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Home Rule and The Effects of COVID-19 on New Jersey Public Education

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Home Rule and The Effects of COVID-19 on New Jersey Public Education

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Table of Contents

I. Introduction 1
II. Home Rule 3
III. COVID-19 school closures..... 8
IV. Technology and remote learning issues for lower-income families 10
V. Reopening schools in New Jersey 13
VI. Comparing New Jersey to Hawaii..... 24
VII. Where to go from here? 29

I. Introduction

“Education is the most powerful weapon which you can use to change the world.”²

Nelson Mandela provided the world with these words of wisdom, and they could not be more true today. While earning potential is not the only gauge for how necessary education is for the world, it does exemplify how education can provide a better life for individuals.³ Yet, in the United States only 86% of students graduated from high school as of the 2018-2019 school year.⁴ This is concerning because an individual who drops out of high school will make even less than individuals who only have graduated high school,⁵ which in many instances puts these individuals below the poverty line.⁶ Further, not only are graduation rates lower than one might expect, but these numbers are not uniform throughout the United States because each state has its own educational system⁷.

² Paul Ellis, Changing the world through education – how Nelson Mandela created the conditions for success, Cambridge Assessment International Education, (Mar. 28, 2019), <https://blog.cambridgeinternational.org/nelson-mandela/>

³ In the United States, men with bachelor’s degrees earn approximately \$900,000 more than high school graduates and Women with bachelor’s degrees earn \$630,000 more than high school graduates. The difference in earning potential is even more stark for graduate degrees verse high school graduates. Men with graduate degrees earn approximately \$1.5 million more than high school graduates and Women with graduate degrees earn \$1.1 million more than high school graduates. Education and Lifetime Earnings, Social Security Administration (Nov. 2015), <https://www.ssa.gov/policy/docs/research-summaries/education-earnings.html>

⁴ Not only are graduation rates below 9 in 10 students on average in the United States, but the lowest graduation rates are for minorities – Hispanic 82%, Black 80%, and American Indian/Alaskan Native 74%. Public High School Graduation Rates, National Center for Education Statistics (May 2021), <https://nces.ed.gov/programs/coe/indicator/coi>

⁵ Median earnings for 25–34 year-old full-time workers without a high school diploma only expect to make \$26,000 compared to \$34,000 for that of a high school graduate. Trends in High School Dropout and Completion Rates in the United States, National Center for Education Statistics (last visited Aug. 12, 2021), <https://nces.ed.gov/programs/dropout/intro.asp>

⁶ The poverty guidelines differ by state due to different standards of living. Also, the guidelines are affected by the number of individuals in the household (children, spouse, etc.). U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs, Office of The Assistant Secretary for Planning and Evaluation (Jan. 13, 2021), <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>

⁷ Graduation rates are as high as 92% in Iowa and as low as 69% in the District of Columbia. Public High School Graduation Rates, National Center for Education Statistics (May 2021), <https://nces.ed.gov/programs/coe/indicator/coi>

As alluded to above, the United States does not have a uniform education system, but a decentralized education system because the Constitution reserves power over education to the states and local authorities.⁸ This decentralization allows for states to organize their educational system however each state determines is in the best interest of its citizens, with limited input from the federal government.⁹ For example, twenty-five states provide their governor with a formal constitutional role in education, forty states give the legislature some role in appointing or confirming state board of education members or an equivalent governing body, in Oregon the governor is the superintendent of the state, only Minnesota and Wisconsin do not have a state board of education, and Hawaii and the District of Columbia have only one school district.¹⁰ This list is obviously not comprehensive, but these are prime examples to highlight how state education systems differ.

This article proceeds as follows: first it will begin by giving an overview of the New Jersey Education system, known as “Home Rule”, and how it is an ineffective inequitable system of education. It then will proceed to provide a timeline of the school closures in New Jersey on to show the downfalls of Home Rule in the wake of the COVID-19 pandemic. It then will identify issues created by COVID-19 pandemic, as well as already existing issues that were exacerbated by it. This will include be emphasized mainly by the implementation throughout different New Jersey school district of remote learning and school reopenings (or in some instances the choice not to reopen at all for many students¹¹). Finally, this article will provide a

⁸ Organization of U.S. Education, U.S. Department of Education (Feb. 20, 2008), <https://www2.ed.gov/about/offices/list/ous/international/usnei/us/edlite-org-us.html>

⁹ International Affairs Office, U.S. Department of Education, Organization of U.S. Education: The Federal Role, U.S. Department of Education (Jan. 2008), <https://www2.ed.gov/about/offices/list/ous/international/usnei/us/fedrole.doc>

¹⁰ Alyssa Evans, Ben Erwin, Eric Syverson, Erin Whinnery, 50-State Comparison: K-12 Governance, Education Commission of the States (Nov. 10, 2020), <https://www.ecs.org/50-state-comparison-k-12-governance/>

¹¹ You will see in further detail below that some school districts in New Jersey, citing safety concerns, either did not open for the 2020-2021 school year, or opened to only a limited number of students, such as Paterson which only

comparison to Hawaii, which as noted above, has only one school district.¹² This comparison will show that Home Rule is an ineffective inequitable system of education that is failing students that are overwhelmingly low-income and minority students. This article will focus on local issues within the state and will not address the role of the federal government or federal funding. In conclusion, this article recommends that New Jersey move away from the current system of Home Rule, instead employing a centralized system similar to that of Hawaii.

II. Home Rule

New Jersey school systems are incredibly unique. First, most decisions are made by the local board of education instead of the Department of Education or a county school board. Additionally, New Jersey has another unique attribute; there are more school districts¹³ (686) than municipalities¹⁴ (565) throughout the state, which is obviously not the norm in the United States. A good example to contrast New Jersey's model is Hawaii, which has one statewide school district comprised of 256 schools¹⁵, significantly fewer than New Jersey. The fact that school districts outnumber municipalities in New Jersey should sound a little ridiculous. Why would any state have more school districts than municipalities, and how did this system originate in the first place?

opened for special education students in the 2020-2021 school year. Stephen M. Lepore, Paterson to bring back in-person learning for special education students June 8, Pix 11 (May 5, 2021), <https://pix11.com/news/local-news/new-jersey/paterson-to-bring-back-in-person-learning-for-special-education-students-june-8/>

¹² Hawaii State Department of Education, State of Hawaii Board of Education (last visited Aug. 12, 2021), <https://boe.hawaii.gov/About/Pages/Department-of-Education.aspx>

¹³ New Jersey has 686 operating school districts within the state and a total of 2,493 schools. NJDOE Data & Reports, Department of Education (last visited Aug. 12, 2021), <https://www.nj.gov/education/doedata/fact.shtml>

¹⁴ New Jersey has 565 municipalities which are classified as one of five categories: boroughs, townships, cities, towns, and villages. The classifications do not make a difference as they are all effectively the same in terms of authority. Types of Government in New Jersey, New Jersey State League of Municipalities (last visited Aug. 12, 2021), [https://www.njlm.org/644/Forms-of-Municipal-Government---NewJers#:~:text=All%20565%20municipalities%20in%20New,4\)%20Town%205\)%20Village.](https://www.njlm.org/644/Forms-of-Municipal-Government---NewJers#:~:text=All%20565%20municipalities%20in%20New,4)%20Town%205)%20Village.)

¹⁵ Hawaii State Department of Education, State of Hawaii Board of Education (last visited Aug. 12, 2021), <https://boe.hawaii.gov/About/Pages/Department-of-Education.aspx>

While there is no perfect answer to why New Jersey needs more school districts than municipalities, the current system in place, known as “Home Rule.” Many individuals, even parents who have children currently enrolled in a New Jersey school district, probably do not truly understand what “Home Rule” is. Moreover, it is also likely that parents with school-age children have never heard of Home Rule and have no idea how it affects their children’s education and their everyday lives.¹⁶

Home Rule originated with the Home Rule Act of 1917. The Home Rule Act’s purpose was to cement the rights of the municipal government, including the right to self-governance for certain items, including education.¹⁷ Many New Jersey residents do not realize this is why each municipality has its own school district, fire department, police department, among other things, but everyone knows this is how New Jersey operates.¹⁸ Everything that a municipality needs is governed by the municipality unless very small municipalities pool their resources for some of these items. Further, since implementation of the Home Rule Act of 1917, legislation has supplemented, but the basic framework of the Home Rule Act has not substantially changed.¹⁹

While Home Rule gives municipalities more autonomy to self-govern, the effects are not all positive. Even though New Jersey is a relatively diverse state, Home Rule has created a system that can cause segregation in school districts. New Jersey boasts that it is “ranked one of

¹⁶ As the cited article indicates, Home Rule gives a municipality a wide array of authority, which was on full display during COVID-19 lockdowns. While Governor Murphy closed state parks in March of 2020 due to rising COVID-19 cases, townships such as Vernon, were able to keep their own parks open for residents to use. Conversely, Edison closed all of its municipal parks as of April 8 following in the footsteps of Governor Murphy. The point is that each municipality is autonomous in some respects and is able to act how they feel is in the best interest of their residents. The same is true when making choices in terms of education. Caroline Fassett, [What is home rule in New Jersey? Why your neighborhood park may still be open](https://www.nj.com/coronavirus/2020/04/what-is-home-rule-in-new-jersey-why-your-neighborhood-park-may-still-be-open.html), NJ.Com (Apr. 24, 2020), <https://www.nj.com/coronavirus/2020/04/what-is-home-rule-in-new-jersey-why-your-neighborhood-park-may-still-be-open.html>

¹⁷ While the Home Rule Act “revised and codified” New Jersey laws granting authority to municipal governments, this actually was only making “explicit what had been implicit for decades.” Michael A. Pane, [34 N.J. Practice, Local Government § 1:6 1](#) (4th ed. 2021).

¹⁸ In New Jersey, police power resides with the municipalities and not with the counties. Interestingly, “[i]n New Jersey counties have been held to lack even the power to sue in a *parens patriae* capacity.” *Id.* at 2.

¹⁹ *Id.* at 1.

the most diverse states in the country”²⁰, yet New Jersey also ranks sixth in terms of the highest segregation of black students and seventh in segregation of Latinos.²¹ The most severe segregation of students in the state tends to occur in the more densely populated urban areas, which is largely influenced by housing throughout the state because of a lack of integration programs.²² Additionally, there are still many school districts that are overwhelmingly comprised of white students²³, yet the suburbs that surround these densely populated urban areas actually tend to be more ethnically diverse.²⁴ For example, Cherry Hill, New Jersey, a suburb near Camden, student population is comprised of 56% white students.²⁵ Camden City School District on the other hand, has a white student population of 1.0%.²⁶ Cherry Hill has 13.3% Hispanic student population,²⁷ while Camden has a 44.4% Hispanic student population.²⁸ The numbers are no different for the Black student population in these districts. 8.3% of students attending a

²⁰ The Office of Diversity and Inclusion states that nearly 45% of New Jersey’s residents are people of color, one-third of all New Jersey business owners are foreign-born, with almost half of the “Main Street” businesses owned by immigrants. Going so far as to explain that the “[d]iversity of our state is one [of] our key strengths that drives productivity innovation and growth.” Hester Agudosi, Chief Diversity Officer, Welcome, New Jersey Office of Diversity and Inclusion (last visited Aug. 12, 2021), <https://diversity.nj.gov/governor/diversity/welcome/>

²¹ In 2015, 8.3% of all New Jersey schools served between 0% and 1% of white students and 46% of New Jersey schools served a majority of non-white students. While some of this can be attributed to an increase in Hispanic population, the figures provided are still staggering. A state that gloats about its diversity, should thrive to have diversity in all schools, not possess a large number of segregated schools.

Gary Orfield et al., New Jersey’s Segregated Schools Trends and Paths Forward 15 (November 2017).

²² *Id.*

²³ See Westfield Public School District Enrollment by Racial and Ethnic Group (79.6% White, 6.3% Hispanic, 2.3% Black or African American, 9.3% Asian, 0.1% Native Hawaiian or Pacific Islander, 0.0% American Indian or Alaska Native, 2.4% Two or More Races. Westfield Public School District (39-5730) Demographics, NJ School Performance Report (last visited Aug. 12, 2021), <https://rc.doe.state.nj.us/district/detail/39/5730/demographics?lang=EN>

²⁴ See Cherry Hill School District (07-0800) Demographics, NJ School Performance Report, <https://rc.doe.state.nj.us/district/detail/07/0800/demographics?lang=EN>; See also Camden City School District (07-0680) Demographics, NJ School Performance Report (last visited Aug. 12, 2021), <https://rc.doe.state.nj.us/district/detail/07/0680/demographics?lang=EN>.

²⁵ Cherry Hill School District (07-0800) Demographics, NJ School Performance Report (last visited Aug. 12, 2021), <https://rc.doe.state.nj.us/district/detail/07/0800/demographics?lang=EN>

²⁶ Camden City School District (07-0680) Demographics, NJ School Performance Report (last visited Aug. 12, 2021), <https://rc.doe.state.nj.us/district/detail/07/0680/demographics?lang=EN>.

²⁷ Cherry Hill School District (07-0800) Demographics, NJ School Performance Report (last visited Aug. 12, 2021), <https://rc.doe.state.nj.us/district/detail/07/0800/demographics?lang=EN>

²⁸ Camden City School District (07-0680) Demographics, NJ School Performance Report (last visited Aug. 12, 2021), <https://rc.doe.state.nj.us/district/detail/07/0680/demographics?lang=EN>.

school in Cherry Hill is black,²⁹ while 44.4% of students in Camden City Schools are black.³⁰

Cherry Hill has a relatively diverse student body compared to other places in the state, but it still begs the question, why is there such a large disparity for school districts less than ten miles apart?

Moreover, the school districts with higher percentages of black and Latino students have drastically higher enrollments of “Economically Disadvantaged Students”. For example, Westfield Public School District, known for being one of the best school districts in New Jersey, has a 1.3% “Economically Disadvantaged Students” body, compared with Paterson public school district’s 74.6% “Economically Disadvantaged”.³¹ How can one school district be comprised of a majority of economically disadvantaged students and another school district that is relatively close in proximity only have a little over one percent economically disadvantaged students? Further, why is there such a high incidence of economically disadvantaged students in the school districts that have the lowest percentages of white students?

Even more concerning, and likely not surprising, is the difference in test scores for school districts with higher percentages of economically disadvantaged students. The school districts with higher percentages of economically disadvantaged students tend to have below average standardized test scores, while the school districts with lower percentages of economically disadvantaged students have above average, or at least average³², test scores. For instance,

²⁹ [Cherry Hill School District \(07-0800\) Demographics](https://rc.doe.state.nj.us/district/detail/07/0800/demographics?lang=EN), NJ School Performance Report (last visited Aug. 12, 2021), <https://rc.doe.state.nj.us/district/detail/07/0800/demographics?lang=EN>

³⁰ [Camden City School District \(07-0680\) Demographics](https://rc.doe.state.nj.us/district/detail/07/0680/demographics?lang=EN), NJ School Performance Report (last visited Aug. 12, 2021), <https://rc.doe.state.nj.us/district/detail/07/0680/demographics?lang=EN>.

³¹ [Paterson Public School District \(31-4010\) Demographics](https://rc.doe.state.nj.us/district/detail/31/4010/demographics?lang=EN), NJ School Performance Report (last visited Aug. 12, 2021), <https://rc.doe.state.nj.us/district/detail/31/4010/demographics?lang=EN>

³² Sayreville Public Schools, which is a relatively middle of the road school district, has an economically disadvantaged student population of 34.9%, and roughly average, to a little below average, test scores. Moreover, Sayreville Public Schools has a relatively diverse student body with 39.3% white students, 21% Hispanic students, and 16.3% black students, 17.9% Asian, 0.4% Native Hawaiian or Pacific Islander, 0.6% Native Indian or Alaska

Westfield³³ and Livingston³⁴ overperform compared to the state average scores in the PSAT, SAT, and ACT, while students in Paterson³⁵ and Camden³⁶ public school districts underperform in each of these categories. Graduation rates continue to tell the same story—school districts such as Westfield have graduation rates near 100%³⁷, while school districts like Camden are below 70%.³⁸

The school districts discussed above are not close enough in proximity to constitute one school district even if county-wide districting were ever used, but they are good representations of the issues created by Home Rule in New Jersey. The wealthier districts, with higher percentages of white students, continue to have students with above average test scores and graduation rates, while poorer school districts in lower-income areas, with higher percentages of black and Hispanic student populations, continue to have below average test scores and graduation rates. While this may come as no surprise, these issues were only further exacerbated by the onset of the COVID-19 pandemic. The pandemic not only caused a public health crisis but created additional issues and caused further inequity within a system that was already failing lower-income students.

Native, and 4.4% Two or more races. Sayreville School District (23-4660) Demographics, NJ School Performance Report (last visited Aug. 12, 2021), <https://rc.doe.state.nj.us/district/detail/23/4660/demographics?lang=EN>

³³ Students in Westfield Public Schools overperform in their average SAT Scores, PSAT scores, and ACT Scores. The students are also enrolled in more AP classes on average. Westfield Public School District (39-5730) College and Career Readiness, NJ School Performance Report (last visited Aug. 12, 2021), <https://rc.doe.state.nj.us/district/detail/39/5730/college?lang=EN>

³⁴ Students in Livingston Public Schools perform similarly to Westfield, overperforming in every metric provided by the state. Livingston Board of Education School District (13-2730) College and Career Readiness, NJ School Performance Report (last visited Aug. 12, 2021), <https://rc.doe.state.nj.us/district/detail/13/2730/college?lang=EN>

³⁵ Paterson public school district students perform below average in every benchmark provided by the state. Paterson Public School District (31-4010) College and Career Readiness, NJ School Performance Report (last visited Aug. 12, 2021), <https://rc.doe.state.nj.us/district/detail/31/4010/college?lang=EN>

³⁶ Like Paterson, students at Camden City Schools also underperforms in every metric used on the performance report. Camden City School District (07-0680) College and Career Readiness, NJ School Performance Report (last visited Aug. 12, 2021), <https://rc.doe.state.nj.us/district/detail/07/0680/college?lang=EN>

³⁷ Livingston Board of Education School District (13-2730) Graduation/Postsecondary, NJ School Performance Report (last visited Aug. 12, 2021), <https://rc.doe.state.nj.us/district/detail/13/2730/postsecondary?lang=EN>

³⁸ Camden City School District (07-0680) Graduation/Postsecondary, NJ School Performance Report (last visited Aug. 12, 2021), <https://rc.doe.state.nj.us/district/detail/07/0680/postsecondary?lang=EN>

III. COVID-19 school closures

In March 2020, COVID-19 swept through the United States, and around the globe, creating one of the worst crises that our country has faced in decades. Because this virus was almost completely unknown, there was no succinct guidance at the outset. Every state governor had a different idea of what was best for their state, and that was reflected in the closures of public facilities or choice to remain open longer than other surrounding states. While it is easy to look back and see what worked best in combatting the spread of COVID-19 and what may have been unnecessary, there is no doubt that each governor attempted to act in their state's best interests. Governor Murphy attempted to save lives and stop the spread of COVID-19 in an environment where information was constantly changing, and the best plan of action was not always clear.

On March 16, 2020, Governor Murphy, among other things, suspended in-person pre-school programs, k-12 education, and in-person instruction at institutions of higher education as part of New Jersey's strategy to combat COVID-19 and reduced the rate of community spread.³⁹ There was no timeline provided for when schools would be allowed to reopen, only that schools would stay closed until public health officials deemed it safe to return to in-person classes.⁴⁰

³⁹ Executive Order Number 104 was an extension of Executive Order No. 103, which declared a Public Health Emergency and State of Emergency due to the COVID-19 pandemic. Governor Murphy explained in Executive Order No. 104 that schools were being closed because the students, educators, and support staff often gather in close proximity in classrooms, hallways, cafeterias, and gymnasiums, making it impossible to social distance in classrooms configured pre-pandemic. Moreover, Executive Order Number 104 also stated that the Murphy administration was committed to ensuring that students from low-income families would continue to have school meals provided or subsidized. N.J. Exec. Order No. 104 (Mar. 16, 2020).

⁴⁰ This shutdown closed more than 2,500 schools in New Jersey and affected 1.4 million public school students and more than 115,000 teachers. This shutdown caught many schools by surprise and the schools needed to resort to sending home worksheets because remote learning was not widely utilized. Governor explained that part of the reason that the shutdown of schools was delayed was because some students only hot meal comes from their school lunches and a plan needed to be in place to ensure those meals were still provided. Matt Arco, [Coronavirus school closures: All N.J. public and private schools ordered to shut down by Wednesday](https://www.nj.com/coronavirus/2020/03/coronavirus-school-closures-all-nj-public-and-private-schools-ordered-to-shut-down-by-wednesday.html), NJ.Com (Mar. 16, 2020), <https://www.nj.com/coronavirus/2020/03/coronavirus-school-closures-all-nj-public-and-private-schools-ordered-to-shut-down-by-wednesday.html>

Further, while schools were closed by executive order, there was no executive order telling school districts how to continue to teach their students because each school district has some autonomy in conducting their regular business because of home rule. What this created was a system in which each school district was forced to create its own plan for remote learning with no set of standards created by the state government and school districts had to try to stay ahead of the anticipated move to remote learning. For instance, the Westfield school district anticipated moving to remote learning and had an early dismissal scheduled before Governor Murphy's executive order closing the school in order to allow the staff to "prepare for possible virtual instruction."⁴¹ Livingston decided to have the last day of in person instruction on March 13, 2020, and would shift to remote learning through March 27, 2020.⁴² Similarly, Paterson public school district had an early dismissal on March 13, 2020, in order to allow for teachers to work on lessons and instruction packets in the event that remote instruction was necessary.⁴³ Moreover, Camden City school district announced on March 13, 2020, that it would be closing its schools through at least March 31, 2020, to limit exposure.⁴⁴

While one might argue these varying closure dates seem minor, they foretold what would follow: districts with vastly different plans for how to proceed with learning during a global pandemic including remote learning, how to return to school (hybrid, in-person, totally virtual), and when it would be safe to do so for students and educators.

⁴¹ Caren Lissner, UPDATED Westfield Schools To Close Early March 18 For Coronavirus, Patch (Mar. 11, 2020), <https://patch.com/new-jersey/westfield/westfield-schools-close-early-march-18-prep-coronavirus>

⁴² Tapinto Livingston Staff, Livingston Public Schools Closed Beginning Friday Afternoon, TAP into Livingston (Mar. 12, 2020), <https://www.tapinto.net/towns/livingston/sections/education/articles/livingston-public-schools-closed-beginning-friday-afternoon>

⁴³ Press Release, Paterson Public Schools, PATERSON PUBLIC SCHOOLS KEEPS STUDENTS, PARENTS AND STAFF INFORMED OF COVID-19 PRECAUTIONS, PREPARATIONS FOR SCHOOL CLOSURES (Mar. 13, 2020) (on file with author).

⁴⁴ Steven Rodas, Camden Schools to Close Through March 31 to Safeguard Students Against Coronavirus, TAP into Camden (Mar. 13, 2020), <https://www.tapinto.net/towns/camden/sections/education/articles/camden-schools-to-close-through-march-31-to-safeguard-students-against-coronavirus>

IV. Technology and remote learning issues for lower-income families

While it was necessary for every school district to move to remote learning because of the danger associated with spreading COVID-19, not every student was able to fully participate in their daily classes. Students without access to highspeed internet or the proper technology have trouble fully participating in classes. While a lack of access to proper technology and internet was a problem occurring around the world⁴⁵, according to the state, 250,000 of the 2 million New Jersey public school students were without access to a table or a computer at home as of March 16, 2020.⁴⁶ Without proper internet access or the right equipment, many students were unable to adequately complete their assignments or participate in daily classroom time.⁴⁷

A study conducted by New America shows that while the world is becoming increasingly dependent on access to the internet, this is not a luxury that all families can afford. The families who were included in this study were those with household incomes below the national median and with children between three and thirteen.⁴⁸ Of those students, 82% have broadband internet access, 11% have mobile-only access, 3% have dial-up access, 2% have home access, but it was not readily apparent what kind of access, and 1% had no internet access at all.⁴⁹ Without proper

⁴⁵ Students across the globe were forced to rely on virtual learning because of the COVID-19 pandemic. Students who have no access to internet find it hard to continue learning in an increasingly online environment. Two thirds of the world's school-age children have no internet access at home, new UNICEF-ITU report says, UNICEF (Nov. 30, 2020), <https://www.unicef.org/press-releases/two-thirds-worlds-school-age-children-have-no-internet-access-home-new-unicef-itu>

⁴⁶ Matt Arco, Coronavirus school closures: All N.J. public and private schools ordered to shut down by Wednesday, NJ.Com (Mar. 16, 2020), <https://www.nj.com/coronavirus/2020/03/coronavirus-school-closures-all-nj-public-and-private-schools-ordered-to-shut-down-by-wednesday.html>

⁴⁷ At the start of the pandemic, it was estimated that 231,000 students in New Jersey lacked a computer or internet making participating in remote classes nearly impossible. That number was down to 9,281 as of December 23, 2020, which is still too many students who could not continue to learn in an online environment. Ted Sherman, More than 9,000 N.J. students are still without a computer, internet connection or both, state says, NJ.Com (Dec. 23, 2020), <https://www.nj.com/coronavirus/2020/12/more-than-9000-nj-students-are-still-without-a-computer-internet-connection-or-both-state-says.html>

⁴⁸ Vikki Katz, Victoria Rideout, Learning at Home While Under-connected, New America (Updated June 24, 2021), <https://www.newamerica.org/education-policy/reports/learning-at-home-while-underconnected/devices-and-internet-access-in-the-home>

⁴⁹ *Id.*

internet access, students were unable to participate in class and are falling further behind.

Moreover, while internet access is becoming more accessible to lower-income families, 18% of the same families who were part of the study had their service disconnected at least once during the pandemic.

This should not be surprising, as COVID-19 caused the economy to come to a screeching halt.⁵⁰ Around the world unemployment rose⁵¹, businesses closed⁵², and people around the globe fell into financial ruin. As a result of this economic disruption, individuals were unable to pay many of their bills, including, and for many most importantly, their internet service bill. Even more distressing is the fact that even though 82% of the lower-income families included in the study had broadband, 18% had their internet service disconnected because they were unable to pay their bills.⁵³ Unsurprisingly, without access to internet these students were unable to continue to participate in remote classes and fell further behind.⁵⁴

Camden City school district is a prime example of this issue. Camden City school district provided a FAQ which included items such as “[c]ompleting assignments on cracked tablets,

⁵⁰ Victoria Udalova, Pandemic Impact on Mortality and Economy Varies Across Age Groups and Geographies, United States Census Bureau (Mar. 8, 2021), <https://www.census.gov/library/stories/2021/03/initial-impact-covid-19-on-united-states-economy-more-widespread-than-on-mortality.html>

⁵¹ Unemployment rates rose from 3.8% in February to a staggering 13.0% in May. It is estimated that May might have even been as high as 16%, but due to challenges in measuring unemployment during COVID-19 was only recorded as 13.0%. Rakesh Kochhar, Unemployment rose higher in three months of COVID-19 than it did in two years of the Great Recession, Pew Research Center (June 11, 2020), <https://www.pewresearch.org/fact-tank/2020/06/11/unemployment-rose-higher-in-three-months-of-covid-19-than-it-did-in-two-years-of-the-great-recession/>

⁵² In New Jersey alone, roughly 30% of small businesses closed because of the economic disruption caused by COVID-19. Brent Johnson, About a third of N.J.'s small businesses have closed so far this year as COVID-19 fears mount, NJ.Com (Dec. 2, 2020), <https://www.nj.com/coronavirus/2020/11/about-a-third-of-njs-small-businesses-have-closed-so-far-this-year-as-covid-19-fears-mount.html>

⁵³ Vikki Katz, Victoria Rideout, Learning at Home While Under-connected, New America (Updated June 24, 2021), <https://www.newamerica.org/education-policy/reports/learning-at-home-while-underconnected/devices-and-internet-access-in-the-home>

⁵⁴ Students without internet access in danger of falling behind during school closures: “This is a crisis”, CBS News (Apr. 15, 2020), <https://www.cbsnews.com/news/coronavirus-students-internet-access-falling-behind-mass-school-closures-crisis/>

phones and sharing with 3 or more children – when will technology be available.”⁵⁵ The website that provided updates for additional deployment dates for technology (aside from the listed April 21st, April 22nd, and April 24th) was removed, but it is clear that the district was providing laptops and addressing the fact that some students may not have internet access.⁵⁶ Additionally, teachers were supposed to check in with at least four students daily and every student weekly.⁵⁷ Not only were check-in’s required, but there were numerous ways to turn in assignments such as sending pictures via text to teachers.⁵⁸ Even with numerous ways to submit assignments, the students in Camden were still struggling, the cracked tablet FAQ provided to students and parents proves at least that much.⁵⁹

While there were some early hiccups for Camden City school district, the district ultimately provided laptops with internet access for students.⁶⁰ The students who lacked internet access were then able to participate in class once the laptops were provided, but before they were able to obtain the laptops, likely had to use a smartphone with a data plan.⁶¹ Additionally, many

⁵⁵ Family and Community FAQs, Camden City School District, http://www.camden.k12.nj.us/news___announcements/return_to_school_plan___coronavirus_information/family_and_community_f_a_qs

⁵⁶ The following language was provided under the Camden City School District Community and Family FAQs: “[w]e will distribute laptops on Tuesdays, Wednesdays, and Fridays. All students in K-12 will receive devices. Each site will be equipped with guidance about a Comcast program to support students without internet access.” The students of Camden were obviously not operating with the proper technology from the start and the students within the district suffered. *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ According to the Family and Community FAQs, students were given a district Chromebook or laptop to support remote learning. The devices were given out the week of April 20, 2020, to all high school students followed by K-8 schools in the subsequent weeks. While it was absolutely necessary to get these students this equipment, these students were still without the technology for the better part of a month of remote learning. Furthermore, while these laptops were equipped with a Comcast program to support students without internet access, the targeted students had to attempt to participate in class without any internet access. Those students who were already at a disadvantage because they had a lack of access were at an additional disadvantage. *Id.*

⁶¹ 11% of families who were part of the newamerica.org study had mobile-only internet access, and pair that with the fact that 22% of all families surveyed said there were too many individuals in their household that needed to use the mobile device, so no one had enough time on the smartphone or table. Moreover, 22% of all families surveyed with a computer had the same issue, they were too many individuals who needed to use the computer so not one individual had enough time on the device to adequately complete their assignments. Further, 69% complained that their computer was “too old or ran too slowly”. Vikki Katz, Victoria Rideout, Learning at Home While Under-

lower-income families who reported having broadband internet access had their access disconnected at least once during the pandemic and also many of those who needed to utilize their smartphone data plan for school reported hitting their data limits at least once during the pandemic.⁶² Unfortunately, technology issues were common all over the country, not just in Camden City school district, as remote learning became more common.

V. Reopening schools in New Jersey

District's reopening plans differed throughout New Jersey because the New Jersey Department of Education only provided guidelines for reopening, not a concrete plan to be implemented⁶³. This resulted in vastly different school district level plans to reopen schools and return to in-person learning. Some of the plans implemented worked well, while others failed miserably.

On June 26, 2020, the New Jersey Department of Education released “The Road Back: Restart and Recovery Plan for Education” as guidance for school districts to reopen while ensuring the safety of students and faculty.⁶⁴ This guidance expected each district to develop a reopening plan for the Fall of 2020⁶⁵, yet reopening schools proved to be a huge task for schools in New Jersey and across the nation⁶⁶. Even more difficult was remaining open after returning to

connected, New America (Updated June 24, 2021), <https://www.newamerica.org/education-policy/reports/learning-at-home-while-underconnected/>

⁶² While 75% of individuals with income below the poverty line reported having broadband service, 31% had their service cut during the pandemic. Additionally, while almost all families have a smartphone or a table, 37% reported hitting the data limits on their mobile plans at least once during the pandemic. These students, already considered under connected, had to struggle to keep up with classes and assignments. *Id.*

⁶³ New Jersey Department of Education, The Road Back Restart and Recovery Plan for Education, Official Site of the State of New Jersey (June 2020), <https://www.nj.gov/education/reopening/NJDOETheRoadBack.pdf>

⁶⁴ It's worth noting that within this plan there are “Anticipated Minimum Standards”, which by the plain language reading, means that there are bare minimum standards required to reopen and some districts should, and are likely encouraged to, do more than what is set out in these minimum standards. New Jersey Department of Education, The Road Back Restart and Recovery Plan for Education, Official Site of the State of New Jersey (June 2020), <https://www.nj.gov/education/reopening/NJDOETheRoadBack.pdf>

⁶⁵ *Id.*

⁶⁶ Amelia Nierenberg et al., Schools Briefing: The State of Play for K-12, The New York Times (Sept. 9, 2020), <https://www.nytimes.com/2020/08/17/us/k-12-schools-reopening.html>

in-person learning because of the rise in COVID-19 cases at the start of the 2020-2021 academic year.⁶⁷ This task proved to be difficult for every district as cases in New Jersey were just beginning to creep back up from the summer lows.⁶⁸ Not only did schools have to keep in mind the increasing transmission rates, but they also had to ensure that that returning back to in-person learning could be done safely, not just for the sake of returning to the classroom. Moreover, classrooms had to be organized for social distancing, some districts needed to split students into groups for hybrid learning because of space constraints, and new equipment had to be utilized such as new ventilation systems, in some instances plexiglass was installed between students and teachers, as well as the prevalence of masks on teachers and students alike. District's reopening plans differed throughout New Jersey, and some plans implemented to get students back into the classrooms worked better than others.

Westfield is a prime example of what worked relatively well getting students back into the classroom. Westfield school district returned to Hybrid combination of in-person and remote instruction on September 10, 2020.⁶⁹ When the district reopened, like every other district, new policies and procedures were implemented to reduce the spread of COVID-19 and ensure the safety for all teachers, staff, and students.⁷⁰ The Westfield Board of Education implemented the

⁶⁷ As early as September 2020, just as some schools were beginning to switch from their remote learning that ended the 2019-2020 school year, positive COVID-19 cases forced schools to switch back to remote learning in order to maintain the safety of educators and students alike. Allison Pries, [Here's the growing list of N.J. schools switching to remote because of COVID-19 cases](https://www.nj.com/education/2020/09/heres-the-growing-list-of-nj-schools-switching-to-remote-because-of-covid-19-cases.html), NJ.Com (Sep. 15, 2020), <https://www.nj.com/education/2020/09/heres-the-growing-list-of-nj-schools-switching-to-remote-because-of-covid-19-cases.html>. Moreover, Governor Murphy signed Executive Order No. 175 which removed the requirement that all schools remain closed due to the COVID-19 pandemic but issued instructions for schools that decided to fully reopen or move to a hybrid model, foreshadowing the difficulties ahead for schools at one of the worst points of the pandemic. N.J. Exec. Order No. 175 (Aug. 13, 2020).

⁶⁸ COVID-19 cases would peak in November 2020 and December 2020 before coming to the all-time worst confirmed cases rate in January 2021, right in the middle of the academic year. [New Jersey COVID-19 Dashboard, Cases and Trends](https://www.nj.gov/health/cd/topics/covid2019_dashboard.shtml), State of New Jersey Department of Health (last visited Aug. 12, 2021), https://www.nj.gov/health/cd/topics/covid2019_dashboard.shtml.

⁶⁹ [Westfield Public School Students Return to Classroom](https://patch.com/new-jersey/westfield/westfield-public-school-students-return-classroom), Patch (Sept. 12, 2020), <https://patch.com/new-jersey/westfield/westfield-public-school-students-return-classroom>

⁷⁰ Westfield Public Schools, [Restart and Recovery Plan 5-6](#) (2020).

state guidelines, even going above and beyond what was required. Not only were students and staff members required to wear face coverings, but any student or staff who were experiencing COVID-19 symptoms, or any other illness, were required to stay home, hand sanitizing stations were provided throughout the district's school buildings, parents were not allowed to visit classrooms even to drop items off, seating was social distanced, when social distancing was not possible, physical barriers were installed, HVAC systems were outfitted with fresh air components, handwashing *was required* periodically throughout the day, no materials were to be shared, lockers were not used at any school, and schedules were changed in order to limit students in common areas.⁷¹ Moreover, students start, and dismissal times were staggered to minimize student congestion.⁷²

While the policies and procedures put in place at Westfield public schools obviously helped to curb the spread of COVID-19, maintaining fully in person learning proved to be a difficult task.⁷³ Not only was remaining fully open difficult but returning to fully in-person was equally difficult.⁷⁴ The Superintendent of Westfield Public Schools made sure to continue to provide information to parents in order to ensure that every student felt safe and confident in the choices being made⁷⁵, especially as guidelines from the federal government continuously

⁷¹ *Id.* at 11-14

⁷² *Id.* at 14

⁷³ Westfield High School needed to switch to virtual instruction on September 16, 2020, after having seven students test positive. The High School returned to the hybrid plan implemented to start the year on October 1st. Allison Pries, [Here's the latest list of schools that have suspended in-person classes because of COVID-19 cases](https://www.nj.com/education/2020/10/heres-the-latest-list-of-schools-that-have-suspended-in-person-classes-because-of-covid-19-cases.html-2), NJ.Com (Oct. 23, 2020), <https://www.nj.com/education/2020/10/heres-the-latest-list-of-schools-that-have-suspended-in-person-classes-because-of-covid-19-cases.html-2>

⁷⁴ The Westfield Superintendent released an email on February 26, 2021, that the Board of Education was continuing to roll out the plan to reopen schools more fully as promised. The plan outlined in the letter was to have all elementary students in Grades 1 through 5 returned to five school days a week by March 22, 2021. Still Grades 6 through 8 were not back in school, but still this was a welcome change for students and parents alike. Letter from Dr. Dolan, Superintendent, Westfield Public Schools, to Westfield Public Schools Community (Feb. 26, 2021) (on file with author).

⁷⁵ See letter from Dr. Dolan, Superintendent, Westfield Public Schools, to Westfield Public Schools Community (Feb. 5, 2021) (on file with author).

changed⁷⁶, including the minimum required distance for social distancing changing between six and three feet as more research was conducted.⁷⁷ Yet, the school district maintained its in-person learning, albeit with some hiccup. Why could this plan not have been implemented everywhere in New Jersey? Why were some districts struggling to get students in the building at all, yet others, such as Westfield Public Schools, were able to return to the classroom at least on a part time basis? The hybrid model and safety practices employed by Westfield Public Schools were by no means revolutionary. Schools throughout the state were taking temperatures, requiring masks, upgrading ventilation systems, and using hybrid models in order to return to in-person learning. Yet, as you will see, some districts were unable to return to learn as successfully as Westfield Public Schools.

Another prime example of a New Jersey school district successfully returning to in-person learning is Livingston Public Schools. The first day of in-person learning for grades seven through twelve students in Livingston was October 26, 2020.⁷⁸ This was the first time the schools were open for learning since the schools were closed in March due to COVID-19. Livingston, similar to Westfield, utilized a hybrid instructional model blending virtual and in-person learning comprised of smaller cohorts of students in-person with students attending classes virtually.⁷⁹ The Livingston school district planned to increase in-person attendance in

⁷⁶ The Center for Disease Control has continuously updated its guidance to assure that returning to the classroom was safe to do. As the science has provided more information, the guidelines have been updated and studies have shown that, not only do students benefit from in-person learning but returning to the classroom can be safe if done properly. Guidance for COVID-19 Prevention in K-12 Schools, Centers for Disease Control and Prevention (last updated Aug. 5, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html#:~:text=Indoors%3A%20CDC%20recommends%20indoor%20masking,to%20wear%20masks%20when%20outdoors>.

⁷⁷ CDC Updates Operation Strategy for K-12 Schools to Reflect New Evidence on Physical Distance in Classrooms, Centers for Disease Control and Prevention (Mar. 19, 2021), <https://www.cdc.gov/media/releases/2021/p0319-new-evidence-classroom-physical-distance.html#:~:text=CDC%20continues%20to%20recommend%20at,worn%2C%20such%20as%20when%20eating>.

⁷⁸ Letter from Matthew J. Block, Superintendent of Schools, Livingston Public Schools, to Livingston Public Schools families (Sept. 24, 2020) (on file with author).

⁷⁹ Livingston Board of Education, Restart and Recovery Plan to Reopen Schools 3 (2020).

stages as they learned more about the model during the early stages.⁸⁰ The option to be fully remote was still available and would have to be chosen by August 14, 2020, on a survey provided by the district.⁸¹ Transportation proved to be another issue because it is difficult to social distance when filling up buses with children on the way to school.⁸² Masks were worn at all times, social distancing required to the extent it was even possible on a bus full of children, temperatures were taken before boarding the bus, the buses were regularly disinfected, and bus windows were to remain open except in inclement weather.⁸³ Moreover, as was the case in classrooms around the country, classrooms had to be configured to maintain social distancing, traffic patterns were configured for inside the buildings to minimize student contact and maintain social distancing.⁸⁴ Additionally, the ventilation systems were checked by “certified HVAC specialists” and retrofitted with “filters with enhanced MERV 13 ratings”, the HVAC systems were going to be cleaned regularly and air filters changed per expert recommendations, and windows were to be open whenever possible in order to increase ventilation in the buildings.⁸⁵ All these policies and procedures put into place ensured that the school year went as smoothly as possible considering the state of the world. Except for winter break⁸⁶, Livingston was able to remain open for most of the school year. This was made possible by continuing to follow the guidance of public health officials as new information and guidance became available.⁸⁷

⁸⁰ *Id.*

⁸¹ *Id.* at 3-4.

⁸² *Id.* at 5.

⁸³ *Id.* at 5.

⁸⁴ *Id.* at 7

⁸⁵ *Id.*

⁸⁶ On November 11, 2020, the Superintendent issued a letter to all parents explaining that the schools will open for remote instruction only for two weeks following winter break in light of the expected holiday travel and in order to attempt to remain open for the remainder of the school year. Letter from Matthew J. Block, Superintendent of Schools, Livingston Public Schools, to Livingston Public Schools Community (Nov. 11, 2020) (on file with author).

⁸⁷ In a letter dated December 11, 2020, the Livingston Superintendent updated its quarantining procedures. Entire cohorts of students were no longer required to be quarantined as long as the contact tracing done could definitively prove that students maintained a distance of six feet and were masked for the entire duration of the class. Letter from

Following this guidance proved fruitful, as more students were able to return in greater numbers for kindergarten through second grade on March 15 and third grade through twelfth grade on April 5, 2021, in grades three through twelve⁸⁸, with fully in person learning expected to return on May 10 for all students.⁸⁹ Livingston Public Schools were able to successfully, and safely, return to the classroom. Their success pinpoints what school districts should have done to return to the classroom safely and effectively. All school districts should have implemented similar plans to social distance, upgrade ventilation systems, etc., to ensure returning to the classroom was achievable and safe for students and faculty.

Yet all districts were not the same story of success as Livingston and Westfield. There were also examples on the opposite end of the spectrum and Camden was one such example. Camden City School District closed its doors on and did not return for the 2019-2020 school year.⁹⁰ After the 2019-2020 school year, Camden City School District created a Reopening Task Force, which considered different learning models before ultimately deciding on a hybrid model to begin the 2020-2021 school year.⁹¹ This model should have enabled students to have a blend of in-person and remote learning, while still allowing for students to opt-out of in-person

Matthew J. Block, Superintendent of Schools, Livingston Public Schools, to Livingston Public Schools Community (Dec. 11, 2020) (on file with author).

⁸⁸ Not only were additional students able to return to classrooms, but any individuals who could show proof of vaccination were no longer required to quarantine if they had traveled during spring break. This did not change the policy that students who did not feel well were required to stay home, and students were still required to complete the “LPS Daily COVID Tracker form” each day. Letter from Matthew J. Block, Superintendent of Schools, Livingston Public Schools, to Livingston Public Schools Community (Apr. 4, 2021) (on file with author).
moduleinstanceid=47162&dataid=109415&FileName=Dr%20Block%204-4-2021.pdf

⁸⁹ Livingston Public Schools, [Spring Forward at LPS 2021 Our Blueprint to Increase In-person Learning for all Students](https://www.livingston.org/site/handlers/filedownload.ashx?moduleinstanceid=46480&dataid=109528&FileName=Spring%20Forward%20LPS%203-5-2021.pdf) (last visited Aug. 12, 2021), <https://www.livingston.org/site/handlers/filedownload.ashx?moduleinstanceid=46480&dataid=109528&FileName=Spring%20Forward%20LPS%203-5-2021.pdf>

⁹⁰ [Family and Community FAQs](http://www.camden.k12.nj.us/news___announcements/return_to_school_plan___coronavirus_information/family_and_community_f_a_qs), Camden City School District (last visited Aug. 12, 2021), http://www.camden.k12.nj.us/news___announcements/return_to_school_plan___coronavirus_information/family_and_community_f_a_qs

⁹¹ [Return to School Plan 2020-21](http://www.camden.k12.nj.us/news___announcements/return_to_school_plan___return_to_school_plan_2020-21), Camden City School District (July 28, 2020), http://www.camden.k12.nj.us/news___announcements/return_to_school_plan___return_to_school_plan_2020-21

learning completely.⁹² While the updates pertaining to return to in-person learning via the hybrid model have since been removed, it is absolutely clear that no student returned to the building before April 12, 2021.⁹³

Camden's first day of hybrid in-person learning was April 19, 2021, and it was only for students in preschool through second grade and specific special education students.⁹⁴ At some point in early May, the next phase of students to join in the hybrid learning model would be all students preschool through eighth grade, and these students would be assigned a schedule for which two days.⁹⁵ At this point, High School Students had not received word when they would be able to begin hybrid instruction under the model being utilized in Camden, but the letter from the Superintendent stated that a determination would be made in the coming weeks.⁹⁶ Phase two of hybrid learning began on May 17, and grades three through 8 were able to return to the classroom on a part-time basis, but this did not include high school students.⁹⁷ High school students did not return to the classroom for the 2020-2021 academic year, and instead finished the year remote.⁹⁸

Students who were unable due to the district's rollout of the hybrid learning suffered. They were not able to be with their friends, be present in a classroom, and some of them never stepped foot inside the school in their final year of high school, something that many students look back upon fondly as they become adults. How is it that Livingston and Westfield were able to return back to the classroom with relative ease, yet Camden City Schools struggled to get

⁹² *Id.*

⁹³ All updates that may have been available have since been replaced with the most recent guidance from the superintendent. The headline provided at the link states students would be remote until April 12, 2021. *Id.*

⁹⁴ Letter from Katrina T. McCombs, State Superintendent, to Camden Parents and Families (Apr. 21, 2021) (on file with author).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Letter from Katrina T. McCombs, State Superintendent, to CCSD Families (May 10, 2021) (on file with author).

⁹⁸ *Id.*

students back into the classroom until the latter part of the 2020-2021 academic year, and never had a high school student return to the classroom? The short answer is that Home Rule affects more than just providing municipalities with their own school districts. These districts, with poorer constituents, cannot raise the same amount of money from taxes that the wealthier districts, such as Westfield and Livingston. This amounts to underfunded districts that struggle to provide the necessities for their students to thrive. The COVID-19 crisis only made this more obvious when the districts were unable to install the necessary equipment to maintain a safe environment for the students and educators. These issues are left to the municipalities and results in districts such as Westfield and Livingston with some of the highest property taxes in the state, to prosper, while places such as Camden and Paterson continue to struggle.⁹⁹

The story for Paterson public school district is an extremely sad example of how Home Rule, and thus New Jersey is failing students from lower-income backgrounds, while the wealthier districts continue to have all the necessary equipment to return to in-person learning safely and quickly.

Paterson public schools did not return to in-person learning during the 2019-2020 school year, but instead planned to reopen schools for in-person learning for the 2020-2021 school year. On June 26, 2020, the Superintendent issued a press release about the guidelines of reopening schools, stating that the district was “on the right track” based on guidance received from the state.¹⁰⁰ On July 30, 2020, Paterson public schools issued its reopening plan “Keeping The

⁹⁹ Property taxes are collected by the municipality and are used for a number of things, including education. There are a total of 565 municipalities in New Jersey and the difference in taxes illustrates the point that Home Rule can be detrimental to students in New Jersey who are from lower-income areas. Average Westfield property taxes are \$17,166, which ranks 24 of 565. Average Livingston property taxes are \$16,005, which ranks 34 of. Average Paterson City property taxes are \$8,245, which ranks 299 of 565. Average Camden City property taxes are \$1,811, which ranks 563 of 565. Tom Davis, Every NJ Town’s Average Property Tax Bill In New 2021 List, Patch (Feb. 1, 2021), <https://patch.com/new-jersey/across-nj/every-nj-towns-average-property-tax-bill-new-2021-list>

¹⁰⁰ The June 26, 2020, press release explained that the district’s reopening plans created by the newly created Reopening of Schools Task Force contained many of the same items that were issued in the state’s guidelines.

Promise: The District’s Restart Plan for 2020-2021” which included information on how the new instructional model was planned to be a hybrid model, according to the state’s guidance.¹⁰¹ This instructional model promised to allow the schools to continue social distancing, return to in-person learning on at least a part time basis, and also enable students to opt out of in-person learning and instead continue the virtual instruction.¹⁰² Paterson public school district was planning for three different cohorts in order to maintain this hybrid model to enable social distancing, while still allowing for children to be remote if need be.¹⁰³ On August 3, 2020, Paterson public school district released a letter to all parents to explain the three Cohorts available for leaning for the upcoming school year¹⁰⁴ and also provided an online form¹⁰⁵ in order to allow students to opt into virtual learning for the 2020-2021 school year.

Unfortunately, while all signs pointed to the resumption of in-person learning, this would never come to fruition. On August 12, 2020, the Paterson public school district voted to delay returning to the school buildings explaining that, as long as it was safe to do so, the district

Further, the Superintendent explained that data and safety were a priority and Paterson public schools would be prepared to open in September. Press Release, Paterson Public Schools, SUPERINTENDENT SHAFER SAYS THE DISTRICT’S EFFORTS TO REOPEN SCHOOLS REFLECT MANY OF STATE’S GUIDELINES FOR REOPENING, Paterson Public Schools (June 26, 2020) (on file with author).

¹⁰¹ The restart plan for 2020-2021 originally issued on July 30, 2020, contains an additional revision dated June 3, 2021, labeled “Remote Learning Plan”, which is noteworthy because the schools did not open for in-person learning for the 2020-2021 school year. The plan highlights when students were supposed to return, even giving September 14, 2020, through September 21, 2020 as the first full week of in-person learning. The reopening plan’s name is almost ironic because the students were never able to actually return, and Paterson public schools were not able to keep the promise. Paterson Public Schools, Keeping The Promise 6 (June 7, 2021).

¹⁰² *Id.* at 38.

¹⁰³ Paterson was going to be grouped into three Cohorts. Cohort A was scheduled for in person learning on Monday and Wednesday with distance learning on Tuesday, Thursday, and Friday. Cohort B was scheduled for in person learning on Monday and Wednesday with distance learning on Tuesday, Thursday, and Friday. Cohort C was to be the “All Virtual” students. Inevitably, all students would be in Cohort C as Paterson public school district never had in-person learning for the 2020-2021 school year. *Id.*

¹⁰⁴ Letter from Paterson Public Schools to Parents & Guardians (Aug 2, 2020) (on file with author).

¹⁰⁵ The Google Form initially prepared by the school district is obviously no longer accepting responses, so the link provided by the district only states Cohort C Request Form 2020-201 “the form Cohort C request Form 2020-2021 is no longer accepting responses.” COVID-19 (novel coronavirus) District Updates, Paterson Public Schools (Aug. 3, 2020), <https://docs.google.com/forms/d/e/1FAIpQLSeuXhWYj77p83uCQ3hKddwzNgq7W1bMrHNEHLFvF2AmSKlsHQ/closedform>

would move to the Hybrid Model on November 2, 2020.¹⁰⁶ From here, the writing was on the wall, students were going to continue learning virtually for the foreseeable future. The Paterson public schools would keep extending the virtual learning all the way through May 3, 2021, with another assessment of the “local pandemic conditions” to be done on April 14th to determine when students can return safely to school.¹⁰⁷ The Paterson Board of Education cited the increasing number of COVID-19 cases among students and staff in the region since December as part of the reason why students have not yet returned.¹⁰⁸ While it is certainly true that COVID-19 cases were high at the time of the press release, why were other schools able to remain open during this time and even returned to learn many months before this press release was ever published? While the Paterson Board of Education may cite protecting students and staff as the reason for delaying returning to in-person learning¹⁰⁹, other schools in the area were able to successfully return safely and effectively. The schools that were able to do this safely and effectively just happen to be the school districts that have enough money to ensure the safety of their staff and the students in the district. Although it is unclear if Paterson public schools did

¹⁰⁶ While it is understandable that in-person learning was delayed in order to ensure the safety of the students and the educators, the fact that other school districts were able to reopen to start the year makes it a tougher pill to swallow. Under Home Rule, the school district is under its own authority and is able to make these decisions. Unfortunately for the students in Paterson public schools, the decision was made to delay, and in-person learning would have to wait. Letter from Eileen F. Shafer, Superintendent of Schools, to Parents and Guardians (Aug. 20, 2020) (on file with author).

¹⁰⁷ Press Release, Paterson Public Schools, PATERSON BOARD OF EDUCATION VOTES TO EXTEND REMOTE LEARNING UNTIL MAY (Feb. 10, 2021) (on file with author).

¹⁰⁸ Additionally, the Board of Education President made the following statement, which was published in their February 2021 press release. “The increases of in-school COVID-19 cases among students and staff in our region since December are a clear indication that it simply not safe for all students and staff to return to district school buildings.” How can in-person learning be unsafe for the students of Paterson due to increases in the Region, yet Westfield Public Schools were learning in person at the time of this press-release. Westfield and Paterson are approximately 25 miles apart. It is not clear what “region” Paterson is referring to, but Westfield Public Schools must not be part of this region referred to. Further, The New Jersey Department of health confirmed 142 in-school outbreaks with 671 cases linked to students, teachers, and staff. While the 671 confirmed cases in schools is concerning, it is hard to stand behind that as the reason for deciding to students out of schools for the majority of the academic year. *Id.*

¹⁰⁹ *Id.*

eventually open, it is clear that they did not meet the May 3, 2021, opening date, but instead were opted for a June 8 opening date.¹¹⁰

The above stories exemplify the issues that New Jersey faces because of the system that it has in place. Home Rule allows for different schools come to different decisions. These school districts are autonomous, and those with the least financial resources are left to fend for themselves.¹¹¹ Why should these districts continue to operate under home rule when districts such as Westfield and Livingston continue to outshine Camden and Paterson, not only in test scores as shown earlier, but also when returning to in-person learning. The wealthier districts were able to give their students proper protective equipment and return to learn for the 2020-2021 academic year. Not only are these students better off in the era of COVID-19 because of the protective equipment and plans put into place within these districts, but one cannot forget that these students consistently have higher test scores, have more students who are college ready, send more students to college, and better prepare their students for life after high school. If we continue to allow for the wealthier districts to operate autonomously lower-income students will continue to be left behind. For a state that makes a point to brag about the diversity of the citizens, the system of education is doing a disservice to many of those students from the same diverse backgrounds they cherish.

¹¹⁰ While the Paterson public school district website is silent on the return to school after the February 10, 2021, update extending the remote learning to May 3, it seems that students were finally expected to return on June 8 beginning with “select Special Education and English Language Learnings programs.” New Jersey coronavirus update: Paterson Public Schools announce 1st dates in reopening plan, abc7NY (May 5, 2021), <https://abc7ny.com/paterson-reopening-schools-board-of-education-special/10586121/>

¹¹¹ The Paterson Education Association was fighting the reopening on June 1 because of issues with the ventilation system. With an airborne virus such as COVID-19, if the ventilation system does not function properly, it could put the entire school at risk. While it is understandable for the teachers to protest the opening of schools, it is an absolute failure to the students at the school district that returning to school could be jeopardized by the ventilation system installed. News 12 Staff, Paterson teachers union says school conditions are not safe for June 1 return, news12 New Jersey (May 28, 2021), <https://newjersey.news12.com/paterson-teachers-union-says-school-conditions-are-not-safe-for-june-1-return>

VI. Comparing New Jersey to Hawaii

Hawaii provides a contrast to New Jersey's patchwork response and demonstrates how a state unified effort to respond to the COVID crisis benefited children. Hawaii's unified effort spearheaded by the Hawaiian Department of Education included implementation of state-wide policies for remote learning¹¹², as well as a unified reopening plan when the time finally came.¹¹³ Moreover, unlike the varied closing dates and different temporary restarts for school districts in New Jersey, in Hawaii, all policies were implemented statewide by the Department of Education.¹¹⁴

Similar to New Jersey, on March 16, 2020, the Governor of Hawaii extended the spring break through March 27, 2020, in order to allow for additional time to plan and implement for social distancing within schools, arrange for professional development to support modified operations, and to clean the schools thoroughly to ensure COVID-19 is not spread.¹¹⁵ During the initial outbreak of COVID-19, while Governor Murphy finally executed the order to close all

¹¹² The Hawaii Department of Education provided a letter on March 27, 2020, explaining schools should plan to ensure the continuation of education in the event of a prolonged school closure caused by the COVID-19 pandemic. The letter briefly outlined what schools should utilize in the event of prolonged school closures, as well as providing resources to aid schools in their move to online learning. Letter from Alisa Bender, Interim Assistant Superintendent, to Complex Area Superintendents et al., (Mar. 27, 2020) (on file with author).

¹¹³ While this site originally provided the School Reopening Plan for the 2020-2021 school year, the link has since been deactivated although it still appears in the Google search function. (last visited July 7, 2021) <https://www.hawaiipublicschools.org/ConnectWithUs/MediaRoom/PressReleases/Pages/school-year-2020-21.aspx>

¹¹⁴ The Hawaii Department of Education worked with the Hawaii State Teachers Association to create and provide policies that would enable students to continue to learn as well as eventually return safely to schools. Announcements were made frequently to keep the public apprised of the situation which could change at a moment's notice as a result of the COVID-19 crisis. [HIDOE memos related to coronavirus \(COVID-19\)](https://www.hstta.org/news/recent-stories/hidoe-memos-related-to-coronavirus-covid-19/), Hawaii State teachers Association (July 29, 2021), <https://www.hstta.org/news/recent-stories/hidoe-memos-related-to-coronavirus-covid-19/>

¹¹⁵ Both New Jersey and Hawaii closed schools in an attempt to combat the COVID-19 pandemic, but New Jersey's unified effort ended there. All of the remaining facets of remote learning in the COVID-19 era were left to individual school districts which led to an array of different approaches to remote learning throughout New Jersey. Hawaii on the other hand had a unified effort from the start. Conversely, for Hawaii, all changes were made by the Hawaii Department of Education, with help and input from the Hawaii State Teachers Association. This [HAWAII DOE EXTENDS SPRING BREAK THROUGH MARCH 27 FOR ALL PUBLIC SCHOOLS](https://governor.hawaii.gov/newsroom/latest-news/hawaii-doe-extends-spring-break-through-march-27-for-all-public-schools/), Governor of the State of Hawai'i (Mar. 16, 2020), <https://governor.hawaii.gov/newsroom/latest-news/hawaii-doe-extends-spring-break-through-march-27-for-all-public-schools/>

schools and move to remote learning, each school was acting under its own rules and interpreting health official's guidance in order to create a safe learning environment for students.¹¹⁶

On March 19, 2020, the Hawaii's Department of Education issued a letter to the Hawaii State Teachers Association Executive Director to outline Hawaii's COVID-19 Preparation and Response.¹¹⁷ The Department of Education discussed many issues that were of concern to teachers. This included requiring teachers to work remotely, but also allowing any teacher without the proper equipment to obtain the equipment from their classrooms on specific days¹¹⁸ (at this point no one was allowed in the schools because of the outbreak of COVID-19). Further, the Hawaii Department of Education noted that digital equity issues exist and explained that teachers could not penalize students for failing to complete assignments during school closures.¹¹⁹ Teachers were only required to work more than the required seven-hour workday, and they were not required to provide their personal information such as their cell phone number or personal email to students, parents, or colleagues.¹²⁰ Moreover, anticipating the difficult tasks ahead, the Hawaii Department of Education scheduled trainings during the extended spring break for administrators and teachers to prepare for remote learning in the wake of COVID-19 school closures.¹²¹ While New Jersey schools were closed per the Governor's orders, how each district implemented remote learning was at the discretion and direction of the local school district.

As the COVID-19 pandemic continued to require remote learning, the Hawaii Department of Education and the Hawaii State Teachers Association continued working on putting the best plan forward. On April 24, 2020, the Hawaii Department of education issued an

¹¹⁶ N.J. Exec. Order No. 104 (Mar. 16, 2020)

¹¹⁷ Letter from Christina M. Kishimoto, Superintendent, State of Hawai'i Department of Education, to Wilbert Holck, Exec. Dir., Hawaii State Teachers Ass'n (Mar. 19, 2020) (on file with author).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

addendum to their earlier agreement because of the unanticipated prolonged school closures as a result of the COVID-19 pandemic.¹²² This letter included the continuation of remote learning for the duration of the 2019-2020 school year, outlining how to accomplish the “End-of-Year Checkout Procedures” (turning in keys, packing classrooms, etc.), guidelines for entering the schools safely, safety precautions that need to be followed, as well as exceptions for those teachers who are were at a high risk of contracting COVID-19.¹²³

Similar to New Jersey, Hawaii also struggled to get their students the technology necessary to continue online learning. The nationwide shift to remote learning put a strain on families who lacked the necessary technology to participate, and the Hawaii Department of Education understood this hardship.¹²⁴ The department of education committed \$12 million to purchase new computers for students in need as well as \$3 million for mobile hotspots for anyone without internet.¹²⁵ This was a massive investment in order to enable their students to learn remotely, amounting to roughly one third of the \$43 million the department of education received through the CARES Act.¹²⁶ Yet, even with such a huge investment in technology for students, supply chain problems made it difficult to get the technology in the hands of students.¹²⁷

¹²² Letter from Christina M. Kishimoto, Superintendent, State of Hawai'i Department of Education, to Wilbert Holck, Exec. Dir., Hawaii State Teachers Ass'n (Apr. 24, 2020) (on file with author).

¹²³ *Id.*

¹²⁴ See letter from Superintendent, State of Hawai'i Department of Education mandating that “teachers shall not penalize students for failing to complete the learning and enrichment activities during school closures” due to digital equity issues. Letter from Christina M. Kishimoto, Superintendent, State of Hawai'i Department of Education, to Wilbert Holck, Exec. Dir., Hawaii State Teachers Ass'n (Mar. 19, 2020) (on file with author).

¹²⁵ Suevon Lee, [DOE Struggles To Get Students The Technology They Need For Online Learning](https://www.civilbeat.org/2020/08/doe-struggles-to-get-students-the-technology-they-need-for-online-learning/), Honolulu Civil Beat (Aug. 17, 2020), <https://www.civilbeat.org/2020/08/doe-struggles-to-get-students-the-technology-they-need-for-online-learning/>

¹²⁶ *Id.*

¹²⁷ After ordering almost 22,000 devices for students, the department of education as waiting on 2,500 Chromebooks which were delayed due to supply chain issues plaguing the country. The Department of Education still needed to order additional devices for students, but the additional amount was not clear. With approximately 85,000 students qualifying for free or reduced lunch, it is likely that a large portion of those students would require some sort of technology, and it's estimated that approximately 88,500 students could potentially require assistance. Suevon Lee,

Hawaii differed from New Jersey in many respects, but nothing more prevalent than its use of a single unified reopening plan, which outlined health and safety, staff capacity in schools, faculty and staff trainings, and school designs.¹²⁸ While this reopening plan took a lot of discussion between the Department of Education and the Hawaii State Teachers Association,¹²⁹ the state was able to confirm and implement a unified plan for reopening which benefited the students of Hawaii. On July 13, 2020, the Department of Education issued a letter clarifying and outlining the Memorandum of Understanding reached with the Hawaii State Teachers Association. This letter outlined social distancing requirements, revisions to the Return to Learn: School Reopening Plan, as well as an exception request forms for school campuses that could not undergo physical distancing on school campuses.¹³⁰

While the reopening plan had to continuously change as COVID-19 continued to wreak havoc on the world, there was still a single unified effort which kept every school district on the same page in terms of safely reopening, implementing different types of learning, ensuring all students were able to actually learn remotely, and ensuring the safety of teachers and students. The implementation of a single plan created an easier way to ensure that the schools were able to return to learn and no children were left behind. Hawaii began reopening schools, on a rolling basis and, in March of 2021, the superintendent of Hawaii’s public schools explained that the goal was to use the summer to prepare for “100% full (in-person learning) by next year [2021-2022 school year]. The next school year is where we’re hoping to have everyone back on

DOE Struggles To Get Students The Technology They Need For Online Learning, Honolulu Civil Beat (Aug. 17, 2020), <https://www.civilbeat.org/2020/08/doe-struggles-to-get-students-the-technology-they-need-for-online-learning/>

¹²⁸ While this site originally provided the School Reopening Plan for the 2020-2021 school year, the link has since been deactivated. (last visited July 7, 2021) <https://www.hawaiipublicschools.org/ConnectWithUs/MediaRoom/PressReleases/Pages/school-year-2020-21.aspx>

¹²⁹ Letter from Christina M. Kishimoto, Superintendent, State of Hawai’i Department of Education, to Wilbert Holck, Exec. Dir., Hawaii State Teachers Ass’n (July 13, 2020) (on file with author).

¹³⁰ *Id.*

campus.”¹³¹ Currently, Hawaii schools are scheduled to be in person beginning on August 3, 2021, for the 2020-2021 school year after having no reported transmissions of COVID-19 at any Hawaii State Department of Education facility since June 2020.¹³² The lack of transmission for almost an entire year shows how successful a unified effort can be when implemented correctly.

New Jersey and Hawaii had some major differences in implementing both remote learning and returning to in-person learning. The most striking difference was the complete uniformity in planning found in Hawaii and the lack of uniformity throughout New Jersey. Having one system in place, one centralized body overseeing all of the policies and procedures enabled Hawaii to have all of their students return to the classroom¹³³ while still keeping all of the students and faculty safe and healthy.¹³⁴

While Governor Murphy put forth his best effort to keep New Jersey citizens safe and healthy in an increasingly dangerous environment (at one point New Jersey was one of the worst places to be in terms of COVID-19), the fact that each municipality is able to dictate when and how they will open as long as they meet minimum requirements mandated by the state created vastly different outcomes for students throughout the state. Outcomes for students should not be

¹³¹ Suevon Lee, DOE Doesn't Expect Schools To Fully Reopen Until Next Year, Honolulu Civil Beat (Mar. 15, 2021), <https://www.civilbeat.org/2021/03/doe-doesnt-expect-schools-to-fully-reopen-until-next-year/>

¹³² A letter from the Hawaii Superintendent to all parents explained that schools will be able to open on August 3, for the 2021-2022 school year as a result of improving health conditions in Hawaiian communities and the fact that schools have proven to be safe spaces. Additionally, protocols from the Hawaii State Department of Health direct students and staff to stay home when they aren't feeling well, consistent mask wearing (which is not required nor recommended universally in the United States), and proper hand hygiene. Letter from Christina M. Kishimoto, Superintendent, State of Hawai'i Department of Education, to HIDEOE Parents and Guardians (Mar. 19, 2020) (on file with author).

¹³³ While returning full-time proved to be a difficult task, Hawaii Department of Education was able to continue increasing the number of students returning to in-person learning. Letter from Christina M. Kishimoto, Superintendent, State of Hawai'i Department of Education, to Wilbert Holck, Exec. Dir., Hawaii State Teachers Ass'n (Mar. 14, 2021) (on file with author).

¹³⁴ No transmission of COVID-19 occurred at a Hawaii State Department of Education facility between June 2020 and May 14, 2021. Hawaii was obviously able to bring students back into schools safely by basing their plans and policies on science as conditions improved over time. Letter from Christina M. Kishimoto, Superintendent, State of Hawai'i Department of Education, to Principals (May 14, 2021) (on file with author).

based on what town they live in. Students should not be at home for the entire school year in Paterson or Camden, but almost completely in-person in Westfield and Livingston. Allowing for this to continue is only hurting students in these communities. Looking at Hawaii proves that a completely uniform approach will benefit the students while still promoting safety in schools. Paterson's and Camden's delay in returning to in-person learning was an attempt to keep all of the students and staff safe. While this is admirable, it is by no means the only model that would have done that. In New Jersey alone you need only to look around the state to places such as Westfield Public Schools or Livingston Public schools to see that students could return to the classroom safely. Moreover, Hawaii had been back in person to some degree for the 2020-2021 academic year, and yet there were no transmissions of COVID-19 at any Hawaii State Department of Education facility. This is proof enough that returning to learn could have been done safely for communities across New Jersey.

VII. Where to go from here?

As has been alluded to in detail above, Home Rule has created an inequitable educational system in New Jersey. Wealthier school districts continue to give their students the best education possible, while poorer, and often predominantly minority, school districts suffer. Although the initial intent behind enacting Home Rule in New Jersey was certainly not to create a system that fails the economically disadvantaged, that has been one of the effects, and this has only been made worse by COVID-19. COVID-19 did not create these issues but exacerbated the issues that already existed within the system.

As a result of Home Rule, each school district was allowed to create a teaching plan as they saw fit, including how they would return to in-person learning and when this would occur. The only requirement was that they needed to follow minimum state guidelines for safely

returning to the classroom. There was no requirement for the 2020-2021 school year that these districts needed to return in any capacity, which we saw on full display in Paterson and Camden who had some students never return to the classroom for the 2020-2021 academic school year. While there were obviously many districts that were successful in creating and implementing plans for both remote learning and returning to in-person learning, there were others that failed miserably in some respects. Allowing for these districts, who are consistently below average in almost every metric, to continue to operate under home rule is doing a disservice to the students in the district. This is especially apparent when other districts have the complete opposite experience and are consistently above average in every metric.

Creating a county-wide school district would enable schools to reduce the probability that schools will be more segregated (whether its predominantly black and Hispanic schools, or predominantly white schools). For example, Camden County, the county which Camden City Schools is located, is relatively diverse¹³⁵, yet only 1% of students at Camden City School district are white, and over 90% are black or Hispanic. In new Jersey, which is an extremely diverse state, there should never be a school with 90% of any race. Doing so is failing the students at the school. As we now know diversity in education is an asset, not a hindrance.¹³⁶ These students should be learning with an accurate representation of the community and the state. Moreover, a change to county-wide schools could change how funding is acquired and thus allow students who live in lower-income areas to attend a school that will be better funded than

¹³⁵ Camden County is relatively diverse, with a population comprised of 55.8% white (not Hispanic or Latino), 21.6% black, and 17.6% Hispanic, 6.0 Asian, as well as other smaller percentages of the race. Quick Facts Camden County, New Jersey, United States Census Bureau (last visited Aug. 12, 2021),

<https://www.census.gov/quickfacts/fact/table/camdencountynewjersey/INC110219>

¹³⁶ This article provides an overview of only one study on the topic, but in the study conducted in the cited New York Times article, participants responses from diverse groups were 58% more accurate than those in non-diverse groups. Sheen S. Levin, David Stark, Diversity Makes You Brighter, New York Times (Dec. 9, 2015), <https://www.nytimes.com/2015/12/09/opinion/diversity-makes-you-brighter.html>

the schools they are currently enrolled in. Increasing the spending on the education of those individuals from lower-income background would bring about many social benefits, including an increased likelihood of graduating and a reduced likelihood of adult poverty.¹³⁷ An increase in spending in schools has dramatic social benefits that cannot be overlooked.

Home Rule has enabled the New Jersey educational system to fail students from lower-income backgrounds who are predominantly minority students. This failure is avoidable, but changes are necessary. If the failure to get students back to in-person learning for the 2020-2021 school year in both Paterson and Camden is not proof enough that a systematic change needs to occur, then what will be?

¹³⁷ Increased per-pupil expenditures of 20% resulted in a 23% increase in graduation rates. Moreover, this 20% increase in spending resulted in 25% higher earnings and a 20% reduction in the annual incidence of adult poverty. C. Kirabo Jackson et al., THE EFFECT OF SCHOOL FINANCE REFORMS ON THE DISTRIBUTION OF SPENDING, ACADEMIC ACHIEVEMENT, AND ADULT OUTCOMES, 5 & 36, (May 2014).