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The Path Less Traveled: Afrocentric Schools and Their Potential for Improving Black Student Achievement while Upholding Brown

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THE PATH LESS TRAVELED: AFROCENTRIC SCHOOLS AND THEIR POTENTIAL FOR IMPROVING BLACK STUDENT ACHIEVEMENT WHILE UPHOLDING *BROWN*

*Chaz Rotenberg**

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INTRODUCTION

At Ember Charter School, an Afrocentric lower middle school nestled into Brooklyn’s Bedford-Stuyvesant neighborhood, students develop mental resilience through an African-centered curriculum.¹ Children of any race may apply to Ember,² but currently, of its 523 students, 516 are Black³ or Latinx.⁴ Ember prides itself on Black leadership and embraces an educational model centered around the experiences of its students, many of whom are at-risk or underserved.⁵ The curriculum emphasizes that the world existed before 1492 and Christopher Columbus’s conquest and colonization of the Americas, focusing on African culture and history.⁶ Students frequently attend school trips so that they can connect to their heritage.⁷ Parents choose Ember because teachers and students physically and culturally resemble their children.⁸ They say that

1. See Larisa Karr, *Re-Emerging Demand Seen for City’s Afrocentric Schools*, CITY LIMITS (Feb. 18, 2020), <https://citylimits.org/2020/02/18/re-emerging-seen-for-citys-afrocentric-schools/> [https://perma.cc/626E-EXDV].

2. See Eliza Shapiro, *‘I Love My Skin!’: Why Black Parents Are Turning to Afrocentric Schools*, N.Y. TIMES (Jan. 8, 2019), <https://www.nytimes.com/2019/01/08/nyregion/afrocentric-schools-segregation-brooklyn.html> [https://perma.cc/LF6N-PMAU].

3. This Note purposefully capitalizes “Black” and “White” when referring to individuals or groups of people. However, it uses lowercase when referencing institutions or concepts, such as “white schools” or “white privilege.”

4. *Ember Charter School Enrollment (2018–19)*, N.Y. STATE DEP’T EDUC., <https://data.nysed.gov/enrollment.php?year=2019&instid=800000067236> [https://perma.cc/3BKN-BQFE] (last visited May 31, 2020).

5. *Id.*

6. See Karr, *supra* note 1.

7. See *id.* After returning from a recent six-week trip to South Africa, one 14-year-old Ember student reflected, “It was an opportunity for me to learn more about my history, learn more about the struggles and actually see it for myself.” *Id.*

8. Ember Charter School receives 500 applications each year for about 90 available seats. See *id.*

Ember embodies “self-determination” in the neighborhood, unlike many of the local public schools.⁹

Plenty of Black parents are deeply dissatisfied with New York City’s public schools.¹⁰ Public schools in Brooklyn are hemorrhaging students at an alarming rate, along with the per-pupil funding.¹¹ A 20-minute walk from Ember, P.S. 25 Eubie Blake School has only 82 students enrolled, despite its four-story building that has a capacity for about 1000 students.¹² At P.S. 5 Dr. Ronald McNair (a 10-minute walk from Ember), they cannot afford to staff its brand-new music program and science lab with full-time teachers.¹³ Some parents also complain about a lack of discipline and structure in public schools.¹⁴ One mother kept her son out of public schools in part because of her experience as a Brooklyn public school student: “Kids used to run amuck . . . [Y]ou had your teachers who cared. And then you had a lot of teachers who really didn’t care.”¹⁵ Black parents’ growing frustration with public education has led them to yearn for alternative solutions.¹⁶

There are many reasons why New York public schools have diminished.¹⁷ Some parents blame the quality of public schools directly.¹⁸ Others attribute the poor performance to the lack of available public resources, which competitive and in some cases “predatory” charter schools tend to monopolize.¹⁹ Finally, many parents argue that the rapid gentrification of their historically-Black neighborhoods — specifically, the influx of middle- to upper-class White parents — causes funding and student enrollment to decrease in certain “failing” public schools and increase in other “selective”

9. See *Episode 6: Mo’ Charters Mo’ Problems*, SCH. COLORS (Nov. 8, 2019) [hereinafter SCHOOL COLORS, *Episode 6*], <https://www.schoolcolorspodcast.com/episodes/episode-6-mo-charters-mo-problems> [https://perma.cc/XRK2-TBQY].

10. See *id.*

11. See *Episode 1: Old School*, SCH. COLORS (Sept. 20, 2019) [hereinafter SCHOOL COLORS, *Episode 1*], <https://www.schoolcolorspodcast.com/episodes/episode-1-old-school> [https://perma.cc/U8RB-PSN3].

12. *Id.*

13. SCHOOL COLORS, *Episode 6*, *supra* note 9.

14. See *id.*

15. *Id.*

16. See *id.*

17. See SCHOOL COLORS, *Episode 1*, *supra* note 11.

18. See *id.*

19. SCHOOL COLORS, *Episode 6*, *supra* note 9.

public schools.²⁰ The answer likely lies in some complex combination of all of the above. Nevertheless, Ember and other Afrocentric schools across the city insist that they do not adopt exploitative charter practices. Furthermore, the Afrocentric model avoids the for-profit and punitive disciplinary policies that define many of New York's other popular charters.²¹ In fact, during a two-year moratorium of new charter approvals in Bed-Stuy's School District 16, Ember made strides to develop relationships with the struggling community public schools.²² Despite Ember's growing popularity among Black parents and students and its rooted connection to the Bed-Stuy community, the school still faces considerable institutional adversity.²³

In June 2019, the New York State Department of Education Board of Regents rejected Ember's plan to expand its program to high school because of its "culturally responsive mission."²⁴ The Board of Regents approved every other charter renewal and expansion in New York City, and the city even preliminarily authorized Embers' charter in May 2019.²⁵ Additionally, the Board of Regents rejected Ember's charter without consulting the school's parents or students.²⁶ The Board of Regents cites to Ember's low math test scores (compared to

20. See *Episode 7: New Kids on the Block*, SCH. COLORS (Nov. 22, 2019), <https://www.schoolcolorspodcast.com/episodes/episode-7-new-kids-on-the-block> [https://perma.cc/5PWN-4HSJ].

21. See SCHOOL COLORS, *Episode 6*, supra note 9. Ember's founder Rafiq Kalam Id-Din II agrees discipline in schools is important, but in contrast to many white-led charters, Ember focuses on "discipline of the mind . . . not of the body." *Id.*

22. *Id.*

23. See Ethan Geringer-Sameth, *Approved by City, 'Culturally Responsive' Charter School Alleges State Bias against Plan to Expand*, GOTHAM GAZETTE (May 31, 2019), <https://www.gothamgazette.com/city/8557-culturally-responsive-charter-school-alleges-state-bias-against-attempt-to-expand> [https://perma.cc/3N7K-QNNR].

24. *Id.*; see also *Report of Regents P-12 Education Committee to the Board of Regents*, N.Y. ST. EDUC. DEP'T (June 3, 2019), <https://www.regents.nysed.gov/report/jun-2019/p-12-education> [https://perma.cc/VYH6-LXMM] (passing a motion "to return the proposed charter for Ember Charter School . . . to the New York City Board of Education for reconsideration with comments and recommendations.").

25. *Actions Taken by the Board of Regents — 2019*, N.Y. ST. EDUC. DEP'T, <http://www.p12.nysed.gov/psc/notices/BOR/2019/regents2019.html> [https://perma.cc/6E9Z-UNNJ] (last visited June 2, 2020).

26. See Madina Touré, *Regents Reject Application to Expand Black-Led Charter School*, POLITICO (June 4, 2019), <https://www.politico.com/states/new-york/newsletters/politico-new-york-education/2019/06/04/regents-reject-application-to-expand-black-led-charter-school-245534> [https://perma.cc/5PWN-4HSJ].

the state average) as justification for the denial.²⁷ However, Ember's founder, Rafiq Kalam Id-Din II, argues a more just comparison would consider the demographics of Ember's students and the surrounding school district.²⁸ In 2018–2019 school year, Ember outperformed the city and state average for the New York State English Language Arts Test (ELA), as well as the state's White student average.²⁹ Although Ember trailed the city and state average on the math test, they surpassed the average for Black and Latinx students statewide.³⁰ Id-Din II believes the Board of Regents treated Ember unequally because the Department of Education has historically favored traditional, large charter networks, often run by White executives who receive much less scrutiny.³¹ While Ember's expansion appears dubious, graduating 8th graders must now find other high school options and will likely have to enroll in local public schools because they forfeited their other acceptances.³²

Part I of this Note reviews the historical and legal background of Afrocentric schools in the United States, specifically addressing how the Black community established immersion schools in response to *Brown v. Board of Education's* inability to integrate public schools. It also focuses on the recent reemergence of Afrocentric schools, like Ember, in New York City and discusses how the city's segregated and underperforming public schools have led many Black parents to turn to immersion schools. Part II lists the policy and legal arguments made for and against Afrocentric schools, including whether they uphold *Brown*. As the two sides of the debate develop, there

27. See Geringer-Sameth, *supra* note 23.

28. See *id.* (“Kalam Id-Din II also argues Ember’s state test scores should be evaluated with respect to the school district it serves, rather than the state as a whole, and in comparison to similar black and Latino student populations. ‘In both of these measures, Ember’s overall math state test performance meets or exceeds these indicators,’ he wrote in the email, an assertion that is supported by test score data he provided, as well as information available on SED’s website.”).

29. For context, 55% of Ember students passed the ELA State Test, while statewide, 51% of White students, 36% of Latinx students, and 35% of Black students passed. *2019 Academic Data Summary for Ember Charter School*, EMBER CHARTER SCHS. (2019), https://drive.google.com/file/d/0Byvlf0ruOOQa_d0VsWDBiVjRBNTU4WFnQTHVMbzZkTk9RX3kw/view [<https://perma.cc/52JM-AX2N>]; see also Karr, *supra* note 1.

30. 30% of Ember students passed the math test, compared to compared to 32% of Black students, 35% of Latinx students, and 56% of White students. *2019 Academic Data Summary for Ember Charter School*, *supra* note 29; see also Karr, *supra* note 1.

31. Geringer-Sameth, *supra* note 23.

32. See SCHOOL COLORS, *Episode 6*, *supra* note 9 (Ember Founder Id-Din II discussing the dilemma his first graduating class of 8th graders currently face).

continues to be limited research on Black-immersion schools, even more than 20 years after their enrollment last peaked in the late 1990s.³³

Part III promotes the comprehensive support to develop Afrocentric schools but acknowledges that New York state and local governments should research the Afrocentric schools' current and potential capacity to improve Black student achievement and development. The New York City Department of Education (NYCDOE) should focus on the feedback from parents and their children who attend the schools. Afrocentric schools can be life-changing for Black students who would otherwise navigate a public education system that too often devalues their identities. As such, the Board of Regents should adopt more accommodating accreditation standards for Afrocentric schools, while simultaneously tightening standards of white-led, discipline-heavy for-profit charters.

The purpose of the Afrocentric school debate is not to push the bounds of what is or is not constitutional (although the legal considerations are undoubtedly relevant). Instead, it should address the recurring ills of the American public school system, which, 60 years after *Brown*, continues to fail Black students across the country.

I. A HISTORY OF THE AFROCENTRIC SCHOOL MOVEMENT

Black activists and educators founded Afrocentric schools as a response to the segregated and Eurocentric American public schools they encountered. These Black-immersion schools were similar to other ethnic and religious immersion schools, and they all share a common characteristic: they developed in response to public schools that did not address the needs of particular students. This development took place against the history of educational inequality in the United States. Today, Afrocentric schools are prominent in New York City due to a substantial achievement gap and segregated schools.

A. The Rise, Fall, and Reemergence of Afrocentric Schools Nationwide

Afrocentric schools originated in the Black Power and Pan-African movements of the 1960s and 1970s to connect Black children with their history and identity while defying the traditional public schools

33. See MARK YUDOF ET AL., *EDUCATION POLICY AND THE LAW* 497 (5th ed. 2012).

that embedded racism and white supremacy through Eurocentric pedagogy.³⁴ In 1968, Baba El Sezengakulu Zulu, a Student Non-Violent Coordinating Committee (SNCC) organizer and Howard University Law School graduate, founded the first African-centered school in the United States, called the Ujamaa Shule in Washington, D.C.³⁵ The Ujamaa School aimed to develop a healthy self-image, a sense of values, and academic excellence for African-American children.³⁶ Six years later, four Howard University student activists founded NationHouse, Washington D.C.'s second African-centered school. Like Ujamaa, NationHouse sought to protect and pass down African heritage to its students and the broader community.³⁷

Afrocentric school enrollment has increased, decreased, and increased again over the last 30 years. The schools spiked in popularity in the 1990s, increasing from 20 schools in 1993 to about 400 schools in 1999.³⁸ After their peak in 1999, they gradually declined due to political pressure and poor school leadership.³⁹ However, since the gradual decline in the 2000s and early 2010s, Afrocentric schools have reemerged in major metropolitan areas.⁴⁰ Analyzing this reemergence requires understanding the theories and historical trends that underpin Afrocentric schools.

African-centered schools, commonly referred to as “Afrocentric schools” or “Black-immersion schools,” draw on a specific academic

34. See Karr, *supra* note 1.

35. See Rachel M. Cohen, *The Afrocentric Education Crisis*, AM. PROSPECT: EDUC. IN AM. (Sept. 2, 2016), <https://prospect.org/education/afrocentric-education-crisis/> [<https://perma.cc/2L37-T34W>]; Marya McQuirter, *4 May 1968 & Ujamaa Shule Opens*, DC1968 PROJECT BLOG, <https://www.dc1968project.com/blog/2018/5/4/er85p7zvji8mk0c8ldal2mq26mu8zp> [<https://perma.cc/6QLF-MME5>].

36. *Celebrating 47 Years of Academic Success!*, UJAMAA SCH. (Dec. 17, 2015), <http://ujamaaschool.tripod.com> [<https://perma.cc/A27R-ZMUX>].

37. See Cohen, *supra* note 35; *Who We Are*, NATIONHOUSE, <http://www.nationhouse.org/about/> [<https://perma.cc/F83Y-CN5B>] (last visited June 4, 2020).

38. See Martell Teasley et al., *School Choice and Afrocentric Charter Schools: A Review and Critique of Evaluation Outcomes*, 20 J. AFR. AM. ST. 99, 103 (2016).

39. See Cohen, *supra* note 35 (discussing how school administrators mismanaged funds and capitulated to resistance from non-Black communities).

40. See *id.*; Shapiro, *supra* note 2; Raven Moses, *Charter Schools and the Black Independent School Movement*, BLACK PERSP. (Oct. 23, 2017), <https://www.aaihs.org/charter-schools-and-the-black-independent-school-movement/> [<https://perma.cc/EQA4-XJUJ>]. A recent study found that with the expansion of charter schools, many Black parents are choosing to send their children to Afrocentric charter schools. See Teasley et al., *supra* note 38, at 100.

paradigm to develop targeted curricula for Black students. The foundation derives from “Afrocentricity” or “Afrocentrism,” a frame of reference where society views the world from the perspective of the African person.⁴¹ In the context of schools, Afrocentrism centers a student’s learning around the study of history, culture, arts, and music through the African lens.⁴² The curricula include literature classes that focus on Black authors and African language classes in Swahili,⁴³ and emphasize the contributions of African Americans throughout history, even in mathematics and science classes.⁴⁴ Ultimately, Afrocentric schools treat Black students as “the subject rather than the object of the discussion.”⁴⁵

Afrocentrism does more than just present subjects that relate to Black children. Afrocentric scholars contend that the schools actively reject “the ‘Eurocentric’ hegemony of American public education.”⁴⁶ In other words, Afrocentric curricula challenge traditional public schools that place White students at the center of learning. Temple University Professor Molefi Kete Asante⁴⁷ argues there is a significant distinction between Eurocentrism and Afrocentrism.⁴⁸ Traditional public schools disseminate Eurocentrism through the lens of white supremacy to protect white privilege.⁴⁹ In contrast, Afrocentrism disregards ethnocentric values because it does not

41. See Molefi Kete Asante, *The Afrocentric Idea in Education*, 60 J. NEGRO EDUC. 170, 171 (1991).

42. See *id.*; Kevin Brown, *Do African-Americans Need Immersion Schools? The Paradoxes Created by Legal Conceptualization of Race and Public Education*, 78 IOWA L. REV. 813, 853–54 (1993).

43. See YUDOF ET AL., *supra* note 33, at 497.

44. *Id.*

45. Brown, *supra* note 42, at 853.

46. Cohen, *supra* note 35; see, e.g., Walter Gill, *Jewish Day Schools and Afrocentric Programs as Models for Educating African American Youth*, 60 J. NEGRO EDUC. 566, 571 (1991); Dorothy Gilliam, *Afrocentric Education Would Benefit All*, WASH. POST (Nov. 19, 1990), <https://www.washingtonpost.com/archive/local/1990/11/19/afrocentric-education-would-benefit-all/c71a0d68-5c81-4790-bf40-55aba9944ee5/> [https://perma.cc/7VZ2-99R3]. For a general discussion of Afrocentricity, see MOLEFI KETE ASANTE, *AFROCENTRICITY: THE THEORY OF SOCIAL CHANGE* (1980) [hereinafter ASANTE, *THEORY OF SOCIAL CHANGE*]; MOLEFI KETE ASANTE, *THE AFROCENTRIC IDEA* (1987).

47. Professor Asante is the prominent scholar credited for coining the term “Afrocentricity.” ASANTE, *THEORY OF SOCIAL CHANGE*, *supra* note 46.

48. See Asante, *supra* note 41, at 171–72 (1991).

49. *Id.* at 171–72.

glorify African history.⁵⁰ Instead, Afrocentrism seeks to analyze the African-American experience.⁵¹

i. Other “Centric” Schools

Afrocentric schools are not the only type of immersion school. In 2010, of the 4600 charter schools in the United States, 113 had specific cultural or linguistic themes.⁵² These included schools for Native Americans,⁵³ Latinos, Hawaiian Americans,⁵⁴ Hebrew language and culture schools,⁵⁵ and Arabic language and Muslim culture schools.⁵⁶ Although each set of immersion schools serves different populations, they share the common goal of upholding the tradition, culture, and language of their students.⁵⁷ In Hawai‘i, the immersion school movement managed to revive the Hawaiian language among its native students. Similarly, in 2015, Houston parents fought to open Texas’ first Arabic-immersion school, which provides its students with a safe, educational environment to learn Arabic language and Muslim culture.⁵⁸ Although these immersion schools bear many similarities,

50. See Brown, *supra* note 42, at 853.

51. See *id.* at 853 n.165 (explaining that anyone, regardless of race or ethnicity, can produce Afrocentric materials; however, African Americans are more equipped to do so because they have lived experience of being Black); see also Teasley et al., *supra* note 38 (presenting general characteristics and examples of Afrocentric schools and curricula in the United States in Table 1).

52. See YUDOF ET AL., *supra* note 33, at 497.

53. *Native Language Immersion Initiative*, FIRST NATIONS DEV. INST., <https://www.firstnations.org/projects/native-language-immersion-initiative/> [<https://perma.cc/LB4S-2LYC>] (last visited Mar. 19, 2020).

54. See, e.g., Anthony DePalma, *The Culture Question*, N.Y. TIMES (Nov. 4, 1990), <https://www.nytimes.com/1990/11/04/education/the-culture-question.html> [<https://perma.cc/E7AE-J6QT>].

55. Jewish schools have existed in the United States since before the Revolutionary War. See Gill, *supra* note 46, at 566–67.

56. YUDOF ET AL., *supra* note 33, at 497; Michael John Weber, Note, *Immersed in an Educational Crisis: Alternative Programs for African-American Males*, 45 STAN. L. REV. 1099, 1101 (1993).

57. See Alexandria Neason, *How Hawaiian Came Back From the Dead*, SLATE (June 8, 2016), http://www.slate.com/articles/life/tomorrows_test/2016/06/how_the_ka_papahana_kai_apuni_immersion_schools_saved_the_hawaiian_language.html [<https://perma.cc/U24L-YURN>] (describing how Hawaiian was once banned in Hawai‘i public schools, and teachers insisted native Hawaiian students use English instead); *Native Language Immersion Initiative*, *supra* note 53 (seeking to “stem the loss of Indigenous languages and cultures by supporting new generations of Native American language speakers, and establishing infrastructure and models for Native language-immersion programs that may be replicated in other communities”).

58. See Leah Caldwell, *Learning Arabic in Houston, Inshallah*, TEX. OBSERVER (Sept. 3, 2015)

Afrocentric schools do not typically prioritize language instruction. Instead, they attempt to return humanity to students and provide them with the tools to navigate a world that denigrates them.⁵⁹ Afrocentric schools present as the leading refutation to the predominant public school Eurocentric approach within the United States.

ii. Education Inequality in the United States

It is undisputed that Black children today attend schools that do not receive the same resources and funding as white suburban schools; as a result, Black students are at a disadvantage.⁶⁰ Studies tracking school district funding and racial demographics find that racial and ethnic segregation changes are associated with racial and ethnic disparities in spending, even after accounting for discrepancies in poverty.⁶¹ Researchers have consistently shown that Black, Latinx, and low-income students tend to enter school far behind their peers academically. Also, they are less likely to have access to a quality education. This includes participation in gifted programs,⁶² access to decent school facilities, rigorous curricula, and reputable schools.⁶³ The lack of available resources translates into glaring disparities in academic achievement.

The student achievement gap between White and Black students is striking. A 2016 longitudinal study found that Black students in advanced mathematics courses scored significantly lower on standardized exams and were less likely to be proficient at every

<https://www.texasobserver.org/houston-embraces-arabic-immersion-school-despite-protests/> [<https://perma.cc/UM96-YJSA>].

59. See Asante, *supra* note 41, at 177–79; see also PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* 71–86 (30th Anniversary ed. 2005) (establishing a paradigm shift away from the colonizer and colonized relationship between teacher and student and towards a pedagogy that treats the student as a co-creator of knowledge).

60. *Id.*

61. See Victoria E. Sosina & Ericka S. Weathers, *Pathways to Inequality: Between-District Segregation and Racial Disparities in School District Expenditures*, 5 AERA OPEN 1 (2019).

62. See CHRISTOPHER B. YALUMA & ADAM TYNER, THOMAS B. FORDHAM INST., *IS THERE A GIFTED GAP? GIFTED EDUCATION IN HIGH-POVERTY SCHOOLS 10–15* (2018) (discussing the discrepancy in availability and participation of gifted programs across different school types).

63. See AMY STUART WELLS, NAT'L EDUC. POLICY CTR., *DIVERSE HOUSING, DIVERSE SCHOOLING: HOW CAN POLICY STABILIZE RACIAL DEMOGRAPHIC CHANGE IN CITIES AND SUBURBS* 5 (2015).

mathematics skill subsets than White students in the same courses.⁶⁴ In another study, the Educational Opportunity Project at Stanford University analyzed test scores from 2008 to 2016 and found that White students outperformed Black students in every county in the country.⁶⁵ Notably, in large metropolitan areas like New York City, Los Angeles, and Washington, D.C., White students outpaced Black students by two and a half to as many as five grade levels.⁶⁶ Beyond trailing in measures of achievement, Black students also lack access to rigorous coursework.

Black students also enroll in fewer advanced classes in schools across the country.⁶⁷ Black, Hispanic, and Native American students are less likely to attend high schools offering advanced courses, such as AP physics and calculus, than are White students.⁶⁸ According to the Department of Education, Black and Latinx students make up 37% of high school students but only 27% of students taking an AP class.⁶⁹ Even if students of color attend schools offering AP classes, they are less likely to participate in those courses.⁷⁰ The achievement gap in testing and course enrollment exist alongside more subjective and cultural concerns for parents.

Even in integrated, high-performing schools, Black parents worry about how majority-white environments and curricula could harm their children.⁷¹ These concerns can include microaggressions, hate

64. See Elizabeth Covay Minor, *Racial Differences in Mathematics Test Scores for Advanced Mathematics Students*, 99 HIGH SCH. J. 193, 193 (2016) (comparing a nationwide sample).

65. See *Average Test Scores Interactive Map*, EDUC. OPPORTUNITY PROJECT STAN. UNIV., <https://edopportunity.org/explorer/#/split/us/counties/avg/ses/wb/3.59/39.75/-93.9> [https://perma.cc/D7CF-76AR] (last visited Mar. 19, 2020).

66. *Id.*

67. See CTR. ON REINVENTING PUB. EDUC., CITYWIDE EDUCATION PROGRESS REPORT 7 (2018) (concluding that Black students in Atlanta schools enrolled in advanced math coursework at a lower rate than the overall high school population).

68. See Sophie Quinton & National Journal, *The Race Gap in High School Honors Classes*, ATLANTIC (Dec. 11, 2014), <https://www.theatlantic.com/politics/archive/2014/12/the-race-gap-in-high-school-honors-classes/431751/> [https://perma.cc/J782-A8BC].

69. U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION DATA SNAPSHOT: COLLEGE AND CAREER READINESS (2014), <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-college-and-career-readiness-snapshot.pdf> [https://perma.cc/YW9A-72NC].

70. *Id.*

71. See Melinda D. Anderson, *The Radical Self-Reliance of Black Homeschooling*, ATLANTIC (May 17, 2018), <https://www.theatlantic.com/education/archive/2018/05/black-homeschooling/560636/> [https://perma.cc/XLE4-UAUR].

speech, disproportionate school discipline, and over-diagnosed learning and social disabilities. As a result, many Black parents remove their children from public schools⁷² and opt for other educational options, such as homeschooling and Black-immersion programs.⁷³ Education inequality disadvantages Black students throughout the United States, and unfortunately, New York City is no exception.

B. Afrocentric Schools in New York City

i. Rampant Inequality and Segregation in New York City Schools

Despite having the highest per-student spending in the country, experts conclude that New York state education funding is highly regressive.⁷⁴ In a 2018 report, the Education Trust found that New York state has the 48th largest funding gap between districts the most students in poverty and districts the fewest.⁷⁵ Moreover, New York ranks 44th for the funding gap between districts with the most students of color and those with the fewest.⁷⁶ The disparity reflects the difference in the tax base between wealthy and poor districts,⁷⁷ which makes up 59% of total school funding.⁷⁸ Thus, even though New York State allocates nearly six times more aid per student to high-poverty districts than high-wealth districts (\$12,442 versus \$2172), *overall spending* in poor districts is *two-thirds* that of wealthy districts (\$17,756 versus \$27,845).⁷⁹ The racial and economic segregation in New York City schools further compounds inequality.

72. *Id.*

73. *Id.*

74. See N.Y. ADVISORY COMM. TO THE U.S. COMM'N ON CIVIL RIGHTS, EDUCATION EQUITY IN NEW YORK 91 (2020) [hereinafter U.S. COMMISSION ON CIVIL RIGHTS REPORT], <https://www.usccr.gov/pubs/2020/02-10-Education-Equity-in-New%20York.pdf> [https://perma.cc/QNE7-UWLY].

75. Ivy Morgan & Ary Amerikaner, *Funding Gaps: An Analysis of School Funding Equity Across the U.S. and Within Each State*, EDUC. TR. (Feb. 27, 2018), <https://edtrust.org/resource/funding-gaps-2018> [https://perma.cc/3Q5B-PEM2] (ranking all 50 states).

76. *See id.*

77. See U.S. COMMISSION ON CIVIL RIGHTS REPORT, *supra* note 74, at 91.

78. THE UNIV. OF THE STATE OF N.Y., STATE EDUC. DEP'T, 2019–20 STATE AID HANDBOOK: FORMULA AIDS AND ENTITLEMENTS FOR SCHOOLS IN NEW YORK STATE AS AMENDED BY CHAPTERS OF THE LAWS OF 2019 5 (2019) [hereinafter STATE AID HANDBOOK], https://stateaid.nysed.gov/publications/handbooks/handbook_2019.pdf [https://perma.cc/ENU9-DBCC].

79. UNIV. OF THE STATE OF N.Y., STATE EDUC. DEP'T, STATE AID TO SCHOOLS: A PRIMER 20 (2019) [hereinafter STATE AID PRIMER],

New York's funding disparity has resulted in severe consequences for low-income students and students of color.⁸⁰ Underfunding has forced high-poverty districts to close schools, lay off teachers, and overcrowd classrooms.⁸¹ Moreover, underfunded schools cannot provide students with enough mental health support.⁸² For instance, the Cornerstone Academy for Social Action Middle School (CASA), comprised of predominantly low-income Black and Latinx students, had to forego hiring multiple school counselors, psychologists, and social workers because the state owes CASA approximately \$6.6 million in funding.⁸³ This is significant because unfilled mental health positions exacerbate the effects of trauma and adverse childhood experiences,⁸⁴ which low-income students of color tend to experience at significantly higher rates.⁸⁵ CASA's principal testified that his school's insufficient funding "has led to 'real world — even life or death — consequences' for his students."⁸⁶ Low-income students of color also suffer from widespread school segregation.

<http://www.oms.nysed.gov/faru/PDFDocuments/2019-20Primer.pdf> [<https://perma.cc/8CBW-2UHF>]. In school year 2015–2016, the lowest-wealth districts raised one-eighth that of high-wealth districts (\$3057 versus \$22,930); *see also Governor Cuomo Outlines 2019 Justice Agenda: The Time Is Now*, N.Y. ST. (Jan. 15, 2019), <https://www.governor.ny.gov/news/video-audio-photos-rush-transcript-governor-cuomo-outlines-2019-justice-agenda-time-now> [<https://perma.cc/R6DN-WA97>]. Acknowledging the lack of educational equity in New York, Governor Andrew Cuomo stated in his 2019 State of the State Address: "The additional resources . . . [have] to go to the poorer school, and the poorer student. That's education equity. And that's what we've been talking about for 40 years and we haven't achieved it We want to make sure that this state can say a quality education regardless of income, race, or zip code[.]" *Id.*

80. *See* U.S. COMMISSION ON CIVIL RIGHTS REPORT, *supra* note 74, at 106–23.

81. *See id.* at 90.

82. *See id.* at 87. For instance, Yonkers Public Schools can only provide one counselor for every 800 students; one psychologist for 1800 students; and one social worker for every 2000 students. *Id.*

83. *Id.* at 88–89.

84. *See id.* at 89.

85. *See* LEILA MORSY & RICHARD ROTHSTEIN, ECON. POLICY INST., TOXIC STRESS AND CHILDREN'S OUTCOMES 8–13 (May 1, 2019) (explaining that African American children are more likely than White children to experience frightening or threatening events because Black families tend to have lower-incomes than White families; and as family income falls, exposure to such traumatic events increases); Natalie Slopen et al., *Racial Disparities in Child Adversity in the U.S.: Interactions with Family Immigration History and Income*, 50 AM. J. PREVENTIVE MED. 47, 47–56 (2016) (finding Black and Hispanic children were exposed to more adversities compared with White children, and income disparities in exposure were larger than racial or ethnic disparities).

86. U.S. COMMISSION ON CIVIL RIGHTS REPORT, *supra* note 74, at 89 (quoting Jamal Bowman's testimony).

New York City schools are among the most racially and economically segregated schools in the country, despite being the most diverse overall.⁸⁷ A well-known 2014 study by the UCLA Civil Rights Project found that New York State schools are the most segregated in the country.⁸⁸ The New York City metropolitan-area schools represented nearly 60% of the state's total Black students and about 66% of the total Asian and Latinx students, but only 10% of White students.⁸⁹ However, the city's total population is 24% Black and almost 43% White.⁹⁰ Furthermore, across the 32 community school districts, 19 had 10% or fewer White students.⁹¹ Charter schools were even more segregated. The Civil Rights Project designated 73% of charters as "apartheid schools," or schools with less than 1% White enrollment, and 90% had less than 10% White enrollment.⁹² Within New York City's specialized high schools,⁹³

87. See Michelle Chen, *New York's Separate and Unequal Schools*, NATION (Feb. 20, 2018), <https://www.thenation.com/article/new-yorks-separate-and-unequal-schools/> [<https://perma.cc/E3C8-Q5TN>]; see also *U.S. News Special Report: Stockton, Calif., Is the Most Diverse City in America*, U.S. NEWS & WORLD REP. (Jan. 22, 2020), <https://www.usnews.com/info/blogs/press-room/articles/2020-01-22/us-news-special-report-stockton-calif-is-the-most-diverse-city-in-america> [<https://perma.cc/5U3V-WP3L>] (ranking New York City as the fourth most racially diverse large city in the United States).

88. JOHN KUCSERA & GARY ORFIELD, CIVIL RIGHTS PROJECT/PROYECTO DERECHOS CIVILES, NEW YORK STATE'S EXTREME SCHOOL SEGREGATION: INEQUALITY, INACTION AND A DAMAGED FUTURE vi (2014), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/ny-norfler-report-placeholder/Kucsera-New-York-Extreme-Segregation-2014.pdf> [<https://perma.cc/M4EQ-5KFP>].

89. *Id.* at viii.

90. *Quick Facts: New York City, New York*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/newyorkcitynewyork> [<https://perma.cc/8TLY-WP56>] (last visited May 31, 2020).

91. KUCSERA & ORFIELD, *supra* note 88, at viii.

92. *Id.* at 32, 89.

93. New York City's specialized high schools are nine selective public high schools, established and run by the NYCDOE to serve the needs of academically and artistically gifted students. See *Specialized High Schools*, N.Y.C. DEP'T EDUC., <https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade/specialized-high-schools> [<https://perma.cc/Q8DT-URAN>] (last visited Mar. 1, 2020). With the exception of LaGuardia High School, which requires an audition or portfolio for admission, middle school applicants must administer the Specialized High Schools Admission Test (SHSAT) to seek admission. *Id.* The other specialized high schools include: The Bronx High School of Science, The Brooklyn Latin School, Brooklyn Technical High School, High School for Mathematics, Science and Engineering at City College of New York, High School of American Studies at Lehman College, Queens High School for the Sciences at York College, Staten Island Technical High School, and Stuyvesant High School. *Id.*

Black and Latinx students made up just 9% of offers of enrollment but 68% of all high school students.⁹⁴ The underfunding and failure to integrate New York City public schools has led Black parents to seek educational opportunities elsewhere.

ii. The Reemergence of Afrocentric Schools within New York City

New York City Afrocentric schools are gaining popularity among Black parents.⁹⁵ There are about 2300 students⁹⁶ currently attending seven private and public Afrocentric charter schools located in Brooklyn, Queens, and Manhattan.⁹⁷ The resurgence of Afrocentric public charter schools reflects the growth in demand for charters citywide.⁹⁸ Since 2010, students applying to charter schools increased 32%, with the city's charter receiving more than 80,000 applicants in 2019 alone.⁹⁹ At one Brooklyn Afrocentric preschool, the Little Sun People, 200 to 250 parents applied for 56 seats.¹⁰⁰ Parents have such high interest in Little Sun that they regularly bake pies, deliver flowers, or send cards, hoping to build goodwill for the admissions process.¹⁰¹ With the city's approval (and if schools comply with state educational standards), public charter schools can adopt a curriculum that focuses on Black history and culture.¹⁰² These schools predominantly employ Black teachers and have almost all Black

94. Madina Touré, *NYC Has the Most Segregated Schools in the Country. How Do We Fix That?*, OBSERVER (June 14, 2018), <https://www.thenation.com/article/new-yorks-separate-and-unequal-schools/> [<https://perma.cc/FAN5-G5MA>].

95. See Shapiro, *supra* note 2; see also Anne Branigin, *New York City's Afrocentric Schools Get More Love as Segregation Increases Nationwide*, ROOT (2019), <https://www.theroot.com/new-york-city-s-afrocentric-schools-get-more-love-as-se-1831678286> [<https://perma.cc/5RR8-Z6T5>].

96. Branigin, *supra* note 95.

97. The seven known Afrocentric schools in New York City include the following: Eagle Academy for Young Men II (public school); Ember Charter School for Mindful Education, Innovation, and Transformation (public charter school); Little Sun People (preschool/daycare); Linden Seventh-Day Adventist School (religious school); Northeastern Academy (private school); Seneca Village Montessori School (preschool); and The XyayX Institute (online homeschool). Karr, *supra* note 1.

98. N.Y.C. CHARTER SCH. CTR., NYC CHARTER SCHOOLS: 2019–20 ENROLLMENT LOTTERY ESTIMATES (2019), <https://www.nyccharterschools.org/sites/default/files/resources/NYCCSC-LotteryReport-2019-20%20final.pdf> [<https://perma.cc/MH92-EP85>].

99. *Id.*

100. See Karr, *supra* note 1.

101. *Id.*

102. See Shapiro, *supra* note 2.

students.¹⁰³ Notably, public charter immersion schools in New York City are entirely voluntary, allowing any interested parent to consider these schools during the application process.¹⁰⁴ Therefore, although Afrocentric schools center the cultural environment around African-American students, they are formally open to anyone and admit students on a racially neutral basis.¹⁰⁵

The de Blasio Administration has shown support for Afrocentric schools.¹⁰⁶ In January 2019, Chancellor Richard Carranza stated that Afrocentric schools reinforce Black students' self-image and tend to have more teachers of color.¹⁰⁷ Moreover, in May 2019, the NYCDOE preliminarily approved the expansion of Ember Charter School to include a high school program,¹⁰⁸ despite many charter school advocates viewing Mayor de Blasio as traditionally anti-charter.¹⁰⁹ De Blasio's administration has simultaneously been slow to integrate schools, and instead has elected to increase funding for schools with low-income students,¹¹⁰ who constitute the majority of Afrocentric schools.¹¹¹

103. *See id.*; Branigin, *supra* note 95.

104. *See* Shapiro, *supra* note 2.

105. *See* Brown, *supra* note 42, at 858.

106. *See* Branigin, *supra* note 95.

107. *Id.*; *see also* Weber, *supra* note 56, at 1110–11 (arguing “the best role model is one with whom a child closely identifies.”).

108. *See* Geringer-Sameth, *supra* note 23. However, as previously noted, the Board of Regents ultimately rejected Ember's application in June 2019. *See* Touré, *supra* note 26; *supra* note 24 and accompanying text.

109. As charter school enrollment continues to increase in New York City, Mayor de Blasio approved only 59 colocations in his first five years in office compared to Mayor Michael Bloomberg who authorized 150 in the final five years of his administration. *See* CHARLES SAHM, MANHATTAN INST., FINDING ROOM FOR NEW YORK CITY CHARTER SCHOOLS 7 (2018), <https://media4.manhattan-institute.org/sites/default/files/R-CS-0518.pdf> [<https://perma.cc/8BGA-UDTT>].

110. *See* Eliza Shapiro, *Segregation Has Been the Story of New York City's Schools for 50 Years*, N.Y. TIMES (Mar. 26, 2019), <https://www.nytimes.com/2019/03/26/nyregion/school-segregation-new-york.html> [<https://perma.cc/6N9Q-4L3K>].

111. *See, e.g., Eagle Academy for Young Men II School Enrollment (2018–19)*, N.Y. ST. EDUC. DEP'T, <https://data.nysed.gov/enrollment.php?year=2019&instid=800000062342> [<https://perma.cc/YVW5-PXJM>] (last visited June 4, 2020) (noting 80% of Eagle Academy's students are economically disadvantaged); *Ember Charter School Enrollment (2018–19)*, *supra* note 4 (noting 81% of Ember's students are economically disadvantaged).

II. THE DIVERSE SPECTRUM OF THE AFROCENTRIC SCHOOLS DEBATE

Part II lists the arguments made for and against Afrocentric schools. In this debate, proponents and opponents take specific legal, policy, and principled approaches to advocate their positions and can share goals, such as improving the educational outcomes of Black students. Understanding this debate is crucial for any critical analysis of the legality and future of Afrocentric schools in the United States.

A. Proponents of Afrocentric Schools

Proponents primarily contend that Afrocentric schools seek to empower Black children in ways that traditional public schools historically have not.¹¹² They reject the idea that traditional public schools teach through a neutral curriculum that values students of all backgrounds.¹¹³ They argue that Afrocentric curricula can possess a distinct cultural outlook that encourages cooperation and teamwork to achieve goals,¹¹⁴ while simultaneously arguing that the predominant white culture within public schools fosters hyper-individualism.¹¹⁵ Proponents thus contend that public schools impose a level of Anglo-American cultural bias, which harms the Black psyche.¹¹⁶ Simply stated, Afrocentric schools “attempt to ‘recognize’ properly black youth,” where more traditional public schools have not.¹¹⁷

For example, Professor Asante argues that Black students in traditional schools suffer from lower self-esteem and lack of motivation as compared to their White peers. This lack of self-esteem emerges, in large part, because the public-school curriculum focuses on the experiences of White students.¹¹⁸ Assante asserts that by teaching Black students about the integral role their ancestors played in the founding and prosperity of the United States and modern world, Black students will develop a stronger identity that improves

112. See Shapiro, *supra* note 2; Karr, *supra* note 1 (after the city’s approval, the state Board of Regents ultimately rejected Ember’s proposal).

113. See Brown, *supra* note 42, at 846.

114. See Weber, *supra* note 56, at 1103–04.

115. See *id.*; USENI EUGENE PERKINS, HARVESTING NEW GENERATIONS: THE POSITIVE DEVELOPMENT OF BLACK YOUTH 51–75 (1986).

116. See Brown, *supra* note 42, at 846.

117. Eleanor Brown, *Black Like Me? “Gangsta” Culture, Clarence Thomas, and Afrocentric Academies*, 75 N.Y.U. L. REV. 308, 314 (2000) [hereinafter Brown, *Black Like Me?*].

118. See Asante, *supra* note 41, at 171.

their self-esteem and will lead to greater student achievement.¹¹⁹ Such an approach demonstrates how Afrocentric schools can address a critical problem that affects Black students in the public school system.

Proponents also claim that the Afrocentric curriculum can have positive effects regarding civics and engagement. They emphasize that Afrocentrism is a response to the prevailing societal view, which depicts African-American culture as inferior to the predominant white culture.¹²⁰ That is, Afrocentrism can restore the African-American identity and establish institutional knowledge¹²¹ by building upon the “values derived from black political struggle and achievements.”¹²² Proponents argue the focus on African American’s triumphs through struggle encourages Black youth to become more involved in the political process.¹²³

In addition to the theoretical and academic support for Afrocentric schools, Black parents are some of the biggest proponents of Black-immersion schools. Black-immersion schools often emphasize self-esteem classes and “rites of passage” ceremonies,¹²⁴ and parents claim the schools stress positive behavior, foster high expectations, and emphasize racial pride.¹²⁵ Parents also praise immersion schools for predominantly hiring Black teachers and a substantially higher proportion of male teachers than at most traditional public schools.¹²⁶ Proponents claim this faculty composition is particularly important for Black male students because they rarely attend schools with Black male teachers.¹²⁷ Parents contend that immersion schools emphasize teachers as positive role models for Black children, which entails understanding and relating to their children’s lived experiences.¹²⁸

119. *Id.* at 171–72, 178–79; *see also* PERKINS, *supra* note 115, at 93 (outlining arguments that if African-American children became aware of their history, culture, and community, they would be socialized away from life on the streets and toward personal and community advancement).

120. *See* Christopher Steskal, Note, *Creating Space for Racial Difference: The Case for African-American Schools*, 27 HARV. C.R.-C.L. L. REV. 187, 213–15 (1992).

121. *Id.*

122. Brown, *Black Like Me?*, *supra* note 117, at 342.

123. *Id.* at 343.

124. YUDOF ET AL., *supra* note 33, at 497.

125. *Id.*

126. *Id.*

127. *See* Weber, *supra* note 56, at 1110–11.

128. *See* YUDOF ET AL., *supra* note 33, at 497; Weber, *supra* note 56, at 1110–11 (emphasizing the importance of providing African-American male role models with whom the students can identify, especially during an educational crisis for Black male students).

Black parents favor immersion schools not because they disfavor integrated schools, but because they are willing to prioritize the educational goals of their children.¹²⁹

Some proponents believe that adopting an Afrocentric curriculum in schools is necessary to address the “crisis” facing the Black community¹³⁰ — the “crisis” being the disproportionate number of incarcerated Black youth, the high homicide rate, unemployment, and school dropout rates.¹³¹ These proponents clarify that citing to statistics of this “crisis” is not to reflect poorly on the Black community as a whole, but to shed light on the flawed public school system as it specifically relates to educating Black children.¹³² Therefore, proponents claim that “Afrocentric education offers the black community a way to ‘turn inward’ to address pervasive social and cultural problems.”¹³³ They also argue that if Black children became more aware of their history, culture, and community, they could turn away from systemic hardship and towards community-building and personal advancement.¹³⁴ Schools that put African-American identity at the forefront of a student’s education become an innovative response to the challenges Black children face.¹³⁵

Furthermore, proponents claim that Afrocentric curricula also benefit non-Black students.¹³⁶ Professor Asante claims that children

129. See Brown, *Black Like Me?*, *supra* note 117, at 312.

130. Brown, *Black Like Me?*, *supra* note 117, at 313.

131. See YUDOF ET AL., *supra* note 33, at 497; see also Brown, *Black Like Me?*, *supra* note 117, at 313 (“Afrocentrism represents an innovative response to . . . a crisis”); Nancy E. Dowd, *Children’s Equality: The Centrality of Race, Gender, and Class*, 47 FORDHAM URB. L.J. 231, 237 (2020) (“The structural and cultural context of the life course of Black boys is a setup for failure. Three pieces of data reflect this stark reality. First, one in three Black boys is born into poverty. Second, two of every five Black boys will not finish high school. Finally, one in three Black boys will be involved in the criminal justice system in their lifetime.”); John A. Powell, *Black Immersion Schools*, 21 N.Y.U. REV. L. & SOC. CHANGE 669, 680 (1995) (arguing that “during a crisis in which Black children are consigned to inferior ghetto schools, [Black] communities should have room to experiment with immersion schools.”).

132. Brown, *supra* note 42, at 847.

133. Brown, *Black Like Me?*, *supra* note 117, at 323.

134. See Weber, *supra* note 56, at 1104; see also Brown, *Black Like Me?*, *supra* note 117, at 321–22 (“Afrocentrists emphasize the oppositional nature of street culture, which has largely overtaken public schools in black communities Afrocentric academies are a necessary mechanism to displace the opposition norms that have overtaken inner-city communities.”).

135. See Brown, *Black Like Me?*, *supra* note 117, at 314.

136. See Asante, *supra* note 41, at 174 (“The African American child has suffered disproportionately, but White children are also the victims of monoculturally diseased curricula.”).

of all races, but White children in particular, have much to gain from an Afrocentric education because it does not disparage other cultures, and can advance multicultural education.¹³⁷ The curriculum could build empathy, open-mindedness, and a complete understanding of the United States and world history.¹³⁸ Teaching White students about the societal and institutional resistance that people of color have had to confront throughout U.S. history leads to a better understanding about fellow Americans who contributed to this decisive struggle.¹³⁹ So, exposing students of all races to an Afrocentric curriculum can foster an appreciation of the African-American experience. Relatedly, proponents argue that the Eurocentric approach paradoxically hurts White students by impairing their moral health development and ability to function in a diverse world.¹⁴⁰ Both Afrocentric and multicultural curricula seek to foster the capacity of White students to empathize with others, develop an understanding of fairness, and resolve conflicts equitably.¹⁴¹ However, the benefits for White students remains a mostly theoretical claim due to the limited empirical evidence on immersion schools.¹⁴²

Proponents also include researchers who set out to determine whether Afrocentric schools are effective at educating Black students, particularly with measurable outcomes like standardized testing. In a recent study, a group of researchers analyzed 23 Afrocentric schools in Chicago, Detroit, and Philadelphia, and found that only 34% achieved or exceeded statewide testing standards.¹⁴³ The authors rightfully acknowledge that their study is one of few: “Research on academic achievement with Afrocentric charter schools has received scant attention within academic literature.”¹⁴⁴ These authors suggest

137. *Id.* at 172.

138. *Id.*

139. See John S. Wills, *Who Needs Multicultural Education? White Students, U.S. History, and the Construction of a Usable Past*, 27 ANTHRO. & EDUC. Q. 365, 382–83 (1996).

140. Louise Derman-Sparks & Patricia G. Ramsey, *What If All the Kids Are White? Multicultural/Anti-Bias Education with White Children 2–3* (2012), https://www.teachingforchange.org/wp-content/uploads/2012/08/ec_whatifallthekids_english.pdf [<https://perma.cc/2ZTT-U2TT>] (“Economically, the lower wages of people of color are always an available weapon to keep the wages of white workers lower than is just, albeit not as low as people of color.”).

141. *Id.* at 3.

142. See Teasley et al., *supra* note 38.

143. Teasley et al., *supra* note 38, at 106 (basing the study off of adequate yearly progress (AYP) data for academic school year 2011–2012).

144. *Id.* at 101.

that if Afrocentric schools want to gain legitimacy, they must implement standardized accountability measures.¹⁴⁵

Another study of a KIPP public charter school in Harlem, New York examined the “effects of an Afrocentric U.S. history curriculum on self-efficacy . . . and academic achievement of Black students on standardized social studies assessments.”¹⁴⁶ The study consisted of 217 8th grade students — 97% of whom were African, African American, or Hispanic — from four consecutive school years, beginning with 2006–2007.¹⁴⁷ In contrast to the previous study, here, researchers concluded that implementing an Afrocentric U.S. history curriculum strongly correlated to higher achievement on a New York State social studies test.¹⁴⁸ The study also concluded the Afrocentric curriculum improved student self-efficacy and students’ emotional connections to the curriculum.¹⁴⁹ Although studies of Afrocentric schools are limited, the few that do exist suggests that Black students may have much to gain from an Afrocentric approach.

One of the common critiques of Afrocentric schools is that they perpetuate segregation,¹⁵⁰ and proponents typically respond to this critique in two ways. First, they assert that most public schools in cities are already racially segregated.¹⁵¹ High-poverty urban school districts, in particular, are composed almost entirely of Black and Brown students.¹⁵² Relatedly, proponents have maintained that Afrocentric schools emerged as a direct response to failed integration

145. *Id.* at 106–07.

146. See Worokya Duncan, *The Effects of Africentric United States History Curriculum on Black Student Achievement*, 5 CONTEMP. ISSUES EDUC. RES. 91, 93 (2012).

147. *Id.*

148. *Id.* at 94.

149. *Id.*

150. See, e.g., Sarah Rivkin Smoler, Note, *Centric Charter Schools: When Separate May Be Equal*, 10 NW. J.L. & SOC. POL’Y 319, 335 (2015); Jennifer Rose Jacoby, *Race-Conscious Charter Schools and the Antibalkanization Perspective of Equal Protection*, 15 U. PA. J. CONST. L. 1561, 1570 (2013) (“[R]ace-conscious charter schools remain constitutionally problematic because they erode social cohesion in the worst way possible—these schools can lead to racial segregation.”).

151. See Sarah Mervosh, *How Much Wealthier Are White School Districts Than Nonwhite Ones? \$23 Billion, Report Says*, N.Y. TIMES (Feb. 27, 2019), <https://www.nytimes.com/2019/02/27/education/school-districts-funding-white-minorities.html> [<https://perma.cc/9AB9-37XH>] (finding that “more than half of the nation’s schoolchildren are in racially concentrated districts, where over 75 percent of students are either white or nonwhite”); see also Weber, *supra* note 56, at 1101 (refuting the segregation argument “because most inner-city schools are already segregated despite the law.”).

152. See Weber, *supra* note 56, at 1101.

and a lack of funding for public schools in Black communities.¹⁵³ Second, even in integrated public schools, proponents argue that tracking systems segregate students by enrolling White students in honors courses and leaving Black students in remedial classes.¹⁵⁴

B. Opponents of Afrocentric Schools

Opponents have distinct complaints about Afrocentric schools. Those who favor school integration take a simple approach: immersion schools disadvantage Black students because school integration is a proven way to improve Black student achievement.¹⁵⁵ In other words, integration supporters believe immersion schools distract from the goal of further integrating public schools.¹⁵⁶ Take the NAACP, for example, which notably opposed single-race schools during the rise of Black-immersion schools in the 1990s.¹⁵⁷ The NAACP feared that a movement towards immersion schools would squander any progress made to integrate schools, or worse, perpetuate segregation.¹⁵⁸ Indeed, much research has shown that when school districts desegregate, the achievement gap¹⁵⁹ between White and Black students (as well as between affluent and low-income students) decreases.¹⁶⁰ However, studies suggest that the

153. See Brown, *Black Like Me?*, *supra* note 117, at 313–14; Powell, *supra* note 131, at 672, 74.

154. Weber, *supra* note 56, at 1101.

155. CENTURY FOUND., RACIALLY INTEGRATED SCHOOLS AND CLASSROOMS 1–3 (Apr. 29, 2019) (finding that when comparing students with similar socioeconomic backgrounds, those students at more affluent schools are 68% more likely to enroll at a four-year college than their peers at high-poverty schools).

156. There is an important distinction between school “desegregation,” which refers to the deliberate steps that government takes “to remedy past segregation by assigning students from different races to attend school together,” and school “integration,” which requires “active measures to make desegregated schools equitable.” Laura Petty, Note, *The Way Forward: Permissible and Effective Race-Conscious Strategies for Avoiding Racial Segregation in Diverse School Districts*, 47 FORDHAM URB. L.J. 659, 671 (2020). To achieve integrated schools, schools must first desegregate. See *id.* 671–72. Within the context of this Note, the achievement gap typically refers broadly the difference in academic achievement between White and Black students.

157. See Weber, *supra* note 56, at 1117.

158. *Id.*

159. See *Students Affected by Achievement Gaps*, NAT’L EDUC. ASS’N, <http://www.nea.org/home/20380.htm> [<https://perma.cc/NY38-P82P>] (last visited May 31, 2020). “The term ‘achievement gap’ is often defined [in the United States] as the differences between the test scores of students of color and/or low-income students and the test scores of their White and Asian peers.” *Id.*

160. See, e.g., Gary Orfield, *Introduction, the Southern Dilemma: Losing Brown, Fearing Plessy*, in SCHOOL RESEGREGATION: MUST THE SOUTH TURN BACK? 7–8

decrease comes from Black students benefiting from well-resourced schools more than the literal comingling of Black and White students in a classroom.¹⁶¹

Other critics often argue that investing in immersion schools diverts funds that could otherwise support low-income students of color in public schools.¹⁶² One critic hoped that “society chooses to improve traditional public schools rather than create and fund identity-focused charter schools”¹⁶³ because it is the only way to achieve educational equality.¹⁶⁴ This perspective opposes Afrocentric schools because they deprive opportunities for all African American students.¹⁶⁵

Another group of opponents is less concerned with the educational outcomes of Black children, and instead criticize what they believe is the potential for immersion schools to disentangle the social fabric of America. During the 1990s, many opponents raised concerns that Afrocentric schools may upset “the ideal of assimilation and commonality,” resulting in “the tribalization of [American]

(John Charles Boger & Gary Orfield eds., 2005) (finding that “the black-white achievement gap closed substantially during the desegregation era” and observing that “the conservative agenda of the late 1980s and the 1990s was implemented at the same time that reversals of some of these gains took place”); Nikole Hannah-Jones, *Episode 562: The Problem We All Live With — Part One*, THIS AM. LIFE (July 31, 2015), <https://www.thisamericanlife.org/562/transcript> [<https://perma.cc/GF8K-T3KF>] (finding that between 1971, when the nation started making formal efforts to desegregate schools, and 1988, when these efforts peaked, the achievement gap between Black and White students was about 40 points). “[O]n standardized reading tests in 1971, black 13 year olds tested 39 points worse than white kids. That dropped to just 18 points by 1988 at the height of desegregation.” See Hannah-Jones, *supra* note 160; see also CENTURY FOUND., *supra* note 155.

161. See RUCKER C. JOHNSON & ALEXANDER NAZARYAN, CHILDREN OF THE DREAM: WHY SCHOOL INTEGRATION WORKS 127 (2019) (“[T]he effects of the New Jersey finance reform was large enough to close about 20 percent of the achievement gap between high- and low-income districts[.]”); see also Petty, *supra* note 156, at 667 (arguing that the narrowest Black-White achievement corresponded with the height of school desegregation *not* because Black students need be seated next to White students to achieve higher test scores, but because there is yet a system that equitably distributes resources to children of color in segregated schools).

162. See Powell, *supra* note 131, at 687–88.

163. Jacoby, *supra* note 150, at 1564.

164. *Id.* at 1580.

165. Although denying a reallocation in funds to immersion schools may have policy merit, courts have held it lacks legal merit. In *San Antonio Independent School District v. Rodriguez*, the Supreme Court held that there is no Equal Protection violation under the U.S. Constitution for challenging funding disparity between high-income and low-income neighborhoods, even with vast inequality. 411 U.S. 1 (1973). In the current constitutional landscape, a school district that allocates more funds to immersion schools — absent any direct race discrimination, and in some contexts, disparate impact — would be obeying the law.

society.”¹⁶⁶ These critics argued that children should be taught about their heritage as Americans, irrespective of race.¹⁶⁷ If Black children did not integrate via the public school system, critics feared disruption to good democratic citizenry.¹⁶⁸ This reasoning stems from *Brown v. Board of Education*, in which the Supreme Court held that even if black schools had equal resources, they would still be inferior to white schools because of the stigma attached to “separate” schools.¹⁶⁹

At the furthest end of the opponents’ spectrum falls a niche yet ardent group of individuals who supposedly seek to inform the public about the dangers of a “radical Afrocentric curriculum.”¹⁷⁰ These skeptics argue that an ethnocentric approach to education is a threat to core constitutional values,¹⁷¹ and often point to specific, extreme instances of curricula used in Black-immersion schools. One scholar criticized Portland Public Schools for distributing the African-American Baseline Essays (“Baseline Essays”) during the late 1980s and early 1990s that promoted false or unverified accounts of African and European history.¹⁷² Despite criticism of the Baseline Essays’ inaccuracies and “Egypt-centric” outlook, many public school

166. David Nicholson, ‘Afrocentrism’ and the Tribalization of America: The Misguided Logic of Ethnic Education Schemes, WASH. POST, Sept. 23, 1990, at B1, B4.

167. Weber, *supra* note 56, at 1107 (citing *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 294 (1954); WILLIAM J. BENNETT, OUR CHILDREN AND OUR COUNTRY 193–209 (1988) and citing 347 U.S. 483 (1954)).

168. Brown, *Black Like Me?*, *supra* note 117, at 345–46 (discussing John Dewey’s view that “a good citizen [is] one who is likely to contribute to reasonable social cooperation”).

169. *Brown*, 347 U.S. at 493 (holding that the segregation of Black students “generates a feeling of inferiority as to their status in the community”); Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 350 (1987).

170. See Steven Siegel, *Ethnocentric Public School Curriculum in A Multicultural Nation: Proposed Standards for Judicial Review*, 40 N.Y.L. SCH. L. REV. 311, 320 (1996).

171. *Id.* at 325–326 (arguing that if a state were to communicate “demonstrably false” information through its public schools, it would threaten the “values embedded in the First Amendment”); see also Jacoby, *supra* note 150, at 1579–80 (evaluating arguments that identity-based schools are “a threat to social cohesion,” which presents a threat to “human dignity and an affront on the Constitution”).

172. See Bernard R. Ortiz de Montellano, *Melanin, Afrocentricity, and Pseudoscience*, 36 Y.B. PHYSICAL ANTHROPOLOGY 33, 36–55 (1993) (reviewing AFRICAN-AMERICAN BASELINE ESSAYS (Asa Grant Hilliard III ed., 1990), which claimed that the paranormal exists and that ancient Egyptians had “psychotronic engineers” who used ESP in a controlled manner); see also Siegel, *supra* note 170, at 319 (questioning reading materials that “claim[ed] that Europe stole its civilization from Africa and then engaged in malicious representation of African society and people as part of a conspiracy.”).

districts in cities throughout the United States adopted the materials in the early 1990s.¹⁷³ The Baseline Essays intended to “develop . . . a better understanding and appreciation of the history, culture, and contributions to society of different ethnic groups and cultures.”¹⁷⁴ Critics, however, feared that the Essays would instill myths in children and send them into the world with a mistaken understanding of reality.¹⁷⁵ Another critic denounced two instances in which educators advanced the heavily refuted theory of “melanism,” which claims racial superiority is based on a higher concentration of melanin in one’s skin.¹⁷⁶ These extreme and rare examples of Afrocentric curricula directly conflict with the core values of an Afrocentric curriculum: that no culture is placed above another. Moreover, these ardent opponents often professed their stance while overlooking the standard practices of immersion schools, which is to provide young people with a sense of history, identity, and pride.¹⁷⁷

C. Comparing the Legal Arguments of Proponents and Opponents

For a complete discussion of the debate over Afrocentric schools, one must also consider the legal arguments in addition to the policy considerations discussed in Sections II.A and II.B. Black-immersion schools implicate the Equal Protection Clause of the Fourteenth Amendment because of the racial motivation behind selecting an

173. See Erich Martel, *How Valid Are the Portland Baseline Essays?*, EDUC. LEADERSHIP, Dec. 1991–Jan. 1992, at 20 [hereinafter Martel, *Portland Baseline Essays*], http://shop.ascd.org/ASCD/pdf/journals/ed_lead/el_199112_martel.pdf [https://perma.cc/X33C-FSWC]. In early 1990s, Atlanta, Baltimore, Detroit and Indianapolis public schools adopted in part or entirely the African American Baseline Essays into school curricula. *Id.*; see also Erich Martel, *The Egyptian Illusion*, WASH. POST (Feb. 20, 1994), <https://www.washingtonpost.com/archive/opinions/1994/02/20/the-egyptian-illusion/ee123656-ca7f-4ef7-8f28-99d7edd166ba/> [https://perma.cc/EQE4-VDWU].

174. See MATTHEW W. PROPHET, PORTLAND PUB. SCH., PREFACE TO THE AFRICAN/AFRICAN-AMERICAN BASELINE ESSAYS ii (1987), <https://www.pps.net/cms/lib/OR01913224/Centricity/Domain/179/pdfs/prefc-af.pdf> [https://perma.cc/2NQD-ZWKR].

175. See Martel, *Portland Baseline Essays*, *supra* note 173, at 22–23 (noting one Washington, D.C. educator stated, “I don’t want children to go out and substitute one myth for a lot of other myths”); de Montellano, *supra* note 172, at 34 (warning the Baseline Essays will worsen the underrepresentation of students of color in science by teaching pseudoscience and failing to develop students’ critical thinking skills).

176. See Leon Jaroff, *Teaching Reverse Racism*, TIME, Apr. 4, 1994, at 74–75 (discussing the seven essays found in AABE that were used as a teachers’ guide in Detroit and Atlanta public schools); see also Siegel, *supra* note 170, at 319–20.

177. See Karr, *supra* note 1.

Afrocentric curriculum, as well as the racial makeup of the schools.¹⁷⁸ Afrocentric schools are race-conscious to the extent that they identify issues that address a specific population of students,¹⁷⁹ and further, more ardent Afrocentric schools strive to develop an explicit sense of identity in their Black students.¹⁸⁰ *Brown v. Board of Education* present proponents and opponents of immersion schools with the challenge of addressing its two key holdings: (1) the declaration that “separate is inherently unequal”; and (2) the commandment to eliminate the feelings of inferiority of Black children caused by racial segregation.¹⁸¹

i. “Separate Is Inherently Unequal”

One of the primary legal arguments against Afrocentric schools is that they perpetuate segregation. Under *Brown* and its progeny, the Supreme Court determined, “school authorities bear the burden of showing that the existence of racially homogenous schools is not the result of discrimination.”¹⁸² In *Brown*, the Court rejected *Plessy*’s “separate but equal” doctrine¹⁸³ and held that “[s]eparate educational facilities are inherently unequal.”¹⁸⁴ As a result, public school districts could no longer segregate their schools based on race.¹⁸⁵ Critics of Black-immersion schools, therefore, argue an Afrocentric curriculum attracts Black students and repels non-Black students, particularly White students.¹⁸⁶ This argument mirrors those of

178. See *Brown*, *supra* note 42, at 859.

179. See Sharon Keller, *Something to Lose: The Black Community’s Hard Choices about Educational Choice*, 24 J. LEGIS. 67, 88 (1998).

180. See *id.*

181. 347 U.S. 483, 495 (1954). This Note limits its analysis to Equal Protection claims under the Fourteenth Amendment. For reference, “[s]tate and statutory and constitutional provisions, along with other federal statutes may be applicable in a legal analysis of immersion schools.” See *Brown*, *supra* note 42, at 858. The relevant federal statutes involved in the legality of immersion schools include Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act. In *Regents of the University of California v. Bakke*, a majority of the Court concluded that Title VI of the 1964 Civil Rights Act goes no further in prohibiting the use of racial classifications than does the Equal Protection Clause of the Fourteenth Amendment. 438 U.S. 265, 287 (1978).

182. Sonia R. Jarvis, *Brown and the Afrocentric Curriculum*, 101 YALE L.J. 1285, 1295 (1992) (discussing how the adoption of multicultural curricula and other immersion schools has not generated the same negative reaction that Afrocentric curricula receive).

183. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

184. *Brown*, 347 U.S. at 495.

185. *Id.*

186. See Smoler, *supra* note 150, at 335.

opponents who fear that Afrocentric schools will lead to the breakdown of social cohesion and perpetuate racial segregation.¹⁸⁷

Even if an immersion school were de facto segregated,¹⁸⁸ some argue that school districts could not sponsor the separation of students based on race through funding an immersion school with taxpayer dollars.¹⁸⁹ Here, the Equal Protection Clause could apply to immersion schools¹⁹⁰ because of racially motivated decision making.¹⁹¹ Immersion schools that attract Black students differ from de jure segregated¹⁹² schools because, when considering school enrollment, they do not classify students based on race.¹⁹³ Unlike de jure segregated schools, attendance in Afrocentric schools is voluntary.¹⁹⁴ The same holds for schools that happen to have only Black students.¹⁹⁵ Thus, because students of any race may apply and attend Afrocentric schools, they are not segregated by law.¹⁹⁶ When parents consider whether to send their children to immersion schools, they do so primarily to seek the best educational opportunity for their children, even if race plays a role.¹⁹⁷ These parents are thus not making a decision constituted solely in race.

ii. Eliminate Feelings of Inferiority

Since *Brown v. Board of Education*, the Court made preventing the stigmatization of Black students in racially homogenous schools the guiding principle in school desegregation litigation.¹⁹⁸ As stigmatization relates to Black-immersion schools, the key is to determine whether the stigma results from adopting an Afrocentric curriculum, rather than the persistence of a racially homogenous school.¹⁹⁹ This critical constitutional issue is complex, and this debate

187. See Jacoby, *supra* note 150, at 1562 and accompanying text.

188. De facto segregation, or segregation “in fact,” is segregation that exists without sanction of the law. *De Facto Segregation*, BLACK’S LAW DICTIONARY (10th ed. 2011).

189. See Powell, *supra* note 131, at 686.

190. *Id.*

191. Brown, *supra* note 42, at 859.

192. De jure segregation is segregation by permitted by law. *De Jure Segregation*, BLACK’S LAW DICTIONARY (10th ed. 2011).

193. Brown, *supra* note 42, at 869.

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.* at 880.

198. Bd. of Educ. v. Dowell, 498 U.S. 237, 258 (1991) (Marshall, J., dissenting).

199. See Jarvis, *supra* note 182, at 1300.

will likely continue as more Afrocentric schools open in the United States.

Opponents contend there is a colorable argument that Afrocentric schools do not serve to eliminate feelings of inferiority in Black students. Sonia Jarvis, the former Executive Director of the National Coalition on Black Voter Participation, contends that Black parents are more likely to bring legal challenges against Afrocentric schools than are White parents.²⁰⁰ To the extent that Afrocentric schools would inadequately prepare Black students for standardized national tests or college readiness, Black parents could argue that such a segregated school environment further stigmatizes their children.²⁰¹ The Afrocentric curriculum would intensify the stigmatization disparity for Black children who would not benefit from a traditional public school curriculum.²⁰² Black parents could also claim that their children are at risk by attending racially homogenous schools that use race-specific curricula.²⁰³

Jarvis thus asserts that if Afrocentric schools failed to prepare Black children adequately for state-approved tests, there would be a *prima facie* Equal Protection claim under *Brown*.²⁰⁴ Black parents could allege their children had been denied equal access to education, which the traditional curriculum otherwise provides to students. However, they would have to prove that the discriminatory intent by the racially homogenous school caused the harm of lower test scores, and that the disparate impact was not the result of other factors, such as a lack of school funding.²⁰⁵ But this claim would be weakened if a school could demonstrate that its students tested the same or better

200. *Id.* (concluding that Black parents are more likely to send their children to public schools than White parents, and Black parents are more likely to face barriers to obtaining quality education for their children).

201. *Id.*

202. *Id.*

203. *Id.* at 1300 n.95 (“In *Reed v. Rhodes*, 455 F. Supp. 569, 597–602 (N.D. Ohio 1978), the court found that a school that maintained a *de jure* system had a constitutional obligation to develop educational programs that would maintain a secure, integrated school environment and prevent resegregation resulting from testing and tracking, curriculum choices, and extracurricular activities. In *Allen v. Wright*, 468 U.S. 737, 756 (1984), the Supreme Court recognized that a ‘child’s diminished ability to receive an education in a racially integrated school is not only legally cognizable but ‘one of the most serious injuries recognized in our legal system.’”).

204. *Id.* at 1300–01.

205. *See id.* at 1301; *Board of Educ. v. Dowell*, 498 U.S. 237, 260 n.5 (1991) (Marshall, J., dissenting) (noting that Black public schools typically receive fewer resources than other schools in same district).

than before adopting an Afrocentric curriculum.²⁰⁶ Jarvis' constitutional argument stands in stark contrast to the vision of the benevolent Afrocentric school.

In response, proponents argue that the purpose of Afrocentric schools is to remove the stigma traditional public schools place on Black children and to oppose Black students' feelings of inferiority.²⁰⁷ Implicit in the Afrocentric curricula is a rejection of *Brown*-style school integration.²⁰⁸ Instead of attributing stigma to the separation of Black students from White students, Black children could learn from a perspective more responsive to their cultural and circumstantial needs.²⁰⁹ So, a Eurocentric curriculum in a traditional integrated public school would still stigmatize Black children by excluding their culture and identity from learning.²¹⁰ In contrast, if Black-immersion schools could demonstrate that its students performed comparably on objective measures of academic achievement (such as standardized testing) before adopting an Afrocentric curriculum, they could argue they are removing stigma for their students.²¹¹ Thus, as Jarvis states, "if an Afrocentric curriculum does improve Black students' academic performance by helping them to overcome this stigma, establishing the sufficient harm to make such a program constitutionally invalid seems highly unlikely."²¹²

The most significant legal challenge against a Black immersion school to date occurred in *Garrett v. Board of Education*.²¹³ In *Garrett*, the parents of four African-American students from Detroit sued the school board for violating the Equal Protection Clause of the Fourteenth Amendment.²¹⁴ Specifically, the parents claimed that the Detroit school board's proposal to open three public schools solely for Black boys constituted sex-based discrimination.²¹⁵ The school board responded that the all-boys schools attended to the crisis facing African-American males.²¹⁶ Although the school board

206. Jarvis, *supra* note 182, at 1301.

207. *Id.*

208. *Id.* at 1299.

209. *Id.*

210. *Id.*

211. *Id.* at 1301.

212. *Id.* at 1301-02.

213. 775 F. Supp 1004 (E.D. Mich. 1991).

214. *Id.* at 1005-06.

215. *Id.* at 1006.

216. *Id.* at 1007.

acknowledged that an equally urgent crisis faced female students, they assured the proposal in no way intended to dilute the rights of its female students.²¹⁷

The district court in *Garrett* disagreed with the school board and held that the all-male academies were unconstitutional.²¹⁸ The court acknowledged the purpose of the academies as an important one, but said “the purpose . . . is insufficient to override the rights of females to equal opportunities.”²¹⁹ However the *Garrett* court did *not* consider an Equal Protection challenge on the issue of race because the plaintiffs did not challenge Detroit public schools’ de facto racial segregation; they only challenged gender-based exclusion.²²⁰ Thus, *Garrett* leaves legal scholars to hypothesize what would happen in a racial discrimination challenge to Black-immersion schools.

Professor Sharon Keller provides one such hypothesis. Keller argues that an Afrocentric curriculum could face a constitutional challenge in one of three ways: (1) if it appears to promote black self-image at the expense of other students; (2) if it discourages integration; and (3) if it runs contrary to the traditional, color-blind mission of public schools.²²¹ For instance, if Afrocentric schools were to advance the doctrine of melanism, which suggests inherent superiority in people with darker skin, there may be a challenge under *Brown*.²²² Despite these dire predictions from Professor Keller, there are more measured and legally justifiable approaches within Afrocentric curricula.

In more common examples of Afrocentric curriculum — ones which de-emphasize Eurocentrism — scholars disagree on whether such curricula would survive a *Brown* challenge.²²³ If a school was predominantly, but not exclusively, Black and implemented an Afrocentric curriculum, non-Black minority students could argue the instruction constitutes “reverse discrimination” because it promotes

217. *Id.*

218. *Id.* at 1014.

219. *Id.* The district court’s decision led to a settlement between the plaintiffs and the school district where the school district agreed to upon up the schools to girls.

220. See Tomiko Brown-Nagin, *Toward a Pragmatic Understanding of Status-Consciousness: The Case of Deregulated Education*, 50 DUKE L.J. 753, 827 (2000) (commenting that *Garrett* “ignore[s] the significance of race”).

221. Keller, *supra* note 179, at 88.

222. *Id.*; see *Nicole K. v. Upper Perkiomen Sch. Dist.*, 964 F. Supp. 931 (E.D. Pa. 1997) (recognizing the possibility of a valid claim for hostile educational environment, but dismissing the particular claim of a White student who was called a “nazi” by her teacher as no more than state tort defamation without state action).

223. Keller, *supra* note 179, at 88–89.

the needs of Black students to the detriment of other students.²²⁴ Other racial minorities could also contend that Afrocentric curricula exclude them through the explicit use of a particular racial perspective, thereby fostering segregation.²²⁵

Afrocentric advocates counter that Afrocentrism is not the Black counterpart of Eurocentricity.²²⁶ These advocates contend that non-Black students can benefit from receiving Afrocentric instruction because it neither assumes African superiority nor denigrates non-Black students' experiences.²²⁷ Thus far challenges to the public school system over its failures to adequately address non-white cultures have proved unsuccessful.²²⁸ However, Keller asserts that "while courts may be slow to find culpable problems where the minority student is a bad fit with the common curriculum, the same may not be true where the curriculum appears to be moving away from the perceived common student."²²⁹ In other words, a curriculum that averts the White student experience may face a higher legal threshold than one which averts the students of color.

III. THE PUSH FOR AN AFROCENTRIC EDUCATION REQUIRES NEW YORK CITY TO INVEST

Black-immersion schools should, at a minimum, be allowed based on legal and policy considerations. Until now, opponents have emphasized the counterproductive effect Afrocentric schools have had on integration. Indeed, integrating schools is a goal that should be advanced in every school district, as it is proven to reduce education inequality.²³⁰ However, the Afrocentric school debate should be framed within the context of improving Black student development, which includes traditional, concrete measures of achievement, such as test scores, college acceptance rates, and mastery of reading and mathematics. Just as importantly, it should also include the intangible benefits that Afrocentric schools can

224. Jarvis, *supra* note 182, at 1302.

225. *Id.*

226. *Id.*

227. See Asante, *supra* note 41, at 171–72.

228. In *Guadalupe Org. v. Tempe Elementary Sch. Dist. No. 3*, the Ninth Circuit found no denial of right or statutory violation in the offering of a monolingual, monocultural education to Mexican-American and Yaqui Indian students even though the Arizona elementary school district did not represent their cultures in the curriculum. 587 F.2d 1022 (9th Cir. 1978).

229. Keller, *supra* note 179, at 89.

230. See CENTURY FOUND., *supra* note 155; Orfield, *supra* note 160; Hannah-Jones, *supra* note 160.

provide for Black students, such as building self-esteem, resiliency, and a sense of identity within society.

The law on immersion schools is relevant, and in many ways, still unclear. However, the priority for policymakers should be to improve student achievement and not spar over legal nuance. Thus, Afrocentric schools should be declared constitutional. Siding with proponents, more funds should be invested in research surrounding Black-immersion schools to learn about the effectiveness of immersion schools and to propose meaningful and positive reform. To effectuate such reform, this Note proposes various methods and approaches to securing investments, conducting research, and reforming New York charter approval policies.

A. Policy Benefits and Moral Justifications for Afrocentric Schools

Regardless of whether or not immersion schools invite constitutional challenges, the advancement of Black-immersion schools within New York City should be supported. They provide Black students the opportunity to center their learning on their history and culture. They also provide teachers and administrators with the opportunity to experiment with new strategies and methods and provide parents with an alternative to public schools, which continue to leave students of color students behind.²³¹

But extreme versions of Afrocentrism should be condemned.²³² Any theory that posits one group of people to be inherently superior to another is antithetical to education in a democratic society. K–12 schools should teach students to be accepting and inclusive of others — regardless of their racial, ethnic, or economic identity.²³³

Moreover, the promise of school integration is still dubious, especially within New York City.²³⁴ Although efforts to integrate New York City public schools have resurfaced, New York City is still the most segregated school district in the country.²³⁵ It is true that when implemented, integration can be an effective means of closing

231. *See supra* Part I. For instance, teaching public students the theory of “melanism,” which holds that individuals of darker skin tone hold superior intellect.

232. *See supra* Section II.B.

233. Although rejecting extreme versions of Afrocentrism, these examples are rare, and that the common forms of Afrocentric schools seek to teach students — Black and non-Black alike — the exact opposite. *See supra* Section II.A.

234. *See* Shapiro, *supra* note 110.

235. *See supra* note 88.

the education gap and increasing Black student achievement.²³⁶ However, even within New York City, integration efforts are often met with intense backlash, meaning alternatives must exist for Black parents. Even though integration efforts are positive and should be encouraged, Black families should not rely on integration. They should also not have to rely on policymakers. Immersion schools present an opportunity for Black communities to take control of educating their children.

Afrocentric schools also present significant potential benefits for non-Black students. If White students were taught to be fully aware of the struggles of African Americans — as opposed to the information customarily taught to them about American history — they would view American society differently and may work to make it more inclusive.²³⁷

B. Resolving the Legal Issues Surrounding Black-Immersion Schools

The law may be secondary in this debate because there has yet to be a legal challenge to an immersion school in New York City. It is also likely that a challenge would be met with harsh public criticism, especially considering the popularity of immersion schools among Black New York City parents.²³⁸ New York City is instead currently overwhelmed with challenges to their de facto segregated public school system.²³⁹

Black-immersion schools in New York City today would more than likely pass a Fourteenth Amendment Equal Protection challenge under *Brown*. Afrocentric schools do not lead to further feelings of inferiority for Black students, as many opponents argue. Afrocentric

236. See CENTURY FOUND., *supra* note 155; Orfield, *supra* note 160; Hannah-Jones, *supra* note 160.

237. See Asante, *supra* note 41, at 177; Keller, *supra* note 179, at 76.

238. See Shapiro, *supra* note 2.

239. In May 2019, the NAACP Legal Defense and Educational Fund, the New York Civil Liberties Union, the American Civil Liberties Union, and LatinoJustice PRLDEF filed a motion to intervene in the federal lawsuit *Christa McAuliffe Intermediate School PTO v. de Blasio*, 364 F. Supp. 3d 253 (S.D.N.Y. 2019), on behalf of a diverse group of public school students and local community-based organizations. See *Christa McAuliffe Intermediate School PTO v. Bill de Blasio*, N.Y. C.L. UNION, <https://www.nyclu.org/en/cases/christa-mcauliffe-intermediate-school-ptov-bill-de-blasio> [<https://perma.cc/HE6P-5UQG>] (last visited Mar. 19, 2020). The motion sought to defend the modest steps taken by New York City to increase access for disadvantaged students to New York City's most competitive and highly-regarded public high schools, and redress the systemic racial exclusion caused by the deeply flawed, test-only admissions policy. *Id.*

schools, from their very inception, set out to oppose the traditional public schools' stigmatization of Black children, and to uplift Black students in the classroom and beyond.²⁴⁰ A curriculum, staff, and student body that reflects the Black student identity, lived experience, and ancestry would much more likely diminish feelings of inferiority than perpetuate them.

Black parents are not likely to be the primary challengers to Afrocentric schools.²⁴¹ Immersion schools are currently increasing in popularity across the country,²⁴² particularly among Black parents,²⁴³ and even more so among Black parents in New York City.²⁴⁴ Instead, a subset of vocal Latinx or Asian parents, two of the larger racial minority groups within New York City, are more likely to challenge Afrocentric schools.²⁴⁵ The challenge could occur based on furthering the stigmatization of non-Black minority students under *Brown*, such that Afrocentric schools uplift Black students to the detriment of other students of color.²⁴⁶ However, the challenge would unlikely occur as an attempt to *disrupt* Afrocentric schools. Instead, it would serve as a means to advocate for equal funding for Latinx or Asian

240. See *supra* Section II.A.

241. See Smoler, *supra* note 150, at 352 (contending if “African American centric charter schools . . . outperform Latino charter schools, the schools could create an unconstitutional division between minority populations because the Latino students will not have a genuine choice to attend whichever school they want”). *But see* Jarvis, *supra* note 182, at 1300 (arguing that “[c]hallenges to Afrocentric curricula are more likely to come from Black parents than white parents”).

242. For instance, when the Minnesota Supreme Court preliminarily ruled in favor of families suing Minnesota for enabling racial segregation in the Twin Cities’ by supporting open enrollment and the creation of racially segregated charter schools, some school choice advocates had serious concerns: “[T]he bad news is that the plaintiffs’ arguments in this particular case risk taking us in the wrong direction by undermining the choices of families of color, and schools designed to specifically serve their needs.” See Erin Hinrichs, *Why Charter School Advocates Have Mixed Feelings About the State Supreme Court’s Integration Decision*, MINNPOST (July 26, 2018), <https://www.minnpost.com/education/2018/07/why-charter-school-advocates-have-mixed-feelings-about-state-supreme-courts-integr/> [https://perma.cc/7QS4-XP7W].

243. See Marquis Baker, *Choose or Lose: African-American Parents and the Decision-Making Process in School Choice 2* (May 2, 2018) (unpublished M.A. theses, Georgia State University) (on file with Georgia State University) (reviewing well-known Afrocentric schools in Washington, D.C., Detroit, Houston, and Brooklyn, New York); Karr, *supra* note 1.

244. See Shapiro, *supra* note 2; Karr, *supra* note 1 (reporting long waitlists for parents hoping to enroll their children in New York City Afrocentric schools).

245. See Smoler, *supra* note 150, at 348 (suggesting that if Afrocentric schools were to outperform failing Latino centric schools (or vice versa), these schools “could drive a deeper wedge between minorities and fail to comply with *Brown*.”).

246. See *id.* at 335.

immersion schools.²⁴⁷ The development of Afrocentric schools should not entail the disregard for other students of color, or worse, pit racial minority groups against one another in a race to claim school funding. This potential, but unlikely, legal challenge should not be a pressing concern for proponents of Afrocentric schools.

C. Proposals for Advancing Immersion Schools

Developing effective proposals for immersion schools can be difficult because there is currently limited data, but the data that does exist is promising, at least in New York City. Thus, the New York State Department of Education (NYSED) and the New York City Department of Education (NYCDOE) should develop research for immersion schools. Additionally, the New York state charter approval process lacks meaningful consideration of at-risk students of color. So, the Board of Regents should adopt new criteria that favor immersion schools.

i. Limited Data Calls for Further Research

To date, there have only been a few extensive national studies conducted on Afrocentric schools,²⁴⁸ and the data in New York City is likewise insufficient. Only two of the seven Afrocentric schools have comprehensive reports on student enrollment and assessment.²⁴⁹ The same two schools, Eagle Academy and Ember Charter, are the only ones with student, parent, and teacher feedback. Notably, Eagle Academy outperformed its district and the city on every evaluative measure.²⁵⁰ Ember scored similarly well on strong family-community

247. See *id.* at 326 (“Initiating ‘freedom of choice’ plans became common practice as a way to collect government funding without integrating public schools.”)

248. See Teasley et al., *supra* note 38, at 101 (“Research on academic achievement with Afrocentric charter schools has received scant attention within academic literature.”).

249. See, e.g., *Archive of Eagle Academy for Young Men II Reports*, N.Y. STATE EDUC. DEP’T, <https://data.nysed.gov/archive.php?instid=800000062342> [<https://perma.cc/DR8Y-V3K5>] (last visited June 1, 2020); *Archive of Ember Charter School Reports*, N.Y. STATE EDUC. DEP’T, <https://data.nysed.gov/archive.php?instid=800000067236> [<https://perma.cc/8BY2-DSRL>] (last visited June 1, 2020).

250. *Eagle Academy for Young Men II (23K644)*, NYC DEP’T EDUC., <https://tools.nycenet.edu/snapshot/2019/23K644/HS/#INFO> [<https://perma.cc/3QDK-JKXF>] (last visited June 1, 2020). Survey questions asked teachers, parents, and students about “rigorous instruction,” “collaborative teachers,” “supportive environment,” “effective school leadership,” “strong family-community ties,” and “trust.” *Id.*

ties, effective school leadership, and trust.²⁵¹ The promising feedback creates incentives to learn more about Afrocentric schools.

School districts should invest more public funds in immersion schools and conduct more research on their educational merit. New York City is the ideal environment to continue investing and researching. The city has the most expansive network of public charters and immersion schools while also having one of the most segregated school systems in the country.²⁵² Furthermore, Black parents in the city have consistently opted for immersion alternatives;²⁵³ the charter school network currently dominates immersion schools in New York City. Charter schools with Black leadership should be supported because they have the opportunity to experiment with new methods and are most culturally adept in catering to Black students. There is also value in adopting the Afrocentric curriculum within the broader context of the New York City public schools.

Not enough data on the curricula of Afrocentric schools exist in academic and legal literature.²⁵⁴ Thus, more research is required for their development. Specifically, the New York State and City Departments of Education should invest in quantitative *and* qualitative research. Quantitative methods should evaluate standardized testing, attendance rates, and college preparedness for students attending immersion schools. Measures should then compare the findings to students of color from similar backgrounds attending neighboring public schools and non-immersion public charter schools. The comparison between immersion and non-immersion schools is critical because quantitative results from immersion schools alone may downplay their value.²⁵⁵

Research should extend beyond quantitative measures to address the intangible benefits Afrocentric schools provide to students. For a qualitative approach, the NYCDOE should poll and interview parents, students, and staff at Afrocentric schools across the city, which would ask participants to evaluate Black-immersion schools and curricula. The questions should ask parents to rate their

251. *EMBER Charter School for Mindful Education, Innovation and Transformation* (84K406), NYC DEP'T EDUC., <https://tools.nycenet.edu/snapshot/2019/84K406/EMS/#INFO> [<https://perma.cc/M3AV-8LSW>] (last visited June 1, 2020).

252. See KUCSERA & ORFIELD, *supra* note 88.

253. See Shapiro, *supra* note 2.

254. See *supra* Part II.

255. See *generally* Teasley et al., *supra* note 38.

children's schools both absolutely and comparatively to other school options. They should also inquire about what motivated parents to send their kids to these schools and how they would want to see them improved. Research efforts should also ask students relevant questions about their experiences in traditional public and immersion schools; researchers could ask students to what extent (if any) have immersion schools improved their self-esteem and built socialization skills.

Additionally, these surveys could target teachers and administrators. For teachers, surveys can provide questions that focus on the effectiveness of Afrocentric curricula, whereas administrators should answer questions on school culture and discipline. Further, for administrators, it is critical to identify whether current or proposed schools take a punitive approach to disciplining its students, as this is a practice that should be avoided. Finally, surveys must represent Black residents across the city. Surveys could contemplate a wide range of participants with a variety of socioeconomic statuses, geographical areas, immigration statuses, parents' educational backgrounds, and the number of children per family.

ii. Make Charter Approval Easier for Immersion Schools

The process to apply for a charter in New York is long and involved, but each decision comes down to the sole discretion of the Board of the Regents.²⁵⁶ Before the Regents make their final determination, the NYSED Charter School Office (CSO) evaluates each application through a competitive Request for Proposals (RFP) process. At the end of the five-phase process, CSO prepares a formal recommendation to the Board of Regents.²⁵⁷ Applicants who do not

256. N.Y. STATE EDUC. DEP'T, 2019 REQUEST FOR PROPOSALS (RFP) AND CHARTER SCHOOL APPLICATION KIT 7 (2019) [hereinafter REQUEST FOR PROPOSALS], <http://www.p12.nysed.gov/psc/startcharter/2019/appmaterials/2019standard.pdf> [<https://perma.cc/PCW4-H46G>]. Under New York Education Law Section 216, the Board of Regents has broad authority to incorporate charter schools. See N.Y. EDUC. LAW § 216 (McKinney 1970). The Board is comprised of 17 members elected by the State Legislature for five-year terms: one from each of the New York's 13 judicial districts and four members who serve at large. *Current Members*, N.Y. STATE EDUC. DEP'T, BOARD OF REGENTS, <https://www.regents.nysed.gov/members> [<https://perma.cc/S7QF-WHBX>] (last visited June 3, 2020).

257. As of November 2018, the Board of Regents has authorized 101 charter schools serving approximately 50,000 students across New York State. Seventy-five of those charter schools are in the New York City Metro Area and Long Island; Bronx (25) and Brooklyn (21) have more charters than any other borough or county in the State. N.Y. STATE EDUC. DEP'T, *supra* note 256, at 2, 9–13. Thus, even though Bronx and Brooklyn constitute almost half of operating charters in the state, the two

pass Regents' approval cannot appeal the decision, but they may reapply the following year as long as they meet all other criteria.²⁵⁸

Although the RFP process holds applicants to rigorous standards for academic achievement and curriculum, organizational expectations, and financial literacy, it almost entirely overlooks measures about educating at-risk students of color.²⁵⁹ In fact, in the almost 100-page document, the RFP mentions promoting “racial, ethnic and linguistic diversity” only as a criterion for schools applying for a supplementary federal grant.²⁶⁰ The RFP does not address culturally responsive teaching,²⁶¹ trauma-informed teaching, or restorative justice.²⁶² Nor does it adequately address how to implement best teaching practices for socioeconomically disadvantaged students.²⁶³ It is no wonder that when the Board of

boroughs only have one representative, or one vote, out of 17 regents. *Current Members*, *supra* note 256. This presents a potential unequal distribution of political power, as regents outside of New York City could make determinations about which charters will serve Bronx and Brooklyn residents. For instance, when the Board of Regents denied Ember Charter’s high school expansion, the Regent from New York County, Nan Eileen Mead, was the only member to oppose the motion. *Report of Regents P-12 Education Committee to the Board of Regents*, *supra* note 24.

258. *Id.* at 4, 7, 13 (requiring charter school applications to comply with the Charter Schools Act, N.Y. EDUC. LAW §§ 2850–57 (McKinney 1998)).

259. *Id.* at 19 (“The Board of Regents will only approve applications that clearly demonstrate a strong capacity for establishing and operating a high-quality charter school. This standard requires a sound educational program, organizational plan and financial plan; and a strong governing board with the demonstrated capacity to implement the proposal effectively and in compliance with State and Federal laws.”).

260. *Id.* at 14 (“New York’s 2011–2016 \$113 million federal Charter School Program (CSP) grant allows new eligible charter schools to apply for a CSP Planning and Implementation sub-grant with a base amount of \$550,000 over a three-year period NYSED encourages applications for new charter schools with certain specific key design features that may qualify for enhanced CSP funding of up to \$800,000 total.”).

261. “Culturally responsive teaching is a pedagogy that recognizes the importance of including students’ cultural references in all aspects of learning.” Kristin Burnham, *5 Culturally Responsive Teaching Strategies*, NE. UNIV. BLOG (July 17, 2019), <https://www.northeastern.edu/graduate/blog/culturally-responsive-teaching-strategies/> [<https://perma.cc/NGF3-VTX4>].

262. “Restorative justice” is an alternative form of student discipline that forgoes punitive actions and instead focuses on restoring relationships and community-building techniques, such as peer meditation, restitution, and community service. *See generally* Lisa Abregú, *Restorative Justice in Schools: Restoring Relationships and Building Community*, 18 DISP. RESOL. MAG. 10 (2012).

263. *See* ERNEST IZARD, NAT’L EDUC. ASS’N, TEACHING CHILDREN FROM POVERTY AND TRAUMA, 25–31 (2016), https://www.nea.org/assets/docs/20200_Poverty%20Handbook_flat.pdf [<https://perma.cc/L6M3-88BH>] (recommending, for instance, that teachers give low-income students a sense of control of their learning and that they prioritize

Regents rejected Ember Charter School's request, it expressed skepticism for Ember's focus on Black culture.²⁶⁴

Thus, it is imperative that the NYSED adopt additional criteria for charter schools that predominantly plan to teach at-risk students of color. Specifically, this Note proposes that the Board of Regents adopt the following additional criteria for charter school applications:

- (1) A demonstrated fluency in culturally responsive teaching;
- (2) compelling support from the local community; and
- (3) executive leadership and staff that reflects the identity and experiences of at-risk students and students of color.

With these changes, promising Afrocentric schools should have an easier time gaining charter approval. In contrast, discipline-heavy for-profit charters may have to adjust their teaching practices if they plan on teaching underserved students.

CONCLUSION

Afrocentric schools emerged at a time in our nation's past when the promise of *Brown* remained beyond reach. Black communities turned inward to find other solutions to the failing and segregated public school system. Afrocentric schools' recent reemergence in New York City and cities across the country is no coincidence. New York City public schools are as segregated today as they were 50 years ago.²⁶⁵ Black students continue to attend schools that are under-resourced and understaffed, especially in comparison to schools with a proportionately larger White student body. Moreover, Black students have made little to no progress in student achievement compared to their White peers. Throughout history, Afrocentric schools have offered hope to these marginalized students, and the modern iterations stand poised to do the same.

Sixty years after the monumental decision in *Brown*, the legality of Black-immersion schools remains unsettled. However, charter schools that do not exclude students based on race may implement an Afrocentric curriculum, even if the student body happens to be exclusively Black. Public schools that implement an Afrocentric curriculum seem likewise not to be at risk of violating *Brown*. The legal landscape points towards a future where immersion schools could survive legal challenges and provide benefits for the

teaching students emotional skills and self-regulation). See generally N.Y. STATE EDUC. DEP'T, *supra* note 256.

264. See SCHOOL COLORS, *Episode 6*, *supra* note 11.

265. See Shapiro, *supra* note 110.

communities often left out of the promises of *Brown v. Board of Education*.

The Afrocentrism school movement is, first and foremost, about improving the educational outcomes of Black children. Afrocentric schools create value for the communities and students they serve. Although the data is not overwhelming, there is enough support to suggest that Afrocentric schools improve Black student achievement and development. There is also evidence that they benefit non-Black students. As such, state and local governments should invest more in immersion schools and further research their potential merits, even if such research methods are costly and time-consuming.²⁶⁶ However, this investment is necessary to understand the full picture and to promote Black student achievement.

266. To be comprehensive, research would likely require longitudinal studies that span the majority of students' K-12 educational path.