New Jersey's Opportunity Scholarship Act: A Step in the Right Direction

Joseph W. Catuzzi

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NEW JERSEY’S OPPORTUNITY SCHOLARSHIP ACT: A STEP IN THE RIGHT DIRECTION

“To deny education to any people is one of the greatest crimes against human nature. It is to deny them the means of freedom and the rightful pursuit of happiness, and to defeat the very end of their being.”

– Frederick Douglass

I. INTRODUCTION

“Before Brown, schoolchildren were told where they could and could not go to school based on the color of their skin.”¹ Half a century after Brown v. Board of Education,² wealth—not race—governs educational opportunity. While children are no longer excluded from public schools based on their race, their ability to attend high performing public schools is tied to their parents’ incomes.³ Public education has been hailed as the “great equalizer” of American society, though children in concentrated poverty are systematically denied quality educations because their parents cannot afford to move to better school districts or pay private school tuitions.⁴ Contrary to the spirit of Brown, which made clear that a two-tiered education system segregated by race generates feelings of inferiority,⁵ maintaining a two-tiered education

³ See Laura D’Andrea Tyson, Income Inequality and Educational Opportunity, ECONOMIX (Sept. 21, 2004), http://economix.blogs.nytimes.com/2012/09/21/income-inequality-and-educational-opportunity/ (“As a result of residential segregation, children from low-income families are more likely to have classmates with low achievement levels and behavioral problems than children from affluent families.”).
⁵ See Brown, 347 U.S. at 494 (“To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever
system segregated by income and quality facilitates a belief that failure is an inevitable future. While there are many causes for persistent educational failure in areas of concentrated poverty, compulsory school attendance laws combined with staunch district boundaries have created a system where disadvantaged children often have no choice but to attend chronically failing schools. In New Jersey, these unforgiving district boundaries severely segregate public education by income, race, and quality.

The Garden State has tried to address the failure of its impoverished districts by investing billions of dollars in supplemental state aid. Unfortunately, decades of evidence reveal that “equalizing funding” has neither provided equal educational opportunities nor seriously reduced a consistent to be undone.

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8 See BROWN, ABOT AND NJ’S SEGREGATED PUBLIC SCHOOLS, EDUC. LAW CENT. http://www.edlawcenter.org/news/archives/other-issues/277.html (last visited Apr. 4, 2013) (describing de facto segregation in New Jersey’s schools). One prime example of New Jersey’s segregated public school system can be seen by comparing Camden to neighboring Haddonfield. See Rita Giordano, 23 of 26 Camden Schools Rated Among Worst in N.J., PHILLY.COM (Apr. 12, 2012), http://articles.philly.com/2012-04-12/news/31331606_1_focus-schools-school-improvement-grant-program-priority (discussing quality of Camden schools). Camden is a city where roughly seventy-five percent of the population is black or Hispanic, the median household income is $26,347, and twenty-three of the district’s twenty-six schools have been rated among the worst in the state. See UNITED STATES CENSUS BUREAU, CAMDEN, NEW JERSEY, http://quickfacts.census.gov/qfd/states/34/3410000.html (providing demographics of Camden). Yet a few miles down the road in Haddonfield, ninety-five percent of the population is white, the median household income is $122,477, and children can attend some of the state’s finest public schools. See UNITED STATES CENSUS BUREAU, HADDONFIELD, NEW JERSEY, http://quickfacts.census.gov/qfd/states/34/3428770.html (providing demographics of Haddonfield).

NEW JERSEY’S OPPORTUNITY SCHOLARSHIP ACT

achievements gap.\textsuperscript{10} Guided by this evidence, New Jersey’s state legislatures have proposed a series of education reforms that emphasize, “quality spending.”\textsuperscript{11} These proposals include tenure reform, merit teacher pay, and opening more charter and magnet schools in failing districts.\textsuperscript{12} The Opportunity Scholarship Act (“OSA”) is part of this broader reform framework.\textsuperscript{13}

The OSA is an attempt to undermine the status quo in New Jersey’s poorest districts by allowing low-income parents to choose a school that best fits their child’s needs.\textsuperscript{14} In essence, the OSA operates as a limited voucher for students from low-income families living in the state’s worst performing school districts.\textsuperscript{15} While the OSA is not the “magic pill” that will solve New Jersey’s education crisis in areas of concentrated poverty, it allows students to escape failing schools and implicitly asserts that more money alone will not help those students currently attending the state’s worst performing schools.\textsuperscript{16} Despite receiving bipartisan political support, including leaders in New Jersey’s worst performing school districts, the OSA has not been subject to a vote.\textsuperscript{17}

\textsuperscript{10} See id. at 7 (“F]orty years and tens of billions of dollars later, New Jersey’s economically disadvantaged students continue to struggle mightily.”).

\textsuperscript{11} See id. at 8 (“[N]ew Jersey courts, legislatures, and past-governors] took an inarguable proposition—nämely, that a school must have sufficient dollars to succeed—and twisted it into the wrong-headed notion that dollars alone equal success.”); see also Ryan & Heise, supra note 4, at 2104-05 (stating that school spending “mattered very little” when reviewing impacts on educational results).

\textsuperscript{12} See EDUCATION FUNDING REPORT, supra note 9 at 28-48 (analyzing proposed education reforms). “If we are to have any chance of delivering on the promise of public education—ensuring that all students regardless of background have the opportunity for a lifetime of success—we must acknowledge that funding alone is not the solution, that it is not only ‘how much’ we spend but ‘how well’ we spend it that matters.” Id. at 49.

\textsuperscript{13} See id. at 48 (noting importance of Opportunity Scholarship Act in broader education reform).

\textsuperscript{14} For a further discussion of Opportunity Scholarship (OSA), see infra notes 41–57 and accompanying text.

\textsuperscript{15} Id.

\textsuperscript{16} See, Christie Administration Announces Highest Levels of K-12 State Aid Funding in New Jersey History, NJ DEPT. OF EDUC. http://www.state.nj.us/education/news/2013/0228aid.htm (last visited Apr. 17, 2013) (“[W]e continue to fund education at the highest levels in state history; we must remain willing to reflect on how we are spending our money and work towards solutions that make every dollar we invest count.”).

\textsuperscript{17} See Jessica Calefati, Newark Mayor Cory Booker Touts Scholarship Bill that Would Allow Some Students to Attend Private School, NJ.COM (May 4, 2012),
This article argues that the OSA is constitutional and is a necessary piece of a broader education reform in New Jersey’s most underperforming districts. Part II of this article provides a brief overview of school choice initiatives in New Jersey, describes the key components of the OSA, and outlines the arguments for and against it. Part III argues that the OSA is valid under the federal and state constitution. Finally, Part IV explains why the OSA is a good policy choice for New Jersey and suggests complementary reforms. Part V offers a brief conclusion.

II. BACKGROUND

The main tension underlying vouchers is between the belief that they will increase educational opportunities for students against concerns that they will privatize public education and enable schools to discriminate against students with special needs. To analyze whether the OSA vouchers are false promises or a necessary piece of education reform in poor school districts, this section provides an overview of school choice in New Jersey and highlights the key components of the OSA. The section concludes with a summary of the arguments for and against the OSA.

A. A Brief History Lesson in School Choice

The primary goal of vouchers is to give parents the ability to send their children to a school that best fits their needs.


18 For a discussion New Jersey’s affirmative obligation to help students transfer, see infra notes 129–53 and accompanying text.

19 For a discussion of why the OSA is a good policy choice, see infra notes 154–68 and accompanying text.

20 For a brief conclusion, see infra notes 171–73 and accompanying text.


22 For a discussion of school choice in New Jersey, see infra notes 27–40. For a discussion of the key components of the OSA, see infra notes 41–57 and accompanying text.

23 For a discussion of the arguments for and against the OSA, see infra notes 62–97 and accompanying text.
2] NEW JERSEY’S OPPORTUNITY SCHOLARSHIP ACT 325

regardless of residence. In the 1970s, vouchers were first introduced in the United States as a way to improve educational opportunities for children with special needs. Vouchers were also seen as a way to increase quality by fostering competition in public education, particularly in low-income areas. As Milton Friedman framed the issue, wealthy families can “choose places to live that have good schools . . . [But] [i]t seems . . . utterly unfair that those opportunities should not be open to everybody at all levels of income.”

Since the 1970s, the use of vouchers has rapidly expanded, and by 2011, a year dubbed “The Year of School Choice,” nearly every state had proposed legislation to establish or expand some type of voucher programs. Although New Jersey’s legislatures have debated the merits of vouchers since the 1980s, the New Jersey General Assembly has consistently shut down voucher proposals. Despite not having a voucher program, one of the state’s most prominent school choice initiatives is the Interdistrict Public School Choice Act.

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25 See Chou, supra note 24, at 304 (noting that early voucher programs in America were aimed at assisting students with special needs).

26 Id. at 298–299 (discussing history and evolution of school choice initiatives) (Milton Friedman advocated for voucher programs as a means to break up public school monopolies); Id. at 299 (“[P]rivate alternatives [would] . . . put pressure on public schools to abandon their inefficient ways [and] inevitably lead to an overall improvement of the public school system.”).


29 See Priscilla Van Tassel, State Weighs Open-Choice Schooling, N.Y. TIMES (Mar. 13, 1988), http://www.nytimes.com/1988/03/13/nyregion/state-weighs-open-choice-schooling.html?pagewanted=all&src=pm (providing an insight into early school choice debates in New Jersey). Early proponents of the school choice movement maintained that it could improve student achievement and attitude, raise teacher morale and make parents more involved. See id. (citing benefits of school choice); see also Chou, supra note 24, at 320–21 (listing voucher programs that were shut down prior to OSA).
(“IDPSCA”). Establish in 1999, and made permanent in 2010, the IDPSCA allows parents to enroll their children in any approved “choice district.”

As a result of the IDPSCA, parents have been able to enroll their children in schools that offer smaller class sizes, unique cultures, and innovative programs that emphasize the arts, foreign languages, and technology. A 2006 policy review of the program yielded mostly positive results. Students participating in the program performed and integrated well while the participating schools experienced "positive fiscal and educational impacts . . . ." The IDPSCA provided the most opportunity for students of lower income levels.

Unfortunately, the IDPSCA failed to serve black and Hispanic students proportional to their statewide population, particularly in poorer districts. A more targeted approach, including incentives for high performing districts to accept out-of-district students and the creation of additional high-quality magnet and charter schools in poor areas, could create more opportunities for students in failing districts.


[^31]: See NJ Dp’t of Educ., Interdistrict Public School Choice Program (last visited Mar. 7, 2013), http://www.nj.gov/education/choice/ (Stating that 136 choice districts are participating in the program).

[^32]: See id. ("Many choice districts have established specialized and innovative programs and courses that focus on areas such as art, music, foreign languages, and technology, and are open to students who demonstrate an interest in the special programs."). Any district in the state can become a “choice district” as long as it submits an application to the state Commissioner of Education and receives approval. See id. at 1 (describing process to become approved “choice district”).

[^33]: See Rutgers Univ. Inst. on Educ., Law and Pol’y., New Jersey’s Interdistrict Public School Choice Program: Program Evaluation and Policy Analysis, 51 (2006) [hereinafter IDPSCA Analysis], available at http://ielp.rutgers.edu/docs/schoolchoicereport_final.pdf (explaining that the program was successful overall but positive impact was limited based on the program’s small size).

[^34]: See id. (discussing benefits of IDPSCA).

[^35]: See id. ("[T]he Program has provided greater choice particularly for students at lower socioeconomic levels.").

[^36]: See id. at 38 (stating that the program did not adequately serve black and Hispanic students. Although the program did not lead to significant racial integration among schools it did have “an impact on racial/ethnic balance in some choice districts . . . .”).

[^37]: See id. at 51–52 (discussing ways to increase opportunities for underserved groups). The report stated that a blind expansion of the program “probably would not provide greater choice to students in underserved groups—black and Hispanic stu-
B. A More Targeted Approach: An Overview of the Opportunity Scholarship Act

The OSA seeks to create a four-year pilot program that would allow the Department of the Treasury to issue tax credits to corporations in exchange for donations to scholarship organizations. First, the total funds raised—roughly $138 million over four years—would be allocated to seven “target districts” that are among the state’s most underperforming districts. Second, vouchers would be distributed to the parents or guardians of low-income children that currently attend “chronically failing schools.” The individual scholarships would be distributed on a rolling basis unless the number of applicants exceeds the number of available scholarships, in which case there would be a lottery. Third, the OSA would create a special board to oversee the administration of the program and monitor its impact.

To be eligible for a voucher, a child must come from a low-
income household, which means the child is “from a household with an income that does not exceed 1.85 times the official federal poverty level based on family size . . . .”44 If a child satisfies the “low-income” threshold and is currently attending a chronically failing school, then he or she would become eligible to receive a $6,000 scholarship for grades k–8 and a $9,000 voucher for high school.45 The vouchers can be used at any approved and participating out-of-district public or private school.46

Participating schools must accept the scholarship as payment for the child’s full tuition and keep the student enrolled for at least two years.47 If the school is religiously affiliated, the student must be allowed to opt out of any religious instruction or activities.48 Additionally, to maintain student cohesion, if a child loses his or her “low-income” status, he or she will maintain the scholarship until completing the eighth or twelfth grade.49

The seven target districts would be responsible for the costs of transporting a voucher recipient to the new school.50 Despite incurring transportation costs, target districts would still receive state aid for students residing in their districts who are participating in the program.51 In effect, some schools would

44 Id. § 3; See also Vicki E. Alger, Freeing Students from Failing Schools in New Jersey, INDEP. WOMENS F. (May 20, 2012), http://iwf.org/blog/2787946/ (stating that family of four would be considered low-income if family had total income of $43,000).
45 See Assemb. B. No. 2830, supra note 39, § 3 (providing scholarship amounts). Thirty percent of the scholarships will be designated for high school and seventy percent for elementary education. See id. § 6 (describing voucher distribution). The number of available scholarships is as follows: 2,000 scholarships in the first year; 4,000 in the second year; 6,000 in the third year; 8,000 in the fourth year. See id. (providing quantity of available vouchers).
46 See id. § 3 (defining eligible schools).
47 See id. § 6 (listing requirements for eligible schools accepting children with OSA vouchers).
48 See id. §6b(4)(d) (explaining that parochial schools must allow the “scholarship student to opt out of any classes that provide religious instruction or any religious activities . . . ”).
49 See id. (“[A]ny child who received a scholarship under the program in the prior school year who is no longer considered a low-income child shall continue to remain eligible to receive a scholarship under the program until the child completes the eighth grade or the twelfth grade, whichever occurs first . . . ”).
50 See id. § 11 (requiring target district to provide transportation services).
51 See id. § 10 (“Notwithstanding any provision of section 5 . . . for each scholarship student who resides in the district, the amount of State school aid paid to the district . . . shall be reduced by an amount equal to the amount of the scholarship awarded
NEW JERSEY'S OPPORTUNITY SCHOLARSHIP ACT 329

receive significant funding for students that do not even attend their schools.52

One of the most overlooked aspects of the OSA is its four-year duration.53 To make its limited time useful, the program requires a comprehensive audit of the academic achievement of voucher recipients, the financial impact of the program on state expenditures and target districts, the impact on student enrollment patterns, and parental satisfaction with the program.54 These audits will help ensure that the OSA is actually an efficient use of money and is not having negative academic impacts on participants and affected schools.55

C. The Debate

The OSA has elicited bipartisan support from political leaders such as Newark’s Democratic Mayor Corey Booker and New Jersey’s Republican Governor Chris Christie.56 In addition, an overwhelming majority of New Jersey citizens support it.57 Despite such widespread backing, New Jersey’s Assembly Speaker Sheila Oliver has refused to let the bill go to a vote, leaving its fate in limbo.58


53 See Assemb. B. No. 2830, supra note 39, § 4 (stating OSA would last four years).

54 See id. § 5 (describing mandatory independent audits of OSA).

55 See id. (explaining that audits and studies of OSA will culminate in a report that would recommend “whether the program should be reauthorized on a permanent basis and whether it should be expanded to include other school districts.”).


57 MONMOUTH UNIV. POLLING INST., NEW JERSEY OPINIONS ON URBAN SCHOLARSHIP FUND 2 (2008), available at http://www.nje3.org/monmouth_2008/monmouth_poll_2008.pdf (finding seventy-four percent of registered voters supported voucher program for urban areas). The poll also showed that seventy-nine percent of people living in urban areas supported vouchers. See id. (breaking down supporters by community type).

58 Trayce Mcardle, Opportunity Ends, E3 (July 19, 2012), http://www.nje3.org/index.php/opportunity-ends (questioning Oliver’s decision to block OSA from vote).
1. “I believe in parents making choices.”

In the words of a mother living in Orange Township, “I am outraged that another generation of children from my community is a prisoner of chronically failing schools.” Proponents of the OSA argue that no child should ever be forced to attend a chronically failing school. While the OSA does not directly improve failing schools, it draws the state’s attention to the broader consequences of linking school attendance to residency, detrimental impact of socio-economic isolation in concentrated poverty, inefficient spending patterns, and provides a path for some children to escape failing schools.

First, linking school attendance to residency concentrates the state’s poorest children—often children with the greatest needs—into failing schools. This assignment structure is particularly unwise because aside from a student’s own socio-economic status, the socioeconomic makeup of a school’s student body is one of the most important factors that impact academic achievement. Moreover, this system has resulted in

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62 For a discussion of linking school attendance to residence, see infra notes 64–9 and accompanying text.

63 See Goodwin Liu & William L. Taylor, School Choice to Achieve Desegregation, 74 FORDHAM L. REV. 791, 792–93 (2005) (arguing that the link between school attendance and residence creates a major obstacle for children to receive a quality education); see also Ryan & Heise, supra note 4 (positing that staunch local control in suburban districts excludes low-income students from inner-cities); see also Assemb. B. No. 2830, supra note 39, § 1 (“Parents of limited financial resources are often less able to provide access to quality educational options for their children and are therefore unable to select the learning environment that might best meet the needs of their children”).

64 See Ryan & Heise, supra note 4, at 2105 (“[S]tudy after study confirms that the social composition of the student body is more highly related to achievement, independent of the student’s own social background, than is any other school factor.”). Students in high or middle-income districts are often raised in environments with high expectations for academic success in contrast to impoverished districts wherein “expec-
severe socioeconomic isolation with many urban districts comprised of mostly low-income and minority students being forced to attend failing schools.\textsuperscript{65}

While education should provide a means to escape poverty, schools in poor neighborhoods have been found to breed cultures that disparage academic success.\textsuperscript{66} Children attending these schools often find themselves surrounded by poverty with few role models and sometimes develop distrust for the notion that their hard work will lead to success.\textsuperscript{67} The OSA tries to combat this problem by allowing parents to send their children to schools that have proven academic records, unique learning environments, and greater socio-economic diversity.\textsuperscript{68}

\textsuperscript{65} See Bob Braun, \textit{Bringing N.J. Schools' Racial Segregation Into Open}, NJ.COM (May 19, 2011), http://blog.nj.com/njv_bob_braun/2011/05/braun Bringing nj schools racial.html (“New Jersey has one of the most segregated school systems in the country.”) (quoting David Sciarra, director of the Education Law Center). The racial isolation in Essex County is particularly severe:

Of the 39,000 students in Newark, more than 36,000 are black and Latino. In Millburn, fewer than 200 of its 4,000 students are black and Latino. In Orange, 12 of 4,400 students are white; in Fairfield, 660 students are white, 33 are Latino and one is black.

\textit{Id.} Newark and Orange are both target districts under the OSA. See Assemb. B. No. 2890, \textit{supra} note 39, § 3 (listing target districts).

\textsuperscript{66} See Ryan & Heise, \textit{supra} note 4, at 2105, (“Indeed, in poor inner-city schools, researchers have found that the dominant school culture often actively denigrates academic success, associating success in school with ‘acting white.’”); see also Katyana Melic, \textit{Blocking Violence at the Door: Is Education in Urban Inner City Schools In Danger or Endangering?}, MACALSTER 3-5 (2005), available at http://www.macalester.edu/educationreform/publicintellectualessay/KatyanaM.pdf (discussing culture of violence in urban schools).

\textsuperscript{67} See Ryan & Heise, \textit{supra} note 4, at 2105–06 (“Presented with few positive role models and surrounded by poverty and despair, poorer students have little reason to expect that hard work in school could lead to success afterward . . . .”). The article summarizes the devastating impact of socio-economic isolation by stating

[The portrait of the nation’s high-poverty schools is not just a racist or classist stereotype; high-poverty schools are marked by students who have less motivation and are often subject to negative peer influences; parents who are generally less active, exert less clout in school affairs, and garner fewer financial resources for the school; and teachers who tend to be less qualified, to have lower expectations, and to teach a watered-down curriculum. These factors point to a devastating paradox.

\textit{Id.} at 2107–08 (quoting Richard Kahlenberg).

\textsuperscript{68} See \textit{id.} at 2111 (explaining how vouchers can lead to students being placed in higher performing private schools that are more socio-economically diverse.). \textit{See id.} (stating that urban Catholic schools tend to be more socio-economically diverse and
Second, the OSA is a more efficient way to spend money. New Jersey has provided supplementary funding to its poorest school districts, resulting in some failing schools being the highest funded schools per pupil in America. For example, in 2012 Asbury Park was the second highest spending district in America, spending $23,940 per student to attend chronically failing schools. Under the OSA, a student could receive a better education at a private or out-of-district public school for $6,000, creating a savings of $17,940. Asbury Park would not be left empty-handed; rather, it would retain the $17,940 to be spread across a smaller class. Thus, under the OSA the state could fund higher quality education at lower costs.

Finally, the OSA supporters argue that other targeted voucher programs have proven successful. Studies of a similar voucher program in New York City revealed that children using vouchers demonstrated improved academic performance and were more likely to attend college. Specifically, the New York City voucher program increased full time college outperform poor public schools (comparing poor private and public schools); see also John C. Eastman, The Magic of Vouchers is No Sleight of Hand: A Reply to Steven K. Green, 39 WILLAMETTE L. REV. 195, 214 (noting that Catholic schools in inner cities achieve higher test scores).

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69 See Jason Butkowski, Bill Would Allow Students in Failing Schools A Chance to Receive Better Education, N.J. Senate Democrats, NJSENDEM.S.ORG (Jan. 20, 2011), http://www.njsendems.org/lesniak-opportunity-scholarships-act-advances/ (“If [the OSA] were in place ten years ago, the Opportunity Scholarship Act would have prevented most of the private school closings that now cost our taxpayers $600–800 million a year.”) (quoting N.J. State Sen., Raymond J. Lesniak).

70 See EDUCATION FUNDING REPORT, supra note 9, at 16 (noting that Asbury Park and Hoboken were ranked the second and fifth highest spending districts in America). New Jersey’s poorest districts spent an average of “$18,850 per-student . . . $3,100 more than the State’s wealthiest districts.” Id. at 11–12.

71 See id. at 7 (stating that Asbury Park spent $23,940 per-pupil).

72 See Assemb. B. No. 2830, supra note 39, § 6 (explaining that elementary schools accepting OSA scholarships must accept the $6,000 as payment for student’s full tuition) available at http://www.njleg.state.nj.us/2012/Bills/A3000/2830_I1.HTM.

73 See Alger, supra note 44 (explaining how the OSA would increase per pupil revenue in target districts).

74 See Eastman, supra note 68, at 214 (“Catholic schools in inner cities spend less than half the amount per student as public schools spend, yet achieve higher test scores.”).


76 See id. at 12–16 (summarizing impact of vouchers).
enrollment by 31 percent and doubled acceptance rates at selective colleges.\textsuperscript{77}

2. “But the losers are public schools, which are left to do more with less.”\textsuperscript{78}

Leading the opposition charge is the New Jersey Education Association (NJEA).\textsuperscript{79} The NJEA claims that the OSA is a bad policy because it removes critical funding from public schools, provides direct subsidies to parochial schools, and does not improve the underlying quality of chronically failing schools.\textsuperscript{80} The overarching concern of challengers is that the OSA would ultimately lead to the privatization and deregulation of public education.\textsuperscript{81}

First, opponents argue that the OSA is fiscally unsound because it would remove over $100 million from poor public school districts while providing tax benefits to corporations.\textsuperscript{82}

\textsuperscript{77} See Matthew M. Chingos & Paul E. Peterson, A Generation of School-Voucher Success, \textit{Wall St. J.} (Aug. 23, 2012), http://online.wsj.com/article/SB10000872396390444184704577585582150808386.html (explaining that minority students in “New York were 24% more likely to attend college if they won a scholarship to attend private school.”).


\textsuperscript{79} See generally id. (articulating the NJEA’s opposition to OSA).

\textsuperscript{80} See id. (stating that OSA is an “irresponsible use of scarce public school funds . . .”). The president of the NJEA also explained, “the state has no business diverting taxpayer funds for the express purpose of subsidizing private religious education.” \textit{Id.}

\textsuperscript{81} See N. J. Educ. Ass’n, \textit{Education, Community Groups Oppose Voucher Scheme}, \textit{YOUTUBE} (Feb. 16, 2011), http://www.youtube.com/watch?v=FTnXICrXQ64&feature=player_embedded (stating that “vouchers are simply a way to privatize and to deregulate the public school system . . .”); see also Marie Corefield, ‘Opportunity Scholarship Act’ Will Not Help Kids in Struggling Schools, \textit{NJ.com} (Feb. 9, 2011), http://www.nj.com/hunterdon-county-democrat/index.ssf/2011/02/opportunity_scholarship_act_wi.html (stating that OSA is a “shell game designed to skirt laws that forbid government funding of private schools and is another attempt by the governor to dismantle public education.”).

Challengers explain that because most students will be educated in public schools and private schools can be selective, the OSA would create a program that benefits a select few—mainly children without special needs—at the expense of the majority. As a result, public schools would be left to educate more special needs students and less overall funds. Second, it is argued that the real motivation behind the OSA is a bailout for fiscally struggling Catholic schools. The NJEA suggests that subsidizing these private schools is particularly dangerous because they can be selective and are not held to the same performance and curriculum standards. Private schools can also choose not to admit children with special needs, restricting OSA vouchers to only non-special needs students.

The NJEA contends that the state should not provide a means for students to leave public schools, but rather pursue measures that make public schools a desirable option. Implicit in the NJEA’s argument is that chronically failing schools have the ability to replicate the practices that have led to success in similarly situated public and private schools. To make such improvements, however, the NJEA argues that

$13,800,000 in the first State fiscal year, $27,600,000 in the second State fiscal year, $41,400,000 in the third State fiscal year, and $55,200,000 in the fourth State fiscal year.

83 See Keshishian, supra note 78 (discussing impact OSA could have on special needs students).
84 See id. (stating public schools will be left to educate more special needs students with less resources).
85 See Corefield, supra note 81 (arguing that the OSA is “a government bailout of private and religious schools.”).
86 See Keshishian, supra note 78 (“Even worse, [private schools] are not required to provide special services that are required of public schools and utilized by so many students in the targeted districts.”).
87 The Charter School Advantage: Operating as a Deregulated Autonomous Public School, COFFINS EDUC. CENTER, (June 28, 2009), http://www.coffinseducationcenter.com/?cat=25 (“The extent to which charter schools can limit the number of students who qualify for special education, are from low-income or poverty level families . . . would force traditional public schools to educate a disproportionate number of these needy and at-risk students who are much more expensive to educate.”).
88 See Keshishian, supra note 78 (“Perhaps we need to look at other models as well, such as converting private schools into public schools.”).
89 See id. (“We should make sure that struggling schools are using best practices, and where they are not, we should implement them.”).
failing public schools need more resources. Aside from arguing the merits of the OSA, opponents also claim that the OSA violates the United States and New Jersey Constitution.

III. CONSTITUTIONALITY

It has been argued that the OSA would violate the Establishment Clause of the United States’ Constitution by diverting public funds to private schools with religious affiliations. Despite such claims, it is unlikely that the Supreme Court would use the OSA as a model to overturn its precedent in Zelman v. Simmons-Harris, where the court held that voucher programs are constitutional even if they provide significant financial support to parochial schools. If the OSA is enacted, its validity will most likely hinge on the New Jersey Supreme Court’s analysis of the state Constitution’s Education Clause. This section begins by briefly explaining why the OSA does not violate the United States’ Constitution’s Free Exercise Clause. Next, this section presents an argument that supports the constitutionality of the OSA under New Jersey’s Education Clause.

A. United States Constitution

It has been argued that voucher programs like the OSA violate the establishment clause because they provide public funds to parochial schools. Notwithstanding such arguments, 

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90 See id. (asserting that teachers in chronically failing schools should be asked what resources they need to raise student performance).
92 Id.
93 See Chou, supra note 24 at 312 (asserting that it would be unlikely for Supreme Court to strike down New Jersey’s OSA).
94 See id. at 326 (“The [New Jersey Supreme Court] will inevitably play a significant role in determining the constitutionality of the OSA should any legal questions arise.”).
95 For a discussion of the OSA’s constitutionality under the Federal Constitution see supra notes 97–106 and accompanying text.
96 For a discussion of the OSA’s constitutionality under the New Jersey State Constitution, see infra notes 107–42 and accompanying text.
97 See Bartram, supra note 91.
the OSA would likely be declared constitutional. A breadth of Supreme Court precedent illustrates that this type of aid to religion does not violate the Establishment Clause. In Zelman v. Simon-Harris, the Supreme Court upheld the constitutionality of Ohio’s voucher program and implicitly placed its stamp of approval on vouchers. Unsurprisingly, the OSA specifically cites to Zelman in its findings section.

The OSA would not violate the Establishment Clause for the following reasons. First, like the voucher plan in Zelman, the OSA provides aid to parents who effectively act as financial intermediaries. Second, the vouchers can be used at private secular schools as well as other public schools; Catholic schools are not the only option. Third, the OSA requires parochial schools to allow children to opt out of any activities or classes that involve religious teachings or activities. Finally, even if a majority of the vouchers are used at parochial schools, the Supreme Court has made it clear that the constitutionality of voucher programs does not hinge on mere statistics of their usage in parochial schools, especially when the program is part of a broader undertaking by the State to enhance its public education system.

98 See Chou, supra note 24, at 309–10 (discussing impact of Zelman).
100 536 U.S. 639 (2009).
102 See Assemb. B. No. 2830, supra note 39, § 2 (citing Zelman for validity of vouchers).
103 See Zelman, 536 U.S. at 639-40 (highlighting significance of parent’s private choice).
104 See Assemb. B. No. 2830, supra note 39, § 3 (stating that eligible schools include private and out-of-district public schools).
105 See id. at § 6 (allowing families to opt out of religious instruction).
106 See Zelman, 546 U.S. at 675-76 (describing use of statistics in constitutional review). See also id. at 680 (Thomas, Concurring) (“Faced with a severe educational crisis, the State of Ohio enacted wide-ranging educational reform that allows voluntary participation of private and religious schools in educating poor urban children otherwise condemned to failing public schools.”).
B. New Jersey State Constitution

The OSA does not violate New Jersey’s Education Clause. Instead, it attempts to give meaning to the notion that the Education Clause guarantees a certain quality of education. However, given the New Jersey Supreme Court’s active role in education financing, the court may require the state legislature to increase funding to the OSA’s target districts. According to New Jersey’s Constitution, the legislature “shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.” Given the vagueness of the Education Clause, the New Jersey Supreme Court has aggressively interpreted it to achieve broad education-finance reforms to increase the quality of public schools.

First, in the landmark case of Robinson v. Cahill, the New Jersey Supreme Court held that the state’s then-existing education finance scheme was unconstitutional because it did not provide adequate funding to poorer districts. Through a series of education finance litigation known as the Abbott decisions, the court created special “Abbott districts,” composed of the state’s poorest districts. The court mandated

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107 For a discussion of the validity of OSA under the N.J. Constitution, see infra notes 107–42 and accompanying text.
108 For a discussion of why the OSA is constitutional, see supra notes 97–106 and accompanying text.
112 See id. at 295 (“[I]t is even more difficult to understand how the tax burden can be left to local initiative with any hope that statewide equality of educational opportunity will emerge.”). Although the state was providing aid to poorer districts, the court explained that the amount was “grossly outdated.” Id. at 296. The court went on to show that the current funding plan did not provide the “level of educational opportunity” required by the state constitution for children living in poorer areas. Id. at 297.
113 See Abbott v. Burke (Abbott II), 575 A. 2d 359, 363 (N.J. 1990) (mandating increased funding for poorer districts). The court explained that poorer urban districts “cannot . . . depend on the ability of local school districts to tax” and that the level of funding must “be adequate to provide for the special educational needs of these poorer urban districts in order to redress their extreme disadvantages.” Id. See also Abbott Decisions, EDUC. LAW CTR. (last visited Mar. 25, 2013 5:03 PM), http://www.edlawcenter. org/cases/abbott-v-burke/abbott-decisions.html (listing Abbott
equalizing funding to these districts, noting that, “the poorer the district and the greater its need, the less the money available, and the worse the education.”114 Under that general premise, the court invalidated education financing statutes that did not provide what it considered to be adequate funding.115

More recently, in Abbott XX, the court held that the state’s current funding scheme, the School Funding Reform Act (SFRA), was constitutional.116 Under the SFRA, schools receive an adjustable amount of funding per pupil that is increased if the student has special needs or is considered “at risk.”117 Yet in Abbott XXI, the latest Abbott decision, the court held that the SFRA was being underfunded in Abbott districts and directed the state to increase funding.118

While funding quantity has been at the heart of Education Clause interpretation, the New Jersey Supreme Court has also stated that the clause guarantees a certain qualitative

decisions).

114 Abbott II, 575 A.2d at 387.
115 See generally Abbott v. Burke (Abbott III), 643 A.2d 575 (N.J. 1994) (holding that Quality Education Act was unconstitutional); Abbott v. Burke (Abbott IV), 693 A.2d 417 (N.J. 1997) (finding the Comprehensive Educational Improvement and Financing Act unconstitutional). In addition to increased funding, the court observed that Abbott districts needed to provide more social services. See generally Abbott v. Burke (Abbott V), 710 A.2d 450 (N.J. 1998) (finding that special programs and services are required in certain districts); Abbott v. Burke (Abbott VII), 751 A.2d 1032 (N.J. 2000) (“The State is required to fund all the costs of necessary facilities remediation and construction in the Abbott districts.”). Most notably, in Abbott V the court mandated an unprecedented education reform package that included full-day kindergarten, new technology in schools, and programs to help transition students from school to work. Abbott V, at 473 (directing Commissioner to “implement whole-school reform; implement full-day kindergarten and a half-day pre-school program for three- and four-year olds as expeditiously as possible; implement the technology, alternative school, accountability, and school-to-work and college-transition programs . . . .”). The court went on to hold that schools “have the right, based on demonstrated need, to request and obtain the resources necessary to enable them to provide on-site social services that either are not available within the surrounding community or that cannot effectively and efficiently be provided off-site.” Id. at 467.

116 See generally Abbott v. Burke (Abbott XX), 971 A.2d 989 (N.J. 2009) (holding that School Funding Reform Act was constitutional).
117 See id., at 996 (discussing School Funding Reform Act formula). The court explained that, “once identified, the per-pupil amount is increased to reflect characteristics that are widely accepted as increasing the cost of education.” Id.
118 See Abbott v. Burke (Abbott XXI), 20 A.3d 1018, 1026 (N.J. 2011) (stating that “$1.601 billion, represents the total amount by which the original SFRA formula was underfunded for FY 2011.”).
2] NEW JERSEY’S OPPORTUNITY SCHOLARSHIP ACT 339

standard.\textsuperscript{119} Notably, in Robinson, the court asserted that the Education Clause demands that children receive \textit{equal educational opportunities} and an education that prepares them to be good citizens and compete in the labor market.\textsuperscript{120} In \textit{Crawford v. Davy},\textsuperscript{121} a group of parents with children in failing schools argued that their children should be able to transfer to an out-of-district school because of their current school’s poor quality.\textsuperscript{122} The parents asked the court to declare that New Jersey’s district boundaries and compulsory attendance laws were unconstitutional because they violated their children’s right to a thorough and efficient education.\textsuperscript{123}

Noting that the parents were asking for a “wholesale restructuring of New Jersey’s [public education] system,” the court stated that their remedy was \textit{premature}.\textsuperscript{124} The court’s reading of \textit{Abbott XX} required the SFRA to have an opportunity to be fully implemented.\textsuperscript{125} Moreover, the court asserted that the parents’ claim was non-justiciable because it could not craft a proper remedy.\textsuperscript{126} Assuming the OSA is passed and challenged, the New Jersey Supreme Court might simply reiterate \textit{Crawford’s} holding that the SFRA should be fully implemented before any voucher experiments are conducted.\textsuperscript{127} The New Jersey Supreme Court, however, has not shied away from making “wholesale restructurings” in the past; thus, the dreams of the parents in \textit{Crawford} might come true.\textsuperscript{128}


\textsuperscript{120} See Robinson v. Cahill, 303 A.2d 273, 294 (noting that providing educational opportunities is covered by education clause).


\textsuperscript{122} See Crawford Complaint at 1–2 (N.J. Super. Ct. App. Div. 2009) (discussing plaintiffs’ claims). The plaintiffs cited to test results in failing districts. \textit{See id.} at 25–52 (listing failing schools). For example, the complaint noted that in 2004, 92.8% or more students in East Camden Middle School failed mathematics on GEPA. \textit{See id.} at 30.

\textsuperscript{123} \textit{See Crawford}, at 2 (discussing plaintiff’s sought relief).

\textsuperscript{124} \textit{See id.} at 12–13 (rejecting plaintiff’s claims as premature).

\textsuperscript{125} \textit{See id.} (asserting that \textit{Abbott XX} precludes challenges to current education structure).

\textsuperscript{126} \textit{See id.} at 3 (stating claim was non-justiciable).


\textsuperscript{128} For a discussion of the New Jersey Supreme Court’s role in education finan-
To support the constitutionality of OSA vouchers and students’ rights to transfer out of failing schools, future litigants might argue that the New Jersey Supreme Court should apply its “inclusionary zoning” principles from its land use jurisprudence.\textsuperscript{129} As argued by the plaintiffs in \textit{Crawford}, school district boundaries often prevent poor children living in concentrated poverty from attending high performing public schools because high performing school districts have no obligation to accept students from failing out-of-district schools.\textsuperscript{130} In operation, district boundaries work against poor children in the same manner that exclusionary land use zoning regulations work against poor citizens who need affordable housing options.\textsuperscript{131} However, “considering the basic importance of the \textit{opportunity} for appropriate housing,” the New Jersey Supreme Court has held that no municipality may engage in exclusionary zoning practices.\textsuperscript{132}

In \textit{Southern Burlington County N.A.A.C.P. v. Mount Laurel Twp.},\textsuperscript{133} the New Jersey Supreme Court held that every municipality “must, by its land use regulations, presumptively make realistically possible an appropriate variety and \textit{choice} of housing.”\textsuperscript{134} The court explained that municipalities have an affirmative obligation to provide their “fair share” of their region’s affordable housing need.\textsuperscript{135} This affirmative obligation was deemed necessary because zoning is administered on a

\textsuperscript{129} For a discussion of how land use precedent can be applied to education, see \textit{infra} notes 129–42 and accompanying text.

\textsuperscript{130} \textit{See} N.J. Stat. Ann. §18A:8-1 (West 1968) (“Each municipality shall be a separate local school district except as otherwise provided in this chapter and except that each incorporated village shall remain a part of the district in which it is situated at the time of its incorporation.”).

\textsuperscript{131} \textit{See} Chris Cerf’s “\textit{Perverse Accountability Regime},” \textit{NJ LEFT BEHIND} (Mar. 15, 2013), http://njleftbehind.blogspot.com/2013/03/chris-cerfs-perverse-accountability.html (criticizing exclusionary system of public education). \textit{Id.} (“The only way to get your kid into NJ’s top schools is to live within district boundaries or . . . live within county boundaries. That’s . . . an exclusionary system that bases access on local residency.”).


\textsuperscript{133} \textit{Id.} at 724.

\textsuperscript{134} \textit{Id.} (emphasis added).

\textsuperscript{135} \textit{See} \textit{id.} (“[A Municipality] cannot foreclose the opportunity of the classes of people mentioned for low and moderate income housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality’s fair share of the present and prospective regional need therefor.”).
local basis, and without regional agreements, low-income families would be forced to live in areas that offer low-quality governmental services, specifically poorer quality education.136

The ultimate goal of the “Mount Laurel Doctrine” is to combat New Jersey’s affordable housing crisis by preventing self-interested municipalities from excluding low-income citizens from residency.137 Unfortunately, when it comes to combating the state’s educational crisis, individual school districts are allowed to be completely self-interested and exclude out-of-district students.138 Permitting these exclusionary practices in education, but not in affordable housing, appears to be disingenuous to the spirit of inclusion and regional responsibility embodied in the Mount Laurel Doctrine.139

If the Mount Laurel Doctrine were to be applied in the context of public education, it would appear that high performing public school districts would have an affirmative obligation to provide their “fair share” of their region’s educational demand.140 Moreover, if the Education Clause truly guarantees a certain quality of education, then the state has an affirmative obligation to ensure students can transfer to an out-of-district school when they are being deprived of a decent education.141 Applying the basic precepts embedded in the Mount Laurel Doctrine to the Education Clause creates a compelling argument to support the constitutionality of the OSA, and might require the state to engage in a “wholesale restructuring” of its public education system in areas of concentrated poverty.142

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136 See id. at 723 (observing self-interested behavior of local municipalities).
139 See Mount Laurel, 336 A.2d at 725 (“[A] zoning enactment which is contrary to the general welfare is invalid.”).
140 See JOSEPH MALONE & FRANCIS BLEE, FINDINGS AND RECOMMENDATIONS, ASSEMBLY TASK FORCE ON SCHOOL DISTRICT REGIONALIZATION, 17-18 (Feb. 25, 1999), http://www.njleg.state.nj.us/legislativepub/reports/school.pdf (discussing benefits of regionalized public school system).
141 See Abbott II, 575 A.2d 359, 369 (N.J. 1990) (“[A] thorough and efficient education requires a certain level of educational opportunity, a minimum level . . . .”).
IV. A Case For the OSA

Albert Einstein once said that the definition of insanity is “doing the same thing over and over again and expecting different results.” While providing extra funding to failing public schools in concentrated poverty is necessary, history demonstrates that New Jersey would be insane to believe that merely spending more money will cure its persistent achievement gap in areas of concentrated poverty. Despite substantial criticism, the OSA is a necessary part of education reform in New Jersey because it gives meaning to the notion that a quality public education should not be governed by income and residency. In response to critics, the OSA is not an irresponsible use of public funding, is not likely to further decrease the quality of failing schools, and would not send students to private schools that offer no benefits to children with special needs.

First, the OSA would not dramatically cut funding from chronically failing public schools. The total cost of the OSA is roughly one hundred and thirty-eight million dollars spread over four years. To put this cost in perspective, the Newark Public School District’s 2012–2013 operating budget was $875 million dollars. In effect, the OSA would actually lead to smaller class sizes and therefore an increase in per-pupil district).

144 See EDUCATION FUNDING REPORT, supra note 9, at 23–27 (discussing connection between funding and academic performance).
145 For a discussion of why the OSA is a necessary component of education reform, see infra notes 166–171 and accompanying text.
146 For a discussion of why the OSA is a good policy choice, see infra notes 149–165 and accompanying text.
147 See Douglas K. Batchelder & George V. Corwell, The Facts are These, OSA Makes Sense, NJ SPOTLIGHT (Feb. 23, 2011), http://www.njspotlight.com/stories/11/0223/1415/ (“The fact is the $360 million dollars is only one-third of 1 percent of what is expended on public schools . . . .”).
148 See Assemb. B. No. 2830, 215th Leg. § 4 (providing aggregate amount of OSA scholarships).
spending in chronically failing schools.\textsuperscript{150} It is difficult to see why a child that could receive a better education at $6,000 should accept an education of poorer quality for over $20,000.\textsuperscript{151}

Second, the OSA is not likely to decrease the quality of chronically failing schools.\textsuperscript{152} Although the OSA will probably skim the top performing children and active parents from failing schools, it is likely that the number of these students and families are already too small to make meaningful impacts in failing schools.\textsuperscript{153} Even without “the cream of the crop,” low expectations from teachers and administrators in many failing schools perpetuate already low academic standards and less advanced curriculum offerings.\textsuperscript{154} Further, the OSA should not be rejected because it only helps a “select few,” under such logic a myriad of valuable social programs would be rejected.\textsuperscript{155}

Third, students attending private schools are still entitled to special education services.\textsuperscript{156} Although private schools are

\textsuperscript{150} Benefits of the New Opportunity Scholarship Act, LATINO LEADERSHIP ALLIANCE OF N.J., http://llanj.org/announcements/benefits-new-opportunity-scholarship-act-1872-lesniakkean-and-2810-fuentesdecroce/01 (last visited Apr. 10, 2013) (“Not only is the New-OSA revenue neutral (in operating costs) to the state, it will decrease class sizes and increase per student state aid in the pilot districts.”).

\textsuperscript{151} For a discussion of OSA funding and quality, see supra notes 70–78 and accompanying text.


\textsuperscript{155} See We Can Do Better, QUESTIONS & ANSWERS ABOUT THE OPPORTUNITY SCHOLARSHIP ACT (last visited Apr. 4, 2013), http://www.wecandobetternewjersey.org/qa.html (criticizing argument of not passing OSA because it does not help all students).

\textsuperscript{156} EDUC. LAW CRT., THE RIGHT TO SPECIAL EDUCATION IN NEW JERSEY: A GUIDE FOR ADVOCATES 54 (2008), http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide.pdf (explaining how school districts are still required to locate and evaluate all children with disabilities that are attending private schools).
not required to offer the same special education services, they are still obliged to work with the local school district to classify students and develop special education plans. Contrary to the claims of challengers, private schools often have high academic standards and offer unique learning environments and services. The OSA merely gives parents the choice to send their child to a private school and requires participating schools to obtain written acknowledgement from parents that they understand their child might not receive the same special education services.

Broadly put, policy makers would be shortsighted to reject the OSA merely because it does not help every student or solve every problem within the state’s public education system. No doubt, it is likely that only children with parents who are actively involved in their education would obtain and use OSA vouchers. This unfortunate reality, however, should not halt all reform. Rather, the OSA should mark the start of a more comprehensive educational reform.

Other education reforms can work in tandem with the OSA to benefit students that do not receive OSA scholarships. Some initiatives include providing additional incentives for schools surrounding failing districts to participate in the IDPSCA and funding magnet and charter schools in and around failing districts. Incentivizing or requiring out-of-district public

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157 See id. (discussing regulations that govern provision of special education in public schools).

158 See WHITE HOUSE DOMESTIC POLICY COUNCIL, PRESERVING A CRITICAL NATIONAL ASSET 69 (Sept. 2008) (“Compared to other students of the same demographic background, minority students in urban Catholic schools are 42 percent more likely to complete high school, and inner-city minorities are two and a half times more likely to obtain a college degree if they attended a Catholic rather than a public high school . . .”).

159 See Assemb. B. No. 2830, supra note 39 at § 6 (requiring notification of parents regarding special education).

160 See id. (noting that only 2,000 OSA scholarships would be available in first year).


162 For a brief discussion of complimentary reforms, see infra notes 163-69 and accompanying text.

163 See IDPSCA ANALYSIS, supra note 33, at 44-46 (discussing the possibility of expanding IDPSCA and creating high performing magnet and charter schools).
schools to offer spots for students in chronically failing schools could allow more students to obtain higher quality educations in student bodies that are more socioeconomically diverse.\textsuperscript{164} Likewise, high-quality charter and magnet schools could offer better learning environments with new educational models that have a track record of success.\textsuperscript{165}

Private education providers that have proven records of success should be given the opportunity to take over chronically failing schools.\textsuperscript{166} Privately operated public schools can operate with more flexibility; offer benefits such as longer school days, weekend and summer sessions; and evaluate and compensate teachers based on their own unique standards.\textsuperscript{167} Privately operated public schools would also not be able to “cherry pick” the best students from failing school districts and would be required to provide accommodations for students with special needs.\textsuperscript{168} Put bluntly, it is unrealistic to expect a generic public school model that works in wealthy districts to have the same results in the state’s poorest districts.\textsuperscript{169}

\textsuperscript{164} See Ryan & Heise, \textit{supra} note 4, at 2126 (“Magnet schools have been able to attract some suburban students into urban school systems, and they offer urban students the opportunity for a more socioeconomically integrated environment, as well as a more academically challenging one.”).


\textsuperscript{166} See \textit{Educa\textbf{tion} F\textbf{unding Re\textbf{port}}}, \textit{supra} note 9, at 48 (“The [Department of Education’s] authority to charter new, independent schools gives the State a powerful tool. By recruiting high-quality school operators, directing them to high-need areas, and enabling them to develop new programs absent restrictive district rules . . . the State can strategically replace low-performing seats with high-performing ones.”).


V. CONCLUSION

At a most basic level, New Jersey’s history of education finance illustrates that more money alone does not improve the quality of education in failing districts. The OSA, however, gives meaning to the notion that the children of New Jersey have a right to a quality education. Unfortunately, the OSA’s goal of providing low-income parents the ability to send their children to schools that are not chronically failing has garnered substantial controversy.

The OSA should not be interpreted as a sign that the state is giving up on fixing its failing public schools. Rather, the OSA is more appropriately viewed as just one part of a broad plan for education reform that includes tenure reform, merit teacher pay, funding more charter and magnet schools, and allowing private education corporations with proven records to take over some public schools. In the absence of any meaningful education reform, the status quo will continue with quality public education being inextricably linked to income and residence. Children should not have to bear the consequences of being forced to attend chronically failing schools while policy makers struggle to pass comprehensive education reform.

Joseph W. Catuzzi*

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170 See id. at 27 (“[M]oney alone is not the solution to the persistent and unacceptably low performance in our State’s neediest districts.”).

* J.D. Candidate, 2014, Villanova University School of Law; B.S, 2011, Finance, Villanova University.