

# ABBOTT GETS AN F; COURTS CAN PROVIDE EXTRA CREDIT

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## Abstract

This note considers New Jersey's utility of *Abbott v. Burke* as a court directed means of education reform. In assessing a variety of Abbott Districts, *Abbott* is failing New Jersey and its students. While *Abbott* hoped to provide a thorough education for all through state funding, these districts exclude minority and low-income populations. This creates a culture of poverty and academic failure.

While current policy is not working effectively, it provides optimism for change. The Supreme Court of the United States and New Jersey have been willing to decide on critical educational issues. The Courts have the power to speak again to resolve current equity problems, through regional schooling and a focus on diversity in the classroom. Some schools have moved in this direction already, providing a rubric for next steps. In a nation where minority populations are becoming the normal face of the country and low opportunity places are outpacing the high, a new mentality is critical. Ideally, through education, New Jersey can begin a shift toward mutuality and equity in its region.

## I. Introduction

Place determines opportunity. There is a simple expectation that your locality should provide all you need to succeed on the journey toward achieving the American middle-class dream. However, this dream has been turned on its head, because a place can also severely limit opportunity. "A lack of institutional cohesion usually mirrors a lack of social cohesion . . . and right now in America, the number of low-opportunity environments is outpacing the number of high."<sup>1</sup> In a nation where the next generation will grow up with a

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majority of its region being the minorities of today, a new understanding of interconnectedness in community is essential. This need is two-fold; it calls for structural change as well as a shift in mentality.

Focusing on education as a means to promote regional equity is a gallant and efficient goal, considering political theory, social reality, and the law up to this point. Education is more than an individual good; its benefits do not accrue in a vacuum.<sup>2</sup> Ensuring citizens an education is a starting point to maintaining a society that is housed, fed, safe, and able to work together to solve the inevitable problems that emerge.<sup>3</sup> Education can act as a foundation to the myriad of equity issues we see in a metropolitan setting and can prepare students to solve issues as adults.

In addition, secondary schooling is the preparation of the next generation to become active, progressive, and effective leaders in our community. Given these students are growing up in a changing demographic and metropolitan landscape, their education needs to prepare them for the world they live in. Education reform begins with the landmark *Brown v. Board of Education*, but simply requiring racially integrated schools does not remove the potential to exclude race and class groups from a school district or to essentially create two schools within one building.<sup>4</sup> A new generation is needed, one that focuses on the need to have a diverse classroom, where racial and economic classes learn from one another. Courts have willingly taken on the role before and can begin a progressive and necessary shift again.

Schools are the place to begin utilizing the law to promote regional equity, as education already has one foot in the courtroom.

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<sup>1</sup>DAVID DANTE TROUTT, *THE PRICE OF PARADISE: THE COST OF INEQUALITY AND A VISION FOR A MORE EQUITABLE AMERICA* 16 (New York University Press 2013).

<sup>2</sup> Beth D. Abbot, *Abbott v. Burke vs. New Jersey: Policy, Politics and Political Economy* (Apr. 1991) (unpublished paper presented at the Annual Meeting of the American Education Research Association, Chicago)(on file with ERIC Institute of Education Sciences), *available at* <http://files.eric.ed.gov/fulltext/ED337907.pdf>. Stating, “[t]he viability of a free society depends on an educated citizenry,” meaning that society is better off when more citizens are educated, skilled, professional and able in a system of government.

<sup>3</sup> *Id.* Noting the belief in intellectual capacity to maintain a free society became a hallmark of the American system as early as with Thomas Jefferson's belief in strengthening education. Holding to this perception, every state has a free public school system.

<sup>4</sup> 347 U.S. 483 (1954).

Within New Jersey, the court has been willing to make sweeping choices in education law, as seen in *Abbott v. Burke* (discussed in detail below).<sup>5</sup> However, in a system of hundreds of disjointed districts, education becomes a private good that gives wealth great advantage. In turn, this can mean that children in poor districts, unable to provide the same levels of opportunity as rich districts, only deserve some bare minimum education as a public good, where as a majority of the state is granted a better, private good.<sup>6</sup> Leaving New Jersey's education system as it is currently will continue to keep this inequity intact.

New Jersey's courts can continue to shift reforms in education, given enough of an evidentiary need for change. Politically, citizens are willing to put children and education as a paramount issue on an agenda, meaning it can gain a voice and support. On the ground, education is already beginning to consider regional means of promoting a better academic experience for children, so the path toward equity has a bit of a head start. Through regional schools, a trickle-down effect can create a focus on metropolitan equity, while creating a generation that believes in such a goal. The importance of diversity in school has succeeded on the collegiate level and can continue to influence education on the secondary school level. Education can be the starting point to regional equity in housing, jobs, and all of metropolitan life. Thus, it is the focus of this paper.

## II. Background

New Jersey may be a small state, but it serves as an ideal arena for experimentation in metropolitan equity across racial and class lines. When it comes to education litigation specifically, its history is "larger than life . . . [b]y any imaginable standard, it far exceeds the litigation in any other state."<sup>7</sup> New Jersey's court-directed effort is somewhat unique and while an all-inclusive history of this complicated litigation is unrealistic, the basics that have gotten us to

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<sup>5</sup> 477 A.2d 1278 (N.J. Super. Ct. App. Div. 1984).

<sup>6</sup> *Id.* at 1284. An idea put forward by Kindleberger, education is something that individuals realize creates very real personal advantages in economics and enjoyment. While education for all helps public welfare, personally obtaining *more* education is a worthwhile private goal. Thus, with the ability for wealthy districts to bring in more opportunities for education that are considered a private good not a public good, these districts sustain great advantage.

<sup>7</sup> Paul L. Tractenberg, *Beyond Educational Adequacy: Looking Backward and Forward Through the Lens of New Jersey*, 4 STAN. J.C.R. & C.L. 411, 411 (2008).

current standards are critical for this piece. Understanding the reasoning behind New Jersey's reform and action to date serves to explain both the hopes of such litigation in the future and its failings in achieving integration currently.

There are three distinct waves in school funding litigation. At first, school districts and individuals looked to the federal courts to desegregate schools, to state that education was a fundamental right, and that lower income students, minority students, or recent immigrant students should be a suspect class.<sup>8</sup> Federally, outside of *Brown v. Board of Education* in 1954, the Court was unwilling to provide any strict standard for education and deferred to the states in finding solutions.<sup>9</sup> Though considered mostly to be a case about breaking down de jure segregation in schools, from the onset *Brown* also becomes the start of a case for equalizing educational opportunity for minorities. Eventually, this needed to mean more than simply occupying the same school grounds.

Unlike the Federal Constitution, most states have an education clause in their Constitution. In the second wave, litigation moved to the state generally, but still focused on federal Equal Protection and Fourteenth Amendment issues of discrimination in schools. Again, there was a hesitancy to fully consider education a fundamental right or an equal protection issue. For example, in New Jersey, the court stated the "equal protection proposition potentially implicates the basic tenet of local government that there be a local authority with concomitant fiscal responsibility," and would not consider the broad issue.<sup>10</sup> The language of the education clause of the state, on the other hand, would prove to have the potential to force judicial change.

New Jersey's Supreme Court started the move to this third wave of litigation in state courts. The move was toward adequacy within schools. In 1973, the school financing system in the state was found unconstitutional. In *Robinson v. Cahill*, the court ruled that large inequities between district and school spending created unequal opportunities for students.<sup>11</sup> Given the "thorough and efficient" system of schools required by the state's education clause, the ruling required the state to define adequacy in education and to then fund it accordingly. *Robinson* is paramount in finding a "different strategy

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<sup>8</sup> Janet D. McDonald et al., *School Finance Litigation and Adequacy Studies*, 27 U. ARK. LITTLE ROCK L. REV. 69, 73 (2004).

<sup>9</sup> Tractenberg, *supra* note 7, at 416.

<sup>10</sup> *Robinson v. Cahill*, 303 A.2d 273, 287 (N.J. 1973).

<sup>11</sup> *Id.* at 283-286.

than using the equal protection clause . . . it hinted at a new standard, which subsequently evolved into adequacy litigation.”<sup>12</sup>

After the *Robinson* decisions, New Jersey enacted the Public School Education Act of 1975. It sought to increase the state’s share of public school expenditures from 28-40%, which raised the total of state aid by \$400 million.<sup>13</sup> This phase had to focus on the arduous task of figuring out a school funding formula and implementing resource equalization across districts. However, as the court noted in *Robinson*, New Jersey’s Education Clause does not merely say adequate, but thorough, which “connotes in common meaning the concept of completeness and attention to detail. It means more than simply adequate or minimal.”<sup>14</sup> Defining the meaning of thorough would return in a second phase of adequacy litigation—*Abbott v. Burke*.

### **A. *Abbott v. Burke***

In 1981, the Education Law Center filed a complaint for students attending public school in Camden, East Orange, Irvington, and Jersey City, challenging New Jersey’s system of financing public education through the Public School Education Act of 1975.<sup>15</sup> Ever since that filing, *Abbott* litigation has continued. In the first phase, the Center argued that the “thorough and efficient education” clause of the state’s constitution<sup>16</sup> meant that current disparities in funding between poor urban and wealthy suburban school districts were unconstitutional.<sup>17</sup> The case was inevitably transferred over to the Commissioner of Education.<sup>18</sup> In 1990, litigation continued with *Abbott II*, finding that state funding was unconstitutional as applied to the twenty-eight poorer school districts in the state, a number that later expanded to thirty-one *Abbott* Districts. The Court expected the

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<sup>12</sup> ALLAN R. ODDEN & LAWRENCE O. PICUS, *SCHOOL FINANCE: A POLICY PERSPECTIVE* 34 (2d ed. 2000).

<sup>13</sup> Margaret E. Goertz & Malik Edwards, *In Search of Excellence for All: The Courts and New Jersey School Finance Reform*, 25 J. EDUC. FIN. No. 1, 5 and 8 (1999).

<sup>14</sup> *Robinson v. Cahill*, 287 A.2d 187, 210-11 (N.J. Super. Ct. Law Div. 1972).

<sup>15</sup> *The History of Abbott v. Burke*, EDUCATION LAW CENTER, <http://www.edlawcenter.org/cases/abbott-v-burke/abbott-history.html> (last visited Feb. 20, 2015). A detailed history of *Abbott* would be unrealistic, but an understanding of its use to the Court to promote policy is essential to this note.

<sup>16</sup> See N.J. CONST. art. VII, § 4.

<sup>17</sup> *The History of Abbott v. Burke*, *supra* note 15 (quoting Hon. Peter E. Doyno of the New Jersey Supreme Court) (internal quotation marks omitted).

<sup>18</sup> *Id.*

Legislature to amend or enact new law to ensure funding in urban districts was (1) "substantially equivalent" to successful districts on a foundational level, (2) "adequate" in providing supplemental programs disadvantaged urban schoolchildren needed, and (3) they requested that the implementation take place by the 1991-92 school year.<sup>19</sup>

Accordingly, the Legislature approved the Quality Education Act, which, despite modestly increasing aid levels in districts, failed to provide equity.<sup>20</sup> Therefore, the plaintiff returned to court, in order to be granted another order in *Abbott III*, which directed the Legislature to adopt another law by 1996, that produced "substantial equivalence" in per pupil funding as well as providing necessary supplemental programs.<sup>21</sup> This ended in the enactment of the Comprehensive Education Improvement and Financing Act, only to be found unconstitutional in 1997, in *Abbott IV*.<sup>22</sup> This time, the Court took more decisive action on its own, ordering parity in foundation funding, "an immediate state aid increase of \$246 million[.]" and that parity continued for future years until the Legislature could "convincingly demonstrate" adequate resources to meet established academic standards could be provided to urban schoolchildren.<sup>23</sup> The State Education Commissioner was requested to prepare a study of needs and recommendations. The Supreme Court in *Abbott V* accepted many of the programs and reforms created and established a process for urban districts to request additional funding for supplemental programs and improvements they could demonstrate were needed.<sup>24</sup> In 1998, after five *Abbott* rulings, a comprehensive set of remedial measures were put in place to ensure adequate and equal education for low-income school children.<sup>25</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> See New Jersey Dept. of Educ., History of Funding Equity, <http://www.state.nj.us/education/archive/abbotts/chrono/> (last visited Mar. 7, 2015) ("The NJ Supreme Court . . . declare[d] the *Quality Education Act* unconstitutional because it d[id] not equalize funding or guarantee needed supplemental programs. The court gl[ave] the state until 1997 to fully comply." (emphasis in original)).

<sup>21</sup> *The History of Abbott v. Burke*, *supra* note 15 (internal quotation marks omitted).

<sup>22</sup> *Id.*

<sup>23</sup> *The History of Abbott v. Burke*, *supra* note 15.

<sup>24</sup> *Id.*

<sup>25</sup> See New Jersey Dept. of Educ. *supra* note 20.

### III. A Look into *Abbott*

#### A. Introduction to the Problem

On the surface, there are certainly facets of the *Abbott* decisions and implementation to celebrate, especially compared to other state progress. New Jersey provides preschool education to a higher proportion of low-income children than any other state, with 80% in *Abbott* Districts (allowing parents to work and preparing children as they move to kindergarten).<sup>26</sup> Additionally, the state has done much comparatively in providing funds to districts with large concentrations of economically disadvantaged students, with higher spending per pupil than in many affluent districts.<sup>27</sup> New Jersey has also undertaken large construction projects to improve the deficient quality of school buildings in many of these urban districts.<sup>28</sup> The *Abbott* districts educate about 20% of New Jersey's students, 51% of all students eligible for free and reduced lunches, half of all Latino students, and nearly half of all African Americans in New Jersey.<sup>29</sup> Fiscally, *Abbott* Districts are granted billions of dollars each year with about 82% coming from state aid (which means by tax payers statewide).<sup>30</sup>

However, *Abbott's* central failing is noticeable when looking only a bit deeper into the numbers. New Jersey, as small as it may be, has about five-hundred and ninety school districts.<sup>31</sup> Demographically the state is made up of 73.4% White, .6% American Indian, 14.7% African American, 9.2% Asian, and 18.9% Latino citizens.<sup>32</sup> Within the thirty-one *Abbott* Districts, only two have a white student population close to the state average, Gloucester and Phillipsburg, while fifteen have less than 5% of white students enrolled within their

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<sup>26</sup> Statement at the New Jersey Senate Education Committee, Assistant Commissioner for Abbott Implementation Gordon MacInnes, Student Achievement in the Abbott Districts (Feb. 3, 2015),

[www.state.nj.us/education/archive/abbotts/info/statement.htm](http://www.state.nj.us/education/archive/abbotts/info/statement.htm).

<sup>27</sup> *Id.* at 1.

<sup>28</sup> See *The History of Abbott v. Burke*, *supra* note 15.

<sup>29</sup> See Statement at the New Jersey Senate Education Committee, *supra* note 26, at 2.

<sup>30</sup> *Id.*

<sup>31</sup> *New Jersey Public Schools Fact Sheet*, N.J. DEP'T OF EDUC., <http://www.state.nj.us/education/data/fact.htm>. This number does shift each year, but remains between 580 to 600 consistently.

<sup>32</sup> *State & County QuickFacts, New Jersey*, UNITED STATES CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/34000.html> (last revised Dec. 4, 2014).

high schools.<sup>33</sup> On the other hand, twenty-three of the Abbott Districts have African American student populations over the state average, with seventeen of the twenty-three being over double the state average.<sup>34</sup> Of the eight districts remaining, six have Latino populations of over 50%, many of them significantly over this number.<sup>35</sup> Moreover, within all of the Districts, seventeen have Latino populations significantly above the state average.<sup>36</sup> The *Abbott* District scheme allows for segregation.

Not only are students still very much divided by race and class lines, but a huge number of districts within New Jersey allow for a containment of students into a very small space. New Jersey spreads across about 7,354 miles in total.<sup>37</sup> If you add up the entirety of the townships or cities that make up the thirty-one *Abbott* Districts, the total square mileage only makes up 4% of the state.<sup>38</sup> Additionally, sixteen of the Districts are less than five square miles!<sup>39</sup> This means 20% of our state's students are contained to this small space. Moreover, it means more than half of our state's low-income students (eligible for free or reduced lunches), more than half of all Latino students in the state, and nearly half of African American students in the state are removed from its landscape.<sup>40</sup> The *Abbott* District scheme allows for containment.

Perhaps most importantly of all, *Abbott* District schools continue to fail students academically. According to *New Jersey Monthly*, of 328 public high schools ranked in New Jersey, *Abbott* District schools make up nineteen of the bottom twenty-five.<sup>41</sup> These Districts are receiving as much as \$23,000 in funding per student, compared to a state average of \$13,600 and a national average of

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<sup>33</sup> NJ SCHOOL PERFORMANCE REPORTS, STATE OF NEW JERSEY DEPARTMENT OF EDUCATION (2013-2014), available at [http://education.state.nj.us/pr/report.php?sch\\_name=](http://education.state.nj.us/pr/report.php?sch_name=). Utilizing this database, I personally looked at various statistics and demographics in each Abbott District to begin my analysis.

<sup>34</sup> *Id.*

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

<sup>36</sup> *See id.*

<sup>37</sup> *State & County Quick Facts*, *supra* note 32.

<sup>38</sup> *Id.* Adding together all of the Districts square mileage and personally finding the percentage. Each of these Districts can be found on this site through the search engine.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 2.

<sup>41</sup> *NJ's Top Public High School*, NEW JERSEY MONTHLY, <https://app.box.com/s/7c300516930c32f71a8e> (last visited Feb. 20, 2015).



\$8,300.<sup>42</sup> This legislation has yet to see any significant improvements in college readiness, academic achievement, or increased confidence in students. The *Abbott* District scheme is failing its students academically.

### ***B. Abbott District Case Studies***

Narrowing the landscape seems the best way to understand how *Abbott* District implementation actually works, on the ground. Four *Abbott* Districts were chosen as examples to investigate, based on different factors. These Districts are Asbury Park, Irvington, Camden, and Vineland.

First, Asbury Park (specifically Asbury Park High School to focus on secondary schooling) is a prime example, given it is granted the most amount of *Abbott* funding per pupil per year. The funding may be more than enough per pupil, but the policy is focused on an internal improvement structure, or “Inside Game,” which in actuality creates containment and a negative impact for the community.<sup>43</sup>

Asbury Park, New Jersey is a 1.46 square mile municipality with 16,000 residents.<sup>44</sup> Known for its historic boardwalk, the Stone Pony, and the rise of Bruce Springsteen, it makes for an intriguing case study, with huge equity issues that are largely overlooked. Asbury Park High School (“APHS”) is a great lens to look at a town in dire need of aid and reform, amidst a very successful region and county. With an enrollment of 439 students, the school consists of primarily minority and low-income students, with 78% of the school being African American, 18.2% Hispanic, 2.3% White, and .8% Asian.<sup>45</sup> This is a very different picture than the beach town many think of as Asbury Park. In addition, 73% of the students at school are

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<sup>42</sup> Ford Fessenden, *Abbott School Districts Among the Top Spenders*, N.Y. TIMES, June 10, 2007, available at [http://www.nytimes.com/2007/06/10/nyregion/nyregionspecial2/10mainnj.html?fta=y&\\_r=1](http://www.nytimes.com/2007/06/10/nyregion/nyregionspecial2/10mainnj.html?fta=y&_r=1) &.

<sup>43</sup> “Inside Game” can be attributed to DAVID RUSK, MEASURING REGIONAL EQUITY, 1 (2005). Rusk speaks to the larger issue of failing cities being granted money to help improve from within. This is a failing goal, whereas regional planning or an “outside game,” may better serve as a solution.

<sup>44</sup> *Asbury Park, New Jersey*, CITY-DATA.COM, <http://www.city-data.com/city/Asbury-Park-New-Jersey.html> (last visited Feb. 28, 2015).

<sup>45</sup> N.J. SCHOOL PERFORMANCE REPORT, ASBURY PARK HIGH, 2, (2012), available at <http://www.state.nj.us/education/pr/2013/25/250100010.pdf>.

considered economically disadvantaged.<sup>46</sup> According to the taxpayer's guide, the per-pupil expenditure at the school in 2012 was \$30,502, an increase from \$29,812 in 2011 and nearly \$6,000 more than any other school in the county.<sup>47</sup>

Yet, in the 2011-2012 state school rankings, APHS dropped eight positions to number 387 of the 389 schools ranked, where it remains this year at 393 of 396 schools ranked. Only two Camden city schools were below it, placing it significantly below all Newark, Paterson, and Trenton public schools and every other *Abbott* District.<sup>48</sup> Additionally, it saw the lowest graduation rate in the entire shore area (two counties) with a 49% graduation rate and a 45th percentile ranking in the state for college and career readiness.<sup>49</sup> While school success may be a subjective measure, APHS is clearly off the mark.

Irvington serves as another example given it has the largest minority population of all of the *Abbott* Districts, establishing itself as the only *Abbott* school in which 0% of recorded students identify as White.<sup>50</sup> The high school is 92% African American, 7.5% Latino, and .5% Asian.<sup>51</sup> Again we see a school that is failing its students, with a high school ranking of 390 in the state out of 411.<sup>52</sup> One fifth of students will be suspended one or more times during school, only half will even take the SAT, and only 63% of students will graduate at all.<sup>53</sup> This small city, not even three square miles, is just a stone's throw away from some of the highest achieving schools in the state.

Third, Camden not only represents the least achieving school system in the state, but also the highest area of crime. Once a thriving suburb of Philadelphia, the city is now better known for corruption

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

<sup>47</sup> Alesha Boyd et al., *New Jersey school report cards released: How did your school perform?*, ASBURY PARK PRESS (Apr. 11, 2013, 6:13 AM), <http://www.app.com/article/20130410/NJNEWS15/304100095/> New-Jersey-school-report-cards-released?odyssey=mod|breaking|text|Frontpage.

<sup>48</sup> *New Jersey High School Rankings*, SCHOOL DIGGER, [http://www.schooldigger.com/go/NJ/schoolrank.aspx?level=3&ci=DQt4UbrBH4LN0gHCxoCIDg&usg=AFQjCNGHRKRzKOEgCvCC6GDDC5nP92wWg&sig2=CG03w\\_nmjT1UGwFqnWTKmw](http://www.schooldigger.com/go/NJ/schoolrank.aspx?level=3&ci=DQt4UbrBH4LN0gHCxoCIDg&usg=AFQjCNGHRKRzKOEgCvCC6GDDC5nP92wWg&sig2=CG03w_nmjT1UGwFqnWTKmw) (last visited Feb. 21, 2015).

<sup>49</sup> Boyd, *supra* note 47.

<sup>50</sup> NEW JERSEY SCHOOL PERFORMANCE REPORT, IRVINGTON HIGH SCHOOL (2012), available at <http://www.state.nj.us/education/pr/2013/13/132330050.pdf>.

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

<sup>52</sup> *New Jersey High School Rankings*, *supra* note 48.

<sup>53</sup> NEW JERSEY SCHOOL PERFORMANCE REPORT, IRVINGTON HIGH SCHOOL, *supra* note 50, at 7-10.

and violence. Since 1998, Camden has been ranked in the top ten most dangerous cities in the United States, and for many years has taken the top spot.<sup>54</sup> Moreover, since 2011, the city lost almost half of its police force, and saw a huge spike in violent crime the following year.<sup>55</sup> Massive government funding has already proven futile in Camden, as programs such as the police and firefighting departments have been halved, while crime continues.

Camden has a few high schools, but two of its public schools, Woodrow Wilson and Camden High, rank as two of the bottom three schools in the state.<sup>56</sup> The student population at Camden High is 74% African American and 25% Hispanic, with less than a percent of the school identifying as White or Asian.<sup>57</sup> Woodrow Wilson is majority Hispanic, at 65%, but otherwise similar in that the school is comprised almost entirely of minority students.<sup>58</sup> Considering all the schools in the District, including the higher ranked schools; the graduation rate is still only 49% for the school system.<sup>59</sup> While most students never even take the SAT, of the portion that does, less than 1% were considered college ready.<sup>60</sup> It is clear that educating children in school cannot disregard what happens out of school.<sup>61</sup> However, within school hours, children in Camden are not being served

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<sup>54</sup> Sam Wood, *Camden Escapes Most-dangerous Status - on Technicality*, PHILLY.COM (Jan. 15, 2015, 5:35 PM),

[http://www.philly.com/philly/news/local/20141204\\_Camden\\_escapes\\_mostdangerous\\_status\\_-\\_on\\_technicality.html#cweuyqfHgbmuV36.99](http://www.philly.com/philly/news/local/20141204_Camden_escapes_mostdangerous_status_-_on_technicality.html#cweuyqfHgbmuV36.99).

<sup>55</sup> Tami Luhby, *Camden, N.J., To Lose Nearly Half Its Cops*, CNN MONEY (Jan. 17, 2011, 7:22 PM),

[http://money.cnn.com/2011/01/17/news/economy/camden\\_police\\_layoffs/index.htm?hpt=T2](http://money.cnn.com/2011/01/17/news/economy/camden_police_layoffs/index.htm?hpt=T2); see also Kate Zernike, *To Fight Crime, A Poor City Will Trade In Its Police*, N.Y. TIMES, Sept. 28, 2012,

<http://www.nytimes.com/2012/09/29/nyregion/overrun-by-crime-camden-trades-in-its-police-force.html?pagewanted=all&r=0>.

<sup>56</sup> *New Jersey High School Rankings*, *supra* note 48.

<sup>57</sup> NEW JERSEY SCHOOL PERFORMANCE REPORT, CAMDEN HIGH SCHOOL 2 (2012), available at <http://www.state.nj.us/education/pr/2013/07/070680030.pdf>.

<sup>58</sup> NEW JERSEY SCHOOL PERFORMANCE REPORT, WOODROW WILSON HIGH SCHOOL 2 (2012), available at <http://www.state.nj.us/education/pr/1213/07/070680040.pdf>.

<sup>59</sup> *Dropout Rates*, NAT'L CTR. FOR EDUC. STATISTICS (Feb. 2014), <https://nces.ed.gov/fastfacts/display.asp?id=16>.

<sup>60</sup> See Julia Terruso, *A Look at What SAT Report on Camden Means*, PHILLY.COM (Dec. 22, 2013), [http://articles.philly.com/2013-12-22/news/45447656\\_1\\_sat-benchmark-college-board-three-students](http://articles.philly.com/2013-12-22/news/45447656_1_sat-benchmark-college-board-three-students) (While college readiness is a new benchmark, it examines the probability a student is prepared to score B's in college courses. A much smaller percentage of students under the benchmark go to college).

<sup>61</sup> This will be discussed further after introducing these *Abbott* case studies.

academically, left with little options, and many dangers outside of school.

The Superintendent of Schools in Asbury Park, Denise Lowe, notes, “[s]ome people are quick to judge Asbury Park by test scores or cost per pupil, without understanding what our students live through each and every day and how these situations affect their learning, their focus, their self-esteem, and overall future goals”.<sup>62</sup> Each of the *Abbott* Districts, have out of school considerations, making educational attainment more difficult. However, many of these problem areas will not be resolved by containing students in small districts, unable to grow and learn from other socioeconomic classes and races nearby. Currently, the environment outside of these schools is left as a statement to explain inside of school hardship, but is largely unanswered policy-wise.

As noted, *Abbott* Districts are densely populated. In Asbury Park, for example, the African American population makes up nearly one fifth of the entire African American population in Monmouth County.<sup>63</sup> This means that one fifth of African American residents in Monmouth County live in 1.4 of its 428 square miles! Similarly, Irvington’s population density is very high, with nearly 20,000 people per mile in its 2.96 miles.<sup>64</sup>

Given such concentration, housing and opportunity becomes difficult. Since 2009, 29% of people in Asbury Park live in poverty and there is a 9% unemployment rate (a number that has doubled since 2007).<sup>65</sup> Given that the average income of an Asbury Park resident is \$30,373 (not even half of the New Jersey average), it is almost impossible to consider buying a condo or house that is valued, on average, at \$345,056 in the area. Thus, most residents in all of these districts live in larger multi-family housing units.<sup>66</sup>

Crime, as evidenced by the three case studies, is a reality of everyday life. In Asbury Park, the crime index is 945, which is almost

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<sup>62</sup> *Gripped by Violence*, ASBURY PARK PRESS, Oct. 25, 2012, <http://www.app.com/article/20121021/NJNEWS2003/310210012/Special-Report-Asbury-gripped-by-violence>

<sup>63</sup> See *Asbury Park, New Jersey*, CITY-DATA.COM, <http://www.city-data.com/city/Asbury-Park-New-Jersey.html> (last visited May 2, 2013).

<sup>64</sup> See *Irvington, New Jersey*, CITY-DATA.COM, <http://www.city-data.com/city/Irvington-New-Jersey.html> (last visited Jan. 30, 2015).

<sup>65</sup> See *Asbury Park, New Jersey*, CITY-DATA.COM, <http://www.city-data.com/city/Asbury-Park-New-Jersey.html> (last visited May 2, 2013).

<sup>66</sup> *Id.*

four times higher than the national average of 260 in 2011.<sup>67</sup> No other municipality in the county even remotely compares to these numbers. Although Irvington's crime rate has decreased in the last decade, it still remains higher than the crime rates of its New Jersey neighbors, such as Newark, Elizabeth, East Orange, and Union (all *Abbott* Districts).<sup>68</sup> There are also 48 registered sex offenders within the 2.96 radius.<sup>69</sup> Camden's crime rate tops most in the nation, and doubles its neighbors, including Philadelphia.<sup>70</sup>

Children witness crime in their neighborhood every day.<sup>71</sup> A shooting is expected every week and the number of gangs steadily increases as gang members use their gang affiliation as a means of finding a family outside of their difficult home life.<sup>72</sup> With 13% of new children being born to teenagers, and gang violence by juveniles becoming a large percentage of the crime within these cities, students must find a set of norms to survive, in an environment pitted against them.<sup>73</sup>

Certainly, outside of the classroom, this set of norms affects future goals and hopes. Ms. Lowe's point is worthy of consideration. It supports the notion that students in low-income areas with difficult homes need the opportunity to be surrounded by a new set of norms in the day-to-day setting of the classroom. Survival in this current setting means that in a larger regional context where there are very different expectations, a student will always fail. A more economically and racially diverse classroom can create new norms and new expectations. Additionally, it can significantly cut costs. Fortunately, the potential for such a diverse school body is locally available in essentially every *Abbott* District.

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<sup>67</sup> *Id.*

<sup>68</sup> See *Crime Rate in Irvington, New Jersey*, CITY-DATA.COM, <http://www.city-data.com/crime/crime-Irvington-New-Jersey.html> (last visited Jan. 30, 2015).

<sup>69</sup> *Id.* at 1.

<sup>70</sup> See *Crime Rate in Camden, New Jersey*, CITY-DATA.COM, <http://www.city-data.com/crime/crime-Camden-New-Jersey.html> (last visited Jan. 30, 2015).

<sup>71</sup> See *Crimes Rates for Asbury Park, NJ*, NEIGHBORHOOD SCOUT, <http://www.neighborhoodscout.com/nj/asbury-park/crime/> (Last visited Feb. 20, 2015).

<sup>72</sup> See *Gripped by Violence*, ASBURY PARK PRESS, Oct. 25, 2012, <http://www.app.com/article/20121021/NJNEWS2003/310210012/Special-Report-Asbury-gripped-by-violence>.

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

### *C. Successful Case Studies*

In search of remedies and solutions, successful schools throughout the state also need to be considered. There is no denying that there are many top-tier schools filled with White student populations. Wealthy districts work diligently at home rule and strict boundaries in order to maintain a community of certain standards (which may translate to districts comprised of certain races and classes). This division cannot continue and is in fact ineffective and lacking in thoroughness. However, there are other schools developing throughout the state that show an effective education is possible.

First, Red Bank Regional (“RBR”), RBR is a school district formed in 1969 by the Little Silver, Red Bank, and Shrewsbury municipalities and opened in 1975. Even with a student body population of 1,189 students, more than double the amount at APHS, RBR has reached a state ranking of 136.<sup>74</sup> The majority of RBR’s student body is comprised of Caucasians, however there is a significant minority population (21.1% Hispanic, 10.1% Black, 1.2% Asian) and 15.2% of students are economically disadvantaged.<sup>75</sup> The graduation rate is 94%, significantly higher than the statewide target of 75% and many continue on to post-secondary schooling.<sup>76</sup>

Since 1984, RBR has been commended and recognized for its regional model. It was applauded with seven other schools for its academic curricula and ingenuity.<sup>77</sup> In 1994, it was ranked in the top 9% of the nation’s public school districts, and has been recognized as a “What Parents Want” program in the state.<sup>78</sup> Since 2000, the school has continued to impress with specific academic programs for information technology, finance, and visual and performing arts. In addition, RBR has continued to gain accreditation, as it has been named twice in *Newsweek*’s “America’s Top High Schools.”<sup>79</sup>

As stated, the regional school district includes three municipalities: Red Bank, Little Silver, and Shrewsbury. The school building itself is in Little Silver. Little Silver is a small, but very wealthy town, with a population of 5,982 and a mean household

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<sup>74</sup> *New Jersey High School Rankings*, *supra* note 48.

<sup>75</sup> See NEW JERSEY SCHOOL PERFORMANCE REPORT, RED BANK REGIONAL HIGH 2 (2012), available at <http://www.state.nj.us/education/pr/2013/25/254365050.pdf>.

<sup>76</sup> *Id.*

<sup>77</sup> See RED BANK REGIONAL HIGH SCHOOL, CURRICULUM GUIDE 5 (2012-2013) (2012-2013), available at <http://www.rbrhs.org/services/guidance/CG.pdf>.

<sup>78</sup> *See id.*

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

income of \$146,995 (more than double the New Jersey average).<sup>80</sup> With a 5.8% unemployment rate in June of 2014, 66.3% of residents currently married, and a low crime rate of 89, compared to 257 in the rest of the state in 2012; Little Silver is the definition of a calm and safe environment for students to be attending school.<sup>81</sup>

However, instead of keeping its district lines rigid, the school district has expanded to include Red Bank, a very different municipality. Red Bank has a population of 12,187 with a household income at \$59,622 (\$7,000 below the state average). Its demographic layout is much more diverse, with 57.6% White, 26.9% Hispanic, 12.7% Black, 2.2% Asian, and 0.6% two or more races making up the 1.78 square mile town. Crime in the area is minimal, with a 190-crime index and unemployment is at 9%.<sup>82</sup> Combined, these towns create a school district within a 6.41 square mile area. This is larger than most *Abbott* Districts. Regional education reform has seen success where an isolated and fully state-funded school has floundered.

Another school that seems to be proving very successful is Dr. Ronald E. McNair Academic High School in Jersey City (an *Abbott* District). It has been consistently ranked in the top five high schools in the state and 50th in the nation.<sup>83</sup> The school pulls from the entire Jersey City region, which is fifteen square miles and maintains an extremely diverse student body (19.7% White, 16% African American, 21.3% Hispanic, 39.8% Asian).<sup>84</sup> Nearly half of the students are economically disadvantaged.<sup>85</sup> A diverse student body works well at McNair.

Admittance into the school is based on middle school grades and performance, extracurricular activities, recommendations, and a

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<sup>80</sup> See *Little Silver, New Jersey*, CITY-DATA.COM, <http://www.city-data.com/city/Little-Silver-New-Jersey.html> (last visited Feb. 20, 2015).

<sup>81</sup> *Id.*

<sup>82</sup> *Red Bank, New Jersey*, CITY-DATA.COM, <http://www.city-data.com/city/Red-Bank-New-Jersey.html> (last accessed April 19, 2013).

<sup>83</sup> *Dr. Ronald E. McNair Academic High School*, U.S. NEWS & WORLD REPORT, <http://www.usnews.com/education/best-high-schools/new-jersey/districts/jersey-city-public-schools/dr-ronald-e-mcnair-academic-high-school-12599> (last visited Jan. 30, 2015).

<sup>84</sup> SCHOOL PERFORMANCE REPORT, DR. RONALD MCNAIR ACADEMIC HIGH SCHOOL, 2 (2013), available at <http://www.state.nj.us/education/pr/1213/17/172390075.pdf>. See also *State and County Quick Facts, Jersey City(city), New Jersey*, UNITED STATES CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/34/3436000.html> (last visited Feb. 20, 2015).

<sup>85</sup> *Id.*

goal toward achieving a very diverse student population.<sup>86</sup> In addition, the school requires 50 community service hours and pushes children to summer school if they receive a failing grade in a class.<sup>87</sup> McNair works on a \$13,750 per pupil spending basis, which is significantly less than the \$18,047 per pupil state average.<sup>88</sup> Utilizing school to become a space for development, growth, and new norms can lead to success. Additionally, many options within McNair, such as performing arts programs and a partnership in colleges, allow the students to leave their locality.

Third, the Freehold Regional School District serves students in eight communities of Monmouth County, with six high schools that provide services and options for students throughout the region.<sup>89</sup> Students can apply to academies and specialty programs anywhere in the district; zoning for schools does not correlate with township lines either.<sup>90</sup>

The Freehold District serves 12,348 students and the six high schools are all ranked in the top 150 schools of the state (as high as the top 50).<sup>91</sup> While the schools are not as diverse as McNair, a diverse student body does exist. The schools average 5% African American, 8% Hispanic, and 11% Asian throughout the district.<sup>92</sup> More importantly, this number is consistent in each school. The district itself is clearly more exclusionary, if considering income or

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<sup>86</sup> Dr. Ronald E. McNair Academic High School: Annual Report 2014, (on file with author); *See generally* Jersey City Public Schools, [http://www.jcboe.org/boe2015/index.php?option=com\\_content&view=article&id=429&Itemid=1047](http://www.jcboe.org/boe2015/index.php?option=com_content&view=article&id=429&Itemid=1047).

<sup>87</sup> Dr. Ronald E. McNair Academic High School: Student / Parent / Teacher Handbook 2013 – 2014, p. 21 (on file with author)

<sup>88</sup> *See* Brody, Leslie and Dave Sheingold, *New Jersey spent \$18,047 per pupil in public schools last year*, NORTHJERSEY.COM, [http://www.northjersey.com/news/New\\_Jersey\\_spent\\_18047\\_per\\_pupil\\_in\\_public\\_schools\\_last\\_year\\_.html](http://www.northjersey.com/news/New_Jersey_spent_18047_per_pupil_in_public_schools_last_year_.html). *See also* City-Data, Jersey City: Education and Research, CITY-DATA.COM <http://www.city-data.com/us-cities/The-Northeast/Jersey-City-Education-and-Research.html>.

<sup>89</sup> *See About Our Schools*, FREEHOLD REGIONAL HIGH SCHOOL DISTRICT, <http://www.frhsd.com/district/index.php?q=about/schools> (last visited Mar. 3, 2015).

<sup>90</sup> *See generally About the Freehold Regional High School District*, FREEHOLD REGIONAL HIGH SCHOOL DISTRICT, <http://www.frhsd.com/district/index.php?q=about/FRHSD> (last visited Feb. 8, 2015).

<sup>91</sup> *New Jersey High School Rankings*, *supra* note 48.

<sup>92</sup> *See New Jersey School Performance Report*, *supra* note 45.



race by housing and town demographics.<sup>93</sup> Students are given a taste of community outside of the rigidity of a town border; they grow and expand throughout a larger area, learning from different socioeconomic classes, races, and community. The biggest District in the state has seen much success, showing that bigger does not have to be negative.

When deciding to look more specifically at these case studies, there were many to compare. The *Abbott* Districts chosen are seated amidst many successful schools. Irvington, with the worst schools in the state, is less than five miles from Millburn High School, often regarded the best non-magnet school in New Jersey!<sup>94</sup> In Monmouth County, where RBR and the Freehold Regional District flourish, and where five schools in the County top the state rankings, Asbury flounders.<sup>95</sup> While Abbott Districts continue to contain, exclude, and spend millions to keep this status quo, other Districts have chosen to regionalize, grow, and save costs.

A comparison between Asbury Park and Red Bank (one of the regional school's municipalities) is of particular interest, given their similar histories and current divergences. Red Bank, a cultural and economic center throughout the 20th century, fell into decline in the 1980s because of the economic recession. It became known as "Dead Bank".<sup>96</sup> Yet since the 1990s, the town has seen huge improvements to its downtown, bringing business, traffic, and culture back into the city.<sup>97</sup> Accompanying the increase in business was a near 50% reduction in crime and, as Police Chief Stephen McCarthy notes, "[t]he town is significantly different now, not just downtown, but all over."<sup>98</sup>

Asbury Park similarly was a popular vacation spot with a flourishing downtown until racially charged riots in the 1970s and

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<sup>93</sup> See *Rich Blocks, Poor Blocks*, <http://www.richblockspoorblocks.com/> (last visited Feb. 8, 2015) (search "Freehold, NJ").

<sup>94</sup> SCHOOL DIGGER, Millburn High School, <http://www.schooldigger.com/go/NJ/schools/1020002148/school.aspx> (last visited Feb. 8, 2015).

<sup>95</sup> *New Jersey High School Rankings*, *supra* note 48.

<sup>96</sup> George James, *From Dead Bank to Red Bank*, N.Y. TIMES (June 17, 2001), <http://www.nytimes.com/2001/06/17/nyregion/communities-from-dead-bank-to-red-bank.html>.

<sup>97</sup> See *id.*

<sup>98</sup> Edward Van Embden, Open Post, *Red Bank Crime Halved Over Two Decades*, RED BANK-SHREWSBURY PATCH (Apr. 2, 2012, 8:49 AM), <http://redbank.patch.com/articles/red-bank-crime-halved-over-two-decades>.

economic distress ignited downfall.<sup>99</sup> The riots, mixed with political corruption, led to the destruction of many buildings, vacancies, and a once famous beachfront boardwalk left in ruins.<sup>100</sup> In 2002, attempts at revival began, and by 2004, the entire boardwalk was completed and fixed and three of the boardwalk's eight pavilions were completed.<sup>101</sup> The town saw a 15% increase in beach and boardwalk revenue, and there are a few housing plans for very expensive \$1 million apartments right by the ocean.<sup>102</sup>

However, the school district in Asbury Park tells a different story. In 1997, APHS attempted to enjoin RBR from accepting students from districts meant to come to Asbury Park through sending and receiving programs.<sup>103</sup> This case presents a theme of exclusion and exemplifies the sociological realities of a culture of poverty that is failing the students who are stuck without other secondary school options.

In the next section, the state's means of measuring educational success and how to promote a thorough education through *Abbott* funding is assessed. It is clear that the *Abbott* District method contains low-income and minority students in a concentrated area, excluding them from opportunities close by. The *Abbott* funding pouring in is failing to produce the academic success the state hopes for, further ostracizes minority students, and forms a school and after school life that is dangerous and extremely difficult to survive within. Students must learn how to survive with a set of norms that may enable achievement within, but bring failure outside of the area. The culture of poverty that is created continues a cycle within the community, but a regionalized school model is the hopeful next wave toward a thorough and efficient education.

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<sup>99</sup> See Jerry Cheslow, *If You're Thinking of Living in Asbury Park; After Bleak Years, Signs of Progress*, N.Y. TIMES, July 27, 2003, <http://www.nytimes.com/2003/07/27/realestate/if-you-re-thinking-of-living-in-asbury-park-after-bleak-years-signs-of-progress.html?pagewanted=3&src=pm>.

<sup>100</sup> *Id.*

<sup>101</sup> See Jeff Schlegel, *The Boardwalks of Jersey*, WASH. POST, Aug. 10, 2005, <http://www.washingtonpost.com/wpdyn/content/article/2005/08/09/AR2005080901311.html>.

<sup>102</sup> *Id.*

<sup>103</sup> See Bd. of Educ. of Asbury Park v. Bd. of Educ. of the Red Bank Regional High Sch. Dist., EDU #6082-96 (1997), [www.nj.gov/education/legal/sboe/1997/asbpk.pdf](http://www.nj.gov/education/legal/sboe/1997/asbpk.pdf).

## IV. Assessment

### *A. Abbott Failure, by the State's own Standards*

While it is difficult to assess academic achievement over time, it seems that *Abbott's* funding money has done little to improve academic success in the Districts it has chosen to fund. New Jersey notes five college and career readiness factors: (1) students participating in the PSAT, (2) students participating in the SAT, (3) scores above 1550 on the SAT, (4) students who take an AP exam, and (5) students who score over a 3 on an AP exam.<sup>104</sup>

Performance is also measured by the ability to graduate from high school and move forward. As stated, the average graduation rate in APHS is 49%, 26% lower than the state's goal, with a dropout rate of 10.8%.<sup>105</sup> Additionally, 27% of students will be suspended one or more times each year.<sup>106</sup> These numbers are the grimmest in the entire county surrounding APHS.

Complicating matters, the state offers different exit exam options. If a student fails the High School Proficiency Assessment ("HSPA") three times, there is a Special Review Assessment ("SRA"), often considered a "backdoor route to graduation".<sup>107</sup> *Abbott* Districts have grown to rely on the SRA to demonstrate passing standards.<sup>108</sup> This secondary route often means repeated failure of basically the single means by which the state measures that a school has offered a proficient education.

Lackluster school performance is also sometimes related to a splintered relationship between beneficiaries and providers. "*Abbott* Districts receive [most] of their funding from state aid[,] rather than local tax revenues."<sup>109</sup> In turn, this removes the incentive to make optimal use of the funding, without local taxpayers ensuring their own taxes are put to proper use. Taxpayers within these low-income school districts will rarely receive tax benefits from the state's funding; with the increased revenue instead going to local government budgets

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<sup>104</sup> See *New Jersey School Performance Report*, *supra* note 45, at 5.

<sup>105</sup> *Id.* at 7.

<sup>106</sup> *Id.* at 9.

<sup>107</sup> Eileen Norcross & Frederic Sautet, *Institutions Matter: Can New Jersey Reverse Course?*, MERCATUS CENTER, GEO. MASON U. (July 2009) <http://newjersey.mercatus.org/wpcontent/uploads/2009/11/Can-New-Jersey-Reverse-Course.pdf>, at 48.

<sup>108</sup> See *id.*

<sup>109</sup> *Id.*

and school officials' salaries.<sup>110</sup> These funds do not seem to amount to a school curriculum that enables students to succeed or prepare for further studies, either.

For example, APHS has a nearly \$30,000 per pupil state budget (one of the largest in the state).<sup>111</sup> It has over 100 courses for students to select from during their time at school.<sup>112</sup> While there are only four AP courses available, there are programs in place to help with students who are deficient in math and literacy skills or who are English Language Learners ("ELL"). English, Math and Physical Education curricula have been revised to incorporate the state's standards. There are technical skill classes available as well. Special needs are often addressed through in-class support programs and assistive technology.<sup>113</sup>

Overall, the focus at APHS is on getting students merely to graduate. Most often, the largest investments are tailored toward making students who are deficient become proficient. While important, so too is an incentive to grow and desire a higher education degree or a career. Opportunities for higher-level learning, college level work, and honors programs are scarce.

RBR on the other hand, has a seventy-five page curriculum guide and offers well over 200 courses.<sup>114</sup> RBR offers eighteen AP courses as well as seventeen IB courses, and twenty-nine honors courses in a variety of subject areas. There are options to do independent work through the Advancement Via Individual Determination ("AVID") program, as well as internship opportunities with local businesses.<sup>115</sup> The school also prides itself on its academies in visual and performing arts, computer science, information technology, engineering, finance, graphic technology, international and cultural studies, math and science, sports management, and medicine.<sup>116</sup>

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<sup>110</sup> *See id.*

<sup>111</sup> Amanda Oglesby et. al., *Summit for Success seeks fresh solutions to Asbury Park school system woes*, ASBURY PARK PRESS (May 16, 2014 7:33 PM), <http://www.app.com/story/news/education/education-trends/2014/04/24/summit-for-success-seeks-fresh-solutions-to-asbury-park-school-system-woes/8124329/>.

<sup>112</sup> Mark Gerbino, *School Report Card*, ASBURY PARK HIGH SCH., <http://www.asburypark.k12.nj.us/Page/826>.

<sup>113</sup> *See id.*

<sup>114</sup> *See generally Curriculum Guide 2012-2013*, *supra* note 76.

<sup>115</sup> *See id.* at 16-17.

<sup>116</sup> *See id.* at 19-36.

There are also a variety of programs to ensure students transition to high school and college as best as possible.<sup>117</sup> The district notes a commitment to ensuring low-income students gain access to the same opportunities within the school, as well as promoting diversity.<sup>118</sup> Its stress on languages and diversity can be seen with classes in four languages and electives such as “Women in Engineering” or “African American studies.”<sup>119</sup> Overall, RBR’s goal is to advance every student and provide opportunities inside and outside of the classroom. An ability to continually succeed and gain college level preparedness within classes is crucial. The difference in these school’s options allude to very different expectations of the student’s chances and opportunities upon leaving the school. Expectations that will only make students at schools like APHS less prepared to move forward with their education or career.

*Abbott* schools have been granted state aid since 1996, ranging from \$3.5 billion to as much as \$6.85 billion calculated for the last fiscal year.<sup>120</sup> Governor Christie has continually attempted to cut *Abbott* spending; the funding formula actually anticipated \$8.45 billion last fiscal year.<sup>121</sup> Districts are continually questioned regarding proper usage of their budgets. In 2007, four districts were audited and the auditors found huge spending excesses.<sup>122</sup> These formulas have enabled New Jersey’s struggling districts to gain more funding than even the wealthiest school districts. While progressive compared to any other state, New Jersey’s consistently rising costs without a workable formula or academic progress for students ends in significant tax increases for all state residents and students who still feel unprepared to succeed outside of the classroom or after high school. This significant funding in the thirty-one *Abbott* Districts also leaves 187-206 underfunded and at-risk districts, with many students suffering the same disadvantages of poverty.<sup>123</sup>

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<sup>117</sup> See *id.* at 15.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 17; 57-61; 63

<sup>120</sup> See David Voreacos et al., *New Jersey Supreme Court Orders Some School Funds Restored*, BLOOMBERG BUSINESS (May 24, 2011, 1:35 PM), <http://www.bloomberg.com/news/2011-05-24/christie-s-fight-to-remove-school-funds-overruled-by-new-jersey-high-court.html>.

<sup>121</sup> *Id.*

<sup>122</sup> Ford Fessenden, *Abbott School Districts Among the Top Spenders*, N.Y. TIMES (June 10, 2007),

[http://www.nytimes.com/2007/06/10/nyregion/nyregionspecial2/10mainnj.html?fta=y&\\_r=0](http://www.nytimes.com/2007/06/10/nyregion/nyregionspecial2/10mainnj.html?fta=y&_r=0), (e.g., whether the districts are utilizing their budgets correctly.)

<sup>123</sup> See Voreacos et al., *supra* note 117.

As education costs continue to increase, with more funding considered the only solution, New Jersey's consistently increasing deficit will only continue to rise. With the only legal solution being an enforcement of money to promote a thorough education, such action has become inefficient for the students within the district and taxpayers throughout the state.

Overall, *Abbott's* intense amount of funding has failed academically. Gordon MacInnes, who oversaw implementation of *Abbott* decisions as the Assistant Commissioner of the Department of Education from 2002 to 2007 notes, "life chances" are still "insubstantial . . . When you get to middle school, eight grade, high school – forget about it. This has been a huge failure."<sup>124</sup>

### ***B. Abbott Schools Exclude***

As *Abbott* fails to provide the education and opportunity a family would hope for its students, parents who can remove their children do. As noted, Irvington has zero recorded white students. In Asbury, only 2% of the students are white, even though the town itself has a 22% white population.<sup>125</sup>

Families find a way to avoid going to their districted high school, if they disapprove and have the funds. APHS technically has a sending and receiving program with Interlaken, Deal, Belmar, and Allenhurst townships (many of which do not have a large enough population to sustain a high school on their own).<sup>126</sup> All of these municipalities, which surround Asbury Park, have huge white majority populations (Interlaken (97%), Deal (98%), Belmar (91%), and Allenhurst (87%)).<sup>127</sup> Other potential public high schools for some of

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<sup>124</sup> *New Jersey's Decades-Long School Finance Case: So, What's the Payoff?*, POLICY, TEACHERS

C., COLUM. U. (NOV. 11, 2009),

<http://www.tc.columbia.edu/news.htm?articleID=7240>.

<sup>125</sup> *Irvington, New Jersey*, CITY-DATA.COM, <http://www.city-data.com/city/Irvington-New-Jersey.html> (last visited Feb. 9, 2015); *Asbury Park, New Jersey*, CITY-DATA.COM, <http://www.city-data.com/city/Asbury-Park-New-Jersey.html> (last visited Feb. 28, 2015).

<sup>126</sup> Molly Mulshine, *Interlaken Seeks to Formalize Relationship with West Long Branch Schools*, ASBURY PARK SUN (Apr. 25, 2012), <http://asburyparksun.com/interlaken-seeks-to-formalize-relationship-with-west-long-branch-schools/>.

<sup>127</sup> See generally USA.COM, [www.usa.com](http://www.usa.com) (search "Interlaken;" search "Deal;" search "Belmar;" search "Allenhurst") (last visited Feb. 8, 2015).

these students are Manasquan and Ocean High School, which are 89% and 93% white respectively.<sup>128</sup>

The idea that optional sending and receiving will create diversity in practice utterly fails on the ground. As Belmar's Superintendent of Schools notes, students who are assigned to APHS instead pay to go to private schools or public schools with specialized programs not offered by APHS.<sup>129</sup> Of course, low-income students cannot afford this option and if you have spent your elementary school years in the Asbury Park district, it is likely your grades or the classes you had to choose from are far below the numbers and honors level needed to get into a specialty program, leaving you without an option.

Interlaken shows a similar distaste with Asbury, currently working on an agreement to educate students in West Long Branch instead of Asbury Park. Currently, only four students from Interlaken actually attend APHS. While the sending and receiving agreement has existed with APHS since the 1940s, in 2011, twenty Interlaken students went to West Long Branch schools or Shore Regional High school instead.<sup>130</sup> That agreement was not even approved by the state!<sup>131</sup> Many students in Interlaken also travel to private schools or magnet programs and academies throughout the county, including RBR. Using its local power, the Interlaken Board of Education paid tuition to the schools.<sup>132</sup>

Given every town has the obligation to find a free, appropriate public education for its citizens, the Board of Education for Interlaken has determined that APHS is not good enough. As the Board's attorney Anthony Sciarrillo states, "I don't want to cast *them* [APHS] in any worse light than they cast themselves by their own test results, but they have been deemed to be failing . . . . They don't meet the definition of a free, appropriate public education for the

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<sup>128</sup> *New Jersey School Performance Report, Manasquan Boro*, STATE OF NEW JERSEY, <http://www.state.nj.us/education/pr/2013/25/252930050.pdf>; *New Jersey School Performance Report, Shore Regional*, STATE OF NEW JERSEY, <http://www.state.nj.us/education/pr/2013/25/254760050.pdf>.

<sup>129</sup> Jerry Cheslow, *LIVING IN/ Belmar, N.J. Pushing Back On A Rowdy Reputation*, N.Y. TIMES (June 20, 2004), <http://www.nytimes.com/2004/06/20/realestate/living-in-belmar-nj-pushing-back-on-a-rowdy-reputation.html?pagewanted=2&src=pm>.

<sup>130</sup> Molly Mulshine, *Interlaken Seeks to Formalize Relationship with West Long Branch Schools*, ASBURY PARK SUN (Apr. 25, 2012), <http://asburyparksun.com/interlaken-seeks-to-formalize-relationship-with-west-long-branch-schools/>.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

children of *this* community”.<sup>133</sup> Whatever that standard may be, if the state accepts this shift to West Long Branch officially, how can a school inappropriate for one group of students be deemed thorough enough for another?

The flight from APHS has been going on for years now and RBR’s history has even been a part of the drain of wealthy, white, or high achieving students from APHS. In 1997, the Board of Education for Asbury Park petitioned against Red Bank Regional, Bradley Beach, Belmar, Allenhurst, and Avon by the Sea and argued that the towns that had statutory sending and receiving orders with Asbury Park school district were violating the required apportionment of high school pupils meant to be districted to APHS.<sup>134</sup> The Commissioner of Education affirmed summary judgment against APHS, stating the districts had properly assigned numbers to APHS and that parents’ decisions to send their children to different schools was beyond the tribunal’s purview.<sup>135</sup>

In its discussion of RBR, the Commission found it acceptable that students attend the regional school if accepted to the performing arts program.<sup>136</sup> Even though APHS had its own arts program equivalent, through Brookdale Community College, RBR’s experts testified that the programs were not equivalent.<sup>137</sup> Furthermore, RBR stressed an audition process and stringent acceptance criteria.

What was it about APHS’s performing arts program that made it worse than RBR’s? Had the court found them to be not suitably equivalent, there may have a new line of reasoning that all districts should be granted the ability to create advanced programs in certain areas of education, such as performing arts, engineering, or trades to ensure thorough access to education for all. If this ability to create equivalent programs in all districts is unrealistic, then perhaps it would open an argument that tuition cannot be enforced for out-of-district students who are accepted to specialty programs on their skills and merits cannot be denied the opportunity.

Further research into the exact demographic and geographic data of the students admitted to programs like RBR’s may also offer

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<sup>133</sup> *Id.* (emphasis added).

<sup>134</sup> *See* Bd. of Educ. of Asbury Park v. Bd. of Educ. of the Red Bank Regional High Sch. Dist., EDU #6082-96 (1997), [www.nj.gov/education/legal/sboe/1997/asbpk.pdf](http://www.nj.gov/education/legal/sboe/1997/asbpk.pdf).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*



evidence of discriminatory acceptance decisions.<sup>138</sup> The lawsuit itself notes that APHS was not attempting to enjoin RBR for the students from Asbury Park that were being removed, but rather the students from Belmar, Interlaken, Deal, and Allenhurst; which are sending districts.<sup>139</sup> These districts also happen to have significantly more wealth and have predominantly white residents.<sup>140</sup> APHS's main concern in its claim was the fact that higher-income and white students were finding a way to avoid APHS, not that RBR was taking minority students in.

This large departure of wealth, opportunity, and white citizens is evidence of a hyper-segregation of black citizens and low-income families, which is exacerbated by schools. Irvington serves as one of the better examples of this intense concentration. Irvington is home to 58,920 residents, 81.5% of which are Black and 8.4% of which are Hispanic.<sup>141</sup> In a county that is 50% white and a state that is 74% white, concentration, isolation, and unevenness is apparent.<sup>142</sup> Schools such as RBR, Freehold Regional, and McNair are much more even in demographic proportions within the school.<sup>143</sup> This creates an entirely different school social dynamic.

Demographic data shows that African American and low-income students unable to afford to move to a private or out-of-district school are concentrated, often into *Abbott* Districts. Other

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<sup>138</sup> I was unable to find specific acceptance data for RBR's performing arts program and the Director of the program was unwilling to comment.

<sup>139</sup> See *Bd. of Educ. of Asbury Park v. Bd. of Educ. of the Red Bank Regional High Sch. Dist.*, EDU #6082-96 (1997), [www.nj.gov/education/legal/sboe/1997/asbpk.pdf](http://www.nj.gov/education/legal/sboe/1997/asbpk.pdf).

<sup>140</sup> See generally USA.COM, [www.usa.com](http://www.usa.com) (search "Interlaken;" search "Deal;" search "Belmar;" search "Allenhurst") (last visited Feb. 8, 2015).

<sup>141</sup> *Irvington, New Jersey*, CITY-DATA.COM, <http://www.city-data.com/city/Irvington-New-Jersey.html> (last visited Feb. 9, 2015).

<sup>142</sup> *Essex County, New Jersey*, U.S. CENSUS BUREAU (last updated Dec. 4, 2014, 3:02:57 PM), <http://quickfacts.census.gov/qfd/states/34/34013.html>.

<sup>143</sup> SCHOOL PERFORMANCE REPORT, DR. RONALD MCNAIR ACADEMIC HIGH SCHOOL, 2 (2013),

available at <http://www.state.nj.us/education/pr/1213/17/172390075.pdf>. See also *State and County Quick Facts, Jersey City(city), New Jersey*, UNITED STATES CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/34/3436000.html> (last visited Feb. 20, 2015); NEW JERSEY SCHOOL PERFORMANCE REPORT, RED BANK REGIONAL HIGH 2 (2012), available at <http://www.state.nj.us/education/pr/2013/25/254365050.pdf>; *New Jersey High School Rankings*, SCHOOL.DIGGER, [http://www.schooldigger.com/go/NJ/schoolrank.aspx?level=3&ci=DQt4UbrBH4LN0gHCxoCIDg&usg=AFQjCNGHRKRzKOEEngCvCC6GDCC5nP92wWg&sig2=CG03w\\_nmjT1UGwFqnWTKmw](http://www.schooldigger.com/go/NJ/schoolrank.aspx?level=3&ci=DQt4UbrBH4LN0gHCxoCIDg&usg=AFQjCNGHRKRzKOEEngCvCC6GDCC5nP92wWg&sig2=CG03w_nmjT1UGwFqnWTKmw) (last visited Feb. 21, 2015).

wealthy students find a way out of these schools, thereby intensifying the schools' inability to become as successful as they could academically or socially. Regional schools can be more successful in attracting wealthy and high achieving students, while retaining a fairly diverse student population, both in terms of class and race.

### ***C. Abbott Schools Create a Culture of Poverty***

Thus far, this section has examined the inability for funding to actually create equal results for *Abbott* schools. Large amounts of funding serves as a cover, condensing low-income and minority students while wealthy or white students find a way out. Outside of the classroom, many children individually face poverty at home, which is clearly detrimental to their ability to succeed within the classroom. Inside of the classroom, without diversity and inclusion, success again becomes difficult. The norms created within this setting make success outside of it impossible.

Oscar Lewis introduced the theory of a "culture of poverty" in the 1960s, expressing fifty psychological and social traits that go in tandem with poverty to create a culture of norms.<sup>144</sup> These norms become separate from what may be expected in surrounding areas, given the harsh difference in the day-to-day reality of the poor. The people in this culture truly feel marginalized, helpless, and as if they do not belong.<sup>145</sup> Along with these emotions, comes a sense of inferiority and unworthiness.<sup>146</sup> Lewis stressed the need to focus on the poor community, rather than the individual victims of poverty.

While Lewis considers many aspects of the poor community where this culture is created, his observations on children and the family are of specific importance. This culture tends to quickly perpetuate itself, as young children usually absorb the basic attitudes or values of their subculture. Thereafter, they psychologically struggle to take advantage of improving opportunities that may develop in their lifetime.<sup>147</sup> Slowly, in working to simply survive within the subculture, plans of the future or deferred gratification for hard work become of little importance.

William Wilson, a Harvard sociologist, continued this work specifically considering race and class in the United States. He

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<sup>144</sup> See Oscar Lewis, *The Culture of Poverty*, 215 SCI. AM. 19 (Oct. 1966), available at [http://lchc.ucsd.edu/MCA/Mail/xmcamail.2010\\_11.dir/pdfKPNFlustp6.pdf](http://lchc.ucsd.edu/MCA/Mail/xmcamail.2010_11.dir/pdfKPNFlustp6.pdf).

<sup>145</sup> See generally *id.* at 21.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at 23.

believes that “the lack of contact or of sustained interaction with individuals and institutions that represent mainstream society”<sup>148</sup> creates decreased chances at opportunity. This theory stressed that this isolation causes the forceful need to create norms in order to survive. A culture of poverty therefore does not mean certain classes or people have inherently different values or attitudes, but rather it is a response to constraints.<sup>149</sup> Wilson notes, for instance, that in this environment as a young man “[i]f you don’t develop a tough demeanor, you won’t survive.”<sup>150</sup> Without any other sense of normalcy, surviving within this subculture as a teenager, will often mean failure in school and eventually in the mainstream.

In districts such as Camden, and other *Abbott* Districts, gang activity has been a part of the city’s culture for over a decade. These groups survive because of children looking for a sense of family and belonging.<sup>151</sup> As one student notes, “the point of being in a gang is mostly for protection, love, attention . . . Kids aren’t getting that at home.”<sup>152</sup> Safety or attention in school becomes unrealistic too, where gang culture continues to dominate.

Even with trouble at home, once the school day ends a diverse school experience can make a difference in shaping a child’s self-worth and expectations. As stressed earlier, it is not the individual experience of poverty, but rather the concentration of poverty that creates a culture or set of norms. Educational opportunity matters, but whom a student’s classmates actually are matters just as much, if not more.<sup>153</sup> A study in 1966, found that low-income children learn best when surrounded by middle-class classmates. Research shows a 12-15% improvement in test scores and academics for a low-income student in such circumstances.<sup>154</sup>

Similarly, a diverse school brings results for every student. Eileen Kugler’s book, *Debunking the Middle-Class Myth: Why Diverse Schools Are Good For All Kids* continues to show how a diverse culture can not only help low income and minority students to succeed more, but better prepare all students. Specifically, she sees no difference in middle-class scores in a socioeconomic class and racially

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<sup>148</sup> WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED* 60 (1987).

<sup>149</sup> *See id.* at 61.

<sup>150</sup> Patricia Cohen, ‘*Culture of Poverty*’ Makes a Comeback, N.Y. TIMES (Oct. 17, 2010), [http://www.nytimes.com/2010/10/18/us/18poverty.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2010/10/18/us/18poverty.html?pagewanted=all&_r=0).

<sup>151</sup> *Gripped by Violence*, *supra* note 71.

<sup>152</sup> *Id.*

<sup>153</sup> Rusk, *supra* note 43, at 23.

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

heterogeneous school, and shows a trend that the most highly educated, top-flight teachers yearn for variety in their classroom.<sup>155</sup> Additionally, Kugler notes that in many ways a diverse school creates the safest environment for students, given sensitivity to issues in different cultures (commenting on the much larger percentage of white students bringing drugs, weapons, and violence into schools).<sup>156</sup> As she states, “If you only live within the boundaries of your values, then you have no idea of the strength of those values. If they are never challenged, never questioned, never tested, you don’t grow”.<sup>157</sup>

A diverse school environment enables a break from the norms created from hyper-segregation. While the home life of many *Abbott* school students may still make academic success difficult at times, creating a new environment in which to learn, with a set of norms that stresses opportunity, is critical. It can be a huge step in regional equity through new attitudes, rather than a cycle of continued concentration and an inability to understand or succeed in the mainstream.

## V. Remedies

Financial backing and aid is needed to start helping desperate school districts where opportunity is not available. However, “[t]hrough internal reforms alone nobody has successfully turned around a highly distressed school system anywhere. I believe that more money is not the answer.”<sup>158</sup> *Abbott* funding, which hopes to create thorough educational equity, shows that such a policy merely considers the “Inside Game.”<sup>159</sup> This means that rather than looking at an entire metropolitan landscape, singular neighborhoods and localities are granted funds in hopes of revitalizing that small area alone.

This note did not hope to prove that *Abbott* Districts are a state-run form of racism and exclusionary practice, it just happens to be a reality. Rather, focusing policy funds and attention on improving small areas ends in failure for students, the municipality, and the region. Solutions that work toward, “linking the needs of the region’s economically isolated and racially segregated residents with

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<sup>155</sup> Jay Mathews, *Seven Myths About Diverse Schools*, WASH. POST (Aug. 3, 2004), <http://www.washingtonpost.com/wp-dyn/articles/A36327-2004Aug3.html>.

<sup>156</sup> *Id.*

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

<sup>158</sup> Rusk, *supra* note 43, at 23-24.

<sup>159</sup> *Id.* at 1-2.

opportunity structures throughout the region” benefits all residents, improves schools, and decreases overall spending.<sup>160</sup>

New Jersey currently has significantly more school districts per square mile than any other state in the nation, around 600 of them (most are uncertain of the exact number year to year).<sup>161</sup> This large number means many districts are very small. Consolidating districts, especially between municipalities that already have a working relationship, would reduce the number of districts quickly. This idea has grown popular throughout the nation, with the number of school districts declining from around 100,000 to close to 15,000 over the last seventy-five years.<sup>162</sup> New Jersey, on the other hand, has seen an increase.<sup>163</sup> New Jersey can balance both racial and economic imbalances between districts by increasing the area from which a school pulls.

It is arguable that this regional system has already become a method of reaction to *Abbott* funding. For example, as Senator Jennifer Beck notes, “Today, *Abbott* Districts are not the only areas in need of help . . . in Monmouth County we have Red Bank Borough and Freehold Borough . . . both are underfunded by more than 20% . . . We need to account for these types of needy suburban districts as well.”<sup>164</sup> Given that both of these needy boroughs are now a part of a larger school district system, in which both districts are celebrated for their success, a local reaction for funds has created a regional solution. The current *Abbott* Districts are significantly smaller than these regional districts and through incorporation them into larger schemes, costs can be saved and students can receive the education they deserve. Additionally, other needy areas can gain funding that is currently unavailable.

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<sup>160</sup> *Id.*

<sup>161</sup> Eli Hiller, *SOAPBOX: Saving New Jersey \$10 Billion a Year*, N.Y. TIMES (Nov. 23, 2003),

<http://www.nytimes.com/2003/11/23/nyregion/soapbox-saving-new-jersey-10-billion-a-year.html>.

<sup>162</sup> Chris Patterson, Tex. Pub. Policy Found., *School District Consolidation and Public School Efficiency: What Does the Research Say?* (Feb. 2006), <http://www.texaspolicy.com/pdf/2006-02-PP-consolidation-cp.pdf>.

<sup>163</sup> *Id.*

<sup>164</sup> Art Gallagher, *Monmouth Legislators Speak Out on Abbott Ruling*, MONMOUTH MUSINGS (May 24, 2011), <http://www.moremonmouthmusings.net/tag/monmouth-county-legislators/>.

## ***A. Legal Remedies***

New Jersey has used the law and court to attempt to promote a thorough education for all students in the state. The plan that has been implemented, *Abbott* Districting, has failed to promote the thorough and efficient schooling that New Jersey's Constitution calls for. There is hope, however, that a court-directed emphasis can continue toward progressive remedies. Similar to past litigation, there are federal and state law based remedies that can be used to promote a regionalized, diverse, and integrated school district system for New Jersey.

### ***i. Federal Legal Remedies***

As mentioned briefly in the second section of this paper, the Supreme Court has been hesitant in making education a fundamental right, which would enable school reform cases to be considered under strict scrutiny. Further, district wealth has not been a successful means of identifying a suspect class.<sup>165</sup> The Court suggested that plaintiffs look to their state constitutions to find education as a fundamental right, which ended up occurring in New Jersey (creating the *Abbott* decisions).

In *San Antonio School District*, the court was unwilling to recognize a suspect class, because it is the school districts themselves that have wealth disparities, not the individuals. However, a solution to make districts equivalent has not worked, thus the individual argument may still be available. For example, while the towns in which Red Bank Regional and Asbury Park High School are located have a difference of over \$100,000 in average household income, Asbury Park's per pupil spending as compared to Red Bank Regional's is over \$6,000 more.<sup>166</sup> Creating adequate funding has not changed the individual's ability to access opportunities for their children that cost extra money. These opportunities range from after school programs, the ability to pay private school tuition, or a better sending and receiving public school nearby. By placing funding into schools in low opportunity areas, the very system operates in a way that particularly damages the susceptible class: low-income minority students. This class now has no means of leaving the state-funded

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<sup>165</sup> See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 26 (1973).

<sup>166</sup> *New Jersey Taxpayers are Being Mised About Per-Pupil Costs*, COMMON SENSE INSTITUTE OF NEW JERSEY, <http://www.csinj.org/schoolspending/> (last visited Feb. 9, 2015).

schools, which are still incomparable to neighboring schools. This line of reasoning will be a bit trickier.

The second federal argument is that there is a compelling interest and need to promote diversity in schools. *Grutter v. Bollinger* shifted the potential of affirmative action law in education.<sup>167</sup> This 2003 case upheld the University of Michigan Law School's affirmative action admission policy and held that an admission process that may favor underrepresented minority groups is constitutional if it is also taking into account other factors for every individual application. The Court felt that such a policy aspires to "achieve that diversity which has the potential to enrich everyone's education and thus make a law school class stronger than the sum of its parts."<sup>168</sup> The Court created a deferential brand of strict scrutiny, allowing the school to present the compelling reasons for its actions. The deference afforded to schools under *Grutter* suggests that the Court saw a fundamental need for affirmative action in schools and education.

How far can the Court's opinion actually go in promoting diversity? Other entities, "public employers, public schools and more democratically accountable sectors of government – may be just as well situated to make determinations regarding affirmative action."<sup>169</sup> Additionally, the Court's opinion of the benefits of racial diversity in *Grutter* expanded beyond higher education, which implied that deference could be afforded to other entities. In the very least, it could be implied that such deference might be afforded to schools outside of higher education. Given this decision was held at a public university, it is a good first step in public entities being granted such deference.

*Grutter* concluded that the school had a "compelling interest in [attaining] a diverse student body".<sup>170</sup> This view of racial diversity needs to be considered a common good, showing that all can benefit from such an establishment. Rather than considering such admissions policies as a way where white people inevitably must lose in order for a minority student to gain, the law school and the Court saw the importance of the interest as a public good. Political theorist Bruce Douglass eloquently explains the inherent conflict in the need to support a public interest when stating that

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<sup>167</sup> See 539 U.S. 306 (2003).

<sup>168</sup> *Id.* at 315 (citing *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 118 (1978)).

<sup>169</sup> Luis Fuentes-Rohwer & Guy-Uriel E. Charles, *In Defense of Deference*, 21 CONST. COMMENT. 133, 136 (2004).

<sup>170</sup> *Grutter*, 539 U.S. at 330.

“Public interest” refers, accordingly, to benefits which apply, more or less equally, to all. ... In most instances in which the public interest is perceived to conflict with the interests of particular individuals, it is not the case . . . . Rather, what is involved is a *balancing* of competing benefits. . . .<sup>171</sup>

These benefits within the classroom were clear to the Court.

Similarly, a black student can usually bring something that a white person cannot offer[.]”<sup>172</sup> In *Grutter*, Justice O’Connor reaffirmed this premise, stating that diversity enhances education through a cross racial understanding and the breaking down of racial stereotypes.<sup>173</sup> In the end, this type of education benefits every student through discussion and a diverse classroom experience, better preparing them to be citizens in a diverse job market. Justice O’Connor stressed that the, “benefits are not theoretical but real,” pointing to American businesses and the military as arenas that require diverse cultures, races, incomes, and opinions to work together.<sup>174</sup>

Through this landmark opinion, it seems that a racially integrated school is only step one of truly succeeding in promoting a diverse education for students. To end this inquiry by merely stating schools need to have a diverse student population would be half the battle, the first generation issue. This first part of putting students of different races and socioeconomic classes in the same building can quickly end with essentially two schools within one. The *Grutter* opinion may offer an argument for a second wave of litigation: the need for a diverse classroom as a space for ideas and communication between races and classes.

While the idea of separate schools as being unequal has long been settled, the more specific idea of desegregation being the optimal and enhanced way for students to learn is still subject to debate. For now, *Grutter* grants somewhat of a shortcut by stating that the benefits of racial diversity are “not theoretical but real.”<sup>175</sup> This same line of thinking could be applied by analogy to a public K-12 context, or at the very least, the high school context, where social growth during

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<sup>171</sup> Bruce Douglass, *The Common Good and the Public Interest*, 8 POL. THEORY 103, 110-12 (1980) (emphasis in original).

<sup>172</sup> *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 316 (1978).

<sup>173</sup> *Grutter*, 539 U.S. at 315-16.

<sup>174</sup> *Id.* at 330.

<sup>175</sup> *Id.*



adolescence and preparation for college becomes a large part of education.

There is some evidence that this legal reasoning can work, given District Court decisions in *Parents Involved* and *McFarland*. In *Parents Involved*, the Ninth Circuit accepted evidence that racial diversity in secondary education enhanced both white and black students' critical thinking skills and helped children learn to challenge views that are different from their own.<sup>176</sup> Additionally, the court found that this diversity improved race relations and reduced prejudicial attitudes, creating a more inclusive experience for every student. These goals are a part of the secondary educational experience, creating democratic citizens. The Sixth Circuit also noted the importance of promoting racial tolerance and preparation for a diverse community and workforce and how secondary schools play a pivotal role in preparing students to be successful in such a community.<sup>177</sup> While still imperfect, this legal reasoning has potential. To have a federal decision such as *Grutter* apply to secondary schooling could mean huge strides in promoting a diverse classroom setting; a success we have seen come to fruition in many universities.

There are of course, some implications. Like the deference the Court gives to the law school in *Grutter*, presenting a secondary school case for diversity would likely mean deference to the local school system. Thus, this plan goes awry where there are unwilling and exclusionary citizens and districts. RBR serves as an example of such a voluntary regional district, whereas Irvington or Asbury defines a school district excluded from its surrounding, wealthier districts. Here, a refusal to implement such a diversity program may end in the Courts' acceptance of localism and local ideals. As stated in *McFarland*, "[t]he historical importance of the deference accorded to local school boards goes to the very heart of our democratic form of government."<sup>178</sup> This roadblock has left the Court unwilling to decide on the subject of secondary schooling to this point.

While the Court's unwillingness to enlarge the scope of *Grutter* to secondary schools in cases like *Parents Involved* thus far may seem to stifle its potential, it has potential in the future with continued evidence to form a fundamental right. *Parents Involved* does not overturn the precedent and continues to describe a school district's interest in pursuing racial diversity broadly. Perhaps Justice Kennedy's

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<sup>176</sup> 426 F.3d 1162, 1174 (9th Cir. 2005).

<sup>177</sup> *McFarland v. Jefferson Cnty. Pub. Sch.*, 330 F.Supp. 2d 834, 852-53 (W.D. Ky. 2004).

<sup>178</sup> *Id.* at 850.

concurrence saves *Grutter* from irrelevance and gives it expansive possibilities by suggesting a link between *Brown's* promise of equal education opportunity with racial diversity.<sup>179</sup> The Court had the chance to limit *Grutter's* context and chose not to, raising more questions than answers. However, this ambiguity is what may allow for a regional school district system to promote diversity.

Justices Ginsberg and Breyer, in their concurring opinion in *Grutter*, stated that "one may hope, but not firmly forecast, that over the next generation's span, progress toward nondiscrimination and genuinely equal opportunity will make it safe to sunset affirmative action."<sup>180</sup> Perhaps, the Court may see its need to implement more measures in secondary schools to help eventually have a racial and class equilibrium in higher education and beyond. Additionally, this line of reasoning may be used in tandem with other legal arguments in state court. New Jersey, known for its progressive Education Clause and court ruling years ago, perhaps is willing to step up to the challenge again in a new wave of education reform.

### *ii. State Legal Remedies*

To date, through *Abbott*, decisions have pushed the idea of funding to school districts where it is needed in order to promote a comparable school district to wealthier districts. However, a thorough education can come to mean a diverse classroom setting, the opportunity to work and communicate with different classes and races, and the chance to spend the school day outside the culture of poverty and norms that are home.

Regional districts currently created have shown that regionalization of school districts is possible. New Jersey's Constitution already allows for transportation to be provided within reasonable limitation to and from any school, as seen with students at magnet schools.<sup>181</sup> Utilizing the federal argument for diversity, the failure of *Abbott*, and increasingly strong evidence that a diverse classroom promotes success for low income and racial minorities, perhaps school reform in New Jersey can push toward regional and diverse districts.

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<sup>179</sup> See Michael Adam, *Stifling the Potential of Grutter v. Bollinger: Parents Involved in Community Schools v. Seattle School District No. 1*, 88 B.U.L. Rev. 937, 985-86 (2008).

<sup>180</sup> *Grutter v. Bollinger*, 539 U.S. 306, at 346 (O'Connor, J., concurring).

<sup>181</sup> N.J. CONST. art. VIII, § 4, pt. 3.

The New Jersey Constitution's additional expectation of an "efficient system of free public schools" may create legal support for a regional school district model.<sup>182</sup> To date, the court has used the languages in New Jersey's Constitution to promote education policy mainly by focusing on the word "thorough." What does "efficient" and "system," or "efficient system" actually mean? Professor Trachtenberg has intensely researched this query, considering a variety of definitions for both words separately and when working together. He notes, "[t]he dominant theme of these definitions is that a system is characterized by a functional relationship, organization, coordination, interconnection, and interdependence, not by its antonyms of disorder and disorganization".<sup>183</sup> Further, this language stresses utilizing a policy that is cost effective in its implementation.

If the State continues to define an acceptable education system by the performance standards it has at current, then the monetary input is not creating the output anticipated or expected, proving inefficiency. The fact that other options, such as regional school districts, are proving more successful by the State's own standards, may raise a claim. Additionally, the word system may be able to push New Jersey away from a "home rule" and local focus, to a state school system. If the State is allowed to set state-wide performance standards, or decide where funds may be needed, then allowing the continuance of small, splintered districts may be unable to satisfy a constitutional standard of a system.<sup>184</sup>

The New Jersey Supreme Court stressed in the decisions that created *Abbott* funding today that education is an evolving concept. In *Robinson*, they noted "what seems sufficient today may be proved inadequate tomorrow," and in *Abbott* "a thorough and efficient education . . . is a continually changing concept."<sup>185</sup> The court is willing to correct its decisions, if regional school systems or magnet schools become the better means of achieving the State's constitutional goals. Further, as diversity and an understanding of racial and ethnic differences between state citizens continues to become a compelling part of a full education, policy that compels a diverse classroom can become a part of this debate. Constitutional litigation and word parsing may be the best means of enforcing this

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<sup>182</sup> N.J. CONST. art. VIII, § 4, pt. 1.

<sup>183</sup> Paul L. Trachtenberg, *Beyond Educational Adequacy: Looking Backward and Forward Through the Lens of New Jersey*, 4 STAN. J.C.R. & C.L. 411, 426 (2008).

<sup>184</sup> *Id.* at 427.

<sup>185</sup> See *Robinson v. Cahill*, 355 A.2d 129, 133 (N.J. 1976). See also *Abbott v. Burke*, 575 A.2d 359, 367 (N.J. 1990).

regional equity goal, circumventing the unwilling local citizens devoted to home rule. The court is the best means of starting a move toward mutuality and regional goal setting, on the federal or state level.

## VI. Conclusion

It is easy for a critic to look at this note as merely a condemnation of *Abbott* funding and New Jersey's current means of providing a thorough education for its students. While investigating this policy on the ground does show that it is not working effectively for the state or the students, it also provides optimism regarding the role of the law to provide change. New Jersey's court is willing to shift with the times in order to provide a thorough and efficient system of education for the state's students. In 2011, a majority of new children born in the United States were not white children.<sup>186</sup> Diversity has become a compelling metropolitan interest. The Court has recognized the need for diversity in education and there is no reason why that should not continue on state and federal levels. Through legal action, structures can change school districts to be cost effective, equitable, and academically thorough enough for all students. Starting with education, New Jersey can recreate a belief in place to mean the availability of opportunity for all of its citizens. The American middle-class dream can breathe new life through education.

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<sup>186</sup> See Troutt, *supra* note 1; see also, *Most Children Younger than Age 1 are Minorities*, U.S. CENSUS BUREAU (May 17, 2012), <http://www.census.gov/newsroom/releases/archives/population/cb12-90.html>.