

*New Jersey's
Interdistrict
Public School Choice Program*

Program Evaluation and Policy Analysis



THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS
NEWARK

Institute on Education Law and Policy
Rutgers University – Newark
123 Washington Street
Newark, New Jersey 07102
<http://ielp.rutgers.edu>

The Institute on Education Law and Policy

at Rutgers-Newark is New Jersey's premier center for interdisciplinary research and innovative thinking on education law and policy. Its mission is:

- **to promote education reform and improvement through research, policy analysis and public discussion**
- **to mobilize lawyers, scholars and education practitioners to address complex and controversial issues in education law and policy in a comprehensive, in-depth manner**
- **to improve public understanding of these issues**
- **to serve as a center for learning and innovative thinking about legal and public policy issues relating to education.**

While issues affecting New Jersey's urban students and educators are the Institute's primary focus, those issues are addressed in the context of the state's wide diversity and with an eye toward their ramifications for the nation as a whole.



New Jersey's Interdistrict Public School Choice Program Program Evaluation and Policy Analysis

Contents

<i>Tables and Graphs</i>	<i>ii</i>
<i>Executive Summary</i>	<i>1</i>
<i>Introduction</i>	<i>9</i>
<i>Program Description</i>	<i>10</i>
<i>Impact of the Program</i>	<i>28</i>
<i>Issues Arising During Pilot Implementation</i>	<i>35</i>
<i>School Choice Policy Issues</i>	<i>41</i>
<i>Conclusion and Recommendations</i>	<i>51</i>
<i>Appendix A: Choice Students, 2001-02 to 2005-06</i>	<i>55</i>
<i>Appendix B: School Choice Aid, FY 2001 to FY 2007</i>	<i>56</i>
<i>Appendix C: Decreases in Core Curriculum Standards Aid to Sending Districts, 2001 and 2002</i>	<i>57</i>
<i>Appendix D: Racial Composition, Sending Districts, 2005-06</i>	<i>59</i>
<i>References</i>	<i>62</i>
<i>Notes</i>	<i>64</i>

Tables and Graphs

<i>Table 1: Per-Pupil School Choice Aid Amounts</i>	<i>12</i>
<i>Table 2: Interdistrict Public School Choice Program Enrollment</i>	<i>14</i>
<i>Table 3: Racial/Ethnic Mix Choice Students and Statewide</i>	<i>14</i>
<i>Table 4: Socioeconomic Mix Choice Students and Statewide.....</i>	<i>14</i>
<i>Table 5: Choice Districts 2005-06</i>	<i>15</i>
<i>Table 6: Choice Districts' Specialized Programs.....</i>	<i>16</i>
<i>Table 7: Choice District Resident Enrollment Growth/Decline</i>	<i>17</i>
<i>Table 8: Sending Districts With More Than 10 Resident Students Attending Choice Districts 2005-06.....</i>	<i>21</i>
<i>Table 9: School Choice Aid 2000-01 to 2006-07.....</i>	<i>24</i>
<i>Table 10: Discrepancies in Reported School Choice Aid Amounts</i>	<i>24</i>
<i>Table 11: Sending Districts: No Adjustment to Core Curriculum Standards Aid.....</i>	<i>27</i>
<i>Table 12: Racial/Ethnic Composition, Englewood 2005-06.....</i>	<i>32</i>
<i>Table 13: Sending-Receiving Arrangements.....</i>	<i>39</i>
<i>Graph 1: Choice Student Enrollment.....</i>	<i>19</i>
<i>Graph 2: Pupil Proficiency Levels, Choice Districts and Sending Districts ASK4 Language Arts Literacy</i>	<i>22</i>
<i>Graph 3: Pupil Proficiency Levels – Choice Districts and Sending Districts ASK4 Mathematics.....</i>	<i>22</i>
<i>Graph 4: Pupil Proficiency Levels – Choice and Sending Districts HSPA Mathematics</i>	<i>23</i>
<i>Graph 5: Pupil Proficiency Levels – Choice and Sending Districts HSPA Language Arts Literacy</i>	<i>23</i>

Executive Summary

This report has been prepared under contract with the New Jersey Department of Education, with support from the Department and the Joint Committee on the Public Schools of the New Jersey State Legislature. It provides an evaluation of the pilot program authorized by the Interdistrict Public School Choice Program Act. Specifically, to the extent possible with available data, it includes an analysis of the program's size, scope and funding; its fiscal, educational and racial/ethnic impact; implementation issues that have arisen in the course of the pilot; other school choice policy issues; and alternative funding provisions for interdistrict public school choice.

Based on this analysis, we make the following findings and recommendations:

- *The Interdistrict Public School Choice Program has had positive results.*
- *Interdistrict public school choice has served some, but not all, of the purposes identified by the Department of Education at the outset of the pilot.*
- *The pilot program's impact has been limited by its small size.*
- *If interdistrict choice is to continue to rely on voluntary participation, the state should offer effective incentives for district participation.*
- *Targeting choice could allow it to provide greater choice opportunities to underserved groups of students.*
- *Whether interdistrict public school choice is voluntary or mandatory, it will require an expenditure of state funds.*
- *If interdistrict choice is to continue in any form, its funding mechanism should be reviewed.*
- *Consistency among the state's choice programs would provide for a more rational state policy, and probably should be the goal on each issue unless particular policy considerations dictate otherwise on particular points.*

Program Description

Basic Provisions, Size and Scope of the Program. The Interdistrict Public School Choice Program ("the Program") was authorized by the New Jersey Legislature in 1999, by the Interdistrict Public School Choice Program Act ("the Act"). The Act limited the Program to one choice district per county and no more than ten choice districts for the first year, no more than 15 for the second year, and no more than 21 for the third, fourth and fifth years. Funding was provided for a sixth year by the 2005 appropriations act and for a seventh year by the 2006 appropriations act.

Designation as a "choice district" is voluntary. A district that wishes to become a choice district must submit an application to the Commissioner of Education for approval. Designation as a "sending district" occurs upon the exercise of choice by any resident student; districts may not prohibit their students from participating in the Program (other than in exceptional circumstances), but they may, by resolution, limit the percentage of their students enrolling in choice district schools.

Choice districts receive a form of state aid, called "school choice aid," for each choice student. They do not count choice students in their enrollments for purposes of determining eligibility for core curriculum standards aid, but they do count those students, pursuant to the Act, "for the purpose of calculating all other forms of aid provided under the Comprehensive Educational Improvement and Financing Act [CEIFA]." Such "other forms of aid" include, among others, special education aid and transportation aid.

Sending districts do not receive any school choice, but the Act provides that sending districts that receive core curriculum standards aid are to continue to receive that aid, in declining amounts, for the first three years of each student's participation. This provides a form of "impact aid," or cushion, for sending districts that are eligible for core curriculum standards aid. Districts ineligible for that aid have no such cushion.

Enrollment in the Program grew from 96 students in ten choice districts in 2000-01 to 1006 students in 16 choice districts in 2005-06. The 1006 students who participated in the

Program in 2005-06 resided in 122 sending districts. These are their characteristics:

- 49.8% are male
50.2% are female
- 43% are in grades K through 8
57% are in grades 9 through 12
- 58.4% are Caucasian
12.6% are Asian
12.3% are Black
12.1% are Hispanic
- 7.7% are eligible for special education services
- 29% reside in DFG A school districts
25% reside in DFG B school districts
21% reside in DFG CD school districts
6% reside in DFG DE school districts
8% reside in DFG FG school districts
5% reside in DFG GH school districts
6% reside in DFG I school districts.

Four choice districts had more than 100 choice students each attending their schools. In three districts, choice students made up more than 25 percent of the student population in the grades they are permitted to attend, while in six other districts they made up two percent or less of the student population in those grades. Resident enrollments have grown in some of the choice districts during the period of their participation in the Program, while in others they have declined.

The choice districts, as a group, have a range of pupil proficiency rates as measured by state-mandated tests. They also cover the socioeconomic gamut. With one exception, the districts with the largest numbers of choice students receive large portions of their choice students from districts with the same or lower DFG designations. Choice districts with small choice student populations receive students from districts in the same or higher DFG.

There are no choice districts in five of the state's counties – Essex, Middlesex, Mercer, Somerset and Sussex. In four counties – Bergen, Cape May, Gloucester and Warren – more than one district has applied for choice designation and the Commissioner has been required to reject applications because of the statutory limit of one choice district per county.

Over the course of the Program, participating students have resided in 141 school districts throughout the state. As of 2003-04, 63 school

districts had adopted resolutions limiting their students' participation in the Program. Twenty-six districts had more than ten students enroll in another district under the Program in 2005-06. Only three of those districts (Little Ferry, Maurice River and Woodbine) had more than two percent of their students do so.

Like the choice districts, the 26 sending districts with more than ten participating students cover the socioeconomic gamut, although they are more heavily weighted at the lower end, with eight of these districts in DFG A and seven others in DFG B. Eighteen of the 26 districts send their students to choice districts with higher DFG designations, four send their students to districts with lower DFG designations, and four send their students to districts with the same DFG designation.

Also like the choice districts, the 26 sending districts with more than ten participating students have a range of pupil proficiency rates, but a smaller number of these districts have proficiency rates above the state average and a larger number have rates below the average.

State Spending. State funds appropriated for the Program and distributed to choice districts as school choice aid have grown steadily over the course of the Program except for a dip in the second year. They exceeded \$10 million only in 2005-06.

Other state aid to choice districts has been affected by the "freeze" on aid to all school districts, which has kept aid at 2001-02 levels for the past five years. Because of the "freeze," categorical aid to choice districts, including transportation aid and special education aid, has not increased, even where enrollments and services have expanded as a result of interdistrict choice.

Whether those aid amounts have been frozen at levels that reflect choice student enrollments – *i.e.*, whether choice districts received categorical aid at levels reflecting choice student enrollments for the first two years of the Program, 2000-01 and 2001-02, before the freeze – is a matter of dispute between NJDOE and choice districts. The Department's Office of School Finance maintains that choice students were counted in aid calculations; some districts maintain that they were not; documentation provided for this report does not definitively support either position.

As to aid to sending districts, since core curriculum standards aid for all school districts has been “frozen” since 2002, the amount of such aid granted to sending districts has not been affected by the Program in the last five years. In other words, because of the “freeze,” the provision of the Act calling for sending districts’ aid to decline over the first three years of their students’ participation in the Program has not been implemented. Moreover, even before the “freeze,” many sending districts had no decrease in their core curriculum standards aid, notwithstanding the terms of the Act. According to the NJDOE Office of School Finance, although some districts had no net decrease in aid, aid calculations for those years reflected enrollment decreases caused by interdistrict transfers. Documentation provided for this report has not been sufficient to verify this position.

Impact of the Program

Impact on Choice Districts and Their Students. Choice districts are almost unanimous in their support of the Program and their reports of its positive fiscal and educational impact. Only one district reports that the Program has had a detrimental effect.

School choice aid has been a substantial source of revenue for choice districts. The districts report that this revenue has permitted them to hire additional staff, reduce class sizes and offer new programs, and avoid tax increases and program cuts that other districts have been forced to endure as a result of freezes and decreases in other forms of state aid. They also attribute other improvements to participation in the Program, including innovation and flexibility, new and enhanced programs and services at all grade levels, reorganization of staff to institute a “team approach,” and strong financial condition enabling one district to pass a bond referendum.

Most of the choice districts report that choice students generally have integrated well into their schools, and have presented no special problems or needs related to their choice status. Individual student achievement data has not been collected; therefore, the Program’s educational impact on individual students has not been evaluated for this report.

The Program has had an impact on racial/ethnic balance in some choice districts, but no such impact in others. In five districts (Brooklawn, Kenilworth, Lower Township, Passaic County

Manchester Regional and South Harrison) choice student enrollment has increased the percentage of minority students in the overall enrollment; in one district (Salem) choice student enrollment has increased the percentage of white students; and in another district (Cumberland Regional), choice student enrollment has varied in the six years of participation in the Program, increasing the percentage of minority students in some years and the percentage of white students in other years.

Impact on Sending Districts. Data and information obtained from the Department of Education indicate that the Program’s fiscal impact on sending districts has been more positive than negative, and the impact on racial/ethnic composition in those districts has been minimal.

Because, as discussed above, core curriculum standards aid to sending districts has not been reduced in the last five years, sending districts have received their full allocation of core curriculum standards aid based on enrollment counts that include students who are not enrolled in their schools. This can only be considered a positive impact, or an unintended windfall, for those sending districts. In this respect the Program has not been implemented in accordance with the original legislative intent. Consequently, we cannot determine the fiscal impact the Program would have had on sending districts if the Program had been implemented as intended.

No information has been obtained for this report regarding the Program’s educational impact, if any, in sending districts. Because the number of choice students residing in each sending district is small – as discussed above, only three districts had more than two percent of their resident enrollment participating in the Program in 2005-06 – it is reasonable to conclude that the Program has had little or no significant impact on instructional program, class size, course offerings or staffing in the vast majority of the state’s school districts (other than choice districts).

Available data does allow an assessment of impact on racial/ethnic balance in the sending districts. That data indicates that the Program has had little or no impact on sending districts’ racial composition. Specifically, interdistrict transfers under the Program have resulted in more than a one percent increase or decrease in

any racial/ethnic group's percentage of enrollment in only one of the 26 districts in the state with more than ten resident students participating in the Program.

Issues Arising During Pilot Implementation

Regulatory changes adopted by the State Board of Education in 2004 responded to certain issues that had arisen in the course of the Program up to that point. Those issues included student eligibility, sending district procedures and choice district procedures.

Other issues have arisen that warrant further consideration if interdistrict choice is to continue, and that suggest a need for statutory, rather than regulatory, change. Those issues include the application procedure; eligibility of kindergarten students, eleventh- and twelfth-grade students, and students who have not been enrolled in public schools; limited choice availability in counties where the designated choice district serves fewer than all grades; and the appropriate recipient of "impact aid" where, even without the Program, students would not attend school in the district of residence, but rather in another district pursuant to a sending-receiving agreement.

Another issue is whether districts may, or should, implement programs to encourage greater participation by resident students in programs open to both resident and choice students, and whether they may establish different selection criteria for resident students and choice students, for the purpose of achieving desegregation. The Commissioner of Education has recommended that one district, Englewood, [implement](#) such a program. To the extent that the recommendation is, in fact, a requirement to establish different selection criteria for resident and choice students, it raises the issue of whether the Commissioner has the authority to require the district to act in a manner inconsistent with Program regulations (which require equal treatment of resident students and choice students). It also raises the question of whether a program such as that recommended by the Commissioner would be consistent with state and federal law.

As to the first question, the Commissioner's recommendation appears to be within her statutory authority, so that any action taken pursuant to the recommendation probably would be permissible as long as it is otherwise consistent with state and federal law. As to the

second question, a United States Supreme Court decision expected within the next year could provide more guidance on whether programs or policies established for the purpose of achieving a racially diverse student body are permitted by the United States Constitution. The Court's decision could clarify the extent to which the Program, and other public school programs and policies, may serve as tools for achieving or maintaining racial or ethnic diversity under federal law.

New Jersey also has its own independent source of law in favor of school desegregation, a provision of the state constitution. Criteria such as those recommended by the Commissioner are consistent with, and arguably required by, state law. However, if the United States Supreme Court rules that such criteria contravene the federal constitution, such a ruling could preempt New Jersey's state constitutional law. Until the Court provides clarification, a policy in keeping with established principles of federal law could be adopted. These principles are, generally, that racial and ethnic balance may be considered along with other factors in choice districts' selection criteria as long as they are not dispositive factors, they are not applied mechanistically or in such a way that they amount to a quota, and the manner in which they are given consideration is narrowly tailored to the goal of achieving diversity.

School Choice Policy Issues

Does Interdistrict Public School Choice Serve a Beneficial Purpose? Several beneficial purposes that could be served by choice were identified by the Department of Education when the Program was initiated. These purposes included: to provide greater choice to parents and students in selecting a school which best meets the needs of the student and thus improves educational opportunities for New Jersey citizens; to improve the degree to which the education system is responsive to parents and students; to improve education and enhance efficiency by allowing a redistribution of students where some districts are overcrowded and others are underenrolled; and to improve quality by creating a healthy competition among school districts.

Data provided by the Department of Education and choice districts suggest that the Program has been successful, to some degree, in serving two of the stated purposes, providing greater choice and making the state's education system more

responsive to parents and students; and that it has been less successful as to the others, redistributing students from overcrowded to under-enrolled districts and creating healthy competition among school districts. The data further suggest that the Program's impact in each area has been limited by its small size.

Providing Greater Choice. For the 1006 students participating in 2005-06, the Program certainly has provided greater choice. It has provided those students with opportunities to attend school free of charge in districts other than their districts of residence, where no such opportunities existed previously. Based on the fact that more than 50 percent of all choice students in 2005-06 resided in DFG A or B districts, it appears that the Program has provided greater choice particularly for students at lower socioeconomic levels. However, based on the fact that the percentages of blacks and Hispanics among choice students were lower than their percentages in the statewide public school population, it appears that the Program has not served those students as well as others. On the other hand, the Program has provided choice opportunities to Asian students to a greater extent than their proportion of the statewide student population. And based on the fact that the percentage of choice students with disabilities is considerably lower than their percentage of the statewide public school population, it appears that the Program has not served this group as well as others either.

While no specific data as to unmet demand is available, some choice districts report that they receive frequent inquiries from parents seeking to participate in the Program, although others have not filled all available spaces and do not receive many such inquiries. The Department of Education also reports receiving such calls almost daily from parents in districts that are not conveniently located near any choice district with space available for additional choice students. This suggests that the Program clearly has provided some greater choice, enough to meet demand in some areas of the state but not in others.

Making the State's Education System More Responsive to Parents and Students. Similarly, the Program has made the state's education system more responsive to the needs and wishes of participating choice students and their parents. The extent to which the Program has made the system in general more responsive has been limited by its size and

the resources available to choice districts. There may have been some "ripple effect" in sending districts and elsewhere, by which schools have become more responsive to students' needs and wishes, but no evidence of such an effect has been reported.

Enhancing Efficiency by Redistributing Students. To the extent that the Program has shifted students from overenrolled schools or districts to districts with otherwise declining or stagnant enrollments or filled classrooms that otherwise would have been half empty, it may be said to have enhanced efficiency. To the extent that it has allowed schools to remain open that otherwise would have closed due to insufficient enrollment, it may be said to have detracted from rather than enhanced efficiency. Reports from the choice districts suggest that efficiency, as measured by redistribution of students, is neither enhanced nor reduced by the Program.

More than half the choice districts have seen their resident enrollments increase, rather than decline, during the period of their participation in the Program, indicating that the Program has not particularly served the purpose of shifting students to districts with declining enrollments. Moreover, more choice districts report reducing than increasing class size as a result of the Program. Those reductions may not have enhanced efficiency, but they are reported as educational benefits. The districts also report adding staff, course offerings and other activities, likewise as educational benefits. The Program seems to have been more successful in enhancing educational programs than redistributing students from overenrolled to underenrolled schools or districts.

Improving Quality by Creating Healthy Competition. Whether the Program has allowed choice districts to improve their educational programs "by creating healthy competition" is hard to say. Choice districts have enhanced their educational programs because they have had additional funds, in the form of school choice aid, but there is no evidence that they did so in order to "beat the competition."

Whether sending districts have responded to the competition created by the Program is also hard to say. Since only three districts have had more than two percent of their students enroll elsewhere under the Program, it appears to have had little effect, competitive or otherwise, on most sending districts. This is particularly true

since losing students to the Program has had little or no fiscal impact on sending districts, as discussed above. The Program's small size also probably has impeded its ability to create a true competitive market for choice options.

Would the Program Serve These Purposes Better if it Were Expanded or Modified? Theoretically, if the Program were considerably larger, it could contribute more to "healthy competition" in the "education marketplace." If all students in the state could choose where to attend school without regard to district boundaries and districts received additional aid for every nonresident student, districts would theoretically compete for those students and that aid. This theory has been put into practice in some states. However, the experience of other states suggests that merely authorizing districts to open their schools does not automatically create a thriving market or serve all students.

Beyond the theoretical competitive effect, would the beneficial purposes identified at the Program's outset be better served if the Program were expanded or modified? Expansion certainly would provide greater choice to a greater number of students and presumably would make the state's educational system more responsive to that greater number. It would not enhance efficiency by redistributing students to a greater degree unless the Program were modified to specifically address redistribution, such as by limiting choice districts to those with declining enrollments. And expansion probably would not provide greater choice to students in underserved groups unless the Program were modified to target those groups.

Aside from the purposes enumerated at the Program's outset, expanding choice for its own sake is also worth considering. New Jersey offers choice to its public school students to a much lesser degree than other states. That alone suggests that there may be unmet demand for greater interdistrict public school choice.

One way to expand interdistrict choice is to make district participation mandatory rather than voluntary, or to combine a voluntary program, available in all districts for all students, with a mandatory program targeted to specific districts, schools or students. A fully voluntary program also could result in some expansion, but suburban districts are not likely to respond in large numbers to a voluntary program without some incentive.

The most likely incentive, of course, is financial. In fact, the school choice aid provided to choice districts and the improvements made possible by that aid are the Program's strongest selling points. Especially with increasing pressures on school district budgets and demands for property tax relief, offering generous amounts of state aid in exchange for participation in an interdistrict public school choice program could be quite effective.

Financial incentives have been sufficient to sustain suburban district participation in interdistrict choice programs in at least two other states, Missouri and Michigan, and both states' programs may provide models worth considering in New Jersey.

Michigan's experience has not been all positive, however. Its statewide open enrollment program is supported with state aid that "follows the child"; *i.e.*, participating districts receive the amount of aid that students' districts of residence would receive but for their exercise of choice and districts of residence lose that aid with each interdistrict transfer. This "zero-sum game" of state aid, in which one district's gain is another's loss, has resulted in a loss of aid for several of the state's mid-size cities and some of the districts in greatest need.

This suggests that financial incentives may, in fact, be too effective – so effective that they detract from other education reform and improvement efforts, and that measures to encourage participation in interdistrict choice may need to be tempered with measures to soften the impact on sending districts. It also suggests that incentives for low-wealth districts to create high-quality magnet programs, to attract students from higher-wealth districts to their schools, should be considered. Such programs could help cushion the fiscal impact of the loss of some of their own students to higher-wealth districts and also promote diversity.

Whether to modify the Program to target underrepresented racial or ethnic groups is another complex issue. Even if the legality of race-conscious admissions were more settled, any specific targeting measure would need to be examined to ensure that it in fact served the desired purpose and that it was narrowly tailored to do so without inordinately disadvantaging students who were not members of the targeted groups. Interdistrict choice programs established for the purpose of enhancing diversity are, at least arguably,

required by our state constitutional law against racially segregated schools. They would, however, require careful monitoring and oversight.

Federal Law and Policy on Public School Choice. An additional reason to consider expanding the Program is that interdistrict public school choice is encouraged, if not required, by federal law. The No Child Left Behind Act (NCLB) requires *intradistrict* choice to be offered to any student in a school designated “in need of improvement” for two or more consecutive years or designated “persistently dangerous”; it requires *interdistrict* choice to be offered “to the extent practicable” when there are no intradistrict spaces available; and it requires that if transfer options are limited, they should be targeted to the lowest-achieving low-income students. Establishing a state policy in conformance with the federal law may be reason enough to expand the Program.

As a practical matter, however, because of the large number of designated schools in some areas of the state, simply offering greater options for interdistrict choice where space is available would not necessarily result in significantly greater exercise of the transfer option. In areas with fewer designated schools, expanding interdistrict choice in a manner consistent with NCLB could increase the options available for eligible students, but the number of such students is relatively small.

Asserted Constitutional Rights to School Choice. Lawyers for plaintiff schoolchildren in a recently filed lawsuit, *Crawford v. Davy*, claim that interdistrict public school choice – and “private school choice” – are not only desirable but constitutional entitlements for children in “failing” public schools.

While the suit could proceed for years before a ruling is issued on the merits and it is too early to predict the outcome (except to note that it is certain to be vigorously defended, several legal defenses are foreseeable, and similar claims have failed in other states), two different policy responses are possible: either to take no action on interdistrict public school choice or private school choice while the suit is pending, awaiting a ruling on the merits; or to attempt to preempt court action by giving careful consideration to reauthorizing the Program and expanding interdistrict choice, even if the ultimate decision is against reauthorization or expansion. The courts may be more likely to defer to the

judgment of the legislative and executive branches if they have given serious consideration to the issues.

The executive and legislative branches also could give consideration to “private school choice” – vouchers providing public funds for students to attend private schools – but that aspect of the lawsuit raises several additional legal and policy issues which should cause policymakers to tread lightly.

School Choice Funding. If interdistrict public school choice is to continue in New Jersey, the Program’s funding mechanism should be reviewed. Interdistrict choice programs in other states have a variety of funding provisions, as do other school choice programs in this state. Some of those provisions may be worth considering.

The Act has several funding provisions, the combined effect of which is not entirely clear. The complexity and ambiguity of these provisions are reason enough to review their continued desirability. Additionally, to the extent that funding is provided through core curriculum standards aid under CEIFA, it should be reviewed in any event in the course of the long overdue review of the state’s system of school finance.

Four specific funding issues should be considered. The first is *whether interdistrict public school choice should be revenue- and funding-neutral, i.e., whether an interdistrict choice program should involve any net cost to the state (other than the cost of administration)*. Under the Act, the Program is not “zero-sum”; it involves state expenditures for school choice aid and “impact aid.” If funding for school choice were “zero-sum,” the exercise of choice should, in itself, have no net cost. In tight budget times, this may be the only kind of program that is realistically possible. As the Michigan experience has shown, however, the fiscal impact on sending districts can be considerable, so that some additional state expenditure to cushion the impact on those districts may be desirable.

A more subtle aspect of this question is whether school choice aid amounts should be based on the per-pupil amounts otherwise received by the choice district or the sending district. Under the Act, aid amounts are determined by the DFG of the choice district; those in DFG A or B receive greater per-pupil aid amounts than others. To the extent that aid amounts reflect the needs of

resident students, school choice aid amounts arguably should be based on the amounts received by districts of residence, and aid should transfer with students when they transfer to choice districts.

Modifying the Program to set the choice aid amount at the level otherwise applicable to the sending district could provide a financial incentive for higher-wealth districts to accept students from lower-wealth districts. On the other hand, it could provide a disincentive for lower-wealth districts to serve as choice districts.

The second funding issue is *whether school choice aid amounts should vary based on student characteristics*. The Act has no provision to this effect. Varying aid amounts would allow the state to target the program for the benefit of certain groups of students, such as those currently enrolled in schools designated “in need of improvement” or those whose transfer would improve the racial or ethnic balance of the sending or receiving district.

The third funding issue is the funding mechanism: *whether interdistrict school choice should be funded with state aid or with transfers of funds from sending districts to receiving districts, or a combination of the two*. While the Act provides for state funding, some other states fund interdistrict choice with interdistrict transfers of funds, and other choice programs in our own state, including charter schools and vocational schools, are at least partly supported with local funding.

To the extent that interdistrict choice were supported with interdistrict transfers of funds, it would be less susceptible than a state-funded program to annual state budget pressures, although local pressures may be just as great in some school districts. Local or interdistrict funding also makes sense conceptually if interdistrict choice is conceived as “open enrollment,” in which students attend school in the districts of their choice and districts accept students from any district, without any state involvement. On the down side, the reliability of local funding may vary substantially among sending districts, some of which may not provide timely transfers of funds. Another variation would be to support interdistrict choice at some basic expenditure level with interdistrict transfers of funds, and provide additional support in the form of state aid for transfers of students in targeted groups.

The fourth funding issue is transportation funding: *whether choice districts, sending districts or parents should be responsible for the cost of transporting choice students*. As discussed, the Act provides that choice districts are responsible for transportation and are to receive state transportation aid. In many states, parents are required to pay the transportation costs associated with interdistrict choice. Among states that provide transportation or subsidies for interdistrict choice students, most provide that transportation is the responsibility of districts of residence. Requiring districts of residence to be responsible for transportation also would be more in keeping with provisions applicable to other choice programs in New Jersey. Given that sending districts carry this burden for vocational and charter schools and state transportation aid is supposed to be provided to ease the burden in any event, relieving choice districts of the transportation requirement is worth considering, as an additional way to encourage districts to accept nonresident students.

On all the funding issues discussed here, consistency among the state’s choice programs would provide for a more rational state policy and should be the goal on each issue unless particular policy considerations dictate otherwise on particular points. In this regard, reviewing issues such as the method of calculating state aid for interdistrict public school choice, the mechanism for providing that aid, and particular elements such as transportation aid may provide an opportunity to review comparable issues in other choice programs in order to develop one rational statewide school choice policy.

More broadly, it should not go unnoticed that these issues arise at a time when the state is engaged in a comprehensive review of its school finance system. Reviewing funding issues that have arisen in the context of interdistrict choice also may provide an opportunity to consider the appropriate role of choice in public education and broader issues of school finance. The notion of state aid “following the child,” for instance, raises issues of both school choice policy and school finance. Thus, while the Interdistrict Public School Choice Program may be limited in size and scope, it has provided policy makers an opportunity to consider some very large, complex education policy issues. For that alone, the state’s pilot experience with interdistrict public school choice has been worthwhile.

Introduction

This report has been prepared under contract with the New Jersey Department of Education (NJDOE), with support from NJDOE and the Joint Committee on the Public Schools of the New Jersey State Legislature.

In accordance with the contract, the report provides an evaluation of the pilot interdistrict public school choice program authorized by the Interdistrict Public School Choice Program Act, N.J.S.A. 18:36B-1 *et seq.* It is intended to fulfill the requirement of N.J.S.A. 18A:36-11b for an evaluation of the pilot program.

Specifically, to the extent possible with available data, this report provides an analysis of the program's size and scope; state funding for the program; its fiscal, educational and racial/ethnic impact; and implementation issues that have arisen in the course of the pilot. It also discusses the role of interdistrict public school choice in the state's effort to increase options and flexibility for parents and students while sustaining educational improvement, and the impact of interdistrict choice – both actual and potential – on efforts to achieve efficiency, equity and racial/ethnic balance.

The evaluation presented here is based on publicly available information and data, ongoing research on school choice conducted by the

Rutgers-Newark Institute on Education Law and Policy,¹ data provided by NJDOE and school districts participating in the Program as choice districts, and discussions with staff of NJDOE and participating districts. Twelve of 16 choice districts responded to survey questions, some with extensive data and comments. No other primary data collection has been conducted.

The principal author of the report is Brenda Liss, Executive Director of the Institute on Education Law and Policy. She received substantial input and assistance from Paul Tractenberg and Alan Sadovnik, respectively Founding Director and Associate Director of the Institute; from research assistants Martin Malague, Eric Bueide, Beth Ferlicchi, Elizabeth Morrison and Marshall Steinbaum; and from program coordinator Mia Kissil.

We wish to acknowledge the substantial assistance provided by NJDOE program staff responsible for program oversight, particularly Anne Schettino Casale. While this report has been prepared with state funding at the request of NJDOE, all findings, conclusions and recommendations in the report are those of the Institute on Education Law and Policy, and the Institute takes sole responsibility for the report's contents.

Program Description

Legislative and Regulatory History

The Interdistrict Public School Choice Program (“the Program”) was authorized by the New Jersey Legislature in 1999, by the Interdistrict Public School Choice Program Act (“the Act”), L. 1999, c. 413, effective January 18, 2000. In fact, the Program had been initiated prior to the Act’s adoption, by regulations promulgated by NJDOE under authority provided by the Comprehensive Educational Improvement and Finance Act (“CEIFA”), N.J.S.A. 18A:7F-1 *et seq.* R. 1999, c. 343, effective October 4, 1999; *see* 31 N.J.R. 1664(a); 31 N.J.R. 2918(a). The purpose of the Program, as stated in the regulations as first promulgated, was as follows:

The choice program is necessary to provide greater choice to parents and students in selecting a school which best meets the needs of the student and thus improves educational opportunities for New Jersey citizens. The choice program has the potential to improve the degree to which the education system is responsive to parents and students. It can also improve education and enhance efficiency by allowing a redistribution of students where some districts are overcrowded and others are under-enrolled. Finally, it can improve quality by creating a healthy competition among school districts. [N.J.A.C. 6A:12-1.1, 31 N.J.R. 2918.]

The regulations and the Act provided for a pilot program to begin in the 2000-01 school year. Although neither explicitly limited the pilot program to five years in duration, this clearly was the intent. The Act authorized appropriations in the amounts of \$1.6 million annually for the first two years of the program and \$3 million annually for the third, fourth and fifth years, “or such other amounts as may be necessary.” N.J.S.A. 18A:36B-12. While the Act envisioned expiration of the pilot rather than indefinite continuation, it provided that any student enrolled in a designated school in a choice district upon expiration of the Program “shall be entitled to remain” in that school until graduation. N.J.S.A. 18A:36B-13.

The Act has not been amended since its adoption. The Program has continued beyond its five-year term, however. Funding was provided for a sixth year, 2005-06, by the 2005 appropriations act (L. 2005, c. 132) and for a

seventh year, 2006-07, by the 2006 appropriations act (L. 2006, c. 45) in an amount sufficient to permit currently participating students to continue but to provide for no net growth.

The regulations, N.J.A.C. 6A:12-1.1 *et seq.*, have been amended three times since the Program’s inception. In 2000, technical changes were made in several provisions to provide clarification and ensure consistency with the Act. R. 2000, c. 477, effective December 4, 2000; 32 N.J.R. 3201(a), 32 N.J.R. 4255(a). In 2001, the subchapter on pupil transportation was repealed and readopted as part of N.J.A.C. 6A:27, which pertains to pupil transportation generally. R. 2001, c. 17, effective January 2, 2001; 32 N.J.R. 3695(a), 32 N.J.R. 33 N.J.R. 31(a). In 2004, the entire chapter was readopted with amendments. R. 2004, d. 376, effective September 10, 2004; 36 N.J.R. 2593(a), 36 N.J.R. 4443(a).

Basic Provisions

Choice Districts. The Act provides that a “choice district” is a public school district established pursuant to chapter 8 or 13 of Title 18A (*i.e.*, a local or regional school district) authorized under the Program to open a school or schools to students from other districts. N.J.S.A. 18:36B-2. Choice districts are also sometimes referred to as “receiving districts.”

The Act limits the number of choice districts statewide to no more than ten in the first year of the program, no more than 15 in the second year, and no more than 21 in the third, fourth and fifth years. It further limits the number to no more than one per county in any year. N.J.S.A. 18A:36B-3.

Designation as a choice district is voluntary. A district that wishes to become a choice district must submit an application to the Commissioner of Education. Among other things, the application must describe the programs and schools in which the district proposes to implement a choice program, the proposed application process and any admissions criteria, and the district’s provisions for a parent information center by which it will publicize the program to prospective participants. The application also must state, by grade level, the number of openings for students to participate in the program. N.J.S.A. 18:36B-4. The Commissioner is required to evaluate choice

district applications in accordance with five criteria: fiscal impact on the district, quality and variety of academic programs offered in the district, “potential effectiveness” of the student application process and admissions criteria, the “impact on student population diversity in the district,” and “the degree to which the program will promote or reduce educational quality in the district and the sending districts.” N.J.S.A. 18A:36-5.

Sending Districts. The Act refers to the district of residence of each participating student as a “sending district.” N.J.S.A. 18A:36-2.

Sending districts may limit the percentage of their students enrolling in choice district schools under the Program. The Act authorizes (but does not require) sending district boards of education, to limit participation, by resolution, to two percent of the number of students per grade level per year or seven percent of the total number of students enrolled in the district. It further authorizes sending district boards, by resolution, to set limitations exceeding these percentages, up to a maximum of ten percent of the number of students per grade level per year and 15 percent of the total number of students enrolled in the district, “subject to approval by the Commissioner upon a determination that the resolution is in the best interest of the district’s students and that it will not adversely affect the district’s programs, services, operations, or fiscal conditions, and that the resolution will not adversely affect or limit the diversity of the remainder of the student population in the district who do not participate in the program.” N.J.S.A. 18A:36B-8b.

Student Eligibility. In order to be eligible to participate in the Program, a student must be in kindergarten through grade nine at the time of application (*i.e.*, in the year prior to enrollment in the choice district) in a public school in his or her district of residence. The student must have attended school in the district of residence for at least one year prior to enrolling in the choice program. N.J.S.A. 18:36B-7a.

If a choice district receives more applications for a designated school than there are openings, it is required to conduct a lottery to determine the selection of students. It may, however, give selection preference to siblings of choice students. N.J.S.A. 18A:36B-7b. It also may establish “reasonable criteria” for evaluation of prospective students; but it shall not discriminate on the basis of athletic ability,

intellectual aptitude, English language proficiency, status as a handicapped person, or any other basis prohibited by State or federal law. *Id.*²

More specifically regarding students with disabilities, the Act provides that “a choice district shall not prohibit the enrollment of a student based upon a determination that the additional cost of educating the student would exceed the amount of additional State aid received as a result of the student’s enrollment,” but it “may reject the application for enrollment of a student who has been classified as eligible for special education services ... if that student’s individualized education program could not be implemented in the district, or if the enrollment of that student would require the district to fundamentally alter the nature of the educational program, or would create an undue financial or administrative burden on the district.” N.J.S.A. 18A:36B-7c.

Once enrolled in a designated choice school, a choice student is entitled to continue there through graduation without reapplying for admission each year. (The Act contains no provision regarding suspension, expulsion or other discipline of choice students.) The student is also permitted to transfer back to a school in the sending district or apply to a different choice district. N.J.S.A. 18:36B-7e.

Student Population Diversity. The Act mentions student population diversity in several provisions, and indicates an intent to maintain diversity in all school districts affected by the Program. In addition to the nondiscrimination provision cited above (N.J.S.A. 18A:36B-8b) and the requirement, discussed earlier, that the Commissioner consider diversity in the review of choice district applications (N.J.S.A. 18A:36B-5), the Act requires that districts seeking choice district designation include “an analysis of the potential impact of the program on student population diversity in all potential participating districts and a plan for maintaining diversity in all potential participating districts, which plan shall not be used to supersede a court-ordered or administrative court-ordered desegregation plan.” N.J.S.A. 18A:36B-4a(4). The Act also gives the Commissioner broad authority to “take appropriate action, consistent with State and federal law, to provide that student population diversity in all districts participating in a choice district program is maintained.” N.J.S.A. 18A:36B-4b. Such action may include:

- directing a choice district to take appropriate steps to successfully implement the district’s plan for maintaining student population diversity;
- restricting the number of choice students from a sending district or the authority of a choice district to accept choice students in the future; and
- revoking approval of the choice district.

The Act specifies that “student population diversity” shall include, but not be limited to, ethnic, racial, economic and geographic diversity. *Id.*

Transportation. Choice student eligibility for transportation or aid in lieu thereof is essentially the same as for other students. The Act states that transportation or aid in lieu thereof shall be provided to any elementary choice student who lives more than two miles from “the receiving district school of attendance” and to any secondary choice student who lives more than two and a half miles from such school, provided that the receiving district school is not more than 20 miles from the residence of the pupil. N.J.S.A. 18A:36B-9; *see also* N.J.S.A. 18A:39-1 *et seq.* The Act further states that transportation or aid in lieu thereof shall be the responsibility of the choice district (rather than the district of residence or parents of choice students), and that choice districts are to receive transportation aid as provided in CEIFA, N.J.S.A. 18A:7F-25. *See* N.J.S.A. 18A:36B-8a.

State Aid to Choice Districts. Choice districts do not count choice students in their enrollments for purposes of determining their eligibility for core curriculum standards aid.

However, they receive “school choice aid” for each choice student. The Act provides that the amount of school choice aid to be provided for each choice student is the weighted per-pupil T & E amount established pursuant to CEIFA or, for choice districts in district factor groups A or B, the weighted per-pupil maximum T & E amount. N.J.S.A. 18A:36B-8; *see also* N.J.S.A. 18A:7F-12 as to the T & E amount. This has been understood to refer to the T & E amount or maximum T & E amount applicable to the choice district rather than the sending district. Thus, choice districts in DFG A or B receive school choice aid based on the maximum T & E amount even if the students for whom they receive the aid reside in districts in higher DFGs; and choice districts in higher DFGs receive the aid based on the T & E amount – rather than the maximum – even if the students for whom they receive the aid reside in DFG A or B districts. Since 2001-02 the per-pupil school choice aid amounts have been as shown in Table 1.

The Act authorizes annual appropriations of school choice aid in the amount of \$1.6 million for the first two years of the program and \$3 million for the third, fourth and fifth years of the program, “or such other amounts as may be necessary,” as mentioned above. N.J.S.A. 18A:36B-12a. The authorized appropriations are to be distributed “for the purpose of funding school choice aid ... for choice students from a sending district that does not qualify for core curriculum standards aid pursuant to [CEIFA].” As to aid for other students, CEIFA itself was amended by the Act to provide for “school choice aid awarded for pupils from a sending district that receives core curriculum standards aid.” N.J.S.A. 18A:7F-11.

Table 1:
Per-Pupil School Choice Aid Amounts

	DFG A & B Districts	All Other Districts
Elementary (1-5)	\$8,309	\$7,913
Middle School (6-8)	\$8,605	\$8,195
High School (9-12)	\$9,221	\$8,782

Thus, while it is not entirely clear, it appears that the amounts stated in N.J.S.A. 18A:36B-12a were not intended to reflect the full cost of state aid for the Program. Rather, they were intended as the amounts to be provided for choice students from those districts – about a third of all districts in the state – that are ineligible, pursuant to CEIFA, for core curriculum standards aid.

Choice districts do count choice students in their enrollments, pursuant to the Act, “for the purpose of calculating all other forms of aid provided under [CEIFA].” N.J.S.A. 18A:36B-8a. Such “other forms of aid provided under CEIFA” include, among others, special education aid (N.J.S.A. 18A:7F-19) and transportation aid (N.J.S.A. 18A:7F-25). They do not, however, include Abbott parity aid or supplemental program aid, since those forms of aid have their legislative authorization only in annual appropriations acts rather than CEIFA. Since neither the Act nor CEIFA provides that choice students are to be counted in the same manner as resident students for purposes of calculating Abbott parity aid or supplemental program aid, Abbott districts participating in the Program as choice districts do not receive those forms of aid for choice students.

State Aid to Sending Districts. There is no form of aid comparable to school choice aid for sending districts. However, CEIFA, as amended by the Act, provides that sending districts are to include choice students in their enrollment counts for purposes of determining eligibility for core curriculum standards aid for the first three years of each student’s participation in the Program, with partial credit for each student, in declining amounts over the three years.

Specifically, N.J.S.A. 18A:7F-13 provides that choice students shall be included in the enrollment counts of their districts of residence, as follows:

- .75 in the first year of the pupil's attendance;
- .50 in the second year of the pupil's attendance;
- .25 in the third year of the pupil's attendance; and
- .00 in the fourth year of the pupil's attendance.

The effect of this provision is that, in the first three years of any student’s participation in the Program, a sending district eligible for core

curriculum standards aid is to continue to receive that aid for that student, but at a reduced level as a result of the partial count of the student. The continued aid, though reduced, apparently was intended as a form of “impact aid” for eligible sending districts, to cushion the negative fiscal impact of the Program. Districts that receive no core curriculum standards aid as a result of their statutory aid calculation receive no “impact aid” either.

Another provision of the Act, N.J.S.A. 18A:36B-12b, also refers to core curriculum standards aid for sending districts. It provides for annual appropriations of additional amounts of such aid to offset any increase in the local share resulting from the adjustment to the enrollment count authorized by the provision discussed above, N.J.S.A. 18A:7F-13.

Program Size and Scope

Enrollment in the Program has grown from 96 students attending schools in ten choice districts in 2000-01 to 1006 students attending schools in 16 choice districts in 2005-06. Enrollment figures for each year are shown in Table 2.

Choice Students. The 1006 students participating in the Program in 2005-06 resided in 122 sending districts. Of those students, 500 (49.8 percent) were male and 505 (50.2 percent) female; 428 (43 percent) were in grades 1 through 8 and 578 (57 percent) in grades 9 through 12. Seventy-seven (7.7 percent) were eligible for special education services (as compared to the statewide special education population, 16.5 percent).³

The annual enrollment totals, and the racial/ethnic mix of choice students and comparison with statewide percentages are shown in Tables 2 and 3. The socioeconomic mix, based on the DFG designation of choice students’ districts of residence, and comparison with statewide percentages are shown in Table 4.

In some choice districts (notably Kenilworth, Brooklawn and Folsom) choice students have been selected by lottery, as the number of applicants for admission has been greater than available spaces in every year of the districts’ participation in the Program, while in others (Salem, Stafford Township and Washington Township) there have been fewer applicants than available spaces in every year. In one district (Kenilworth) choice students are required to live in the county in which the district is located. In one district (Englewood),

Table 2:
Interdistrict Public School Choice Program Enrollment

<u>Year</u>	<u>Choice Students</u>	<u>Choice Districts</u>
2000-01	96	10
2001-02	291	11
2002-03	461	13
2003-04	737	14
2004-05	795	15
2005-06	1006	16

Table 3: Racial/Ethnic Mix Choice Students and Statewide

	<u>Choice Students</u>	<u>Statewide*</u>
Caucasian	589 / 58.4%	56.5%
Black	124 / 12.3%	17.6%
Hispanic	122 / 12.1%	18.2%
Asian	127 / 12.5%	7.5%
Native American	5 / 0.004%	0.2%
Unknown/Other	41 / 4.4%	

* Source: NJDOE, 2005-2006 Enrollment,
<http://www.state.nj.us/njded/data/enr/enr06/county2.htm>.

Table 4: Socioeconomic Mix Choice Students and Statewide

	<u>Choice Students</u>	<u>Statewide*</u>
DFG A	293 / 29%	17.7%
DFG B	248 / 25%	10.9%
DFG CD	207 / 21%	9.5%
DFG DE	65 / 6%	13.6%
DFG FG	83 / 8%	12.5%
DFG GH	53 / 5%	14.4%
DFG I	57 / 6%	17.5%
DFG J	0 / 0%	3.9%

* Source: NJDOE, NJDOE Department of Education District Factor Groups (DFG) for School Districts,
<http://www.state.nj.us/njded/finance/sf/dfg.shtml>

they are accepted through a competitive admissions process. In two districts (Englewood and Cumberland Regional) they are required to participate in a particular specialized program, and in another (Upper Freehold Regional) they must express interest in such a program on their application but are not required to participate in the program once enrolled. In all other choice districts there are no such eligibility or other requirements.

Choice Districts. Table 5 lists the 16 school districts that served as choice districts in 2005-06. (Additional data regarding these districts appears in Appendix A.) Of those districts, six serve grades K-12 (one of the six limits its choice program to grades 9-12, another to grades 7-12), eight serve elementary grades only (preK-8, K-6 or K-8), and two serve grades 9-12. Three are regional school districts.

Four of the choice districts (Folsom, Englewood, Cumberland Regional and Kenilworth) had more than 100 choice students attending their schools. In three of the districts (Folsom, Englewood and Brooklawn), choice students made up more than 25 percent of the student population in the grades they are permitted to attend; but in six other districts (South Harrison, Hoboken, Passaic County Manchester Regional, Stafford Township, Salem City and Belvidere), choice students made up two percent or less of the student population in those grades.

As shown in Table 6, five of the districts (Brooklawn, Cumberland Regional, Englewood, Salem and Upper Freehold Regional) offer specialized career-oriented magnet programs. Passaic County Manchester Regional also has a specialized technology program.

Table 5: Choice Districts 2005-06

<u>County</u>	<u>District</u>	<u>DFG</u>	<u>Grades Served</u>	<u>Total Student Population</u>	<u>Choice Student Population</u>	<u>Choice Students % of Total Population</u>
Atlantic	Folsom	CD	Pre-K-8	403	151	37.46%
Bergen	Englewood	DE	K-12/9-12	2781/1007	260	9.34/25.81%
Burlington	Washington Twp.	A	K-8	79	6	7.59
Camden	Brooklawn	B	Pre-K-8	330	89	26.96%
Cape May	Lower Twp.	B	K-6	1915	55	2.87%
Cumberland	Cumberland Reg.	B	9-12	1350	139	10.29%
Gloucester	South Harrison	FG	K-6	288	1	0.34%
Hudson	Hoboken	FG	K-12	1900	33	1.73%
Hunterdon	Bloomsbury	GH	K-8	165	28	16.96%
Monmouth	Upper Freehold Reg.	GH	K-12/9-12	2259/1142.5	49	2.16/4.28%
Morris	Mine Hill	FG	K-6	369	54	14.63%
Ocean	Stafford Twp.	DE	K-6	2515	5	0.19%
Passaic	P.C. Manchester Reg.	B	9-12	767	14	1.82%
Salem	Salem City	A	K-12/9-12	1791.5/676.5	11	0.61%/1.62%
Union	Kenilworth	DE	K-12/7-12	1343/714	101	7.52%/14.15%
Warren	Belvidere	DE	Pre-K-12	965	10	1.03%

Table 6: Choice Districts' Specialized Programs

<u>District</u>	<u>Program</u>
Brooklawn	Music Technology
Cumberland Regional	Agriculture
Englewood	Academy of Biomedicine Academy of Finance Academy of Information Systems Academy of Law and Public Safety
P.C. Manchester Regional	Technology
Salem	Performance Dance Digital Communications Video Communications Business Technologies International Studies Health, Recreation & Fitness Studies Energy Engineering Agricultural Landscaping & Turf Mgmt.
Upper Freehold Regional	Agriculture

The choice districts are all fairly small districts – indeed, some are very small. Their 2005-06 resident enrollments, not counting choice students, ranged from a high of 2,521 (Englewood) to a low of 73 (Washington Township, Burlington County). Resident enrollments have grown in some of the choice districts during the period of their participation in the Program, while in others they have declined. As shown in Table 7, nine of the 16 choice districts have experienced increases in their resident student enrollments; five have experienced decreases; and two have had no significant change.

The choice districts, as a group, have a range of pupil proficiency rates based on state-mandated tests. As shown in the graphs on pages 24 to 26 (in which choice districts' proficiency rates are compared with those of sending districts), five of the 14 choice districts serving fourth graders had proficiency levels above the state average on the 2005 ASK4 language arts literacy assessment, eight had proficiency levels below the state average and one was at the state average. On the 2005 ASK4 mathematics assessment, six choice districts had proficiency levels above the state average and eight below. Of the eight choice

districts serving high school students, four had proficiency levels above the state average on the 2005 HSPA language arts assessment and four below. On the 2005 HSPA mathematics assessment, three had proficiency levels above the state average and five below.⁴

The choice districts also cover the much of the socioeconomic gamut, although none is in the highest socioeconomic category. Two are in district factor group (DFG) A, four in DFG B, one in DFG CD, four in DFG DE, three in DFG FG, and two in DFG GH. Those with the largest numbers of choice students fall in the DFG range B through DE: Englewood (DE), Folsom (CD), Cumberland Regional (B), Kenilworth (DE) and Brooklawn (B). With one exception, the districts with the largest numbers of choice students all receive large portions of their choice students from districts with the same or lower DFG classifications:

- Englewood (DFG DE) receives its largest numbers of choice students from Bergenfield (DFG FG, the only exception), Fairview (DFG A), Hackensack (DFG CD), Little Ferry (DFG CD), and Palisades Park (DFG CD).

Table 7: Choice District Resident Enrollment Growth/Decline

<u>District</u>	<u>First Year of Participation</u>	<u>Resident Student Population First Year</u>	<u>Resident Student Population 2005-06</u>	<u>% Change</u>
Belvidere	2001-02	950	955	0
Bloomsbury	2000-01	117	137	+ 17%
Brooklawn	2002-03	237	241	+ 2%
Cumberland Reg.	2000-01	1152	1211	+ 5%
Englewood	2000-01	2606.5	2521	- 3%
Folsom	2000-01	250	252	+ 1%
Hoboken	2002-03	2207	1867	- 15%
Kenilworth	2000-01	1086	1242	+ 14%
Lower Twp.	2005-06	1860	1860	N/A
Mine Hill	2000-01	361	315	- 13%
P.C. Manchester Reg.	2004-05	761	753	- 1%
Salem	2000-01	1399.5	1780.5	+ 27%
South Harrison	2000-01	232	287	+ 24%
Stafford Twp.	2003-04	2411	2510	+ 4%
Upper Freehold Reg.	2000-01	1742	2210	+ 27%
Washington Twp.	2000-01	113	73	- 35%

- Folsom (DFG CD) receives its largest numbers of choice students from Buena Regional (DFG A), Hamilton (DFG CD) and Winslow Township (DFG CD)
- Cumberland Regional (DFG B) receives students from Bridgeton, Downe, Commercial and Lawrence (all DFG A)
- Brooklawn's (DFG B) largest sending districts are Camden (DFG A) and Gloucester City (DFG B)
- Kenilworth (DFG DE) receives most of its choice students from Elizabeth (DFG A), Hillside (DFG CD), and Roselle (DFG B).

Others with somewhat smaller choice student populations also draw students from districts in lower DFGs:

- Hoboken (DFG FG) receives most of its students from Jersey City (DFG B)
- Mine Hill (DFG FG) draws most of its students from Dover (DFG A), the only Morris County district in a lower DFG.

In contrast, choice districts with small choice student populations tend to receive students from districts in the same or higher DFG:

- Washington Township is one of only three out of 40 districts in Burlington County in DFG A; it receives all of its choice students from Egg Harbor City (DFG A) and Mullica Township (DFG B), both of which are in Atlantic County
- Salem (DFG A) is surrounded by districts in higher DFGs and draws its students from those surrounding districts.

This does not, alone, establish a causal connection between choice districts' DFG designations and the size of their choice student populations, but it suggests that districts with higher socioeconomic levels than their neighbors tend to attract larger numbers of choice students.

Most choice districts enroll students from a handful of contiguous or nearby sending districts. One district, Englewood, is an exception: in 2005-06 Englewood enrolled 260 choice students from 46 different sending districts. Those sending districts are located throughout Bergen County (and this may be more of a reflection of the number of districts in Bergen County than Englewood's choice program) and, a few, in Passaic and Hudson counties.

Just as important as this analysis of choice districts is the fact there are no choice districts in five of the state's counties: Essex, Middlesex, Mercer, Somerset and Sussex. One district in one of those counties (Trenton, Mercer County) submitted applications for choice designation in 2000 and 2001, but its application was rejected by the Commissioner of Education both times. In the four other counties, no districts have applied to participate in the Program. One district in Sussex County (Fredon) expressed interest in 2002 but did not submit an application.

The Commissioner has suggested that the reason for this lack of participation may be the fact that no districts in these counties have experienced declining enrollment since 2000. The Commissioner's annual report on the Program for 2003-04 states, "There are some counties in which every school district is experiencing increased student enrollment. These districts have no room for out-of-district students and thus are ineligible to become choice districts."⁵ Declining enrollment is not a statutory eligibility requirement (indeed, as discussed above, some choice districts have experienced increased resident enrollment during the period of their participation in the Program), but the Department's regulations provide that eligible districts must have "classroom space available." N.J.A.C. 6A:12-2.1.

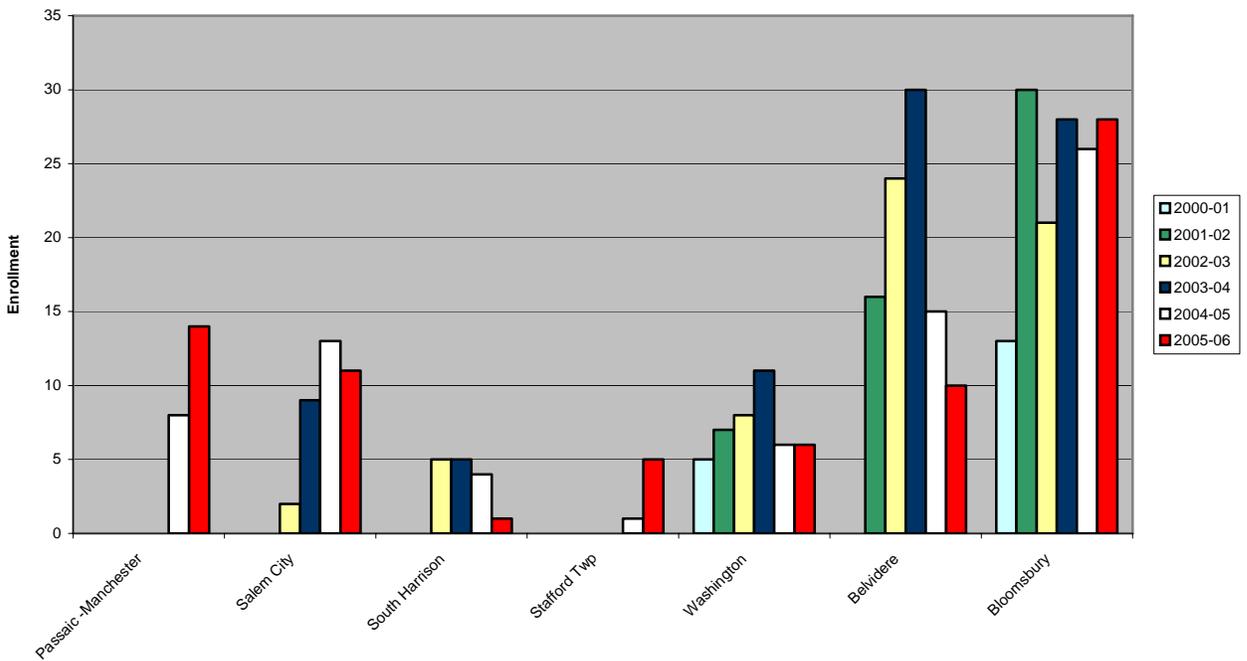
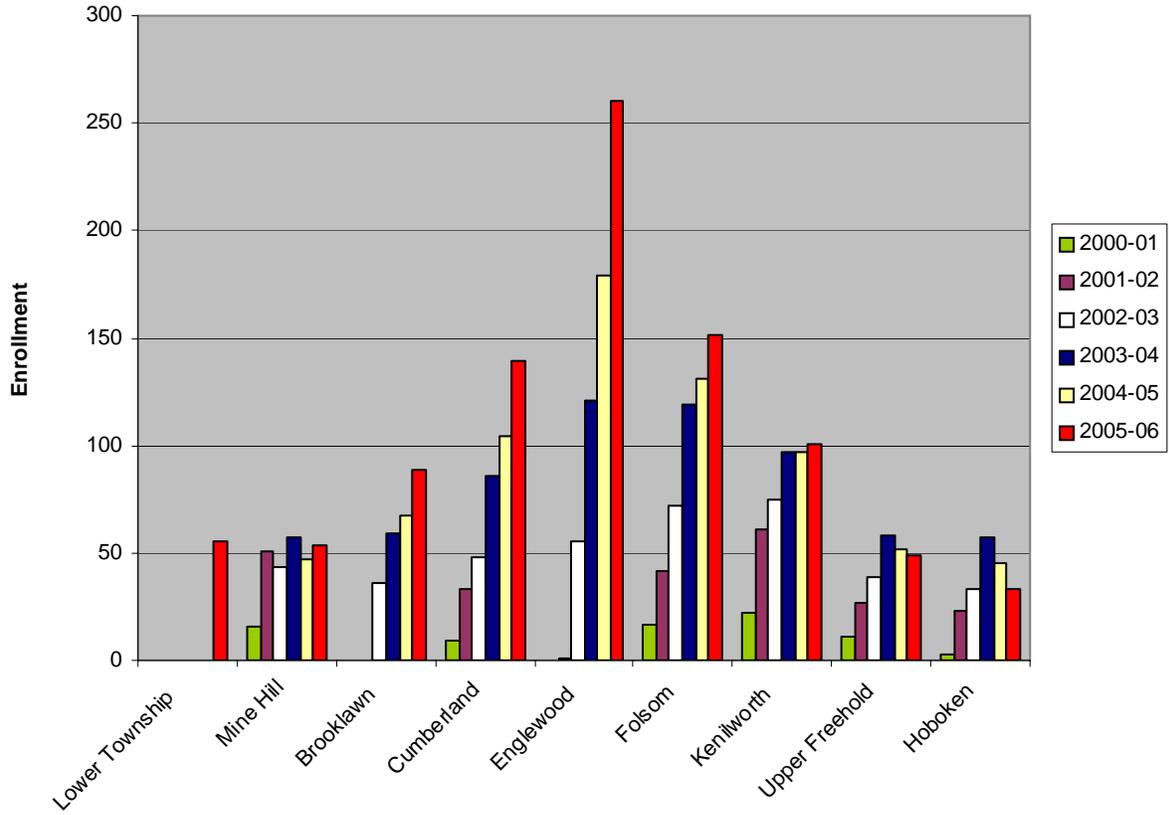
While in some counties no district has applied for choice designation, in four counties more

than one district has applied and the Commissioner has been required to reject applications because of the statutory limit of one choice district per county. Those counties include Bergen (Midland Park in addition to the designated district, Englewood), Cape May (Dennis Township, Cape May City and Middle Township as well as the designated district, Lower Township), Gloucester (Clayton and Kings Regional as well as the designated district, South Harrison) and Warren (North Warren Regional, Warren Hills and Franklin Township as well as the designated district, Belvidere). The Department of Education also reports receiving informal inquiries from districts in Burlington, Camden and Monmouth counties, which already have designated choice districts. Such multiple applications and inquiries suggest that some counties may have sufficient demand to support interdistrict choice in more than one district.

Program Growth. While the Program has grown overall, the five districts with the largest choice student populations account for most of the growth: Folsom, Englewood, Brooklawn, Cumberland Regional and Kenilworth. Four districts have had steady growth in their choice student populations: Folsom, Englewood, Brooklawn and Cumberland Regional. Two have had substantial growth and then reached a plateau or declined slightly: Kenilworth and Upper Freehold Regional. Four other districts have not had much growth in their programs at all, or peaked and then had a decline: Hoboken, Washington Township, South Harrison and Belvidere. Three have had uneven numbers in various years: Bloomsbury, Mine Hill and Salem City. Graph 1 shows the increase (and, in some cases, decline) in choice enrollment each year in each choice district.

Sending Districts. Over the course of the Program, participating students have resided in 141 school districts throughout the state. As of 2003-04 (the most recent year for which relevant data are available), 63 school districts had adopted resolutions limiting their students' participation in the program. Of those districts, 20 limited participation to two percent of their student population per grade, 33 limited participation to two percent per grade and seven percent of the total student population, and one adopted a different limitation.

Graph 1: Choice Student Enrollment



For the most part, the numbers of students transferring to other districts have been much lower than those apparently envisioned when the percentage limitations were set by the Act. Of the 122 districts with resident students participating in the Program in 2005-06, 26 had more than ten participating students, and only three of those districts (Little Ferry, Maurice River and Woodbine) had more than two percent of their resident students participating in the Program. Choice students residing in Little Ferry amounted to 2.1 percent of that district's total enrollment, in Maurice River 2.7 percent, and in Woodbine 8.8 percent.

The 26 sending districts with more than ten participating students in 2005-06 are listed in Table 8. These districts, like the choice districts, cover the socioeconomic gamut from DFG A through I, although they are more heavily weighted at the lower end, with eight of these 26 districts in DFG A and seven others in DFG B. Eighteen of the 26 districts send their students to choice districts with higher DFG designations, four send them to districts with lower DFG designations, and four send them to districts with the same DFG designation.

Also like the choice districts, the 26 sending districts with more than ten students participating in the Program have a range of

pupil proficiency rates, as shown in Graphs 2 through 5, but a smaller number of these districts have proficiency rates above the state average and a larger number have rates below the average. Of the nine sending districts with more than ten choice students in 2005 that had fourth graders participating in the Program, two had proficiency rates above the state average on the ASK4 mathematics assessment and seven below; three had proficiency rates above the state average on the ASK4 language arts assessment and six below. Of the 12 sending districts with more than ten choice students in 2005 that had high school students participating in the Program, four had proficiency rates above the state average on the HSPA mathematics assessment and eight below; three had proficiency rates above the state average on HSPA language arts and nine below.⁶

Based on this broad comparison of standardized test scores, choice districts appear to have higher levels of student achievement than the largest sending districts, both at the elementary and high school levels. The difference between the choice districts, as a group, and the sending districts, as a group, is greater at the elementary level than high school. In both groups, at least half the districts have proficiency levels below the state average on each test.

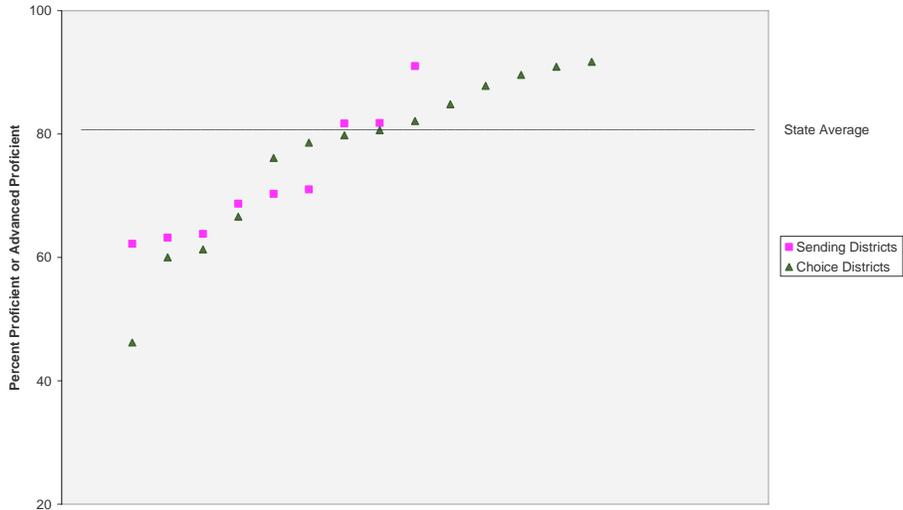
**Table 8: Sending Districts with More Than Ten Resident Students Attending Choice Districts
2005-06**

<u>Sending District</u>	<u>DFG</u>	<u>Total Enrollment*</u>	<u>Choice Students</u>	<u>Choice Students % of Total Enrollment</u>	<u>Choice District</u>
Bergenfield	FG	3864	40	1.035	Englewood
Camden	A	15850	31	0.195	Brooklawn
Cliffside Park	B	2652	11	0.414	Englewood
Commercial	A	**	27		Cumberland Reg
Dover	A	3200	23	0.718	Mine Hill
Downe	A	**	30		Cumberland Reg
Elizabeth	A	21118	17	0.080	Kenilworth
Fort Lee	FG	3484	12	0.344	Englewood
Garfield	B	4518	12	0.265	Englewood
Gloucester City	DE	2247	36	1.602	Brooklawn
Hackensack	CD	5059	11	0.217	Englewood
Hillside	CD	3398.5	26	0.765	Kenilworth
Jersey City	B	29318	31	0.105	Hoboken
Lawrence Twp.	A	**	69		Cumberland Reg
Little Ferry	CD	953	20	2.098	Englewood
Maurice River	B	406	11	2.709	Cumberland Reg
Middle Twp	B	3416	21	0.614	Lower Twp.
Palisades Park	CD	1436	11	0.766	Englewood
Paterson	A	25320	12	0.047	Manchester Reg
Phillipsburg	B	3617	24	0.663	Bloomsbury
Ridgefield	DE	2146	16	0.745	Englewood
Roselle	B	2934	36	1.226	Kenilworth
Washington Twp	I	1985	35	1.763	U. Freehold Reg
Wharton	DE	791	11	1.390	Mine Hill
Winslow Twp	CD	6475.5	100	1.544	Folsom
Woodbine	A	238	21	8.823	Lower Twp.

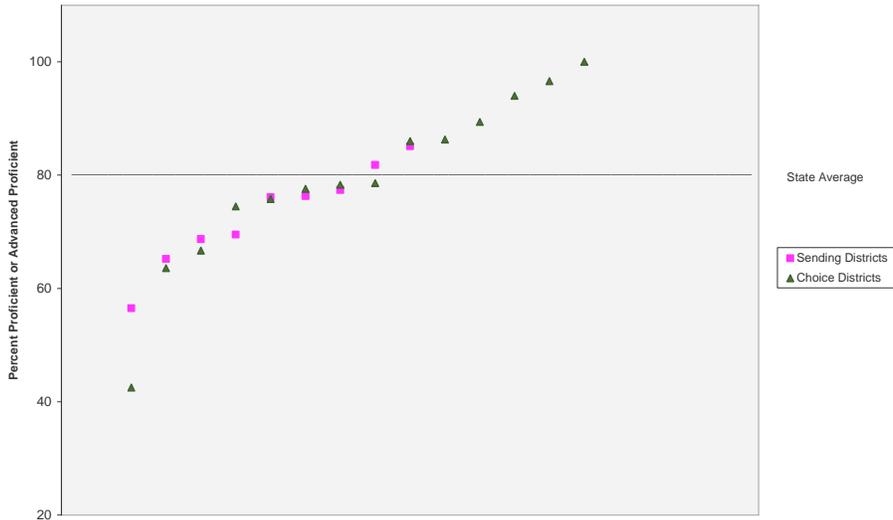
* Source: New Jersey Department of Education, 2005-06 Enrollment Data, <http://www.state.nj.us/njded/data/enr/enr06/>. The numbers in this column include choice students.

** Residents of Washington Township, Commercial Township, Lawrence Township and Downe Township (those who are not choice students) attend high school in other districts pursuant to sending-receiving agreements. Since the choice students residing in these districts would not, therefore, attend school in their districts of residence even if they were not choice students, the enrollment and enrollment percentages of those districts of residence are not listed here. For discussion of "impact aid" for sending districts participating in sending-receiving arrangements, see page 37.

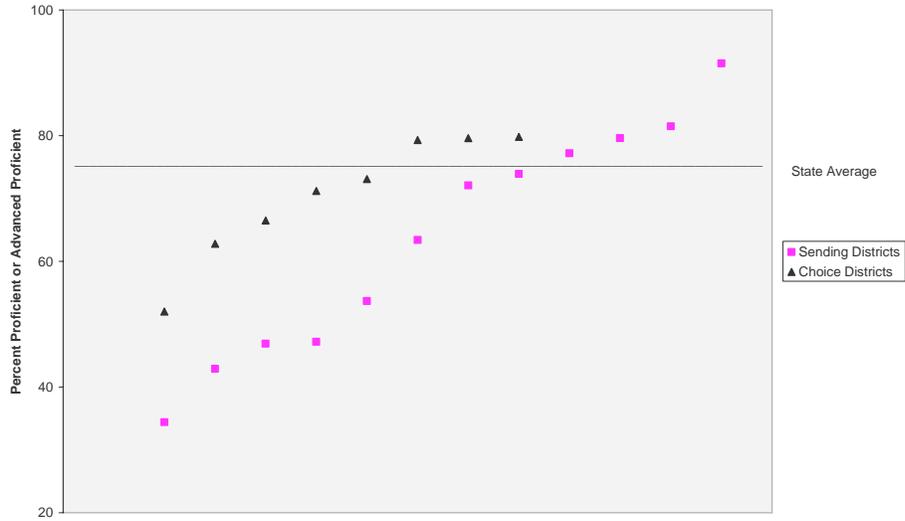
**Graph 2: Pupil Proficiency Levels, Choice Districts and Sending Districts
ASK4 Language Arts Literacy**



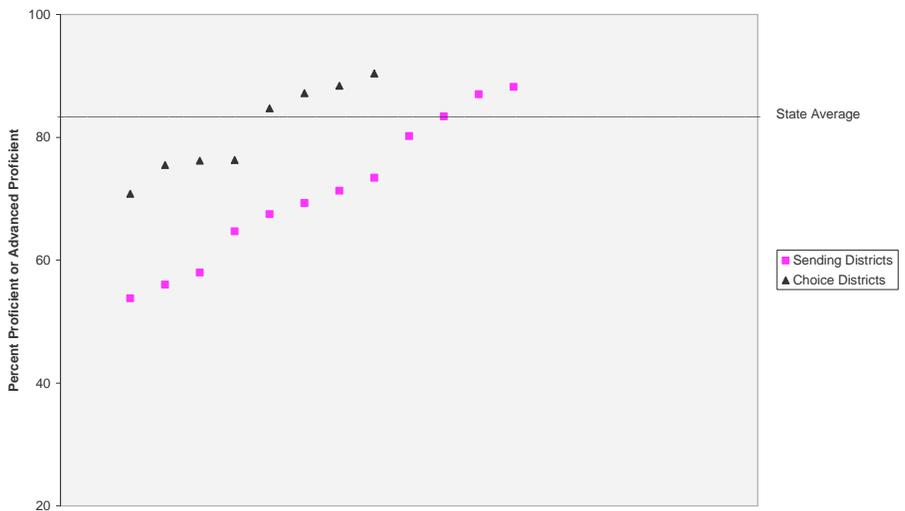
**Graph 3: Pupil Proficiency Levels – Choice Districts and Sending Districts
ASK4 Mathematics**



**Graph 4: Pupil Proficiency Levels – Choice and Sending Districts
HSPA Mathematics**



**Graph 5: Pupil Proficiency Levels – Choice and Sending Districts
HSPA Language Arts Literacy**



**Table 9: School Choice Aid
2000-01 to 2006-07**

<u>Year</u>	<u>Amount</u>
2000-01	\$ 1,015,323
2001-02	\$ 712,891
2002-03	\$ 3,753,576
2003-04	\$ 6,536,618
2004-05	\$ 7,969,288
2005-06	\$10,209,119
2006-07	\$ 8,294,110

Table 10: Discrepancies in Reported School Choice Aid Amounts

<u>District</u>	<u>Year</u>	<u>Amount Reported by NJDOE</u>	<u>Amount Reported by District</u>
Bloomsbury	2001-02	\$97,084	\$142,751
Cumberland Reg.	2001-02	\$67,537	\$159,767
Folsom	2000-01	\$154,335	\$170,335
Folsom	2001-02	\$109,768	\$309,873
Folsom	2004-05	\$1,163,211	\$1,165,211
Kenilworth	2001-02	\$180,336	\$562,773
Kenilworth	2005-06	\$1,028,690	\$989,125
Salem City	2003-04	\$33,236	\$99,000
Salem City	2004-05	\$99,708	\$142,000

State Spending

School Choice Aid. State funds appropriated for the Program and distributed to choice districts as school choice aid have grown steadily over the course of the pilot except for a dip in the second year. They exceeded \$10 million only in 2005-06. Data provided by the Department of Education show that school choice aid has been distributed to choice districts in the amounts listed in Table 9.⁷

The amounts distributed to each choice district in each year of the Program, as reported by the Department of Education, are shown in Appendix B. Most, but not all, of the choice aid

data have been confirmed by the districts themselves. Five choice districts reported that they had received amounts different from those reported by the Department of Education. In most cases, the amounts reported by the districts were higher than those reported by the Department, in one case lower. We have been unable to determine which aid amounts, those reported by the Department or those reported by the districts, are accurate. The discrepancies in reported amounts of school choice aid are shown in Table 10.

Aside from these few discrepancies in reported amounts of school choice aid, the Department's

basis for calculating that aid, at least in two years of the Program, may have been questionable. An audit conducted in 2005 by the Office of the State Auditor in the Office of Legislative Services reported that the Department calculated school choice aid amounts for 2003-04 and 2004-05 based on enrollment projections rather than actual enrollments, and noted an “opportunity for cost savings” that could have been realized if actual enrollments rather than projections had been used. The savings “opportunity” would have been substantial, amounting to \$2.5 million in the two years in question. The audit report stated:

Choice districts receive a fixed amount of aid per student based on a projected enrollment. Our review disclosed that most districts had projected enrollments that were greater than the actual enrollments. In fiscal year 2004 the total program projected enrollment was 766 students while the actual enrollment was 623.

In fiscal year 2005 the projected enrollment was 929 while the actual program enrollment was only 773. One district received \$166,000 for 20 projected students but only one student actually attended. Our review also noted that two districts had an actual enrollment that was greater than the projected enrollment.

The department does not adjust payments based on actual enrollment. If choice aid payments were adjusted for actual enrollment, the department could have saved a total of \$2.5 million during fiscal years 2004 and 2005.

The Department disputed this finding, and rejected the recommendation to base the calculation of school choice aid on actual rather than projected enrollments. In a letter to the Office of the State Auditor, the Commissioner of Education expressed the view that the Department’s calculation of aid amounts was in accordance with legislative intent to “hold choice districts harmless.” The Commissioner requested that the following comment be included in the audit report:

School choice aid was calculated and awarded to districts in accordance with language provided each year in the Appropriations Act authorizing that fiscal year’s payments. It is my view that the DOE acted properly in adhering to the language

and intent of the Legislature to hold Choice Districts harmless. As a result, the DOE did not have the authority to adjust the state aid category, even though it would have saved money.

The language to which the Commissioner referred in this statement is, apparently, a paragraph that appeared in almost identical terms in the 2004 and 2005 appropriations acts (as well as in slightly different terms in the 2003 act, but not at all in the 2006 act or appropriations acts for earlier years of the Program), as follows:

Notwithstanding the provisions of P.L. 1999, c. 413 (C. 18A:36B-1 et seq.) [the Act], for purposes of the calculation of 2004-05 [or other relevant year] choice aid, the projected enrollment of choice students shall be the sum of the actual choice students reported in the October 15, 2003 Application for State School Aid inflated by the choice district’s growth rate and the new choice students accepted during the first application cycle and the estimated second cycle acceptances for the 2004-05 school year.

Thus, as stated in the Commissioner’s letter, in appropriations acts for 2003, 2004 and 2005, the Legislature did direct that school choice aid be calculated based on the sum of the prior year’s enrollment count plus newly accepted choice students. It did not, at the same time, direct that the calculation reflect decreases in enrollment due, for instance, to graduation or withdrawal from the choice program. The Commissioner apparently interpreted the legislative directive to adjust enrollment counts upward but not downward as an indication of legislative intent to hold choice districts “harmless.” Why the districts should have been held “harmless” in this manner – *i.e.*, protected against decreases in aid based on decreases in enrollment – is not clear.

In any event, as noted, the directive to adjust school choice aid upward “notwithstanding the provisions of [the Act]” does not appear in the 2006 appropriations act. That act provides that school choice aid shall be calculated based on the October 2005 enrollment count in each choice district. NJDOE reports that aid amounts have been calculated accordingly, with no adjustment for increases or decreases.

“Other Forms of Aid Provided under CEIFA.” As mentioned above, the Act provides that choice students are to be counted in choice district enrollments for the purpose of calculating “other forms of aid provided under CEIFA.” The NJDOE Office of School Finance reports that choice students were counted in accordance with this provision for the first two years of the Program, 2000-01 and 2001-02. However, several districts participating in the Program in those years report that they did not receive categorical aid, including transportation aid and special education aid, for choice students (others could not say whether their aid allocations for those years reflected choice student enrollments). Documentation provided by NJDOE and the districts does not definitively support either position.

For the years 2002-03 and later, categorical aid to choice districts has been affected by the “freeze” on state aid to all school districts, which has kept aid at 2001-02 levels. Because of the “freeze,” the six choice districts joining the Program in 2002-03 or later have received no categorical aid at all for their choice students, and those that had joined in the first two years of the Program had their aid levels frozen, notwithstanding substantial increases in enrollment as a result of interdistrict choice. The amount of categorical aid that would have been provided to choice districts but for the freeze has not been calculated. One district, Kenilworth, calculates that if transportation aid had been awarded in accordance with the Act, it would have received approximately \$325,000 in such aid for choice students during the period 2000-01 to 2005-06; but, it says, it has received none of this amount.

Aid to Sending Districts. Since the Act provides for “impact aid,” as described above, to eligible sending districts in the form of continued, but reduced, core curriculum standards aid, funds have not been appropriated separately or explicitly for this purpose. Aid amounts received by sending districts for students enrolled in choice districts can be determined only by examining each sending district’s enrollment count for each year to determine the extent to which it has included choice students. Data maintained by NJDOE does not distinguish between resident and choice students for this purpose; as a result, “impact aid” amounts could not be determined for this report.

Core curriculum standards aid amounts were based on actual enrollment counts only in the first two years of the Program in any event. Since core curriculum standards aid for all school districts has been “frozen” since 2002, for the last five years the amount of such aid granted to sending districts has not been affected by the number of students participating in the Program.

In other words, because of the “freeze,” the provision of the Act calling for declining amounts of aid to sending districts over the first three years of their students’ participation in the Program has not been implemented. Core curriculum standards aid to sending districts has not decreased, even where enrollments in those districts have decreased as a result of their resident students’ enrollment in choice districts.

Before the “freeze,” in the first two years of the Program, core curriculum standards aid amounts received by some, but not all, eligible sending districts decreased, but many districts experienced no decrease in aid. The reductions in aid amounts provided to sending districts in 2000-01 and 2001-02, as reported by NJDOE, are shown in Appendix C. Table 11 lists those sending districts that received core curriculum standards aid in 2000-01 and/or 2001-02 but experienced no decrease in aid as a result of their students’ enrollment in other districts, notwithstanding the statutory provision for such decrease. NJDOE reports that enrollment decreases resulting from interdistrict transfers were figured into calculations, and that any district showing no net decrease had other offsetting increases in enrollment, but since data maintained by NJDOE does not distinguish between resident and choice students for this purpose, this could not be verified.

Cost of State Administration. In addition to aid provided to choice districts and sending districts, funds have been appropriated to support the Department of Education’s Office of School Choice, which administers the Program. Appropriations for this purpose have ranged from a high of \$1,336,000 in 2001-02 to a low of \$617,000 in 2005-06 (through a gradual decline). These appropriations provide no indication of the amounts devoted specifically to the Program, however, as the Office of School Choice administers the state’s charter school program as well as interdistrict public school choice.

*Table 11: Sending Districts: No Adjustment to
Core Curriculum Standards Aid*

2000-01

Buena Reg.	Plumstead	Washington Twp.(Mercer County)
Dover	Randolph	Winfield
Hammonton	Roselle	Winslow
Maurice River		

2001-02

Buena Reg.	Linden	Roselle
Blairstown	Lopatcong	Roselle Park
Commercial Twp.	Maurice River	Roxbury
Delsea Reg.	Mount Arlington	Union
Dover	Mount Olive	Washington Twp.(Mercer Cty.)
Downe	Northern Burlington Reg.	Warren Hills Reg.
Egg Harbor City	Northern Warren Reg.	West Deptford
Great Meadows Reg.	Oxford	Wharton
Hillside	Plainfield	Winslow
Kingsway	Rahway	Roselle

Impact of the Program

Impact on Choice Districts and Their Students

In 2004, upon readoption of the Program's implementing regulations, the Department of Education described the Program's "social impact" as follows:

The school choice program clearly has proven to be beneficial for choice districts, choice students and their parents. In addition, students who reside in the choice districts, their parents and their communities have benefited from smaller class sizes, the establishment of innovative programs, the expansion of classes in art, music, literature and technology, the increase in instructional hours or days, the enrichment of the school community through the addition of students of different backgrounds and with different experiences from those of the district's resident students. [36 N.J.R. 2593(a).]

Choice districts are almost unanimous in their support of the Program and their reports of the Program's positive fiscal and educational impact. One district in particular, Folsom, credits the Program with allowing its school to remain viable in the face of otherwise decreasing enrollment and no hope of growth due to development restrictions imposed by the Pinelands Protection Act. The Folsom superintendent calls interdistrict public school choice "one of the most successful programs that the DOE and the Legislature ever developed."

One district, Passaic County Manchester Regional, is somewhat less enthusiastic, reporting that the Program has had "no particular positive impact" on the district's educational program, but adding, "The value of the program in Passaic County is measured more by the opportunities provided to students from urban schools."

One district, Belvidere, reports that the Program has had a detrimental effect. That district's negative review appears to be related to two factors: prolonged special education litigation involving a choice student; and difficulties arising from a decrease in school choice aid, and therefore the overall district budget, due to a decrease in choice student enrollment (after aid had not decreased, despite enrollment

decreases, in the two previous years, as discussed above).

Fiscal Impact. School choice aid has been a substantial source of revenue for choice districts. Aid amounts for 2005-06 ranged from approximately \$75,000 for the smallest choice district (in terms of choice student enrollment), Washington Township, to almost \$2.3 million for the largest, Englewood. (See Appendix B for further detail as to aid amounts.) The choice districts report that this additional revenue has permitted them to hire additional staff, reduce class sizes and offer new programs. They also report that it has permitted them to avoid tax increases and program cuts that other districts have been forced to endure as a result of freezes and decreases in other forms of state aid. Kenilworth, for example, describes the fiscal impact as follows:

In an era when many school districts have been forced to reduce programs and increase class sizes due to budgetary and funding shortfalls, Kenilworth has been able to maintain its special non-mandated programs (extended day kindergarten, preschool, interscholastic athletics), reduce class size, and even expand many of its existing programs

Without the almost one million dollars of annual funding provided by the Choice Program, the school district's financial situation and educational program would be adversely affected. The Kenilworth School District without Choice and the funding associated with it would look much different than it does today. If the school district attempted to make up the approximately one million dollar "shortfall" in the budget entirely by raising taxes, the average homeowner would experience an additional tax increase of approximately \$200 for the 2006-2007 school year. Realistically, this would not happen. The "shortfall" in funding would be made up through a reduction in the school district's staff ..., a reduction of programs/services ... and an increase in class sizes throughout the school district as well as an increase in taxes.

The superintendent of another choice district has observed that, ironically, participation in the Program has caused some consternation among residents of neighboring districts at school

budget time, when his district is the only one in the area identified in press reports with a budget that will maintain programs without raising taxes. He credits school choice aid for giving his district this enviable distinction.

Educational Impact. The Program's primary educational impacts on choice districts are additional staff, new and enhanced programs, and manageable class sizes. Six of the districts (Brooklawn, Cumberland Regional, Folsom, Kenilworth, Lower Township, Salem) report hiring additional professional staff with the revenue provided by school choice aid. Five districts (Brooklawn, Cumberland Regional, Folsom, Lower Township and Salem) report reducing or maintaining class size, and another (Bloomsbury) reports increasing class size without compromising quality. Three districts (Folsom, Kenilworth, Salem) report adding new academic or extracurricular programs, and three others (Cumberland Regional, South Harrison and Washington Township), as well as Folsom

and Kenilworth, report enhancing or adding resources to existing programs.

Districts attribute other improvements as well to participation in the Program: Kenilworth reports that it has been able to institute and enhance a significant number of programs and services at all grade levels, although its choice program serves grades 7-12 only. Cumberland Regional reports that it has been able to create a "team approach." Mine Hill reports that "it has made us a more innovative, flexible school." Folsom reports that because of its strong financial condition the district has been able to pass a bond referendum, and it is now on the way to completing a building program.

Most choice districts report that choice students generally have integrated well into their schools, and have presented no special problems or needs related to their choice status. Illustrative favorable comments on choice students are shown below.

Comments on Choice Students

"They are a spectacular group!"

"The Choice students have excelled academically, which creates a challenge to all."

"We could tell stories all day about our choice students but three students come to mind immediately. One child in fifth grade came to us as an angry young man with disciplinary issues. Since arriving, he has not had one disciplinary infraction, has made solid friends and is succeeding academically. Two sisters in third and fourth grade participate in Girls on the Run, an after school esteem-building program, and are without a doubt our best runners!"

"[T]he program has...had a positive impact on the program in agricultural science. Many members of our Choice Program participate in the FFA program, which was selected as one of the best in the state last year."

"The more than 100 students who currently attend [the district's middle/high school] are [an] asset to the school district. Based upon all available measures, their level of academic performance and behavior match or exceed the performance levels of the resident student population. Simply put, they make [the school] a better place!"

Some districts have been required to meet special education needs that had not been anticipated at the time of the affected students' enrollment. Mine Hill and Salem report that they have been able to do so with little difficulty; but Belvidere, as mentioned above, has been involved in special education litigation. Some districts have taken disciplinary action against choice students: Passaic County Manchester Regional reports that choice students "tend to increase discipline challenges"; Upper Freehold Regional and Kenilworth suggest that they should be permitted to condition choice students' continued enrollment on satisfactory behavior.

Individual student achievement data have not been collected for this report. Therefore, the Program's educational impact on individual students cannot be evaluated. However, several choice districts have collected and provided standardized test data on choice students as a group, permitting comparisons between proficiency levels attained by those students collectively and the total student population in the districts where they are enrolled. Choice students, as a group, have performed at higher levels than the total student population in three choice districts (Salem, South Harrison and Upper Freehold); they have performed at lower levels than the total student population in one choice district (Bloomsbury); and they have performed at approximately the same levels as the total student population in two choice districts (Brooklawn and Mine Hill). In one choice district (Washington Township) the comparison is mixed, with choice students as a group performing at higher levels than the total student population in some years and at lower levels in other years. With such limited and mixed results, no conclusion can be drawn regarding choice student performance in comparison to that of other students. No correlation has been identified between student achievement and participation in the Program.

One district, Kenilworth, has conducted its own analysis of choice student achievement, using indicators other than standardized test scores, and concluded that the Program has had a positive educational impact. Kenilworth reports that its choice students, as a group, had grade point averages "consistent with" those of the total population of students graduating in 2004 and 2005 (slightly higher in 2004, slightly lower in 2005); they had higher SAT scores than the overall population of 2005 graduates; they had

higher on-time graduation rates than the overall student population in 2004 and 2005; and they achieved membership in the National Honor Society in proportionately greater numbers than the total student population in 2004 and 2005. The district also reports that a lower percentage of choice students than the total population is eligible for special education services, and choice students have received out-of-school suspensions at a lower rate than the total student population.

This clearly suggests that Kenilworth's choice students, as a group, are good students. But without more student-specific data, including data on their performance prior to participation in the Program, we cannot determine whether their good performance in Kenilworth is attributable to the Program or to other factors. Without data that would permit comparison of their performance in Kenilworth with their performance in their districts of residence or elsewhere, the Program's educational impact on individual choice students cannot be determined.

Diversity Impact. The Program has had an impact on the racial/ethnic composition of some choice districts, but no such impact in others. Five districts (Bloomsbury, Folsom, Mine Hill, Upper Freehold Regional and Washington Township) report that the Program has caused no change in the racial/ethnic composition of their student populations; in all those districts, both the resident populations and the choice student populations are virtually, if not entirely, all white. Seven districts (Brooklawn, Cumberland Regional, Kenilworth, Lower Township, Passaic County Manchester Regional, Salem and South Harrison) report at least some impact on racial/ethnic balance, but those impacts differ among the seven districts. In five of them (Brooklawn, Kenilworth, Lower Township, Passaic County Manchester Regional and South Harrison) choice student enrollment has increased the percentage of minority students in the overall enrollment; in one district (Salem) choice student enrollment has increased the percentage of white students; and in another district (Cumberland Regional), choice student enrollment has varied in the six years of participation in the Program, increasing the minority student percentage in some years and the white student percentage in other years.

Brooklawn reports that its student population was about 85 percent white prior to its participation in the Program, and now, its

student population, including choice students, is 70 percent white. That district comments:

It has been encouraging that the district, which is primarily White, has enthusiastically welcomed School Choice students, many of whom are minorities.

Salem reports that its total student population (in its high school, where its choice program is located) has been approximately 52 percent white and 47 percent black in most years, but all of its choice students have been white. Without choice students, the enrollment would be approximately 51 percent white and approximately 48 percent black. Thus, in this district, where the racial balance is almost even, choice student enrollment has had the effect of slightly increasing the percentage of white students. Since the number of choice students is small (two percent of the total high school population, 11 out of 550 students), the impact on the school's racial composition – the one percent increase in the white student population – probably could be considered insignificant.

The impact on the choice students themselves, however, could be considerable. All of those students reside in districts in which the vast majority of students are white (Upper Pittsgrove Township, Hopewell, Alloway Township, Oldmans Township and Woodstown-Pilesgrove). Interdistrict choice provides them an opportunity to attend school with a more diverse population than they would have if they remained in their districts of residence. The substantial educational benefits of attending school with a diverse student population are well recognized.⁸

Diversity Impact in Englewood. One choice district, Englewood, merits specific consideration on the issue of diversity impact.⁹

Englewood's program, Academies@Englewood, was established in 2002 for the explicit purpose of increasing the population diversity of its comprehensive high school, Dwight Morrow High School, and was an integral part of the plan that led to settlement of the district's long-standing desegregation litigation.¹⁰ Englewood has been a choice district since the Program's inception in 2000, but in the first two years the district was able to attract only one choice student. Then, in 2002-03, upon creation of the Academies, the district enrolled 55 choice students, and its choice population has grown steadily since then (121 in 2003-04, 173 in 2004-

05, and 260 in 2005-06). Englewood is now the Program's largest choice district.

Academies@Englewood is modeled after the highly successful magnet school programs of the Bergen County Technical Schools – with career-oriented programs in biomedicine, law and public safety, pre-engineering, information systems and finance – and operated under an interlocal management agreement with the Bergen County Vocational School District Board of Education. Among other things, that agreement calls for sharing of administrative staff between the two school districts (including the late John Grieco, who served simultaneously as superintendent of both the Bergen County Technical Schools and the Englewood school district until his death in October 2004). The vocational district has been successful in creating competitive academic programs, attracting students from throughout Bergen County and creating a racial/ethnic mix much more diverse than many of the districts from which its students are drawn. Academies@Englewood also has selective admissions (it is the only program in all the choice districts with selective admissions requirements), and in 2005-06 it drew its 260 choice students from 46 sending districts. Perhaps most remarkably, it has attracted some students from Englewood Cliffs (the district that sought, through many years of litigation, to send its students elsewhere) as well as some Englewood students who have returned to the district from private schools.

However, according to the Commissioner of Education (who is required by the court order approving the litigation settlement to monitor and report on the district's desegregation efforts) and the State Board of Education, the program has been less successful in desegregating Dwight Morrow High School. In a June 2005 decision, the State Board found that "while the proportion of white students attending the Academies@Englewood is steadily increasing, the racial imbalance among the composite student body at Dwight Morrow is not improving."¹¹ In a November 2005 report to the State Board, the Acting Commissioner stated:

The implementation of the Academies@Englewood as an Interdistrict Public School Choice Program offering has attracted out-of-district students and resulted in an ethnically balanced student body within the Academies program. These gains in integration, however, do not yet

extend to the entire student body of [Dwight Morrow High School].¹²

More specifically, the Acting Commissioner reported that Dwight Morrow's population "continues to belong overwhelmingly to minority groups. After three years progress toward integrating either the Academies@Englewood and DMHS programs or the student bodies of the Academies@Englewood and DMHS, the pace remains far slower than desired."¹³ The racial/ethnic mix at Dwight Morrow and in the Academies@Englewood, and the district's overall high school racial/ethnic composition in 2005-06, are shown in Table 12.

An additional concern is the degree to which the Academies function as a separate unit, independent of Dwight Morrow. The Academies program is "the only integrated educational opportunity offered in the district," the Acting Commissioner stated in the November 2005 report, but it is operated as a separate program unavailable to most Englewood students: "Although the students are on the same campus, students at DMHS experience two separate and distinct schools."¹⁴ Core courses do not include DMHS and Academies students in the same class, and the two programs operate on different daily schedules, a situation that the district has attributed to the terms of a union contract but that it reportedly planned to change gradually in order to allow Dwight Morrow and Academies students to take electives and participate in clubs and extracurricular activities together. In short, according to the Acting Commissioner's report, "There are two very different high schools on one campus":

Academy@Englewood students have access to increased instructional time through a

longer school day, a rigorous and engaging core academic curriculum, technology, and other upgraded classroom materials and equipment not available to DMHS students, as well as an opportunity to participate in focused career prep "academies" with labs. The climate of the Academy programs reflects high expectations. Teachers are well prepared, classrooms are inviting, and instructional strategies are varied. Students are spirited and proud of their school and opportunities. At DMHS, a climate of high expectations, support, and standards is not evident. The belief that all students can achieve at high levels is wanting. There is lack of equipment and technology in classrooms, and virtually every room is set-up in traditional rows. In many classes, students are either not engaged at all or engaged in below grade-level assignments. Students arrive late to school and to classes.¹⁵

Further, in every year of the Academies' operation, Englewood has admitted fewer resident students than it agreed to admit at the program's inception. The district's application for designation as a choice district was approved on the condition that 75 resident ninth graders and 75 ninth grade choice students would be admitted to the program each year. However, 55 resident students were admitted in 2002-03, 48 in 2003-04, 42 in 2004-05, and 61 (plus two Englewood Cliffs students) in 2005-06. Larger numbers have not been admitted because other resident students have failed to meet the Academies' admissions standards. To make up for the "shortfall" in resident students in 2005-06, the district admitted more than the approved number of choice students, 95 rather than 75.

Table 12: Racial/Ethnic Composition, Englewood 2005-06

	Dwight Morrow H.S.		Academies@Englewood		Total High School	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
White	12	2.13	105	22.39	117	11.34
Black	335	59.50	119	25.37	454	43.99
Hispanic	204	36.23	102	21.75	306	29.65
Asian American	12	2.13	135	28.78	147	14.24
Other	0	0	8	1.71	8	0.78
Total	563		469		1032	

The Acting Commissioner questioned this approach (and also questioned how the “extra” 20 choice students would be funded, since the district’s school choice aid would be limited to an amount based on 75 rather than 95 students). She did not order any immediate action on this issue, but urged the district to admit the full complement of 75 resident students, stating:

In order to meet its goal of including 75 resident students in the ninth grade of the Academies program each year, the district must develop a process to ensure the admission of a minimum of 75 resident students. In past reports, the department has suggested as one approach that the district develop and implement a plan that will allow it to admit to the Academies program any Englewood resident student who demonstrates potential to satisfy the requirements for admission to the Academies program through a bridge or aspiring scholar initiative. The DOE will work with the district to implement admissions policy and programs to ensure the participation of the full complement of Englewood students in each entering Academies class.¹⁶

Thus, in some respects, Englewood’s experience is similar to those in other districts: its choice program has provided an opportunity for participating students to attend school with a diverse population, where otherwise such an opportunity probably would not exist. Indeed, the extent to which Englewood has done so is a success story for the Program. On the other hand, Englewood’s choice program has had no impact on the racial balance in the district’s comprehensive high school, according to reports by the Commissioner of Education. While a finding of “no impact” might seem no different from similar findings in other districts where the Program has caused no change in racial composition, such a finding has greater significance in this district. Given the long history of Englewood’s desegregation efforts, the positive diversity impact on participating students cannot be said to outweigh the program’s failure to improve the district’s overall racial/ethnic mix.

Impact on Sending Districts

Data and information obtained from the Department of Education indicate that the

Program’s fiscal impact on sending districts has been more positive than negative, and that the impact on the racial/ethnic composition of those districts has been minimal.

Fiscal Impact. As discussed above, CEIFA (N.J.S.A. 18A:7F-11, as amended by the Act) provides that for the first three years of a student’s participation in the Program, the student is to be counted in the enrollment of his district of residence for purposes of calculating core curriculum standards aid and the district is to continue to receive declining amounts of such aid. The clear purpose of this “impact aid” provision is to provide a temporary cushion for sending districts against any substantial fiscal impact caused by loss of students and resultant loss of state aid. As also discussed, however, state aid provided to all districts statewide under CEIFA has been frozen for the past five years. The freeze has prevented not only increases in aid but also decreases, even to districts with declining enrollments or choice students attending school in other districts. No adjustments to sending districts’ core curriculum standards aid or categorical aid provided under CEIFA (including transportation aid and special education aid) have been made since 2001-02, according to the Department of Education.

Thus, because of the “freeze,” the Program’s actual fiscal impact has been that sending districts have received their full allocation of aid under CEIFA based on enrollment counts that include students who are not enrolled in their schools. This can only be considered a positive impact, or an unintended windfall, for those districts. We have not obtained the data (aid amounts received by each sending district in each year, and the number of each district’s resident students in their first, second and third years of participation in the Program) required to calculate the amount of aid received by sending districts over and above that provided by the Act.

The unreduced aid amounts have been authorized by annual appropriations acts. While those acts might be understood to indicate legislative intent superseding CEIFA, their effect has been to prevent the Program from being implemented in accordance with the original legislative intent. Consequently, we cannot determine the fiscal impact the Program would have had on sending districts if the Program had been implemented as intended.

Educational and Diversity Impact. No information has been obtained for this report regarding the Program's educational impact, if any, in sending districts. Because the number of choice students residing in each sending district is small – as discussed above, only three districts had more than two percent of their resident enrollment participating in the Program in 2005-06 – it is reasonable to conclude that the Program has had little or no significant impact on instructional program, class size, course offerings or staffing in the vast majority of the state's school districts (other than choice districts).

Available data does allow an assessment of impact on racial/ethnic balance in the sending districts. That data indicates that the Program also has had little or no impact on sending districts' racial/ethnic composition. Specifically, interdistrict transfers have resulted in more than a one percent increase or decrease in any racial/ethnic group's percentage of enrollment in only one of the 26 districts in the state with more than ten resident students participating in

the Program.¹⁷ For more detailed information on changes in racial/ethnic balance in those 26 districts, see Appendix D.

The Department did receive complaints in 2001 from two sending districts, Bridgeton and Winslow Township, which claimed participation in the Program was causing a negative impact on the racial balance in their schools. (In Winslow's case, the complaint pertained to the district's resident students, while in Bridgeton's case it pertained to students residing in Downe and Lawrence Townships, who would attend school in Bridgeton under a sending-receiving agreement but for their participation in the Program.) The Department investigated each situation and found the claims to be unfounded. It advised one of the districts, Winslow Township, that it would monitor the situation and if the Program proved in the future to have a negative impact on racial balance in Winslow schools, appropriate remedial action would be within the Commissioner's authority under the Act (N.J.S.A. 18A:36B-4b). No such further action has been taken.

Issues Arising During Pilot Implementation

Issues Addressed in Regulatory Amendments

In 2004, when the State Board of Education proposed amendments to the Program's implementing regulations, it stated in the *New Jersey Register* that the Program had "experienced great success," but that the proposed regulatory changes would respond to certain issues that had arisen in the Program's implementation up to that point. Specifically, the State Board stated in the preamble to the rule proposal:

The school choice program has now been in operation for more than four years and has experienced great success in achieving its purpose: to increase options and flexibility for parents and students in selecting a school that best meets the needs of each student, thereby improving educational opportunities for New Jersey citizens.

...

The proposed amendments reflect Department policies established in response to issues that have arisen during the four plus years of the implementation of the program. Because the rules governing the school choice program serve as a blueprint for parents and students as well as for school districts, the Department, through its proposed amendments, intends to clarify actions which have proven to be somewhat problematic during the implementation of the program. [36 N.J.R. 2593.]

The items that had "proven to be somewhat problematic" included the following:

- Student eligibility (N.J. A.C. 6A:12-2.2(a)). The rule amendments clarified that in order to be eligible, a student must have been enrolled in and attended a *public* school in his district of residence for at least one year, and also clarified that a student who moves from one district to another during the school year but attends public school both before and after the move is eligible.
- Sending district procedures (N.J.A.C. 6A-12.4.1). The amendments added a provision stating that a sending district may not restrict or limit its students' participation in a specialized program

offered in a choice district and not in the sending district. They also clarified the process of calculating the number of students who may apply to participate in the Program where the sending district has adopted a resolution limiting participation, and they specified that the sending district lottery process must be held in public, since "some districts have attempted to conduct the required lottery in other than public fashion."

- Choice district procedures (N.J.A.C. 6A:12-4.2). The amendments added a provision stating that a choice district may not impose admissions criteria on choice students that are different from those applicable to its own resident students. They also clarified that lotteries held in choice districts, like those in sending districts, must be conducted in public.

Statutory Issues

Several issues have arisen during pilot implementation that can be addressed through statutory, rather than regulatory, amendment.

Application Procedure. The procedure by which students apply and are accepted to participate in the Program has been modified three times over the course of the pilot, twice by way of regulatory amendment and once by way of a change authorized informally by the Department of Education.

As initially adopted, the regulations required applications to be submitted to the choice district by September 30 of each year, the choice district to notify the parent or guardian and the sending district of acceptance or rejection by October 30, and the parent or guardian to submit a notice of "intent to enroll" to the choice district by January 15. As modified in late 1999 upon adoption of the Act, the regulations extended the deadline for applications to November 30 and set the time for choice districts to notify parents and sending districts of approval or rejection at January 5, but kept the date by which parents were required to submit the notice of intent to enroll at January 15.

Then, in 2000, based on early program experience, the regulations were amended again

to make three changes in the application procedure: first, requiring students to send a “Notice of Intent to Participate in School Choice” to their district of residence before submitting an application to the choice district, by November 1; requiring sending districts to inform students whether they may participate by November 25; requiring applications to be submitted to choice districts by December 5, with notice of acceptance or rejection sent to parents and sending districts by January 5 and notice of intent to enroll submitted to choice districts by January 15. Second, authorizing a second application cycle each year, with deadlines (corresponding to those in the previous sentence) of March 1, March 25, April 5, May 5 and May 15, in order to provide more flexibility to families that are unable to plan as much as almost a year in advance and to allow choice districts to accommodate those families. Third, authorizing choice districts to establish waiting lists; providing that if choice districts did not fill all spaces available for choice students in the regular application process, they were required to offer those spaces to students on the waiting list by January 25, and those students were required to submit their notices of intent to enroll by February 4; and providing that for the second application cycle, corresponding dates would be May 25 and June 4.

By 2003, some choice districts had told the Department of Education the process still provided insufficient flexibility, since students could withdraw from the Program at any time but districts could not accept new students after the established deadlines. Some districts also reported that some students were “playing the system,” applying to both a choice district program and elsewhere (such as a vocational district program), submitting a notice of intent to enroll in the choice district, then withdrawing upon receiving notice of admission into the other program but after the choice district’s deadline for accepting additional students. In response, the Department informed the choice districts that they would be permitted to continue to accept students from their waiting lists beyond the dates provided in the regulations, through August 15 of each year. It did so without amending the regulations.

With the 2004 readoption of the regulations, the application procedure remained the same (the waiting list extension to August 15 was not inserted, although in practice it remains in effect). Provisions were added to clarify that the

various deadlines were as stated unless they fell on a weekend or holiday, in which case they would be the next business day.

With these additional provisions and the several dates for each of the two application cycles, the regulations pertinent to the application process are quite detailed and prescriptive. Even with such prescriptive regulations, the Department has made an effort to provide as much flexibility as possible. In addition to allowing waiting lists to remain open, it has allowed at least one district, Englewood, to establish its own application schedule, different from that provided in the regulations. Englewood coordinates its application process with that of the Bergen County Vocational School District. The effect of the coordinated schedules, according to the Department of Education, is that many students who are not admitted to the vocational school district’s programs enroll in the Academies@Englewood.

Given the exception allowed for one choice district and the objective of flexibility, one might question whether the state’s rules need to be as prescriptive as they are, or even whether state regulation of choice districts’ application procedures is necessary.

Eligibility Criteria. Several issues relating to student eligibility have arisen in the course of the Program: eligibility of kindergarten students; eleventh and twelfth grade students; and students enrolled in nonpublic schools or public schools in districts other than their districts of residence and home schoolers.

Kindergarten students. The Act limits eligibility to students who are enrolled in grades K through 9 at the time of application, *i.e.*, in the year prior to enrollment in a choice district. (N.J.S.A. 18A:36B-7a.) Thus, students may not enroll as choice students until they are in first grade. Choice districts express no objection to this limitation in principle, but also see no reason for it. Some of the districts have received inquiries from parents who wish to enroll more than one child in the Program but cannot enroll a younger sibling because of the kindergarten limitation, and therefore choose to enroll neither. Eliminating the kindergarten limitation would increase opportunities for choice and could increase participation in the Program.

Eleventh and Twelfth Grade Students. The provision limiting eligibility to students enrolled in grades K through 9 at the time of application also prevents students from

enrolling in the Program for the first time in their eleventh or twelfth grade year. This limitation has a clearer rationale than the kindergarten eligibility rule – continuity of instruction that may not be achievable if a student does not begin a program until eleventh or even twelfth grade – but even this may be questionable. Vocational school programs, for instance, have no such limitation; nor do many nonpublic schools. Another rationale may have been a desire to prevent transfers for athletic advantage; but this would apply to students in lower grades as well as eleventh and twelfth graders, and in any event this concern is addressed in other ways, with the Act’s explicit prohibition of discrimination on the basis of athletic ability (N.J.S.A. 18A:36B-7b) and under the rules of the state interscholastic athletic association.

Moreover, permitting students to enroll in choice district programs, especially specialized high school programs, could be one way of providing the flexibility that is often desirable in upper grades to meet students’ various needs and interests. Thus, as with the kindergarten eligibility rule, relaxing the rule to allow students to enroll in the Program for the first time in eleventh or twelfth grade would increase opportunities for choice and could increase participation in the Program.

Students Enrolled in Nonpublic Schools or Elsewhere and Home Schoolers. The same section of the Act also limits eligibility to students who “are enrolled in a school of the sending district” and “have attended school in the sending district for at least one full year immediately preceding enrollment in the choice district.” The effect of this provision is to prohibit participation by students enrolled in nonpublic schools, students enrolled in public school districts other than their districts of residence (such as districts accepting tuition-paying students pursuant to N.J.S.A. 18A:38-3), and children receiving home schooling, who are not enrolled in any district.

Provisions prohibiting participation by nonpublic school students are common in statutes authorizing school voucher programs,¹⁸ where the intent is to limit public subsidies for private school enrollment to students who are not already enrolled in private schools. In a statute authorizing a public school choice program, the purpose of such a provision is less clear. Given that all children, including those

currently or previously enrolled in private schools as well as those currently enrolled elsewhere or receiving home schooling, are statutorily entitled to enroll in the public schools in the districts in which they are domiciled (see N.J.S.A. 18A:38-1), there is no clear reason to provide, in effect, that nonpublic school students may enroll in the public schools of their districts of residence but not in those of choice districts. Other choice programs, such as those operated by vocational school districts, have no comparable eligibility limitation. As a result, this limitation may put choice districts at a competitive disadvantage in their efforts to attract students to their programs.

An administrator in one choice district has observed that the provision limiting eligibility to public school students is particularly unfair to families who already have expressed their dissatisfaction with public schools in their home districts by enrolling in private schools before a nearby choice program has become available. One possible modification that would address this perceived unfairness, short of eliminating the provision altogether, would be to limit eligibility to students who have been enrolled in the public schools in their districts of residence at any time, not necessarily in the year in which they apply for enrollment in the choice district. Or the provision could simply be eliminated.

Choice Districts Serving Fewer Than All Grades. For some of the eight choice districts that serve elementary grades only (Bloomsbury, Brooklawn, Folsom, Lower Township, Mine Hill, South Harrison, Stafford Township and Washington Township), the unavailability of a choice program for students upon graduation has proven to be an issue. Some districts report difficulty attracting students because they won’t be permitted to remain in a program for their entire school careers, while others report that the difficulty arises after the students have been enrolled for several years, when they realize their choice options will end.

Lower Township, for instance, serves grades K to 6. Its students enroll in the Lower Cape May Regional School District for grades 7 through 12. In response to a survey question asking, “Has your district had any difficulty addressing the needs of choice students,” Lower Township reported: “The only potential problem at present is the ability for our sixth grade students to attend our regional 7-12 district, as it is not a designated choice district.”

Similarly, Brooklawn serves grades K to 8. Its students attend high school in Gloucester City under a sending-receiving relationship. In its survey response, Brooklawn stated: “The program should be expanded ... to encourage other districts to become choice districts. K-12 choice “systems” are needed. In Brooklawn, for example, a Camden child can leave his/her home district for eight years but then have no choice (except for the county vocational high school) but to return to Camden for high school.”

Even if the districts to which these choice districts send their own students were willing to accept their choice students – *i.e.*, become choice districts themselves – they are precluded from doing so by the statutory limit of no more than one choice district per county (N.J.S.A. 18A:36B-3). Some have suggested that if such a statutory limit must remain, it should be relaxed at least to the extent necessary to provide opportunities for public school choice at all grade levels in at least one district per county. That is, if the one-per-county limit must remain, where the first district to be designated a choice district in any county serves grades K to 8 only, another district should be permitted to volunteer for such designation as well, at least for grades 9 through 12.

For further discussion of whether the one-per-county limit should remain, see the section entitled “Improving Quality by Creating Healthy Competition” below.

Impact Aid for Sending Districts with Sending-Receiving Agreements. As discussed above, the Act provides that sending districts eligible to receive core curriculum standards aid under CEIFA are to continue to receive declining amounts of such aid for their choice students (“impact aid”) during the first three years of each student’s participation in the Program. As also discussed, since core curriculum standards aid levels for all districts have been frozen for the past four years, eligible sending districts have continued to receive the full amount of aid for each participating student, even beyond the first three years. This is particularly generous for those districts that receive “impact aid” for students who would not have attended district schools even if they were not participating in the Program, because they would have attended school in other districts pursuant to sending-receiving agreements.

In a sending-receiving situation, where two boards of education enter into an agreement by

which one (the sending district) pays tuition for its students to enroll in the schools of the other (the receiving district), the “impact” of the Program, if any – its effect on educational programs and racial/ethnic balance as well as its fiscal impact – is not on the sending district, but on the receiving district, where those students would attend school but for their participation in the Program. Sending-receiving agreements typically provide for payments based on the number of students residing in the sending district and attending school in the receiving district. If some students residing in the sending district do not enroll in the receiving district because of their participation in the Program, the sending district pays less and the receiving district receives less. Thus, any negative fiscal impact of the Program is on the receiving district.

Since the negative impact is on the receiving district, the “impact aid” (core curriculum standards aid), if any, logically should go to that district as well. However, the Act (as incorporated into CEIFA, N.J.S.A. 18A:7A-11) provides that each choice student’s “district of residence” is to receive the aid. Apparently, at the time of the Act’s adoption the sending-receiving situation was not considered. As a result, choice students’ districts of residence that are on the “sending side” of sending-receiving agreements continue to receive core curriculum standards aid for their choice students even where they are unaffected by the Program, and their counterparts on the “receiving side” receive no such aid even where the Program’s negative fiscal impact clearly falls on them.

Four of the 26 sending districts throughout the state that have more than ten students participating in the Program have been the beneficiaries of this apparent inadvertence. That is, four of those 26 districts were on the “sending side” of sending-receiving agreements in 2005-06, by which their students would not have attended school in their district of residence even if they were not participating in the Program. Table 13 lists those districts, the receiving districts in which the students would have been enrolled under the sending-receiving agreement, the choice districts in which the students were enrolled, and the number of choice students in each case.

Thus, pursuant to the Act, four of the largest sending districts (as well as others, possibly, with smaller numbers of choice students) were supposed to have received core curriculum

Table 13: Sending-Receiving Arrangements

<u>District of Residence</u>	<u>Receiving District</u>	<u>Choice District</u>	<u>Number of Students</u>
Commercial Twp.	Millville	Cumberland Reg.	27
Downe Twp.	Bridgeton	Cumberland Reg.	11
Lawrence Twp.	Bridgeton	Cumberland Reg.	19
Washington Twp.	Lawrence Twp.	Upper Freehold Reg.	31

standards aid for students who were not enrolled and would not have been enrolled in their schools in any event because of their sending-receiving agreements; and three districts on the “receiving side” – Millville, Bridgeton and Lawrence Township (Mercer County) –not only received smaller payments under their sending-receiving agreements because of choice students’ participation in the Program, but also have received no “impact aid.”

One of those receiving districts, Bridgeton, has requested that the Department of Education address the situation. The Department has responded by acknowledging the unfairness to receiving districts but stating that any change to address the unfairness would require legislative action.

Other Issues

Programs and Criteria Aimed at Achieving Diversity. As discussed above, the Act permits choice districts to establish “reasonable” admissions criteria (N.J.S.A. 18A:36B-7b); the regulations prohibit the districts from imposing criteria upon prospective choice students that differ from those they apply to their resident students (N.J.A.C. 6A:12-4.2(a)(3)); and the Acting Commissioner has recommended that one choice district, Englewood, implement policies that would “ensure the participation of the full complement of Englewood students in each entering Academies class.” Specifically, in her November 2005 report, the Acting Commissioner recommended that Englewood “develop and implement a plan that will allow it to admit to the Academies program any Englewood resident student who demonstrates potential to satisfy the requirements for admission to the Academies program through a bridge or aspiring scholar initiative.”

While the report does not specify the elements of such a plan – such as the nature of the “bridge or

aspiring scholar initiative ” or whether admitting any resident student who “demonstrates potential to satisfy the requirements for admission” would entail race-conscious selection criteria – the clear objective is to afford a greater number of Englewood’s resident students the benefit of the magnet program, which was created for the explicit purpose of achieving desegregation of Englewood’s high school. Whether the district may do so, or the Commissioner may order it to do so, may raise legal and policy issues, including federal and state constitutional issues.

To the extent that the Commissioner’s recommendation is, in fact, a requirement to establish differing selection criteria for resident students and choice students, the first question is the Commissioner’s authority to require Englewood to act in a manner that is inconsistent with the regulations. While conformance with regulatory authority is always desirable, regulatory provisions may be overridden with appropriate statutory authority, especially where a compelling state interest arguably supports the state’s action. Here, although the regulations require equal treatment of resident students and choice students, the Act gives the Commissioner broad authority to “take appropriate action, consistent with State and federal law, to provide that student population diversity in all districts participating in a choice district program is maintained.” (N.J.S.A. 18A:36B-4b.) In light of this provision, even if the Acting Commissioner’s recommendation is inconsistent with the regulations, it is most likely within her statutory authority, and any action taken pursuant to that recommendation probably would be permissible as long as it is otherwise “consistent with State and federal law.”

The second question, whether differing selection criteria or a “bridge” program open only to resident students would be consistent with state and federal constitutional law, is less clear. The United States Supreme Court has held that

achieving the educational benefits of racial diversity in university student populations is a compelling state interest.¹⁹ It has not so held with respect to elementary or secondary public school populations, although several intermediate federal courts have held that the state's interest in diversity is equally compelling in K-12 public schools.²⁰ In its 2006 term, the Supreme Court will consider two cases, one arising in Kentucky and the other in Washington state, involving admissions policies established for the purpose of promoting racial diversity in K-12 public school programs.²¹ A decision in those cases may provide more guidance on the question of whether a plan or program such as that recommended by the Acting Commissioner would be consistent with the United States Constitution.

New Jersey also has its own independent source of law in favor of school desegregation. The New Jersey Constitution has an explicit prohibition of segregated schools, which states, "No person shall be ... segregated in the ... public schools, because of religious principles, race, color, ancestry or national origin." (Article I, paragraph 5.) The New Jersey Supreme Court has held repeatedly that "whether due to official action, or simply segregation in fact, our public policy applies with equal force against the continuation of segregation in our schools,"²² and has observed that "our State's policy against discrimination and segregation in the public schools is of such vigor and import as to match its policy in favor of a thorough and efficient education."²³ Programs such as those

recommended by the Acting Commissioner in Englewood would be consistent with the state constitution and this well established state policy; indeed, arguably, such programs are required by state law.

However, if the United States Supreme Court rules in the Kentucky or Washington cases that race-conscious admissions policies contravene the federal constitution, such a ruling could preempt New Jersey's own state constitutional law. Thus, the extent to which the state may authorize choice districts (and other public school districts) to establish policies to promote racial diversity could be clarified by the United States Supreme Court within the next year. More generally, such a ruling could clarify the extent to which the Program, or other public school programs, may serve as tools for achieving or maintaining racial or ethnic diversity.

Until the Court provides such clarification, a policy in keeping with established principles of federal law could be adopted. These principles are, generally, that "bridge" or support programs and alternative selection criteria offered without regard to race or ethnicity are generally permissible; and that racial and ethnic balance may be considered along with other factors in selection criteria as long as they are not dispositive factors, they are not applied mechanistically or in such a way that they amount to a quota, and the manner in which they are given consideration is narrowly tailored to achieving the goal of achieving diversity.

School Choice Policy Issues

In light of our state's six-year experience with interdistrict public school choice, should the Legislature reauthorize the Program? Should it expand the Program? If so, how much? Should it modify the Program? If so, how? These questions raise two fundamental policy issues:

- Does interdistrict public school choice serve a beneficial purpose?
- Would the Program serve that purpose more effectively if it were expanded or modified?

After addressing those issues, three others should be considered:

- What role does interdistrict public school choice play in our state's compliance with federal law and policy under No Child Left Behind?
- What is the impact, if any, of the recently filed lawsuit, *Crawford v. Davy*, in which the plaintiffs claim a constitutional right to interdistrict public school choice?
- What alternative provisions for funding public school choice are available?

Does Interdistrict Public School Choice Serve a Beneficial Purpose?

As noted at the outset of this report, several purposes that could be served by interdistrict public school choice were identified when the Program was initiated:

- to provide greater school choice to parents and students in selecting a school which best meets the needs of the student and thus improves educational opportunities for New Jersey citizens;
- to improve the degree to which the education system is responsive to the parents and students;
- to improve education and enhance efficiency by allowing a redistribution of students where some districts are overcrowded and others are underenrolled; and
- to improve quality by creating a healthy competition among school districts.

Data provided by the Department of Education and choice districts suggest that the Program has been successful, to some degree, in serving two of the stated purposes, providing greater choice and making the state's education system more responsive to parents and students; and that it has been less successful as to the others, redistributing students and creating healthy competition among school districts. The data further suggest that the Program's impact in each of these areas has been limited by its small size.

Providing Greater Choice. For the 1006 participating students in 2005-06, the Program certainly has provided greater choice. It has provided those students with opportunities to attend school free of charge in districts other than their districts of residence, where no such opportunities existed previously. Based on the fact that more than 50 percent of all choice students in 2005-06 resided in DFG A or B districts, it appears that the Program has provided greater choice particularly for students at lower socioeconomic levels.

However, based on the fact that the percentages of blacks and Hispanics among choice students were lower than their percentages in the statewide public school population (blacks and Hispanics comprised 12.3 percent and 12.1 percent, respectively, of choice students, compared with 17.6 percent and 18.2 percent, respectively, of all public school students statewide for each group), it appears that the Program has not served those students as well as others. On the other hand, the Program has provided choice opportunities to Asian students to a greater extent than their proportion of the statewide student population (12.6 percent of choice students but 7.2 percent of all public school students statewide).

Based on the fact that the percentage of choice students with disabilities was considerably lower than their percentage of the statewide public school population (7.7 percent of choice students, 16.5 percent of all public school students statewide), it appears that the Program has not served this group as well as others either.

Based on the fact that no district has volunteered to serve as a choice district in Essex, Middlesex, Mercer, Somerset or Sussex counties, it appears that the Program has not served students who

reside in those counties as well as those who reside elsewhere in the state, unless they travel to districts in other counties. And since the only choice district in some counties is in a remote location – Washington Township, Burlington County and Mine Hill, Morris County – it appears that the Program has not served students in those counties as well as those who have choice districts closer to home.

While no data has been collected directly from parents or students, choice districts report that the Program has been popular among participants. And while no specific data as to unmet demand is available, some choice districts report that they receive frequent inquiries from parents seeking to participate in the Program, although others have not filled all available spaces and do not receive many such inquiries, and the Department reports receiving such calls almost daily from parents in districts that are not conveniently located near any choice district with space available for additional choice students. This suggests that the Program clearly has provided some greater choice, enough to meet demand in some areas of the state but not in others.

Making the State's Education System More Responsive to Parents and Students.

Similarly, while the Program has made the state's education system more responsive to the needs and wishes of the 1006 participating choice students and their parents, the extent to which it has made the system in general more responsive to students and parents has been limited by its size and the resources available to choice districts. There may have been some "ripple effect" in sending districts and elsewhere, by which those districts also have become more responsive to students' needs in response to the availability of interdistrict public school choice, but no evidence of such an effect has been reported.

Adjustments made over the course of the Program, such as changes in the application procedure, have made the Program itself more responsive to students' and parents' needs. The discretion afforded to choice districts, allowing each to establish the parameters of its own choice program, allows them to be responsive to local needs and demands. While controls in some areas are necessary, a greater degree of discretion and flexibility – such as in the application procedure, as discussed above – would allow the Program to make "the system" even more responsive to parents and students.

Enhancing Efficiency by Redistributing Students. To the extent that the Program has shifted students to districts with otherwise declining or stagnant enrollments, it may be said to have enhanced efficiency. Also, to the extent that it has filled classrooms that otherwise would have been half empty, it may be said to have enhanced efficiency. To the extent that it has allowed schools to remain open that otherwise would have closed due to insufficient enrollment, it may be said to have detracted from rather than enhanced efficiency. Examples of each of these effects have occurred in some choice districts, but reports from the districts suggest that neither enhanced nor reduced efficiency, measured by redistribution of students, is the predominant impact of the Program.

As Table 7 shows, more than half the choice districts have seen their enrollments increase, rather than decline, during the period of their participation in the Program. And as discussed above in the section on educational impact, more choice districts report reducing class size as a result of the Program than increasing it. Those reductions are reported as educational benefits – many educators, of course, consider smaller class size a positive effect – rather than efficiency enhancements. The districts also report adding staff, course offerings and other activities, likewise as educational benefits. While such effects might be said to detract from, rather than enhance, efficiency, they certainly are not reported as negative effects. The proper balance between educational improvement and efficiency is an issue well beyond the scope of this report; suffice it to say that the Program seems to have been more successful in enhancing educational programs than redistributing students from overenrolled to underenrolled schools or districts.

The issue of limiting the Program to districts with declining enrollment in order to enhance efficiency may warrant further consideration. Since several choice districts have not experienced declining enrollments but still have found the Program beneficial, it appears that a district's enrollment trend should not be a concern, and the Department should clarify that declining enrollment is not a requirement for district participation. Some might argue that shifting additional students to districts with rising populations is not efficient; but if districts themselves believe they can use the Program, or the state aid that comes with it, to improve

programs or provide some other benefit for their students even in times of growth, they should be permitted to do so. In such cases, efficiency might not be the overriding objective.

At the other extreme, if a district's population has decreased to the point that schools should be closed or it should be consolidated with another district, careful consideration should be given to whether adding students through interdistrict choice is the best course. In one choice district, Folsom, where it appeared that this might have been the case, a sufficient number of choice students have been attracted to the district to revitalize the district's school. But if only a small number of choice students had chosen to enroll, and they were not enough to keep the school viable, the Program might have merely served to postpone the inevitable. In such a situation, efficiency concerns might outweigh a district's desire to improve programs or even continue to exist. Where to draw the line between efficiency and educational benefit may be difficult.

Improving Quality by Creating Healthy Competition. Again, the educational impact most frequently reported by choice districts is that it has allowed them to improve the quality of their educational program by increasing staff, adding course offerings and other activities. Whether the Program has allowed them to do so "by creating healthy competition" is hard to say. The districts have enhanced their educational programs because they have had additional funds, in the form of school choice aid; there is no evidence that they did so in order to "beat the competition."

Whether sending districts have responded to the "competition" created by the Program is also hard to say. Since only three districts have had more than two percent of their student population enroll elsewhere under the Program, it appears to have had little effect, competitive or otherwise, on sending districts (other than those three districts, Little Ferry, Maurice River and Woodbine). This is particularly true since losing students to the Program has had little or no fiscal impact on sending districts, as discussed above.

The Program's small size also probably has impeded its ability to create a true competitive market for choice options. With only 16 choice districts statewide, some counties having none, others having choice districts serving fewer than all grades, and others having choice districts in remote locations, the Program cannot be said to

have had a significant effect on the statewide education marketplace. The Program has had some positive impacts, but "creating healthy competition" probably is not one of them.

Would the Program Serve These Purposes Better if it Were Expanded or Modified? Theoretically, if the Program were considerably larger – if the limit on the number of choice districts were eliminated and many more districts chose to participate – it could contribute more to "healthy competition" in the "education marketplace." If all students in the state could choose where to attend school without regard to district boundaries and districts received additional aid for every nonresident student, districts would theoretically compete for those students and that aid.

The theory has been put into practice in some states. Authors of a 2003 report on school choice in Massachusetts, for example, found that an "education marketplace," including public school choice, is emerging there. The report states, "The education system can be increasingly described as a mixed delivery model – with public, private; and quasi-public providers – as is the case with the health care and early childhood sectors." However, the report's authors also found that suburban school districts served disproportionately few nonresident students, and that "while choices exist for many, entitlements and opportunity are unevenly and inequitably distributed."²⁴ Similarly, as described in *Zelman v. Simmons-Harris*, the United States Supreme Court decision on the school voucher program in Cleveland, Ohio, public school districts in that state are authorized to enroll nonresident students in their schools, but none of the districts bordering the City of Cleveland has chosen to do so.²⁵ Such cases suggest that merely authorizing districts to open their schools does not automatically create a thriving market or serve all students.

Beyond the theoretical competitive effect of greater choice, would the beneficial purposes identified at the Program's outset be better served if the Program were expanded or modified? Expansion certainly would provide greater choice to a greater number of students and presumably would make the state's education system more responsive to that greater number. It would not enhance efficiency by redistributing students to a greater degree unless the Program were modified to require

choice programs to specifically address redistribution, such as by limiting choice districts to those with declining enrollments, which would not necessarily be an improvement, as discussed above. And expansion probably would not provide greater choice to students in underserved groups – black and Hispanic students, and students with disabilities – unless the Program were modified to target those groups,²⁶ which also would not necessarily be an improvement. Targeting to minority students could be beneficial (as discussed further below), but targeting to students with disabilities would serve no purpose if it would merely duplicate efforts already made under the Individuals with Disabilities Education Act (IDEA). No one has suggested that public school placements currently provided in accordance with IDEA should be regulated or funded as interdistrict choice.

Aside from the purposes enumerated at the Program's outset, expanding choice for its own sake is also worth considering. New Jersey offers choice to its public school students to a much lesser degree than other states.²⁷ It has been criticized in one publication for being "unresponsive to the demand for more choice" because the Program is limited to a small number of districts.²⁸ That alone suggests that there may be unmet demand for greater interdistrict public school choice.

One way to expand interdistrict choice is to make district participation mandatory rather than voluntary, as 18 other states and Puerto Rico currently do in one way or another (some do not have interdistrict choice "programs," but have statutory provisions permitting some or all students to enroll, free of charge, in schools outside their districts of residence).²⁹ Short of a mandatory statewide program, the state could require participation by certain districts to further a specific purpose but retain the voluntary nature of the program for other districts. Connecticut, for instance, has both a voluntary program, in which all districts in the state are authorized but not required to establish interdistrict magnet schools, and a mandatory program of open enrollment in Hartford, Bridgeport, New Haven and the suburban districts surrounding those cities.³⁰

A fully voluntary program could result in some expansion in those counties where additional districts have expressed interest, or where current choice districts do not serve all grades K to 12. In those counties in which there are no

choice districts (Essex, Middlesex, Mercer, Somerset and Sussex), informing districts that declining enrollment is not a prerequisite to their participation could spark some greater interest, and publicizing the positive experiences of current choice districts also could help promote participation by others. But as shown by the Massachusetts and Ohio experiences, suburban districts are unlikely to respond in large numbers to a voluntary program without some stronger incentive.

The most likely incentive, of course, is financial. In fact, the school choice aid provided to choice districts and the improvements made possible by that aid are the Program's strongest selling points. Especially with increasing pressures on school district budgets and demands for property tax relief, offering generous amounts of state aid in exchange for participation in an interdistrict public school choice program could be quite effective.

Financial incentives have been sufficient to sustain suburban district participation in interdistrict choice programs in at least two other states, Missouri and Michigan. The program in St. Louis, Missouri, with 12,000 St. Louis residents attending schools in 16 suburban districts, began as part of a court-supervised desegregation plan but continued on a voluntary basis even after the court relinquished jurisdiction, reportedly in part because it had the support of participating suburban districts that had become dependent on the state aid associated with the program.³¹ The program in Michigan – a statewide program supported with state aid that "follows the child," with participating districts receiving the full amount of aid that students' districts of residence would receive but for their exercise of choice and districts of residence losing that aid with each interdistrict transfer – has almost 44,000 participating students, and the percentage of the state's districts electing to accept nonresident students increased from 37 percent to almost 70 percent between 1996 and 2002.³² The Missouri and Michigan examples suggest that financial incentives can encourage voluntary participation, even by suburban districts.

Michigan's experience has not been all positive, however. Its "zero-sum game" of state aid, in which one district's gain is another's loss, has resulted in a loss of aid for some of the state's districts in greatest need. A report issued in 2001, five years after the interdistrict choice program had been established, noted that

several of the state's mid-size cities were actively seeking to attract students but still had lost substantial enrollment and revenue to neighboring districts with higher-income residents. It also noted that in the state's "most hard-pressed urban districts," including Detroit, "choice policies [had] overwhelmed the local capacity to respond and accelerated a spiral of decline."³³

This suggests that financial incentives may, in fact, be too effective – so effective that they detract from other education reform and improvement efforts – and that measures to encourage participation in interdistrict choice may need to be tempered with measures to soften the impact on sending districts. Our own Act's provision for "impact aid" was intended to serve this purpose, but because of the freeze on core curriculum standards aid, whether the aid amounts provided there are sufficient, or more than sufficient, to soften the impact cannot be determined.

It also suggests that incentives for low-wealth districts to create high-quality magnet programs, to attract students from higher-wealth districts to their schools, should be considered. Such programs could help cushion the fiscal impact of the loss of some of their own students to higher-wealth districts and also promote diversity.

Whether to modify the Program to target underrepresented racial or ethnic groups is another complex issue. Even if the legality of race-conscious admissions were more settled,³⁴ any specific targeting measure would need to be examined to ensure that it in fact serves the desired purpose, that it is narrowly tailored to do so without inordinately disadvantaging students who are not members of the targeted groups, and that it does not cause other undesirable consequences.

Englewood's experience indicates that if a program is attractive enough and promoted effectively, students will come, and that an interdistrict choice program can serve the purpose of racial integration by attracting nonminority students to a predominantly minority district. The program in Hartford, Connecticut, which has roughly equal numbers of suburban students attending city schools and city residents attending suburban schools, provides another example of where this has worked.³⁵ Authorizing and encouraging urban districts to create high-quality magnet programs and open them to resident and nonresident

students could serve the purpose of creating racially integrated schools, and the opportunity such programs would provide to participating students might be reason enough to do so. As discussed above, such programs also are at least arguably required by our state constitutional law against racially segregated schools.

Englewood's experience also shows, however, that programs that attract nonresident students do not necessarily integrate or improve the schools in the rest of the district or serve district students in sufficient number. This does not mean such efforts are necessarily doomed to failure or they are not worth pursuing. It does suggest that interdistrict choice programs established for the purpose of enhancing student population diversity require careful monitoring and oversight.

Federal Law and Policy on Public School Choice

An additional reason to consider expanding the Program is that interdistrict public school choice is encouraged, if not required, by federal law. The No Child Left Behind Act (NCLB) requires that students in schools receiving federal Title I funds that are designated "in need of improvement" for two or more consecutive years (by failing to meet state standards for pupil proficiency) or in schools that are designated "persistently dangerous" be offered the option to transfer to another public school in the same district. (20 U.S.C. 6316(b)(E)(ii)). If all of a district's schools, or all of its schools serving a certain grade level, have been so designated or have no room for additional students, the board of education "shall, to the extent practicable, establish a cooperative agreement with other [boards of education] in the area for a transfer" (20 U.S.C. 6316(b)(11)). All students in the designated schools must be offered the opportunity to transfer, with priority given to "the lowest achieving children from low-income families."

Thus, No Child Left Behind requires *intradistrict* choice to be offered to any student in a designated school; it requires *interdistrict* choice to be offered "to the extent practicable" when there are no intradistrict spaces available; and it requires that if transfer options are limited, they should be targeted to the lowest-achieving low-income students.

School districts throughout the country have had difficulty satisfying these requirements. As a result, only a tiny percentage of eligible students

have been able to take advantage of the choice opportunities offered by the federal law.³⁶ In a May 2006 letter to chief state school officers, the Secretary of Education stated, “Public school choice and [supplemental educational services] are critical to students' academic success, and yet for the past several years, participation has been unacceptably low in many [local education agencies] around the country.” To improve compliance and increase the level of participation, the Secretary threatened “significant enforcement action” against states and local districts, including the withholding of federal funds. She also urged states to take action to assist school districts to meet their obligations to offer choice:

We urge States to consider ways to help their LEAs become fully compliant in the next school year by, for example, closely monitoring LEA actions, including their spending on public school choice and SES and their parent notifications, and providing LEAs with significant resources and technical assistance. Additionally, we ask States to ensure that their own information systems include data on student participation and performance and LEA spending for public school choice and SES. We know the importance of accurate data on these provisions and ask that States consider ways to provide responses to the Consolidated State Performance Reports and ED Facts that are complete and accurate.³⁷

The New Jersey Department of Education’s “information systems” – at least, publicly available information – do not include data on student participation in school choice under NCLB. Its Consolidated State Performance Report on compliance with NCLB states that such data is unavailable.³⁸ The state has acknowledged, however, that “a large number of districts” in the state have no intradistrict capacity to offer transfers to eligible students, and that “consequently, many districts offer no parental options at Year 2 schools [in need of improvement],” contrary to the requirements of No Child Left Behind.³⁹ The Department’s solution, offered on the Department’s web site in “A Q & A on Options for Children Enrolled in Title I Schools in Need of Improvement,” is charter schools and “choice schools” available through the Interdistrict Public School Choice Program,⁴⁰ even though only 16 districts

statewide are authorized to offer interdistrict transfers.

Given the threat of federal enforcement action, establishing a state policy in conformance with the federal law may be reason enough to expand the Program. Although NCLB requires interdistrict choice only “to the extent practicable,” limiting such choice to a few districts or discontinuing the Program would seem to violate even that limited requirement. A policy more consistent with NCLB would include expanding the Program to authorize, or require, or provide strong incentives for many more districts to allow students attending Title I schools designated “in need of improvement” or “persistently dangerous,” regardless of where they reside, to transfer to schools with available space that have not been so designated.

As a practical matter, because of the large number of designated schools in the state, simply offering greater options for interdistrict choice where space is available would not necessarily result in significantly greater exercise of the transfer option. Statewide, 544 schools, including 145 high schools, were designated “in need of improvement” in 2005.⁴¹ But while all of the students in 145 high schools throughout the state must be offered transfers, only 28 districts in the state have more than one high school, and only 11 of those 28 had a high school designated “in need of improvement” in 2005 and another that was not so designated, so that intradistrict transfers under NCLB are even theoretically available for students in only 11 of 145 affected high schools in the state.⁴² This suggests that if NCLB-mandated choice is to have any meaning for New Jersey’s high school students, interdistrict choice needs to be offered as an option.

Even interdistrict choice may not be a real option for some students. In nine of the state’s 21 counties, more than half of the high schools have been designated “in need of improvement.” In Atlantic County, all eight high schools were so designated; in Cape May County, three out of four; in Cumberland County, four out of six. This suggests that even if a transfer option is theoretically offered to eligible students in those counties, they may have nowhere to go, or at least no school in their county that is considered satisfactory by NCLB standards.

In counties with fewer designated high schools, the need for additional NCLB-mandated choice options is not as great. In Bergen County, for

instance, only six of 42 high schools are “in need of improvement”; in Somerset County, only two of 11. In those counties, expanding interdistrict choice in a manner consistent with NCLB would increase the options available for eligible students, but the number of such students is relatively small.

We have not conducted a similar analysis regarding elementary students, nor have we conducted an analysis of schools in need of improvement within reasonable proximity to schools without such designation that are not in the same county. Such further analysis would be helpful if consideration is given to expanding the Program in order to achieve consistency with NCLB.

Asserted Constitutional Rights to School Choice

Lawyers for plaintiff schoolchildren in a recently filed lawsuit claim that interdistrict public school choice – and “private school choice” – are not only desirable but constitutional entitlements for children in “failing” public schools. Regardless of its merits, the case is likely to focus additional attention on the Program and potential expansion of school choice.

Crawford v. Davy, filed July 13, 2006 in the Superior Court of New Jersey, is a putative class action filed on behalf of “all children attending failing schools in the State of New Jersey” against the Commissioner of Education, other state officials and 25 local boards of education. The plaintiffs allege that “[a] constitutionally adequate system of education cannot be maintained so long as plaintiff school children lack meaningful choice to exit the public school that is failing them in favor of a successful school”; that “[i]n many instances there will be insufficient successful public schools within a child’s school district to accommodate all of the students who exercise the right to leave their failing schools”; and that “[e]ven if district boundaries and mandatory attendance zones are eliminated as a basis for assigning students to failing schools, insufficient alternatives may exist within a reasonable distance from a child’s home unless private schools are included.”⁴³

Accordingly, the plaintiffs seek “an injunction barring defendants from enforcing compulsory district boundaries and attendance zones where they operate to trap plaintiff schoolchildren in failing schools” and “an Order that allows them to immediately use their share of per-pupil State

and local funding to attend successful public and private schools in New Jersey.” They base their claims on the Thorough and Efficient Clause of the state constitution and state and federal equal protection clauses.

While the suit could proceed for years before a ruling is issued on the merits and it is too early to predict the outcome (except to note that the case is certain to be vigorously defended, several legal defenses are foreseeable, and similar claims have failed in other states⁴⁴), two different policy responses are possible: either to take no action on interdistrict public school choice or private school choice while the suit is pending, awaiting a ruling on the merits; or to attempt to preempt court action by giving careful consideration to reauthorizing the Program and expanding interdistrict choice, even if the ultimate decision is against reauthorization or expansion. The legislative and executive branches need not take action just because the suit has been filed, and any action on their part need not take exactly the same form as the remedies sought in the lawsuit – indeed, appropriate policy decisions should be made regardless of the plaintiff’s claims or the specific remedies they seek – but the courts may be more likely to defer to the judgment of the legislative and executive branches if they have given serious consideration to the issues.

Of course, the executive and legislative branches also could consider “private school choice” – vouchers providing public funds for students to attend private schools – but that aspect of the lawsuit raises several additional legal and policy issues which should cause policymakers to tread lightly. Those legal issues, aside from the merits of the claim of constitutional entitlement, include the effect of the “Public Purpose Clause” of the New Jersey Constitution (Article III, section 3, paragraph 3) and, if eligible schools include religious schools, the effect of the Establishment Clause (Article I, paragraph 4) and the clause prohibiting the use of taxpayer funds to support any religious “ministry” (Article I, paragraph 3). The policy issues include whether there is support for the notion that “private school choice” would lead to educational improvement (recent conflicting reports comparing public and private school achievement show that this continues to be a matter on which researchers disagree⁴⁵) and whether our state can afford both its efforts to provide a thorough and efficient system of public education and a program of public subsidies to be used in private schools. A full discussion of

these complex issues is beyond the scope of this report, but would be essential to any serious consideration of “private school choice.”

School Choice Funding

Considering the budget pressures facing the State of New Jersey in general and the Department of Education in particular, the question of whether and to what extent to provide state funds for interdistrict public school choice is ultimately beyond the scope of this report. If, however, interdistrict choice is to continue in New Jersey, the Program’s funding mechanism should be reviewed. Reauthorizing the Program need not include maintaining the current funding mechanism. Interdistrict choice programs in other states have a variety of funding provisions, as do other school choice programs in this state.⁴⁶ Some of those provisions may be worth considering.

The Act has several funding provisions (N.J.S.A. 18A:36B-8, -12a, -12b, -13; 18A:7F-11), the combined effect of which is not entirely clear, as discussed earlier. The complexity and ambiguity of these provisions are reason enough to review their continued desirability. Additionally, to the extent that funding is provided through core curriculum standards aid and categorical aid under CEIFA, it should be reviewed in any event in the course of the long overdue review of the state’s system of school finance.⁴⁷

Four specific funding issues should be considered: whether school choice aid amounts should be based on the characteristics of the choice district or the sending district; whether those amounts should vary based on student characteristics; whether interdistrict choice should be funded with state aid, interdistrict transfers of funds, or a combination of the two; and whether transportation costs should be borne by choice districts, sending districts, or parents.

Should school choice aid amounts be based on amounts otherwise received by the choice district or the sending district?

To the extent that state aid amounts reflect the needs of resident students, school choice aid arguably should be based on sending districts’ aid amounts and should transfer with choice students when they enroll in choice districts. The Program works this way with respect to “other categorical aid provided under CEIFA” but not school choice aid; school choice aid is determined by the DFG of the choice district; those in DFG A or B receive greater per-pupil

amounts than others. As a result, transfers to choice districts in DFG A or B from sending districts in higher DFGs result in a net increase in state expenditure (in addition to the “impact aid” theoretically provided to the sending district), and transfers from sending districts in DFGs A or B to choice districts in higher DFGs result in a net decrease in state expenditure (except for “impact aid”). On the other hand, to the extent that aid amounts are based on program costs rather than pupil needs (a subtle distinction of interest to school finance experts), school choice aid arguably should be based on choice district aid amounts.

Modifying the Program to set the choice aid amount at the level otherwise applicable to the sending district could provide a financial incentive for higher-wealth districts to accept students from lower-wealth districts that receive greater amounts of state aid. On the other hand, it could provide a disincentive for lower-wealth districts to serve as choice districts. Abbott districts already have such a disincentive in the provision stating that choice students shall be counted in choice district enrollments for purposes of “other forms of aid under CEIFA,” which means – by negative implication – they shall not be counted for purposes of the substantial amounts of aid received for resident students under *Abbott v. Burke*. This specific issue could be addressed by an additional categorical aid category for magnet schools designed to attract students from higher-wealth to lower-wealth districts, or by including Abbott aid in the aid provided under CEIFA or some other comprehensive system of school finance, if and when such a system is established.

A related, and even more fundamental, issue is whether interdistrict public school choice should be revenue- and funding-neutral, *i.e.*, whether an interdistrict choice program should involve any net cost to the state (other than the cost of administration). Under the Act, the Program does involve expenditures for school choice aid and “impact aid,” as discussed above. If, as in Michigan, funding for school choice were “zero-sum,” with funds transferred along with students from sending districts to receiving districts, the exercise of choice should, in itself, have no net cost. In tight budget times, this may be the only kind of program that is realistically possible. As the Michigan experience has shown, however, the fiscal impact on sending districts can be considerable, so that some additional state expenditure to cushion the

impact on those districts may be desirable. How much “impact aid” is sufficient is hard to say; continuing full amounts of aid for those sending districts that receive core curriculum standards aid, as New Jersey has done for the last five years as a result of the freeze on core curriculum standards aid, is probably more than sufficient.

Should school choice aid amounts vary based on student characteristics? Varying aid amounts would allow the state to target the program for the benefit of certain groups of students, such as those currently enrolled in schools designated “in need of improvement” or those whose transfer would improve the racial or ethnic balance of the sending or receiving district. The Program also could be targeted by simply limiting eligibility to students in the relevant groups rather than through a funding mechanism, but maintaining broad eligibility while varying aid amounts could achieve the desired effect without unfairly excluding students who are not in the targeted groups.

Should interdistrict school choice be funded with state aid, with transfers of funds from sending districts to receiving districts, or a combination of the two?

Choice districts seem satisfied with the funding mechanism set forth in the act, which is direct state funding, but other mechanisms may be worth considering. Iowa and New Hampshire, for example, offer no direct state aid for interdistrict school choice, providing instead for tuition to be paid by the district of residence to the receiving district.⁴⁸ Delaware has a combination: it provides that each choice student shall be included in the enrollment count of the receiving district for purposes of state and federal aid, but also requires the sending district to pay the receiving district the “lower cost per pupil expenditure of the two districts,” and further requires that any sending district with a higher cost per pupil expenditure than the receiving district pay the difference between the two amounts to a state “school choice fund” which is allocated pro-rata to all receiving districts with higher per pupil expenditures than the districts from which they receive students.⁴⁹

Other choice programs in our own state are at least partly supported with local funding: Charter schools are supported with payments received from the districts in which their students reside, supplemented with state aid (N.J.S.A. 18A:36A-12; N.J.A.C. 6A:23-9.4); and vocational schools receive funding from the

counties in which they are located, tuition paid by sending districts, and direct state aid (N.J.S.A. 18A:54-20.1; N.J.A.C. 6A:23-3.3).

To the extent that interdistrict choice were supported with interdistrict transfers of funds, it would be less susceptible than a state-funded program to annual state budget pressures, although local budget pressures may be just as great in some school districts. Local or interdistrict funding also makes sense conceptually if interdistrict choice is conceived as an “open enrollment” program, in which students are permitted to attend school in the districts of their choice and districts are authorized to accept students from any district, without any state involvement. On the down side, the reliability of local funding may vary substantially among sending districts, some of which may not provide timely transfers of funds. Another variation would be to support interdistrict choice at some basic expenditure level with interdistrict transfers of funds, and provide additional support in the form of state aid for transfers of students in targeted groups.

Who should be responsible for transportation costs? Finally, there is the question of whether choice districts or sending districts should be responsible for transporting choice students or providing aid in lieu thereof, and whether parents of participating students should pay transportation costs.

In many states, parents are required to pay the transportation costs associated with interdistrict choice. Even where the state subsidizes the enrollment, parents often pay for transportation. In Michigan, for example, funding follows the child but parents pay to transport him if his parents choose to have him attend school outside their home district.⁵⁰ Similarly, in Delaware, students may attend school in any district (subject to reasonable admissions criteria established by receiving districts), but parents are responsible for transportation to and from a point on a regular bus route of the receiving district.⁵¹ Provisions such as those have the advantage of reducing public expenditure, of course; they may have the disadvantage of discouraging the exercise of choice, although they do not seem to have had that effect in Michigan. As another variation, Wisconsin requires each district to decide, by resolution, whether to provide transportation to resident students attending schools in other districts or to students who reside in other districts and attend its schools.⁵²

Among states that provide transportation or subsidies for parents of interdistrict choice students, most provide that transportation is the responsibility of sending districts. In Massachusetts, the state provides a form of school choice aid but sending districts are responsible for transporting their resident students who choose to participate in interdistrict choice.⁵³ The same is true in Texas.⁵⁴ Connecticut, however, gives this responsibility to receiving districts or regional educational service centers for its program serving Hartford, Bridgeport and New London, but provides state transportation aid to those entities.⁵⁵

Requiring districts of residence to be responsible for transportation costs would be more in keeping with provisions applicable to other choice programs in New Jersey. The Charter School Program Act provides that “students who reside in the school district in which the charter school is located shall be provided transportation to the charter school on the same terms and conditions as transportation is provided to students attending the schools of the district” and that “non-resident students shall receive transportation services pursuant to regulations established by the State board” (N.J.S.A. 18A:36A-13), which has been interpreted to mean districts of residence are responsible for transportation of charter school students or aid in lieu thereof (*see* N.J.A.C. 6A:11-4.10). The statutes governing vocational schools have no specific transportation provision, which has been interpreted to mean they are governed by the more general pupil transportation provision, which states, “Whenever in any district there are elementary school pupils who live more than two miles from their public school of attendance or secondary school pupils who live more than 2 1/2 miles from their public school of attendance, the district shall provide transportation to and from school for these pupils.” (N.J.S.A. 18A:39-1). That statute also permits districts to provide transportation of pupils to a school in an adjoining district when they are transferred there (under unusual circumstances) by order of

the county superintendent or under a sending-receiving agreement.

There is no clear reason why transportation of students participating in the interdistrict public school choice program should be treated differently, except to relieve sending districts of this added burden associated with interdistrict choice. Given that sending districts carry this burden for vocational and charter schools and state transportation aid is supposed to be provided to ease the burden in any event, relieving choice districts of the transportation requirement would be worth considering, as an additional way to encourage districts to accept nonresident students.

On all the funding issues discussed here, consistency among the state’s choice programs would provide for a rational state policy, and should be the goal on each issue unless particular policy considerations dictate otherwise on specific points. In this regard, reviewing issues such as the method of calculating state aid for interdistrict public school choice, the mechanism for providing that aid, and particular elements such as transportation aid may provide an opportunity to review comparable issues in other choice programs in order to develop one rational statewide school choice policy.

More broadly, it should not go unnoticed that these issues arise at a time when the state is engaged in a comprehensive review of its school finance system. Reviewing funding issues that have arisen in the context of interdistrict choice may also provide an opportunity to consider not only the appropriate role of choice in the state’s system of public schools but broader issues of school finance as well. The notion of state aid “following the child,” for instance, raises issues of both school choice policy and school finance. Thus, while the state’s Interdistrict Public School Choice Program may be small, it has provided policy makers an opportunity to consider some very large, complex education policy issues. For that alone, the state’s pilot experience with interdistrict public school choice has been worthwhile.

Conclusion and Recommendations

Based on our review and analysis of available data, we conclude that the Interdistrict Public School Choice Program has had positive results.

Choice districts are almost unanimous in their support of the Program. It has had positive fiscal and educational impacts in most of those 16 school districts, but little or no impact on their racial/ethnic composition. Participating students have performed well and integrated well in choice district schools. The impact on sending districts has been minimized by the fact that participating students reside in a large number of districts (122 districts statewide in 2005-06), but only three districts have more than two percent of their resident students participating in the Program.

Interdistrict public school choice has served some, but not all, of the purposes identified by the Department of Education at the outset of the pilot.

The purposes identified by the Department of Education included:

- to provide greater choice to parents and students in selecting a school which best meets the needs of the student and thus improves educational opportunities for New Jersey citizens
- to improve the degree to which the education system is responsive to parents and students
- to improve education and enhance efficiency by allowing a redistribution of students where some districts are overcrowded and others are under-enrolled
- to improve quality by creating a healthy competition among school districts.

Data provided by the Department and choice districts indicates that the Program has been successful, to some degree, in serving two of the stated purposes, providing greater choice and in making the state's education system more responsive to parents and students; but it has been less successful as to the other two, enhancing efficiency by redistributing students to districts with declining enrollments and creating healthy competition among school districts.

The Program certainly has provided greater choice for participating students and made the state's education system more responsive to those students. It has provided participating students with opportunities to attend school free of charge in districts other than their districts of residence, where no such opportunities existed previously.

The characteristics of participating students indicate that the Program has provided greater choice particularly for students at lower socioeconomic levels. It has not served black and Hispanic students or students with disabilities to an extent proportionate to their numbers in the statewide student population, but it has served Asian students to a greater extent than their proportion of the statewide population.

The fact that five of the state's counties have no choice district while in other counties more than one has applied for choice district designation, and the fact that some choice districts cannot accommodate all applicants while others cannot fill all available spaces, indicate that the Program has provided sufficient choice to meet demand in some areas of the state but not others.

The fact that some choice districts have experienced increases in resident enrollment during their years of participation in the Program while others have experienced decreases in resident enrollment suggests that the Program has not particularly served the purpose of redistributing students from overcrowded to under-enrolled districts.

The fact that choice districts have used school choice aid to improve or enhance educational programs but they do not appear to have done so in order to compete with other districts, and the fact that participating students have comprised very small percentages of sending district enrollments, indicate that the Program has not particularly served the purpose of creating "healthy competition" among school districts.

The pilot program's impact in each of the areas identified by the Department has been limited by its small size.

The state's pilot experience indicates that expanding interdistrict choice would allow it to better serve some, but not all, of the identified purposes. Expanding the Program would allow

the state to provide a greater amount of choice and make the state's education system more responsive to a larger number of parents and students. It also could serve the purpose of redistributing students from overcrowded schools or districts to those with declining enrollments or creating "healthy competition" among districts, but not without some modification of the Program.

Expanding interdistrict public school choice could allow it to serve other purposes as well. It would be consistent with federal policy under No Child Left Behind, and it could serve to increase racial and ethnic diversity in schools.

If the Program is to be expanded, a fundamental issue for consideration is whether district participation should be mandatory or voluntary. A fully voluntary program could result in some expansion of interdistrict choice, but suburban districts are unlikely to respond in large numbers to a voluntary program without some strong incentive.

If interdistrict choice is to continue to rely on voluntary participation, the state should offer effective incentives for district participation.

The strongest incentive, of course, is financial. School choice aid has been of substantial benefit to choice districts, and is likely to be the strongest incentive for voluntary participation. To provide maximum levels of choice and, theoretically, obtain the greatest possible benefit, the amount of state aid provided to participating districts should be limited only by demand. Alternatively, interdistrict choice could be targeted to certain districts or groups of students.

Targeting choice could allow it to provide greater choice opportunities to underserved groups.

Targeting could, for instance, allow the state to address racial or ethnic imbalance to a greater extent than it has been able to do with the Program. The state could offer special incentives for districts with predominantly white populations to accept nonresident minority students or for predominantly minority districts to establish high-quality interdistrict magnet programs. Academies@Englewood shows that an attractive, effectively promoted program can serve the purpose of desegregation by attracting nonminority students to a predominantly

minority district, but also that such programs require careful monitoring and oversight.

Targeting choice also could allow the state to more effectively respond to No Child Left Behind, which encourages, or requires, interdistrict public school choice to be offered to students attending schools designated "in need of improvement" or "persistently dangerous" where no intradistrict transfer option is available.

To offer substantially expanded public school choice and also targeted choice, the state could establish both a voluntary program, open to all districts that wish to receive students from other districts, and a mandatory program targeted to specific groups of students.

Whether interdistrict public school choice is voluntary or mandatory, it will require an expenditure of state funds.

Considering the budget pressures facing the State of New Jersey in general and the Department of Education in particular, the question of whether and to what extent to provide state funds for interdistrict public school choice is ultimately beyond the scope of this report. However, it seems clear that if interdistrict choice is to continue in any form, some state funding will be necessary.

In tight budget times, "zero-sum" funding for interdistrict school choice, with state aid "following the child" from the district of residence to the choice district, may be the only kind of funding that is realistically possible. But financial incentives for district participation will require additional state funding; and if interdistrict choice is successful, the fiscal impact on sending districts could be considerable, so that some additional state expenditure to cushion the impact on those districts may be desirable or even essential.

If interdistrict choice is to continue in any form, its funding mechanism should be reviewed.

The Program's enabling legislation has several funding provisions, the combined effect of which is not entirely clear. The complexity and ambiguity of these provisions are reason enough to review their continued desirability. Additionally, several funding issues should be considered:

Should school choice aid amounts be based on the characteristics of the choice district or the sending district? Under the Act, school choice aid is provided in amounts based on the socioeconomic level of each choice district. Setting aid amounts based on the characteristics of sending districts rather than choice districts could provide more of a financial incentive for higher-wealth districts to accept students from lower-wealth districts. Conversely, it could provide a disincentive for lower-wealth districts to serve as choice districts. To encourage both high-wealth and low-wealth districts to serve as choice districts, the state could provide school choice aid at the level applicable to either the sending or the receiving district, whichever is higher.

Should school choice aid amounts vary based on student characteristics? Varying aid amounts to reflect student characteristics would allow the state to target interdistrict choice for the benefit of certain groups of students. This could be done by limiting eligibility to students in the relevant groups rather than through a funding mechanism, but maintaining broad eligibility while varying aid amounts could achieve the desired effect without unfairly excluding students who are not in the targeted groups.

Should interdistrict choice be funded with direct state aid, with transfers of funds from sending districts to receiving districts, or a combination of the two? To the extent that interdistrict choice were supported with interdistrict transfers of funds rather than direct state aid, it would be less susceptible than a state-funded program to annual state budget pressures, although local budget pressures may be just as great in some school districts. Local or interdistrict funding makes sense conceptually if interdistrict choice is conceived as “open enrollment,” without any state involvement. Another variation would be to support interdistrict choice at some basic expenditure level with interdistrict transfers of funds, and provide additional support in the form of state aid for transfers of students in targeted groups. The state should consider a combination of direct state aid and interdistrict transfers of funds.

Should choice districts or sending districts, or parents, be responsible for transportation? Requiring sending districts to be responsible for transportation would be more consistent with provisions applicable to other choice programs.

Relieving choice districts of the transportation requirement would be worth considering as an additional way to encourage districts to accept nonresident students. Requiring districts of residence to be responsible for transportation costs also would be more in keeping with provisions applicable to other choice programs in New Jersey.

On all of these funding issues, consistency among the state’s choice programs would provide for a more rational state policy, and should be the goal on each issue unless particular policy considerations dictate otherwise on particular points.

Additionally, the Department of Education has addressed operational issues that have arisen during the course of the pilot, but some issues remain and should be given further consideration if the Program, or any version of interdistrict public school choice, is to continue. Those issues include the application procedure, eligibility rules, the limited availability of choice in counties where the designated choice district serves fewer than all grades, the appropriate recipient of “impact aid” where the sending district is engaged in a sending-receiving arrangement, and selection criteria established for the purpose of achieving racial or ethnic desegregation.

The Legislature should seek the input of NJDOE as well as the choice districts and sending districts on all the issues identified in this report. The Institute on Education Law and Policy also stands ready to provide additional information or analysis of these issues to the Department and the Legislature.

Appendix A: Choice Students, 2001-02 to 2005-06

County	District	District Type	DFG	Choice Students 2000-2001	Choice Students 2001-2002	Choice Students 2002-2003	Choice Students 2003-2004	Choice Students 2004-2005	Choice Students 2005-2006	Estimated Total Student Enrollment 2005-2006	Choice Students in District as % 2005-2006
Atlantic	Folsom	PreK-8	CD	17	42	72	119	131	151	361	41.83%
Bergen	Englewood Choice Program	K-12 9-12	DE	0	1	55	121	179	260	1013	25.67%
Burlington	Washington Twp.	K-8	A	5	7	8	11	6	6	102	5.88%
Camden	Brooklawn	PreK-8	B			36	59	67	89	298	29.87%
Cape May	Lower Township	K-6	B						55	1921	2.86%
Cumberland	Cumberland Reg.	9-12	B	9	33	48	86	104	139	1443	9.63%
Gloucester	South Harrison	K-6	FG			5	5	4	1	272	0.37%
Hudson	Hoboken	K-12	FG	3	23	33	57	45	33	2007	1.64%
Hunterdon	Bloomsbury	K-8	GH	13	30	21	28	26	28	156	17.95%
Monmouth	Upper Freehold Reg. Choice Program	K-12 9-12	GH	11	27	39	58	52	49	974.5	5.03%
Morris	Mine Hill	K-6	FG	16	51	43	57	47	54	378	14.29%
Ocean	Stafford Twp.	K-6	DE				0	1	5	2280	0.22%
Passaic	Passaic-Manchester Regional HS	9-12	B					8	14	763	1.83%
Salem	Salem City	K-12	A	0	0	2	9	13	11	1517.5	0.72%
Union	Kenilworth Brearley HS	K-12 7-12	DE	22	61	75	97	97	101	662.5	15.25%
Warren	Belvidere	PreK-12	DE		16	24	30	15	10	985	1.02%
TOTALS:				96	291	461	737	795	1006		

Appendix B: School Choice Aid, FY 2001 to FY 2007

<u>County</u>	<u>District</u>	<u>FY 2001</u>	<u>FY2002</u>	<u>FY2003</u>	<u>FY2004</u>	<u>FY2005</u>	<u>FY2006</u>	<u>FY 2007</u>
Atlantic	Folsom Boro	154,335	109,768	561,823	1,068,255	1,163,211	1,408,514	1,202,776
Bergen	Englewood City	0	0	7,913	1,131,559	1,661,730	2,294,770	2,373,900
Burlington	Washington Twp	37,795	48,025	83,090	99,708	66,472	74,781	49,854
Camden	Brooklawn Boro	0	0	157,871	515,158	581,630	880,754	731,192
Cape May	Lower Twp	0	0	0	0	0	465,304	357,287
Cumberland	Cumberland Regional	98,702	67,537	556,703	781,046	1,063,552	1,329,440	1,013,698
Gloucester	South Harrison Twp	0	0	23,739	39,565	71,217	71,217	7,913
Hudson	Hoboken City	162,839	0	257,579	506,849	531,776	531,776	300,694
Hunterdon	Bloomsbury Boro	106,571	97,084	221,564	197,825	229,477	269,042	221,564
Monmouth	Upper Freehold Regional	112,863	98,705	411,476	538,084	609,301	609,301	411,476
Morris	Mine Hill Twp	130,356	111,436	427,302	466,867	506,432	506,432	427,302
Ocean	Stafford Twp	0	0	0	66,472	166,180	166,180	23,739
Passaic	Passaic Co Manchester Reg	0	0	0	0	55,391	166,180	99,708
Salem	Salem City	0	0	0	33,236	99,708	232,652	99,708
Union	Kenilworth Boro	211,862	180,336	759,648	854,604	989,125	1,028,690	886,256
Warren	Belvidere Town	0	0	284,868	237,390	174,086	174,086	87,043
<i>Total Appropriation</i>		<i>1,015,323</i>	<i>712,891</i>	<i>3,753,576</i>	<i>6,536,618</i>	<i>7,969,288</i>	<i>10,209,119</i>	<i>8,294,110</i>

**Appendix C: Decreases in Core Curriculum
Standards Aid to Sending Districts,
2001 and 2002**

<u>County</u>	<u>District</u>	<u>2001</u>	<u>CCSA (\$)*</u>
Atlantic	Buena Regional		0
Atlantic	Egg Harbor City		7,559
Atlantic	Hamilton Twp		6,839
Atlantic	Hammonton Town		0
Atlantic	Mullica Twp		13,678
Burlington	Northern Burlington Reg		7,559
Camden	Winslow Twp		0
Cumberland	Bridgeton City		7,559
Cumberland	Commercial Twp		15,118
Cumberland	Downe Twp		15,118
Cumberland	Maurice River Twp		0
Hudson	Jersey City		22,677
Mercer	Washington Twp		0
Monmouth	Freehold Regional		7,559
Monmouth	Ocean Twp		15,118
Morris	Dover Town		0
Morris	Randolph Twp		0
Morris	Roxbury Twp		30,236
Morris	Wharton Boro		27,356
Ocean	Plumsted Twp		0
Union	Hillside Twp		37,795
Union	Roselle Boro		0
Union	Union Twp		15,118
Union	Winfield Twp		0

		<u>2002</u>	
Atlantic	Buena Regional		0
Atlantic	Egg Harbor City		0
Atlantic	Hamilton Twp		30,068
Atlantic	Hammonton Town		30,068
Atlantic	Mullica Twp		22,551
Atlantic	Pleasantville City		0
Burlington	Northern Burlington Reg		0
Camden	Winslow Twp		0
Cumberland	Bridgeton City		8,309
Cumberland	Commercial Twp		0
Cumberland	Downe Twp		0
Cumberland	Lawrence Twp		9,969
Cumberland	Maurice River Twp		0
Gloucester	Kingsway Regional		0
Gloucester	Delsea Reg. H.S Dist.		0
Gloucester	West Deptford Twp		0
Hudson	Jersey City		66,472
Hudson	North Bergen Twp		7,517

*Note: Amounts shown here reflect all adjustments to core curriculum standards aid, not only those related to interdistrict transfers.

<u>County</u>	<u>District</u>	<u>CCSA (\$)*</u>
Mercer	Washington Twp	0
Monmouth	Freehold Regional	8,309
Morris	Dover Town	0
Morris	Mount Arlington Boro	0
Morris	Mount Olive Twp	0
Morris	Randolph Twp	0
Morris	Roxbury Twp	0
Morris	Wharton Boro	0
Ocean	Plumsted Twp	22,551
Union	Elizabeth City	24,927
Union	Hillside Twp	0
Union	Linden City	0
Union	Plainfield City	0
Union	Rahway City	0
Union	Roselle Boro	0
Union	Roselle Park Boro	0
Union	Union Twp	0
Union	Winfield Twp	0
Warren	Blairstown Twp	0
Warren	Great Meadows Reg.	0
Warren	Greenwich Twp	7,517
Warren	Hope Twp	0
Warren	Lopatcong Twp	0
Warren	North Warren Regional	0
Warren	Oxford Twp	0
Warren	Phillipsburg Town	91,399

Appendix D: Racial Composition, Sending Districts, 2005-06

<u>District</u>	<u>Choice Students</u>		<u>Total Enrollment</u>		<u>Enrollment After Choice Student Transfers</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Bergenfield						
Caucasian	6	15	1105	28.5	1099	28.7
Asian	23	57.5	1144	29.6	1121	29.3
Blacks	1	2.5	319	8.2	318	8.3
Hispanics	7	17.5	1296	33.5	1289	33.7
Camden						
Caucasian	4	12.9	153	.009	149	.009
Asian	1	3.2	249	1.5	248	1.5
Blacks	15	48.3	8400	53	8385	53
Hispanics	11	35.4	7038	44	7027	44
Cliffside Park						
Caucasian	8	72.7	1341	50.5	1333	50.5
Asian	1	9	194	7.3	193	7.3
Blacks	0	0	72	2.7	72	2.7
Hispanics	2	18	1043	39.3	1041	39.4
Commercial						
Caucasian	21	77.7	541	79.2	520	79.2
Asian	1	3.7	1	0	0	0
Blacks	2	7.4	115	16.83	113	17.2
Hispanics	0	0	23	3.3	23	3.5
Dover						
Caucasian	7	30.4	408	13.8	401	13.7
Asian	0	0	62	2.1	62	2.1
Blacks	4	17.3	209.5	7.1	205	7.0
Hispanics	12	52.1	2267.5	76.9	2255.5	77.1
Downe						
Caucasian	21	70	195	89	174	92
Asian	0	0	1	0	1	0
Blacks	0	0	13	5.9	13	6.8
Hispanics	1	3.3	6	2.7	5	2.6
Elizabeth						
Caucasian	14	82.3	2060	9.7	2046	9.7
Asian	0	0	372	1.7	372	1.7
Blacks	0	0	5216	24.7	5216	24.7
Hispanics	3	17.6	13453	64	13450	63.7
Fort Lee						
Caucasian	4	33	133	3.8	129	3.7
Asian	8	66	1600	45	1592	45
Blacks	0	0	94.5	2.7	94.5	2.7
Hispanics	0	0	454.5	13	454.5	13

Garfield							
Caucasian	10	83.3	2366	52.3	2356	52.2	
Asian	1	8.3	98	2.2	97	2.1	
Blacks	0	0	293.5	6.4	293.5	6.5	
Hispanics	1	8.3	1754	38.8	1753	38.9	
Gloucester							
Caucasian	35	97.2	2008	91	1973	90.9	
Asian	0	0	31	1.4	31	1.4	
Blacks	0	0	70	3.1	70	3.2	
Hispanics	1	2.7	97	4.3	96	4.4	
Hackensack							
Caucasian	3	27.2	873	17.2	870	17.2	
Asian	0	0	311	6.1	311	6.1	
Blacks	5	45.5	1669	32.9	1664	32.9	
Hispanics	3	27.2	2189	43.2	2186	43.3	
Hillside							
Caucasian	12	46.1	385	11.4	373	11.1	
Asian	2	7.6	27	0	25	0	
Blacks	5	19.2	2273	67.3	2268	67.7	
Hispanics	7	26.9	687	20.3	680	20.3	
Jersey City			Insufficient Data				
Lawrence							
Caucasian	54	78.2	371	75.5	317	75.1	
Asian	3	4.3	1	0	????		
Blacks	7	10.1	52	10.5	45	10.6	
Hispanics	4	5.7	64	13	60	14.2	
Little Ferry							
Caucasian	2	10	363	38	361	38	
Asian	10	50	261	27.3	251	26.9	
Blacks	2	10	47	4.9	45	4.8	
Hispanics	6	30	282	29.5	276	29.5	
Maurice River							
Caucasian	10	90.9	385	94.8	375	94.9	
Asian	0	0	0	0	0	0	
Blacks	0	0	9	2.2	9	2.2	
Hispanics	0	0	10	2.4	10	2.4	
Middle Twp.							
Caucasian	15	71.4	2503.5	73.7	2488.5	73.7	
Asian	0	0	44	1.2	44	1.2	
Blacks	4	16.6	703	20.7	699	20.7	
Hispanics	1	4.7	144	4.2	143	4.2	

Palisades Park							
Caucasian	1	9	326	22.7	325	22.8	
Asian	7	63.6	620	43.1	613	43.0	
Blacks	1	9	42	2.9	41	2.8	
Hispanics	2	18	447	31	445	31	
Paterson							
Caucasian	0	0	1334	5.2	1334	5.2	
Asian	0	0	633	2.5	633	2.5	
Blacks	10	83	9140	36.1	9130	36.0	
Hispanics	2	16	14143	55.8	14141	55.9	
Phillipsburg							
Caucasian	18	75	2838	78.7	2820	78.7	
Asian	0	0	80	2.2	80	2.2	
Blacks	0	0	332	9.2	332	9.2	
Hispanics	6	25	353	9.79	347	9.69	
Ridgefield							
Caucasian	6	37.5	959	44.6	953	44.7	
Asian	10	62.5	680	31.6	670	31.45	
Blacks	0	0	63	2.9	63	1.7	
Hispanics	0	0	444	20.6	444	20.8	
Roselle							
Caucasian	4	11.1	81.5	2.8	77.5	2.7	
Asian	3	8.3	45	1.5	42	1.4	
Blacks	26	72	1965	68.3	1939	68.2	
Hispanics	2	5.5	782.5	27.2	780.5	27.4	
Washington Twp.							
Caucasian	33	94.2	1654	83.3	1621	83.1	
Asian	0	0	220	11	220	11	
Blacks	0	0	58	2.9	58	2.9	
Hispanics	2	17.5	48	2.4	46	2.3	
Wharton							
Caucasian	5	45.4	324	41.5	319	41.4	
Asian	1	9	49	6.2	48	6.4	
Blacks	2	18	45	5.7	43	5.5	
Hispanics	3	27	362	46.4	359	46.6	
Winslow							
Caucasian	91	91	2381	37.3	2290	36.4	
Asian	1	1	73	1.1	72	1.1	
Blacks	6	6	3381.5	53	3375.5	53.7	
Hispanics	2	2	487	7.6	485	7.7	
Woodbine							
Caucasian	3	14.2	39	18.0	36	18.4	
Asian	0	0	0	0	0	0	
Blacks	11	52.3	103	47.6	92	47.1	
Hispanics	6	28.5	74	34.2	68	34.8	

References

Cases

Booker v. Plainfield Bd. of Ed., 45 N.J. 161 (1965)

Comfort v. Lynn Sch. Comm., 418 F.3d 1, 6 (1st Cir. 2005)

Englewood Cliffs Bd. of Ed. v. Englewood Bd. of Ed., 257 N.J. Super. 413 (App. Div. 1992)

Englewood Cliffs Bd. of Ed. v. Englewood Bd. of Ed., 170 N.J. 323 (2002)

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

Grutter v. Bollinger, 539 U.S. 306, 325 (2003)

McFarland v. Jefferson Cty. Public Schs., 416 F.3d 513 (6th Cir. 2005), *cert. granted* ___ U.S. ___, 2006 WL 166104 (No. 05-915, June 5, 2006)

In re North Haledon Sch. Dist. And Passaic Manchester Reg. H.S. Dist., 181 N.J. 161 (2004)

Jenkins v. Morris Twp. Sch. Dist., 58 N.J. 483 (1971)

Parents Involved in Community Schs. v. Seattle Sch. Dist. No.1, 426 F.3d 1162 (9th Cir. 2005), *cert. granted* ___ U.S. ___, 2006 WL 160097 (No. 05-908, June 5, 2006)

Payne v. State of New York, Index No. 102009/06 (N.Y. Sup. Ct., New York Cty. 2006) (unpublished)

Williams v. State of Georgia, 277 Ga. App. 850, 627 S.E.2d 891 (Ga. App. 2006).

Zelman v. Simmons-Harris, 536 U.S. 639, 707 (2002)

Statutes and Regulations

14 Del. C. § 408. (Delaware)

14 Del. C. 409(a) (Delaware)

A.L.M. Ch. 76 § 12B (Massachusetts)

C.G.S.A. 10-266aa (Connecticut)

C.G.S.A. 10-226h (Connecticut)

111 U.S.C. 306 (District of Columbia)

O.R.C. § 3313.977 (Ohio)

I.C.A. § 282.18(7) (Iowa)

M.C.L.A. 388.1705c (16) (Michigan)

N.H. Rev. Stat. 194-B:11 (New Hampshire)

N.J.S.A. 18A:36A-1 *et seq.* (New Jersey)

N.J.S.A. 18A:36B-1 *et seq.* (New Jersey)

N.J.A.C. 6A:12-4.2 (New Jersey)

W.S.A. § 119.23 (2)(1)(2) (Wisconsin)

W.S.A. 118.51(4)(6) (Wisconsin)

Books, Reports and Articles

David Arsen, David N. Plank and Gary Sykes, "A Work in Progress," *Education Next*, Winter 2001, <http://www.educationnext.org/20014/7arsen.html>

Henry Braun, Frank Jenkins and Wendy Grigg, *Comparing Private Schools and Public Schools Using Hierarchical Linear Modeling* (U.S. Department of Education, National Center for Education Statistics, Institute of Education Sciences 2006), <http://nces.ed.gov/nationsreportcard/pdf/studies/2006461.pdf>

Cynthia G. Brown, *Choosing Better Schools: A Report on Student Transfers Under the No Child Left Behind Act* (Citizens' Commission on Civil Rights May 2004), <http://www.cccr.org/ChoosingBetterSchools.pdf>

Richard Lee Colvin, "Public School Choice: An Overview," in Frederick M. Hess and Chester E.

Finn, Jr. (eds.), *Leaving No Child Behind* (Palgrave Macmillian 2004)

Connecticut Department of Education, *Public School Choice in Connecticut: A Guide for Students and their Families 2006-2007*, <http://www.state.ct.us/sde/equity/choice/schoolchoice2006.pdf>

Education Commission of the States, *Open Enrollment: 50-State Report*, <http://mb2.ecs.org/reports/Report.aspx?id=268>

William H. Freivogel, "St. Louis: Desegregation and School Choice in the Land of Dred Scott," in *Divided We Fail: Coming Together through Public School Choice* (The Century Foundation 2002)

IELP analysis of 2004-05 School Report Cards, <http://education.state.nj.us/rc/rc05/menu/H/A.html>

Richard D. Kahlenberg, *Helping Children Move from Bad Schools to Good Ones* (The Century Foundation 2006), <http://tcf.org/>

Letter from Secretary Margaret Spellings to Chief State School Officers dated May 15, 2006, <http://www.ed.gov/policy/elsec/guid/secletter/060515.html>

Brenda Liss, Ruth Moscovitch, Alan Sadovnik and Paul Tractenberg, *Don't Forget the Schools* (Rutgers-Newark Institute on Education Law and Policy 2006), <http://ielp.rutgers.edu>

Kathryn McDermott, Susan Bowles, and Andrew Churchill, *Mapping School Choice in Massachusetts, Data and Findings* (Center for Education Research and Policy at MassINC 2003), http://www.renniecenter.org/research_docs/0305_SchoolChoice_report.pdf

New Jersey Department of Education (NJDOE), *Interdistrict Public School Choice Program, Annual Report 2003-2004 School Year*, <http://www.nj.gov/njded/choice/annrept/04/>

New Jersey Department of Education Policy Statement, *Public School Choice and Supplemental Educational Services Under No Child Left Behind*, <http://www.nj.gov/njded/title1/program/ss/policy.shtml>

New Jersey Department of Education, Consolidated State Performance Report for 2004-05, <http://www.nj.gov/njded/grants/nclb/app/per06/performance.pdf>

New Jersey Department of Education, Division of Educational Programs and Assessment, *Englewood Report*, November 2005

New Jersey Department of Education, *New Jersey 2004-05 No Child Left Behind Act AYP Report*, <http://www.state.nj.us/njded/news/2005/0810/aypreport.htm>

Paul E. Peterson and Elena Llaudet, "On the Public-Private School Achievement Debate," Paper Prepared for the Annual Meetings of the American Political Science Association August 2006, <http://www.ksg.harvard.edu/pepg/PDF/Papers/PEPG06-02-PetersonLlaudet.pdf>

David N. Plank and Christopher Dunbar, Jr., "Michigan: False Start," in Frederick M. Hess and Chester E. Finn, Jr. (eds.), *Leaving No Child Behind* (Palgrave Macmillian 2004)

Paul Tractenberg, Alan Sadovnik and Brenda Liss, *Tough Choices: Setting the Stage for Informed, Objective Deliberation on School Choice* (Rutgers-Newark Institute on Education Law and Policy 2004), <http://ielp.rutgers.edu>

United States Government Accountability Office, Report to the Secretary of Education, *No Child Left Behind Act: Education Needs to Provide Additional Technical Assistance and Conduct Implementation Studies for School Choice Provision*, December 2004, <http://www.gao.gov/new.items/d057.pdf>

Notes

¹ For more information on school choice and other work of the Rutgers-Newark Institute on Education Law and Policy, go to <http://ielp.rutgers.edu>.

² Regulations issued by the Department of Education include a somewhat different nondiscrimination provision: "No applicant to become a choice student shall be discriminated against on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a student with disabilities, proficiency in the English language, or any other basis prohibited by State or Federal law." N.J.A.C. 6A:12-4.2(b).

³ No gender was reported for one student (therefore, figures provided do not total 1006). Source of data for special education enrollment: NJDOE Office of Special Education Services, *2005 Statewide Classification Rate, Ages 3-21* (as of December 1, 2005),

<http://www.state.nj.us/njded/specialed/data/2005.htm>.

⁴ Choice students are included in the proficiency assessment scores of their districts of residence in their first year of participation in the Program and in the choice districts' scores in each year thereafter.

⁵ *New Jersey Department of Education (NJDOE), Interdistrict Public School Choice Program, Annual Report 2003-2004 School Year*,

<http://www.nj.gov/njded/choice/annrept/04/>.

⁶ See footnote 4 above.

⁷ These figures are consistent with appropriations acts, except for 2005-06, in which the act shows a smaller amount, \$9,969,000, appropriated for school choice aid. See L. 2005, c. 132, §34-5068.

Appropriations for 2000-01 and 2001-02 cannot be confirmed, as appropriations acts for those years list school choice aid and charter schools together.

⁸ See *In re North Haledon Sch. Dist. and Passaic Manchester Reg. H.S. Dist.*, 181 N.J. 161, 183-84 (2004), citing *Grutter v. Bollinger*, 539 U.S. 306, 330-31 (2003) in which the United States Supreme Court found the benefits of diversity to be "substantial" in that they "promote[] cross-cultural understanding," help[] break down racial stereotypes, and enable[] students to better understand persons of different races." The Court in *North Haledon* also addressed the issue of whether a certain increase or decrease in the majority population was great enough to be considered significant, finding there that a nine percent decrease in the white student population was indeed significant. See also *Englewood Cliffs Bd. of Ed. v. Englewood Bd. of Ed.*, 257 N.J. Super. 413, 463-64 (App. Div. 1992), in which the court upheld a finding by the State Board of Education that a 6.5 percent decrease in the white student population, combined with other factors, caused a substantial impact. Whether, by the standard applied in *North*

Haledon or *Englewood*, the one percent increase in Salem's white student population caused by choice student enrollment would be considered significant is less clear. A one percent change is obviously smaller than a nine percent or 6.5 percent change.

⁹ All information in this section has been obtained from the Department of Education and publicly available sources. The Englewood Board of Education provided no information for this report. Englewood did not respond to the survey distributed to choice districts.

¹⁰ See *Englewood Cliffs Bd. of Ed. v. Englewood Bd. of Ed.*, 170 N.J. 323, 339 (2002).

¹¹ *Englewood Cliffs Bd. of Ed. v. Englewood Bd. of Ed.*, State Board of Education Docket No 16-03 and 19-05, June 1, 2005, slip op. at 15.

¹² New Jersey Department of Education, Division of Educational Programs and Assessment, Office of Vocational-Technical, Career and Innovative Programs, *Englewood Report* (November 2005), at 1.

¹³ *Id.* at 5-6.

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 13. The racial composition of Dwight Morrow High School changed only slightly from 2004-05 to 2005-06: Black student enrollment decreased by 1.31 percent. Hispanic student enrollment decreased by 0.89 percent. Asian student enrollment decreased by 1.42 percent. White student enrollment remained the same.

¹⁶ *Id.* at 9-10. For discussion of whether such policy and programs would be consistent with the Act or other applicable law, see the discussion of selection criteria in the section entitled "Issues Arising During Pilot Implementation" below.

¹⁷ There may be a somewhat greater impact on racial balance in districts participating in sending-receiving arrangements, which would have choice students enrolled in their schools but for those students' participation in the Program. Data that would allow an analysis of such potential impact is unavailable.

¹⁸ See, e.g., Cleveland Scholarship and Tutoring Program Act, O.R.C. § 3313.977 (Ohio); Choice Incentive Act, 111 U.S.C. 306 (District of Columbia); but see W.S.A. § 119.23 (2)(1)(2) (Wisconsin, including nonpublic school students among those eligible to receive vouchers).

¹⁹ *Grutter v. Bollinger*, 539 U.S. 306, 325 (2003).

²⁰ *Parents Involved in Community Schs. v. Seattle Sch. Dist. No.1*, 426 F.3d 1162 (9th Cir. 2005); *Comfort v. Lynn Sch. Comm.*, 418 F.3d 1, 6 (1st Cir. 2005); *McFarland v. Jefferson Cty. Public Schs.*, 416 F.3d 513 (6th Cir. 2005).

²¹ *Parents Involved in Community Schs. v. Seattle Sch. Dist. No.1*, cert. granted ___ U.S. ___, 2006 WL 160097 (No. 05-908, June 5, 2006); *McFarland v. Jefferson Cty. Public Schs.*, cert. granted ___ U.S. ___, 2006 WL 166104 (No. 05-915, June 5, 2006).

²² *In re North Haledon Sch. Dist. and Passaic Manchester Reg. H.S. Dist.*, 181 N.J. at 177, citing *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316, 324 (2000); *Booker v. Plainfield Bd. of Ed.*, 45 N.J. 161, 173-75 (1965).

²³ *Englewood Cliffs Bd. of Ed. v. Englewood Bd. of Ed.*, 170 N.J. 323, 340-41 (2002), citing *Jenkins v. Morris Twp. Sch. Dist.*, 58 N.J. 483 (1971); *Booker v. Plainfield Bd. of Ed.*, 45 N.J. 161 (1965)

²⁴ Kathryn McDermott, Susan Bowles, and Andrew Churchill, *Mapping School Choice in Massachusetts, Data and Findings* (Center for Education Research and Policy at Mass INC 2003), http://www.renniecenter.org/research_docs/0305_SchoolChoice_report.pdf, at 11.

²⁵ *Zelman v. Simmons-Harris*, 536 U.S. 639, 707 (2002) (Souter, J. dissenting).

²⁶ Research on interdistrict choice shows that minority students participate at significantly lower rates than white students in other states' programs as well. See Richard Lee Colvin, "Public School Choice: An Overview," in Frederick M. Hess and Chester E. Finn, Jr. (eds.), *Leaving No Child Behind* (Palgrave Macmillian 2004).

²⁷ See Paul Tractenberg, Alan Sadovnik and Brenda Liss, *Tough Choices: Setting the Stage for Informed, Objective Deliberation on School Choice* (Institute on Education Law and Policy 2004),

<http://ielp.rutgers.edu>, at 2, citing data from the National Center for Education Statistics indicating that the percentage of students who are permitted to enroll in school districts other than their own at no cost is 42.4 percent nationwide, but only 4.6 percent in New Jersey.

²⁸ Colvin, "Public School Choice: An Overview," at 31.

²⁹ See Education Commission of the States, *Open Enrollment: 50-State Report*, <http://mb2.ecs.org/reports/Report.aspx?id=268>.

³⁰ C.G.S.A. 10-226h; C.G.S.A. 10-266aa; see Connecticut Department of Education, *Public School Choice in Connecticut: A Guide for Students and their Families 2006-2007*, <http://www.state.ct.us/sde/equity/choice/schoolchoice2006.pdf>.

³¹ Richard D. Kahlenberg, *Helping Children Move from Bad Schools to Good Ones* (The Century Foundation 2006), <http://tcf.org/>, at 7, 10; William H. Freivogel, "St. Louis: Desegregation and School Choice in the Land of Dred Scott," in *Divided We Fail: Coming Together through Public School Choice* (The Century Foundation 2002).

³² Kahlenberg, *Helping Children Move from Bad Schools to Good Ones*, at 10; see also David N. Plank and Christopher Dunbar, Jr., "Michigan: False Start," in Frederick M. Hess and Chester E. Finn, Jr. (eds.), *Leaving No Child Behind*.

³³ David Arsen, David N. Plank and Gary Sykes, "A Work in Progress," *Education Next*, Winter 2001, <http://www.educationnext.org/20014/7arsen.html>.

³⁴ See cases cited at footnote 26 above and accompanying text.

³⁵ Kahlenberg, *Helping Children Move from Bad Schools to Good Ones*, at 11.

³⁶ See United States Government Accountability Office, Report to the Secretary of Education, *No Child Left Behind Act: Education Needs to Provide Additional Technical Assistance and Conduct Implementation Studies for School Choice Provision* (December 2004),

<http://www.gao.gov/new.items/d057.pdf>, at 5; Cynthia G. Brown, *Choosing Better Schools: A Report on Student Transfers Under the No Child Left Behind Act* (Citizens' Commission on Civil Rights May 2004), <http://www.cccr.org/ChoosingBetterSchools.pdf>.

³⁷ Letter from Secretary Margaret Spellings to Chief State School Officers dated May 15, 2006, <http://www.ed.gov/policy/elsec/guid/secletter/060515.html>.

³⁸ New Jersey Department of Education, *Consolidated State Performance Report for 2004-05*, <http://www.nj.gov/njded/grants/nclb/app/per06/performance.pdf>.

³⁹ New Jersey Department of Education Policy Statement, *Public School Choice and Supplemental Educational Services Under No Child Left Behind*, <http://www.nj.gov/njded/title1/program/ss/policy.sh tml>.

⁴⁰ <http://www.nj.gov/njded/parents/title1.htm>.

⁴¹ New Jersey Department of Education, *New Jersey 2004-05 No Child Left Behind Act AYP Report*, <http://www.state.nj.us/njded/news/2005/0810aypreport.htm>. The figure of 544 schools is stated in the press release accompanying the report; the figure of 145 high schools is based on our count of schools on the list included in the report.

⁴² IELP analysis of NJDOE data in 2005 NCLB Report, <http://education.state.nj.us/rc.nclb05/index.htm>.

⁴³ A copy of the complaint is posted on the web site of Excellent Education for Everyone, <http://www.nje3.org/complaint.pdf>.

⁴⁴ *Payne v. State of New York*, Docket No. ___ (N.Y. Supreme Ct. 2006, unpublished); *Williams v. State of Georgia*, 277 Ga. App. 850, 627 S.E.2d 891 (Ga. App. 2006).

⁴⁵ Compare Henry Braun, Frank Jenkins and Wendy Grigg, *Comparing Private Schools and Public Schools Using Hierarchical Linear Modeling* (U.S. Department of Education, National Center for Education Statistics, Institute of Education Sciences 2006),

<http://nces.ed.gov/nationsreportcard/pdf/studies/2006461.pdf> (finding little or no significant difference between achievement levels attained in public and private schools), with Paul E. Peterson and Elena Llaudet, *On the Public-Private School Achievement Debate*, Paper Prepared for the Annual Meetings of the American Political Science Association August 2006, http://www.ksg.harvard.edu/pepg/PDF/Papers/PEP_G06-02-PetersonLlaudet.pdf (criticizing research methods used in the NCES study).

⁴⁶ For further information on other school choice programs, go to

<http://ielp.rutgers.edu/resources/schoolchoice>.

⁴⁷ See Brenda Liss, Ruth Moscovitch, Alan Sadovnik and Paul Tractenberg, *Don't Forget the Schools* (Institute on Education Law and Policy 2006), <http://ielp.rutgers.edu>, a three-part series of reports on school finance issues to be considered in the context of state tax reform.

⁴⁸ I.C.A. § 282.18(7) (Iowa); N.H.Rev.Stat. 194-B:11 (New Hampshire).

⁴⁹ 14 Del. C. § 408.

⁵⁰ M.C.L.A. 388.1705c(16).

⁵¹ 14 Del. C. 409(a).

⁵² W.S.A. 118.51(4)(6).

⁵³ A.L.M. Ch. 76 § 12B.

⁵⁴ V.C.T.A., Education Code § 29.203(f).

⁵⁵ C.G.S.A. 10-266aa.

New Jersey's Interdistrict Public School Choice Program

Program Evaluation and Policy Analysis

In this report the Institute on Education Law and Policy offers its evaluation of the pilot program authorized by the Interdistrict Public School Choice Program Act, including:

- the program's size, scope and funding
- its fiscal, educational and racial/ethnic impact
- issues arising during pilot implementation.

The Institute also offers its analysis of school choice policy issues, including:

- Does interdistrict public school choice serve a beneficial purpose?
- Would the program serve these purposes better if it were expanded or modified?
- Federal law and policy on public school choice
- Asserted constitutional rights to school choice, and
- Funding for interdistrict public school choice.

It concludes:

- The Interdistrict Public School Choice Program has had positive results.
- The program has served some, but not all, of the purposes identified at its outset.
- The impact of interdistrict choice has been limited by the program's small size.
- If interdistrict choice is to rely on voluntary district participation, the state should offer effective incentives for districts to volunteer.
- Targeting choice could allow it to provide greater choice opportunities to underserved groups.
- If interdistrict choice is to continue, its funding mechanism should be reviewed.
- Consistency among all the state's choice programs would provide for a more rational state policy.