to merge student populations forcefully without reference to community unity and cultural differences. Students from diverse backgrounds should feel valued and differences celebrated and show respect for each other. Their parents and families should feel supported and welcome in the school community. There must be an environment of trust as well as a positive school culture for all students.

B. The Program Has Been Used Historically to Promote Diversity.

During the history of the interdistrict choice program in New Jersey, certain choice programs have been designed to attract students of other ethnicities to districts whose populations were predominately Black such as the Academies at Englewood program and the Salem City program. According to the NJDOE annual report on the program for 2003-2004, in Englewood, 42.78% of the choice program students are Asian, 6.95% are Black, 34.22% are White, 15.51% are Hispanic, and one student is of mixed racial heritage. In Salem City, all 13 choice program students are White. 2004 DOE Report, *supra*, at 9. The report indicated that some districts entered the program in order to increase diversity in their student bodies. *Id.* at 6. It noted that one choice district was “able to address a long-standing desegregation challenge by admitting out-of-district students through the school choice program.” *Id.* The report indicated that “Englewood and Salem are choice districts that have seen choice district status as an opportunity to develop new programs that would help the districts to retain resident students and to attract a more diverse student body.” *Id.*

The impact of the program on providing greater diversity and educational opportunity is borne out by a letter from the parent of a choice student attending the Deal choice program.

Jamie McGuire of Ocean Grove states:

[I]n my son's kindergarten class of 16 students, a cultural, racial, as well as socioeconomic diversity prevailed. He would not have had the same level of diversity if we had stayed in our home district. A choice school needs to create community in a way a home school does not. The creation of a school culture is an important step in identifying if the school is a match for your family. Members of the community need to make an effort to become a part of this fabric. Thus, a strong community is born. Folks bring their best to the table and the school benefits from this.

[See the Certification of Robert Garguilo, Exhibit "B."]

The main drivers of the school choice program as a vehicle for achieving greater diversity are the rigorous, comprehensive, and innovative regionalized programs of study that choice districts are able to create through the additional funding. These programs are difficult to replicate by individual districts due to prohibitive costs, facility capabilities, and limited student populations with an affinity for the program. These programs provide a natural entry point into one shared school community for students from all neighborhoods, races and ethnic background based simple on a shared passion.

There are many examples of such specialized areas of focused study being implemented by choice schools. For example, Glassboro High School in Gloucester County has two specialized academies which allow high school students to take classes at Rowan University with college students. Both of these programs, the Fine and Performing Arts Academy and the Science, Technology, Engineering, & Math (STEM) Academy, allow for students to earn college credits. These college classes are taken without any cost to parents. In this way, students are graduating Glassboro High School with college credits; some have reached a total of 40 college

credits before graduation. This unique program would be difficult to replicate in other locations (just as a matter of geography given the high school is contiguous to the university campus). Unfortunately, due to the caps the State has placed on the Choice Program, Glassboro can only offer 2 available seats to Choice Students in the Fine and Performing Arts Academy and only 4 for the STEM Academy for the upcoming 2019-20 school year.

Another example of the success of the choice program are Junior Reserve Officers Training Corps (ROTC) programs. The Army, Navy, Air Force, Marines and Coast Guard each operate their own versions of the program for high schoolers, which are offered at more than 3,000 high schools nationally as an elective course. A school must make an application to the respective branch of military service and a minimum of 100 cadets must be recruited into the program. The choice program allows an individual school district to meet the ROTC program requirements by establishing what is in effect a regional program through choice.

One of the success stories in this regard is Sterling High School of Camden County. Sterling was seeing declining enrollment in their Jr. ROTC program in 2010 and feared going below the 100 student minimum. Once interdistrict choice became available, Sterling opened the Jr. ROTC program to Choice Students and they experienced instant success with increased enrollment.

One personal success story is that of Shaniyla Johnson of the City of Camden. Shaniyla became a Choice Jr. ROTC student at Sterling and needed to take two NJ Transit buses from her home to get to Sterling High School. Today, Shaniyla is in her Junior Year at Loyola University in Baltimore, Maryland on a Presidential Scholarship studying Urban Development. Exhibit C.

C. Choice Districts Believe the Program Can be Used to Promote Equity.

In his doctoral dissertation, Robert Zywicki investigated participating superintendents' perceptions of New Jersey's Interdistrict School Choice program relative to equity based on the factors of district socioeconomic status, district geographic location and district enrollment dynamic. Robert Zywicki, *An Investigation of the Impact of the New Jersey Interdistrict Public School Choice Program as Perceived by Participating School Superintendents* (2015), <https://pqdtopen.proquest.com/doc/1685483367.html?FMT=AI&pubnum=3704216>. He created an Equity Inventory Survey that gauged the perception of superintendents participating in the choice program and whether the program had a positive effect on educational equity in New Jersey. *Id.* at 51-52. He found that the mean score from the Equity Inventory for all participants was 75.8, with a standard deviation of 17.6. *Id.* at 65. This reflects that the participating superintendents overall had a generally positive perception of the choice program's effect on equity in New Jersey. *Id.* This conclusion was supported by not only the Equity Inventory scores but also qualitative results and the combined validated data. *Id.* at 101. He also found that the cap on student enrollment in the choice program was an issue of contention for participating superintendents who indicated that the caps limited the scope of the program and its effect on equity and district finances. *Id.* The author noted that seat caps have resulted in systemic inequality among choice districts and constituted a supply side constraint. *Id.*

D. The Program Has Been Implemented Effectively and Has Positive Results.

An examination of the program was also conducted by the Institute on Education Law and Policy at Rutgers University Newark, 2006 Rutgers Evaluation, *supra*, at 1, which concluded that:

- The Interdistrict Public School Choice Program has had positive results.
- Interdistrict public school choice has served some, but not all, of the purposes identified by the Department of Education at the outset of the pilot.
- The pilot program's impact has been limited by its small size.
- If interdistrict choice is to continue to rely on voluntary participation, the State should offer effective incentives for district participation.
- Targeting choice could allow it to provide greater choice opportunities to underserved groups of students.

The study also recommended that the issue of the effectiveness of the financial incentives be reconsidered in terms of both motivating participation of choice districts and softening the impact of losing students on sending districts. *Id.* at 6. The report indicated that policymakers should consider providing additional incentives for students from poor performing districts or from poverty to attend higher achieving wealthier districts or vice versa in order to increase diversity. *Id.* at 7-8.

## **II. THE SUPREME COURT HAS APPROVED INTERDISTRICT SCHOOL CHOICE AS A REMEDY FOR REDUCING SEGREGATION.**

In *Board of Education of the City of Englewood v. Board of Education of the Borough of Tenafly*, 170 N.J. 323 (2002), the New Jersey Supreme Court approved the Department of Education's plan to pursue voluntary school choice over forced regionalization in an effort to reduce segregation at Dwight Morrow High School in Englewood.

The issue underlying the litigation concerned the increasing segregation of Dwight Morrow High School in Englewood due to the withdrawal of White students residing in Englewood Cliffs. The Englewood Cliffs Board of Education had a long-standing sending-receiving relationship with the Englewood Board of Education under which high school students residing in Englewood Cliffs were educated at Dwight Morrow High School in Englewood. *Id.* at 327. Englewood Cliffs petitioned to sever the sending-receiving relationship in 1985 in order to pursue a similar relationship with the Borough of Tenafly. *Id.* at 327-30. Meanwhile,

Englewood Cliffs students had for several years been attending Tenafly High School through a tuition program. *Ibid.* Englewood opposed the petition to sever the sending-receiving relationship and filed a cross petition seeking to enjoin the Board of Education of the Borough of Tenafly from admitting tuition-paying high school students from Englewood Cliffs and Englewood and asked the Commissioner to require the three districts to form a single regional district at the high school level. *Id.* at 327-28.

The State Board of Education ultimately opted for a middle ground. Although it acknowledged that it was required to take action to stop the increasing segregation of Dwight Morrow High School by restraining Tenafly from accepting students from Englewood Cliffs and Englewood on a tuition basis, *id.* at 333-34, so too was it against the idea of forced regionalization as a way to remedy the problem, *id.* at 326, 335-36. Instead, the State Board opted for the development and implementation of a voluntary program designed to achieve racial balance through incentivizing parents — particularly parents of White and Asian students — to send their children to Dwight Morrow High School. *Id.* at 325-26. Although that plan originally centered on the development of a magnet school or other specialty school designed to attract students to Dwight Morrow, a solution was ultimately reached whereby Bergen County Technical School “would offer some of its academy-type programs at Dwight Morrow to a sufficient number of students from high schools throughout Bergen County so as to significantly diminish the racial imbalance at Dwight Morrow.” *Id.* at 339.

The Supreme Court looked favorably upon this arrangement, noting:

we must acknowledge that the most recent actions taken by the Commissioner and the Department since October 7, 1998, appear to reflect an understanding of their obligations in this matter. Specifically, their initiative in proposing the partnership between Englewood and the Bergen County Technical Schools District and in providing funding for the start-

up costs demonstrate their commitment to pursuing and achieving a successful resolution of this difficult issue.

[*Id.* at 344.]

The Court’s language on the issue leaves no doubt of its unmistakable endorsement of voluntary school choice as a sufficient remedy for school segregation. In fact, Englewood became one of the first school districts to join the Interdistrict Public School Choice Program during the 2000-01 school year. *See generally* 2006 Rutgers Evaluation, *supra*. Clearly, these voluntary measures for reducing segregation which encourage free choice and voluntary participation are just as proper a remedy — and are perhaps even preferred — to the more rigid and often unpopular resort to regionalization to remedy unlawful segregation.

**III. THE INTERDISTRICT CHOICE PROGRAM CAN BE MODIFIED TO PROVIDE A MORE TARGETED AND POTENT STATEWIDE REMEDY.**

The Association believes that a well-crafted school choice program can both increase access to high quality educational options for underserved students and promote equity and diversity. The interdistrict choice program provides an avenue for immediate improvement in the level of diversity given the length of the change process required for solutions that involve merging school bureaucracies or creating new attendance zones.

Students in struggling schools or in racially isolated (majority minority schools) will benefit from being provided with the opportunity to attend a high-performing, well-functioning school as compared with a poor performing school with operational, social, disciplinary, and academic challenges. High performing schools will have challenging curriculum, well-prepared teachers, adequate facilities, high expectations for students, and socioeconomically diverse peer groups.

Finnegan and Stewart argue that “The benefits for students of color come not from sitting next to white students but rather because of a reduction in the social isolation that exists in their

own communities and schools as well as the networks and relationships that they develop in integrated settings.” Kara S. Finnigan and Tricia J. Stewart, *Interdistrict Choice As A Policy Solution: Examining Rochester’s Urban-Suburban Interdistrict Transfer Program (USITP)* (2009), <https://files.eric.ed.gov/fulltext/ED513912.pdf> (citations omitted).

There is substantial scholarship on the issue of the benefits of interdistrict public school choice on school diversity and segregation. We refer the Court to the literature review in the Dissertation of Dr. Zywicki for an overview of the research on this regard.

We also note the commitment of the New Jersey Supreme Court to freeing New Jersey schools of illegal segregation. In this regard, the Court has recognized the substantial educational benefits of attending school with a diverse student population. Perhaps the most instructive case involves the petition of the North Haledon school district to withdraw from the Passaic County Manchester Regional High School District. *In re Petition for Authorization to Conduct a Referendum on The Withdrawal of North Haledon School District from The Passaic County Manchester Regional High School District*, 181 N.J. 161 (2004). In Manchester, the statutory Board of Review granted a predominantly White school district’s application for withdrawal, in the face of claims that there was only a negligible impact on the racial composition of the regional district (a 9% point drop in the White student population) and that the regional district would remain racially diverse after the withdrawal. *Id.* at 164-65. The Appellate Division reversed, on appeal, noting that the withdrawal implicated the Constitutional obligation of a Thorough and Efficient Education. *Id.* at 173-75. The Appellate Court found that the maintenance of a diverse student population was a critical element of the delivery of a Thorough and Efficient Education and that the current racial and ethnic composition of the district, as well as demographic trends in the future, should have been considered by the Board of

Review. *Id.* The appellate court found that a 9% point diminution of the White population along with a projected racial ethnic imbalance in the near future was untenable and was not an insubstantial impact on the racial composition of the school district. *Id.* at 175. The Appellate Court further held that the State has both a duty to refrain from any action that will exacerbate that imbalance as well as a duty to remediate racial imbalance. *Id.* Moreover, the Court warned that the State cannot rely on the fact that the imbalance will grow regardless of its decision as a way to justify a failure to remediate. *Id.* New Jersey's Supreme Court affirmed the Appellate Division's decision and found that, as a matter of law, students who attend racially imbalanced schools are denied the benefits that come from learning and associating with students from different backgrounds, races, and cultures. *Id.* at 165, 178. The Supreme Court also noted that New Jersey has one of the most segregated school systems in the country and that the state must take action to prevent trends that will result in districts becoming predominately minority schools. *Id.* at 179.

We note that modifying the program to target students from underrepresented racial or ethnic groups represents a complex legal issue. Interdistrict choice programs that are designed to specifically increase diversity would appear to be consistent with State constitutional law prohibiting racially segregated schools. In order to comply with constitutional equal protection principles, the program would need to be carefully constructed and evaluated to ensure that it is serving the intended purpose and is narrowly tailored to do so without disadvantaging students who were not members of the targeted groups.

Current limitations on the program must be removed, and an explicit focus on equity be developed, in order to ensure that students most in need are not excluded. Most importantly, the

caps on available seats should be lifted and the restriction on charging tuition for non-eligible students should be eliminated.

The financial incentives for the sending district are especially problematic given that the district is provided full aid for that student for as long as the student is enrolled in the choice district. This funding policy can be contrasted with funding for sending districts under the charter school law which basically allows the district to keep only 10% of the per pupil costs. In addition, the 1999 law was originally designed to include a five year phase-out of the sending district aid on the assumption that the sending district would be able to make budgetary adjustments to compensate for the departure of the choice student within that time period. In order to be effective in increasing diversity, the State must restore full funding for all eligible students. The cost to the State for the expansion of the program will be modest, especially when compared with the transactional costs of merging school bureaucracies or creating new attendance zones.

The interdistrict choice program eligibility criteria can also be modified to foster integration goals. Specifically, incentives can be provided for the participation of students who will contribute to greater diversity in either the sending or receiving (choice) schools or both. We propose that program criteria be developed that fosters such integration, such as:

1. Providing incentives for successful suburban and urban choice districts to enroll the most disadvantaged students (target subgroups based on performance; socio-economic factors; or, when appropriate and necessary, race and ethnicity or geographic areas; individual students can also be targeted through use of a profile);
2. Providing program supports for these students so that they have a meaningful opportunity to succeed in the new school setting (parent information centers, multicultural curriculum, and antiracism initiatives); and
3. Encouraging partnerships between urban and suburban districts in terms of enrichment, and extra and co-curricular programs as well as regional professional development opportunities.

For these purposes, using a combination of poverty indicators, student achievement indicators, and racial/ethnic balance indicators may present the best path forward so as to avoid a quota system where race/ethnicity are dispositive indicators.

**CONCLUSION**

At the core of the plaintiffs' claims regarding segregation in New Jersey is the historical reality of how our school districts arose from neighborhood schools. The narrowly constructed attendance zones around those neighborhoods do not allow students from one community to attend school in another community. The Association believes that any remedy, in order to be effective, must be able to pierce these historical school boundaries. The choice program was designed to do this and has proven to be a workable and viable remedy. The program has a track record of success, has been utilized by the DOE and the courts as a remedy in past litigation, and can be easily modified by the Court to provide more targeted and potent relief.

The Association believes that this Amicus Brief will provide valuable information to the Court indicating the potential of the program to provide greater diversity in New Jersey schools and would be willing to provide additional information as may be required by the Court to further illuminate this potential.

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