

## BLURRING THE LINES: HOW CONSOLIDATING SCHOOL DISTRICTS CAN COMBAT NEW JERSEY'S PUBLIC-SCHOOL SEGREGATION PROBLEM

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Diversity in classrooms is essential; students can learn about cultural differences and enhance their academic experience. Yet, despite the landmark Supreme Court case *Brown v. Board of Education*, public-school segregation still haunts states across America.<sup>1</sup> “De facto” segregation refers to segregation that exists in practice, without being ordered by law.<sup>2</sup> “De facto” segregation is prevalent in New Jersey, as it is the sixth most segregated state for Black students, and the seventh most segregated state for Latino students.<sup>3</sup> Public school segregation exists in New Jersey even though no race constitutes a majority of the total public school student population.<sup>4</sup>

On May 17, 2018, a conglomerate of non-profit organizations came together in New Jersey with hopes to remedy “de facto” school segregation through litigation.<sup>5</sup> On the anniversary of the decision in *Brown v. Board of Education*, the Latino Action Network, New Jersey's National Association for the Advancement of Colored People (NAACP), the New Jersey Coalition for Diverse and Inclusive Schools, and other

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<sup>1</sup> Keith Meatto, *Still Separate, Still Unequal: Teaching about School Segregation and Educational Inequality*, N.Y. TIMES (May 2, 2019).

<sup>2</sup> DE FACTO VS. DE JURE DISCRIMINATION, <https://www.scarsdaleschools.k12.ny.us/cms/lib5/NY01001205/Centricity/Domain/379/De%20Facto%20vs.%20De%20Jure%20Discrimination.pdf> (last visited Oct. 24, 2020).

<sup>3</sup> GARY ORFIELD ET AL., NEW JERSEY'S SEGREGATED SCHOOLS: TRENDS AND PATHS FORWARD 6 (2017).

<sup>4</sup> *Id.* at 9.

<sup>5</sup> Sharon Otterman, *New Jersey Law Codifies School Segregation, Suit Says*, N.Y. TIMES (May 17, 2018).

non-profit organizations, filed a lawsuit against New Jersey, claiming the State has been complicit in public-school segregation.<sup>6</sup>

*Latino Action Network v. New Jersey* will soon go to trial in the Mercer County Superior Court.<sup>7</sup> If Latino Action Network wins this lawsuit, New Jersey would be forced to recognize its role in public-school segregation.<sup>8</sup> A potential remedy would be to enforce inter-district magnet schools in county-wide school districts.<sup>9</sup> Magnet schools are regional, choice-based institutions that were designed to attract students from different socio-economic areas in an effort to make schools more diverse.<sup>10</sup>

The Supreme Court of New Jersey in *Jenkins v. Morris Tp. School Dist.*<sup>11</sup> held that New Jersey's Commissioner of Education holds the authority to cross school district boundaries to desegregate schools.<sup>12</sup> This Comment suggests that New Jersey should use its authority to consolidate school districts. This Comment also explains that creating magnet schools is not the best remedy for public-school segregation. Although New Jersey Superior Court decisions are not binding on the entire state, each judgment is instructive to all courts throughout the state.<sup>13</sup> *Latino Action Network* gives New Jersey an opportunity to understand its role in public-school segregation and take action to desegregate public schools.<sup>14</sup> Furthermore, this Comment urges New Jersey to use the Uniform Shared Services and Consolidation Act ("the CORE Act"), which expanded the role of Executive County Superintendents to develop regional district plans, as a way to consolidate school districts where "de facto" segregation exists.<sup>15</sup> This Comment will also discuss the history of New Jersey public-school segregation to provide the necessary context of the problem's severity,

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<sup>6</sup> *Id.*

<sup>7</sup> Charles Toutant, *Settlement Talks Break Down in School Desegregation Lawsuit*, N.J. L. J. (April 5, 2019).

<sup>8</sup> Otterman, *supra* note 5.

<sup>9</sup> Colleen O'Dea, *Group May Head Back to Court over Lack of NJ School Desegregation*, N.J. SPOTLIGHT (March 20, 2019).

<sup>10</sup> ADAI TEFERA ET AL., INTEGRATING SUBURBAN SCHOOLS: HOW TO BENEFIT FROM GROWING DIVERSITY AND AVOID SEGREGATION 19 (2011), <https://files.eric.ed.gov/fulltext/ED520331.pdf> [hereinafter TEFERA ET AL.].

<sup>11</sup> *Jenkins v. Morris Twp. School Dist.*, 58 N.J. 483 (1971).

<sup>12</sup> *Id.* at 507.

<sup>13</sup> Robyn Painter & Kate Mayer, *Which Court is Binding? Binding vs. Persuasive Cases*, GEO. L. CTR. 7 (2017).

<sup>14</sup> Otterman, *supra* note 5.

<sup>15</sup> See The Fund for New Jersey, *Persistent Racial Segregation in Schools: Policy Issues and Opportunities to Address Unequal Education Across New Jersey's Public School* 19 (2019).

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as well as the attempts to remedy segregation that have both succeeded and failed in the past.

Part II discusses New Jersey's history of segregation and the evolution of public-school segregation, the current state of segregation in New Jersey, its effects, and common remedies. Part III analyzes potential remedies that New Jersey can use to combat public-school segregation, particularly magnet schools and district consolidation, and then proposes actions New Jersey can take to remedy school segregation. Part IV of this Comment concludes that New Jersey should consolidate school districts to combat public-school segregation. This Comment ultimately aims to analyze New Jersey's efforts to desegregate its public schools, and only uses other state and federal initiatives to compare or contrast. Public-school segregation in other states across America is beyond the scope of this Comment.

## PART II: BACKGROUND

### A. *New Jersey's Shaky History with Public-School Segregation*

New Jersey has enacted progressive laws in favor of public-school integration; however, the State is currently the sixth most segregated state for Black students and the seventh most segregated state for Latino students.<sup>16</sup> In 1881, the New Jersey Legislature enacted R.S. § 18:14-2 ("the 1881 Statute"), which prohibited school segregation by race.<sup>17</sup> It was the first state statute passed in America that prohibited school segregation on the basis of race.<sup>18</sup> The statute serves as the foundation of N.J.S.A. § 18A:38-5.1, the modern statutory prohibition of public-school segregation.<sup>19</sup>

In 1947, New Jersey enacted a constitutional provision specifically prohibiting public-school segregation.<sup>20</sup> The provision provides that:

No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregate in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin.<sup>21</sup>

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<sup>16</sup> ORFIELD ET AL., *supra* note 3, at 6.

<sup>17</sup> R.S. § 18:14-2 (1881).

<sup>18</sup> GREG FLAXMAN ET AL., A STATUS QUO OF SEGREGATION: RACIAL AND ECONOMIC IMBALANCE IN NEW JERSEY SCHOOLS, 1989-2010 9 (2013).

<sup>19</sup> *Id.* at 9 n. 5; *see also* N.J. STAT. ANN. § 18A:38-5.1 (2013) ("[n]o child between the ages of four and 20 years shall be excluded from any public school on account of his race, creed, color, national origin, or ancestry").

<sup>20</sup> FLAXMAN ET AL., *supra* note 18, at 9.

<sup>21</sup> N.J. CONST. art. I, para. 5.

New Jersey adopted this provision by a public vote in the midst of re-chartering its state constitution.<sup>22</sup> For context, in 1984, Connecticut adopted a constitutional provision related to public-school segregation.<sup>23</sup> Connecticut's state Constitution bars "segregation or discrimination in the exercise or enjoyment of his or her civil or political rights."<sup>24</sup> Although Connecticut's Constitution bans segregation in general, it makes no specific mention of prohibiting *public-school* segregation.<sup>25</sup>

Despite the 1881 Statute and the newly enacted New Jersey Constitution, public-school segregation persisted in New Jersey through the 1950s due to lack of enforcement.<sup>26</sup> This lack of enforcement stemmed from local or municipal control over school districts and residential segregation.<sup>27</sup> School segregation was especially prevalent in Southern New Jersey school districts, which adopted policies from other states near or below the Mason-Dixon Line.<sup>28</sup> From the end of the 19th century through the 1940s, New Jersey was divided; as Northern and Central New Jersey school districts began to desegregate their schools, Southern New Jersey school districts remained segregated.<sup>29</sup> The efforts of Northern and Central New Jersey school districts to desegregate led to the 1881 Statute which banned school segregation on the basis of race.<sup>30</sup> Northern districts easily integrated their schools after the 1881 Statute passed because there were so few Black school children living in that area.<sup>31</sup> Since there were few Black school children in North Jersey, a segregated school system proved to be too expensive and inefficient.<sup>32</sup>

Most legislators from Southern New Jersey counties opposed the 1881 Statute.<sup>33</sup> School segregation became entrenched in Southern New Jersey, where Black school children made up a higher proportion of the school population than in Northern New Jersey.<sup>34</sup> As a result of their

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<sup>22</sup> FLAXMAN ET AL., *supra* note 18, at 9.

<sup>23</sup> FLAXMAN ET AL., *supra* note 18, at 7; *see also* Lincoln Caplan, *Two Connecticut School Systems for the Rich and the Poor*, NEW YORKER (Sep. 14, 2016).

<sup>24</sup> CONN. CONST. art. I, § 20.

<sup>25</sup> FLAXMAN ET AL., *supra* note 18, at 9.

<sup>26</sup> FLAXMAN ET AL., *supra* note 18, at 9.

<sup>27</sup> *See* FLAXMAN ET AL., *supra* note 18, at 12.

<sup>28</sup> FLAXMAN ET AL., *supra* note 18, at 9.

<sup>29</sup> FLAXMAN ET AL., *supra* note 18, at 9.

<sup>30</sup> Davison M. Douglas, *The Limits of Law in Accomplishing Racial Change: School Segregation in the Brown North*, 44 UCLA L. REV. 677, 689-90 (1997).

<sup>31</sup> *Id.* at 688.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 690.

<sup>34</sup> *Id.* at 688-90.

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opposition to the 1881 Statute, the state's southern counties defied the statute and expanded public school segregation with little to no enforcement of the law.<sup>35</sup>

This substantial increase of school segregation in Southern New Jersey resulted from an increase in the Black population moving into the state during and after World War I.<sup>36</sup> Anti-segregation laws were rarely enforced partly because statutory enforcement required citizens to file a lawsuit against a school board.<sup>37</sup> Legal challenges to segregation were scarce due to high costs of litigation and attorneys' lack of interest in taking matters related to school segregation.<sup>38</sup> School segregation persists to this day partially because of the disparity between actions of the legislature and the ability of individuals to enforce the laws designed to combat public school segregation.<sup>39</sup> Therefore, the enforcement of New Jersey's segregation laws depends upon whether private citizens have the financial means to pursue expensive litigation.

Between 1944 to 1973, New Jersey's Judiciary formidably enforced racial balance in public schools.<sup>40</sup> This began in the few years leading up to the adoption of the 1947 constitutional provision outlawing public school segregation and lasted into the 1970s.<sup>41</sup> In 1944, the Supreme Court of New Jersey decided *Hedgepeth v. Board of Education of City of Trenton*.<sup>42</sup> In *Hedgepeth*, the court ruled that it was unlawful for Trenton's Board of Education to assign students to a certain neighborhood school on the sole basis of their race.<sup>43</sup> Prior to this litigation, black school children, no matter the location of their residence, could only attend a junior high school that admitted Black children.<sup>44</sup> The plaintiffs were merely asking that their children be permitted to attend schools closest to their residence, and to be treated the same as White children.<sup>45</sup> Justice Porter stated, "It is unlawful for Boards of Education to exclude children from any public school on the ground that they are of the [Black] race."<sup>46</sup> *Hedgepeth* marked the beginning of an era where the New Jersey courts vigorously enforced

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<sup>35</sup> *Id.* at 690.

<sup>36</sup> FLAXMAN ET AL., *supra* note 18, at 9-10.

<sup>37</sup> Douglas, *supra* note 30, at 701-02.

<sup>38</sup> FLAXMAN ET AL., *supra* note 18, at 9; Douglas, *supra* note 30, at 701-02.

<sup>39</sup> FLAXMAN ET AL., *supra* note 18, at 9.

<sup>40</sup> FLAXMAN ET AL., *supra* note 18, at 10-11.

<sup>41</sup> FLAXMAN ET AL., *supra* note 18, at 10.

<sup>42</sup> *Hedgepeth v. Bd. of Educ. of Trenton*, 131 N.J.L. 153 (N.J. 1944).

<sup>43</sup> *Id.* at 154.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

laws prohibiting “de facto” segregation of public schools, shifting the paradigm from *Plessy v. Ferguson*’s<sup>47</sup> “separate but equal” rule that was applied by federal courts.<sup>48</sup>

Whereas *Brown* is silent on whether cases involving “de facto” segregation gave rise to suitable action, in 1965, the Supreme Court of New Jersey enforced desegregation laws against “de facto” segregation in *Booker v. Board of Education of Plainfield*.<sup>49</sup> The court in *Booker* noted the importance of eliminating “de facto” segregation.<sup>50</sup> In doing so, the court stressed the importance of integrating primary schools by explaining that states “may not justly deprive the oncoming generation of the educational advantages which are its due.”<sup>51</sup> Further, the court weighed the importance of not allowing the evil of residential segregation to dictate the State’s school composition.<sup>52</sup> Where residential segregation existed, school attendance zones should not be determined solely on a geographic basis without corrective measures to integrate the schools.<sup>53</sup> Additionally, and perhaps most importantly, the court in *Booker* gave the New Jersey Commissioner of Education the broad discretion and authority to correct the racial imbalances of school districts across the state.<sup>54</sup> With this authority, the State could now proactively approach and remedy public school segregation.

In 1971, the Supreme Court of New Jersey heard a landmark case, *Jenkins v. Morris School District*.<sup>55</sup> Although *Booker* gave the Commissioner of Education authority to correct the school districts’ racial imbalances, it was still unclear whether the Commissioner’s discretion was limited to solutions within a given school district, or whether the Commissioner might transcend district lines to achieve less segregation in a given area.<sup>56</sup> *Jenkins* arose from a vote conducted among Morris Township residents in favor of a separate school system for Morris Township residents.<sup>57</sup> Historically, Morris Township and Morristown, two separate but adjacent school districts, engaged in a send-receive relationship where children from Morris Township

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<sup>47</sup> *Plessy v. Ferguson*, 163 U.S. 537 (1896).

<sup>48</sup> FLAXMAN ET AL., *supra* note 18, at 10.

<sup>49</sup> *Booker v. Bd. of Educ. of Plainfield*, 45 N.J. 161, 168-69, 171 (N.J. 1965).

<sup>50</sup> *Id.* at 170-71.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 171-72.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 173-74.

<sup>55</sup> *Jenkins v. Morris Twp. School Dist.*, 58 N.J. 483 (1971).

<sup>56</sup> *Id.* at 485.

<sup>57</sup> *Id.* at 492.

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attended Morristown High School.<sup>58</sup> New Jersey's Commissioner of Education was concerned about the racial imbalance that would ensue between the two districts when in 1968, Morris Township sought to create a separate high school rather than merge the two districts.<sup>59</sup> In *Jenkins*, the Supreme Court of New Jersey expanded the role of the Commissioner of Education, in ruling that the Commissioner had the authority to use their judgment to cross district lines to desegregate public schools.<sup>60</sup> The court determined that where feasible, the state has the power to consolidate public school districts for desegregation purposes.<sup>61</sup> The *Jenkins* decision led to the consolidation of the Morristown and Morris Township school districts in 1973.<sup>62</sup>

Unfortunately, *Jenkins* ended an era of New Jersey history that showcased vigorous enforcement of the state's anti-segregation laws. Shortly after the merger between Morristown and Morris Township, the Commissioner of Education responsible for consolidating the two districts, Dr. Carl Marburger, lost his job.<sup>63</sup> Thereafter, subsequent urban districts comparable to Morristown lost their consolidation battles before less bold successor commissioners.<sup>64</sup>

Dr. Marburger lost his position when he was not confirmed by the State Senate during a transition between two Governors.<sup>65</sup> The New Jersey Education Association (hereinafter "NJEA") successfully blocked Dr. Marburger's reappointment—in the midst of this critical time period where he and the New Jersey Board of Education were focused on racially balancing schools—because he had not included them in the education policy decision-making process.<sup>66</sup> Nonetheless, the Senate's failure to reappoint Dr. Marburger had heavy ramifications concerning the State's failure to carry out his desegregation policies.<sup>67</sup>

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<sup>58</sup> *Id.* at 487-88.

<sup>59</sup> *Id.* at 493.

<sup>60</sup> *Id.* at 501.

<sup>61</sup> *Jenkins v. Morris Sch. Dist.*, 58 N.J. 483, 508 (N.J. 1971).

<sup>62</sup> *Id.*

<sup>63</sup> FLAXMAN ET AL., *supra* note 18, at 11; Katherine L. Auchinloss, *Letters to the Editor*, N.Y. TIMES (Nov. 16, 1972) <https://www.nytimes.com/1972/11/16/archives/controversy-over-dr-marburger.html>.

<sup>64</sup> FLAXMAN ET AL., *supra* note 18, at 11.

<sup>65</sup> Auchinloss, *supra* note 63; Ronald Sullivan, *Marburger Aftermath: Some Officials Term Rejection a Result of Misconception of His Busing Record*, N.Y. TIMES (Nov. 16, 1972) <https://www.nytimes.com/1972/11/18/archives/new-jersey-pages-marburger-aftermath-some-officials-term-rejection.html>.

<sup>66</sup> Auchinloss, *supra* note 63. The political dispute between the Commissioner of Education and the NJEA is beyond the scope of this Comment.

<sup>67</sup> Auchinloss, *supra* note 63

After Dr. Marburger lost his position in the 1970s, many districts similar to Morris lost their consolidation battles.<sup>68</sup> The school districts of Plainfield and New Brunswick are examples of districts with many Black and Latino students that exemplify how the failure to consolidate school districts with surrounding districts contributes to “de facto” segregation.<sup>69</sup> State courts no longer enforce anti-segregation laws because New Jersey’s education commissioners have all decided not to use their broad authority to integrate school districts.<sup>70</sup> Also, a shift in the Supreme Court of New Jersey’s approach has failed to enforce desegregation and racial balance in schools since *Jenkins*.<sup>71</sup> The Court’s failure to directly attack race over the past four decades contributes to the persistence of public-school segregation in New Jersey.

#### B. New Jersey’s “De Facto” Segregation Standard

“De facto” segregation’s overarching meaning refers to segregation that exists in practice and is not ordered by law, however, New Jersey upholds “de facto” segregation differently than federal courts do. For example, the Supreme Court of the United States in *Keyes v. School District No. 1, Denver*<sup>72</sup> held that the actions of school authorities with any “segregative” intent are deemed a prima facie case of unlawful “segregative” design of a school district by school authorities.<sup>73</sup> Regardless of a cause of action leading to segregation, if the government did not *purposefully* enact a law to segregate people, a federal court will not deem the cause of action unlawful.<sup>74</sup>

New Jersey’s Judiciary has upheld laws that prohibit “de facto” segregation.<sup>75</sup> Both intentional and “de facto” racial segregation are unconstitutional in New Jersey, especially in the context of public-school segregation.<sup>76</sup> In *In re Grant of Charter School Application of Englewood*

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<sup>68</sup> FLAXMAN ET AL., *supra* note 18, at 11.

<sup>69</sup> FLAXMAN ET AL., *supra* note 18, at 11.

<sup>70</sup> FLAXMAN ET AL., *supra* note 18, at 11.

<sup>71</sup> FLAXMAN ET AL., *supra* note 18, at 11.

<sup>72</sup> *Keyes v. Sch. Dist. No. 1, Denver*, 413 U.S. 189 (1973).

<sup>73</sup> *Id.* at 208.

<sup>74</sup> *Id.*

<sup>75</sup> See generally *Jenkins v. Morris Twp. School Dist.*, 58 N.J. 483 (1971); *Booker v. Bd. of Educ. of Plainfield*, 45 N.J. 161 (1965).

<sup>76</sup> Derek Black, *The New Statewide Challenge to School Segregation in New Jersey Already has a Lot Going For It*, L.P.B. NETWORK (May 21, 2018), [https://lawprofessors.typepad.com/education\\_law/2018/05/the-new-statewide-challenge-to-school-segregation-in-new-jersey-already-has-a-lot-going-for-it.html](https://lawprofessors.typepad.com/education_law/2018/05/the-new-statewide-challenge-to-school-segregation-in-new-jersey-already-has-a-lot-going-for-it.html) [hereinafter Black].



on the *Palisades Charter School*,<sup>77</sup> the Supreme Court of New Jersey held that “whether due to an official action, or simply segregation in fact, our public policy applies with *equal force* against the continuation of segregation in our schools.”<sup>78</sup> Therefore proving that New Jersey courts are stricter about “de facto” segregation than federal courts.<sup>79</sup>

Despite being stricter than federal courts, New Jersey does not ideally enforce its “de facto” segregation standard. The level of school segregation in New Jersey is not an inevitable consequence, but rather a state policy choice.<sup>80</sup> After the court’s decision in *Jenkins*, New Jersey courts have not aggressively opposed “de facto” segregation, which is why they fall in between the federal court standard and the ideal standard. *Latino Action Network* provides New Jersey courts with an opportunity to apply the strong standard they have already set in prior Supreme Court of New Jersey decisions.

### C. *New Jersey’s Diverse Student Population*

New Jersey’s public-school student population has undergone significant changes since the Civil Rights Era of the 1960s.<sup>81</sup> During the Civil Rights Era, New Jersey’s population, like the rest of the United States, had an overwhelming White majority.<sup>82</sup> Approximately one-tenth of the country’s population was Black during the Civil Rights era, and there were small populations of other racial and ethnic groups.<sup>83</sup> Currently, four racial demographics comprise the New Jersey student population, consisting of White, Black, Latino, and Asian students.<sup>84</sup> The racial proportion of students in New Jersey changed over time, creating a notably diverse student population.<sup>85</sup>

Although White student enrollment increased between 1989 and 2015, the proportion of White public-school students to students from other racial backgrounds actually decreased from 66% to 46% in that same period.<sup>86</sup> The decline in the share of White students between 1989 and 2015 coincided with a rapid growth of Latino and Asian students,

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<sup>77</sup> *In re Grant of Charter Sch. Application of Englewood on the Palisades Charter Sch.*, 164 N.J. 316 (N.J. 2000).

<sup>78</sup> *In re Grant of Charter Sch. Application of Englewood on the Palisades Charter Sch.*, 164 N.J. 316, 324 (N.J. 2000) (emphasis added).

<sup>79</sup> *Id.*

<sup>80</sup> Black, *supra* note 76.

<sup>81</sup> ORFIELD ET AL., *supra* note 3, at 8.

<sup>82</sup> ORFIELD ET AL., *supra* note 3, at 8.

<sup>83</sup> ORFIELD ET AL., *supra* note 3, at 8.

<sup>84</sup> ORFIELD ET AL., *supra* note 3, at 8,9.

<sup>85</sup> ORFIELD ET AL., *supra* note 3, at 9.

<sup>86</sup> ORFIELD ET AL., *supra* note 3, at 9.

which now make up 26% and 10% of the student population respectively.<sup>87</sup> Interestingly, the proportion of Black students to the school population has declined from 18% in 1989 to 15% in 2015.<sup>88</sup> But in absolute numbers, the Black student population remains relatively stable in New Jersey schools.<sup>89</sup> There is no longer a White student majority of New Jersey's student population, as there are more non-White students than White students attending public schools.<sup>90</sup>

Despite these demographics, only one in every five school districts contain student enrollment that is racially proportional to the county in which it is located.<sup>91</sup> Furthermore, only 2.8% of districts in New Jersey accurately reflect the racial composition of students across the state.<sup>92</sup> Education officials can use this demographic data to understand the severity of public school segregation. For example, the fact that only one in every five districts contains student enrollment that is racially proportional to the county in which it is located provides evidence that public schools are segregated by district within each county.<sup>93</sup> Since only 2.8% of districts in New Jersey accurately reflect the racial composition of students across the state, there is evidence that inter-district school segregation still persists.

Ultimately, New Jersey must address the public-school segregation problem because, as previously discussed, the state has a very diverse student population. Since there is no longer a majority of White students in the state, it is important for public schools to accurately reflect student diversity as a means for closing the achievement gap between White students and Black and Latino students.<sup>94</sup>

#### D. *The Effects of Public-School Segregation and Benefits of School Integration*

Diversity in schools is critically important for sustaining both political and cultural heritage and closing the achievement gap.<sup>95</sup> New Jersey should diversify its public schools because the strength of this

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<sup>87</sup> ORFIELD ET AL., *supra* note 3, at 9.

<sup>88</sup> ORFIELD ET AL., *supra* note 3, at 9.

<sup>89</sup> ORFIELD ET AL., *supra* note 3, at 9.

<sup>90</sup> ORFIELD ET AL., *supra* note 3, at 9.

<sup>91</sup> ORFIELD ET AL., *supra* note 3, at 32.

<sup>92</sup> ORFIELD ET AL., *supra* note 3, at 32.

<sup>93</sup> ORFIELD ET AL., *supra* note 3, at 32.

<sup>94</sup> ORFIELD ET AL., *supra* note 3, at 10.

<sup>95</sup> *Grutter v. Bollinger*, 539 U.S. 306, 331 (2003).

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State and its citizens stems from people of different backgrounds uniting in the commitment for freedom of all people.<sup>96</sup>

Segregation of public schools produces lower educational achievement and attainment for students in high minority school settings.<sup>97</sup> This, in turn, limits segregated students' exposure to better lifetime opportunities because they suffer from attending schools in segregated districts.<sup>98</sup> Students who are not exposed to racial diversity lack the critical opportunities to interact with people from different backgrounds.<sup>99</sup> Segregation and racial isolation impact students in high minority settings, as evidenced by: 1) higher dropout rates; 2) higher suspension and expulsion rates; 3) lower success in higher education; 4) lower test scores and; 5) lower graduation rates.<sup>100</sup> In America, there are 2,000 high schools where graduation is uncommon for students, and nearly all of these schools are minority-majority schools.<sup>101</sup> Further, if students do graduate from these schools, they are less likely to be successful in college.<sup>102</sup> This research and data emphasizes the importance of an integrated society for students in both primary and secondary schools.<sup>103</sup>

Racially integrated schools provide students with opportunities to learn and work with people from a wide range of backgrounds.<sup>104</sup> These opportunities allow students to develop skills and to understand a variety of perspectives. By learning to accept a wide variety of perspectives, students in integrated schools are less likely to accept racial stereotypes.<sup>105</sup> Students can then communicate and make friends with people across racial barriers.<sup>106</sup> This is particularly apparent in students who started attending integrated schools at a young age.<sup>107</sup> Segregated schools allow students across generations to internalize

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<sup>96</sup> See *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 782 (2007) (Kennedy, J., concurring).

<sup>97</sup> ORFIELD ET AL., *supra* note 3, at 10.

<sup>98</sup> ORFIELD ET AL., *supra* note 3, at 10.

<sup>99</sup> ORFIELD ET AL., *supra* note 3, at 10; see also *Parents Involved in Cmt. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 798 (2007) (Kennedy, J., concurring).

<sup>100</sup> ORFIELD ET AL., *supra* note 3, at 10.

<sup>101</sup> ORFIELD ET AL., *supra* note 3, at 10.

<sup>102</sup> ORFIELD ET AL., *supra* note 3, at 10.

<sup>103</sup> ORFIELD ET AL., *supra* note 3, at 10.

<sup>104</sup> ORFIELD ET AL., *supra* note 3, at 10.

<sup>105</sup> ORFIELD ET AL., *supra* note 3, at 10; Amy Stuart Wells & Robert L. Crain, *Perpetuation Theory and the Long-Term Effects of School Desegregation*, 64(4) REVIEW OF EDUCATIONAL RESEARCH 531, 536 (1994).

<sup>106</sup> ORFIELD ET AL., *supra* note 3, at 10.

<sup>107</sup> TEFERA ET AL., *supra* note 10, at 4.

racial stereotypes, which formulate as a result of misconceptions caused by racial segregation.<sup>108</sup>

Desegregated schools also cause heightened academic achievement for minority students without negatively impacting the academic performance of White students.<sup>109</sup> All students in desegregated schools are able to access the same, stronger resources throughout the education process, which shrinks achievement gaps between students of different races.<sup>110</sup> For example, Black students who attend desegregated schools are more likely to graduate from both high school and college at least in part because they are connected to stronger curriculums and social networks that support such goals.<sup>111</sup> In fact, Black students who attend desegregated schools for at least five years earn 25% more in salary than those who do not.<sup>112</sup>

Finally, school desegregation is important because it has a cross-generational effect on students. Students that attend integrated schools are more likely to attend integrated colleges, seek integrated workplaces, and live in integrated neighborhoods.<sup>113</sup> This, in turn, creates a more successful and engaged population.<sup>114</sup> Therefore, New Jersey can create a better society for all of its citizens if it takes action to combat the public-school segregation problem.

#### E. *School Segregation Trends in New Jersey*

Education researchers, such as the UCLA Civil Rights Project, distinguish between three types of segregated schools: majority non-white schools, intensely segregated schools, and apartheid schools.<sup>115</sup> All three types of segregated schools exist in New Jersey and have rapidly grown over the past three decades.<sup>116</sup> Majority non-white schools are those where minority students make up at least half of the

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<sup>108</sup> *Id.*

<sup>109</sup> Rucker C. Johnson, *Long-Run Impacts of School Desegregation & School Quality on Adult Attainments 2* (Nat'l Bureau of Econ. Research, Working Paper No. 16664, 2015), [https://gsppi.berkeley.edu/~ruckerj/johnson\\_schooldesegregation\\_NBERw16664.pdf](https://gsppi.berkeley.edu/~ruckerj/johnson_schooldesegregation_NBERw16664.pdf); see also TEFERA ET AL., *supra* note 107, at 4 (explaining that White students benefit from racially integrated schools because they are more likely to demonstrate racial tolerance than their counterparts in White segregated schools); see also ORFIELD ET AL., *supra* note 3, at 11.

<sup>110</sup> Johnson, *supra* note 109, at 3.

<sup>111</sup> Johnson, *supra* note 109, at 18-19.

<sup>112</sup> ORFIELD ET AL., *supra* note 3, at 11.

<sup>113</sup> TEFERA ET AL., *supra* note 10, at 4.

<sup>114</sup> TEFERA ET AL., *supra* note 10 at 5.

<sup>115</sup> ORFIELD ET AL., *supra* note 3, at 15.

<sup>116</sup> ORFIELD ET AL., *supra* note 3, at 15.

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school's student population.<sup>117</sup> Between 1989 and 2015, the proportion of schools with a majority of minority students more than doubled from 22% to 46%.<sup>118</sup> Public schools are considered intensely segregated if the school's population contains less than 10% White students.<sup>119</sup> Intensely segregated schools nearly doubled between 1989 and 2015, increasing from 11% of schools to 20% of schools.<sup>120</sup> Schools are considered apartheid schools if their student population is less than 1% White.<sup>121</sup> Between 1989 and 2015, apartheid schools also doubled, expanding from about 5% of schools to 8% of schools.<sup>122</sup> Although apartheid schools make up only 8% of all schools in New Jersey, such schools hold 26% of the Black student population and nearly 13% of the Latino student population in the state.<sup>123</sup>

Of the fifty states, New Jersey ranks forty-eighth in ensuring that Black students do not attend apartheid schools.<sup>124</sup> New Jersey is forty-sixth in keeping Latino students out of apartheid schools.<sup>125</sup> Black students remain the most segregated group of students in New Jersey, while the segregation of Latino students continues to grow rapidly.<sup>126</sup> There is also a significant number of racially isolated schools in rural and suburban areas, where 90% of the students are White.<sup>127</sup>

The large number of segregated schools is a reflection of both the increase of the Black and Latino student population and the decrease in the proportion of White students.<sup>128</sup> Additionally, this problem is caused by residential segregation paired with the lack of desegregation enforcement.<sup>129</sup> Intensely segregated and apartheid schools in New Jersey are concentrated in the densely populated urban areas across the State, specifically in the New York City-Philadelphia Corridor.<sup>130</sup> As one-in-four Black students attend apartheid schools, and one-in-eight Latino students attend apartheid schools, the effects of school segregation

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<sup>117</sup> ORFIELD ET AL., *supra* note 3, at 15.

<sup>118</sup> ORFIELD ET AL., *supra* note 3, at 15.

<sup>119</sup> PAUL TRACTENBERG ET AL., NEW JERSEY'S APARTHEID AND INTENSELY SEGREGATED URBAN SCHOOLS: POWERFUL EVIDENCE OF AN INEFFICIENT AND UNCONSTITUTIONAL STATE EDUCATION SYSTEM 5 (2013).

<sup>120</sup> ORFIELD ET AL., *supra* note 3, at 15.

<sup>121</sup> TRACTENBERG ET AL., *supra* note 119, at 5.

<sup>122</sup> ORFIELD ET AL., *supra* note 3, at 15.

<sup>123</sup> TRACTENBERG ET AL., *supra* note 119, at 5.

<sup>124</sup> TRACTENBERG ET AL., *supra* note 119, at 5, 6.

<sup>125</sup> TRACTENBERG ET AL., *supra* note 119, at 5, 6.

<sup>126</sup> ORFIELD ET AL., *supra* note 3, at 17.

<sup>127</sup> ORFIELD ET AL., *supra* note 3, at 15.

<sup>128</sup> ORFIELD ET AL., *supra* note 3, at 15.

<sup>129</sup> TRACTENBERG ET AL., *supra* note 119, at 6.

<sup>130</sup> ORFIELD ET AL., *supra* note 3, at 16.

should be considered.<sup>131</sup> As New Jersey's population continues to become more racially and ethnically diverse, the State's failure to desegregate its public schools and implement sound policy intensifies the issue of public-school segregation to disastrous levels.

F. *School-Districting Practices in New Jersey*

New Jersey school populations typically reflect the districts in which they are located.<sup>132</sup> In fact, 75% of public schools in New Jersey serve a student population that is considered proportional to the racial composition of their districts.<sup>133</sup> This statistic is misleading, however, because most of New Jersey's school districts are typically small and contain homogenous populations.<sup>134</sup> Only 2.8% of New Jersey school districts are proportional to the overall student population across the state, and only one district in every five has student enrollment racially proportional to the county where it is located.<sup>135</sup> Therefore, the statistics indicate that New Jersey's public schools suffer from inter-district segregation rather than intra-district segregation. Inter-district segregation refers to racial segregation among several districts, rather than segregation within one district.<sup>136</sup>

A large extent of public-school segregation occurs across boundary lines.<sup>137</sup> New Jersey has 8.9 million citizens across 21 counties and currently operates 584 school districts.<sup>138</sup> For comparison, North Carolina has 10 million citizens across 100 counties and currently operates 115 school districts.<sup>139</sup> From these statistics, it is evident that New Jersey school districts are small.<sup>140</sup> This is because many municipalities have their own school district, most of which lack diversity due to residential segregation.<sup>141</sup> Therefore, when residential

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<sup>131</sup> TRACTENBERG ET AL., *supra* note 119, at 6.

<sup>132</sup> ORFIELD ET AL., *supra* note 3, at 31.

<sup>133</sup> ORFIELD ET AL., *supra* note 3, at 31.

<sup>134</sup> ORFIELD ET AL., *supra* note 3, at 32; STATE OF NEW JERSEY DEPARTMENT OF EDUCATION, *Enrollment Data for SY 2015*, <https://www.nj.gov/education/data/enr/enr16/> (last visited Oct. 24, 2020).

<sup>135</sup> ORFIELD ET AL., *supra* note 3, at 32.

<sup>136</sup> ORFIELD ET AL., *supra* note 3, at 31.

<sup>137</sup> TEFERA ET AL., *supra* note 10, at 22.

<sup>138</sup> STATE OF NEW JERSEY DEPARTMENT OF EDUCATION, *Public School Fact Sheet* (2019), <https://www.nj.gov/education/data/fact.htm> (last visited Oct. 24, 2020).

<sup>139</sup> NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION, *Education Directory 3* (2019).

<sup>140</sup> STATE OF NEW JERSEY DEPARTMENT OF EDUCATION, *Enrollment Data for SY 2015*, <https://www.nj.gov/education/data/enr/enr16/> (last visited Oct. 24, 2020).

<sup>141</sup> FLAXMAN ET AL., *supra* note 18, at 29.

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segregation policies, such as “red-lining,”<sup>142</sup> were practiced in New Jersey, inter-district public school segregation also occurred because school districts failed to capture the racial demographics of the entire state or even the county where schools were located.<sup>143</sup> New Jersey continues to suffer from inter-district public-school segregation.

G. *Common Remedies to Public School Segregation*

This Comment will discuss two remedies to public-school segregation: magnet schools and consolidated school districts. Where inter-district school segregation is prevalent, like it is in New Jersey, the State should adopt policies to draw students across district boundaries in order to desegregate schools.<sup>144</sup>

The first common remedy this comment will analyze is magnet schools, which are choice-based institutions that were explicitly designed to attract students from different socioeconomic areas for the purpose of school desegregation.<sup>145</sup> These schools are typically located in regions including suburban and urban areas where there is plenty of racial diversity, yet the school districts in the region are segregated.<sup>146</sup> The goal of magnet schools is to allow students to benefit from racial diversity in their education and to gain exposure to better academic programs.<sup>147</sup> The original purpose of magnet schools was to desegregate public schools, however, that goal shifted due to less focus on race-conscious policies, and more focus on diversifying people of different socioeconomic statuses.<sup>148</sup>

The other common remedy this comment will analyze is the consolidation of school districts. Attendance zones are geographic areas in which all students who reside in that area are assigned to a particular school.<sup>149</sup> School districts are in control of drawing attendance zones

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<sup>142</sup> Redlining was a process where government surveyors graded neighborhoods based on living desirability. Redlined areas were regions that local lenders would discount as credit risks because of the residents’ racial and ethnic demographics. Loans in higher-desired areas were not available to low-income minorities, which created a racial wealth gap and established residential segregation. See Tracy Jan, *Redlining was Banned 50 Years Ago, It’s Still Hurting Minorities Today*, WASH. POST (Mar. 28, 2018).

<sup>143</sup> FLAXMAN ET AL., *supra* note 18, at 29.

<sup>144</sup> TEFERA ET AL., *supra* note 10, at 22.

<sup>145</sup> TEFERA ET AL., *supra* note 10, at 19.

<sup>146</sup> TEFERA ET AL., *supra* note 10, at 20.

<sup>147</sup> TEFERA ET AL., *supra* note 10, at 20.

<sup>148</sup> TEFERA ET AL., *supra* note 10, at 20.

<sup>149</sup> U.S. DEP’T OF JUSTICE & U.S. DEP’T OF EDUC., GUIDANCE ON THE VOLUNTARY USE OF RACE TO ACHIEVE DIVERSITY AND AVOID RACIAL ISOLATION IN ELEMENTARY AND SECONDARY SCHOOLS 10 (2011).

and can ensure that each attendance zone reflects racial diversity.<sup>150</sup> Attendance zones can be redrawn by multiple forms of action, such as grade realignment or multi-district consolidation.<sup>151</sup>

Grade realignment takes place when school districts assign students to schools and make decisions about which grades each school will serve.<sup>152</sup> For example, where a school district has two elementary schools containing students from kindergarten through fifth grade that are racially segregated, the district can realign the grades that are available at each school.<sup>153</sup> Therefore, all students within the district will go to one school for kindergarten through second grade, and then another school for third grade through fifth grade, which in turn diversifies the school population.<sup>154</sup>

Multi-district consolidation occurs when the state or court orders the combination of multiple school districts for the purpose of improving racial diversity.<sup>155</sup> An example of multi-district consolidation can be found in the remedy used in *Jenkins*.<sup>156</sup> There, the New Jersey Supreme Court ruled that the New Jersey Commissioner of Education holds the authority to consolidate school districts as a means to achieve racial balance in schools.<sup>157</sup> The Court's decision resulted in the consolidation of Morristown and Morris Township's school districts in 1973 because Morristown's urban schools were racially segregated.<sup>158</sup> In doing so, the Commissioner of Education was able to integrate students so that they could enjoy the benefits of exposure to diversity during their academic careers.

### PART III: ANALYSIS

This section analyzes how New Jersey has handled its issues with public school segregation. The analysis will show that magnet schools are not as effective as multi-district consolidation due to New Jersey facing issues with inter-district segregation.

Ultimately, this section discusses the potential remedies that may arise from the pending lawsuit in *Latino Action Network*. As the plaintiffs are on record seeking inter-district magnet schools, it is

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<sup>150</sup> TEFERA ET AL., *supra* note 10, at 62.

<sup>151</sup> TEFERA ET AL., *supra* note 10, at 62.

<sup>152</sup> U.S. DEP'T OF JUSTICE & U.S. DEP'T OF EDUC., *supra* note 149, at 10.

<sup>153</sup> U.S. DEP'T OF JUSTICE & U.S. DEP'T OF EDUC., *supra* note 149, at 10.

<sup>154</sup> U.S. DEP'T OF JUSTICE & U.S. DEP'T OF EDUC., *supra* note 149, at 10.

<sup>155</sup> FLAXMAN ET AL., *supra* note 18, at 11.

<sup>156</sup> *See Jenkins v. Morris Sch. Dist.*, 58 N.J. 483, 508 (1971).

<sup>157</sup> *Id.* at 501.

<sup>158</sup> *Id.* at 508.



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important to flesh out the true ramifications if the state chooses to add more magnet schools as a way to attract diversity and integrate schools.<sup>159</sup> Furthermore, this section will propose that the plaintiffs in *Latino Action Network* should seek multi-district consolidation because of its previous success in the State.<sup>160</sup>

A. *The Problems with Magnet Schools*

New Jersey will continue to face many of its current public-school segregation problems if it chooses to rely too heavily on magnet schools to solve inter-district school segregation. First, there are choice-based problems New Jersey would have to consider when implementing this kind of remedy.<sup>161</sup> Second, while magnet schools historically have been an effective remedy to intra-district school segregation, which is evidenced by Montclair's school district; magnet schools have not been an effective remedy to inter-district segregation.<sup>162</sup> The Academies at Englewood is an example of a failed magnet program which was designed to remedy inter-district segregation. Its failure demonstrates the ineffectiveness magnet schools tend to have on inter-district segregation.<sup>163</sup>

Although magnet schools have the purpose of desegregating public schools by attracting racially diverse students to special programs from multiple districts, that is not always the case.<sup>164</sup> Magnet schools fail to desegregate public schools in many situations because they fail to attract White students, while others fail to attract non-White students.<sup>165</sup> Chase M. Billingham and Matthew O. Hunt explain that magnet schools fail to attract White students "against the backdrop of declining budgets and diminishing public interest in racially diverse schooling."<sup>166</sup> A hope of magnet schools has been to attract White

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<sup>159</sup> Otterman, *supra* note 5.

<sup>160</sup> See *Jenkins v. Morris Sch. Dist.*, 58 N.J. 483, 508 (N.J. 1971).

<sup>161</sup> Chase M. Billingham & Matthew O. Hunt, *School Racial Composition and Parental Choice: New Evidence on the Preferences of White Parents in the United States*, 89 Soc. EDUC. 99, 101 (2016).

<sup>162</sup> See Erica Frankenberg & Chinh Q. Lee, *The Post-Parents Involved Challenge: Confronting Extralegal Obstacles to Integration*, 69 OHIO ST. L.J. 1015, 1060 (2008).

<sup>163</sup> EMILY JOY JONES MCGOWAN, A CASE STUDY OF DWIGHT MORROW HIGH SCHOOL AND THE ACADEMIES AT ENGLEWOOD: AN EXAMINATION OF SCHOOL DESEGREGATION POLICY FROM A CRITICAL RACE PERSPECTIVE, 2 (2011).

<sup>164</sup> See Billingham & Hunt, *supra* note 161, at 101.

<sup>165</sup> Billingham & Hunt, *supra* note 161, at 101.

<sup>166</sup> Billingham & Hunt, *supra* note 161, at 101 (citing Claire Smrekar & Ngaire Honey, *The Desegregation Aims and Demographic Contexts of Magnet Schools: How Parents Choose and Why Sitting Policies Matter*, 90 PEABODY J. EDUC. 128, 138 (2015)).

students to exclusive academic programs that each school offers.<sup>167</sup> This method depends on parents selecting schools on the basis of a school's academic-criteria, however, this idea typically fails in practice.

A 2002 study discussed by Billingham and Hunt in Washington, D.C. reflects that parents select schools based on many factors, one of them being schools' racial composition.<sup>168</sup> This premise was evidenced in the study when parents were polled on how they chose schools for their children through an online school choice website.<sup>169</sup> The results of this study indicate that many parents choose schools that have more White students than the average public school.<sup>170</sup> In fact, the study showed that a school's demographic composition was one of the first factors most parents look at when deciding where they should send their children to school.<sup>171</sup> When parents ranked their concerns, many looked at the racial demographics of the school before searching average test results, teacher quality, and other academic related factors.<sup>172</sup>

Based on this information, many parents tend to search for institutions within or outside their districts or elsewhere that have the racial composition they see fit for their children. Unfortunately, many White families care more about racial composition than diversity, or even academic resources. Parents become less interested in sending their children to magnet schools because the purpose of magnet schools is to foster diversity, thus defeating their purpose.

Furthermore, magnet school ineffectiveness is a by-product of dramatic changes to racial demographics in each state.<sup>173</sup> Magnet schools in New Jersey tend to focus on remedying intra-district segregation rather than inter-district segregation, which means that magnet schools attempt to diversify schools within a single district rather than moving across district boundaries.<sup>174</sup> An example of a magnet school incorporated for the purposes of remedying intra-district segregation is Montclair's magnet school system.<sup>175</sup> Montclair's school district created three middle school magnets in response to a lawsuit that was filed against their Board of Education in protest of the

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<sup>167</sup> See Billingham & Hunt, *supra* note 161, at 101.

<sup>168</sup> Billingham & Hunt, *supra* note 161, at 102.

<sup>169</sup> Mark Schneider & Jack Buckley, *What Do Parents Want from Schools? Evidence from the Internet*, 24 EDUC. EVALUATION AND POLICY ANALYSIS 133, 136 (2002).

<sup>170</sup> See *id.* at 138.

<sup>171</sup> *Id.*

<sup>172</sup> Billingham & Hunt, *supra* note 161, at 102.

<sup>173</sup> See Frankenberg & Lee, *supra* note 162, at 1060.

<sup>174</sup> Frankenberg & Lee, *supra* note 162, at 1060.

<sup>175</sup> TEFERA ET AL., *supra* note 10, at 30.

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lack of equal resources caused by public-school segregation.<sup>176</sup> The lawsuit resulted in a successful mandate for racially balanced schools within the school district.<sup>177</sup>

The success of Montclair's magnet schools, although beneficial to desegregate that specific school district, does not show that magnet schools will fix the problem statewide. New Jersey suffers primarily from inter-district school segregation because only 2.8% of school districts are comprised of students that reflect a proportional relationship to the racial composition of students across the state.<sup>178</sup> Since 75% of public schools serve a student population that is proportional to the overall racial composition of their districts, an intra-district remedy such as magnet schools only continues the pattern of racial isolation by district in New Jersey.<sup>179</sup> Magnet schools are more effective for intra-district school segregation, as was the case when they were successfully incorporated within Montclair's segregated school district. Meanwhile, when applied to inter-district cases of school segregation, other factors such as parental choice prevents desegregation from taking place.

The town of Englewood, New Jersey attempted to remedy inter-district segregation by creating the Academies at Englewood. The Academies at Englewood was created as a magnet program to attract high-achieving White and Asian students from across Bergen County to remedy the racial imbalance in Englewood's school district.<sup>180</sup>

The Academies at Englewood is technically an addition to Dwight Morrow High School.<sup>181</sup> Dwight Morrow is a regional public high school for both the towns of Englewood and Englewood Cliffs.<sup>182</sup> Englewood Cliffs has a separate school district, but also engages in a "send and receive" program with Englewood's school district by sending their high school students to Dwight Morrow High School.<sup>183</sup> A majority of Black and Latino students from Englewood, and a majority of White students from neighboring Englewood Cliffs, attend Dwight Morrow.<sup>184</sup> Despite this, the school has an overwhelming majority of Black and Latino students.<sup>185</sup> In 1985, Englewood Cliffs attempted to end its "send and

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<sup>176</sup> TEFERA ET AL., *supra* note 10, at 30.

<sup>177</sup> TEFERA ET AL., *supra* note 10, at 30.

<sup>178</sup> ORFIELD ET AL., *supra* note 3, at 32.

<sup>179</sup> ORFIELD ET AL., *supra* note 3, at 31.

<sup>180</sup> MCGOWAN, *supra* note 163, at 2.

<sup>181</sup> MCGOWAN, *supra* note 163, at 2.

<sup>182</sup> MCGOWAN, *supra* note 163, at 1.

<sup>183</sup> MCGOWAN, *supra* note 163, at 2.

<sup>184</sup> MCGOWAN, *supra* note 163, at 1.

<sup>185</sup> MCGOWAN, *supra* note 163, at 12-14, 16.

receive” program with Englewood’s school district, and enter a new agreement with Tenafly’s school district instead.<sup>186</sup> Tenafly is a predominantly White school district with 95 percent of students being White and Asian; parents from Englewood Cliffs would rather send their children to Tenafly than Dwight Morrow.<sup>187</sup>

In 1985, Englewood’s school district proposed that the three towns of Englewood, Tenafly, and Englewood Cliffs consolidate their districts to avoid racial imbalance of students in response to Englewood Cliffs’ attempt to end their agreement.<sup>188</sup> This resulted in a fifteen-year legal battle.<sup>189</sup> Parents of students that were from Englewood believed that the parents of the students from Englewood Cliffs and Tenafly were against consolidation because of an aversion to the increased racial integration of the public schools.<sup>190</sup> The parents of students from Englewood Cliffs and Tenafly stated they were against consolidating the three school districts because of the quality of education at Dwight Morrow.<sup>191</sup> This left both sides at an impasse, and the Englewood Cliffs and Tenafly parents wanted to leave the “failing” educational system rather than implement diversifying solutions.<sup>192</sup> This dispute resulted in the creation of the Academies at Englewood as an attempt to diversify the school district.<sup>193</sup>

In spite of this, Academies at Englewood did not desegregate Englewood schools. Although students involved in the program were mostly white, and were housed in a school which typically educated a majority of Black and Latino students, the students in the magnet program were isolated from the rest of the Dwight Morrow student population.<sup>194</sup> This isolation created school segregation on a different scale by creating an academic hierarchy separated by race.<sup>195</sup> The Academies at Englewood are comparable to Bergen County Academies, which is a prestigious public school attracting students across Bergen County.<sup>196</sup> These programs are evidence of magnet schools’ evolution into incredibly selective and less-diverse public schools, that ultimately

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<sup>186</sup> MCGOWAN, *supra* note 163, at 2.

<sup>187</sup> MCGOWAN, *supra* note 163, at 2.

<sup>188</sup> *See* MCGOWAN, *supra* note 163, at 10.

<sup>189</sup> MCGOWAN, *supra* note 163, at 2.

<sup>190</sup> MCGOWAN, *supra* note 163, at 18.

<sup>191</sup> MCGOWAN, *supra* note 163, at 18.

<sup>192</sup> MCGOWAN, *supra* note 163, at 18.

<sup>193</sup> MCGOWAN, *supra* note 163, at 11.

<sup>194</sup> MCGOWAN, *supra* note 163, at 221-22.

<sup>195</sup> MCGOWAN, *supra* note 163, at 221-22.

<sup>196</sup> MCGOWAN, *supra* note 163, at 104.

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establish a hierarchy rather than diversity.<sup>197</sup> The purpose of these programs are to remedy inter-district segregation by attracting a racially diverse student body from across the county.<sup>198</sup> Evidence shows that magnet schools are a less effective remedy to the problem of inter-district school segregation than consolidating school districts, notwithstanding its intended purpose.

*B. The Benefits of Consolidating School Districts*

New Jersey has had success by consolidating school districts to combat public school segregation, whereas inter-district solutions have been ineffective, and should revisit this solution. This method has been successful; it has been recognized and deemed permissible by the Supreme Court of New Jersey and even the Supreme Court of the United States.<sup>199</sup>

In 1971, the Supreme Court of New Jersey held in *Jenkins* that the Commissioner of Education has the authority to consolidate school districts to remedy school segregation.<sup>200</sup> With this authority granted by the State's highest court, the Commissioner now has a duty to take necessary action to desegregate New Jersey's public school whenever it is feasible.<sup>201</sup>

*Jenkins* arose from a merger sought between Morristown and Morris Township school districts.<sup>202</sup> Morristown had a larger population of Black residents, who made up twenty-five percent of its population at the time.<sup>203</sup> Furthermore, the Black population in Morristown was expected to increase to a point where nearly half of its population would be Black.<sup>204</sup> As a contrast, merely five percent of Morris Township's population was Black, and an overwhelming proportion of its residents were White.<sup>205</sup> This case resulted in the merger of the two school districts, serving as one of the few successful attempts at desegregation in New Jersey public schools. Currently, the consolidated Morris district is one of the more racially balanced schools in the state and has positively affected the urban area of Morristown.<sup>206</sup>

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<sup>197</sup> The Fund for New Jersey, *supra* note 15, at 9.

<sup>198</sup> The Fund for New Jersey, *supra* note 15, at 8.

<sup>199</sup> *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 28 (1971); *Jenkins v. Morris Sch. Dist.*, 58 N.J. 483, 508 (1971); FLAXMAN ET AL., *supra* note 18, at 11.

<sup>200</sup> *Jenkins v. Morris Sch. Dist.*, 58 N.J. 483, 508 (N.J. 1971).

<sup>201</sup> *Id.*; FLAXMAN ET AL., *supra* note 18, at 11.

<sup>202</sup> *Jenkins v. Morris Sch. Dist.*, 58 N.J. 483, 485 (N.J. 1971).

<sup>203</sup> *Id.* at 487.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> FLAXMAN ET AL., *supra* note 18, at 11.

In 1971, the Supreme Court of the United States heard *Swann v. Charlotte-Mecklenburg Board of Education* and held that shifting school attendance zones was a constitutionally viable remedy to desegregating public schools.<sup>207</sup> This case was brought because the Charlotte-Mecklenburg School District failed to shift from a racially segregated dual-system to a unitary system, as was mandated by the ruling in *Brown*.<sup>208</sup> The Court held that the consolidation of school zones is an adequate and effective remedy for ensuring racial diversity in public schools.<sup>209</sup>

The pre-*Brown* dual school system was created by drawing school district boundaries to ensure schools were racially segregated.<sup>210</sup> The primary method of doing so was to separate school districts by municipality because of patterns related to residential segregation.<sup>211</sup> New Jersey, in particular, is a state where majority of its school districts coincide with municipal boundaries.<sup>212</sup> Therefore, New Jersey's school districts continue to face ramifications of the municipal boundaries that ensure the public schools remain racially segregated.

In response to this problem, New Jersey should look to consolidate school districts to desegregate schools where it is feasible, as it did for the Morris school district.<sup>213</sup> Primarily, New Jersey has homogenous school districts, which are reflected by the ongoing problem of intra-district segregation.<sup>214</sup> To remedy that, New Jersey can consolidate smaller school districts that do not reflect racial composition of all students in the state or county. New Jersey has a total of 584 operating school districts among twenty-one counties because small municipalities have their own school districts.<sup>215</sup> Therefore, the Commissioner of Education could consolidate small neighboring districts to create new school districts that accurately reflect the state's racial composition of students with the authority that was recognized in the *Jenkins* decision.<sup>216</sup>

New Jersey should consider ending the magnet program at the Academies at Englewood and consolidate Englewood, Englewood Cliffs,

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<sup>207</sup> *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 28 (1971)

<sup>208</sup> *Id.* at 7.

<sup>209</sup> *Id.* at 28

<sup>210</sup> *Id.* at 7.

<sup>211</sup> TRACTENBERG ET AL., *supra* note 119, at 6.

<sup>212</sup> The Fund for New Jersey, *supra* note 15, at 16.

<sup>213</sup> The Fund for New Jersey, *supra* note 15, at 20.

<sup>214</sup> ORFIELD ET AL., *supra* note 3, at 31.

<sup>215</sup> STATE OF N.J. DEP'T OF EDUC., N.J. PUB. SCH. FACT SHEET, <https://www.state.nj.us/education/data/fact.htm> (2019).

<sup>216</sup> *Jenkins v. Morris Sch. Dist.*, 58 N.J. 483, 508 (N.J. 1971).

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and Tenafly's school districts. Because the magnet program has failed to effectively desegregate the Englewood Public School District, the Commissioner of Education can promptly consolidate Englewood, Englewood Cliffs, and Tenafly to create a racially diverse school district. As a result, New Jersey would have a lower number of school districts that serve individual municipalities and have larger districts that reflect the State's racially diverse student body.

New Brunswick is another area in New Jersey that can improve racial integration in public schools through multi-district consolidation. New Brunswick High School was racially integrated for decades, but in the 1970s, the school became increasingly segregated as White students began attending nearby North Brunswick High School.<sup>217</sup> Prior to the 1970s, North Brunswick residents sent their children to New Brunswick High School, which was racially balanced.<sup>218</sup> Nonetheless, White parents from North Brunswick formed a coalition to create North Brunswick High School, which siphoned approximately 700 White students from New Brunswick High School, thus making it a minority-majority school.<sup>219</sup>

North Brunswick High School accurately reflects the inter-district school segregation problem in New Jersey. There were attempts to merge the New Brunswick and North Brunswick school districts, however the efforts were to no avail.<sup>220</sup> Instead, North Brunswick and New Brunswick became separate and unequal school districts with racially imbalanced schools.<sup>221</sup> North Brunswick became a predominantly White school district, while New Brunswick became a predominantly Black and Latino school district.<sup>222</sup> North Brunswick and New Brunswick show a significant opportunity for the State to use its authority to combine school districts to create racially balanced schools and better opportunities for Black and Latino students.

The Plainfield School District suffers a problem similar to New Brunswick.<sup>223</sup> The circumstances of public-school segregation in New Jersey are a result of inactivity in situations where the State needed to be proactive. The past is the past, and unfortunately the mistakes made cannot be changed. But, those mistakes can be corrected with proper

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<sup>217</sup> Chris Rasmussen, *Creating Segregation in the Era of Integration: School Consolidation and Local Control in New Brunswick, New Jersey, 1965-1976*, 57(4) HIST. OF EDUC. Q., 480, 481 (2017).

<sup>218</sup> *Id.* at 483.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.* at 486.

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> FLAXMAN ET AL., *supra* note 18, at 11.

initiatives to end “de facto” segregation of public schools. New Jersey can significantly remedy this crisis by making the decisions they should have made in the public-school integration era. By consolidating school districts like Englewood, New Brunswick, and Plainfield, New Jersey can integrate public schools and provide better opportunities for students across the state.

*C. Where New Jersey Can Go from Here to Consolidate Its School Districts*

With the parties in *Latino Action Network* preparing for trial in the Mercer County Superior Court, New Jersey faces a unique opportunity to further the State’s efforts to desegregate public schools.<sup>224</sup> A coalition of community groups statewide has made the claim that New Jersey school segregation is codified, since a majority of school district boundaries coincide with municipal boundaries.<sup>225</sup> *Latino Action Network* also makes the claim that intra-district remedies do not solve the problem of public-school segregation because no matter what solutions are made within urban districts, racial diversity is never implemented.<sup>226</sup>

With this case at the forefront, New Jersey has its best opportunity to take on public school segregation by consolidating school districts to accurately reflect the racial composition of the state’s students. There are opportunities across the state to break the boundaries of small school districts and create larger districts that are more diverse.

In 2007, Governor John Corzine signed the CORE Act, which created an Executive County Superintendent to serve the role of consolidating school districts to accurately reflect the racial diversity of the state.<sup>227</sup> Unfortunately, this Act has not been executed as intended, but can be amended to incentivize towns across New Jersey to come together and consolidate school districts. A potential benefit is to equalize tax incentives between municipalities that consolidate their school districts.<sup>228</sup> In doing so, many of the higher-taxed White suburban districts will be motivated to merge with the lower-taxed Black and Latino districts. The foreseeable issue with tax incentives is that they can cause a deficit. Acknowledging this, municipalities can manipulate their services to the town, like garbage collection and recycling, to make up for the tax incentives. For example, municipalities can limit twice-

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<sup>224</sup> Otterman, *supra* note 5.

<sup>225</sup> Otterman, *supra* note 5.

<sup>226</sup> Otterman, *supra* note 5.

<sup>227</sup> The Fund for New Jersey, *supra* note 15, at 19.

<sup>228</sup> The Fund for New Jersey, *supra* note 15, at 20.



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per-week garbage pick-up in the summer months to save money and compensate for the tax incentives given by consolidating school districts.

The CORE Act gives each Executive County Superintendent a pivotal role in integrating public schools. The Act charges each County Superintendent with an affirmative duty to recommend certain school districts that the Commissioner of Education should consolidate to diversify schools.<sup>229</sup> However, in practice, County Superintendents would submit incomplete reports due to a lack of funding for appropriate studies to investigate school districts.<sup>230</sup> Also, Governor Chris Christie was not interested in consolidating school districts when he took office in 2010.<sup>231</sup> Governor Christie's laissez-faire approach and the County Superintendents' incomplete reports exacerbated the ongoing public-school segregation problem.

Moreover, the State's government can be upfront with this issue and openly promote district consolidation to combat public-school segregation. New Jersey's recent history reflects poorly on its government, which has regressed after the pivotal Court decision in *Jenkins*. After four decades of the judicial and governmental failure to enforce and execute the state's progressive integration laws, *Latino Action Network* gives New Jersey the opportunity to right many of the wrongs. Nonetheless, in order to effectively do so, the State needs to use its authority properly.

Multi-district consolidation has already proven to be effective in New Jersey. The Morris School District has celebrated nearly fifty years of integrated public schools.<sup>232</sup> The importance of diversifying the Morris School District is greater than just racially balancing the schools. The strength of New Jersey and its citizens stems from people of different backgrounds coming together to enjoy freedom for all individuals.<sup>233</sup> Racially integrated schools provide students with the opportunity to learn and understand a variety of perspectives, causes heightened academic achievement, and increases the likelihood of students moving on to higher education.<sup>234</sup> For example, the Morris School District remains racially integrated to this day, and 93 percent of its students go on to receive a higher education.<sup>235</sup> Further, as the

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<sup>229</sup> N.J. STAT. ANN. § 18A:7-8(e) (2019).

<sup>230</sup> The Fund for New Jersey, *supra* note 15, at 19.

<sup>231</sup> The Fund for New Jersey, *supra* note 15, at 19.

<sup>232</sup> FLAXMAN ET AL., *supra* note 18, at 11.

<sup>233</sup> Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 782 (2007).

<sup>234</sup> TEFERA ET AL., *supra* note 10, at 4; ORFIELD ET AL., *supra* note 3, at 10-11.

<sup>235</sup> The Fund for New Jersey, *supra* note 15, at 20.

quality of the Morristown public school system has increased over the decades, the community itself has also significantly revitalized.<sup>236</sup> Districts like New Brunswick and Englewood did not share the same fate because the education commissioner was not proactive. New Jersey will solve its public school segregation problem through exemplary efforts to consolidate school districts.

#### PART IV: CONCLUSION

New Jersey faces an ongoing and outdated problem with public school segregation. To combat this, New Jersey must take concrete action to ensure that public schools accurately reflect the racial composition of students across the state. Magnet schools have been implemented in areas of the state and have proven to be an ineffective remedy of inter-district segregation because of parental-choice and programs' evolution into over-selective and less-diverse institutions. Consolidating school districts has proven to be a successful remedy in New Jersey, as connecting districts effectively blurs municipal lines that were drawn decades ago to create racially segregated school districts.

In the face of this problem, there is a potential turning point for New Jersey with *Latino Action Network*, and an opportunity for the state commissioner to do more. New Jersey has taken progressive and proactive roles on public school segregation throughout its history. The state was one of the first to adopt a statute outlawing school segregation by race. In addition, the state also adopted a constitutional provision specifically outlawing public-school segregation. Despite this early progress, New Jersey has fallen short of its own standards. The problem of public-school segregation continues to deepen. It is time for New Jersey to consider consolidating multiple school districts to integrate and desegregate schools statewide.

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<sup>236</sup> The Fund for New Jersey, *supra* note 15, at 20.