

GIBBONS P.C.

Lawrence S. Lustberg, Esq. (023131983)
Ethan J. Kisch, Esq. (349152020)
One Gateway Center
Newark, NJ 07102-5310
Telephone: (973) 596-4731; Facsimile (973) 639-6285
Attorneys for Plaintiffs

PASHMAN STEIN WALDER HAYDEN, P.C.

Michael S. Stein, Esq. (037351989)
Roger Plawker, Esq. (004951993)
Court Plaza South
21 Main Street, Suite 200
Hackensack, NJ 07601
Telephone: (201) 488-8200; Facsimile (201) 488-5556

LATINO ACTION NETWORK; NAACP NEW JERSEY STATE CONFERENCE; LATINO COALITION; URBAN LEAGUE OF ESSEX COUNTY; THE UNITED METHODIST CHURCH OF GREATER NEW JERSEY; MACKENZIE WICKS, A MINOR, BY HER GUARDIAN AD LITEM, COURTNEY WICKS; MALI AYALA RUEL-FEDEE, A MINOR, BY HIS GUARDIAN AD LITEM, RACHEL RUEL; RA'NAYA ALSTON, A MINOR, BY HER GUARDIAN AD LITEM, YVETTE ALSTON-JOHNSON; RA'YAHN ALSTON, A MINOR, BY HIS GUARDIAN AD LITEM, YVETTE ALSTON-JOHNSON; DASHAWN SIMMS, A MINOR, BY HIS GUARDIAN AD LITEM, ANDREA HAYES; DANIEL R. LORENZ, A MINOR, BY HIS GUARDIAN AD LITEM, MARIA LORENZ; MICHAEL WEILL-WHITEN, A MINOR, BY HIS GUARDIAN AD LITEM, ELIZABETH WEILL-GREENBERG,

Plaintiffs,

and

PLEASANTVILLE BOARD OF EDUCATION and WILDWOOD BOARD OF EDUCATION,

Intervenor-Plaintiffs,

v.

SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MERCER COUNTY

DOCKET NO: MER-L-001076-18

Civil Action

PLAINTIFFS' RESPONSE TO INTERVENOR-DEFENDANTS NEW JERSEY CHARTER SCHOOL ASSOCIATION, INC, ET AL.'S STATEMENT OF UNDISPUTED MATERIAL FACTS PURSUANT TO *RULE 4:46-2(b)*

THE STATE OF NEW JERSEY; NEW JERSEY STATE BOARD OF EDUCATION; and LAMONT REPOLLET, Acting Commissioner, State Department of Education,

Defendants,

and

NEW JERSEY CHARTER SCHOOLS ASSOCIATION, INC.; BELOVED COMMUNITY CHARTER SCHOOL; ANA MARIA DE LA ROCHE ARAQUE; TAFSHIER COSBY; DIANE GUTIERREZ; CAMDEN PREP, INC.; KIPP COOPER NORCROSS, INC.; and MASTERY SCHOOLS OF CAMDEN, INC.,

Intervenor-Defendants.

Pursuant to *New Jersey Court Rule 4:46-2(b)*, Plaintiffs submit this Response to the Charter School Intervenor-Defendants’ Statement of Undisputed Material Facts. In the aggregate, Plaintiffs object to the Charter School Intervenor-Defendants’ attempts to present alleged disagreement in the record over the definition of “segregation” as a genuine dispute of material fact. The racial and socioeconomic data on the composition of New Jersey’s public schools are not in dispute and the definition of segregation is a legal issue for the Court. Accordingly, while Plaintiffs have responded below to each purported statement of fact pertaining to the definition of segregation, any such statements with regard to the definition of segregation do not constitute genuine issues of fact for the purposes of this motion.

1. No response required.
2. No response required.
3. No response required.
4. No response required.
5. No response required.

6. No response required.
7. No response required.
8. No response required.
9. No response required.
10. No response required.
11. No response required.
12. No response required.
13. No response required.
14. No response required.
15. No response required.
16. No response required.
17. No response required.
18. No response required.
19. No response required.
20. No response required.
21. No response required.
22. No response required.
23. No response required.
24. No response required.
25. No response required.
26. No response required.
27. No response required.
28. No response required.

29. No response required.

30. No response required.

31. No response required.

32. Denied. Plaintiffs provide objective data on racial and socioeconomic segregation in New Jersey's public schools that rely on enrollment data from the 2015-2016, 2016-2017, 2017-2018, 2018-2019, and 2019-2020 school years, which demonstrate statewide *de facto* segregation, and in addition, provide numerous examples of segregated school districts (include many schools in each district) that are located within otherwise diverse counties throughout the state. Am. Compl. ¶¶ 23-29, 40(A-H); Coughlan Cert., ¶¶ 22-35, Exh. E-F; Coughlan Supp. Cert., ¶¶ 3-4, 7(A-H), Exhs. A, C.¹ In other words, district- and county-level data demonstrate the widespread nature of segregation by district, despite New Jersey's counties having diverse student bodies in the aggregate. Compare Am. Compl. 40(A-H), and Coughlan Supp. Cert. ¶ 7(A-H), Exh. C, with Coughlan Cert. ¶¶ 22-35, Exhs. E-F. Plaintiffs also provide objective data that demonstrate widespread *de facto* segregation in New Jersey's charter schools, and in addition, provide numerous examples of segregated charter schools. Am. Compl. ¶ 31; Coughlan Cert., ¶¶ 15, 21, Exh. B; Coughlan Supp. Cert. ¶¶ 5-6, Exh. B.

33. Admitted to the extent that the Charter School Intervenor-Defendants accurately recount the quoted portion of Dr. Ryan Coughlan's testimony. Denied to the extent that this quotation is based upon a small excerpt of Dr. Coughlan's testimony and thus fails to accurately represent that testimony as a whole. Dr. Coughlan testified: "This data [provided by Plaintiffs] is

¹ The September 25, 2019 Certification of Dr. Ryan W. Coughlan (Coughlan Cert.) was included as exhibit to Plaintiffs' September 27, 2019 Motion for Partial Summary Judgment. The February 24, 2021 Supplemental Certification of Dr. Ryan W. Coughlan (Coughlan Supp. Cert.) was included as Exhibit T to the December 17, 2021 Certification of Christopher Weber (Weber Cert. Exh. T) in support of the State Defendants' December 17, 2021 Cross-Motion for Summary Judgment.

just so abundantly clear that the schools in New Jersey are segregated. When you don't manipulate the data with any kind of algorithm or equation, when you just present the clear, raw data of the proportions of students in these different demographic groups, you could see that there's clear unevenness of the demographics between school districts. And so there was no reason in this space to go into more complex measures such as proportionality score, a dissimilarity index, an interaction index, an exposure index." Coughlan Dep. 66:18-67:6.²

34. Denied. Dr. Coughlan provides basic demographic information taken directly from the State's own data. Dr. Coughlan testified that he "ran a statistical test to be able to say [certain data is] significant. I wouldn't say it was if it wasn't." Coughlan Dep. 185:4-6.

35. Admitted to the extent that the Charter School Intervenor-Defendants accurately recount the quoted portion of Dr. Coughlan's testimony. Denied to the extent that this quotation is based upon a small excerpt of Dr. Coughlan's testimony and thus fails to accurately represent that testimony as a whole. In fact, Plaintiffs have provided geographically-anchored data, including district- and county-level data that demonstrate the widespread nature of segregation by district, despite New Jersey's counties having diverse student bodies in the aggregate. *Compare* Am. Compl. 40(A-H), and Coughlan Supp. Cert. ¶ 7(A-H), Exh. C, *with* Coughlan Cert. ¶¶ 22-35, Exhs. E-F. Dr. Coughlan testified: "This data [provided by Plaintiffs] is just so abundantly clear that the schools in New Jersey are segregated. When you don't manipulate the data with any kind of algorithm or equation, when you just present the clear, raw data of the proportions of students in these different demographic groups, you could see that there's clear unevenness of the demographics between school districts. And so there was no reason in this space to go into more complex measures such as proportionality score, a dissimilarity index, an interaction index, an

² The transcript of the October 29, 2021 deposition of Dr. Ryan W. Coughlan was included as Weber Cert. Exh. I (Coughlan Dep.).

exposure index.” Coughlan Dep. 66:18-67:6.

36. Admitted to the extent that the Charter School Intervenor-Defendants accurately recount the quoted portion of Dr. Coughlan’s testimony. Denied to the extent that this quotation is based upon a small excerpt of Dr. Coughlan’s testimony and thus fails to accurately represent that testimony as a whole. Neither the State nor the Charter School Intervenor-Defendants provide “campus by campus” data for charter districts, and the data they do provide demonstrate widespread segregation. *See* Am. Compl. ¶ 31; Coughlan Cert., ¶¶ 15, 21, Exh. B; Coughlan Supp. Cert. ¶¶ 5-6, Exh. B. Dr. Coughlan testified: “I think the state should be recording individual school data in the same way that they do for every single other public school. And it does confuse me as to why Charter[s] are not being mandated to present that data publicly in the same way. . . . I wish I had that data, because I think it would provide us with a more complete picture. That said, each Charter district – you know, we’re not talking about 30,000 students. And you know – we’re also talking about relatively homogeneous district[s] to begin with. Many of these Charter districts are nearly entirely [B]lack and – [B]lack and Hispanic.”; “[M]y guess is that it would not change the . . . analysis of whether that specific school is segregated.” Coughlan Dep. 198:25-200:18.

37. Admitted.

38. Denied. Plaintiffs provide objective data that in fact demonstrate widespread segregation in New Jersey’s public schools that rely on enrollment data from the 2015-2016, 2016-2017, 2017-2018, 2018-2019, and 2019-2020 school years. *See generally* Am. Compl.; Coughlan Cert.; Coughlan Supp. Cert.

39. Denied. Plaintiffs provide objective data that demonstrate widespread segregation in New Jersey’s public schools that rely on enrollment data from the 2015-2016, 2016-2017, 2017-2018, 2018-2019, and 2019-2020 school years. *See generally* Am. Compl.; Coughlan Cert.;

Coughlan Supp. Cert.; *see also* Coughlan Dep. 66:18-67:6 (“This data [provided by Plaintiffs] is just so abundantly clear that the schools in New Jersey are segregated. When you don’t manipulate the data with any kind of algorithm or equation, when you just present the clear, raw data of the proportions of students in these different demographic groups, you could see that there’s clear unevenness of the demographics between school districts. And so there was no reason in this space to go into more complex measures such as proportionality score, a dissimilarity index, an interaction index, an exposure index.”). Moreover, the New Jersey Supreme Court has examined similar measures when finding unconstitutional *de facto* segregation. *See In re Petition for Auth. to Conduct a Referendum on Withdrawal of N. Haledon Sch. Dist.*, 181 N.J. 161, 170--71 (2004); *Jenkins v. Morris Twp. Sch. Dist.*, 58 N.J. 483, 487-88 (1971); *Booker v. Bd. of Educ. of Plainfield*, 45 N.J. 161, 166 (1965).

40. Denied. Plaintiffs provide objective data that demonstrate widespread segregation in New Jersey’s public schools that rely on enrollment data from the 2015-2016, 2016-2017, 2017-2018, 2018-2019, and 2019-2020 school years. *See generally* Am. Compl.; Coughlan Cert.; Coughlan Supp. Cert. Dr. Coughlan testified: “This data [provided by Plaintiffs] is just so abundantly clear that the schools in New Jersey are segregated. When you don’t manipulate the data with any kind of algorithm or equation, when you just present the clear, raw data of the proportions of students in these different demographic groups, you could see that there’s clear unevenness of the demographics between school districts. And so there was no reason in this space to go into more complex measures such as proportionality score, a dissimilarity index, an interaction index, an exposure index.” Coughlan Dep. 66:18-67:6. Moreover, Dr. Coughlan testified: “I can certainly point to what a dissimilarity score says about New Jersey or what an isolation score says about New Jersey. They all say that the schools are segregated.” Coughlan

Dep. 190:1-7. Dr. Coughlan, in fact, compiled a proportionality score in a published report. *See* Paul L. Tractenberg & Ryan W. Coughlan, *The New Promise of School Integration and the Old Problem of Extreme Segregation: An Action Plan for New Jersey to Address Both* 23-29, 85 (May 2018) (2018 Coughlan Report).³ This report, which appeared on Dr. Coughlan’s CV, and was provided to the Charter School Intervenor-Defendants, was raised extensively during the State and Charter Defendants’ deposition of Plaintiffs’ expert. *See, e.g.*, Coughlan Dep. 52:16-53:19, 99:6-104:5, 158:9-161:11, 169:21-175:15; *see also* Erlichson Dep.⁴ 48:14-19; Barrett Dep.⁵ 43:11-45:10. The report demonstrated high levels of disproportionality when comparing the demographics of individual schools and districts on the one hand to the demographics of the county in which a school or district is located, as well as to the State as a whole. 2018 Coughlan Report at 24 (51.4% of New Jersey’s schools are either somewhat or highly disproportional to their county demographics; 75% of schools are somewhat or highly disproportional to the State’s demographics; 43.2% of New Jersey’s school districts are either somewhat or highly disproportional to their county demographics; 76.3% of districts are somewhat or highly disproportional to the State’s demographics). Moreover, the New Jersey Supreme Court, in *North Haledon*, made it perfectly clear that “demographic trend[s]” cannot be used as an “excuse” to fail to counteract segregation. *N. Haledon*, 181 N.J. at 183.

41. Denied to the extent that the Charter School Intervenor-Defendants contend that Plaintiffs’ objective data that demonstrate widespread segregation in New Jersey’s public schools

³ A copy of Paul L. Tractenberg & Ryan W. Coughlan, *The New Promise of School Integration and the Old Problem of Extreme Segregation: An Action Plan for New Jersey to Address Both* (May 2018) (2018 Coughlan Report) was included as Exhibit F to the December 17, 2021 certification of Matthew M. Caminiti (Caminiti Cert., Exh. F) in support of the Charter School Intervenor-Defendants’ December 17, 2021 Brief in Opposition to Plaintiffs’ Motion for Partial Summary Judgment.

⁴ The transcript of the October 25, 2021 deposition of Dr. Bari Anhalt Erlichson was included as Weber Cert. Exh. H (Erlichson Dep.).

⁵ The transcript of the November 1, 2021 deposition of Dr. Nathan Barrett was included as Weber Cert. Exh. J (Barrett Dep.).

that rely on enrollment data from the 2015-2016, 2016-2017, 2017-2018, 2018-2019, and 2019-2020 school years are somehow “subjective.” Plaintiffs provide objective and geographically-anchored data, including district- and county-level data that demonstrate the widespread nature of segregation by district, despite New Jersey’s counties having diverse student bodies in the aggregate. *Compare* Am. Compl. 40(A-H), and Coughlan Supp. Cert. ¶ 7(A-H), Exh. C, *with* Coughlan Cert. ¶¶ 22-35, Exhs. E-F.

42. Admitted to the extent that Plaintiffs’ absolute statistical measures demonstrate the specific demographics of a school or school district. Denied to the extent that the Charter Intervenor-Defendants dispute that these measures can and do establish unconstitutional segregation within the meaning of New Jersey Supreme Court caselaw, and common sense. *See N. Haledon*, 181 N.J. at 170--71; *Jenkins*, 58 N.J. at 487-88; *Booker*, 45 N.J. at 166.

43. Denied as this statement is not sufficiently coherent to admit or deny. Plaintiffs provide objective data demonstrating widespread segregation in New Jersey’s public schools. *See generally* Am. Compl.; Coughlan Cert.; Coughlan Supp. Cert.

44. Denied to the extent that the Charter School Intervenor-Defendants define racial imbalance by comparing the demographics of individual schools within a school district to the demographics of the district as a whole. Plaintiffs admit that the demographics of schools within a school district will be similar to the demographics of the school district. *See, e.g.*, Am. Compl. ¶ 41 (“The fact of residential segregation, combined with district boundaries that track such segregation, and the attendance requirements of [the Residency Statute] yield segregation on the basis of race and socioeconomic class[.]”). Plaintiffs provide objective and geographically-anchored data, including district- and county-level data, that demonstrate the widespread nature of segregation by district, despite New Jersey’s counties having diverse student bodies in the

aggregate. *Compare* Am. Compl. 40(A-H), and Coughlan Supp. Cert. ¶ 7(A-H), Exh. C, with Coughlan Cert. ¶¶ 22-35, Exhs. E-F.

45. Denied. Plaintiffs' objective data on racial and socioeconomic segregation in New Jersey's public schools rely on enrollment data from the 2015-2016, 2016-2017, 2017-2018, 2018-2019, and 2019-2020 school years and thus in fact demonstrate segregation over time. *See generally* Am. Compl.; Coughlan Cert.; Coughlan Supp. Cert.

46. Denied as this statement is not sufficiently coherent to admit or deny. Denied as well because Plaintiffs' objective data demonstrate widespread segregation in New Jersey's public schools. *See generally* Am. Compl.; Coughlan Cert.; Coughlan Supp. Cert. Denied also because Dr. Barrett's affidavit⁶ provides no support for this statement, to the extent that it can be understood.

47. Denied as this statement is not sufficiently coherent to admit or deny. Denied as well because Plaintiffs' objective data demonstrate widespread segregation in New Jersey's public schools. *See generally* Am. Compl.; Coughlan Cert.; Coughlan Supp. Cert. Denied also to the extent that the Charter School Intervenor-Defendants are contending that changing demographics excuse the State from acting to prevent and remedy *de facto* segregation.

48. Admitted to the extent that New Jersey's percentage of White residents has declined relative to other racial groups in recent years. Admitted also that, today, Hispanic/Latino students are often located in racially isolated schools, many of which include very few White students. Am. Compl. ¶ 24; Coughlan Supp. Cert. ¶ 4(b) (from 2015-2016 to 2019-2020 school years, expressed as a five-year average, out of the approximately 386,224 Latino students in New Jersey public schools each year, 60,540 (15.7%) attended schools that were at least 99% non-White and 112,953

⁶ Dr. Nathan Barrett's September 17, 2021 Affidavit was included as Weber Cert. Exh. E (Barrett Aff.).

(29.2%) attended schools that were between 90% and 99% non-White; in the aggregate, an average of 224,901 Latino students (58.2%) attended schools each year that were more than 80% non-White and 239,570 (62%) attended schools that were more than 75% non-White); Erlichson Rep.⁷ at 7 (finding that during the 2019-2020 school year 12.9% of the State’s Hispanic students (53,477 total Hispanic students) attended a school comprised of 90% or more students of one race or ethnicity). Denied to the extent that the Charter School Intervenor-Defendants contend that changing demographics excuse the State from acting to prevent and remedy *de facto* segregation.

49. Admitted to the extent that the Charter School Intervenor-Defendants accurately recount the quoted portion of Dr. Coughlan’s testimony. Denied to the extent that this quotation is based upon a small excerpt of Dr. Coughlan’s testimony and thus fails to accurately represent that testimony as a whole. Dr. Coughlan also testified: “So when we look at those numbers overall in New Jersey, what you found is that 75 percent of children are currently going to school in a place that is disproportionate or nonrepresentative of the overall demographic[s] of the state and relatively nondiverse because of that and that those 75 represents over a million students in the state.” Coughlan Dep. 155:24-157:3.

50. Admitted to the extent that there are many non-legal definitions of segregation. Denied to the extent that the Charter School Intervenor-Defendants contend that the fact that there are many non-legal definitions of segregation prevents the Court from finding unconstitutional *de facto* segregation as a matter of law. Indeed, the New Jersey Supreme Court has specifically stated that “it is not really possible to establish a precise point” at which segregation crosses the line into unconstitutional impermissibility. *N. Haledon*, 181 N.J. at 183; *see also Booker*, 45 N.J. at 179-80. And yet, despite not establishing a specific statistical threshold – *i.e.*, without providing the

⁷ Dr. Bari Anhalt Erlichson’s August 30, 2021 Report was included as Weber Cert. Exh. A (Erlichson Rep.).

definition that the Defendants somehow argue dooms this lawsuit – the New Jersey Supreme Court has repeatedly found conditions to constitute unlawful *de facto* segregation based on demographic statistics. See *N. Haledon*, 181 N.J. at 170-71; *Jenkins*, 58 N.J. at 487-88; *Booker*, 45 N.J. at 166.

51. Denied. The parties' experts agree that there are numerous measures of segregation. See Coughlan Dep. 189:16-190:7 (“[T]here’s a general consensus in the field that any single measure of segregation, that points to segregation tells us that segregation exists.”); “I can certainly point to what a dissimilarity score says about New Jersey or what an isolation score says about New Jersey. They all say that the schools are segregated.”); Erlichson Dep. 21:14-15 (“So I did not put forward my definition of segregation.”); 24:5-8 (Q: “And as we sit here right now, you don’t have a suggestion as to what an appropriate way of calculating segregation would be; is that right?” A: “I do not.”); 28:3-6 (“I wouldn’t take issue with the characterization that there are many ways of calculating whether or not segregation is present.”); 30:14-22 (Q: “Do you have an opinion as to what a good measure [of segregation] would be, even if not the best?” A: “I have not opined on that.”); 40:14-21 (“I haven’t put forth a definition personally.”); Barrett Dep. 47:7-21 (“I can’t speak to whether it would be segregation in the legal sense . . . and what measure that would be from a legal sense.”); 55:21-23 (“There’s so many measures of segregation[.]”). Denied also to the extent that the Charter School Intervenor-Defendants contend that the fact that there are many non-legal definitions of segregation prevents the Court from finding unconstitutional *de facto* segregation as a matter of law. Dr. Coughlan testified: “This data [provided by Plaintiffs] is just so abundantly clear that the schools in New Jersey are segregated. When you don’t manipulate the data with any kind of algorithm or equation, when you just present the clear, raw data of the proportions of students in these different demographic groups, you could see that there’s clear unevenness of the demographics between school districts. And so there was

no reason in this space to go into more complex measures such as proportionality score, a dissimilarity index, an interaction index, an exposure index.” Coughlan Dep. 66:18-67:6. Indeed, the New Jersey Supreme Court has specifically stated that “it is not really possible to establish a precise point” at which segregation crosses the line into unconstitutional impermissibility. *N. Haledon*, 181 N.J. at 183; *see also Booker*, 45 N.J. at 179-80. And yet, despite not establishing a specific statistical threshold – *i.e.*, without providing the definition that the Defendants argue somehow dooms this lawsuit – the New Jersey Supreme Court has repeatedly found conditions to constitute unlawful *de facto* segregation based on demographic statistics. *See N. Haledon*, 181 N.J. at 170-71; *Jenkins*, 58 N.J. at 487-88; *Booker*, 45 N.J. at 166.

52. Denied as this statement is not sufficiently coherent to admit or deny. Plaintiffs provide objective and geographically-anchored data, including district- and county-level data that demonstrate the widespread nature of segregation by district, despite New Jersey’s counties having diverse student bodies in the aggregate. *Compare* Am. Compl. 40(A-H), and Coughlan Supp. Cert. ¶ 7(A-H), Exh. C, *with* Coughlan Cert. ¶¶ 22-35, Exhs. E-F. Dr. Coughlan testified: “This data [provided by Plaintiffs] is just so abundantly clear that the schools in New Jersey are segregated. When you don’t manipulate the data with any kind of algorithm or equation, when you just present the clear, raw data of the proportions of students in these different demographic groups, you could see that there’s clear unevenness of the demographics between school districts. And so there was no reason in this space to go into more complex measures such as proportionality score, a dissimilarity index, an interaction index, an exposure index.” Coughlan Dep. 66:18-67:6.

53. Denied to the extent that the Charter School Intervenor-Defendants contend that evenness or exposure are the most common methods to define segregation in the educational setting. They provide no basis for this statement. Admitted to the extent that statistical measures

of evenness and exposure must necessarily define a relevant community.

54. Denied as this statement is not sufficiently coherent to admit or deny. Denied as well because Plaintiffs' objective data demonstrate widespread segregation in New Jersey's public schools without "arbitrary comparisons and normative speculation." *See generally* Am. Compl.; Coughlan Cert.; Coughlan Supp. Cert.

55. Denied. The Charter School Intervenor-Defendants provide no basis for this statement.

56. Denied as this statement is not sufficiently coherent to admit or deny. Denied as well because although proportionality measures can serve as one measure of segregation, Plaintiffs provide objective data that are sufficient to demonstrate widespread *de facto* segregation in New Jersey's public schools relying on enrollment data from the 2015-2016, 2016-2017, 2017-2018, 2018-2019, and 2019-2020 school years. *See generally* Am. Compl.; Coughlan Cert.; Coughlan Supp. Cert. Dr. Coughlan testified: "This data [provided by Plaintiffs] is just so abundantly clear that the schools in New Jersey are segregated. When you don't manipulate the data with any kind of algorithm or equation, when you just present the clear, raw data of the proportions of students in these different demographic groups, you could see that there's clear unevenness of the demographics between school districts. And so there was no reason in this space to go into more complex measures such as proportionality score, a dissimilarity index, an interaction index, an exposure index." Coughlan Dep. 66:18-67:6. And yet, even looking at more advanced proportionality measures, Dr. Coughlan testified: "I can certainly point to what a dissimilarity score says about New Jersey or what an isolation score says about New Jersey. They all say that the schools are segregated." Coughlan Dep. 190:1-7; *see* Paul L. Tractenberg & Ryan W. Coughlan, *The New Promise of School Integration and the Old Problem of Extreme Segregation:*

An Action Plan for New Jersey to Address Both 24 (May 2018) (2018 Coughlan Report) (51.4% of New Jersey's schools are either somewhat or highly disproportional to their county demographics; 75% of schools are somewhat or highly disproportional to the State's demographics; 43.2% of New Jersey's school districts are either somewhat or highly disproportional to their county demographics; 76.3% of districts are somewhat or highly disproportional to the State's demographics).

57. Admitted to the extent that the Charter School Intervenor-Defendants provide accurate quotations from Dr. Coughlan's deposition. Denied to the extent that this quotation is based upon a small excerpt of Dr. Coughlan's testimony and thus fails to accurately represent that testimony as a whole. Dr. Coughlan's Proportionality Score measure as used in his 2018 co-authored study shows high levels of disproportionality when comparing the demographics of individual schools and districts in New Jersey to the demographics of the county in which those schools or districts are located, as well as to New Jersey as a whole. *The New Promise of School Integration and the Old Problem of Extreme Segregation: An Action Plan for New Jersey to Address Both 28* (May 2018) at 24 (51.4% of New Jersey's schools are either somewhat or highly disproportional to their county demographics; 75% of schools are somewhat or highly disproportional to the State's demographics; 43.2% of New Jersey's school districts are either somewhat or highly disproportional to their county demographics; 76.3% of districts are somewhat or highly disproportional to the State's demographics). When looking at more advanced methods, Dr. Coughlan testified: "I can certainly point to what a dissimilarity score says about New Jersey or what an isolation score says about New Jersey. They all say that the schools are segregated." Coughlan Dep. 190:1-7.

58. Denied to the extent that this characterization is based upon a small excerpt of Dr.

Coughlan's testimony and thus fails to accurately represent that testimony as a whole. Dr. Coughlan, at no time, criticizes the type of data provided by Plaintiffs. Dr. Coughlan testified: "This data [provided by Plaintiffs] is just so abundantly clear that the schools in New Jersey are segregated. When you don't manipulate the data with any kind of algorithm or equation, when you just present the clear, raw data of the proportions of students in these different demographic groups, you could see that there's clear unevenness of the demographics between school districts. And so there was no reason in this space to go into more complex measures such as proportionality score, a dissimilarity index, an interaction index, an exposure index." Coughlan Dep. 66:18-67:6. And even looking at more advanced proportionality measures, Dr. Coughlan testified: "I can certainly point to what a dissimilarity score says about New Jersey or what an isolation score says about New Jersey. They all say that the schools are segregated." Coughlan Dep. 190:1-7; *see* Paul L. Tractenberg & Ryan W. Coughlan, *The New Promise of School Integration and the Old Problem of Extreme Segregation: An Action Plan for New Jersey to Address Both* 24 (May 2018) (2018 Coughlan Report) (51.4% of New Jersey's schools are either somewhat or highly disproportional to their county demographics; 75% of schools are somewhat or highly disproportional to the State's demographics; 43.2% of New Jersey's school districts are either somewhat or highly disproportional to their county demographics; 76.3% of districts are somewhat or highly disproportional to the State's demographics).

59. Admitted to the extent that Dr. Coughlan did not directly provide a Proportionality Score or other advanced metrics in his two certifications. Denied to the extent that this characterization is based upon a small excerpt of Dr. Coughlan's testimony and thus fails to accurately represent that testimony as a whole. *See* Coughlan Dep. 168:13-15 ("So not only was it not what I was asked to do, but it also was not necessary for demonstrating that the schools are

segregated.”). In any event, other analyses performed by Dr. Coughlan that reference a proportionality score also demonstrate that New Jersey’s public schools are segregated. *See* Paul L. Tractenberg & Ryan W. Coughlan, *The New Promise of School Integration and the Old Problem of Extreme Segregation: An Action Plan for New Jersey to Address Both* 24 (May 2018) (2018 Coughlan Report); Coughlan Dep. 190:1-7 (“I can certainly point to what a dissimilarity score says about New Jersey or what an isolation score says about New Jersey. They all say that the schools are segregated.”). This report, which appeared on Dr. Coughlan’s CV, and was provided to the Defendants, was raised extensively during the State and Charter School Intervenor-Defendants’ deposition of Plaintiffs’ expert. *See* Coughlan Dep. 52:16-53:19, 99:6-104:5, 158:9-161:11, 169:21-175:15.

60. Admitted to the extent that Dr. Coughlan’s initial certification provided the data referenced in Plaintiffs’ Amended Complaint. Dr. Coughlan has since provided additional analysis in the Supplemental Certification of Ryan W. Coughlan dated February 24, 2021 (Coughlan Supp. Cert.). Dr. Coughlan testified: “This data [provided by Plaintiffs] is just so abundantly clear that the schools in New Jersey are segregated. When you don’t manipulate the data with any kind of algorithm or equation, when you just present the clear, raw data of the proportions of students in these different demographic groups, you could see that there’s clear unevenness of the demographics between school districts. And so there was no reason in this space to go into more complex measures such as proportionality score, a dissimilarity index, an interaction index, an exposure index.” Coughlan Dep. 66:18-67:6. And, as he testified, other analyses performed by Dr. Coughlan that reference a proportionality score also demonstrate that New Jersey’s public schools are segregated. *See* Paul L. Tractenberg & Ryan W. Coughlan, *The New Promise of School Integration and the Old Problem of Extreme Segregation: An Action Plan for New Jersey to*

Address Both 24 (May 2018) (2018 Coughlan Report); Coughlan Dep. 190:1-7 (“I can certainly point to what a dissimilarity score says about New Jersey or what an isolation score says about New Jersey. They all say that the schools are segregated.”). This report, which appeared on Dr. Coughlan’s CV, and was provided to the Charter School Intervenor-Defendants, was raised extensively during the State and Charter Intervenor-Defendants’ deposition of Plaintiffs’ expert. *See* Coughlan Dep. 52:16-53:19, 99:6-104:5, 158:9-161:11, 169:21-175:15.

61. Denied as this statement is not sufficiently coherent to admit or deny.

62. Admitted.

63. Admitted.

64. Admitted.

65. Denied. The Charter School Intervenor-Defendants provide no basis for the statement that an Interaction Index (II) is the most common measure used to track exposure.

66. Admitted to the extent that the Charter School Intervenor-Defendants provide a generally accurate description of II. Denied to the extent that the Charter School Intervenor-Defendants contend that more than one measure of segregation is always necessary to demonstrate segregation. Coughlan Dep. 54:9-18 (“[I]t’s generally accepted in my field, that if you find segregation based off of any single metric, that that’s [sic] clear evidence of a problem of segregation.”).

67. Denied. Plaintiffs provide objective data on racial and socioeconomic segregation in New Jersey’s public schools that rely on enrollment data from the 2015-2016, 2016-2017, 2017-2018, 2018-2019, and 2019-2020 school years, which demonstrate statewide *de facto* segregation, and in addition, provide numerous examples of segregated school districts (which include many schools each) that are located within otherwise diverse counties throughout the state. Am. Compl.

¶¶ 23-29, 40(A-H); Coughlan Cert., ¶¶ 22-35, Exh. E-F; Coughlan Supp. Cert., ¶¶ 3-4, 7(A-H), Exhs. A, C. In other words, district- and county-level data demonstrate the widespread nature of segregation by district, despite New Jersey’s counties having diverse student bodies in the aggregate. *Compare* Am. Compl. 40(A-H), and Coughlan Supp. Cert. ¶ 7(A-H), Exh. C, *with* Coughlan Cert. ¶¶ 22-35, Exhs. E-F. Plaintiffs also provide objective data that demonstrate widespread *de facto* segregation in New Jersey’s charter schools, and in addition, provide numerous of segregated charter schools. Am. Compl. ¶ 31; Coughlan Cert., ¶¶ 15, 21, Exh. B; Coughlan Supp. Cert. ¶¶ 5-6, Exh. B; Coughlan Dep. 66:18-67:6 (“This data [provided by Plaintiffs] is just so abundantly clear that the schools in New Jersey are segregated. When you don’t manipulate the data with any kind of algorithm or equation, when you just present the clear, raw data of the proportions of students in these different demographic groups, you could see that there’s clear unevenness of the demographics between school districts. And so there was no reason in this space to go into more complex measures such as proportionality score, a dissimilarity index, an interaction index, an exposure index.”).

68. Denied as this statement is not sufficiently coherent to admit or deny. Denied as well because the Charter School Intervenor-Defendants fail to provide any information to support this statement. The demographics of a school generally reflect the demographics of the school’s campus and will therefore generally define the exposure that a student will have to students from other racial or ethnic groups.

69. Denied. Plaintiffs provide objective data demonstrating widespread segregation in New Jersey’s public schools that rely on enrollment data from the 2015-2016, 2016-2017, 2017-2018, 2018-2019, and 2019-2020 school years. *See generally* Am. Compl.; Coughlan Cert.; Coughlan Supp. Cert.; Coughlan Dep. 66:18-67:6 (“This data [provided by Plaintiffs] is just so

abundantly clear that the schools in New Jersey are segregated. When you don't manipulate the data with any kind of algorithm or equation, when you just present the clear, raw data of the proportions of students in these different demographic groups, you could see that there's clear unevenness of the demographics between school districts. And so there was no reason in this space to go into more complex measures such as proportionality score, a dissimilarity index, an interaction index, an exposure index." This data is comprehensive, reliable and sufficient to demonstrate segregation as a matter of law.

70. Denied. Plaintiffs provide objective data on racial and socioeconomic segregation in New Jersey's public schools that, consistent with New Jersey Supreme Court caselaw, rely on enrollment data from the 2015-2016, 2016-2017, 2017-2018, 2018-2019, and 2019-2020 school years, which demonstrate statewide *de facto* segregation, and in addition, provide numerous examples of segregated school districts (which include many schools each) that are located within otherwise diverse counties throughout the state. Am. Compl. ¶¶ 23-29, 40(A-H); Coughlan Cert., ¶¶ 22-35, Exh. E-F; Coughlan Supp. Cert., ¶¶ 3-4, 7(A-H), Exhs. A, C. In other words, district- and county-level data demonstrate the widespread nature of segregation by district, despite New Jersey's counties having diverse student bodies in the aggregate. Compare Am. Compl. 40(A-H), and Coughlan Supp. Cert. ¶ 7(A-H), Exh. C, with Coughlan Cert. ¶¶ 22-35, Exhs. E-F. Plaintiffs also provide objective data that demonstrate widespread *de facto* segregation in New Jersey's charter schools, and in addition, provide numerous of segregated charter schools. Am. Compl. ¶ 31; Coughlan Cert., ¶¶ 15, 21, Exh. B; Coughlan Supp. Cert. ¶¶ 5-6, Exh. B; Coughlan Dep. 66:18-67:6 ("This data [provided by Plaintiffs] is just so abundantly clear that the schools in New Jersey are segregated. When you don't manipulate the data with any kind of algorithm or equation, when you just present the clear, raw data of the proportions of students in these different demographic

groups, you could see that there's clear unevenness of the demographics between school districts. And so there was no reason in this space to go into more complex measures such as proportionality score, a dissimilarity index, an interaction index, an exposure index.”).

71. Denied. Plaintiffs provide objective data on racial and socioeconomic segregation in New Jersey's public schools that rely on enrollment data from the 2015-2016, 2016-2017, 2017-2018, 2018-2019, and 2019-2020 school years, which, consistent with New Jersey Supreme Court caselaw, demonstrate statewide *de facto* segregation, and in addition, provide numerous examples of segregated school districts (which include many schools each) that are located within otherwise diverse counties throughout the state. Am. Compl. ¶¶ 23-29, 40(A-H); Coughlan Cert., ¶¶ 22-35, Exh. E-F; Coughlan Supp. Cert., ¶¶ 3-4, 7(A-H), Exhs. A, C. In other words, district- and county-level data demonstrate the widespread nature of segregation by district, despite New Jersey's counties having diverse student bodies in the aggregate. Compare Am. Compl. 40(A-H), and Coughlan Supp. Cert. ¶ 7(A-H), Exh. C, with Coughlan Cert. ¶¶ 22-35, Exhs. E-F. See also Coughlan Dep. 66:18-67:6 (“This data [provided by Plaintiffs] is just so abundantly clear that the schools in New Jersey are segregated. When you don't manipulate the data with any kind of algorithm or equation, when you just present the clear, raw data of the proportions of students in these different demographic groups, you could see that there's clear unevenness of the demographics between school districts. And so there was no reason in this space to go into more complex measures such as proportionality score, a dissimilarity index, an interaction index, an exposure index.”). Plaintiffs also provide objective data that demonstrate widespread *de facto* segregation in New Jersey's charter schools, and in addition, provide numerous examples of segregated charter schools. Am. Compl. ¶ 31; Coughlan Cert., ¶¶ 15, 21, Exh. B; Coughlan Supp. Cert. ¶¶ 5-6, Exh. B.

72. Denied. Plaintiffs provide objective data which are neither “flawed” nor “outdated” demonstrating widespread segregation in New Jersey’s public schools and which rely on enrollment data from the 2015-2016, 2016-2017, 2017-2018, 2018-2019, and 2019-2020 school years and demonstrate statewide *de facto* segregation; in addition, Plaintiffs provide numerous examples of segregated school districts (which include many schools each) that are located within otherwise diverse counties throughout the state. Am. Compl. ¶¶ 23-29, 40(A-H); Coughlan Cert., ¶¶ 22-35, Exh. E-F; Coughlan Supp. Cert., ¶¶ 3-4, 7(A-H), Exhs. A, C. In other words, district- and county-level data demonstrate the widespread nature of segregation by district, despite New Jersey’s counties having diverse student bodies in the aggregate. *Compare* Am. Compl. 40(A-H), and Coughlan Supp. Cert. ¶ 7(A-H), Exh. C, *with* Coughlan Cert. ¶¶ 22-35, Exhs. E-F. Plaintiffs also provide objective data that demonstrate widespread *de facto* segregation in New Jersey’s charter schools, and in addition, provide numerous of segregated charter schools. Am. Compl. ¶ 31; Coughlan Cert., ¶¶ 15, 21, Exh. B; Coughlan Supp. Cert. ¶¶ 5-6, Exh. B; Coughlan Dep. 66:18-67:6 (“This data [provided by Plaintiffs] is just so abundantly clear that the schools in New Jersey are segregated. When you don’t manipulate the data with any kind of algorithm or equation, when you just present the clear, raw data of the proportions of students in these different demographic groups, you could see that there’s clear unevenness of the demographics between school districts. And so there was no reason in this space to go into more complex measures such as proportionality score, a dissimilarity index, an interaction index, an exposure index.”). Denied as well because even when examining more advanced proportionality measures, Dr. Coughlan testified: “I can certainly point to what a dissimilarity score says about New Jersey or what an isolation score says about New Jersey. They all say that the schools are segregated.” Coughlan Dep. 190:1-7; *see* Paul L. Tractenberg & Ryan W. Coughlan, *The New Promise of School Integration and the Old Problem*

of Extreme Segregation: An Action Plan for New Jersey to Address Both 24 (May 2018) (2018 Coughlan Report) (51.4% of New Jersey’s schools are either somewhat or highly disproportional to their county demographics; 75% of schools are somewhat or highly disproportional to the State’s demographics; 43.2% of New Jersey’s school districts are either somewhat or highly disproportional to their county demographics; 76.3% of districts are somewhat or highly disproportional to the State’s demographics). This report, which appeared on Dr. Coughlan’s CV, and was provided to the Charter School Intervenor-Defendants, was raised extensively during the State and Charter Defendants’ deposition of Plaintiffs’ expert. *See* Coughlan Dep. 52:16-53:19, 99:6-104:5, 158:9-161:11, 169:21-175:15

73. Admitted to the extent that underlying demographics of communities and public policy priorities and subjective expectations may change over time, though such changes are not pertinent to whether school segregation is permissible – in New Jersey, as a matter of state constitutional law, it is not, the State’s knowing tolerance of it for many decades notwithstanding. Otherwise, denied as this statement is not sufficiently coherent to admit or deny.

74. Denied. Plaintiffs provide objective data – not as the Charter School Intervenor-Defendants claim, a “subjective assessment” – that demonstrate widespread segregation in New Jersey’s public schools and rely on enrollment data from the 2015-2016, 2016-2017, 2017-2018, 2018-2019, and 2019-2020 school years, which, consistent with New Jersey Supreme Court caselaw, demonstrate statewide *de facto* segregation, and in addition, provide numerous examples of segregated school districts (which include many schools each) that are located within otherwise diverse counties throughout the state. Am. Compl. ¶¶ 23-29, 40(A-H); Coughlan Cert., ¶¶ 22-35, Exh. E-F; Coughlan Supp. Cert., ¶¶ 3-4, 7(A-H), Exhs. A, C. In other words, district- and county-level data demonstrate the widespread nature of segregation by district, despite New Jersey’s

counties having diverse student bodies in the aggregate. *Compare* Am. Compl. 40(A-H), and Coughlan Supp. Cert. ¶ 7(A-H), Exh. C, *with* Coughlan Cert. ¶¶ 22-35, Exhs. E-F; Coughlan Dep. 66:18-67:6 (“This data [provided by Plaintiffs] is just so abundantly clear that the schools in New Jersey are segregated. When you don’t manipulate the data with any kind of algorithm or equation, when you just present the clear, raw data of the proportions of students in these different demographic groups, you could see that there’s clear unevenness of the demographics between school districts. And so there was no reason in this space to go into more complex measures such as proportionality score, a dissimilarity index, an interaction index, an exposure index.”). Plaintiffs also provide objective data that demonstrate widespread *de facto* segregation in New Jersey’s charter schools, and in addition, provide numerous of segregated charter schools. Am. Compl. ¶ 31; Coughlan Cert., ¶¶ 15, 21, Exh. B; Coughlan Supp. Cert. ¶¶ 5-6, Exh. B.

75. Denied as this statement is not sufficiently coherent to admit or deny. Denied, as well, because the “more comprehensive analyses” that the Charter School Intervenor-Defendants propose, but do not perform, are neither more comprehensive than that undertaken by Plaintiffs, nor are they focused on relevant facts, but instead look to “how students sort into schools, the relationship between different schools and their respective contribution to segregation in the defined community, and the tradeoffs associated with expanding the defined community to create a more diverse student population,” none of which bear upon whether Plaintiffs have shown segregation, as they have by providing objective information on racial and socioeconomic segregation in New Jersey’s public schools that relies upon enrollment data from the 2015-2016, 2016-2017, 2017-2018, 2018-2019, and 2019-2020 school years, and which demonstrates statewide *de facto* segregation. In addition, Plaintiffs provide numerous examples of segregated school districts (which include many schools each) that are located within otherwise diverse

counties throughout the state. Am. Compl. ¶¶ 23-29, 40(A-H); Coughlan Cert., ¶¶ 22-35, Exh. E-F; Coughlan Supp. Cert., ¶¶ 3-4, 7(A-H), Exhs. A, C. In other words, district- and county-level data demonstrate the widespread nature of segregation by district, despite New Jersey’s counties having diverse student bodies in the aggregate. *Compare* Am. Compl. 40(A-H), and Coughlan Supp. Cert. ¶ 7(A-H), Exh. C, *with* Coughlan Cert. ¶¶ 22-35, Exhs. E-F. Coughlan Dep. 66:18-67:6 (“This data [provided by Plaintiffs] is just so abundantly clear that the schools in New Jersey are segregated. When you don’t manipulate the data with any kind of algorithm or equation, when you just present the clear, raw data of the proportions of students in these different demographic groups, you could see that there’s clear unevenness of the demographics between school districts. And so there was no reason in this space to go into more complex measures such as proportionality score, a dissimilarity index, an interaction index, an exposure index.”). And Plaintiffs also provide objective data that demonstrate widespread *de facto* segregation in New Jersey’s charter schools, and in addition, provide numerous of segregated charter schools. Am. Compl. ¶ 31; Coughlan Cert., ¶¶ 15, 21, Exh. B; Coughlan Supp. Cert. ¶¶ 5-6, Exh. B.

76. Admitted to the extent that the Charter School Intervenor-Defendants contend that comparing demographic data “across schools” is necessary to measure, and here demonstrate, *de facto* segregation, including in circumstances in which one racial group makes up a small proportion of the total population of students in a defined community. Plaintiffs provide just such data, which here demonstrate widespread *de facto* segregation across New Jersey’s public schools, including between districts. Am. Compl. ¶¶ 23-29, 31 40(A-H); Coughlan Cert., ¶¶ 15, 21-35, Exh. E-F; Coughlan Supp. Cert., ¶¶ 3-7, Exhs. A-C. ; Coughlan Dep. 66:18-67:6 (“This data [provided by Plaintiffs] is just so abundantly clear that the schools in New Jersey are segregated. When you don’t manipulate the data with any kind of algorithm or equation, when you just present the clear,

raw data of the proportions of students in these different demographic groups, you could see that there's clear unevenness of the demographics between school districts. And so there was no reason in this space to go into more complex measures such as proportionality score, a dissimilarity index, an interaction index, an exposure index.”).

77. Admitted.

78. Admitted.

79. Denied. Dr. Barrett's Table 1 looks only at *intra*-district demographics, which the Charter School Intervenor-Defendants contend demonstrate that White students are proportionally spread among charter schools within the district. This statement, however, ignores that Plaintiffs provide *inter*-district data demonstrating widespread *de facto* segregation across New Jersey's public schools, including between districts. Am. Compl. ¶¶ 23-29, 31 40(A-H); Coughlan Cert., ¶¶ 15, 21-35, Exh. E-F; Coughlan Supp. Cert., ¶¶ 3-7, Exhs. A-C.; Barrett Dep. 41:11-21 (Q: “So if, for example, you used a different space, to use your term, . . . instead of a city, you looked at a county and you measured schools vis-à-vis the counties, you might get a different result than if you're looking at the community that is the municipality or the city, correct?” A: That's correct. Because presumably as you change the geographic boundaries, you're changing the underlying proportion of students.”). And, in fact, Dr. Barrett's Table 4 provides data demonstrating that the demographics of the school districts in Table 1 do not match the demographics of their more diverse counties.

80. Admitted, as the Charter School Intervenor-Defendants correctly contend that White students are disproportionately educated in a small number of schools in Camden, Jersey City, Newark, Paterson, and Trenton School Districts and that the result is “high levels of racial isolation.”

81. Admitted. Furthermore, Dr. Coughlan testified that a DI above 0.6 demonstrates a “high” level of segregation, as the Charter School Intervenor-Defendants admit in the preceding paragraph. Coughlan Dep. 53:20-54:8.

82. Denied. Plaintiffs provide robust data that demonstrate extreme levels of *de facto* segregation within counties. *See, e.g.*, Am. Compl. ¶¶ 23-29, 31 40(A-H); Coughlan Cert., ¶¶ 15, 21-35, Exh. E-F; Coughlan Supp. Cert., ¶¶ 3-7, Exhs. A-C. In fact, Tables 1 and 4 in Dr. Barrett’s affidavit further demonstrate that there are school districts – including Camden, Newark, and Trenton school districts – that are substantially more segregated than their overall county demographics. For example, Dr. Barrett notes that Camden School District enrolls 16,536 minority students and 219 White students (98.7% minority students; 1.3% White students), Barrett Aff., Table 1, while Camden County has 42,501 minority students and 37,817 White students (52.9% minority students; 47.1% White students), *id.* at Table 4. This proves the segregation that Plaintiffs allege using the Charter School Intervenor-Defendants’ data and analysis.

83. Admitted to the extent that Mercer County enrolls 54% minority students and 46% White students, and Camden County enrolls 52.9% minority students and 47.1% White students. Barrett Aff. Table 4. Denied to the extent that the Charter School Intervenor-Defendants imply with this contention that there are not available methods to more fully integrate New Jersey’s public schools. In fact, Tables 1 and 4 in Dr. Barrett’s affidavit further demonstrate that there are school districts – including Camden, Newark, and Trenton school districts – that are substantially more segregated than their overall county demographics. And the New Jersey Supreme Court, in *North Haledon*, made clear that “demographic trend[s]” cannot be used as an “excuse” to fail to counteract segregation. *N. Haledon*, 181 N.J. at 183.

84. Admitted. In fact, Dr. Barrett’s Table 5 further demonstrates that students are

largely separated by race in New Jersey's schools.

85. Denied to the extent that the Charter School Intervenor-Defendants contend that there are not available methods to more fully integrate New Jersey's public schools. The New Jersey Supreme Court, in *North Haledon*, made it perfectly clear that "demographic trend[s]" cannot be used as an "excuse" to fail to counteract segregation. *N. Haledon*, 181 N.J. at 183. Objection, as well, to the extent that the Charter School Intervenor-Defendants seek to raise remedy – an issue not currently before the Court.

86. Admitted to the extent that the Charter School Intervenor-Defendants concede that there are innumerable benefits to learning from and associating with students from other backgrounds. Denied to the extent that the Charter School Intervenor-Defendants contend that the relationship between diverse schools and benefits to students is somehow "complex." The evidence is clear and it is, in New Jersey, a matter of law, as pronounced by our Supreme Court: students gain significant benefits from integrated educational environments. *See, e.g., N. Haledon*, 181 N.J. at 178 ("Students attending racially imbalanced schools are denied the benefits that come from learning and associating with students from different backgrounds, races, and cultures." (citing *Jenkins*, 58 N.J. at 499; *Booker*, 45 N.J. at 170–71)). Indeed, their expert agrees. Barrett Aff. ¶ 57 ("The literature is clear that students can benefit from attending a racially diverse school."); Barrett Dep. 32:19-33:3, 81:17-23.

87. Denied to the extent that the Charter School Intervenor-Defendants contend that desegregation somehow harms students. The evidence is clear: students gain significant benefits from integrated educational environments. Barrett Aff. ¶ 57 ("The literature is clear that students can benefit from attending a racially diverse school."); Barrett Dep. 32:19-33:3, 81:17-23; *see, e.g., N. Haledon*, 181 N.J. at 178 ("Students attending racially imbalanced schools are denied the

benefits that come from learning and associating with students from different backgrounds, races, and cultures.” (citing *Jenkins*, 58 N.J. at 499; *Booker*, 45 N.J. at 170–71)). As well, denied to the extent that the Charter School Intervenor-Defendants contend that student achievement outcomes are relevant to whether a school or school district is unconstitutionally segregated as a matter of law. That is not the law. Finally, objection to the extent that the Charter School Intervenor-Defendants here seek to raise the issue of remedy, which is not currently before the Court.

88. Admitted to the extent that integration remedies have taken many forms throughout the United States. Denied to the extent that the Charter School Intervenor-Defendants claim that New Jersey students can receive a constitutionally adequate education while attending racially segregated schools. Objection to the extent that the Charter School Intervenor-Defendants seek to raise the issue of remedy, which is not currently before the Court.

89. Denied as this statement is not sufficiently coherent to admit or deny, but admitted to the extent that integration remedies have taken many forms throughout the United States, though it is not clear what forms the Charter School Intervenor-Defendants reference when they cite to “interventions” that are neither mandated nor voluntary. Of course, denied to the extent that the Charter School Intervenor-Defendants claim that New Jersey students can receive a constitutionally adequate education while attending racially segregated schools. Object also to the extent that the Charter School Intervenor-Defendants seek to raise remedy – an issue not currently before the Court.

90. Denied as this statement is not sufficiently coherent to admit or deny. Objection to the extent that the Charter School Intervenor-Defendants are claiming that the cause of *de facto* segregation determines its constitutionality; that is not the law in New Jersey. *See, e.g., Englewood on the Palisades*, 164 N.J. at 324 (“New Jersey’s abhorrence of discrimination and

segregation in the public schools is not tempered by the cause of the segregation. Whether due to an official action, or simply segregation in fact, our public policy applies with equal force against the continuation of segregation in our schools.” (citing *Booker*, 45 N.J. 161)). Denied as well to the extent that the Charter School Defendant-Intervenors focus on “the effects of integrated schools.” The law in New Jersey is that students do not receive a constitutionally adequate education while attending racially segregated schools. And the evidence is clear: students gain significant benefits from integrated educational environments. *See, e.g., N. Haledon* 181 N.J. at 178 (“Students attending racially imbalanced schools are denied the benefits that come from learning and associating with students from different backgrounds, races, and cultures.” (citing *Jenkins*, 58 N.J. at 499; *Booker*, 45 N.J. at 170–71)). Indeed, their expert agrees. Barrett Aff. ¶ 57 (“The literature is clear that students can benefit from attending a racially diverse school.”); Barrett Dep. 32:19-33:3, 81:17-23.

91. Admitted to the extent that varying remedies have had varying results throughout the United States. But this, again, is a matter of remedy – an issue not currently before the Court.

92. Denied as this statement is not sufficiently coherent to admit or deny. Denied, as well, to the extent that the Charter School Intervenor-Defendants are claiming that increasing racial isolation does not have any negative effects. The law in New Jersey is otherwise: students do not receive a constitutionally adequate education while attending racially segregated schools. Denied also to the extent that the Charter School Intervenor-Defendants here seek to raise the issue of remedy, which is not currently before the Court.

93. Denied to the extent that the Charter School Intervenor-Defendants are claiming that racial isolation does not have any negative effects. The law in New Jersey is otherwise: students do not receive a constitutionally adequate education while attending racially segregated

schools.

94. Objection to the extent that the Charter School Intervenor-Defendants are claiming that with adequate resources, New Jersey students can receive a constitutionally adequate education while attending racially segregated schools. That is not the law in this State. Objection also to the extent, though it is not clear, that the Charter School Intervenor-Defendants seek to raise the issue of remedy, which is not currently before the Court.

95. Admitted to the extent of the data regarding the performance of students in Charter Schools, which are uniquely positioned to be a part of the solution to New Jersey's segregation problem. But otherwise denied because those schools are, today, a manifestation of the State's systemically segregated schools, which because they are themselves segregated, further entrench the segregation throughout the State's schools. Denied also to the extent that, in this statement, the Charter School Intervenor-Defendants are claiming that New Jersey students can receive a constitutionally adequate education while attending racially segregated schools.

96. Admitted. Plaintiffs agree that charter schools are uniquely positioned to be a part of the solution to New Jersey's segregation problem.

97. Admitted to the extent that various school structures have had certain effects on students throughout the United States. Denied to the extent that the Charter School Intervenor-Defendants claim that New Jersey students can receive a constitutionally adequate education while attending racially segregated schools. Objection to the extent that the Charter School Intervenor-Defendants seek to raise the issue of remedy, which is not currently before the Court.

98. Admitted to the extent that charter schools have provided increased educational opportunities to some students in urban areas and are therefore uniquely positioned to be a part of the solution to New Jersey's segregation problem, although those schools are, today, a

manifestation of the State's systemically segregated schools, which because they are themselves segregated, further entrench the segregation throughout the State's schools. Denied to the extent that the Charter School Intervenor-Defendants are claiming that New Jersey students can, as a result of those educational opportunities, receive a constitutionally adequate education while attending racially segregated schools.

99. Admitted, including admitted that charter schools are uniquely positioned to be a part of the solution to New Jersey's segregation problem, in part because of the demand for them.