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CAN PUBLIC INTERNATIONAL BOARDING SCHOOLS IN GHANA BE THE NEXT EDUCATIONAL REFORM MOVEMENT FOR LOW-INCOME URBAN MINORITY PUBLIC SCHOOL STUDENTS?

by KEVIN BROWN*

INTRODUCTION

The past twenty-five years has witnessed the collapse of the Soviet Union, the end of the Cold War, the rise in importance of international trade, dramatic increases in immigration to the United States bringing people from diverse countries who did not previously come in large numbers to America, tremendous advances in communication technologies and new forms of knowledge. Due to the changes of this magnitude, the American public is aware of new and formidable global and international problems, including global climate change, the fear of cataclysmic destruction from weapons of mass destruction, common knowledge of the possibility of global catastrophe from alignment of the sun and massive solar flares with the center of the galaxy. These changes, however, also provide the conditions for applying new solutions to domestic problems that have plagued

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American society for decades. In this Article, I will put forward an innovative suggestion to a persistent problem of American society: the problem of how to improve the educational performance of some low-income urban minority schoolchildren. I will argue that due to the changes over the past twenty-five years noted above, it is now technologically possible and economically feasible to establish international boarding schools in politically and economically stable developing countries to educate some low-income urban minority schoolchildren. These schools would provide a high academic quality American-style boarding school education to its students, subject to the inclusion of courses about the history, language, culture and customs of the countries where they are located. International boarding schools would, therefore, provide one additional educational option for students, parents and guardians to consider.

A number of possible locations for these schools would work, including areas in countries like India or China. I, however, will argue for the creation of international boarding schools in or near, Accra, the capital city of the Republic of Ghana. Such schools would be open to any student in the public school district that establishes the school, regardless of race or ethnicity. However, since it is located outside of Accra, Ghana, it will probably appeal more to blacks than to other racial or ethnic groups. It is unlikely that such a start-up international boarding school would appeal as much to the urban school students whose demonstrated academic performance indicates that they are among the most academically gifted public school students. Most of the parents and guardians of academically successful students would likely not be willing to make the personal sacrifice that accompanies a decision to send their child halfway around the world for the opportunity of a better education. This natural tendency, however, means that such a boarding school opportunity will appeal most to the parents and guardians of students whose life trajectory could most dramatically be improved by attending, when fully informed of the chances of success of their child in its current situation as opposed to attending such a school.

Part I of this Article will lay out the tentative proposal for the broad outline of an international boarding school in Ghana, the justifications for the school and the tremendous potential benefits that it could provide for students who attend. This Part shall also note that the total annual per pupil expenses would approximate what taxpayers currently pay for urban education. If the organizers of such a school raise funds from private sources to cover the construction and equipment of the facilities, startup costs and early yearly deficits in operating expenses, such an international boarding school would not require any additional public funds. Thus, from the economic vantage point of the taxpayers, the educational choice provided to parents of guardians comes at little or no additional cost.

The problem of the educational difficulties encountered by many low-income urban minority public school students is one American society has been aware of for at least forty-five years. Part II will start with discussions about Dr. Kenneth Clark's groundbreaking book published in 1965, *Dark Ghetto*, and the publication in 1966 of the Coleman Report. These documents focused attention on the educational plight of many low-income, urban minority schoolchildren. This Part will then briefly talk about some of the major educational reform efforts over the

past forty-five years. It will conclude by discussing the two largest current reform efforts for urban education: increasing school choice through charter schools and the accountability movement as best exemplified by No Child Left Behind Act.¹ Despite almost fifty years of educational reform, American society has yet to discover and implement an effective plan for substantially increasing the educational attainments of low-income urban minority youth.²

Part III of this Article will then discuss whether boarding schools created in local communities in the United States, are a potential solution to many of the problems that prevent low-income urban minority youth from succeeding in school. It will conclude by noting that boarding schools in the United States, while a possible solution, are extremely expensive propositions. This, no doubt, explains why there are so few of them.

Part IV will lay out the case for creating an international boarding school near Accra, Ghana, as a technologically possible and economically feasible alternative. This Part will start by discussing the only international boarding school created for urban school students, the Baraka School in rural Kenya. The Abell Foundation established the Baraka School upon the request by school officials in Baltimore public schools. It operated from 1996 to 2002. Despite impressive academic gains by the students that attended, in 2002 organizers closed the Baraka School due to concerns about terrorism in Kenya. This Part will then discuss the recent significant upswing in blacks immigrating to the United States from other parts of the world and especially from Africa. This increase allows us to look at some comparisons between the educational success of native-born and foreign-born blacks in the U.S. The better educational performance of black immigrants and their children may suggest that some urban minority students could draw additional benefits from attending international boarding schools in Ghana. This Part will conclude by discussing why Ghana is the best place to establish an international boarding school.

I. PROPOSAL, JUSTIFICATION AND BENEFITS TO STUDENTS OF ATTENDING AN INTERNATIONAL BOARDING SCHOOL IN GHANA

This Part will first discuss the tentative proposal for international boarding schools in Ghana. Then, it will discuss the justifications for creating international boarding schools. This Part will conclude by discussing the many benefits for students who attend an international boarding school in Ghana when compared to attending public urban day schools.

1. No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2001).

2. Since the number of school children who could ever attend international boarding schools is necessarily limited, it is very important that we continue to search and implement methods to improve urban education.

A. Tentative Proposal for the International Boarding Schools in Ghana

The general outline of international boarding schools contained in this Article is tentative.³ As efforts to establish such schools proceed, the basic proposal will need to be modified to take account of local situations and better suggestions. Nevertheless, for a starting point, such schools would seek to enroll approximately eighty students per year, beginning with the sixth grade and add one grade per year with a like number of students. Parents, guardians, and students would commit for an initial three-year period. However, after the end of the second year, parents, guardians, students, and officials of the boarding school would collectively decide whether the school's success justified its continuation and expansion for four more years so that it would eventually cover the sixth through the twelfth grade. Individual students and their parents or guardians would also decide whether each individual student should continue to stay at the boarding school throughout their entire high school career. When the schools expand to cover grades six to twelve there could be over 300 students attending.

American educators licensed to teach by the state that creates the school would occupy the top administrative positions and make up the classroom faculty in the boarding school. The boarding school should also employ highly trained Ghanaian teachers who will work collaboratively and alongside the American teachers to supplement the teaching staff as night tutors and classroom assistants. Ghanaian teachers, however, should take the lead in teaching courses on Ghanaian history, languages, culture and customs. The support staff including nurses, doctors, cooks, security guards, landscapers, and maintenance personnel should be highly qualified Ghanaians. By taking advantage of the lower cost for goods and services in Ghana, the annual operating cost of the international boarding schools should be between \$8000 and \$14,000 per year, per pupil.⁴ This amount covers all students' living expenses, including transportation to Ghana, food, housing, clothing, and medical and dental care. This amount is comparable to the current per pupil expenditures of American urban public school districts.⁵

3. On November 6, 2009, a group calling itself the Founding Committee for the DuBois Institute proposed the establishment of such an international boarding school to the Indianapolis Public School Board. Andy Gammill, *Is African Boarding School the Answer for Indiana's Inner-city Kids?*, INDIANAPOLIS STAR, Nov. 16, 2009, available at <http://www.indystar.com/article/20091116/NEWS04/911160367/Is-African-boarding-school-the-answer-for-inner-city-kids>.

4. Transportation would be a significant cost. The airfare to Ghana is approximately \$2000 per round trip.

5. See, e.g., Indiana Education Statistics - Expenditures Per Pupil, available at <http://mustang.doc.state.in.us/TRENDS/corp.cfm?corp=5385&var=epup> (reporting the per pupil expenses in Indianapolis public schools in 2006-07 as \$13,357). There is, however, much disagreement and dispute regarding how to calculate the per pupil expenditures of public schools. In a Washington Post article about the cost of public education in the District of Columbia, Andrew Coulson argues that the public is told, "public schools are underfunded. In the District, the spending figure cited most commonly is \$8,322 per child, but total spending is close to \$25,000 per child." Andrew Coulson, *The Real Cost Of Public Schools*, WASH. POST, Apr. 6, 2008, at B8. Coulson argues that the commonly cited figure counts only part of

The construction of the school facilities, including classrooms, sports facilities, student dormitories, and computer labs, would take advantage of Ghana's lower construction costs. It would also occur in stages, as the student population at the school expands during the first few years. The facilities, however, must provide the students and teachers with an exceptional lifestyle—as determined by American standards—including comfortable living quarters, an up-to-date computer lab, and well-manicured grounds.

The total cost of constructing and equipping the facilities, along with start up costs and operating deficits for the first few years should not exceed four million dollars.⁶ The organizers of a given international boarding should raise these funds from private sources. By doing so, the cost to construct and operate the international boarding school would not add any additional costs to the taxpayers.

The primary justification for starting with the sixth grade is to assure that students enrolled are still young enough to reap huge rewards from the international boarding school experience. The reason to seek approximately 80 students per year is to assure that there are enough students who attend the international boarding school to generate the economies of scale after a few years that are necessary to bring the per pupil costs down to roughly what public schools currently spend to educate American school children. For some districts, operating an international boarding school could actually generate economic savings. However, this proposal does not rest upon economics. Rather, it rests upon its substantial potential to improve the likelihood that students who attend these schools will be enormously successful in life without increasing the cost to the taxpayers.

B. Justifications for the Creation of an International Boarding School

The typical public school student spends less than 8 hours a day, 180 days a year in school or about 1/4th of their annual waking time. A significant part of what influences students' educational performance, however, occurs during the 75 percent of their time that they spend outside of the classroom. Even though many educators and administrators perform exemplary work in urban public schools, circumstances and conditions beyond their control hamper their ability to educate effectively many of their students. Even committed parents, grandparents and guardians are often unable to combat negative influences such as crime, drugs, teenage pregnancy, gang activity and lack of positive role models within the neighborhoods where many urban schoolchildren reside. For some schoolchildren, the problem is a dysfunctional home situation.

One option that could address the problems urban school students encounter

the local operating budget. *Id.* In order to calculate the real cost per student it is necessary to add all sources of funding for education from kindergarten through twelfth grade. *Id.*; see also Andrew J. Coulson, *The Real Cost of Public Schools*, CATO@LIBERTY, Apr. 7, 2008, <http://www.cato-at-liberty.org/2008/04/07/the-real-cost-of-public-schools> (last visited Oct. 19, 2009) (providing further explanation of the educational costs per student).

6. See, e.g., A Practical Addition for Schools in Ghana, <http://www.openarchitecturenetwork.org/projects/3672> (last visited Oct. 19, 2009) (listing construction costs for a classroom in Ghana to be \$10,000 per classroom).

outside of the classroom is to create public boarding schools where students spend at least five, if not six or seven, days a week in a loving, supportive, structured and academically rich environment. The United States has a long history of elite boarding schools with outstanding academic reputations, including schools like Phillips Exeter Academy in Exeter, New Hampshire, and Canterbury School in New Milford, Connecticut.⁷ Four private boarding schools in the U.S. cater principally to blacks in the U.S.⁸

Public boarding schools could respond to a number of the non-classroom issues that hamper the abilities of many urban students. Both Washington, D.C. and the State of Maryland have followed this line of thinking and established such schools.⁹ However, the cost of a public boarding school education in the U.S. generally runs in excess of \$30,000 per student, per year.¹⁰ Unfortunately, few school districts in this environment of fiscal responsibility can devote such resources to public education.

C. Advantages for Students Who Attend an International Boarding School in

7. See Prepreview's Homepage, <http://www.prepreview.com> (last visited Oct. 19, 2009) (listing boarding schools). The cost of sending students to these schools, however, exceeds \$30,000 per year. See, e.g., Prepreview Phillips Exeter Academy, http://www.prepreview.com/School/Phillips_Exeter_Academy.html (last visited Oct. 19, 2009) (listing tuition for Phillips Exeter Academy as \$38,720).

8. See, e.g., Piney Woods Homepage, <http://www.pineywoods.org> (last visited Oct. 19, 2009) (providing information about Piney Woods, a well-known boarding school in rural Mississippi); see also, e.g., Pine Forge Academy Information, <http://www.pineforgeacademy.org/about.html> (last visited Oct. 19, 2009) (providing a description of Pine Forge Academy, located in Pine Forge, Pennsylvania). The school is a co-educational Seventh-day Adventist school that serves grades nine through twelve and is "only one of [four] African-American boarding academies." *Id.* It boasts a Christ-centered curriculum in a safe, caring environment. *Id.* Pine Academy opened its doors in September of 1946 with an initial enrollment of 90 students. *Id.* The annual cost of Pine Forge Academy is only about \$19,000 per year. Pine Forge Academy Tuition and Fees, <http://www.pineforgeacademy.org/tuition.html> (last visited Oct. 19, 2009). See, e.g., Laurinburg Institute Homepage, <http://www.laurinburginstitute.org> (last visited Oct. 19, 2009) (providing information about Laurinburg Institute located in Laurinburg, North Carolina). It was "started in 1904 by Emmanuel Monty and Tinny McDuffie Forge, with only a small piece of swamp land and a dream of providing quality education and guidance for black children." Laurinburg Institute Mission, <http://www.laurinburginstitute.org/mission.htm> (last visited Oct. 19, 2009). Laurinburg Institute encompasses grades nine to twelve and has a capacity to enroll 135 boys and girls. *Id.* The annual cost for tuition and room and board is at least \$15,000 per year. Laurinburg Institute Tuition, <http://www.laurinburginstitute.org/tuition.htm> (last visited Oct. 19, 2009). See, e.g., Redemption Christian Academy Homepage, <http://www.rcastudents.com> (last visited Oct. 19, 2009) (providing information about the fourth African-American boarding school, Redemption Christian Academy, located in Troy, New York). It was founded in 1979 by Rev. John Massey, Jr. *Id.*

9. See, e.g., Diane Suchetka & Barb Galbincea, *Programs Across Country Tackle Poverty With Innovative Ideas*, CLEVELAND PLAIN DEALER, Aug. 6, 2006, at B3 (describing the SEED schools as boarding schools for urban children to improve their rates of graduation and college attendance).

10. The initial price tag for constructing the campus of the SEED school in Washington D.C. was roughly \$26 million, approximately \$14 million from tax-free bonds and \$12 million in donations. *Id.* The annual operating cost for the Baltimore SEED School is about \$34,000 per year per student. Sue Ontiveros, *Boarding Schools May be Answer for Poor Kids - Concept Has Worked Elsewhere, and CPS Needs to Take a Bold Step to Try to End a Cruel Cycle*, CHICAGO SUN TIMES, Mar. 21, 2008, at 29.

Ghana

An international boarding school constructed in Ghana could offer students all of the advantages of an American boarding school and more. Such a school would be far more than an educational reform effort. It would be a very different model of public education. Commentators generally discuss the success of education reform efforts in terms of improved performance on accountability exams, more students staying in school long enough to graduate with a regular high school diploma, or attendance at post-secondary institutions of higher education. An international boarding school, however, would create a different type of educational experience that could substantially improve the life trajectory of its students in many more ways than just the increased educational benefits. An international boarding school could assure that students are living a healthy lifestyle with well-balanced nutritious diets and exercise programs. The health benefits will last well into the students' adult years. Attending an international boarding school will eliminate a number of obstacles to successful long-term futures that many urban public school students encounter. Students attending an international boarding school in Ghana are not going to be involved in the American juvenile justice or criminal justice system. Nor will they be involved in criminal street gangs, have easy access to deadly weapons nor involved in selling illegal drugs. Measuring the success of an international boarding school just in terms of academic improvement would overlook these other substantial non-educational benefits.

An international boarding school can almost guarantee its students that they will have teachers, staff, and administrators that are deeply committed to the students' academic and non-academic success. The American administrators and teachers who would be a part of an international boarding school, like the students and their families, would have to make the choice of leaving the care, comfort, and security of their loved ones and homes for an extended period. In order to make such a sacrifice, these individuals would have to be inspired by a vision that would not just improve their ability to effectively teach, but allow them to elevate the future life paths of the students in their charge. The result is that the American faculty and administrative staff who chose to be a part of an international boarding school would be motivated by a strong desire to make the school a success.

An international boarding school would provide an opportunity for administrators and educators to institute the most effective teaching techniques and strategies in an environment where they would have complete control of the educational process. The teaching staff would be assured adequate time to work with their colleagues to plan curricula. They could also ensure that systematic socialization structures were in place to acculturate the students for greater success when they returned to the United States. For the African-American students who attend the school, the teachers and administrators could make sure that the students were made acutely aware of the connection between blacks in the United States and those in Africa.

An international boarding school could also provide several significant academic advantages to its students that even the best urban day schools could not duplicate. The students would spend far more time on their academic work because there would be fewer distractions to occupy the students' time and, thus, divert

their attention from their academic pursuits. An international educational experience would broaden the intellectual horizons of the students who attended, kindle their imaginations, foster a spirit of free inquiry, and increase their understanding of international events and the interconnectedness of the globalizing world. This experience would better prepare these students to take full advantage of all of the opportunities that will result from increasing globalization.

When these students apply to selective colleges and universities, admissions officials are likely to view them as more attractive candidates in comparison to their American counterparts with equal academic credentials. Students with substantial international experience bring a diverse perspective to the educational process. As a result, most selective colleges and universities provide these kinds of applicants with additional positive considerations during their admissions process.¹¹

Finally, and perhaps most importantly, attending an international boarding school in Ghana would fundamentally alter the social economic environment for many of the urban students during their critical formative adolescent years. Instead of living in American communities where the public perceives them as poor urban minorities with limited resources and long-term opportunities, the local Ghanaian population will view these students as wealthy, upwardly mobile foreigners who have incredibly bright futures. Effectively, these students will have the socio-cultural experience of growing up as upwardly mobile, fortunate, and well-to-do individuals, rather than as poor, urban, minority students.

II. EDUCATIONAL REFORM OVER THE PAST FIFTY YEARS

In 1965, legendary black psychologist, Kenneth Clark, published his groundbreaking book, *Dark Ghetto*. This book revealed the conditions in schools attended by children in Harlem.¹² Clark pointed out that public schools in deprived communities have a disproportionate number of substitute teachers and many of their faculty are inexperienced.¹³ Many experienced teachers felt that an assignment at a Harlem school was a step down.¹⁴ As a result, the best teachers would not accept assignments to these schools.¹⁵ A damaging cycle of low expectations also pervaded the schools.¹⁶ The teachers expected little of the students because of the environmental disadvantages stemming from their family backgrounds and neighborhoods.¹⁷ These low expectations meant that the teachers were not teaching

11. See, e.g., Yale University Undergraduate Admissions, <http://www.yale.edu/admit/freshmen/application/what.html> (last visited Oct. 19, 2009) (emphasizing that the admissions committee seeks to admit applicants from "as broad a range of backgrounds as possible"). Attending boarding school in Ghana would contribute to students having experience with diversity.

12. KENNETH B. CLARK, *DARK GHETTO: DILEMMAS OF SOCIAL POWER* (Wesleyan University Press) (1965).

13. *Id.* at 138.

14. *Id.* at 136.

15. *Id.* at 137.

16. *Id.* at 132-33.

17. See *id.* (observing that teachers and school supervisors sustain the relationship found in statistical studies that there is a "tenuous link" between environment and social factors).

the students, because they did not believe that the students had the capability to learn.¹⁸ The teachers held the students to low academic standards and rewarded them when they turned in mediocre work.¹⁹ Clark noted that the cultural and economic background of urban school children is only a barrier to learning when students are permitted to treat it as such.²⁰ He went on to argue that public school authorities should hold black children and teachers to the same high standards of academic performance as everyone else.²¹

Clark exhorted school administrators and teachers not to excuse students for inadequate academic performance. This only makes more rigid and intolerable the “pathology, injustices, and distinctions of racism” that perpetuate the cycle of poverty in which these urban school students are imprisoned.²² Clark urged the New York City Board of Education to institute rigorous standards for teachers in its ghetto schools.²³ He argued that the Board should assign the best teachers to these schools and pay them for their superior skills and willingness to tackle such a difficult learning environment. The teachers, he said, must also expect that the students have the ability to learn.²⁴ However, he cautioned, only excellent supervision can maintain excellent teaching.

The Coleman Report was released a year after Dr. Clark published his book. As part of the Civil Rights Act of 1964,²⁵ Congress commissioned a study, commonly referred to as the Coleman Report, to determine “the lack of availability of equal educational opportunity” for individuals of minority race, color, religion, or national origin.²⁶ In the fall of 1965, a research team led by James Coleman of

18. See CLARK, *supra* note 12, at 132-33 (recognizing that teachers “talked of lowering standards to meet what they considered the intellectual level of their students”).

19. *Id.* at 121. Clark calls this “Educational Atrophy: The Self-fulfilling Prophecy.” *Id.* at 127.

20. *Id.* at 139-40.

21. *Id.* at 148.

22. *Id.*

23. CLARK, *supra* note 12, at 138.

24. See *id.* at 147-48 (explaining that academic performance of students is tied to the teacher’s acceptance or rejection of their students and the teacher’s belief in the children’s ability to learn); see also DIANE RAVITCH, LEFT BACK: A CENTURY OF FAILED SCHOOL REFORMS 381 (2000) (discussing Clark’s insistence on high expectations for students and teachers).

25. 42 U.S.C. § 2000 (2006).

26. JAMES S. COLEMAN, EQUALITY OF EDUCATIONAL OPPORTUNITY iii (1966) [hereinafter COLEMAN REPORT]. The Coleman Report assessed the effect of desegregation on academic performance. *Id.* In order to determine the effect of desegregation on student achievement, the Coleman Report compared the achievement levels of four groups of African-American students: (1) those in majority-white classes; (2) those in classes that were half black and half white; (3) those in majority-black classes; and (4) those in classes with no whites. *Id.* at 31-32. African-American students in the first group generally received the highest scores on the standardized tests, although the differences from group to group were small. *Id.* at 29. African-American student achievement, however, did not rise in proportion to the presence of white classmates. *Id.* at 1-2. Although African-American students in majority-white classes generally had the highest scores, black students in all-black classes actually scored as high as or higher than those in half-black or majority-black schools. *Id.* at 31. Moreover, in the Midwest, some African-American students in all-black classes outperformed even those African-Americans in majority-white classes. *Id.* at 32. Because there was no court-ordered busing in 1965 when the survey for the Coleman Report was conducted, the African-Americans who attended majority-white

Johns Hopkins University and Ernest Campbell of Vanderbilt University surveyed some 4000 public schools.²⁷ The research team not only scrutinized educational facilities, materials, curricula, and laboratories, but also analyzed educational achievement as determined by standardized tests.²⁸ The primary purpose of the study was to measure how primary school resources affected pupil achievement.²⁹ The major finding of the survey was that academic achievement appeared to be related to students' family backgrounds, rather than the quality of their school.³⁰ Next to the student's own family background, the other factors most closely related to student achievement were the social composition of the school, and the student's sense of control of the environment.³¹ The study also found "that variations in the facilities and curriculums [sic] of the school account for relatively little variation in pupil achievement insofar as this is measured by standard tests."³²

Two generations of urban school students have attended public school since Dr. Clark offered his advice and the Coleman Report was published. In that time, there have been many educational reform movements directed at improving the academic achievement of low-income urban minority schoolchildren.³³ All of these reform movements have worked within the limitations imposed on urban public education by American society. While there are examples of successful urban schools, our society has not demonstrated the ability to provide low-income urban minority students at-large with the opportunity for the kind of educational success that we routinely expect of students attending wealthy suburban schools.³⁴ As laudable as Dr. Clark's advice was, as admirable as these educational reform efforts have been, and as much as our society needs them to continue, our society has yet to find the magic solution to what seems to be an intractable problem. This is not surprising, since educational researchers have pointed to the fact that urban schools populated with low-income minority students create significant challenges for educators.³⁵

schools presumably lived in integrated neighborhoods. Their slightly better performance may have only reflected their more privileged socioeconomic position. If so, then the academic performance of black students in majority-white classes adds force to one of the major findings of the study, that the socioeconomic status of the student was a strong determinant in academic achievement.

27. DIANE RAVITCH, *THE TROUBLED CRUSADE: AMERICAN EDUCATION, 1945-1980*, 168 (1983).

28. COLEMAN REPORT, *supra* note 26, at iii.

29. *Id.*

30. *Id.* at 22.

31. *See* RAVITCH, *supra* note 27, at 168-69 (listing findings from the Coleman Report).

32. COLEMAN REPORT, *supra* note 26, at 21. The study, however, did note that variations in facilities appeared to have a greater impact on the educational achievement of African-American students than upon white students. *Id.* at 22.

33. *See, e.g.*, PAUL TOUGH, *WHATEVER IT TAKES: GEOFFREY CANADA'S QUEST TO CHANGE HARLEM AND AMERICA 3* (2008) (discussing the Head Start program).

34. *But see id.* at 19 (discussing The Harlem Children's Zone, which has been able to accomplish this for the entire community and seeks to address all of the problems that poor families are facing, including substandard housing, violent crime, chronic health problems, and failing schools).

35. *See, e.g.*, GARY ORFIELD & CHUNGMEI LEE, *HISTORIC REVERSALS: ACCELERATING RESEGREGATION, AND THE NEED FOR NEW INTEGRATION STRATEGIES 18-22* (2007), available at http://www.civilrightsproject.ucla.edu/research/deseg/reversals_reseg_need.pdf (discussing problems in

Many of the challenges for urban public schools involve problems that undermine the ability of students to concentrate on their studies, but occur outside of the school walls. Thus, educational reform efforts limited to public schools may not be adequate to address all of the factors that prevent many students from excelling in school. However, educational reformers tend to follow the lead of Dr. Clark, asserting that factors related to a student's social and economic background are only obstacles when educators allow them to function as such.³⁶ Underlying this position is Clark's pragmatic concern, expressed over forty years ago, that excusing poor school performance, by pointing to the existence of problems outside of school runs the risk of society accepting inadequate performance from urban public school students and viewing this performance as beyond societal control.³⁷

A. School Desegregation as Educational Reform

Many commentators and educational experts viewed school desegregation as an educational reform movement that could have positive effects on the education of public school students.³⁸ After all, the Supreme Court, in *Brown v. Board of Education*,³⁹ noted that segregation with the sanction of law retarded the educational development of the black schoolchildren.⁴⁰

Regardless of whether school integration could be an effective educational reform movement,⁴¹ America's public schools have been re-segregating for the past two decades. Figures from the former Harvard's Civil Rights Project show that the percentage of black students attending majority-minority schools has increased from its all-time low of 62.9 percent in 1980-81, to 68.8 percent in the 1996-97 school year, 71.6 percent in 2000, and 73 percent in 2006-07.⁴² The percentage of blacks in schools that are 90 percent or more minority has also increased from its low point of 32.5 percent in the 1986-87 school year, to 35 percent in 1996-97, 37.4

schools that have a high concentration of poor students).

36. See CLARK, *supra* note 12, at 139-40 (explaining that students' backgrounds become a barrier to learning when these backgrounds are allowed to become an obstacle).

37. See *id.* at 127 (arguing that assuming learning impediments based on disadvantaged background furthers perceptions of class and race differences that reinforce inferior education standards for disadvantaged students).

38. *Id.* at 126.

39. 347 U.S. 486 (1954).

40. *Id.* at 493-94.

41. See Roslyn Arlin Mickelson, *Twenty-First Century Social Science On School Racial Diversity And Educational Outcomes*, 69 OHIO ST. L.J. 1173, 1173-1227 (2008) (reviewing research on the impact of school desegregation on academic achievement).

42. For 1980-81, 1996-97, and 2000 figures, see ERICA FRANKENBURG ET AL., A MULTIRACIAL SOCIETY WITH SEGREGATED SCHOOLS: ARE WE LOSING THE DREAM? 31, 39 (2003), available at <http://www.civilrightsproject.ucla.edu/research/reseg03/AreWeLosingtheDream.pdf>. For figures for 2003-04, see GARY ORFIELD & CHUNGMEI LEE, NEW FACES, OLD PATTERNS? SEGREGATION IN THE MULTIRACIAL SOUTH 9 (2005), available at http://www.civilrightsproject.ucla.edu/research/reseg05/reseg_lee05.pdf. For 2006-07 figures, see GARY ORFIELD, REVIVING THE GOAL OF AN INTEGRATED SOCIETY: A 21ST CENTURY CHALLENGE 26 (2009), available at http://www.civilrightsproject.ucla.edu/research/deseg/reviving_the_goal_mlk_2009.pdf.

percent in 2000, 38 percent in 2003-04, and 38.5 percent in 2006-07.⁴³ Considering the Supreme Court's opinion in the summer of 2007 in *Parents Involved v. Seattle School District No. 1*,⁴⁴ it is unlikely that there will be a significant increase in school integration. Even for those who are willing to employ the race-neutral means for integrating student bodies that Justice Kennedy's controlling opinion in *Parents Involved* clearly invites,⁴⁵ there is the reality that the percentage of white students in public schools is steadily decreasing. In 1980, white students made up 73.3 percent of public students.⁴⁶ By 1988, their percentage had dropped to 68.6 percent.⁴⁷ The decline in the percentage of white students has continued. In 2006 they made up only 56.5 percent of public school students.⁴⁸ As a result, a large percentage of urban public school students will spend their educational careers in racially and ethnically segregated schools.

B. Effective Schools Movement and Comer Schools

Senior Assistant to the Chancellor for the Instruction of New York City Public Schools, Ronald Edmonds, responded vigorously to the Coleman Report, refusing to accept the notion that schools could not make a huge difference.⁴⁹ In the 1970s, following the suggestions laid out by Dr. Clark, Edmonds articulated the characteristics of effective schools for minority schoolchildren.⁵⁰ According to

43. For 1986-87, 1996-97, and 2000 figures, see FRANKENBURG ET AL., *supra* note 42, at 31, 39. For figures for 2003-04, see ORFIELD & LEE, *supra* note 42, at 10. For the 2006-07 figures, see ORFIELD, *supra* note 42, at 12. For Latinos, segregation has been increasing since the 1968-69 school year. At that time, 54.8 percent of Latino students were in majority-minority schools and only 23.1 percent were in hyper-segregated schools. FRANKENBURG ET AL., *supra* note 42, at 34. In 1991-92, 73 percent of Latinos were in predominately minority schools and 34 percent were in hyper-segregated schools. ORFIELD & LEE, *supra* note 42, at 9-10. By 2003-04, the percentage in majority-minority schools had increased to 77 percent, with the percentage in hyper-segregated schools increasing to 39 percent. *Id.* In 2006-07, the corresponding percentages were 78 percent in majority-minority schools and 40 percent in hyper-segregated schools. ORFIELD, *supra* note 42, at 26.

44. *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007).

45. See Kevin Brown, *Reflections On Justice Kennedy's Opinion In Parents Involved: Why Fifty Years Of Experience Shows Kennedy Was Right*, 59 S.C. L. REV. 735, 740-53 (2008) (analyzing Justice Kennedy's controlling opinion in *Parents Involved*).

46. In the fall of 1980, whites constituted 73.3 percent of public school students, blacks 16.1 percent, Hispanics 8.0 percent, Asian and Pacific Islanders 1.9 percent, and American Indian/Alaskan Native 0.8 percent. VANCE W. GRANT & THOMAS D. SNYDER, DIGEST OF EDUCATION STATISTICS, 1985-86, 39 (22nd ed. 1986), available at http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/2f/4f/7e.pdf.

47. In the 1988-89 academic year, whites made up 68.6 percent of public students with blacks making up another 15.5 percent, Latinos 11.5 percent, and Asians 3.4 percent. ORFIELD, *supra* note 42, at 11.

48. By the 2006-07 academic year, the percentage of white students had fallen to 56.5 percent, while the percentage of black students had increased to 17.1 percent, Latino students to 20.5 percent, and Asians to 4.7 percent, with 1.2 percent Native American. *Id.*

49. ALAN R. SADOVNIK ET AL., POCKETS OF EDUCATIONAL EXCELLENCE: FINDINGS FROM EFFECTIVE SCHOOLS IN NEWARK AND JERSEY CITY 13 (2009), available at <http://ielp.rutgers.edu/docs/poe.final.pdf>.

50. Ronald Edmonds, *Effective Education for Minority Pupils: Brown Confounded or Confirmed*, in

Edmonds, there are five characteristics that effective schools for minority children have in common: (1) strong administrative leadership; (2) a climate of expectation “in which no children are permitted to fall below minimum but efficacious levels of achievement”; (3) an orderly but not unduly rigid atmosphere; (4) an emphasis on pupil acquisition of basic school skills; and (5) frequent monitoring of pupil progress.⁵¹

Although Yale Professor of Child Psychiatry James Comer agreed with most of the characteristics noted by Edmonds, he emphasized the need for parental involvement in the education of minority children.⁵² He pushed the Comer School Development Program, which sought to create collaborative working relationships with parents, educators, and the community in order to improve the educational performance of students.

C. *A Nation at Risk Report*

In 1983, the National Commission on Excellence in Education published its influential report, *A Nation At Risk*.⁵³ In the report, the Commission stated that public schools were failing in their mission to educate students and were creating “a rising tide of mediocrity that threatens our very future as a Nation and a people.”⁵⁴ This report placed a good portion of the blame for the problem of public education on schoolteachers.⁵⁵ The report argued that the teaching profession was not attracting high caliber personnel. The solution offered was to raise the academic standards for education majors and provide them with more rigorous training.⁵⁶ This report helped to spark a host of educational reform measures to combat the crisis in public education, including new teacher testing and licensing schemes.

D. *Multicultural and Afrocentric Educational Reforms*

Following the multicultural movement of the 1980s sparked by James Bank and the Portland Baseline Essays,⁵⁷ many urban school systems started to utilize

SHADES OF BROWN: NEW PERSPECTIVES ON SCHOOL DESEGREGATION 109, 121 (Derrick Bell ed., 1980).

51. *Id.*

52. James P. Comer et al., *School Power: A Model for Improving Black Student Achievement*, in BLACK EDUCATION: A QUEST FOR EQUALITY AND EXCELLENCE 187, 190-91 (Willy De Marcel Smith & Eva Wells Chunn eds., 1989).

53. DAVID P. GARDNER ET AL., A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM (1983), available at <http://www.ed.gov/pubs/NatAtRisk/index.html>.

54. *Id.* at 5.

55. *Id.* at 22.

56. *Id.* at 30-31.

57. See generally James A. Banks, *Race, Ethnicity and Schooling in the United States: Past, Present and Future*, in MULTICULTURAL EDUCATION IN WESTERN SOCIETIES 30, 30-44 (James A. Banks & James Lynch eds., 1986) (chronicling the multicultural education movement and the events leading up to it); James A. Banks, *Multicultural Education: Characteristics and Goals*, in MULTICULTURAL EDUCATION: ISSUES AND PERSPECTIVES 2, 2-6 (James A. Banks & Cherry A. McGee Banks eds., 1989) (defining multicultural education and providing a summary of its history). Portland, Oregon, for example, began using African-American baseline essays that were first developed in 1982 as part of a

Afrocentric curricular materials, because this material was believed to make education more relevant, and thus more effective, for urban schoolchildren.⁵⁸ Afrocentric curricular materials provide black students with an opportunity to study concepts, history, and the world from a perspective that places Africans and African-Americans at the center of the analysis. It treats them as the subject rather than the object of the discussion.⁵⁹ Such curricular material was infused into the content of various subjects, including language arts, mathematics, science, social studies, art, and music.

By the late 1980s, many public school systems including Atlanta, Detroit, Indianapolis, New Orleans, Portland, and Washington, D.C., approved the use of Afrocentric curricular materials.⁶⁰ In addition, several school districts created African-American Immersion Schools. The Ujamaa Institute, an immersion school in New York City that opened in September 1992, is coeducational. The Milwaukee School System, on advice of counsel, abandoned its original proposal to establish an all-black male school and instead established immersion schools that include females.⁶¹

F. Current Major Educational Reforms for Urban Education

Two major efforts are currently dominating reform of urban public education.

multicultural program. Portland developed similar materials on the history, culture, and contributions of five other geo-cultural groups: Asian-Americans, European-Americans, Hispanic-Americans, Indian-Americans, and Pacific Island-Americans. Portland Public Schools, <http://www.pps.k12.or.us/depts-c/mc-me/essays.php> (last visited Oct. 19, 2009). For example, the mathematics section of a Portland Public Schools baseline essay begins by pointing out that many programs avoid the African basis for mathematics. Beatrice Lumpkin, *African and African-American Contributions to Mathematics*, PORTLAND PUBLIC SCHOOLS GEOCULTURAL BASELINE ESSAY SERIES 1 (1987), <http://www.pps.k12.or.us/depts-c/mc-me/be-af-ma.pdf>.

58. See Robert K. Landers, *Conflict Over Multicultural Education*, Editorial Research Reports, Nov. 3, 1990, at 682 (reporting that proponents of Afrocentrism believe it to be beneficial in educating urban children).

59. See *id.* at 691 (explaining that Afrocentrists view Egypt as “the cradle of Western civilization . . .”); see generally MOLEFI K. ASANTE, *THE AFROCENTRIC IDEA* 159 (1987) (providing the purpose of the Afrocentric method as “establishing a world view about the writings and speaking of oppressed people”); MOLEFI K. ASANTE, *AFROCENTRICITY 1* (1988) (“offer[ing] a philosophical inquiry into the future of the Afrocentric perspective . . .”); MOLEFI K. ASANTE, *AFROCENTRICITY: THE THEORY OF SOCIAL CHANGE* (1980); C. TSEHLOANE KETO, *THE AFRICA CENTERED PERSPECTIVE OF HISTORY AND SOCIAL SCIENCES IN THE TWENTY-FIRST CENTURY* (1989). The Afrocentric perspective rests upon the premise that it is valid to posit Africa as the geographical and cultural starting base for peoples of African descent. When the discussion, however, is limited to reconstructing the history of African-Americans, the Afrocentric perspective becomes an African-American centered perspective. For a full discussion of African-American immersion schools, see Kevin Brown, *Do African-Americans Need Immersion Schools?: The Paradoxes Created by the Conceptualization by Law of Race and Public Education*, 78 IOWA L. REV. 813, 846-80 (1993).

60. Peter Schmidt, *Educators Foresee ‘Renaissance’ in African Studies*, EDUC. WK., Oct. 18, 1989, at 8.

61. See, e.g., Dr. Martin Luther King African-American Immersion Elementary School, Milwaukee, Wisconsin, <http://www.ncrel.org/sdrs/areas/issues/students/atrisk/at6lk112.htm> (last visited Nov. 10, 2009) (describing an African-American immersion school).

One prevailing reform movement is an effort to increase school choice. According to its proponents, increased choice creates an environment that forces schools to compete for students. In a Darwinian competitive environment, schools that cannot demonstrate their ability to provide a quality education will not survive. While some states have pursued efforts to provide public funding for private school education,⁶² the predominate form of increased school choice are efforts to increase charter schools. The second major reform effort is the accountability movement. The basic tenet of this reform effort is that schools should be held accountable for results. Therefore, states should establish standards for what schools teach, tests students to see if they have learned what should be taught and then punish or reward schools based on whether their students learned what should have been taught.⁶³ The accountability movement is best embodied in the landmark No Child Left Behind Act (NCLB), signed into law by President Bush in January 2002.⁶⁴ While the data is still incomplete on charter schools and the impact of NCLB, to this point it appears that we have not yet found a workable solution to the academic problems plaguing many urban minority school districts.

1. Charter Schools

In 1991, Minnesota became the first state in the nation to pass charter school legislation.⁶⁵ By the 2002-03 school year, thirty-nine states and the District of Columbia had passed charter school legislation.⁶⁶ The number of charter schools grew from the two in 1991 to almost 3000 in 2004.⁶⁷ According to the Report Card on American Education, published by the American Legislative Exchange Council, by 2007 over 4200 charter schools serving over 1,200,000 students were operating in forty states and the District of Columbia.⁶⁸ Currently, there are more than 4900 charter schools in 40 states and the District of Columbia, enrolling 1.5 million students.⁶⁹ While charter school legislation varies from state to state,⁷⁰ it generally

62. For a discussion of the benefits of public funding of private education with concern about the educational benefits for urban school children see Kevin Brown, *Reexamination Of The Benefit Of Publicly Funded Private Education For African-American Students In A Post-Desegregation Era*, 36 IND. L. REV. 477 (2003).

63. James Forman, Jr., *The Rise and Fall of School Vouchers: A Story of Religion, Race and Politics*, 54 UCLA L. REV. 547, 587 (2006-07)

64. *Id.* at 587.

65. U.S. DEP'T OF EDUC., OFFICE OF THE UNDER SEC'Y, EVALUATION OF THE PUBLIC CHARTER SCHOOLS PROGRAM: FINAL REPORT, at ix (2004), available at <http://www.ed.gov/rschstat/eval/choice/pcsp-final/finalreport.pdf>.

66. *Id.*

67. National Education Association: Charter Schools, <http://www.nea.org/home/16332.htm> (last visited Oct. 19, 2009).

68. ANDREW T. LEFEVRE, REPORT CARD ON AMERICAN EDUCATION: A STATE-BY-STATE ANALYSIS, 1985-1986 TO 2006-2007 4 (2008), available at http://www.alec.org/am/pdf/2007_ALEC_Education_Report_Card.pdf.

69. Gary Miron & Leigh Dingerson, *The Charter School Express: Is Proliferation Interfering With Quality?* EDUC. WK., Oct 2, 2009, available at www.edweek.org/login.html?source=http://www.edweek.org/ew/articles/2009/10/07/06miron.h29.html&destination=http://www.edweek.org/ew/articles/2009/10/07/06miron.h29.html&levelId=2100.

allows for private persons and institutions, including so-called educational management companies like the Nobel Learning Communities, Inc.,⁷¹ to develop and implement plans for a given school. Most charter schools operate in urban areas.⁷² Charter schools are public schools. However, they are under less supervisory control by public education officials, and can often operate somewhat independently of public school authorities.⁷³ Charter schools are intended to foster new approaches to education with innovative curricula and instruction.

The unique focus provided by charter schools is the primary feature that attracts parents and children to the schools. Advocates for increased choice in public education typically provide support for charter schools.⁷⁴ They argue that the process-oriented approach to educational reform and increased school choice will improve educational achievement.⁷⁵ Increased choice creates an environment that forces schools to compete for students. In addition, increased school choice has the potential to produce new and innovative schools,⁷⁶ including those that are particularly effective at responding to the educational needs of minority, low-income, urban school students. In a competitive environment, schools that cannot demonstrate their ability to provide a quality education do not survive. Increased choice also reduces administrative burdens on educators. As a result, it drives educational decisions down to the level of the individual school. This should also allow educators to respond more effectively to the educational needs of students enrolled in their schools. Allowing parents to select the school that their children attend should increase parental and student satisfaction with students' education. Increased choice provides an opportunity for those parents who do not think a particular school is serving their child's interest to select another school. No consensus, however, has developed regarding the educational benefit of charter schools.⁷⁷

70. See Wendy Parker, *The Color of Choice: Race and Charter Schools*, 75 TUL. L. REV. 563, 574-81 (2001) (offering a brief basic primer about charter schools).

71. See William C. Symonds, *Edison: How Big a Blow to School Choice?*, BUS. WK., June 3, 2002, at 44 (detailing how Nobel currently operates 174 schools serving 25,000 students).

72. ERICA FRANKENBERG & CHUNGMEI LEE, CHARTER SCHOOLS AND RACE: A LOST OPPORTUNITY FOR INTEGRATED EDUCATION 11 (2003).

73. See *id.* at 12 ("Charter schools, a form of school choice that is almost a decade old, represent a further attempt to institute school choice within the public education sphere. A charter is merely a political, legal, administrative and financial arrangement of relative autonomy, created in a somewhat different form in each state that has authorized them.").

74. *Id.*

75. See *id.* at 13 (explaining that charter supporters argue that such schools offer important new options to parents and allow for educational innovation).

76. It may very well be that the accountability movement is reducing the ability of charter schools and voucher schools to institute creative approaches to education. Since these schools are judged by their performance on the accountability tests, the need for their students to do well on the tests has the tendency to standardize their education with that of the public schools. See James Forman, Jr., *The Rise and Fall of School Vouchers: A Story of Religion, Race and Politics*, 54 UCLA L. REV. 547 (2006-07) (suggesting that religion, race, and politics are the reasons why school vouchers have failed).

77. "Repeated studies over the past decade have failed to find consistent, positive academic change produced by the vast majority of charter schools." Miron & Dingsen, *supra* note 69.

2. No Child Left Behind: An Act to Close the Achievement Gap With Accountability, Flexibility and Choice

The latest educational reform effort is the landmark No Child Left Behind Act (NCLB), signed into law by President Bush in January 2002.⁷⁸ NCLB is subtitled "Improving the Academic Achievement of the Disadvantaged." The first words of the Act are: "[a]n Act [t]o close the achievement gap with accountability, flexibility and choice, so that no child is left behind."⁷⁹ NCLB requires all states to implement statewide accountability mechanisms at both school and district levels.⁸⁰ States must develop challenging academic content and student achievement standards.⁸¹ The standards are to be uniform throughout the state and should apply to all public schools and students.⁸²

According to NCLB, content standards must specify what all students are expected to know and be able to do.⁸³ The standards always covered reading or language arts and mathematics.⁸⁴ Beginning in the 2005-06 academic year, NCLB expanded the covered subjects to include science.⁸⁵ NCLB now requires states to administer tests assessing student achievement against the content and achievement standards in grades 3 through 8, and at least once during grades 10 through 12, in math and reading or language arts.⁸⁶ Starting with the 2007-08 school year, states must annually assess students in science at least once during grades 3 through 5, grades 6 through 9, and grades 10 through 12.⁸⁷ A key aspect of these testing requirements is that schools must monitor and record scores, so that they are accessible by itemized student categories.⁸⁸ These student categories include English proficiency status, economic disadvantage and each major racial and ethnic group (American Indian or Alaska Native; Asian; black or African-American; Hispanic/Latino; Native Hawaiian or Other Pacific Islander; and white).⁸⁹

The core of NCLB is its requirement for adequate yearly progress (AYP).⁹⁰ NCLB requires states, school districts, and individual schools to demonstrate AYP toward enabling all public school students to meet the state's academic achievement standards, while working toward the goal of narrowing achievement

78. *Id.* at 587.

79. No Child Left Behind Act of 2001, Pub. L. No. 107-110, Preamble, 115 Stat. 1425 (2001).

80. 20 U.S.C. § 6311(b) (2006).

81. *Id.* § 6311(b)(1)(A).

82. *Id.* § 6311(b)(1)(B).

83. *Id.* § 6311(b)(1)(D)(i)(I).

84. *Id.* § 6311(b)(1)(C).

85. *Id.*

86. 20 U.S.C. § 6311(b)(3)(C)(vii).

87. *Id.* §§ 6311(b)(3)(C)(v)(II)(aa)-(cc).

88. *Id.* §§ 6311(b)(2)(C)(v)(II)(aa)-(dd).

89. *Id.*

90. See Joseph O. Oluwole & Preston C. Green III, *No Child Left Behind Act, Race, and Parents Involved*, 5 HASTINGS RACE & POVERTY L.J. 271, 275-76 (2008) ("NCLB requires that each state establish an accountability system to ensure that its school districts and public schools are making AYP toward the state's implemented standards . . .").

gaps in the state.⁹¹ States were first required to establish a starting point from which improvement could be assessed (i.e., the current percentage of students meeting or exceeding the state's "proficient" level of achievement on state assessment tests).⁹² Thereafter, states were required to identify for each subsequent school year (beginning no later than the 2004-05 school year), a minimum percentage of students who must meet or exceed the proficient level of academic achievement in each subgroup.⁹³ For a given school to make acceptable AYP, all subgroups must make progress in all grades tested.⁹⁴ Thus, for example, if American Indian or Alaska Native, Asian, Hispanic/Latino, Native Hawaiian or Other Pacific Islander, and white students make AYP in all tested grades, but black students do not in one particular grade, that school has failed to make AYP. Each of the individual student groups must make AYP each year. NCLB insists that by the 2013-14 school year, all students, including all the demographic subgroups, will meet or exceed the proficiency level as determined by the state's academic assessments.⁹⁵

NCLB triggers sanctions for schools that fail to make AYP.⁹⁶ NCLB does not just use the "stick" approach for educators. Instead, it is more accurately described as a spiked-club approach. For schools that fail to make AYP five years in a row, the school is required to implement one of several remedies:

91. 20 U.S.C. § 6311(b)(2)(B).

92. *Id.* § 6311(b)(2)(E).

93. The calculation of the annual yearly percentage is complicated. *See Oluwole & Green III, supra* note 90, at 274-75 (explaining how to calculate annual yearly progress). The article notes:

Each state's accountability system must include measures of proficiency on the state's assessments that are 'based on the higher of the percentage of students at the proficient level in': (i) the lowest achieving subgroup of students identified above; or (ii) the school at the twentieth percentile, based on enrollment, after ranking all schools in the state by the proportion of proficient students at the schools. Even if a demographic subgroup at a school does not make AYP as defined by the state standards, the school would still be considered to have met AYP if the percentage of students in the subgroup not meeting or exceeding the proficiency level 'for that year decreased by 10 percent of that percentage from the preceding school year and that group made progress on one or more of the academic indicators.' At least 95 percent of each demographic subgroup must take the state's annual academic assessments. This 95 percent requirement is not applicable, however, if "the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student.

Id. at 275-76 (quoting § 6311(b)(2)(E); § 6311(b)(2)(I)(i); § 6311(b)(2)(I)(ii)).

94. *See id.* at 275 ("By the year 2014, all students, including all the demographic subgroups, must meet or exceed proficiency on academic achievement based on the state's assessments."). The Department of Education issued new requirements for the reporting of data on race and ethnicity that educational institutions must follow entitled the "Final Guidance on Maintaining, Collecting, and Reporting Racial and Ethnic Data to the U.S. Department of Education" *Federal Register*, Vol. 72, No. 202, October 19, 2007. *available at* <http://edocket.access.gpo.gov/2007/E7-20613.htm> [(hereinafter *The Guidance*)]. The Guidance could change the racial and ethnic subgroups reported under No Child Left Behind. *See The Guidance* at 59272.

95. 20 U.S.C. § 6311(b)(2)(F). These subgroups are: the economically disadvantaged; racial and ethnic groups; students with disabilities; and students with limited English proficiency. *Id.* §§ 6311(b)(2)(C)(v)(II)(aa)-(dd).

96. Oluwole & Green III, *supra* note 90, at 276-80.

(i) convert the school to a charter school; (ii) '[replace] all or most of the school staff (which may include the principal) who are relevant to the failure to make adequate yearly progress'; (iii) contract with a private management company to run the school; (iv) takeover of the school by the state educational agency; and (v) '[a]ny other major restructuring of the school's governance arrangement that makes fundamental reforms, such as significant changes in the school's staffing and governance, to improve student academic achievement in the school and that has substantial promise of enabling the school to make adequate yearly progress.'⁹⁷

With these sanctions, NCLB has provided one of the greatest incentives to improve educational performance of students that public school teachers and administrators have ever encountered.⁹⁸ However, seven years after NCLB was signed into law, evidence suggests that while there has been some improvement in the academic performance of students, the improvement is nowhere near what is needed to accomplish the goals set for 2013-14.⁹⁹

In addition to the accountability tests that states use, other tests of academic performance offer insight into whether reductions in various racial and ethnic achievement gaps exist. The National Assessment of Educational Progress (NAEP) exams are one group of tests that provide some perspective on the national effect of NCLB. Congress created these exams in 1969 to assess trends in the progress of elementary and secondary students in certain academic areas, including reading, math, and science.¹⁰⁰ Since 1971, students in the fourth, eighth, and twelfth grades have been tested.¹⁰¹ Although test results have generally improved, racial achievement gaps have increased in many areas.¹⁰²

With regard to reading, a larger percentage of black, white, and Hispanic students now perform at, or above, proficiency levels than in 2000.¹⁰³ However, a greater percentage of whites than blacks tested as proficient in 2007 than did so in 2000.¹⁰⁴ For example, the percentage of black fourth-graders performing at or above proficiency in reading increased from ten percent to fourteen percent.¹⁰⁵ However, the percentage of whites increased from thirty-eight percent to forty-

97. *Id.* at 279 (quoting 20 U.S.C. § 6316(b)(8)(B))

98. *See id.* (arguing that NCLB "sanctions" requiring school improvement, corrective action, and restructuring for failure to make AYP act as incentives, in light of the threat of losing federal funds).

99. *See id.* at 282 ("The racial achievement gap that existed prior to enactment of NCLB continues post-NCLB.").

100. National Assessment of Educational Progress Overview, <http://nces.ed.gov/nationsreportcard/about/> (last visited Oct. 19, 2009).

101. National Assessment of Educational Progress Frequently Asked Questions, <http://nces.ed.gov/nationsreportcard/faq.asp> (last visited Oct. 19, 2009).

102. Oluwole & Green III, *supra* note 90, at 280-81.

103. *See id.* at 281 (explaining that reading scores of white fourth-graders improved five percentage points, and reading scores of black and Hispanic fourth-graders each improved four percent).

104. *Id.*

105. *Id.*

three percent.¹⁰⁶ Thus, while both groups improved, the gap between blacks and whites actually widened.¹⁰⁷ For eighth-graders, the percentage of blacks performing at, or above, the proficiency level in reading remained the same from 2003 to 2007 at thirteen percent, while for whites it decreased slightly from forty-one percent to forty percent.¹⁰⁸

A similar story exists for math scores where, in 2000, only five percent of the nation's black fourth-graders performed at or above proficiency level in math.¹⁰⁹ This contrasted with thirty-one percent of white fourth-graders.¹¹⁰ By 2003, ten percent of black students and forty-three percent of white students were at or above proficiency levels.¹¹¹ In 2007, those percentages increased to fifteen percent for blacks and to fifty-one percent for whites.¹¹² The percentage of black eighth-graders performing at, or above, proficiency increased from five percent in 2000, to seven percent in 2003, to eleven percent in 2007, while the corresponding percentages for whites increased from thirty-four percent to thirty-seven percent to forty-two percent.¹¹³

SAT and ACT scores are another measure of academic achievement, at least for students planning on attending college.¹¹⁴ Scores of black students continue to lag behind their non-black counterparts on the SAT and the ACT.¹¹⁵ Gaps between the average SAT scores of blacks and whites actually increased from 2001 to 2008.¹¹⁶ In 2001, the gap between the average SAT combined math and verbal scores of black and white students was 201 points.¹¹⁷ For 2008 test takers, the gap

106. *Id.*

107. *See id.* at 280-81 (noting that researchers with the Harvard Civil Rights Project concluded that NCLB has widened, not reduced, the racial achievement gap).

108. Oluwole & Green III, *supra* note 90, at 281 (also noting that the proficiency level for Hispanics remained at fifteen percent from 2003 to 2007).

109. *Id.* at 280.

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.* at 280-81.

114. *See* SAT vs. ACT: Standardized Testing, <http://shine.yahoo.com/channel/life/sat-vs-act-standardized-testing-505665/> (last visited Oct. 19, 2009) ("The SAT . . . measures students' ability to analyze and solve problems, skills very important to a college education The ACT, on the other hand, is mostly an achievement test: it measures how much you've retained from school.").

115. *See* Eddy Ramirez, *SAT Scores Hold Steady for Class of '08*, U.S. NEWS & WORLD REPORT, Aug. 27, 2008, available at <http://www.usnews.com/articles/education/2008/08/27/sat-scores-hold-steady-for-class-of-08.html> ("The College Board report . . . shows that black and Latino test-takers continue to trail Asian-American and white students.").

116. *See infra* text accompanying notes 117-120.

117. *See* TABLE 9: SAT AVERAGES ROSE FOR ALMOST ALL RACIAL/ETHNIC GROUPS BETWEEN 1991 AND 2001, http://www.collegeboard.com/prod_downloads/about/news_info/cbsenior/yr2001/table9.pdf (last visited Oct. 19, 2009) (showing that, in 2001, black students had an average SAT score of 859, while white students had an average score of 1060). *See also* TABLE 7: STRONG SAT MATH SCORE GAINS FOR ALMOST ALL RACIAL/ETHNIC GROUPS BETWEEN 1993 AND 2003, http://www.collegeboard.com/prod_downloads/about/news_info/cbsenior/yr2003/table7.pdf (last visited Oct. 19, 2009) (showing that, in 2003, black students had an average SAT score of 857, while white students had an average score of 1063).

increased to 209 points.¹¹⁸ A similar story exists for the ACT. With regard to 2008 ACT scores, the gap was 5.2 points.¹¹⁹ This is an increase from the 2001 gap of 4.9 points.¹²⁰

III. BOARDING SCHOOLS PROVIDE POTENTIAL SOLUTIONS AND HIGH COSTS

One potential solution to the problem of poor education for urban minority students is to enroll them in academically rich boarding schools. As discussed earlier in this Article, the United States has a long history of elite boarding schools with outstanding academic reputations, including schools like Phillips Exeter Academy in Exeter, New Hampshire, and Canterbury School in New Milford, Connecticut.¹²¹ Four private boarding schools in the U.S. cater principally to African-American students.¹²²

118. See TABLE 7: SAT REASONING TEST CRITICAL READING, MATHEMATICS, AND WRITING MEAN SCORES BY RACE/ETHNICITY, WITH CHANGES FOR SELECTED YEARS, <http://professionals.collegeboard.com/profdownload/cbs-08-Page-8-Table-7.pdf> (last visited Oct. 19, 2009) (showing that, in 2008, black students had an average SAT score of 856, while white students had an average score of 1065). In 2007, the College Board added a writing component to the SAT and renamed the verbal section as critical reading. *The College Board Announces a New SAT*, June 27, 2002, <http://www.collegeboard.com/press/releases/11147.html>. In 2007, black students had an average SAT writing score of 425, while white students had an average writing score of 518, for a difference of ninety-three points. TABLE 7: SAT REASONING TEST CRITICAL READING, MATHEMATICS, AND WRITING MEAN SCORES BY RACE/ETHNICITY, WITH CHANGES FOR SELECTED YEARS, <http://professionals.collegeboard.com/profdownload/cbs-08-Page-8-Table-7.pdf>. In 2008, black students had an average SAT writing score of 424, while white students had an average writing score of 518, for a difference of ninety-four points. *Id.*

119. See ACT HIGH SCHOOL PROFILE: SECTION II, ACADEMIC ACHIEVEMENT, TABLE 2.5: AVERAGE ACT SCORES BY RACE/ETHNICITY, <http://www.act.org/news/data/08/pdf/two.pdf>, 12 (last visited Oct. 19, 2009) (showing that the 2008 black-student composite score was 16.9, while the white-student composite score was 22.1).

120. See Digest of Education Statistics: Table 138, http://nces.ed.gov/programs/digest/d07/tables/dt07_138.asp (last visited Oct. 19, 2009) (showing that the 2001 black-student composite score was 16.9, while the white-student composite score was 21.8).

121. See generally Welcome to Phillips Exeter Academy, http://www.exeter.edu/about_us/about_us.aspx (last visited Oct. 19, 2009) (offering 450 courses in 190 subject areas and a student-teacher ratio of five-to-one); About Canterbury, <http://www.cbury.org/podium/default.aspx?t=116469> (last visited Oct. 19, 2009) (offering an average class size of eleven and a student-teacher ratio of six-to-one).

122. Piney Woods is a well-known, historically African-American boarding school in rural Mississippi. The Piney Woods School, <http://www.pineywoods.org> (last visited Oct. 19, 2009). Pine Forge Academy is located in Pine Forge, Pennsylvania. Pine Forge Academy, <http://www.pineforgeacademy.org/about.html> (last visited Oct. 19, 2009) (co-educational Seventh-day Adventist school serving grades nine through twelve). *Id.* The annual cost of Pine Forge Academy is only about \$19,000 per year. Pine Forge Academy Tuition and Fees, <http://www.pineforgeacademy.org/tuition.html> (last visited Oct. 19, 2009). The Laurinburg Institute is located in Laurinburg, North Carolina. Mission of Laurinburg Institute, <http://www.laurinburginstitute.org/mission.htm> (last visited Oct. 19, 2009) (explaining that the prep school founded in 1904 in order to provide quality education and guidance for black children). *Id.* The school serves up to 135 high-school age children. *Id.* The annual cost for tuition and room and board is at least \$15,000 per year. Tuition, Fees, and Payment Plans, <http://www.laurinburginstitute.org/tuition.htm> (last visited Oct. 19, 2009). Redemption Christian Academy is located in Troy, New York. History of Redemption Christian Academy, <http://www.rcastudents.com/history.htm> (last visited Oct. 19, 2009) (noting that the historically African-

The concept of public boarding schools has received a significant amount of attention recently. Over a decade ago, the Schools for Educational Evolution and Development (SEED) Foundation established a public boarding school in Washington D.C.¹²³ In 2004, ninety-eight percent of the students at the SEED school were black, and seventy-nine percent of them hailed from low-income families.¹²⁴ Over eighty-five percent of the students come from single-parent homes.¹²⁵ One of the co-founders of the SEED School, Princeton graduate Rajiv Vinnakota, noted that disadvantaged students lack three keys to academic success.¹²⁶ First, they lack a challenging college-preparatory curriculum.¹²⁷ Second, they often do not have a stable home to provide the necessities of food, clothing, and a safe and supportive space to do their schoolwork.¹²⁸ Finally, their family and communities do not usually cultivate high-achieving educational values.¹²⁹ Boarding schools provide these necessities.

The SEED School is a charter school and, consequently, receives public funds.¹³⁰ However, it operates independently of the Washington, D.C. public school system.¹³¹ SEED School students stay at the boarding school five days a week.¹³² They go home on the weekends, for holidays, and for vacations.¹³³

Every year, the number of applications for the SEED School exceeds the number of spaces available.¹³⁴ Thus, to determine enrollment, the School holds an annual lottery.¹³⁵ The SEED School is currently operating at full capacity, serving 320 sixth through twelfth grade students.¹³⁶

The students receive a high-quality education.¹³⁷ In 2004, SEED's entire first graduating class of twenty-one students enrolled in college.¹³⁸ In 2005, all thirteen

American school was founded in 1979 in response to escalating crime, drug use, and illiteracy among young people).

123. KEVIN P. CHAVOUS, *SERVING OUR CHILDREN: CHARTER SCHOOLS AND THE REFORM OF AMERICAN PUBLIC EDUCATION 100-04* (2004) (describing the SEED Public Charter School as an educational program based on the recognition that some children may have more opportunities for academic success living in a school environment).

124. Perry Bacon, Jr., *Urban Preppies*, *TIME*, Jan. 12, 2004, at 61.

125. CHAVOUS, *supra* note 123, at 101.

126. Aseem Chhabra, *A School for the Disenfranchised*, Apr. 6, 2001, <http://www.rediff.com/news/2001/apr/06usspec.htm> (last visited Oct. 19, 2009).

127. *Id.*

128. *Id.*

129. *Id.*

130. Bacon, *supra* note 124, at 61.

131. *Id.*

132. *Id.*

133. *Id.*

134. The SEED Foundation, http://www.seedfoundation.com/seed_schools/index.aspx (last visited Oct. 19, 2009).

135. *Id.*

136. *Id.*

137. *See id.* ("SEED schools provide an academically rigorous middle and high school option to urban families and students who seek a high-quality education.")

138. *See* History of the SEED Foundation, http://www.seedfoundation.com/about_seed/history.aspx

graduating seniors went to college, and twenty-one of twenty-three seniors who graduated in 2006 were college-bound.¹³⁹ According to the foundation's website, ninety-eight percent of SEED graduates have been accepted to college and ninety percent have immediately enrolled in college.¹⁴⁰

In August 2008, the SEED School of Maryland opened as a boarding school which caters to students who live in "under-resourced" communities.¹⁴¹ The SEED School of Maryland is based on the SEED School of Washington, D.C. Funding for the school comes primarily from the state of Maryland.¹⁴² The school enrolled eighty sixth-graders and will eventually grow to 400 students in grades six through twelve.¹⁴³

Boarding schools may be effective alternatives to public day schools. They can provide several advantages for many urban schoolchildren. However, boarding schools in the U.S. are expensive. The initial price tag for constructing the campus of the SEED School in Washington, D.C. was roughly \$26 million. This allotment consisted of approximately \$14 million from tax-free bonds and \$12 million in donations.¹⁴⁴ In addition, the annual operating cost comes to about \$30,000 per student per year.¹⁴⁵ The annual operating cost for the SEED School of Maryland is about \$34,000 per student per year.¹⁴⁶ Plans are underway for an additional boarding school in the District of Columbia and feasibility studies are ongoing in Ohio and New Jersey.¹⁴⁷

In the summer of 2008, a coalition of philanthropists, educators, politicians, and business leaders announced that they were going to raise \$30 million in private funds to open a SEED School in Milwaukee.¹⁴⁸ Their plan was for the school to open in 2011, with eighty sixth-grade students from southeastern Wisconsin.¹⁴⁹ The coalition felt that if it could get the Wisconsin Legislature to back its efforts for

(last visited Oct. 19, 2009) (noting that 100 percent of SEED's 2004 class was admitted to college).

139. *See id.* (noting that 100 percent of SEED's 2005 class was admitted to college and ninety-one percent of its 2006 class was college-bound).

140. About SEED, http://www.seedfoundation.com/about_seed/index.aspx (last visited Oct. 19, 2009).

141. *Id.*; *see also* Tanika White, *Eyes On The Ball—Parents, Kids Pin Their Hopes on One White Orb in Boarding School Lottery*, BALTIMORE SUN, May 18, 2008, at 1B (explaining that the school "is designed to serve students who live in 'under-resourced' communities and are not performing to their potential").

142. *Id.*

143. *Id.*

144. Diane Suchetka and Barb Galbincea, *Programs Across Country Tackle Poverty With Innovative Ideas*, CLEVELAND PLAIN DEALER, Aug. 6, 2006, at B3.

145. Dani McClain, *Group Seeks \$30 Million for Public Boarding School—2011 Launch Seen, State Funding Also Wanted*, MILWAUKEE J. SENTINEL, June 25, 2008, at 3.

146. Ontiveros, *supra* note 10.

147. *See id.* at 29 ("Officials in Chicago are looking into different options for boarding schools. Proposals include creating a complex that combines a school and a dormitory. Another proposal would provide the schooling at one place and the housing at another. A third proposal addresses students who are involved in the juvenile justice system. They would receive their education and residence in the same facility.").

148. McClain, *supra* note 145, at 3.

149. *Id.*

state funding, there would be 400 students by 2017, with an annual state contribution of \$10 million.¹⁵⁰ The per pupil expenditure, however, would be about \$30,000 a year, three times the \$10,000 per year spent to educate Milwaukee students.¹⁵¹

As of the summer of 2009, the organizers of the SEED School in Wisconsin had raised approximately \$3.5 million from private sources.¹⁵² These donations, however, were contingent upon receiving funding from the State of Wisconsin.¹⁵³ Unfortunately, in June of 2009, the Wisconsin State Legislature failed to approve the proposal to fund the school when the Joint Finance Committee of the Wisconsin Legislature rejected the proposal. The Committee based its decision largely on objections from the Governor of Wisconsin, Jim Doyle, and the Wisconsin Education Association Council. They argued that the school was too expensive.¹⁵⁴

IV. THE CASE FOR ESTABLISHING INTERNATIONAL BOARDING SCHOOLS IN GHANA

The high outlay for public boarding schools in the U.S. no doubt explains why they have not caught on as a significant educational reform movement for the problems of urban education. The rise in economic importance of international trade, dramatic increases in immigration to the United States from other parts of the world and tremendous advances in communication technologies that have occurred over the past twenty years now provide an opportunity to establish boarding schools in politically and economically stable developing countries that can be both academically successful and cost effective. These schools should use the curriculum, textbooks, and teaching materials approved by the state that authorizes the creation of the school, supplemented by additional courses to teach students about the history, languages, cultures and customs of the countries where they are located. These schools should employ American administrators and American classroom teachers, yet take advantage of low cost, but high quality local educators to supplement the instructional staff. In addition, the school should employ local citizens to provide various support services including medical and dental care, security, food preparation and serving, cleaning, maintenance and landscaping. There are a number of potential countries in which organizers could establish and operate a cost-effective international boarding school, including places in India or China. However, the proposal in this Article is to establish such a school near the capital city of Accra in the Republic of Ghana.

The first Section will discuss recent increases in immigration of blacks from other parts of the world. One aspect of globalization that makes the creation of an international boarding school in developing countries for urban schoolchildren more acceptable is the significant numbers of black immigrants arriving in the

150. *Id.*

151. *Id.*

152. Erin Richards, *Public Boarding School Fails to Attract Legislative Support*, MILWAUKEE J. SENTINEL, June 6, 2009, available at <http://www.jsonline.com/news/education/47131897.html>.

153. *Id.*

154. *Id.*

United States over the past two decades. This is especially true of blacks emigrating from Africa. As a result, Americans are becoming more familiar with the abilities of individuals from Africa. On average, foreign-born black immigrants fare better in America in terms of both their earnings and educational attainments than native-born blacks. Growing up and being educated outside of the United States may provide them with some advantages over their native-born black American counterparts. The only international boarding school established and operated for urban minority school students from the U.S. was the Baraka School in rural Kenya. The Abel Foundation working with the Baltimore Public School District, operated the Baraka School from 1996 to 2002. The next Section will discuss the experiences of the Baraka School. The third Section of this Part will discuss why Ghana is the best country for the creation of an international boarding school for urban schoolchildren.

A. Increase in Black Immigrants

One aspect of globalization that makes the creation of an international boarding school in developing countries for urban schoolchildren a far-more palatable suggestion is the extraordinary increase of black immigrants into the United States, especially from Africa, over the past two decades. As a result, Americans are becoming more familiar with the abilities of individuals from the place that used to be called the "Dark Continent." In 1960, the percentage of foreign-born blacks in the United States was less than 1 percent of the black population, totaling just over 125,000 individuals.¹⁵⁵ By 1990, that percentage increased to almost 5 percent and the numbers increased almost twelve-fold to 1,455,294.¹⁵⁶ According to the 2000 Census, there were almost 2,100,000 foreign-born blacks in the United States, constituting approximately 6.1 percent of the black population.¹⁵⁷ In 2000, 41 percent of foreign-born blacks in the U.S. had entered between 1990 and 2000, 32 percent had entered between 1980 and 1989 and only 27 percent had entered before 1980.¹⁵⁸ The percentage of foreign-born blacks has continued to grow since the turn of the millennium. By 2005, the number of foreign-born blacks had increased to 2.8 million, approaching almost 8

155. CAMPBELL J. GIBSON & EMILY LENNON, U.S. CENSUS BUREAU, TABLE 8. RACE AND HISPANIC ORIGIN OF THE POPULATION BY NATIVITY: 1850 TO 1990 (1999), available at <http://www.census.gov/population/www/documentation/twps0029/tab08.html>.

156. *Id.* This rise in immigration to the United States was triggered by the independence of Caribbean countries and the passage of the Immigration Act of 1965, which abolished the country-of-origin quotas, affirmed family connection preference, and increased the total numbers of immigrants to be admitted to the United States. See generally Roger Waldinger, *Immigration and Urban Change*, 15 ANN. REV. OF SOC. 211, 212 (1989).

157. JESSE D. MCKINNON & CLAUDETTE E. BENNETT, U.S. CENSUS BUREAU, WE THE PEOPLE: BLACKS IN THE UNITED STATES, CENSUS 2000 SPECIAL REPORTS 7 fig.5 (2005), available at <http://www.census.gov/prod/2005pubs/censr-25.pdf>. See also *id.* at 17 tbl.2 (figures related to the number of foreign-born blacks). In 2000, 84 percent of all foreign-born blacks were from two regions—the Caribbean (60 percent) and Africa (24 percent). *Id.* at 9 fig.7. The 6.1 percent also contrasts with 11.1 percent of the total United States population being foreign born. *Id.* at 7 fig.5.

158. *Id.* at 8 fig.6.

percent of the black population.¹⁵⁹ Thus, as of 2005, over one in thirteen blacks in the U.S. was foreign-born.¹⁶⁰ The recent increase in foreign-born blacks from Africa is particularly striking. 41 percent of the 870,000 foreign-born African immigrants in the U.S. in 2005 arrived between 2000 and 2005 and more than 75 percent have arrived since 1990.¹⁶¹

On several economic measures, foreign-born black immigrants fare better than native-born blacks do. The median household income of black immigrants exceeds that of native-born blacks.¹⁶² African-born blacks have a median income of \$42,900 and blacks from the Caribbean have a median income of \$43,650.¹⁶³ This far outpaces that of native-born blacks, whose median household income is \$33,790.¹⁶⁴ Foreign-born black immigrants are also less likely to be unemployed (8.7 percent of blacks from the Caribbean and 7.3 percent from Africa compared to 11.2 percent for native born blacks).¹⁶⁵ Fewer foreign born blacks live below the poverty level (18.8 percent and 22.1 percent, respectively, compared to 30.4 percent).¹⁶⁶

Perhaps most striking is the performance of black immigrants and their sons and daughters in American colleges and universities. According to United States Census Bureau statistics, in 2004, 3.7 percent of the black children in K-12 schools were born outside of the country, and 13.3 percent had at least one parent born in a foreign country.¹⁶⁷ Both of these percentages are approximately double the rate for whites.¹⁶⁸ The percentage of blacks in American schools who are foreign-born increases with higher levels of education. More than 12 percent of all black undergraduate students enrolled in United States colleges and universities were born outside of the United States.¹⁶⁹ This is over three times the rate for whites.¹⁷⁰

159. Mary Mederios Kent, Population Reference Bureau, *Immigration and America's Black Population*, 62 POPULATION BULL. 1, 4 (2007), available at <http://www.prb.org/pdf07/62.4immigration.pdf>.

160. *Id.*; but see Campbell Gibson & Kay Jung, *Historical Census Statistics on the Foreign-Born Population of the United States: 1850 to 2000*, 26 tbl.1 (U.S. Census Bureau, Working Paper No. 81, 2006), available at <http://www.census.gov/population/www/documentation/twps0081/twps0081.pdf> (noting that the percentage of foreign-born in the entire U.S. population is actually closer to 11 percent).

161. Kent, *supra* note 159, at 5, 12. The U.S. became a prime destination for international students. More African emigrants fleeing civil violence and strife started to head to the U.S. as opposed to European countries, especially former colonial powers of Belgium, France, Portugal, and the U.K. *Id.* Almost 30 percent of sub-Saharan Africans who became legal permanent residents entered as refugees of political asylum. *Id.* at 6-7. Finally, a change in immigration law created a diversity visa. The diversity visa program was created to provide for more visas to flow to countries not well-represented in the U.S. Between 1998 and 2007, some 27 percent of diversity visas were awarded to sub-Saharan Africans. *Id.* at 6.

162. Abdi Kusow, *Africa: East*, in *THE NEW AMERICANS: A GUIDE TO IMMIGRATION SINCE 1965* 295, 299 (Mary C. Waters & Reed Ueda with Helen B. Marrow eds., 2007).

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *A Solid Percentage of Black Students at U.S. Colleges and Universities Are Foreign Born*, 54 J. BLACKS HIGHER EDUC. 22 (Winter 2006/2007) [hereinafter *Foreign Born Blacks in College*].

168. *Id.*

169. *Id.*

In 2004, 20.9 percent of black undergraduates had at least one parent born outside of the United States.¹⁷¹ For enrolled black graduate students, 18.7 percent, almost one out of every five, were born outside the United States.¹⁷² This compares with only 6.3 percent for white students.¹⁷³ In addition, 27.4 percent of the black graduate students had at least one foreign-born parent.¹⁷⁴ The 2000 Census also revealed that black immigrants from Africa averaged the highest percentage of college graduates of any group in the United States.¹⁷⁵ The college graduation rate for African immigrants over the age of 25 was 43.8 percent, compared to 42.5 percent of Asian-Americans; 28.9 percent for immigrants from Europe, Russia, and Canada; and 23.1 percent of the United States population as a whole,¹⁷⁶ and 16.5 percent for African-Americans.¹⁷⁷

Foreign-born black immigrants and their sons and daughters are also disproportionately represented in America's selective colleges and universities. Colleges and universities do not generally break their black students down along ethnic lines. As a result, there is a limit to the statistics on the percentage of foreign-born black immigrants or sons and daughters of immigrants at colleges or universities. However, a recent article discussing baseline data from a study of freshmen enrolling in twenty-eight selective colleges and universities in 1999 noted that while only 13 percent of black eighteen or nineteen-year olds are first- or second-generation immigrants, they made up 27 percent of the freshmen at these selective colleges and universities.¹⁷⁸ This article noted that the percentage of first

170. *Id.*

171. *Id.*

172. *Id.*

173. *Foreign Born Blacks in College*, *supra* note 167, at 22.

174. *Id.*

175. Clarence Page, *Black Immigrants Collect Most Degrees - But Affirmative Action is Losing Direction*, CHI. TRIB., Mar. 18, 2007, at 7.

176. *Id.*

177. U.S. CENSUS BUREAU, THE 2009 STATISTICAL ABSTRACT: THE NATIONAL DATA BOOK, EDUCATIONAL ATTAINMENT BY RACE AND HISPANIC ORIGIN: 1960 TO 2007 tbl.221, *available at* <http://www.census.gov/compendia/statab/tables/09s0221.pdf>. *But see* Kent, *supra* note 159, at 9 (noting that percentages dropped to 38 percent by 2005 compared to 16 percent for blacks Americans and 20 percent for Caribbean blacks).

178. See Douglas S. Massey, Margarita Mooney, Kimberly C. Torres & Camille Z. Charles, *Black Immigrants and Black Natives Attending Selective Colleges and Universities in the United States*, 113 AM. J. EDUC. 243, 248 (2007) (focusing specifically on the issue of black immigrants in comparison to native born blacks). This study examined data from the national longitudinal survey of freshmen first collected and published by DOUGLAS S. MASSEY, CAMILLE Z. CHARLES, GARVEY F. LUNDY & MARY J. FISCHER, *THE SOURCE OF THE RIVER: THE SOCIAL ORIGINS OF FRESHMEN AT AMERICA'S SELECTIVE COLLEGES AND UNIVERSITIES* (2003).

The national longitudinal survey of Freshmen was developed to provide comprehensive data to test different theoretical explanations for minority underachievement in higher education . . . Specifically, the NLSF sought to measure the academic and social progress of college students at regular intervals to capture emergent psychological processes hypothesized by investigators such as [Claude] Steele and [John] Ogbu.

Id. at 20.

The twenty-eight colleges and universities in the study were Barnard College, Bryn Mawr College,

and second-generation black immigrants was actually higher at the ten most selective schools in the study, constituting 35.6 percent.¹⁷⁹ Their percentage was even higher at the four Ivy League schools (Columbia, Princeton, Penn, and Yale) in the survey, where they constituted 40.6 percent of the black students enrolled.¹⁸⁰ According to Dr. Michael T. Nettles, Vice President for Policy Evaluation and Research at the Educational Testing Service: "If Blacks are typically 5 and 6 percent of the population at elite colleges, then the representation of native U.S. born African-Americans might be closer to 3 percent."¹⁸¹

Certainly American immigration policy is partially responsible for the overrepresentation of black immigrants and their children in American colleges and universities. However, work by educational researchers like Claude Steele and John Ogbu suggests that there may also be cultural factors at work from which black Americans who spend their formative years in boarding schools in Ghana could also benefit.¹⁸²

B. Baraka School in Kenya Started at the Request of Baltimore Public School Officials

The Baltimore School District initiated the only effort to create an international boarding school for urban schoolchildren.¹⁸³ At the request of Baltimore Public School officials, the Abell Foundation established the Baraka School (Baraka means "blessing" in Kiswahili), a boarding school located in a rural area of Kenya about three hours north of Nairobi.¹⁸⁴ Kate Walsh, the current

Columbia University, Denison University, Duke University, Emory University, Georgetown University, Howard University, Kenyon College, Miami University (Ohio), Northwestern University, Oberlin College, Pennsylvania State University, Princeton University, Rice University, Smith College, Stanford University, Swarthmore College, Tufts University, Tulane University, the University of California Berkeley, the University of Michigan, the University of North Carolina, the University of Notre Dame, the University of Pennsylvania, Washington University in St. Louis, Williams College, and Yale University. *Id.* at 30–31 tbl. 2.5. All twenty-eight schools are selective in the sense that only a subset of those who apply are selected. The least selective of the institutions was Miami University (Ohio) with a 79 percent acceptance rate, and the most selective was Princeton University with an 11 percent acceptance rate. *Id.* at 29.

179. *Id.* at 248, tbl.1.

180. *Id.* at 248, tbl.1, 249.

181. Ronald Roach, *Drawing upon the Diaspora*, DIVERSE: ISSUES IN HIGHER EDUC., Aug. 25, 2005, at 40, available at <http://diverseeducation.com/article/4558/drawing-upon-the-diaspora.html>.

182. John U. Ogbu, *Immigrant and Involuntary Minorities in Comparative Perspective*, in MINORITY STATUS AND SCHOOLING: A COMPARATIVE STUDY OF IMMIGRANT AND INVOLUNTARY MINORITIES 3, 13-30 (Margaret A. Gibson & John U. Ogbu eds., 1991) (drawing a distinction between the cultures of involuntary minorities like African-Americans and voluntary immigrants like recent black immigrants). For an extended discussion of the distinction Ogbu makes see Kevin Brown & Jeannine Bell, *Demise Of The Talented Tenth: Affirmative Action And The Increasing Under-Representation Of Ascendant Blacks At Selective Higher Educational Institutions*, 69 OHIO ST. L.J. 1229, 1267-72 (2008).

183. MARY E. YAKIMOWSKI & KIMBERLY CLARK-ADEDOLYIN, BALTIMORE CITY PUBLIC SCHOOL SYSTEM, AN EVALUATION OF THE BARAKA SCHOOL I (2002), available at http://www.bcps.k12.md.us/Student_Performance/PDF/PE_Baraka_Comp_Report_Aug2002.pdf [hereinafter *Baraka Report*].

184. *Id.* at 1 n.1, 2.

President of the National Council on Teacher Quality, was founder and director of the Baraka School when she worked for the Abel Foundation.¹⁸⁵ According to Walsh, when the Baltimore Public School officials asked the Abell Foundation to assist in the creation of an international boarding school, it initially selected Ghana as the country in which to create such a school.¹⁸⁶ However, a local Baltimore businessman, George Smalls, agreed to offer his 150 acre ranch in Kenya as the campus site for the school.¹⁸⁷

The Baraka School took middle school boys to Kenya for two years: seventh and eighth grades. Any sixth grade boy enrolled in Baltimore's public schools could apply to attend Baraka. The school took boys who were most at risk of not graduating. All of them were at least two years behind when they went to Kenya, but caught up by the time they returned to Baltimore.¹⁸⁸ The Baraka School operated from 1996 to 2002. Over that period, seventy-three students participated in the school, with fifty-two graduating from the program.¹⁸⁹ A documentary detailing the lives of four of the boys who attended the school received an Image Award from the NAACP in 2006.¹⁹⁰

Even though the students showed impressive academic gains, the school was closed down in 2002. Organizers of the school closed it due to concerns about terrorist activity in the area,¹⁹¹ political unrest, and the general geopolitical situation following the attacks of September 11th.¹⁹² In fact, the American Embassy in Nairobi was bombed in August of 1998.¹⁹³ However, according to Kate Walsh, during the time the Baraka School was operated, there were no serious medical, safety or security issues.¹⁹⁴

Beyond the political situation that existed in Kenya that forced the school to close, the Baraka School encountered several other problems that limited its

185. The National Council on Teacher Quality, <http://www.nctq.org/p/about/staff.jsp> (last visited Dec. 10, 2009).

186. Conversation with Kate Walsh, President of the National Council on Teach Quality, (Nov. 5, 2009).

187. Jonathan Pitts, 'Boys of Baraka': a Story of Hope, Dreams - A Film About African School Opens, the 4 Baltimore Youths at its Center Struggle to Stay the Course, THE BALT. SUN, Feb. 7, 2006, at C1.

188. Gammill, *supra* note 3.

189. *Baraka Report*, *supra* note 183, at 4. Of the initial class that started in 1996-97, 16 of the 18 students finished both years; for the 1997-98 class 14 of 20; for the 1998-99 class only 5 of the 15 completed; and 17 of the 29 in the 1999-00 class finished. *Id.* There were no new students brought over in 2000-01. *Id.* For 2001-02, 21 students were brought over, but since the school closed during their summer, they did not spend the entire 2 years at Baraka. *Id.*

190. Gammill, *supra* note 3.

191. John Douglas, 'Baraka' Bares Need for Support in Schools, GRAND RAPIDS PRESS, Apr. 7, 2006, at D4.

192. Point of View, Public Broadcasting System, *The Baraka School*, Aug. 31, 2006, http://web.archive.org/web/20080602150503/http://www.pbs.org/pov/pov2006/boysofbaraka/special_baraka.html (last visited Oct. 19, 2009).

193. James C. McKinley Jr., *Two U.S. Embassies in East Africa Bombed*, N.Y. TIMES, Aug. 8, 1998, available at <http://partners.nytimes.com/library/world/africa/080898africa-bombing.html>.

194. Gammill, *supra* note 3.

success and long-term viability. First, the school could not accommodate more than fifty students at a time. As a result, it was never able to develop the economies of scale that could have brought down the cost of operation. The Abell Foundation provided the funding for building the school and initially all of the cost for running the school.¹⁹⁵ The Baltimore City School System, however, contributed one-third of the \$18,000 per pupil cost for the last three years.¹⁹⁶ There were other problems at the Baraka School that “the administrators blamed on rebellious, homesick kids testing novice teachers, sometimes violently.”¹⁹⁷ Mary Scanlan, the U.S. coordinator for Baraka, noted that school officials learned that they needed to be on the lookout for kids with emotional and behavioral problems because the school was not a residential treatment center.¹⁹⁸

C. Justifications for Establishing an International Boarding School Outside Accra, Ghana

An international boarding school outside of Accra, Ghana should be able to avoid many of the significant pitfalls encountered by the Baraka School. There are many historical reasons to select Ghana in general, and Accra in particular, as the place to establish an international boarding school catering to American urban minority youths. As a former British colony, English is the primary language of business, law, and education in Ghana.¹⁹⁹ In 1957, Ghana became the first African country to gain its independence from colonial rule.²⁰⁰ Upon independence, Ghana became the leading country in the Pan African movement.²⁰¹ The relationship created between Ghana’s first President, Kwame Nkrumah, and legendary black intellectual W.E.B. Du Bois eventually led the elder black statesman to relocate to a home provided for him in Accra in 1961.²⁰² Du Bois died in Ghana two years later and is buried at his former residence.²⁰³ Ghana was also one of the primary points of departure for the ancestors of black Americans during the Trans-Atlantic slave

195. *Id.*

196. *Id.*; see also Alefe Tyehimba, *Lessons Learned: The Baraka School Gets Back on its Feet*, BALT. CITY PAPER, June 19, 2002, available at <http://www.citypaper.com/printStory.asp?id=4754>. Baltimore public schools increased its funding from \$1800 per student to \$6800 for the last year of operation. *Id.* The increase resulted after three board members visited the school in November of 2000. *Id.*

197. Tyehimba, *supra* note 196.

198. *Id.*

199. The Central Intelligence Agency, *Ghana*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/gh.html> (last visited Oct. 19, 2009).

200. *Id.*

201. Commanding Heights, The Public Broadcasting System, *Kwame Nkrumah*, http://www.pbs.org/wgbh/commandingheights/shared/minitextlo/prof_kwamenkrumah.html (last visited Oct. 19, 2009) (excerpted from DANIEL YERGIN & JOSEPH STANISLAW, *COMMANDING HEIGHTS* 83-88 (Simon & Schuster 1998)).

202. W.E.B. Du Bois Library, U. Mass. Amherst, *Du Bois: The Activist Life*, <http://www.library.uma.edu/spcoll/exhibits/dubois/page13.htm> (last visited Oct. 19, 2009).

203. *Id.*

trade.²⁰⁴ Thus, the ancestral roots of many of today's African-Americans can be traced to this area of Africa. Because of these historical connections, Ghana is considered a "favored destination" for African-Americans visiting Africa.²⁰⁵ According to Valerie Papaya Mann, who is the president of the African-American Association of Ghana, about 5000 African-Americans are now living in Ghana.²⁰⁶ Some of these individuals would certainly be interested in assisting an international boarding school for urban public school students. Thus, there is already a source of American educators in Ghana.

More importantly, Ghana is one of the most economically viable and politically stable countries in the developing world. The current constitution there was adopted in 1992 as Ghana sought to transform from a one party state to a democratic system.²⁰⁷ The top American diplomat for Africa, Jendayi E. Frazer, said that the "U.S. considers Ghana as a model democracy in Africa, and the country has contributed to keeping the image of the continent afloat by holding consecutive successful elections over the years."²⁰⁸

The 2008 national election was an important transition point for Ghana. Eight different candidates vied for the honor of succeeding President John Kufuor. The election came down to two main individuals. In the general election, the governing party candidate, Nana Akufo-Addo, received 4,159,439 votes, or 49.13 percent, of the vote, compared to 4,056,634, or 47.92 percent, to his rival, John Atta Mills.²⁰⁹ More than 200,000 ballots (2.4 percent of the over 8 million cast) were rejected.²¹⁰ Since neither party received a majority of the vote, a run-off election was held on December 28th. In January 2009, Ghana concluded this hotly contested presidential election in which Nana Akufo-Addo narrowly lost, receiving 49.77 percent of the vote compared to law professor John Atta Mills, who received 50.23 percent.²¹¹ Although there were some irregularities, the election was generally considered free and fair.²¹² Akufo-Addo conceded defeat after the Electoral Commission finished its count of all the votes three days later and declared Mills the winner. "I acknowledge the electoral commissioner's declaration and congratulate Professor Mills," Akufo-Addo told a news conference.²¹³ Mills was sworn in as Ghana's new

204. *Ghana's New Money*, TIME, Aug. 21, 2006, available at <http://www.time.com/time/magazine/article/0,9171,1229122-1,00.html>.

205. *Id.*

206. *Id.*

207. See Lydia Polgreen, *Opposition Leader is Declared the Winner of Ghana's Presidential Election*, N.Y. TIMES, Jan. 4, 2009, at A7 (discussing Ghana's position as a prosperous, African country attracting international investors and donors).

208. Reuters, *Presidential Runoff in Ghana Mostly Calm*, N.Y. TIMES, Dec. 29, 2008, at A7.

209. *Ghana Election to Go to a Run-off*, BBC NEWS, Dec. 10, 2008, <http://news.bbc.co.uk/2/hi/africa/7775789.stm> (last visited Oct. 19, 2009).

210. *Id.*

211. *Ghana has Done Africa Proud*, New Vision Online, Jan. 5, 2009, <http://www.newvision.co.ug/D/8/14/666997>. (last visited Oct. 19, 2009) [hereinafter *Africa Proud*].

212. *Opposition Candidate Wins Ghana Presidential Election*, CNN.com, Jan. 3, 2009, <http://www.cnn.com/2009/WORLD/africa/01/03/ghana.election/index.html> (last visited Oct. 19, 2009).

213. See *Africa Proud*, *supra* note 211 (discussing the maturity shown by the opposition candidate, Akufo-Addo, and the potential setback that his refusal to concede defeat would have been for Ghana and

president on January 7, 2009, in a peaceful transition of power.

CONCLUSION

Globalization and technological changes have created the opportunity to establish international boarding schools in Ghana for low-income urban minority students from the United States. With judicious planning and foresight, such schools should be able to operate at a cost comparable to per pupil expenditures in the U.S. Additionally, an international boarding school could provide its students with several advantages otherwise unavailable to urban minority public school students.

Students attending an international boarding school in Ghana would devote more of their time to their academic pursuits because there would be fewer distractions than in the U.S. The international educational experience that students would have in these boarding schools would better prepare them to take full advantage of our increasingly interconnected world. Attending an international boarding school outside of Accra would remove some students from distractions prevalent in their neighborhoods that can prevent them from excelling in their academic work, such as crime, gangs, drugs, teenage pregnancies, and lack of positive role models. Such a school could also utilize healthy diets and exercise programs to promote healthy lifestyles. Finally, attending an international boarding school would alter the social environment for these students during their critical formative years. These students would have the socio-cultural experience of growing up not as low socio-economic students, but as upwardly mobile, fortunate, and well-to-do individuals.

all of Africa); *see also Ghana Election, supra* note 212 (discussing the closeness of the election and alleged irregularities).