





**A SCHOOL INTEGRATION
ACTION PLAN FOR NEW JERSEY**
CHANCELLOR'S SEED GRANT PROJECT FOR 2018-19

December 2019

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Foreword

This report was made possible by a generous grant from the Rutgers-Newark Chancellor's Seed Grant program. We believe that it advances several of the core goals of that program.

- At its heart, our project uses research to illuminate and provide recommended solutions for one of New Jersey's and the nation's most persistent and important problems—meaningfully integrating our public schools.
- Our work is thoroughly interdisciplinary drawing upon applied research approaches in law, sociology, education and public policy studies.
- This project reaches across school, campus and university lines, and engages the private non-profit sector as well.
- This project seeks to inform and engage the general public, as well as professional educators, policy makers and advocates.

This project used a thoroughly interdisciplinary approach with the goal to create multi-disciplinary partnerships, to inform and educate the public, the policy community, and academic and research leaders about the special opportunity that is available in New Jersey to make major progress toward true school integration, and how that will serve our enlightened self-interest as individuals, communities and the state as a whole.

Our project team reflects not only a broad diversity of professional training and expertise, but also great variability in terms of experience, career status and university affiliation:

- Professor Emeritus Paul Tractenberg, the Principal Investigator, retired from 46 and one-half years of full-time teaching at Rutgers Law School in Newark on January 1, 2016, but has continued to be actively engaged in education law and policy, especially as it seeks to improve the educational opportunities of low-income children of color. During his Rutgers-Newark tenure, he established and directed (for its first three years) the Education Law Center, one of the nation's premiere public interest law projects, and the Rutgers-Newark Institute on Education Law and Policy, whose focus was on applied research. Upon his retirement, he established and has directed the non-profit Center for Diversity and Equality in Education (CDEE). A book he co-authored with Professors Roda, Dougherty and one other, entitled *Making School*

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Integration Work: Lessons from Morris, is scheduled to be published during the spring of 2020 by Teachers College Press of Columbia University.

- Professor Elise Boddie, the co-Principal Investigator, is a distinguished Professor of Law at Rutgers Law School in Newark and in 2016 was appointed the Henry Rutgers Professor by the University's president. While at the law school, in addition to a myriad of activities, she founded and is directing The Inclusion Project, which seeks to advance racial inclusion and equity. Prior to her Rutgers affiliation, Professor Boddie was director of litigation for the NAACP Legal Defense and Educational Fund, Inc.
- Dr. Allison Roda is an Assistant Professor of Education in the Educational Leadership for Diverse Learning Communities Ed. D. program at Molloy College. She earned her Ph.D. in Sociology and Education at Teachers College at Columbia University. In 2015, she authored a book entitled *Inequality in Gifted and Talented Education*. The forthcoming book that she co-authored with Professors Tractenberg and Dougherty, and many recent articles, reports and presentations all focus on school integration. For the past four years, Professor Roda also has served as research director for CDEE's Morris Project, which led to the forthcoming book and other major publications.
- Dr. Deidre Dougherty is an Assistant Professor of Educational Studies at Knox College. She received her Ph.D. in Education Theory, Organization and Policy from the Rutgers Graduate School of Education in New Brunswick. She also received an M.A. in Latin American Studies/Anthropology from Georgetown University. That academic work, coupled with ethnographic fieldwork in El Salvador and Guatemala, has led to a professional specialization on the impact of school segregation on Latinx students and on how best to implement their educational integration, a focus of her work with CDEE's Morris Project and the forthcoming Teachers College Press book.
- Nicole Mader is a Senior Research Fellow at the Center for New York City Affairs at the New School. She received a M.S. in Urban Policy Analysis and Management from the Milano School of Policy, Management and Environment at the New School and is a Ph.D. candidate in Public and Urban Policy at that institution. She has special technical expertise in quantitative analysis and GIS mapping.

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Our core project team has received assistance from many others, including Charles Payne, Director of the Joseph C. Cornwall Center for Metropolitan Studies at Rutgers-Newark and his staff, Professor Rachel Godsil of Rutgers Law School in Newark, Professor Julia Sass Rubin of the Bloustein Center at Rutgers-New Brunswick, and Danielle Farrie, Research Director at the Education Law Center.

This report is the result of our collaborative effort. We anticipate that its dissemination will contribute to a broad-based and developing effort to have New Jersey's record of true integration in the schools finally match its longstanding constitutional and policy commitment.

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Introduction

On May 17, 2019, the United States Supreme Court's iconic decision in *Brown v. Board of Education* was 65 years old. Although that decision has had enormous symbolic importance, and for a time led to significant desegregation in the southern states (Orfield & Lee, 2007), its practical effect has waned even in the South (Clotfelter, 2004). In truth, *Brown* never had a major impact on school segregation in the rest of the country because it was limited to de jure segregation, which required either formal state statutes mandating racially separate schools or a showing of school segregation resulting from provably discriminatory intent (Orfield, 2001; Reardon & Owens, 2014). De facto school segregation, the kind said to be most prevalent outside of the South,¹ was left unaddressed by the federal courts and by most state courts. New Jersey was a notable exception, which is a major justification for, and strength of, this project.

The reality throughout most of the country is that school segregation persists even though there is substantial evidence that educating students in a diverse setting can have a powerfully positive educational and social impact, especially on the educational achievement of low-income students of color (Johnson, 2019). Instead of giving primacy to desegregating, let alone integrating, our schools, we have devoted time, attention and money to other techniques designed to improve student performance and to narrow opportunity gaps² across racial and socioeconomic lines (Carter & Welner, 2013). These techniques have included equalizing funding, expanding school choice options, and/or penalizing or rewarding teachers, administrators and schools for aggregate test scores. The truth, however, is that these approaches have ignored the segregated status of schools. Indeed, to a significant degree they actually have used segregation as a justification for employing some of those other techniques.

Focus of this Report

In this report, we draw a clear distinction between desegregation and integration. While the predominant focus in the media and in research has been on versions of desegregation, in this report we focus much more on integration. As Johnson (2019) wrote “moving from desegregation to integration means moving from access to inclusion, and moving from exposure to understanding” (p. 210). School integration goes beyond the creation of racial/ethnic and socio-economic balance of the student body in schools, or what is generally referred to as desegregation. Integration infuses student diversity into every

1 Books such as Richard Rothstein's *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017) raise serious questions about whether segregation, in housing or in schools, ever truly was de facto—a function of unintended circumstance.

2 Like Carter & Welner and others, we use the term opportunity gap in lieu of achievement gap because the former places the onus on the system fixing the problem instead of on the student.

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aspect of the school, including “its cultural climate, and the educational processes and contents employed in it” (Michelson, 2010, n.p.). For the purpose of this action plan, we also draw on the definition that the New York City Alliance for School Integration and Desegregation (ASID) published, which defines school integration as, “The pedagogical, curricular, and cultural mechanism(s) inside of schools that support racially integrated student bodies. Integration is about decentering Whiteness—creating educational opportunities and spaces that are affirming and empowering to all students” (ASID, 2019). Ultimately, the creation of racially diverse and integrated schools and classrooms should be considered an important educational resource that confers mutual benefits to White students and students of color in terms of increases in academic outcomes and social mobility, and a reduction of racial prejudice and implicit bias (Braddock & Del Carmen, 2010; Clayton, 2011).

Yet, most Black, Latinx,³ Native American and low-income students are systematically denied the academic benefits of high quality and racially diverse schools. These “opportunities to learn are most often denied to students of color and to students who come from impoverished homes” (Carter & Welner, 2013). The problem is related to segregation across neighborhoods, schools, and even classrooms via tracking. This intra-district segregation often exists even where there is district-wide student diversity because neighborhoods within such districts still tend to be residentially segregated and students often are assigned to their neighborhood schools.

To the extent states have sought to deal with school segregation, their main focus has been on the intra-district type. For example, for a period of time beginning in the 1980's New Jersey seemed to be making serious efforts to address within-district segregation, especially at the individual school building level. The state education department created a well-staffed Office of Equal Educational Opportunity (OEEO) with responsibility for identifying all schools in New Jersey that were racially imbalanced when compared to district-wide student demographics. OEEO developed an annual survey of every school that ran afoul of the prevailing standard for balance⁴ and, based on that survey, required some school districts to develop school desegregation corrective action plans. In 1989, under the aegis of a Statewide Task Force on School Desegregation and with staffing by OEEO, the State of New Jersey issued elaborate *Guidelines Governing School Desegregation/Integration*,⁵ which are still referenced by current regula-

3 Throughout this report we use the gender-neutral term “Latinx” to replace “Latino/Latina” and “Hispanic,” except when we are referencing studies and data that use the other terms.

4 A variance of more than 10 percent from district-wide demographic levels.

5 For a copy of the Guidelines still available at the New Jersey State Library, see <https://dspace.njstatelib.org/xmlui/bitstream/handle/10929/44554/s3722000b.pdf?sequence=1&isAllowed=y>.

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tions entitled *Managing for Equality and Equity in Education*.⁶ However, there is no evidence that the Guidelines are being enforced and OEE0 was effectively disbanded years ago. Still, the Guidelines contain enough thoughtful and relevant policies and procedures regarding desegregation/integration to warrant treatment, along with the current regulations, later in this report. Indeed, one of the elements of the integration action plan proposed in this report is for the NJDOE to reconstitute OEE0 and broaden its mandate to include inter-district segregation.

Such a broadening of OEE0's mandate for inter-district desegregation is necessary because, nowadays, between-district segregation is receiving greater attention than intra-district segregation. This is the case because inter-district segregation levels are rising due to concentrated poverty in cities and housing segregation between cities and suburbs (Reardon & Owens, 2014). Predominantly White, high-income schools are often characterized by high test score averages and college-going rates, abundant resources, and highly qualified teachers and social supports. In comparison, in most states low-income schools that are predominantly Black and Latinx have fewer resources, including access to challenging courses, opportunities, and effective teachers (Clotfelter, Ladd, & Vigdor, 2005; Darling-Hammond, 2010; Gamoran, 1992).

New Jersey is something of an outlier in terms of resources as a result of the longstanding *Abbott v. Burke* litigation. *Abbott* resulted in greatly increased state education aid being directed to the so-called *Abbott* districts, 31 poor urban districts with a large number of the state's at-risk students. Still, despite *Abbott*'s positive effect on equalizing funding, schools that are predominantly Black, Latinx and low-income still lag behind schools populated by Whiter and higher income students (State of New Jersey Department of Education, 2005). Students in most of the *Abbott* districts (now referred to as "SDA districts") continue to be educated in extraordinary isolation where they seldom, if ever, come in contact with students who look different, and who come with different perspectives and backgrounds. For New Jersey to seriously address its school segregation, that extreme segregation affecting about 25 percent of its students must be at the top of the list.

At the same time, there are hopeful signs that schools are becoming more diverse as national and state-wide demographics shift. Suburban areas that were once predominantly White are experiencing influxes of students of color, and certain urban neighborhoods are undergoing demographic changes due to gentrification (Stroub & Richards, 2013). The White school-aged population in the U.S. continues to decline and, in 2016, scholars predicted that it would soon

⁶ NJAC 6A-7-1.4(d)(1).

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be surpassed by the growing number of students of color (Wells et al., 2016). In fact, by 2019 that prediction had been proven accurate.⁷ New Jersey actually was ahead of the national trend since for several years there has been no racial subgroup in the majority and students of color make up 52 percent of the K-12 school-aged population (Frankenberg et al., 2019). These natural demographic changes have resulted in almost a quarter of all New Jersey school districts, roughly 160 out of 674, whose student populations are relatively proportional to statewide averages (Tractenberg & Coughlan, 2018).

When diverse schools exist, however, a common critique is that they are not fully integrating all students into every aspect of the school community (Wells et al., 2016). Within-school segregation is prevalent because of tracking or ability grouping that sorts students into classes or specialized programs by perceived ability, which is often tied to race and class (Brooks et al., 2013; Lewis & Diamond, 2015; Mickelson, 2016; Oakes, 2005; Roda, 2015). Students of color are also disproportionately referred for disciplinary reasons and are given stricter punishments than their White peers—taking away from teaching and learning time, which can lead to the school-to-prison pipeline (Skiba, et al., 2011). Teachers often hold colorblind or deficit-based views of students of color, which can have negative effects on short-term and long-term academic outcomes and aspirations (Cooper 2009; Evans, 2007; Yoon, 2016). Ultimately, education leaders and teachers must adopt and implement culturally responsive and equity-oriented policies and teaching practices that do not systematically exclude certain student subgroups from opportunities and resources in diverse school settings (Holme et al., 2013; Jenlink, 2009).

Objective of this Report

While much is known about the status quo of school segregation and inequality, there is very little guidance about what schools can do to create more equitable and integrated school systems. Unlike in the case of desegregation, there are no laws or policies that exist regarding integration; there is no guidebook for districts or schools that want to do this work. This report's aim is to provide New Jersey policymakers, district leaders, and parents with legal, policy, and educational practices to foster integration across all communities and schools. This is a particularly important and timely question to answer given New Jersey's pending statewide school desegregation case, *Latino Action Network, et al. v. the State of New Jersey* (LAN case), which was filed on May 17th, 2018, the 64th anniversary of *Brown v. Board of Education*.

⁷ U.S. Department of Education. Institute of Education Sciences, National Center for Education Statistics.

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New Jersey's Unique Ability to Take the Lead

If there finally is to be meaningful movement in the direction not just of school desegregation, but also school integration in the United States, New Jersey should be in the forefront of that movement for several important reasons.

First, New Jersey has the strongest body of state law in the nation that goes beyond barring segregation to affirmatively requiring racial balance in the schools “wherever feasible.” Almost 50 years ago, the state’s highest court derived that integration-oriented command from the education clause of the New Jersey constitution. Under that provision, New Jersey students have been deemed to have a fundamental constitutional right to a “thorough and efficient” education and, as indicated, “racial balance” has been found to be an integral aspect of that right. This provision supplements, and actually goes well beyond, New Jersey’s unique state constitutional provision that explicitly bars segregation in the public schools. Even beyond that, the New Jersey courts have construed the state constitution to:

- bar de facto, as well as de jure, school segregation;⁸
- empower the state commissioner of education to merge school districts and take other strong action, including cross-district action, to ensure racial balance in the schools;⁹
- require the state and localities to assure that every region has affordable housing and, at the same time, to bar exclusionary zoning;¹⁰
- and require that all students, and especially those who are educationally at-risk, receive the funding necessary to provide them with a meaningful opportunity to achieve a “thorough and efficient” education.¹¹

Second, New Jersey is a decisively “blue” state with a self-styled progressive governor who was a long-time member of the NAACP national board.

Third, the demographic profile of New Jersey students is remarkably similar to the national profile so perhaps what can be accomplished regarding school integration here can become a viable national model. In fact, New Jersey is second only to Illinois in its alignment with the national profile (Tractenberg

⁸ Booker v. Board of Education of City of Plainfield, 1965.

⁹ Jenkins v. Township of Morris School District and Board of Education, 1971.

¹⁰ Mount Laurel I (1975) and Mount Laurel II (1983)

¹¹ Abbott v. Burke, 1981; all states have state education clauses and most states have had school funding reform litigation.

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& Coughlan, 2018). Of course, in a remarkable touch of irony, the four states that mirror most closely the U.S. demographic profile for students—Illinois, New Jersey, New York and Maryland in that order—are also regularly listed as having among the nation's most segregated public education systems where the White-Black and White-Latinx exposure indexes are very low (Flaxman, Kucsera, Orfield, Ayscue, & Siegel-Hawley, 2013; Frankenberg, Ee, Ayscue, & Orfield, 2019). This paradox of having high levels of racial diversity accompanied by high levels of segregation dramatically demonstrates a core concept underlying this report—that diversity at the largest and most remote unit, in this case a state, hardly assures that smaller units within it—school districts, schools and classrooms—will be comparably diverse.

Consequently, our analysis in this report will focus on four tiers, or concentric circles—the state, the school district, the schools within the district, and the classrooms within each school. Within those four units, there are policies, communities, organizations, and individuals that have to do the work of true integration inside and outside of school. Even then, what some have called “true integration” requires more—that the teaching staff, the curriculum and the learning process have been imbued with meaningful culturally responsive and sustaining pedagogies and leadership (Gay, 2010; Ladson-Billings, 1995; Paris, 2012; Khalifa, Gooden, & Davis, 2016). The Joseph P. Cornwall Center for Metropolitan Studies at Rutgers-Newark, in collaboration with Professor Elise Boddie, a co-Principal Investigator of the Chancellor's Seed Grant project that produced this report, is engaged in a study exploring how such pedagogy and leadership can be developed and implemented.

Fourth, despite New Jersey's disappointing record of school segregation on the ground, there are both some encouraging signs of serious efforts to force that reality to align better with its constitutional and statutory promise of meaningful integration, and a statutory and regulatory infrastructure that can be adapted to achieve that result.

Core of New Jersey's School Segregation Problem

It must be said here, though, that the core of New Jersey's school segregation problem—and the main explanation for the disconnect between the State's strong constitutional commands and weak record of school integration—is that New Jersey has failed to operationalize, through sufficient legislative and executive branch action, what the constitution commands. A detailed and systematic review of New Jersey's voluminous education code has revealed that there are relatively few provisions that directly address school integration, and, to the extent they do so, it is in a very broad and general way. That is in sharp

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contrast to many other areas of educational significance, which have received substantial and detailed, even elaborate, treatment. Those areas include: the general powers and duties of the Commissioner and State Board of Education, Executive County Superintendents, the legislative Joint Committee on the Public Schools, and even the Governor and Legislature; school funding; educational standards and assessment;¹² evaluation and state oversight, including ultimately state takeover of districts;¹³ educational facilities; school report cards; school district structures; attendance of students at schools outside the district of residence; educational programs and services for students classified as needing special education; specialized programs and schools such as the Interdistrict Public School Choice Program; and Charter Schools and Renaissance Schools.

For the programs covered in detail, a typical format is for the commissioner to be charged with powers and duties extending to:

- establishment and definition of the program;
- issuance of rules and regulations;
- oversight, evaluation and any necessary modifications; and
- reporting to the State Board, Legislature and/or Governor.

In contrast, the treatment of school integration is minimal, rarely going beyond broad generalities and devoid of any operational details. The one possible, but limited, exception is the regulations, previously mentioned, for Managing for Equality and Equity in Education. Those regulations deal in considerable detail with creating a non-discriminatory educational environment, but they stop short of dealing directly with school integration except in one respect.¹⁴

A thrust of this report and its action plan is to recommend ways to broaden the treatment of school integration to bring it into conformity with how other educational priorities, many of which are not of comparable constitutional dimensions, are dealt with.

Structure of this Report

This report is organized into six sections. **Section 1** describes the legal, policy and educational context in which the movement to fully integrate New Jersey's schools should proceed. We explain the statutory and constitutional

¹² These include the Core Curriculum Content Standards, now known as the New Jersey Student Learning Standards, which has become the accepted definition of the constitutional "thorough and efficient" education.

¹³ These include the Quality Single Accountability Continuum for district evaluation and ranking, and ultimately state takeover of districts.

¹⁴ Without elaboration, the regulations require district boards of education to attain "within each school minority representation that approximates the school district's overall minority representation." NJAC 6A:1.7 (a) (2).

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requirements, unique in the nation, to ensure that schools provide a thorough and efficient education for all students in a racially balanced setting wherever feasible. Next, in **Section 2**, we detail how these provisions provide the authority for students to cross existing district lines and, in **Section 3**, how they provide the authority for changing existing district lines, which could become vehicles for achieving New Jersey's constitutional promise of a racially, ethnically and socio-economically balanced education for all its students. In **Sections 4 and 5**, we describe three potential solutions/models for aspects of a contemporary action plan to integrate the State's schools: first, the Commissioner of Education's power and duty to provide student access to racially balanced schools; second, the carefully-crafted Guidelines Governing School Desegregation/Integration in the State Legislature, which contain many potentially relevant structural, oversight and enforcement provisions, including provisions related to curriculum, pedagogy and student conduct; and third, the New Jersey judiciary's longstanding and system-wide structure for addressing "minority concerns" and advancing equal treatment and opportunity, which can serve as a paradigm for the executive and legislative branches.

Finally, in **Section 6** we provide practical approaches to moving from desegregation to true school integration. Thinking through the promises of integration and the challenges to its full implementation, we draw on an understanding of schools and individuals that is informed by a social ecological model (Bronfenbrenner, 1979). A social ecological model, often used in public health research, research on policy, and research on economic behavior, helps situate personal attitudes and behaviors within the larger public policy and legal context (Sections 1-5), as well as the community, organizational and inter-personal contexts of a person's life (Section 6) (Center for Disease Control, 2019). We believe that New Jersey offers very helpful lessons with regard to school integration, in part because important elements of its laws and public policies prioritize desegregation. This, in turn, should assist districts, schools, classrooms and communities to move toward inclusivity and integration. See **Figure 1**, "Social-ecological Model for School Integration in New Jersey".

Section 1: Integration in New Jersey Schools: The Legal Context

In comparison to other states, New Jersey has the nation's strongest state law requiring racial balance wherever feasible. As early as 1881, the state legislature began to prohibit school segregation.¹⁵ Although there were several notable state court decisions enforcing that statute,¹⁶ there were equally notable failures to implement it, especially in the southern part of the state. A 2008 article published on the occasion of Black History Month traced the history of school integration in New Jersey. It showed how entrenched school segregation remained midway through the 20th century: "A survey of schools in 1941 turned up 70 districts with some type of segregated schools—an open flouting of the 1881 law against it."¹⁷

In 1947, when the State adopted its current constitution, a provision explicitly barring segregation in the public schools was incorporated.¹⁸ It predated *Brown* by seven years. State supreme court decisions of the 1960s and early 1970s extended the integration commands of state law far beyond the emerging federal law. These forces combine to provide New Jersey with a special opportunity to move toward "true integration," diversity not only at the district and school levels, but also at the classroom, program, and curricular level.

For more than 50 years, the New Jersey Supreme Court has repeatedly emphasized the scope of the commissioner's power and duty to provide students with access to racially balanced schools and admonished the commissioner whenever he has failed to act on it. There are two constitutional sources of that power and duty—the anti-segregation provision and the thorough and efficient education clause.¹⁹

Of the two constitutional provisions, the education clause is far more common and vastly broader. Indeed, every state has its own education clause and a significant number mirror New Jersey's core phrase of "a thorough and efficient system of free public schools," or have a close approximation. The education clause is the foundation for most of New Jersey's multiple volumes of state education legislation.

The anti-segregation clause, which prohibits the segregation of any person "in the public schools because of religious principles, race, color, ancestry or na-

¹⁵ R.S. 18:14-2 (1881); now incorporated as N.J.S.A. 18A:38-5.1.

¹⁶ See, e.g., *Hedgepeth v. Board of Educ. Of Trenton*, 35 A.2d 622 (1943) (ruling that segregated schools in Trenton violated the 1881 statute).

¹⁷ See https://www.nj.com/ledgerarchives/2008/02/black_history_month_integratin.html.

¹⁸ N.J. CONST. Art. I, par. 5.

¹⁹ N.J. CONST. Art. 8, Sec. 4.

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tional origin," actually is unique in the nation. The Connecticut state constitution has an anti-segregation clause, but it does not provide explicitly for the public schools.

New Jersey's education clause and anti-segregation clause overlap as a result of the state supreme court's construction of the education clause as being violated if students who could be educated in a racially integrated setting are being denied that opportunity. The New Jersey courts also have construed both constitutional provisions as being violated by de facto segregation in the schools, not just by de jure segregation as the federal courts have done. In a second important aspect, the New Jersey courts, unlike the federal courts, have ruled that school district borders are not an impediment to remedies for segregation in the schools.

Thus, New Jersey has what is almost certainly the nation's strongest state constitutional law barring segregation in the public schools and requiring racially balanced education wherever feasible. Nonetheless, as the Tractenberg and Coughlan (2018) report and the LAN lawsuit's complaint point out in detail, New Jersey's record on the ground is far removed from its constitutional promise and commitment. Researchers have documented that New Jersey has the sixth or seventh most segregated public school system in the country for Black and Latinx students, respectively, significantly more segregated than the systems of all the southern states (Flaxman et al., 2013; Frankenberg et al., 2019).

That remains true even as New Jersey's general and pupil populations have become increasingly diverse, closely mirroring the national demographic profile with 46% White, 15% Black, 27% Latinx, and 10% Asian (Frankenberg et al., 2019). Almost 25% of the state's school districts and students have become quite diverse in relation to the statewide profile, largely because of recent demographic shifts (Tractenberg & Coughlan, 2018). At the same time, though, almost 25% of the state's students are isolated in school districts where more than 90% of the students are Black or Latinx, or in a dwindling number of cases more than 90% are White. The problem is compounded because a very high percentage of the students isolated in the predominantly Black and Latinx districts are low-income—and this problem actually is worsening.

The challenge is to find ways to attend to the social ecological layers that can help foster inclusive and integrated environments at the levels of a) state and district policy, b) community relationships, c) organizational strategies, and d) individual attitudes. To do so, the state must:

1. Take advantage of the increased diversity in 25% of the state's districts and among 25% of the state's students by stabilizing and even extending

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that diversity and by cultivating integration at the school, classroom and program levels and then ensuring that the pedagogy, curricula and educational materials are culturally responsive;

2. Find the path to end the extreme segregation of another 25% of New Jersey's students, most of whom are isolated in the larger urban districts; and
3. Promote increased diversity in the remaining districts, which cover the span between significant diversity and significant White-isolated segregation.

There is good reason to believe that restructuring the state's education system to accomplish these goals will not only afford all students with educational opportunities to learn in truly integrated settings, but will also produce significant cost savings and increased educational efficiency, an explicit element of the state constitutional mandate of a "thorough and efficient system of free public schools."

Although both the legislative and executive branches need to do their part to fully meet this challenge, the main default has been by the executive branch. The state's education laws can be construed to provide an adequate basis for the commissioner and state board of education to implement the constitutional promise, and the courts have repeatedly acknowledged that. Certainly, the legislature could have been more explicit and directive in its insistence that every aspect of the state education laws should be implemented to advance racial, ethnic and socioeconomic balance and diversity in the schools—and amendments to that effect are appropriate if not necessary. Still, their failure to have done so consistently does not strip the commissioner and state board of their inherent power and duty to enforce the constitutional command.

Almost a century and a half ago, in 1881, the legislature adopted a statute, still on the books as NJSA 18A:38-5.1, that prohibits exclusion of any child from public school "on account of his race, creed, color, national origin, or ancestry." Much more recently, the legislature incorporated into a number of statutes provisions explicitly addressing racial composition and the effect on racial balance. These include statutes involving termination of sending-receiving relationships (NJSA 18A:38-13, 20.1), and the creation and monitoring of charter schools (NJSA 18A:36A-8 (e), implementing regulations NJAC 6A:11-2.1 (b) (4) (ii), (j)). Another notable regulation, already referenced, is NJAC 6A:7.1-7 (a)(2), that imposes on school districts the responsibility for "Attaining within each school minority representation that approximates the district's overall minority representation."

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In many other statutes, although the legislature did not explicitly address racial balance, it provided opportunities for the commissioner and state board to do so. For example, in the elaborate statutory provisions relating to the definition and implementation of a thorough and efficient system of free public schools, as well as those that vest unbridled supervisory and enforcement authority in the commissioner and state board, the legislature has not hedged in the power and duty of those executive officers to advance the constitutional command that racial balance should be provided New Jersey students wherever feasible. This is a point acknowledged and built upon by the state courts in numerous decisions that upheld the commissioner's and state board's power and duty to deal with racial imbalance and foster racial balance even though the statutes did not make that an explicit mandate.

One of the most important examples is the case of *Jenkins v. Township of Morris School District and Board of Education*,²⁰ where the New Jersey Supreme Court ruled that the commissioner had the inherent authority to order a merger of two school districts for racial balance purposes. The commissioner had taken the position that, although he believed a merger would be desirable, he lacked the legal authority to order one because the legislature had specifically provided a merger mechanism requiring the approval of voters in the districts involved. The court had this to say about the commissioner's position:

The Commissioner has been appropriately charged with high responsibilities in the educational field and if he is to faithfully discharge them in furtherance of the State's enlightened policies, he must have corresponding powers. The Legislature has here granted them in broad terms, and it would disserve the interests of the State to permit their administrative narrowing which in effect represents not only a disavowal of power but also a disavowal of responsibility. (58 NJ at 504).

In sum, the primary responsibility for moving forward rests with the executive branch and the commissioner and state board of education.

²⁰ 58 NJ 483 (1971).

Section 2: Statutory and Constitutional Authority for Students to Cross Existing District Lines

Because many of New Jersey's school districts are still deeply segregated at the district level, in the near term the ability of students in those districts to benefit from an integrated education may depend upon their ability to cross existing district lines to attend schools in other districts. The degree to which New Jersey students already attend, or are authorized to attend, schools outside of the district and municipality where they reside is often overlooked in legal and policy debates on school integration. This is important because, although the LAN lawsuit correctly identified as a core cause of school segregation the combination of residential segregation, school districts contiguous with the borders of segregated municipalities, and an attendance statute that mainly assigns students to the public schools of their districts of residence, state law already contemplates extensive cross-district movement of students for a wide variety of reasons, but not, with rare exceptions, school integration.

Consequently, these cross-district educational opportunities have to be expanded to the more than 315,000 New Jersey students living in districts whose schools are deeply segregated by race, ethnicity and socioeconomic status. Logically, for those students to have an integrated educational experience, their only hope is by enabling them, or their counterparts in nearby districts, to cross district lines. Students already have significant ability to cross district lines through sending-receiving relationships, participating in the Interdistrict Choice Program, or attending a charter school or a vocational-technical school. Overall, these statutory programs resulted in about 150,000 students, or about 11% of all New Jersey public school students, attending schools in districts other than the ones in which they lived in 2017-18.

Despite the fact that one of the state's paramount educational obligations is to assure that students attend racially balanced schools wherever possible, most of those programs do not explicitly seek to meet that obligation. They are neither constructed nor used to advance school integration. As Kuscera & Orfield (2014) stated, when school districts "do not make integration a goal, it cannot happen." With minor adjustments, however, these programs could become vehicles for promoting integration. In some cases that may not even require legislative amendments since the commissioner of education's broad supervisory powers and duties may be sufficient. Even though statutory provisions mandating the use of these programs may not be necessary, though, such explicit legislative mandates would serve the important purpose of underscoring the primacy of integration efforts and the State's commitment to them.

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Cross-District Education Statutes

An entire article of the state education code is entitled “Attendance at School Without District” (meaning other than a school operated by the student’s district of residence²¹) (NJSA Title 18A, Subtitle 6, Part 2, Ch. 38, Art. 2). The broadest statute, applicable to all school districts, provides that “Any person not resident in a school district, if eligible except for residence, may be admitted to the schools of the district with the consent of the board of education upon such terms, and with or without the payment of tuition, as the board may prescribe.” (NJSA 18A:38-3). This provision is rarely used and virtually never used to promote diversity in a district’s schools. It can be readily adapted, however, to encourage or even require that result.

This provision was used, however, in one notable case involving school diversity in which the Englewood Cliffs school district sought to terminate a longstanding sending-receiving relationship with Englewood so that it could enter into a new one with Tenafly. Ironically, the provision was used to impede rather than advance diversity. While Englewood Cliffs’ effort was pending, Tenafly adopted a private tuition program pursuant to NJSA 18A:38-3 under which it admitted to Tenafly High School more than 100 mostly White students from Englewood Cliffs and Englewood whose public high school otherwise would have been Dwight Morrow in Englewood. The court found that the selection process and parent-paid tuition amounts were akin to those of a private school. Both Englewood Cliffs’ effort to terminate the sending-receiving relationship and Tenafly’s effort to sustain its private tuition program failed because the New Jersey courts deemed them to be racially discriminatory.²²

The education statutes also provide for enrollment in a district other than the “district of residence” in many other instances including:

- where the district of residence’s education program is defective or limited (i.e., where the district of residence does not have “sufficient accommodations)” (NJSA 18A:38-8);
- where the district of residence determines that it is “advisable” for its students to attend a school in another district to “secure better school

21 The distinction between which district operates the school and where the school is physically located is important for several of the “cross-district” programs discussed below. For example, county vocational schools are physically located within the borders of one or more local school districts within the county, but they are operated by the county vocational district, not by the local district. Therefore, we have counted all the county vocational students as attending schools “without the district,” even if in some cases the county vocational school is located in the local school district where some county vocational students may live.

22 Board of Education of Borough of Englewood Cliffs v. Board of Education of City of Englewood v. Board of Education of Borough of Tenafly, 170 N.J. 323 (2002).

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facilities,” “or for reasons of economy or other good cause” (NJSA 18A:38-10);

- where the high school in the district of residence does not provide a “particular high school course of study” that a student wishes to pursue (NJSA 18A:38-15);
- where the district of residence does not provide approved evening high school courses (NJSA 18A:38-16); and
- where the district of residence does not furnish instruction beyond 12th grade (NJSA 18A:38-17)).

A complete list of the statutory provisions permitting cross-district programs is in **Appendix A**. Some of the most prominent programs, and the extent to which they are currently used by New Jersey students, will be discussed below.

Sending-Receiving Program

The program which probably accounts for the greatest number of students attending schools outside the districts of their residence is the sending-receiving program. That is because about 40% of New Jersey’s school districts are too small to permit the operation of full K-12 educational systems (Stirling and Clark, 2018). In fact, as of September 2017, there were 15 districts too small to operate even a single school (New Jersey Department of Education, 2017). Consequently, students who reside in non-K-12 (K-6, or K-8) districts receive part or even all of their public education in the schools of another district. They do so pursuant to sending-receiving arrangements between the district of the student’s residence and the other district providing them with at least part of their public education with negotiated tuition dollars following those students.

According to our analysis of enrollment figures from each district’s public User-Friendly Budget Summaries, 30,423 students were “received” at public schools in districts other than where they lived in 2017-18. An additional 6,607 students were “shared” with public schools in other districts for part of the school day because their home districts did not provide the curricular program or special education services they required. Although these students, grouped together, made up only a small portion of the state’s pupil enrollment of 1.37 million, they came from 504 school districts, representing almost 87% of all non-charter²³ public school districts across the state.

²³ Under New Jersey law, each of the 88 charter schools is considered its own school district. That total, when added to the 585 traditional operating school districts and the 15 non-operating districts (or 16, also listed on the NJDOE website), produces a grand total of 678 (or 679).

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Yet, the structure of the widely-used sending-receiving program does not fully comply with the constitutional mandate to achieve racial balance whenever feasible. This is the case because once an inter-district agreement is adopted, its termination requires approval of the commissioner of education and an explicit criterion that the commissioner must apply is the termination's impact on the racial balance of the districts (NJSA 18A:38-13, 38-21.1(a)(4)). Paradoxically, though, racial balance is not a criterion or goal at the front end when the sending-receiving agreement is created (NJSA 18A:38-11). With a minor statutory amendment it could be.

Other Cross-District Programs

Among the other major cross-district programs that could be used to advance school integration, but have not been, are:

- The Interdistrict Public School Choice program, which, by definition and design, seeks to facilitate enrollment of students in districts other than their districts of residence (NJSA 18A:36B-14, 36B-16). In 2017-18, at least 5,500 students participated in the Interdistrict Choice Program, based on estimates of Choice Aid in the 2017-18 Revised State School Aid Budget.
- County vocational schools, which also, by definition, are open to students from any district in the county who apply and are admitted (NJSA 18A:54-20) and, under certain circumstances, can include students from other counties (NJSA 18A:54-23.5). Local school districts run vocational programs as well, which can enroll students from other districts (NJSA 18A:54-7). The total enrollment of all students at vocational schools in 2017-18, according to budget enrollment counts, was more than 34,300. These counts do not distinguish between students living in or out of the districts in which the county vocational schools are located, but, conceptually, that should not reduce the total number of out-of-district enrollees since the county vocational districts are separate legal entities from the local school districts. Therefore, students attending the county vocational schools are receiving their education in schools not operated by their districts of residence.
- Charter schools, which can enroll non-resident students if they have space available, but also can give preference to students who reside in the school district in which the charter school is located (NJSA 18A:36A-8). Pursuant to state regulations, though, charter schools can choose to be formed on a regional, multi-district basis (NJAC 6A:11-2.1(b)(4), 2.1(l)) and, in that event, must “ensure the enrollment of a cross section of the school-age population of the region of residence,

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including racial and academic factors” (NJAC 6A:11-2.1(b)(4)(ii), 2.1(j)). According to Charter Aid Notices detailing the number of students in each charter school who live in each residential school district, 7,975, or 16% of all 48,622 charter school students in 2017-18, attended a charter school located outside of the district in which they lived.²⁴ Yet, for the reason described above in connection with county vocational schools, we have counted all 48,622 charter school students as attending schools “without the district.”

- Programs under which special education students may attend schools of a district other than the one in which they reside that have the “necessary facilities” (NJSA 18A:46-20), or approved private schools at public expense. More than 14,000 special education students attended public schools in other districts for part or all of their day, and an additional 10,284 were sent to approved private schools in 2017-18, according to budget enrollment counts.

Although none of these provisions or statutes directly address the issue of segregation, the New Jersey Supreme Court has stated that “schools with feasibly correctable racial imbalances might well currently be viewed as not affording suitable educational facilities within the meaning of the statutory language,” and that this might even be a denial of the students’ constitutional right to a “thorough and efficient system of free public schools.”²⁵ In a 2000 decision, the court cited an even earlier integration precedent, *Booker v. Board of Education of Plainfield*,²⁶ to the effect that: “In *Booker* we held that the Commissioner had the responsibility and power of correcting De facto segregation or imbalance which is frustrating our State constitutional goals.”²⁷

The *Booker* decision would mean the commissioner has a constitutional duty to make some of the provisions above mandatory upon districts not discretionary. Likewise, if students in some districts are being denied their constitutional rights to an integrated education, and their own districts cannot provide it, then the commissioner has the power and duty to act by having students cross district lines pursuant to some of the statutory provisions cited above, or by changing district lines as the commissioner did in the Morris school district pursuant to *Jenkins*.

24 Charter Aid Notices were obtained through an Open Public Records Act request by Dr. Julia Sass Rubin of the Bloustein School of Public Policy and Planning at Rutgers and generously shared with us aggregated to the district level. These data were compared to public geospatial data on each charter school’s location and each residential district’s boundaries to identify how many students attended a charter school located outside of the district in which they lived.

25 *Jenkins v. Township of Morris School District and Board of Education*, 58 N.J. 483, 507 (1971)

26 45 N.J. 161 (1965).

27 In *Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316, 324 (2000).

Section 3: Statutory and Constitutional Authority for Changing Existing School District Lines

Another important mechanism for promoting school integration is changing district lines. As was true of students attending schools outside of their districts of residence, there is abundant legal authority for regionalization by local decision and state edict. Yet, regionalization by either mode has rarely occurred. State authority has only been used once, 48 years ago, and that was explicitly to advance the cause of school integration. As indicated above, in 1971, the commissioner of education, prodded by a decision of the New Jersey Supreme Court, ordered the merger of the Morristown and Morris Township school districts into the Morris school district for racial balance purposes.²⁸ Research has shown that the success of the Morris district is largely due to the merger remedy, and over time the importance of stable and committed leadership, strong community-school partnerships, buy-in from a diverse group of families, and a strong sense of pride, trust and hope for a truly equitable school system (Tractenberg, Roda, & Coughlan, 2017; Tractenberg, Roda, Coughlan, & Dougherty, forthcoming).

Regionalization, even for purposes other than school integration, has been used only a few times during the past half century notwithstanding statutory authority, blue ribbon commission recommendations, and longstanding educational and fiscal research that extol the educational advantages, efficiency and cost benefits of regionalization. Much of that research evidence was described in detail at a full-day forum convened by the Educational Testing Service (ETS) in 2016 to consider district consolidation to advance school diversity.²⁹ Moreover, blue ribbon commissions as long ago as 50 years and as recently as 2018 have strongly and consistently recommended school district consolidation. In 2018, the New Jersey Economic & Fiscal Policy Workgroup, established by the State's legislative leadership and inspired by Senator Steven Sweeney, the Senate President, urged statewide school district consolidation for educational effectiveness reasons. In particular, two of its recommendations were to: "Merge all K-4, K-5, K-6, K-8, and K-9 school districts into K-12 regional districts to improve the quality of education and promote efficiency...Permit the establishment of two county-wide school district pilot programs."³⁰

28 Jenkins v. Township of Morris School District and Board of Education, 58 N.J. 483 (1971).

29 For detailed information about that forum, which was entitled Bringing Students Together: Obstacles and Opportunities of School District Consolidation, see https://www.ets.org/s/achievement_gap/conferences/bringing_students_together/overview.html. The proceedings of that forum were published in a special issue of ETS Policy Notes, vol. 24, no. 1 (Spring 2017).

30 N.J. Economic & Fiscal Policy Workgroup, Path to Progress (Aug. 9, 2018) at 19.

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The failure of state government to act upon these repeated recommendations, even for efficiency and cost savings reasons, is especially inexplicable because the education clause of New Jersey's state constitution imposes on the legislature the requirement that it provide for the "support and maintenance of a thorough and **efficient system of free public schools** for the instruction of all the children in the State between the ages of five and eighteen years."³¹

Beyond that, the so-called CORE Act of 2007,³² had 11 years earlier demonstrated a legislative recognition of the value of school district regionalization, albeit not for integration purposes. Pursuant to that New Jersey legislative enactment, the newly-created executive county superintendents were instructed to develop plans to use district consolidation/regionalization as a means to eliminate all districts that did not offer a K-12 educational program (NJSA 18A:7-8 (d) and (h)). Two years later, in 2009, the legislature added a provision requiring the executive county superintendent to "eliminate any non-operating district and merge that district with the district with which it participates in a sending-receiving relationship." (NJSA 18A:8-44; 7-8 (g)). Although that mandate resulted in the elimination of less than half the state's 26 non-operating districts, the others remain in place and the CORE Act's broader regionalization instruction to the executive county superintendents went largely unaddressed.

Ironically, but for the ETS conference these studies and resulting recommendations have not focused on the diversity potential of school district consolidation. It is not too late to correct that oversight by persuading the commissioner to act upon his clear power and duty to integrate districts.

³¹ NJ Const. Art. VIII, par. 4 (Emphasis added.).

³² L. 2007, c. 63, sections 42-58 (codified as N.J.S.A. 18A:7-1 to 7-16).

Section 4: What the Commissioner of Education and State Legislature Should Do

Under New Jersey's current education statutes, as already indicated, the commissioner of education has expansive powers, and corresponding duties, to ensure that the state's constitutional and legislative goals for the public schools are fully met. Surely that includes school integration. The Legislature also has assigned to the state board of education important powers and duties regarding educational policy, rule-making and oversight. Some of these are designed to be exercised independently and some in cooperation with the commissioner. To round out the picture, the governor and the Legislature itself, sometimes through its Joint Committee on the Public Schools, have substantial responsibilities, especially with regard to receiving or issuing reports. **Appendices B, D, E and F** list the relevant statutory provisions for the commissioner, state board, governor and Legislature, respectively. **Appendix C** lists the statutory provisions that address equity, equal opportunity, non-discrimination and non-exclusion in the schools, and **Appendix G** contains a "Condensed State Action Plan" for New Jersey.

There are two approaches that the state legislature should adopt to assure integration. First, a variety of existing statutes dealing with cross-district student movement, including those referenced above, could be amended to build into each a requirement that advancing school integration is a first priority. Existing statutes provide two examples of approaches that can be adopted:

- Language in the charter school statute provides that each charter school must "ensure the enrollment of a cross section of the school-age population" of the relevant community, "including racial and academic factors" (NJSA 18A: 36a-8). Of course, the relevant community would itself have to be racially diverse for this approach to achieve the desired end, which may require that a multi-district, county or even statewide demographic profile would have to be employed. Tractenberg and Coughlan's 2018 report provides a basis for determining what relevant community would be required.
- Language in the provisions relating to the termination of sending-receiving relationships requires that the commissioner consider "the effect on the racial composition of the pupil population of the districts." (NJSA 18A: 38-13).

Second, an entirely new section focusing on the commissioner's paramount duty to assure the integration of the state's public schools could be added, or

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language could be inserted in a variety of existing statutory provisions, including, by way of example, the following:

- A sentence could be added to the end of NJSA 18A: 4-24, which imposes on the commissioner the duty to determine the efficiency of the schools, reading as follows: “As a paramount aspect of the commissioner’s duty to inquire into and ascertain the thoroughness and efficiency of the state’s public schools, the commissioner shall determine the extent to which any of those schools have feasibly correctable racial, ethnic or socioeconomic imbalances and shall recommend how any such imbalances shall be expeditiously corrected or, if necessary, shall take action on his own to do so.”
- A phrase could be added to NJSA 18A: 4-29’s list of matters about which the commissioner has to instruct county and local district superintendents after “the conduct of the schools,” as follows: “, the achievement of racial, ethnic and socioeconomic balance wherever feasible.”
- A phrase could be added at the end of the first sentence of NJSA 18A: 55-2, which empowers the commissioner to withhold school moneys for nonperformance of duties, reading as follows: “, including the requirement that racial, ethnic and socioeconomic balance be achieved wherever feasible.”
- A phrase could be added after “reading levels of low-income children,” to NJSA 18A: 60-71, which provides for the establishment and operation of a statewide system of educational centers for research and demonstration, reading as follows: “achievement of racial, ethnic and socioeconomic balance in the schools wherever feasible.”

These examples are designed to illustrate the extent to which existing state statutes can be easily modified to make them more effective vehicles for assuring that New Jersey’s clear and longstanding constitutional obligation to integrate its schools is finally met.

Section 5: The New Jersey Judiciary's Minority Concerns Program

The New Jersey Judiciary's Minority Concerns Program is still being actively promoted and supported after 35 years, and truly deserves to be considered a national model for other court systems. It also should be considered a model for the other branches of state government in dealing, from their perspectives, with the persistent challenge of racial inequality and segregation confronting many facets of New Jersey's governmental structure and society and especially its schools.

In this section, the lessons to be drawn from the judicial branch's program by the executive and legislative branches are highlighted:

1. *Strong, explicit and continuing support and leadership from the highest levels of the governmental branch.* The early support of the Chief Justice, the administrative head of the judicial branch, was crucial to the launching of the minority concerns initiative, and the strong support of his successors was essential for its continuation and growth. That means in the executive branch the full support of the governor, commissioner of education and attorney-general is essential for true school integration. Under existing New Jersey law, the commissioner already has broad power and responsibility to take action. In the legislative branch, the leadership of both houses must likewise articulate strong and unequivocal support for integrating the schools and they must be prepared to advance whatever further legislation is required.
2. *An articulation of the crucial importance of the effort for the state and its citizens.* Truly integrating New Jersey's schools is complicated politically and administratively. The public must be made to understand how important it is to the state and why some residents will have to re-calibrate what they conceive to be in their enlightened self-interest. The state's political, educational, corporate, media and public interest leadership must use their respective bully pulpits to communicate the message about the benefits of integration.
3. *A commitment must be made to a set of explicit core goals and implementing techniques.* The action plans of the executive and legislative branches must be detailed and operationally sound. They must move New Jersey toward meaningful action within a prescribed timetable.
4. *Broad-based engagement in the formulation of the action plan and in its implementation.* In preparing recommendations and an action plan

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to address minority concerns, the judiciary convened 13 public hearings and forums across the state over a two- and one-half-week period, accepted written testimony and even took confidential testimony from members of the public who were reluctant to speak out publicly. It also included members of the public on the Supreme Court Committee on Minority Concerns and fostered other means of engaging the public and members of the bar in the implementation of the action plan. Any plan that seeks to address sensitive and controversial issues, such as school integration, ought similarly to focus on public engagement and collaboration.

5. *Periodic reporting about the status and progress of the effort.* Openness and transparency, as well as public engagement and collaboration, are crucial to effective implementation of an action plan. One essential element is regular and detailed reporting about the status and progress of implementation. But such a mechanism cannot just be on paper. Pursuant to the implementation of *Abbott v. Burke*, the commissioner and state board of education have had statutory obligations to report on progress periodically, but these obligations have been honored more in the breach than the observance. The Supreme Court Committee on Minority Concerns has been much more diligent in meeting its reporting obligations and that communicates a powerful message.
6. *Revisions in the action plan based on experience.* A major purpose of meaningful regular reporting is to pave the way for fine-tuning or more substantially revising the action plan.
7. *In-service training of employees at all levels.* Successful implementation of an action plan is dependent upon the attitudes and capabilities of those charged with carrying out the tasks. That is especially true when the plan deals with such sensitive matters as race, ethnicity and socioeconomic status and how government can make its citizens feel respected and attended to. In the schools, as in the court system, that means staff at all levels must be helped to recognize and deal with implicit biases they hold, and to be afforded the know-how and resources to discharge their responsibilities.
8. *Long-term commitment and demonstrated staying power.* Transforming large and complex governmental systems, which discharge crucially important and inherently sensitive roles with regard to major segments of New Jersey's increasingly racially diverse population, does not happen on command. The other branches of state government need to learn

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from the judiciary and its 35 years of sustained effort to address minority concerns.

9. *Collaboration with other states confronting the same or similar challenges.* As with other endeavors, there is strength in numbers. Many states are wrestling with the same concerns as New Jersey, including the states cited earlier that are racially diverse overall, but continue to have segregated school systems (i.e., Illinois, New York and Maryland). Sharing experiences and reform ideas—even possibly collaborating across state borders—can strengthen each state's efforts.
10. *Participation, or even leadership, in a national effort.* The New Jersey judiciary, led by its Committee on Minority Concerns, has played an essential role in the creation of national recognition and national action to address racial and other inequalities in both state and federal courts across the country. The challenges of school segregation also are multi-state, if not national, in scope. Collaborative action on a national level is the logical extension of collaboration between and among individual states.

If the executive and legislative branches were to adopt action plans modeled on the judiciary's plan and the elements outlined above, the prospects for meaningful positive change are encouraging.

Section 6: Moving from School Desegregation to Integration

In this final section of the report, we provide a list of practical recommendations centered around reimagining education for equity and integration and on attending to the social ecological layers that can help foster inclusive and integrated environments. These layers include (i) the powerful role of state and district policy, or laws and regulations, which require and support the efforts of districts to integrate; (ii) the meaningful effects of community relationships that can help shift districts toward more integrative practices both directly and indirectly; (iii) the institutional practices that districts can deploy; (iv) the interpersonal skills that school and district leaders can cultivate in order to create integrated schools; and (v) the importance of challenging and transforming individual attitudes regarding diversity. We further organize our research-based ideas under the following two categories: a) top-down efforts to create more racially diverse, high-quality public school options that reflect and value changing demographics, and b) bottom-up efforts to train leaders and teachers to respond effectively to demographic changes by using culturally responsive and inclusive practices.

We believe this list of promising practices can be achieved with top-down state and district policy changes, as well as bottom-up support from various school-level stakeholders. The underlying theme running through each of these tactics is to center the needs and experiences of students and families of color, instead of catering to the advantaged (mostly White) families that historically hold the most privilege and power in educational spaces.

Public Policies at the State and District Levels

1. *Draw on the statutory and constitutional authority for changing existing district lines.* State education officials should research the enrollment patterns and demographic shifts across districts. Then, they should consider two strategies, one broader or even countywide and statewide, and the other narrower and more particularized, for integrating New Jersey's schools.

The broader strategy can build on the 2018 recommendations of the New Jersey Economic and Fiscal Policy Workgroup and restructure school districts statewide so that all are unified K-12 districts, as well as to pilot several countywide school districts, perhaps modeled on the approach adopted by many states, including Maryland, that was a special focus of the Workgroup.

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The narrower strategy can build on the ETS forum and move toward consolidating individual smaller, under-enrolled districts with adjacent districts that would in effect combine two segregated districts into a new desegregated district. This can build on the Morris district model and adapt that approach to each set of districts' unique circumstances. Key to the Morris district's continuing recognition as a high quality district is that structures remain in place to support diversity and the district is committed to sustaining them.

2. *Adopt a policy that mandates affordable and integrated housing policy within the boundaries of each school district, in accordance with guidelines set out in the Mount Laurel litigation.³³ Since the norm has been for most school-aged children to attend their zoned neighborhood school based on their home address, “exclusionary zoning policies (such as banning apartment buildings, townhouses, or houses on modest-sized lots) that discriminate based on income and exclude the non-rich from many neighborhoods—and thus from their associated schools” —are a problem that needs to be addressed if the state is serious about school integration (Kahlenberg, et al., 2019, n.p.).*

One idea comes from Charlotte, North Carolina where Mayor Anthony Foxx improved neighborhoods to achieve integration in housing. He brought businesses and jobs into the most segregated neighborhoods in the city, obtained capital improvement grants to install new sidewalks, created affordable housing, and improved the public transportation system (Johnson, 2019). Other urban neighborhoods that have revitalized include Washington Park in Cincinnati, and Denver, where low-income housing is distributed throughout the city instead of being clustered in certain areas. Minneapolis recently “became the first major city to enact the bold policy reform to eliminate single-family zoning to address the history of racist housing segregationist practices and alleviate the affordable housing crisis” (Johnson, 2019, pp. 257-258). New Jersey's urban centers should use these models, and others, to first diversify their neighborhoods, and then diversify their schools, as well.

3. *Utilize statutory and constitutional authority for students to cross existing district lines to receive part or all their education outside of their districts of residence. Create diverse magnet school options that allow students to rank and choose specific themed programs, but have diversity in admissions targets. This connects to the discussion above regarding the*

33 Southern Burlington County NAACP v. Mount Laurel Township, 67 N.J. 151 (1975).

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ways in which New Jersey students can and already do cross district lines. One idea comes from Connecticut where the Sheff case³⁴ has led to an extensive magnet school program in Hartford and other urban communities.

Another idea is from New York City's public school Diversity in Admissions program. The program allows individual schools to set aside a percentage of kindergarten seats for students in certain subgroups to offset rapid increases of White and/or advantaged students, which can create a temporary state of diversity, but can also turn into new segregation. Today, more than 75 schools citywide are enrolled in the Diversity in Admissions program, setting aside a certain percentage of seats — anywhere from 10 to 100 percent — for students who are low-income (FRPL eligible), English language learners, involved in the child-welfare system, homeless, or have incarcerated parents (Potter, 2017).

Closer to home, a number of New Jersey districts, including Montclair, have used magnet schools policies to enhance the diversity of their schools.

4. *Ensure student assignment policies result in racially and SES-balanced schools within districts.* One idea already described comes from the Morris School District, which uses geography to achieve racial diversity in the primary (K-2) and intermediate (3-5) schools by designating the center of town as an open assignment area because it continues to be where many of the low-income Black and Latinx residents live. Students living in this area are bused to various schools across the district to desegregate those schools and to achieve racial and SES balance. Students in every other assignment area, which look like pie-shaped pieces radiating out from the center of town, attend their “neighborhood” school based on address. Because of this pie-shaped configuration, however, most students are bused and thus the burden is not entirely on students of color in the open assignment area (Tractenberg, et al., Forthcoming). The Montclair district also uses a geography-based assignment policy.

Another idea comes from Jefferson County, Kentucky, which includes Louisville and the surrounding suburban schools. As detailed in Johnson's (2019) book, the school district superintendent used geography-based school choice, but provided economic incentives for neighborhoods to become more diverse by offering the following exemptions from the

34 Sheff v. O'Neill, 238 Conn. 1, 678 A.2d 1267 (1996).

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school integration plan: 1) to families already living in integrated neighborhoods; 2) to black families who moved to White neighborhoods using public housing vouchers; and 3) to families living in neighborhoods that eventually evolved into integrated areas.

5. *Re-establish a Statewide School Integration Office under the supervision of the commissioner of education to replace the Office of Equal Educational Opportunity that played an important function in the 1970s and 1980s. The director and staff of the new office will be responsible for working with school districts to complete equity audits, devise integration plans, provide resources and support for the implementation of the individualized plans, and evaluate their progress each year. Equity audits will be completed by each district to report yearly on such matters as student, teacher and administrator demographics, between- and within-school segregation levels, school choice policies and statistics, tracking and specialized programs by race and SES, PTA and district foundations fundraising amounts, and disciplinary rates broken down by race and SES.*
6. *Assure that sufficient state funding is provided to support meaningful integration efforts. That includes: funding of within-district and between-district transportation of students; and employment of specially equipped personnel to develop, implement, monitor and report on district-level integration plans, interact with and support students and parents, and conduct in-depth professional development programs.*

Community Relationships

1. *Change realtor perceptions about public school quality. One idea comes from the Pasadena Public Schools, which implemented a program called, "Realtors Read Across Pasadena." This was designed to deal with the poor reputation of the Pasadena schools perpetuated by realtors who, in most cases, did not know what was going on in the schools. As a consequence, 55% of families living in the city did not send their children to the district's public schools (Miyake-Trapp, 2018). However, the school district's reputation is slowly changing as district officials attempt to improve the message as a way to attract more resident children. As the superintendent explained, part of this initiative involves inviting realtors into the schools to give them facts and personal knowledge of the schools that they can relay to prospective families: "This is a way for realtors and their clients to see beyond a rating or report card, and to consider quality public schools - that are tuition free. It's a way*

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to personally experience the great things happening at our schools: kids excited about learning, teachers actively engaging kids in advanced academics - all in facilities designed to ignite learning," (p. 4).

The New Jersey Board of Realtors could partner with the state board of education on training and incentive programs to encourage realtors to engage with their local school districts. The Morris School District is a possible model for such an approach since it has been inviting local realtors into the high school every year for a school tour. That's only a starting point, however, for a program that can enlist area realtors as allies in an effort to help combat commonly held negative attitudes about racially diverse schools.

2. *Hire community liaisons and diversity officers at the district and school levels.* Parent involvement and school-community relations are important factors that influence a school's ability to meaningfully integrate students from historically marginalized backgrounds.

Community liaisons can help bilingual students and their families feel more welcome in the schools. Districts can benefit from hiring bilingual staff in each school to help increase and sustain parental involvement. In general, community liaisons help districts and schools work toward true integration both by helping teachers better understand the families and children they serve and by directly reaching out to parents themselves (Murray et al, 2014). Importantly, schools can strive to be present in the community in ways that encourage involvement through positive interactions with the school (Murray, et al, 2014). In Morris, the district created a unique position called a community outreach teacher. The teacher, who advocated for the position and was a long-time Spanish high school teacher and Morristown High School alumna, spends half of her time doing community outreach to the growing Latinx population and the other half in the classroom.

Diversity officers are often thought of as being uniquely affiliated with institutions of higher education, but in a K-12 setting, diversity officers can help coordinate a systemic effort to make schooling more inclusive. Diversity officers can take the educational mission of a given district and create programming to help actualize goals regarding integration (Healey, 2016). Diversity officers can craft professional development opportunities for teachers and staff to recognize and address the needs of a given student body and to assist districts in analyzing achievement data and other education indicators.

Institutional Practices

1. *Shift from tracking to detracking the curriculum.* Tracking practices remain ubiquitous across most middle and high schools in the U.S. Tracking has been criticized for being unfair and inequitable because it segregates students by race, class, and perceived ability; students in the low tracks do not receive equal access to high-quality teaching (Abu El-Haj & Rubin, 2009; Oakes, 2005). Low-track classes tend to have predominantly teacher-directed, rote instruction and students are given lower expectations (Oakes, Wells & Datnow, 1997). Research shows that, as much as possible, students should be equally represented by race/ethnicity and SES in every course, elective, club and extracurricular activity. Detracking the curriculum, including the elimination of separate gifted programs (Roda, 2015), is the most equitable practice because students are grouped heterogeneously.

One idea comes from the Rockville Centre Schools in Long Island, NY. When Principal Carol Burris detracked her high school mathematics curriculum and created heterogeneous, accelerated classes, the achievement gap narrowed significantly. From 1995 to 1997, the passing rate for Black and Latinx students on the state exams more than tripled from 23% to 75%, and the White and Asian student passing rate increased from 54% to 98% (Burris & Welner, 2005).

2. *Shift from no-excuses discipline to non-punitive discipline such as restorative justice practices.* Punitive discipline policies disproportionately affect students of color because of teachers and school leaders' implicit biases, which can exacerbate the school-to-prison pipeline (Skiba, et al., 2011). As Welsh and Little (2018) reported, "the evidence suggests that remedies to discipline disparities should focus on the disposition and biases of teachers and school leaders' behavior management rather than student misbehavior" (p. 773). This is the case because non-punitive discipline programs alone have not been effective at reducing the racial disparities in disciplinary outcomes. These programs must be combined with implicit bias training and culturally responsive practices (Welsh & Little, 2018), described in more detail below.

Interpersonal Skills

1. *Combine high-quality instruction with a culture of belongingness for students who have been traditionally marginalized in schools, namely Black and Latinx students.* Latinx students are often triply segregated

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within schools because of their race, SES and language. School leaders must change policies and programs that segregate English Learners into separate bilingual tracks for the entire day by incorporating them as much as possible into general education classrooms with their English-dominant peers (Gandara, 2012; Gandara & Orfield, 2012).

Research has shown that students learn best in dual language environments where their language is considered an asset, and not a deficit (Ovando, 2003). Black, Latinx, and low-income students are regularly relegated to lower-ability groups and tracks because of their perceived ability, often measured by standardized tests. Standardized tests are highly correlated to a school's overall level of socio-economic advantage or disadvantage, with students in schools that have mostly advantaged students performing four grade levels above schools with mostly low-income students (Johnson, 2019).

Instead, schools should place less emphasis on outcome measures and institute culturally relevant practices that help build interpersonal skills for a diverse democracy by committing to “help students who are on the fringes of the classroom become the intellectual leaders of the class, build a learning community, legitimate students’ real-life experiences as part of the curriculum, encourage students to engage in collective struggle against the status quo and become aware of themselves as political beings” (Abu El-Haj & Rubin, 2009, p. 457).

More broadly, the physical spaces within schools should reflect student diversity in a variety of ways, including what appears on the walls, in the trophy cabinets and everywhere else.

2. *Ensure that teachers and staff, as well as parents in school leadership positions, are racially diverse.* Research has shown that hiring teachers of color is vitally important for relationship-building with students of color, which, in turn has short- and long-term impacts on achievement, graduation and college-going rates (Carver-Thomas, 2017).

However, reflecting national trends, only 16 percent of New Jersey public school teachers are Black, Latinx or Asian (O’Dea, 2019). The NJDOE has taken small steps to address the issue by partnering with teacher educator programs at Rowan University and The College of New Jersey. These programs offer training, mentoring and scholarships to pre-service teachers for the purpose of increasing the number of men of color in the teaching field. Yet, the current programs also have long waiting lists and

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should be expanded to further diversify the teaching staff in urban and suburban districts.

The importance of diversity goes for parents, as well, and should be considered when leadership positions on PTA boards, educational foundations, and other school-related programs are being filled. When White parents dominate leadership positions, they have been found to influence policies and practices within the school through fundraising and other forms of parent involvement that benefit their children at the expense of others (Cucchiara, 2013; Lewis, 2013; Posey-Maddox, 2014).

Individual Attitudes

1. *Mandate implicit bias training in conjunction with non-punitive discipline policies.* Implicit bias training requires teachers and leaders to interrogate their own implicit biases about race and class (Doucet, 2017). In conjunction with implicit bias training, restorative justice circles should be practiced with all students, not just students who misbehave.

This circle work between teachers and students stems from the philosophy that when teachers and other school staff build student relationships that support the schools' "underlying ethos that encompasses the values of respect, openness, empowerment, inclusion, tolerance, integrity and congruence" (Hopkins, 2002, p. 144), the result is fewer behavioral incidents and more and better learning. Ultimately, social emotional learning programs, including implicit bias training and student circle work, have been an effective way to decrease serious discipline incidents and referrals in racially diverse schools (Welsh & Little, 2018), and to increase student achievement levels (Gonzalez, 2012, 2015).

In adopting and implementing such programs, though, districts must ensure that they require meaningful interventions and not just simplistic check-the-box approaches, which can do more harm than good. One way to accomplish that is by utilizing individual and organizational consultants with well-earned reputations for successful engagement with school personnel.

2. *Offer professional development on culturally-sustaining pedagogy.* Related to uncovering teachers' implicit biases and developing relationships between teachers and students to reduce discipline disparities, culturally sustaining pedagogy (CSP) renounces deficit perspectives that blame the family for educational gaps and seeks to humanize schooling spaces through an asset-based pedagogical stance (Paris, 2012). This

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means recognizing the unique abilities and strengths that students of color bring to school, instead of framing them as problems.

CSP also means including the lives and experiences of students of color in curriculum and teacher practices. Because schools often adopt colorblind and Euro-centric policies and practices, ample resources are needed for professional development for teachers, staff, students and parents on restorative practices, implicit bias and anti-racism trainings, interrupting micro-aggressions, socio-emotional learning, differentiation, classroom management and detracking. Each of these practices has been found to improve the school climate (Gregory et al., 2017). And, “if the school climate facilitates relationship building for the entire school community, it will (a) allow all students to be a part of the conversation, (b) invite teachers and school leaders into the lives of all students and not just students who engage in misbehavior, and (c) create a culture of connectivity” (Welsh & Little, 2018, p. 783).

3. *Change parental attitudes about the value of integration for all students, particularly suburban White families who have historically been the loudest dissenters to desegregation plans.* One idea comes from New York City’s District 15 middle school equity plan. The district hired an outside urban planning and design organization, called WXY Studio, to publish statistics about school segregation and school choice patterns, facilitate roundtable discussions for parents to voice their opinions, concerns and questions about what to do to foster greater access and opportunities, and disseminate recommendations based on their findings (<http://d15diversityplan.com>). After a year-long process, the district voted to eliminate all admission screens to the middle schools, which will result in greater diversity by race, class, and academic ability.

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Conclusion

Policymakers, school leaders and New Jersey residents are seeking alternatives to the highly fragmented, segregated and unequal landscape of educational access and opportunity. New Jersey's LAN school desegregation case is one example of this effort. New Jersey offers two lessons that are helpful to other states interested in true integration.

First, it has a longstanding legal and legislative commitment to desegregation or even integration. This is reflected in our fundamental infrastructure, codified in the 1947 anti-segregation constitutional clause, some related broad statutory provisions adopted as early as 1881, and a judicial interpretation of the state constitution's education clause, which has made it a partner for pursuing school integration. This infrastructure gives the commissioner of education the power and duty to do what is necessary to integrate the schools, including by consolidating districts and allowing students to cross district lines for racial balance purposes. It gives individual districts the mandate and broad capacity to prioritize diversity and integration.

Second, although New Jersey still battles racial isolation in many of its schools, it is also the site of many persistent efforts on the part of local districts and communities, which have maintained a commitment to creating racially diverse and integrated schooling spaces. It is from the commitment on the part of many districts that we take several of our policy recommendations to create more diverse, high quality school district options.

As both the scholarly and popular conversation starts to differentiate between mere desegregation and true integration, other states can learn from the ongoing, sometimes fraught, but ultimately hopeful efforts of New Jersey. They can look to the state as they embrace equity-oriented policies and practices that seek to build bridges instead of walls among diverse students and their families.

To aid them in this effort, we attach to this report as **Appendix G** a "Condensed Action Plan" for integration, which embodies most of the ideas presented in this report, but in a format that may be more conducive to their adoption and implementation. Although some aspects of the action plan may be particularly focused on the New Jersey situation, the plan can be easily adapted to the circumstances of other states. The urgent need is for states and school districts to begin the arduous but critically important journey toward true integration in their schools, and to commit to staying the course until that goal has been fully achieved.

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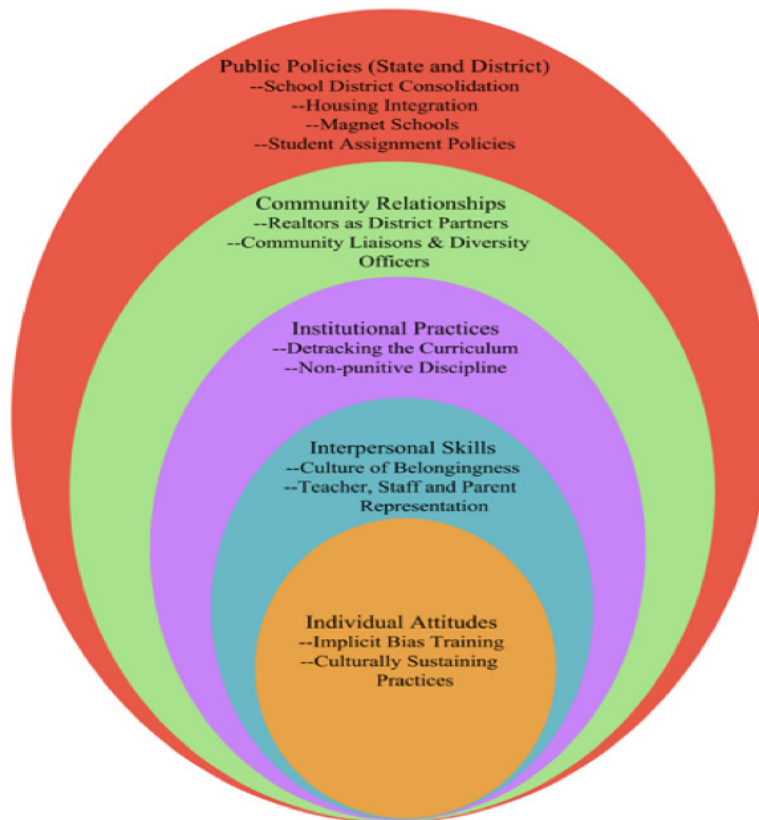
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Figure 1. Social-ecological Model for School Integration in New Jersey

School Integration in New Jersey



(Adapted from Bronfenbrenner's (1979) socio-ecological model)

Appendix A: Statutory Provisions that Enable Students to Receive Education in Districts Other than their Districts of Residence

- NJSA 18A:13-34—formation of regional districts
- NJSA 18A:36A-8 (and NJAC 6A: 11-2.1(b)(4) and 2.1 (j), (l))—Charter schools, including regional or multi-district charters
- NJSA 18A:36B-14, -16—Interdistrict Public School Choice program
- NJSA 18A:36C-8—Renaissance Schools can enroll students from outside their “attendance area,” if space permits
- NJSA 18A:38-3—authority of all districts to accept non-resident students
- NJSA 18A:38-7.12—if student lives in a multi-district federal enclave
- NJSA 18A:38-8—if district of residence does not have “suitable accommodations”
- NJSA 18A:38-9—if student lives far from the school in his district of residence
- NJSA 18A:38-10—if district of residence determines that it is “advisable” for its students to “secure better school facilities” in another district, “or for reasons of economy or other good cause”
- NJSA 18A:38-11 et seq.—if district of residence does not provide a full K-12 educational program (or any educational program), it must enter into a sending-receiving relationship with another district for the education of its students
- NJSA 18A:38-15—if high school in district of residence does not provide “particular high school course of study” sought by a resident student
- NJSA 18A:38-16—if district of residence does not provide approved evening high school courses
- NJSA 18A:38-17—if district of residence does not provide instruction beyond 12th grade
- NJSA 18A:38-24—with consent of district of residence and commissioner of education, student can attend a “demonstration school maintained in connection with any State college”
- NJSA 18A:46-20—special education students can attend schools in districts other than their districts of residence that have “necessary facilities”
- NJSA 18A:47-5—“[c]hildren who are dependent and delinquent, or who are habitually truant or incorrigible, or who shall be found by the court to require

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special instruction, and who reside in a school district in which there is no such special school of instruction” may be assigned to such a school in another district

NJSA 18A:54-1 et seq.—county vocational districts

NJSA 18A:54-7—districts with vocational programs can receive students from other districts

NJSA 18A:54-20.1--districts of residence must pay tuition to county vocational school district for students who apply for and are accepted by a county vocational school (and NJSA 18A: 54-23.5—county vocational schools can accept non-resident students (students from other counties))

NJSA 18A:54c-6—the county vocational district Marine Academy can admit students from other counties

NJSA 18A:54f-3—the At-Risk Youth Employment pilot program presumably can accept students from multiple districts

NJSA 18A:61-3-any deaf resident of New Jersey under the age of 21 can attend the Marie H. Katzenbach School for the Deaf, space permitting

NJSA 18A:61A-1—any New Jersey resident with the requisite skills can attend the New Jersey School of the Arts, governed by the commissioner of education and supervised and directed by the state board of education

NJSA 18A:61B-1—placed under the state department of education the State School District for Institutions (formerly the Garden State School District) (NJSA 30:4C-26: children placed in foster [resource family] homes, group homes or institutions are deemed to be residents of the municipality and county in which the home or institution is located, except that for school funding purposes the district of residence will be determined by the commissioner of education)

Appendix B: Selected Statutory Provisions Regarding the Commissioner's Relevant Powers and Duties

A Prefatory Note: This Appendix culls from the voluminous provisions in the New Jersey Statutes which address the Commissioner of Education's powers and duties those that seemed most relevant to this report and its focus on racial integration of the schools. Some provisions speak generally to the broad scope of the Commissioner's powers and duties regarding the State's educational system; others address his role in a range of key program areas; but, tellingly, only a few deal explicitly with the matter of race in the schools. Those are presented in Appendix C. Although the Commissioner is the State's chief education officer, the State Board of Education is an important policymaking and oversight body with many statutory powers and duties over the State's schools, some operating in tandem with the Commissioner's powers and duties and some independently. The Governor and the Legislature and its Joint Committee on the Public Schools have some relevant statutory powers and duties as well, and frequently are recipients of reports from the commissioner. We have included a selection of statutory provisions for the State Board, the Governor and the Legislature in Appendices D, E and F.

General Powers and Duties

NJSA 18A:4-22-- "The commissioner shall be: (a) The chief executive and administrative officer of the department [of education] having general charge and supervision of the work of the department; ... (c) The budget request officer and the approval officer of the department

NJSA 18A:4-23—"The commissioner shall have supervision of all schools in the state receiving support or aid from state appropriations...and he shall enforce all rules prescribed by the state board [of education]."; several decisions of the New Jersey Supreme Court cited this provision in requiring school integration

NJSA 18A:4-24—"The commissioner shall [,] pursuant to rules and regulations of the State board, inquire into and ascertain the thoroughness and efficiency of operation of any of the schools of the public school system of the State and of any grades therein by such means as to him seem proper, and he shall report to the State board the results of such inquiries and such other information with regard thereto as he shall deem proper...."; New Jersey court decisions grant the commissioner broad discretion to define "through and efficient" education and the supreme court decision in *Jenkins* suggested that the clause requires racial balance whenever feasible

NJSA 18A:4-25—prescribing minimum courses of study

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NJSA 18A:55-2—"The commissioner shall direct the State treasurer to withhold funds payable by the State from any district which fails to obey the law or the rules or directions of the State board or the commissioner"

Controversies and Disputes Arising under the School Laws

NJSA 18A:6-9—"The commissioner shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws...or under the rules of the State board or of the commissioner"

NJSA 18A:6-9.1—commissioner decisions are final agency action (no longer requiring an appeal to the State board) appealable directly to the Appellate Division of the NJ Superior Court

School Funding

NJSA 18A:7F-5—(a) commissioner shall notify districts annually of state aid components, total state aid, adequacy budget and required local share; (c) commissioner shall approve each district's budget as providing a thorough and efficient education

NJSA 18A:7F-5c—commissioner can adjust school budget calendar and date by which districts must notify nontenured personnel

NJSA 18A:7F-5.4—commissioner to approve additional district funding authorized by local Voters

NJSA 18A:7F-6—commissioner cannot approve a district budget "unless he is satisfied that the district has adequately implemented within the budget the thoroughness and efficiency standards set forth" by statute; a district whose budget is less than its adequacy budget and whose students are not satisfying the core curriculum content standards that define a thorough and efficient education must increase expenditures to at least meet the adequacy budget within two budget years

NJSA 18A:7F-7—commissioner must approve any district appropriating more than a specified percentage of its excess undesignated general fund balance, and, if a district fails to reserve its excess undesignated general fund balance not authorized for appropriation by the commissioner, the commissioner may withhold state aid in that amount

NJSA 18A:7F-9—commissioner can withhold all or part of a district's State aid for failing to comply with "any rule, standard or directive," including those prescribed by law " or formulated by the commissioner" for "equalization of opportunity" (but, in that connection, it refers only to the core curriculum content standards and not to school integration)

NJSA 18A:7A-29—nothing in state school aid law "shall be construed to deny the State board, commissioner or local boards of education powers granted

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to them elsewhere in Title 18A except as expressly provided”

NJSA 18A:7F-32—commissioner can adjust State aid calculation for a district changing its composition or organization (i.e., regionalizing)

NJSA 18A:7F-33—every school district shall file an annual report with the commissioner containing all data necessary to effectuate the State aid provisions

NJSA 18A:7F-46—in connection with the State board’s review and update every five years of the core curriculum standards, the commissioner “shall develop and establish through the [Education Adequacy] report...efficiency standards which define the types of programs, services, activities, and materials necessary to achieve a thorough and efficient education”

NJSA 18A:7F-60—“The Commissioner of Education shall not authorize the disbursement of funds to any district until the commissioner is satisfied that all educational expenditures in the district will be spent effectively and efficiently in order to enable students to achieve the core curriculum content standards. The commissioner shall be authorized to take any affirmative action as is necessary to ensure the effective and efficient expenditure of funds by school districts and county vocational school districts”

QSAC/State Intervention

NJSA 18A:7A-10—“For the purpose of evaluating the thoroughness and efficiency of all the public schools of the State, the commissioner, with the approval of the State board and after review by the [legislative] Joint Committee on the Public Schools, shall develop and administer the New Jersey Quality Single Accountability Continuum [QSAC] for evaluating the performance of each school district;” the statute identifies “five key components of school district effectiveness,” but none deals explicitly with school integration

NJSA 18A:7A-11—districts have to submit a report every three years about their progress in complying with all the state’s quality performance indicators. “In the years intervening between the district’s three-year review, whenever the commissioner determines that conditions exist in a district that significantly and negatively impact the educational program or operations of the district, the commissioner may direct that the department immediately conduct a comprehensive review of the district. Nothing in this section shall preclude the commissioner, in his discretion, from conducting a random review of a school district to assess the district’s compliance with the quality performance indicators.” The quality performance indicators could, but do not, include school integration.

NJSA 18A:7A-14—commissioner to evaluate districts’ progress reports and determine where, on the performance continuum, to place each district;

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commissioner also “shall establish a mechanism for parent, school employee and community resident input into the review process;” for districts below 80% of the performance quality indicators in “any of the five key components of school district effectiveness, the commissioner shall require the district to develop an improvement plan;” and not less than every six months the commissioner “shall review the district’s progress in implementing the improvement plan.”

NJSA 18A:7A-15—commissioner can order a local board “to show cause why an administrative order placing the district under full State intervention should not be implemented;” if the commissioner determines after a plenary hearing that “it is necessary to take corrective action, the commissioner shall have the power to order necessary budget changes within a district or other measures the commissioner deems appropriate to establish a thorough and efficient system of education”

NJSA 18A:7A-31.3—“Within six months following the establishment of a school district under full State intervention, the commissioner shall present to the Joint Committee on the Public Schools the improvement plan developed by the district,” and the commissioner shall annually report on the progress made in implementation and prospects for State withdrawal from intervention.

NJSA 18A:7A-49—based on the annual report of a district under full State intervention, “The commissioner shall formally report to the State board and to the Governor and the Legislature on the district’s progress,” and, not sooner than three years after the district was placed under State intervention, “the commissioner may recommend that the State board place the school district under partial State intervention or elsewhere on the performance continuum.”

NJSA 18A:7A-53—differentiates between the commissioner’s roles regarding districts certified as Levels I, II or III, or placed under State operation regarding a schedule for evaluation of the district’s performance on the five key components of performance.

Developing Standards for Graduation and Otherwise

NJSA 18A:7C-1—with the approval of the State Board of Education, the commissioner “shall establish a program of standards for graduation from secondary school,” which must include some enumerated elements.

NJSA 18A:7C-9—the commissioner also shall monitor “the results of the implementation of graduation requirements...and from time to time, but at least once every 5 years review and evaluate State and local programs, and shall report the results of said review and evaluation to the Governor and Legislature together with such recommendations for changes as may be

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appropriate to achieve the purposes of this act.”

NJSA 18A:7C-10—annually the commissioner “shall report to the Governor and Legislature on the impact of the State graduation proficiency test...[and] this annual report shall include data on the number of students who have dropped out of school, the number of students who have failed to take the test, curriculum realignments in grades K-12 to prepare students for the examination, testing requirements and practices in grades K-8 and any other related matters requested by the Chairman of the Joint Committee on the Public Schools or the chairman of the education committee of either House of the Legislature. The report shall also enumerate the efforts by the Department of Education to assist local school districts in the area of pupil retention, curriculum alignment and remediation.”

NJSA 18A:7C-16—“The Commissioner shall submit a report to the governor, and the Legislature...by September 1 of each school year that includes the number of students awarded the State Seal of Biliteracy in the previous school year, the languages in which those students attained proficiency, and the methods used by students to demonstrate proficiency for the State Seal of Biliteracy.”

School Report Card Program

NJSA 18A:7E-2—“The Commissioner of Education shall develop and administer a School Report Card Program,” which will annually prepare and disseminate the card “to parents and other interested taxpayers within each local school district.” “The commissioner is authorized to collect the data and to define the terms as necessary to effectuate the purposes of this act.”

NJSA 18A:7E-3—commissioner is given broad authority over the content, data collection, methodology and dissemination of the report cards.

Educational Facilities

NJSA 18A:7G-2—commissioner shall determine what educational facilities are required, especially in the SDA (formerly Abbott) school districts, for a thorough and efficient education system, and it is the Legislature's constitutional responsibility to assure that those facilities' needs are met through State funding

NJSA 18A:7G-4—commissioner receives, reviews and approves districts' long-range educational facilities plans updated at least once every five years pursuant to facilities efficiency standards issued by the commissioner

NJSA 18A:7G-12—commissioner can approve educational facilities projects not approved by the school development authority

NJSA 18A:7G-24—in consultation with the commissioner and State Treasurer,

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the development authority shall submit a biannual report to the Governor, Joint Budget Oversight Committee, the President of the State Senate and the Speaker of the General Assembly about the educational facilities program and its implementation

NJSA 18A:7G-26—commissioner must adopt rules and regulations necessary to implement the educational facilities program

Formation of Regional Districts

NJSA 18A:13-35—commissioner or his representative, with the local districts in question, shall determine, “after consultation, study and investigation,” that it is advisable for the districts to form a regional district and to move ahead with referenda in the districts

Interdistrict Public School Choice Program

NJSA 18A:36B-16—“The Commissioner of Education shall establish an interdistrict public school choice program which shall provide for the creation of choice districts. A choice district may enroll students across district lines in designated schools of the choice district.”

NJSA 18A:36B-24—“The commissioner shall annually report to the State Board of Education, the Legislature and the Joint Committee on the Public Schools on the effectiveness of the interdistrict public school choice program.”

Charter School Program

NJSA 18A:36A-3—“The Commissioner of Education shall establish a charter school program which shall provide for the approval and granting of charters to charter schools pursuant to the provisions of this act....The commissioner shall actively encourage the establishment of charter schools in urban school districts with the participation of institutions of higher education.”

Renaissance Schools

NJSA 18A:36C-5—“The commissioner may not approve more than four renaissance school projects in any one renaissance school district....In reviewing and judging applications for renaissance school projects, the factors considered by the commissioner may include, but not be limited to: (a) The likelihood that the renaissance school project will improve academic achievement...; (b) The strength of the support for the renaissance school project from the school district, board of education, and parents; (c) The facilities plan...; (d) Diversity of school type, elementary, middle school, and high school, among the proposed renaissance school projects; and (e) Any other factors deemed significant by the commissioner.”

Appendix C: Statutes and Regulations Dealing with Equity, Equal Opportunity, Non-Discrimination and Non-Exclusion

NJSA Title 10 (Civil Rights including the Law Against Discrimination)—provides broad protection against discrimination based on race, creed, color, national origin, ancestry, marital status, sex or sexual preference, or disability in any place of public accommodation, specifically defined to include a school or educational institution; and imposes penalties for violations in the form of fines and imprisonment.

NJSA 18A:35-1—in connection with a required two-year course of study in U.S. history, such “course of study shall include materials recommended by the commissioner dealing with the history of the Negro in America.”

NJSA 18A:36-20—“No pupil in a public school shall be discriminated against in admission to, or in obtaining any advantages, privileges or courses of study of the school by reason of race, color, creed, sex or national origin.”

NJAC 6A:7-1.1 et seq. [Managing for Equality and Equity in Education]—these regulations, promulgated under the authority of NJSA 18A:36-20, provide relatively comprehensively for equality and equity in school district practices, including board of education responsibilities, the establishment of an affirmative action officer, professional development, school and classroom practices, and employment and contract practices; however, they address school integration only in regard to “[a]ttaining within each school minority representation that approximates the school district’s overall minority representation,” but do not address promoting increased diversity at the district level; indeed, the current version of these regulations deleted a prior definition of “school desegregation” “because the term is not used in the chapter.”

NJSA 18A:38-5.1—“No 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;” and any board of education member who votes for such an exclusion shall be guilty of a misdemeanor punishable by fine or imprisonment,

NJSA 18A:7F-9—“In order to receive any State aid..., a school district, county vocational school district, or county special services school district shall comply with the rules and standards for the equalization of opportunity which have been or may be prescribed by law or formulated by the commissioner of education pursuant to law...”

NJSA 18A:38-13—a district seeking to terminate a sending-receiving relationship with another district “shall prepare and submit [to the commissioner] a feasibility study, considering the educational and financial implications for

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the sending and receiving districts, the impact on the quality of education received by pupils in each of the districts, and the effect on the racial composition of the pupil population of each of the districts. The commissioner shall make equitable determinations based upon consideration of all the circumstances, including the educational and financial implications for the affected districts, the impact on the quality of education received by pupils, and the effect on the racial composition of the pupil population of the districts.” [NB: the statutory provisions providing for the creation of sending-receiving relationships, NJSA 18A:38-8 and -11, do not specify that the effect on the racial composition of the pupil population must be considered]

NJSA 18A:36A-7—“A charter school shall be open to all students on a space available basis and shall not discriminate in its admissions policies or practices on the basis of intellectual or athletic ability, measure of achievement or aptitude, status as a person with a disability, proficiency in the English language, or any other basis that would be illegal if used by a school district...”

NJSA 18A:36A-8—“e. The admission policy of the charter school shall, to the maximum extent practicable, seek the enrollment of a cross section of the community’s school age population including racial and academic factors.”

NJSA 18A:36A-11—“c. A charter school shall comply with applicable State and federal anti-discrimination statutes.”

Appendix D: Selected Statutory Provisions Regarding the State Board's Relevant Powers and Duties

General Powers and Duties

NJSA 18A:4-10-- "The general supervision and control of public education in this state... and of the state department of education shall be vested in the state board, which shall formulate plans and make recommendations for the unified, continuous and efficient development of public education...of people of all ages within the state."

NJSA 18A:4-15—"The state board shall make and enforce, and may alter and repeal, rules for its own government and for implementing and carrying out the school laws of this state under which it has jurisdiction."

NJSA 18A:4-16—"The state board shall have all powers, in addition to those specifically provided by law, requisite to the performance of its duties."

NJSA 18A:4-19—vests the state board with power to issue subpoenas compelling attendance of witnesses and production of books and papers "before any of its committees or before the commissioner or one of his assistants;" and with power to impose penalties on any who "neglect or refuse to obey the command of the subpoenas" or who "refuse to be sworn and testify."

NJSA 18A:4-20—"The state board shall report annually to the legislature in regard to all matters committed to its care."

School Funding

NJSA 18A:7-29—state board and commissioner have all powers granted to them elsewhere in Title 18A, except as expressly provided in the state school aid law.

NJSA 18A:7A-30—state board given power and duty to "promulgate rules and adopt policies,...make all determinations and exercise such powers as are necessary for the proper administration of' the state school aid law.

Core Curriculum Content Standards

NJSA 18A:7F-46—"a. The State Board of Education shall review and update the core curriculum content standards every five years"

NJSA 18A:7F-4.2—state board required to adopt core curriculum content standards in the area of technology.

NJSA 18A:state board required to review core curriculum content standards for comprehensive health and physical education to ensure that information about organ donation is included for students in grades 9 through 12.

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QSAC/State Intervention

NJSA 18A:7A-34—“Whenever the Commissioner of Education shall determine after the issuance of an administrative order that a local school district has failed to assure a thorough and efficient system of education, the State Board of Education may issue an administrative order...which shall create a school district under full State intervention.”

NJSA 18A:7A-31.2—“Whenever the State Board of Education issues an administrative order establishing a school district under full State intervention..., the commissioner shall immediately inform the [Legislature's] Joint Committee on the Public Schools of that administrative order....”

NJSA 18A:7A-15.1—provides authority to the state board to: (a) approve appointment by the commissioner of up to three additional board members; (b) create a school district under full State intervention; and (c) upon the recommendation of the commissioner, appoint a State district superintendent of such a district.

NJSA 18A:7A-16—if the local board of education fails or refuses to comply with an administrative order, “the State board shall apply to the Superior Court... for an order directing the local school board to comply with such administrative order.”

School Report Card Program

NJSA 18A:7E-5—“The State Board of Education shall adopt rules and regulations...necessary to effectuate the purposes of” the school report card act.

Appendix E: Selected Statutory Provisions Regarding the Governor's Relevant Powers and Duties

NJSA 18A:4-4—governor appoints members of the state board of education to six-year terms with the advice and consent of the state senate

NJSA 18A:4-21—governor appoints commissioner with advice and consent of state senate to serve at the governor's pleasure during his term

NJSA 18A:7A-13—"[T]he Governor shall deliver a biennial message to the Legislature on the progress of New Jersey's schools in providing a thorough and efficient education and recommending legislative action, if appropriate."

NJSA 18A:7F-46—Every three years, 'the Governor, after consultation with the commissioner, shall recommend to the Legislature through the issuance of the Education Adequacy Report for the three school years to which the report is applicable" funding components for the school funding act.

NJSA 18A:7-1—"The Governor, upon the recommendation of the commissioner and with the advice and consent of the Senate, shall appoint for each county" an executive county superintendent, who shall report to the commissioner or his designee.

Appendix F: Selected Statutory Provisions Regarding the Legislature's Relevant Powers and Duties

NJSA 18A:7A-14a—in relation to the Legislature defining quality education programs for all children, "The Legislature finds and declares that: "a. It is the constitutional obligation of the Legislature to provide all children in New Jersey with a thorough and efficient system of free public schools; b. The scope and breadth of such a system are defined by the Legislature through the commissioner and the State board...so as to insure quality educational programs for all children; c. It is imperative that the program in every school district in this State includes all of the major elements identified as essential for that system consistent with standards adopted...; d. It is the responsibility of the State to insure that any school district which is shown to be deficient in one or more of these major elements takes corrective action without delay in order to remedy those deficiencies."

NJSA 18A:7C-11—"a. Not later than September 1, 1999, the [Legislature's] Joint Committee on the Public Schools shall evaluate and report on the status of proficiency testing in the public schools of New Jersey...b. Beginning in 1991, the Joint Committee on the Public Schools shall undertake an annual evaluation of the report submitted to the Legislature by the Commissioner of Education..."

Appendix G: Condensed Action Plan³⁵

1. *A clear, definitive and strong policy statement from the governor making it a state priority to:*
 - a. Actually achieve residential and educational diversity wherever feasible and as soon as possible;
 - b. Define educational diversity in a manner that comports to the state's current demography and establish the state's diversity goals based on that definition;
 - c. Develop and implement an operational plan for achieving diversity that recognizes the state's varied circumstances;
 - d. In those definitions and that plan, emphasize that the required educational diversity does not stop at the district or even school level, but applies to classrooms, courses and programs and the achievement of "true integration," thereby necessitating that educators throughout the state and at every level evaluate and improve all relevant policies and practices, including those that relate to tracking and ability grouping, student discipline, special education classification, curricular development and pedagogy;
 - e. Require all districts to develop and implement plans to diversify their teaching, administrative and support staffs with CJ PRIDE (Central Jersey Program for the Recruitment of Diverse Educators), a program being implemented by 17 school districts, as a possible model;
 - f. Rationalize the structure of the education system (bringing it into harmony with the state constitutional mandate of an "efficient system of free public schools") and ensure that it gives priority to promoting diversity;
 - g. Develop and fully fund a school financing law that assures adequate resources to every district, that is adjusted regularly to reflect changing enrollments and demographics, that provides incentives for districts to maintain or increase their diversity, and that reduces reliance on disparate local property tax rates; and
 - h. Charge relevant state agencies and officials with responsibility for: implementing the elements of this Action Plan; reviewing all existing statutes, regulations, policies and practices that potentially impact housing and educational diversity and proposing changes that would enhance the prospect of their promoting diversity; and proposing new statutes, regulations and policies for that purpose.

³⁵ Taken from Tractenberg & Coughlan, 2018

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2. A new blue-ribbon commission, with a broad but specific mandate and a relatively short time-line, to study and recommend the best means of achieving and sustaining educational diversity over the long-term, including by studying linkages between educational diversity and:

- a. school district and municipal structures;
- b. the state and local tax structure;
- c. residential segregation;
- d. the availability of jobs; and
- e. real and perceived issues regarding community safety.

3. A re-established highly visible and well-staffed office in the state department of education to monitor the status of educational diversity and to require districts to take actions to promote educational diversity, including to extend district-wide diversity to the school and classroom, course and program levels.

4. Support for districts that already are diverse by choice or by demographic happenstance, or are seeking to reach that status, to enable them to maintain or extend their diversity. This could include financial support for student transportation necessary to diversify all of the districts' schools, and financial support and technical assistance for training district and school staff to deal effectively with an increasingly diverse student population.

5. Increase the number of diverse school districts by:

- a. Supporting judicial efforts under Mount Laurel to assure the construction of more affordable housing units and promoting other measures to integrate housing throughout the state;
- b. Enforcing the 2007 statutory mandate of the CORE Act to require all districts to move to K-12 status, but with a specific requirement that this be done in a manner that increases educational diversity to the maximum extent feasible;
- c. Identifying clusters of districts whose consolidation can feasibly enhance educational diversity and inducing them to consolidate (or, if need be, requiring them to do so); and
- d. Establishing pilot projects to test the effectiveness of county-wide or other regional school districts as a vehicle for increased educational diversity, as well as greater efficiency and overall student achievement.

6. Promote diverse schools in districts not yet diverse by:

- a. Supporting and promoting residential integration efforts, including neighborhood integration efforts;

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- b. Modifying the Interdistrict Public School Choice law to require that increasing student diversity be a priority purpose;
- c. Establishing inter-district magnet schools modeled after the Sheff magnet schools in Connecticut or the longstanding magnet programs in Massachusetts; and
- d. Modifying the charter school law to encourage or require more multi-district charter schools with a specific mandate to enhance diversity.

7. *Encourage districts where day-to-day diversity is not a realistic prospect in the near term to develop other ways to provide their students with an exposure to diversity and its benefits through extra-curricular or co-curricular means, periodic cross-district programming with districts different in pupil population than theirs (as, for example, by using immersive educational technology and Holodeck classrooms).*

8. *Establish high-quality professional development and implicit bias programs for teachers and administrators to enhance their ability to effectively educate diverse student bodies.*

9. *Require that, as a condition of New Jersey school districts purchasing textbooks, other instructional materials and educational technology, those items must be sensitive and responsive to the racial, ethnic, cultural and economic diversity of the state's students.*

10. *Foster or support citizen coalitions to promote greater educational and residential diversity by all appropriate means including political action, legislative lobbying, policy development and, if necessary, litigation.*