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ATTACKING EDUCATIONAL INEQUALITY: THE PRIVATIZATION APPROACH

JENNIFER L. ROMER*

I. INTRODUCTION

In the wake of education reform efforts, another solution to America's declining public schools has emerged: private management of local public schools. Under the privatization approach, a for-profit firm manages a school district or a group of schools within a given district.¹ The for-profit firm assumes all the management responsibilities but not the ownership of the school facilities which remain in state control.² The privatization approach considered in this Note is not just another band-aid solution; it goes further than other reform efforts such as school choice and education voucher programs.³ Privatization reform, as implemented by the for-profit corporation, Education Alternatives, Inc. (EAI), does not concentrate only on traditional education factors⁴ and application of market principles, but rather considers the entire learning environment, inside and outside the classroom.

* Solicitations Editor, BOSTON COLLEGE THIRD WORLD LAW JOURNAL.

¹ Lewis D. Solomon, *The Role of For-Profit Corporations in Revitalizing Public Education: A Legal and Policy Analysis*, 24 U. Tol. L. Rev. 883, 891 (1993).

² *Id.*

³ John E. Chubb & Terry M. Moe, *Educational Choice: Why It Is Needed and How It Will Work*, in EDUCATION REFORM IN THE '90s 36, 42 (Chester E. Finn, Jr. & Theodor Rebarber eds., 1992). School choice plans are based on the market principles of parental choice and school competition. *Id.* Advocates of school choice schemes, John E. Chubb and Terry M. Moe, argue that "students will seek schools responsive to their interests and needs and in which they want to be enrolled." *Id.* at 46. Students will, thereby, force schools to be responsive to their needs or face extinction. *See id.* Chubb and Moe encourage both public and private schools to take part in the school choice plans. *Id.* at 42. For attendance at private schools, students will be given vouchers that will enable them to attend private schools if they choose. Tax dollars (the amount determined by individual state legislatures) are applied to the voucher for student use at participating private and parochial schools. *See* Jean Merl, *Colorado Is Battleground for School Voucher System Education: Both Sides Are Bringing in Their Big Guns Over a Ballot Initiative that Would Provide Tax Dollars for Parents Who Want to Choose Non-Public Institutions*, L.A. TIMES, Oct. 26, 1992, at A3 (discussing groundbreaking reform in school choice programs).

⁴ Concentration on traditional educational factors includes trends in achievement in science, mathematics, reading, and writing. OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT,

This Note asserts that EAI's privatization approach and increased community involvement in the public schools is the best way to attack educational inequality. Educational equality will not be achieved until reformers consider not only what goes on inside the classroom but also the social, racial, and economic factors that necessarily affect the learning process.⁵ This Note considers a case study of the Hartford, Connecticut, School System which on October 4, 1994, became the first school district in the country to be completely managed by the for-profit corporation, EAI.⁶ The Hartford School Board has contracted with EAI in the wake of continually declining test scores and a desegregation suit, *Sheff v. O'Neill*,⁷ brought by seventeen Hartford school children. The plaintiffs allege that the educational system in Hartford and the surrounding suburbs is segregated on the basis of race, ethnicity, and economic status, fails to provide the equal educational opportunity to which every student in Connecticut is constitutionally entitled, and fails to provide Hartford students with a minimally adequate education.⁸

This Note argues that EAI's privatization approach, in conjunction with increased community involvement in the public schools, is the most effective alternative to the integration approach asserted in *Sheff* for equalizing educational opportunity in inner city schools like Hartford's. Part II considers the current state of education in America; Part

U.S. DEP'T OF EDUC., REP. NO. 23-TR01, REPORT IN BRIEF 8 (1994) [hereinafter REPORT IN BRIEF]. Although race, ethnicity, and class are considered in reporting achievement in such areas, these factors are often ignored by school officials and legislators in considering how to obtain greater levels of achievement for the nation's children. See generally *id.*; NATIONAL EDUCATION GOALS PANEL, THE NATIONAL EDUCATION GOALS REPORT BUILDING A NATION OF LEARNERS (1992) [hereinafter GOALS REPORT]; THE NAT'L COMM'N ON EXCELLENCE IN EDUC., A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM (1983) [hereinafter A NATION AT RISK].

⁵ See John C. Brittain, *Educational and Racial Equity Toward the Twenty-First Century—A Case Experiment in Connecticut*, in RACE IN AMERICA THE STRUGGLE FOR EQUALITY 167, 169 (Herbert Hill & James E. Jones, Jr. eds., 1993); Peter B. Edelman, *Toward a Comprehensive Antipoverty Strategy: Getting Beyond the Silver Bullet*, 81 GEO. L. REV. 1697, 1742-43 (1993).

⁶ Dion Haynes & Jacquelyn Heard, *Private Answer for the Public School Mess?*, CHI. TRIB., Oct. 10, 1994, at 1; Education Alternatives, Inc. *News Release, Hartford Public Schools and the Alliance for Schools That Work Form Groundbreaking Public-Private Partnership*, Oct. 3, 1994 [hereinafter *News Release*, Oct. 3, 1994]. After a difficult 1994-95 school year, marked by disagreements with some school board members and hostility from many staff members, EAI and the school board agreed to focus on six schools. EAI remains involved district wide in other areas, including financial management. Rick Green, *2nd Chance to Give Schools 2nd Chance Series: EAI Trying to Make the Grade*, HARTFORD COURANT, Sept. 5, 1995, at A1.

⁷ *Sheff v. O'Neill*, No. CV89-0360977S, slip op. at 1 (Conn. Super. Ct. Apr. 12, 1995).

⁸ *Id.* at 2; George Judson, *School Integration: Summing Up the Case; For the Plaintiffs: At Issue, Lack of an Equal Education*, N.Y. TIMES, Dec. 12, 1993, at 13CN14 [hereinafter Judson, *School Integration: Summing Up the Case for the Plaintiffs*].

III examines the particular demographics of Hartford, Connecticut, and its current state of education; Part IV considers the history of the *Sheff* case and the issues it raises; Part V considers EAI and its early results, rejects integration as the most effective solution for obtaining equal educational opportunity, and argues that EAI's privatization in conjunction with increased community involvement is the most effective way of attacking educational inequality; Part VI considers possible alternatives to EAI's privatization approach and concludes that it provides a more flexible approach for achieving educational equality because it can accommodate these alternative approaches in conjunction with its existing framework.

II. THE CURRENT STATE OF EDUCATION IN AMERICA

A. *Impetus for Change*

Sagging test scores, gang violence, high dropout rates, and cuts in school funding have thrust education to the forefront of the political agenda.⁹ Legislators are desperately looking for alternatives to the failing education system now in place.¹⁰ In April 1983, education landed on the forefront of the political agenda when the National Commission on Excellence in Education issued its report, *A Nation at Risk: The Imperative For Educational Reform*.¹¹ The Commission warned the nation: "If an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today, we might well have viewed it as an act of war."¹²

A variety of education reform efforts had preceded this warning including varying degrees of school choice programs and education voucher systems.¹³ In 1989, as part of the increased effort to stimulate

⁹ *A Bold Move Raises Hopes and Anxieties*, HARTFORD COURANT, Nov. 6, 1994, at A1; Judson, *School Integration: Summing Up the Case For the Plaintiffs*, *supra* note 8, at 13CN14; George Judson, *Merge City and Suburban Schools, Lawsuit Urges*, N.Y. TIMES, Dec. 17, 1992, at B1. [hereinafter, Judson, *Merge City and Suburban Schools, Lawsuit Urges*].

¹⁰ See A NATION AT RISK, *supra* note 4, at 24-34.

¹¹ See generally *id.* The Report addressed its "call to all who care about America and its future: to parents and students; to teachers, administrators, and school board members; to colleges and industry; to union members and military leaders; to governors and State legislators; to the President; to members of Congress and other public officials; to members of learned and scientific societies; to the print and electronic media; to concerned citizens everywhere." *Id.* at 14.

¹² *Id.* at 5.

¹³ See Merl, *supra* note 3, at 3 (discussing the nature of school choice programs). Students have differing needs, and different schools which each offer unique opportunities may better accommodate students' often divergent needs. See Chubb & Moe, *supra* note 3, at 40. For

academic improvement, President Bush and the nation's Governors adopted a set of six national education goals for the twenty-first century.¹⁴ These goals represent educational improvement targets relevant to all Americans from the early childhood years through adulthood to be achieved by the goal date of the year 2000.¹⁵ The National Education Goals state that by the end of this decade: (1) each child will enter school ready to learn; (2) the high school graduation rate will increase to at least 90%;¹⁶ (3) students will achieve demonstrated competence at grades four, eight, and twelve; (4) the United States will be first in the world in mathematics and science;¹⁷ (5) every adult will be literate and competent to exercise the rights and responsibilities of citizenship; and (6) drugs and violence will be eliminated from our schools.¹⁸

The Goals for the year 2000 are lofty but certainly not beyond grasp. However, they are bound for failure if they are not approached from a multi-faceted and multicultural viewpoint.¹⁹ Goal 1 recognizes the problems attached to poverty, yet poses no solution for making such knowledge universal to all communities.²⁰ For example the 1992 report by the National Education Goals Panel asserted:

A large number of the very young do not enjoy a childhood that most adults would consider desirable. Many are not receiving the kind of parental support that enriches childhood. Poor children in particular (constituting about one-third of those enrolling in school each year) are less likely than children from wealthier families to be born healthy, to have routine health care, and to be enrolled in preschools.²¹

example, a handful of high schools in the nation offer African American studies departments. Sandy Kleffman, *Berkeley Leads the Way—for High Schools*, S.F. CHRON., Apr. 9, 1993, at A1. This type of program is the type of competition which the Chubb & Moe school choice model anticipates. See Chubb & Moe, *supra* note 3, at 40.

¹⁴ See GOALS REPORT, *supra* note 4, at xi.

¹⁵ See *id.*

¹⁶ The graduation rate for 1991 was 85%. See *id.* at 22.

¹⁷ In 1991, Taiwan, followed by Switzerland, was first in the world in mathematics and science. See *id.* at 38.

¹⁸ GOALS REPORT, *supra* note 4, at xi.

¹⁹ See Brittain, *supra* note 5, at 167; Edelman, *supra* note 5, at 1742. Legislators must take into account from where and what type of background a student comes. See Brittain, *supra* note 5, at 167; Edelman, *supra* note 5, at 1742. Otherwise, teachers will inevitably ignore possible obstacles for individual learning. See *Plan Offered on Training of Teachers*, N.Y. TIMES, Jan. 29, 1995, at A23.

²⁰ See GOALS REPORT, *supra* note 4, at 18–19.

²¹ *Id.* at 18.

While acknowledging that programmatic change cannot evolve overnight, the question remains whether the inner cities, which are inundated with children with current special education funding problems, will be able to find resources to implement programs to equalize "readiness" for school among the rich and the poor.²² The privatization reform effort may be the answer because, in theory, it applies private management market principles to encourage the efficient running of the public schools.²³

Goal 2 is more concerned with problems dropouts face instead of considering what can prevent children from leaving school.²⁴ The report asserts that "appreciation of the reasons why students drop out is necessary if we are to make serious progress toward achieving Goal 2."²⁵ However, the problem is that the report is too concerned with the economic burden on society after the student quits school.²⁶ Policymakers' concerns should focus on the economic and social burdens of the student which may lead to drop-out.²⁷ Educators cannot only consider societal effects once the student is out of the school system, but must also consider them as much when he or she is in the system.²⁸

Goal 3 ties all achievement up to standardized tests which cannot indicate all factors of an individual student's achievement.²⁹ Instead, multiple indicator tests need to be designed which take into account community support, student attitudes and social behavior, and parental support.³⁰ Therefore, comparisons among districts can be fairly

²² *Id.* at xi. For example, Hartford, Connecticut, decided to contract with EAI in the wake of \$2 million budget gap for the 1994 school year. See William Celis III, *Hartford Seeking A Company To Run Its Public Schools*, N.Y. TIMES, Apr. 19, 1994, at A1. As well, there have been dozens of school-financing cases across the country alleging that budget constraints in urban schools have violated the individual state constitution's guarantee of equal educational opportunity. See, e.g., *Committee For Educ. Rights v. Edgar*, 641 N.E.2d 602, 605 (Ill. App. 1 Dist. 1994) (holding that school finance scheme was constitutional despite allegations that poorer districts had less resources than wealthier districts); *Skeen v. State of Minn.* 505 N.W. 2d 299, 312 (Minn. 1993) (holding that state education financing system did not violate "general and uniform" educational equality clause in Minnesota constitution).

²³ See Solomon, *supra* note 1, at 891.

²⁴ See GOALS REPORT, *supra* note 4, at 20-21.

²⁵ *Id.* at 20.

²⁶ See *id.* at 20-21.

²⁷ Students may need to work to help the family unit to survive or may have their own family to support. Moreover, lack of parental involvement in the education process leads to greater failure in school. See James S. Liebman, *Voice Not Choice*, 101 YALE L.J. 259, 308-09; Gene I. Maeroff, *Reform Comes Home: Policies to Encourage Parental Involvement in Children's Education*, in EDUCATION REFORM IN THE '90s 157, 158 (Chester E. Finn, Jr. & Theodor Rebarber eds., 1992).

²⁸ See Edelman, *supra* note 5, at 1741-42; Liebman, *supra* note 27, at 308-09.

²⁹ See GOALS REPORT, *supra* note 4, at 24-25.

³⁰ See Terry K. Peterson, *Designing Accountability To Help Reform*, in EDUCATION REFORM IN THE '90s 109, 115-16 (Chester E. Finn, Jr. & Theodor Rebarber eds., 1992).

made because factors such as parental and community support may be able to account for disparities in achievement.³¹

Goals 4 and 5 have their direct link to keeping the United States at the forefront of the global economy.³² However, policymakers must remember that even though the United States is a First World country, within it exists a Third World microcosm which is daily denied equal access to education due to societal barriers like poverty and race.³³ Only when these barriers are removed can the United States proclaim its global supremacy.³⁴

Goal 6 only considers how to make the *school* a safe haven.³⁵ Yet, students leave school often to face poverty, homelessness, and crime.³⁶ One first grade teacher in the Hartford School System reported that she has to be careful when she dismisses her six year-olds "[n]ot to send them into the direct line of stray bullets. . . ."³⁷ Efforts must be made to incorporate these two worlds into this Safety Goal in education or it has failed before it has begun.³⁸

While it appears from national testing reports that the United States is heading in a positive direction toward achieving these goals, a closer examination reveals that racial, ethnic, and economic minorities are lagging behind white middle-class students.³⁹ The effects of segregation and closed opportunities are all too visible.⁴⁰ These effects will continue until education reform accounts for the entire learning environment which inherently includes the home and community at large.⁴¹

³¹ See *id.*

³² See GOALS REPORT, *supra* note 4, at 36–37, 40–41.

³³ See Maeroff, *supra* note 27, at 158.

³⁴ See *id.*

³⁵ See GOALS REPORT, *supra* note 4, at 44–45.

³⁶ See *infra* Part III (discussing demographics of Hartford, CT).

³⁷ Telephone Interview with Santa Herman, Hartford Federation of Teachers, in Hartford, CT (Jan. 23, 1995); see also *A Bold Move Raises Hopes and Anxieties*, *supra* note 9, at A1 (describing violence problems in Hartford public schools).

³⁸ See Maeroff, *supra* note 27, at 158.

³⁹ See *generally* REPORT IN BRIEF, *supra* note 4.

⁴⁰ The *Sheff v. O'Neill* lawsuit and strikingly low test scores in Hartford are examples of the existing inequities in educational opportunity for ethnic and racial minorities. See CV89–0360977S, slip op. at 1 (Conn. Super. Ct. Apr. 12, 1995); CONNECTICUT STATE DEP'T OF EDUC., STRATEGIC SCHOOL DISTRICT PROFILE HARTFORD SCHOOL DISTRICT (1993–94) [hereinafter STRATEGIC SCHOOL DISTRICT PROFILE].

⁴¹ See Joseph Murphy, *Restructuring America's Schools: An Overview*, in EDUCATION REFORM IN THE '90s 3, 7 (Chester E. Finn, Jr. & Theodor Rebarber eds., 1992) (discussing the necessity for enhanced community involvement in education); Maeroff, *supra* note 27, at 160 (discussing the reinforcement of learning in the home by the parent).

B. *Current Status of United States Educational Achievement*

The Nation's Report Card⁴² reports that trends in science and mathematics show noteworthy improvements since the 1983 publication of *A Nation at Risk*, while trends for reading show declines in student abilities during the same period.⁴³ However, average proficiency in science, mathematics, and reading remains lower for blacks and Hispanics than whites.⁴⁴ Between 1984 and 1992, across the ages and grades assessed, students reported that family members were writing more, but reported little change in the extent of reading in the home.⁴⁵ In 1992, from 47% to 64% of these students found time to watch three or more hours of television each day.⁴⁶

From the Nation's Report Card, it is apparent that change is slow and that there is still great disparity between white students and minority students.⁴⁷ However, economic factors are not considered and social factors are only lightly touched upon in the Nation's Report Card.⁴⁸ Change is slow when academic subjects learned are considered alone and disparity in racial achievement is accepted.⁴⁹ The racial gap

⁴² The Nation's 1992 Report Card was prepared by the Educational Testing Service under contract with the National Center for Education Statistics. REPORT IN BRIEF, *supra* note 4, at 1. Since its inception in 1969, the National Assessment of Educational Progress (NAEP) has been conducting assessments of student progress in the nation. *Id.* at 5.

⁴³ *Id.* at 6. In 1978, 20% of nine year-olds could add, subtract, multiply, and divide using whole numbers, and solve one-step problems; while in 1992, 28% of nine year-olds could do the same level of mathematics. *Id.* at 12 tbl. 2. Similarly, in 1977, 26% of nine year-olds could understand and apply general information from the life and physical sciences; while in 1992, 33% of seventeen year-olds could perform the same scientific functions. *Id.* at 11 tbl. 1. The trends in reading across proficiency levels show little difference between 1971 and 1992. *Id.* at 13. At age nine, the ability to "search for specific information, interrelate ideas, and make generalizations" remained constant at 16%. *Id.* at 13 tbl. 3.

⁴⁴ *Id.* at 15 tbl. 5. For example, proficiency in reading for white students was given a score of 218, whereas for black students, the score was 184, and for Hispanic students, the score was 192. *Id.*

⁴⁵ *Id.* at 28. At age nine, students reported no change in the amount of reading for fun, although there was a reported increase in literacy-related activities such as telling a friend about a good book. *Id.*

⁴⁶ *Id.* at 31. This high percentage is significant because it demonstrates that students are spending more time watching television than reading for fun. *Compare id.* at 30 tbl. 10 *with id.* at 31 tbl. 11. In 1992, at age 17, only 27% of students reported reading daily for fun. *Id.* at 30 tbl. 10.

⁴⁷ See *supra* notes 42-46 and accompanying text.

⁴⁸ Social factors such as race and gender are included in reporting proficiency, but their impact is not acknowledged in any meaningful way, i.e., how race and gender may have impacted on proficiency and ability. See *id.* at 16.

⁴⁹ See Brittain, *supra* note 5, 175-76 (discussing *Sheff v. O'Neill* and the impact of race and environment on learning).

appears to be closing, while in reality the gap is not closing at a rapid pace at all, considering that desegregation efforts were well underway by the early 1970s.⁵⁰ All impact-bearing factors need to be considered in order to achieve equal protection of the laws for all racial, ethnic, and economic groups in society.⁵¹ Otherwise, minorities will continue to be burdened by a narrowly focused educational system.

III. HARTFORD, CONNECTICUT

A. *School Demographics*

The Strategic School District Profile 1993–94 of the Hartford School District reveals that the racial composition of the district is: 41.9% black; 50.2% Hispanic; 6.2% white.⁵² There is a high number of special programs: bilingual, English as a Second Language (ESL), compensatory, migrant, and special education.⁵³

The student needs in Hartford are greater relative to the rest of state; in particular, 54.7% of the students in the district come from non-English speaking homes in comparison to 12.0% of students in the whole state.⁵⁴ Only 20.9% of Hartford parents even bothered to fill out a survey about their involvement in their second, fourth, sixth, eighth, or tenth grade child's education whereas 41.7% of parents statewide did.⁵⁵

A comparison of Hartford and neighboring West Hartford more sharply demonstrates the economic and social inequities in Hartford. More than 70% of Hartford's 25,000 students in thirty-two schools are low-income.⁵⁶ In Hartford, 47.6% of the public school students come from families on welfare.⁵⁷ Whereas in West Hartford, where the faces are mostly white, the total is only 2%.⁵⁸

⁵⁰ *Brown v. Board of Education* decided over 40 years ago that different education for different races was inherently unequal, yet, that inequality persists. 347 U.S. 483 (1954).

⁵¹ See Edelman, *supra* note 5, at 1742–43; Maeroff, *supra* note 27, at 160.

⁵² STRATEGIC SCHOOL DISTRICT PROFILE, *supra* note 40, at 2.

⁵³ See *id.* Because of the high percentage of minority students, the aforementioned programs become acutely necessary. *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 3.

⁵⁶ Haynes & Heard, *supra* note 6, at 1. Low-income is defined as below or just above the poverty line. The poverty line varies according to family size and is adjusted annually to account for inflation. See Edelman, *supra* note 5, at 1697 n.1. In 1992, the poverty line for a family of four was \$14,463; for a family of three, the poverty line was \$11,280. *Id.*

⁵⁷ Kirk Johnson, *Two Connecticut Schools, Segregated By Poverty*, N.Y. TIMES, Apr. 29, 1989, at 29.

⁵⁸ *Id.*

B. *State of Education in Hartford*

Student performance on Connecticut Mastery Tests is the lowest in the state.⁵⁹ Moreover, the drop-out rate in Hartford is higher than the rest of the state and higher for blacks and Hispanics than whites.⁶⁰

A comparison between Hartford and West Hartford more clearly illuminates the frail state of education in Hartford. In 1991, for example, 59.3% of the children in West Hartford scored at or above the state's goal on the mastery test in mathematics; in neighboring Hartford, only 12.6% met this goal.⁶¹ In West Hartford, 90.2% of the 1991 graduates took the Scholastic Aptitude Test, and the average score was 962, of a possible 1600.⁶² In Hartford, only 56.7% of a senior class already decimated by dropouts took the S.A.T. and the average score was 668.⁶³

Gary Natriello, a professor of education and sociology at Teachers College in Connecticut, stated that "the poor performance of Hartford's students is a result of where they live: in a city whose schools are overwhelmed by the problems posed by intense poverty."⁶⁴ Natriello stated that an average fifth grade class in Hartford would have three students who were born with low birth weights, three students born to mothers using drugs, and five students born to teenage mothers; fifteen students living below the poverty line, fifteen students living with single

⁵⁹ CONNECTICUT STATE DEP'T. OF EDUC., CONNECTICUT MASTERY TEST SECOND GENERATION STATEWIDE TEST RESULTS SCHOOL YEAR: 1994-1995, GRADE 4, 1995 [hereinafter MASTERY TEST GRADE 4]; CONNECTICUT STATE DEP'T. OF EDUC., CONNECTICUT MASTERY TEST SECOND GENERATION STATEWIDE TEST RESULTS SCHOOL YEAR: 1994-1995 GRADE 6, 1995 [hereinafter MASTERY TEST GRADE 6]; CONNECTICUT STATE DEP'T. OF EDUC., CONNECTICUT MASTERY TEST SECOND GENERATION STATEWIDE TEST RESULTS SCHOOL YEAR: 1994-1995 GRADE 8, 1995 [hereinafter MASTERY TEST GRADE 8]. In Mathematics, 11% of 4th graders in Hartford met the state goal while 57% of 4th graders statewide met the state goal; MASTERY TEST GRADE 4 at 14, 18; 7% of 6th graders in Hartford met the state goal while 46% of 6th graders statewide met the state goal; MASTERY TEST GRADE 6 at 14, 18; 8% of 8th graders in Hartford met the state goal while 48% of 8th graders statewide met the state goal; MASTERY TEST GRADE 8 at 13, 17. In Language Arts, 13% of 4th graders met the state goal while 40% of 4th graders statewide met the state goal; MASTERY TEST GRADE 4 at 21, 25; 11% of 6th graders in Hartford met the state goal while 40% of 6th graders statewide met the state goal; MASTERY TEST GRADE 6 at 21, 25; 12% of 8th graders in Hartford met the state goal while 41% of 8th graders statewide met the state goal. MASTERY TEST GRADE 8 at 20, 25.

⁶⁰ STRATEGIC SCHOOL DISTRICT PROFILE, *supra* note 40, at 8.

⁶¹ George Judson, *In Hartford, Data Portray Schools in Crisis of Poverty*, N.Y. TIMES, Jan. 2, 1993, at 26. [hereinafter Judson, *In Hartford, Data Portray Schools in Crisis of Poverty*].

⁶² *Id.*

⁶³ *Id.* In Hartford, the dropout rate for Fall 1992 to 1993 was 18% while overall for the state of Connecticut it was 4.6%. STRATEGIC SCHOOL DISTRICT PROFILE, *supra* note 40, at 8.

⁶⁴ Judson, *In Hartford, Data Portray Schools in Crisis of Poverty*, *supra* note 61, at 1.

parents, and eight students living in inadequate housing; twenty-one students who are members of minority groups; up to twelve students from homes in which English is not spoken, and nine students whose parents are unemployed.⁶⁵ In the face of such stunning statistics, it is hard to argue that these students are receiving an equal education. However, integration will only take the lucky ones out of this environment for a few hours every day and others will have to remain. Integration is hardly the answer for Hartford's failing schools.⁶⁶

IV. SHEFF V. O'NEILL

Sheff v. O'Neill was filed in 1989 on behalf of Milo Sheff, now a sixteen-year-old Hartford student, and sixteen other children.⁶⁷ Six of the seventeen plaintiffs are white children who claim that their constitutional rights have been curtailed as a result of being placed in all-white schools.⁶⁸ The plaintiffs claimed to have been denied the educational and cultural experience of integration.⁶⁹ Six of the children are Puerto Rican, and five are black, including Milo Sheff who gives his name to the suit.⁷⁰

According to the desegregation suit, the concentration of minority-group students in the Hartford public schools and the equal concentration of white students in the suburban schools violated students' rights to equal education opportunity, as guaranteed by the Connecticut Constitution.⁷¹ Lawyers from the American Civil Liberties Union

⁶⁵ *Id.* Hartford students needs are therefore greater than neighboring areas, like West Hartford, which are not plagued by such problems that result from poverty. *See id.*; Leibman, *supra* note 27, at 273.

⁶⁶ Integration or school desegregation is a concept which has come to denote educational equity. *See* Brittain, *supra* note 5, at 170. "Educational equity offers learning opportunities for the urban, poor nonwhite schoolchildren on an equal basis with those which the suburban, affluent, virtually all white children enjoy. Enhanced educational opportunities for African American and Hispanic students include racial balance as a strong component." *Id.*; *see also infra* Part IV (discussing particular educational inequality and integration claims in *Sheff v. O'Neill*).

⁶⁷ No. CV89-0360977S, slip op. at 1 (Conn. Super. Apr. 12, 1995); *see* Charlotte Libov, *Connecticut Q&A: Milo Sheff; A Young Crusader for Integration*, N.Y. TIMES, July 22, 1990, at 12CN3.

⁶⁸ *Sheff*, No. CV89-0360977S, slip op. at 2-3 (Conn. Super. Ct. Apr. 12, 1995); Libov, *supra* note 67, at 12CN3.

⁶⁹ *Sheff*, No. CV89-0360977S, slip op. at 2-3 (Conn. Super. Ct. Apr. 12, 1995); Libov, *supra* note 67, at 12CN3.

⁷⁰ *Sheff*, No. CV89-0360977S, slip op. at 2-3 (Conn. Super. Ct. Apr. 12, 1995); Libov, *supra* note 67, at 12CN3.

⁷¹ *Sheff*, No. CV89-0360977S, slip op. at 3 (Conn. Super. Ct. Apr. 12, 1995); Brittain, *supra* note 5, at 173-74; George Judson, *Failings but No Solutions for Hartford Schools*, N.Y. TIMES, Jan. 31, 1993 [hereinafter Judson, *Failings but No Solutions for Hartford Schools*]; Johnson, *supra* note 57, at 29. The Connecticut Constitutional provisions the plaintiffs rely on are:

and the NAACP Legal and Educational Defense Fund, who are cosponsoring the suit with local civil rights groups, said that minority-group students in Hartford are being denied educational opportunity by being in an environment of poverty, while white students are being denied their right to a multicultural environment due to insufficient contact with minority children.⁷² On April 12, 1995, Judge Harry Hammer of Rockville Superior Court ruled that because the plaintiffs had failed to prove state responsibility for the existing educational inequality of opportunity, he did not have to reach the constitutional claims. The plaintiffs, at this writing, have appealed the decision to the Connecticut Supreme Court.⁷³

Regardless of whether the appellants succeed on appeal, desegregation across districts will not ensure equal education opportunities when those who do not attend the suburban schools are left in the Hartford School System.⁷⁴ A program must be devised which takes

ARTICLE FIRST: Declaration of Rights. Sec. 1. All men when they form a social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community. . . .

Sec. 10. All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay. . . .

Sec. 20. No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry or national origin, sex or physical or mental disability.

ARTICLE EIGHTH: Of Education. Sec. 1. There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.

CONN. CONST. of 1818, art. I, §§ 1, 10, 20; art. VIII, § 1.

⁷²Johnson, *supra* note 57, at 29. The suit follows dozens of school-financing cases in arguing that the conditions in urban schools violate a state constitution's guarantee of equal educational opportunity. See *supra* note 22 (discussing educational inequality and school financing cases). However, it goes beyond those suits because here, the remedy is not simply more money for Hartford's schools but their merger with suburban districts. Compare *Committee for Educ. Rights*, 641 N.E. 2d at 605 with *Sheff*, No. CV89-0360977S, slip op. at 3 (Conn. Super. Ct. Apr. 12, 1995).

⁷³*Sheff*, No. CV89-0360977S, slip op. at 71-72 (Conn. Super. Ct. Apr. 12, 1995); George Judson, *Connecticut Wins School Bias Suit*, N.Y. TIMES, Apr. 13, 1995, at B6. No court in the nation has ever ordered a school-integration plan that crosses district lines without first finding deliberate segregation. See *Milliken v. Bradley*, 418 U.S. 717, 721 (1974) (holding that a federal court will not impose a "multidistrict, areawide remedy to a single-district *de jure* segregation problem absent any finding that the other included school districts have failed to operate unitary school systems within their districts, absent any claim or finding that the boundary lines of any affected school district were established with the purpose of fostering racial segregation in public schools. . . ."). In Hartford and its surrounding areas, there is *de facto* segregation, i.e., the result of housing patterns and population shift, rather than intentional, *de jure* segregation.

⁷⁴Those students remaining in the Hartford schools will still be subjected to the same inequities that they faced before integration because they will still not be afforded the opportunities their suburban and integrated counterparts are afforded. See Liebman, *supra* note 27, at 313.

into account environmental factors which necessarily impact upon students' abilities to learn.⁷⁵ Acknowledging that multiculturalism is an important part of modern education is an important step toward awareness of racial, ethnic, and economic disparities in the public school system.⁷⁶ Yet, integration alone cannot solve these disparities.⁷⁷ As history denotes, desegregation has not helped to curb the educational, economic, and social disparities that still exist.⁷⁸

V. ATTACKING EDUCATIONAL INEQUALITY— EDUCATIONAL ALTERNATIVES, INC. (EAI)

A. *Education Alternatives, Inc. (EAI)*

On October 4, 1994, the Hartford Board of Education approved the execution of a contract with Education Alternatives, Inc. (EAI) to manage the city's 32-school educational system.⁷⁹ EAI was founded by John Golle, EAI's chairman and Chief Executive Officer, in 1986 with a mission: "to give children the academic, societal, interpersonal and motivational tools they need to succeed in today's world and in the future."⁸⁰ EAI is joined in a collaborative effort, which is known as the *Alliance for Schools That Work*, with KPMG Peat Marwick, Johnson Controls Facility Management Services, and Computer Curriculum Corporation.⁸¹ Under the terms of the *Alliance*, Peat Marwick will perform services as a subcontractor in the areas of financial management, systems, and controls.⁸² Johnson Controls will perform services as a subcontractor in noninstructional areas, including the operation, maintenance, and management of school buildings and facilities.⁸³

⁷⁵ See Brittain, *supra* note 5, at 169; Edelman, *supra* note 5, at 1742-43; Liebman, *supra* note 27, at 313.

⁷⁶ See *Plan Offered on Training of Teachers*, *supra* note 19, at 23.

⁷⁷ The plaintiff's assertions in *Sheff*, although a first step in acknowledging educational inequity in urban centers like Hartford, ignore the very social, racial, and economic factors the integration approach is alleged to alleviate. See *Sheff*, No. CV89-0360977S, slip op. at 2-4 (Conn. Super. Ct. Apr. 12, 1995).

⁷⁸ See generally *id.*

⁷⁹ *News Release*, Oct. 3, 1994, *supra* note 6, at 1. After a difficult school year, EAI and the school board agreed to focus on six schools while remaining involved districtwide with financial management. Green, *supra* note 6, at A1.

⁸⁰ Education Alternatives, Inc., *News Release, A Company with a Mission: A Partnership That Works*, Sept. 29, 1994, at 1 [hereinafter *News Release*, Sept. 29, 1994].

⁸¹ *Id.*

⁸² EDUCATION ALTERNATIVES, INC., PROSPECTUS 10 (Apr. 30, 1993) [hereinafter PROSPECTUS].

⁸³ *Id.*

Computer Curriculum Corporation will install and maintain computer hardware and provide and update educational computer software at the schools managed by the Company.⁸⁴

EAI asserts the following as characteristics of schools that work: (1) an environment favorable to learning, (2) methods that engage each child's ability to learn, (3) partnerships focused on the child, and (4) management accountable for results.⁸⁵ EAI seeks to improve the learning environment in which a child studies by focusing on the environment in which the child lives. Improving the public schools through privatization includes improving the child's daily environment. One such innovative way that EAI seeks to achieve this goal is through its Tesseract Model.

The Tesseract Model is a multi-faceted educational program developed to meet children's individual needs by redesigning the classroom environment, changing the role of the teacher, and increasing the use of technology in the classroom.⁸⁶ The word "Tesseract" comes from Madeleine L'Engle's children's book, *A Wrinkle in Time*, which defines it as "a fifth-dimensional corridor leading to destinations otherwise beyond reach."⁸⁷ The focus of the Tesseract system is learning-centered classrooms where teachers facilitate the needs of students, as opposed to teaching-centered classrooms where teachers generally lecture to students.⁸⁸ Tesseract practices focus on parental involvement, active learning, personalized education, and building self-esteem.⁸⁹

⁸⁴ *Id.*

⁸⁵ EDUCATIONAL ALTERNATIVES, INC., 1994 ANNUAL REPORT TO SHAREHOLDERS 4 (1994) [hereinafter EAI 1994 ANNUAL REPORT].

⁸⁶ *Id.* at 23.

⁸⁷ *News Release*, Sept. 29, 1994, *supra* note 80, at 7.

⁸⁸ PROSPECTUS, *supra* note 82, at 23.

⁸⁹ The goals of the Tesseract program are:

1. Motivate students by helping them experience success every day.
2. Involve parents by enlisting them in the design, implementation and monitoring of each child's Personal Education Plan TM (PEP TM).
3. Increase instructional time for students by lowering student-instructor ratios in each classroom (that is, providing two adults to work with students).
4. Offer teachers extensive professional development and support to give them new skills to meet the needs of all students effectively.
5. Provide interactive computer technology to help students learn and explore at their own pace, and as a tool for teachers to track and monitor the progress of students in learning basic skills.
6. Promote ongoing communication between parents and teachers by holding at least three conferences a year and providing telephones in classrooms for each teacher.
7. Provide "hands-on" learning rather than workbooks to encourage children to ask, "Why?"
8. Encourage teachers to connect learning to real-life experiences.

An important component of the Tesseract program is the Personal Educational Plan (PEP™).⁹⁰ The PEP™ is designed with input from the student, the parents, and the teacher. Goals are set, and methods and materials are prescribed to reach those goals.⁹¹ Parental involvement is integral to the program's success.⁹² Parents are encouraged to attend teacher conferences, and their input is solicited through surveys when direct contact is not possible.⁹³

In June 1990, EAI entered into a consulting agreement with the School Board of Dade County, Florida, to provide management services for five years to the South Pointe Elementary School.⁹⁴ EAI and the school board contracted for EAI to receive a fee of \$1.2 million payable only if it is successful in raising, from private resources, contributions to cover the additional costs in implementing the Company's educational system. Unfortunately, the school board did not renew its contract with EAI in June 1995.⁹⁵

In July 1992, EAI executed a contract with the Baltimore School Board under which EAI has assumed responsibility for the operation of nine Baltimore public schools in return for payment of a negotiated

9. Build ownership and responsibility by involving students in the planning and evaluation of their work.

10. Develop relation-building, self-esteem and problem-solving skills in students through cooperative learning projects that create a sense of family.

11. Focus on all aspects of the learner—educational, emotional, social and physical. *See News Release*, Sept. 29, 1994, *supra* note 80, at 8.

⁹⁰ PROSPECTUS, *supra* note 82, at 23. The PEP™ focuses "on the need to identify and nurture each student's particular learning style." *Id.*

⁹¹ *Id.* Such input includes setting goals for the student, prescribing methods and materials to achieve those goals, measuring individual student progress regularly, and making changes to the PEP™ as it becomes clear that goals are not being effectively achieved. *Id.*

⁹² *See id.* EAI enlists parents to take an active role in designing a PEP™ appropriate for their children. *Id.* EAI pronounces that "every attempt is made, from the development of the PEP, to detailed progress reports, periodic conferences and solicitation of parent surveys, to involve parents in their child's education." *Id.* EAI views success of schools as inherently dependent on "partnerships focused on the child." EAI 1994 ANNUAL REPORT, *supra* note 85, at 11. One such partnership is the parent-school partnership in which the parent is fully integrated in the education of his or her child. *See id.*

⁹³ *See* EAI 1994 ANNUAL REPORT, *supra* note 85, at 11; PROSPECTUS, *supra* note 82, at 23.

⁹⁴ PROSPECTUS, *supra* note 82, at 26. This contract is an educational consulting contract as opposed to the school management contract with the Hartford School System: "Consulting services can be distinguished from management services in that the Company acts only in an advisory capacity, evaluating, reporting on and assisting with the implementation of the recommended services without having the full responsibility for the school's operations as it would under a school management contract." *Id.*

⁹⁵ *Id.*; Rick Green, *City Schools Still Await EAI Transformation*, HARTFORD COURANT, July 31, 1995, at A3.

amount each year based upon the average-per-pupil expenditure in the Baltimore district.⁹⁶ The terms of the contract allow the Baltimore District to terminate the contract for any reason upon 90 days notice to EAI.⁹⁷ Furthermore, the contract provides that EAI will only realize a profit for its services if it generates cost savings in the delivery and administration of educational, facility and related services, and any cost overruns are the responsibility of EAI.⁹⁸

However, on November 23, 1995, Baltimore took advantage of its contract termination clause.⁹⁹ The Baltimore contract was canceled after Mayor Kurt L. Schmoke, trying to close a school department deficit, proposed a \$7 million reduction in payments. The city and EAI could not agree on a revised contract.¹⁰⁰ EAI's management of the schools will end on March 4, 1996.¹⁰¹ However, in a written statement released to Business News Services, EAI Chairman John T. Golle stated: "[W]e are not willing to cut back on what we're offering the children of Baltimore. The significant budget reduction would have compromised the integrity of the Tesseract program."¹⁰² Supporters of EAI's privatization approach do not view Baltimore's contract termination as a major setback to the company.¹⁰³ John M. McLaurin, editor of Education Industry Reports, stated that EAI's fatal flaw was that it failed to put forth a contract that "spell[ed] out the expectations on both sides."¹⁰⁴ Furthermore, supporters point out how political a process education reform can be when one considers the incredible force that teacher's unions and budget crises can have upon the viability of a private education contract.¹⁰⁵ Since Baltimore terminated its contract with EAI, for what appears to be financial and political reasons as

⁹⁶ PROSPECTUS, *supra* note 82, at 24. EAI has management and control authority over the eight elementary schools and one middle school. *Id.* The average-per-pupil expenditure for the 1992-1993 school year was approximately \$5550. *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* Any profit EAI generates is to be equally split between the Baltimore District and the Company. *Id.*

⁹⁹ Mike Bowler, *EAI Fell to High Hopes, Unmet Promises; Company Ran into Political Reality*, BALTIMORE SUN, Nov. 23, 1995, at 18A.

¹⁰⁰ M. William Salganik, *Privatization Suffers Blow with EAI Loss; Baltimore School Board Cancels a Pact the Firm Uses as a Selling Point; EAI Down to One Client; Chairman Now Drags 'More Chains than Jacob Marley's Ghost'*, BALTIMORE SUN, Dec. 2, 1995, at 11C.

¹⁰¹ Jean Thompson, *City School Board Ends Effort to Privatize; Contracts with EAI are Severed Halting 3 1/2-Year Experiment*, BALTIMORE SUN, Dec. 1, 1995, at 1A.

¹⁰² *Id.*

¹⁰³ Mike Bowler, *supra* note 99, at 18A.

¹⁰⁴ *Id.* *Education Industry Reports* tracks the school privatization movement.

¹⁰⁵ M. William Salganik, *supra* note 100, at 11C.

opposed to educational reasons, the Baltimore School System provides the most readily available measurements for EAI's reform efforts in the nine schools it began managing in 1992.¹⁰⁶ The privatization effort had only been underway for three years and thus it is unfair to qualify its achievements as either a success or a failure. Yet, the results of an end-of-the-year survey conducted following the Tesseract's first year revealed that 88% of teachers support the continuation of the program.¹⁰⁷ John Golle asserts that during the 1993–1994 school year, students began to show “[m]odest yet encouraging signs of academic improvement. . . .”¹⁰⁸ Furthermore, the results of a University of Maryland, Baltimore County, study released in the Summer of 1995 convinced city officials to retain EAI's services for the nine schools.¹⁰⁹ Researchers pronounced that EAI's accomplishments are “considerable” and “the less-than-complete success of EAI management of some Baltimore City schools does not mean that private management of public schools cannot work.”¹¹⁰ In fact, test scores increased in six of the seven tested schools managed by EAI. In four of these schools the increase was five percent or more.¹¹¹ The study concluded that the school system has learned from EAI about teaching methods, staff training, and being responsive to individual schools.¹¹² However, EAI had difficulty implementing widespread improvements due to opposition from the teachers union.¹¹³

In Baltimore, EAI has invested \$1.3 million upfront to improve the buildings and grounds.¹¹⁴ Moreover, EAI has made great strides in ensuring parent and community involvement in Baltimore students'

¹⁰⁶The Baltimore Contract is the best measure of EAI's effectiveness available because it is the school management contract which has been in effect the longest thereby lending itself to standards of measurement.

¹⁰⁷Baltimore Teachers Union, Release, *Second Tesseract Survey Brings Mixed Results*, Sept. 3, 1993.

¹⁰⁸EAI 1994 ANNUAL REPORT, *supra* note 85, at 2. It is too early to tell exactly how successful EAI will be given that the Baltimore Contract is the Company's first attempt to completely manage the public schools. The Dade County Contract is a consulting contract and therefore a poor indicator because all accountability does not rest with EAI.

¹⁰⁹Rick Green, *EAI Report Cited in Baltimore Decision Evaluation Finds Firm's Promise Outweighs Shortcomings*, HARTFORD COURANT, Aug. 3, 1995, at A3.

¹¹⁰*Id.*

¹¹¹Jean Thompson and Mike Bowler, *Test Scores for City Schools Show Improvement; System Still Ranks Last in State, But Figures Reveal Some Progress*, BALTIMORE SUN, Dec. 18, 1995, at 3B.

¹¹²*Id.*

¹¹³*Id.*

¹¹⁴Liz Willen, *For-Profit School Firm Eyes City; Cortines Open to Private Role*, NEWSDAY, Sept. 1, 1994, at A3. EAI plans to invest \$1.6 million to repair, secure and upgrade school buildings in Hartford. *News Release*, Oct. 3, 1994, *supra* note 6, at 1.

learning. For example, EAI has established a newsletter called *Community Alliance*, which includes: advertisements for a health promotion program in which the Baltimore Public Schools, EAI, and the Harvard School of Public Health participate; information regarding where to obtain free health screening or immunizations; where to go to do homework, to obtain tutoring, day care, and minority adolescent health.¹¹⁵ In addition, in April 1994, parents, school staff, and EAI representatives staged the second annual Parent Conference for the Baltimore Tesseract Schools.¹¹⁶ Well over 400 parents participated, which was the highest turnout for such an event in the city's history.¹¹⁷

B. *Privatization in Conjunction With Community Involvement as the Most Effective Way of Attacking Educational Inequality*

1. Integration v. Privatization

In *Sheff v. O'Neill*, lawyers for Hartford schoolchildren argue that increased spending on the city's schools will not insure equal educational opportunity because of the district's already intense poverty and racial segregation.¹¹⁸ Similarly, EAI does not intend to spend more money than Hartford's \$200 million per year school budget currently allows and will only make a profit if it does not go over this budget.¹¹⁹ EAI does intend, through maximizing management strategies, to implement programs to involve the Hartford community in their children's education.¹²⁰

¹¹⁵ EDUCATIONAL ALTERNATIVES, INC., 1 COMMUNITY ALLIANCE (Sept.-Oct. 1994) [hereinafter COMMUNITY ALLIANCE].

¹¹⁶ EAI 1994 ANNUAL REPORT, *supra* note 85, at 11.

¹¹⁷ *Id.*

¹¹⁸ See *Sheff*, No. CV89-0360977S, slip op. at 50 (Conn. Super. Ct. Apr. 12, 1995); George Judson, *As It Moves to Privatize Schools, Hartford Is Keeping Some Control*, N.Y. TIMES, July 22, 1994, at A1 [hereinafter Judson, *As It Moves to Privatize Schools, Hartford Is Keeping Some Control*].

¹¹⁹ THE HARTFORD BOARD OF EDUC., SCHOOLS THAT WORK A SUMMARY OF THE PUBLIC-PRIVATE PARTNERSHIP BETWEEN THE HARTFORD BOARD OF EDUC. AND EDUC. ALTERNATIVES, INC. 2 (1994); Haynes & Heard, *supra* note 6, at 1. However, EAI announced a \$2.5 million loss for the financial quarter ending September 30, 1995. EAI has not been paid by Hartford for nearly \$4 million in bills ending June 30, 1995. Hartford attributes its non-payment to the fact that EAI has not identified savings in the budget as required by its contract. Rick Green, *EAI Reports Loss of \$2.5 Million*, HARTFORD COURANT, Nov. 16, 1995, at A3. EAI, due to mounting obstacles from the teachers union, has been unable to take control of the budget and therefore has had difficulty specifically identifying savings. Robert A. Frahm & Rick Green, *Dispute Threatens EAI Deal Hartford, Company Interpret Contract In Different Ways*, Oct. 18, 1995, HARTFORD COURANT, at A1.

¹²⁰ See EAI 1994 ANNUAL REPORT, *supra* note 85, at 11; PROSPECTUS, *supra* note 82, at 23; News Release, Oct. 3, 1994, *supra* note 6, at 1.

EAI includes in its Tesseract structure and PEP™ program an analysis of what the individual student needs.¹²¹ A Hartford student who is a racial or ethnic minority or comes from an economically impoverished background inherently needs different educational designs than a white middle-class student from a two-parent home typically found in neighboring West Hartford.¹²² The PEP™, therefore, can account for differences that simple integration cannot.¹²³

The *Sheff* suit presents the theory that segregation by race, ethnicity, and poverty places Hartford schoolchildren at a severe adverse educational disadvantage, denying them an education equal to that afforded to suburban, virtually all white, schoolchildren.¹²⁴ One integration study, Project Concern, conducted in Hartford in 1966 involving 661 Hartford students supports such a contention.¹²⁵ Three hundred and eighteen black students were sent to predominantly white schools in Hartford suburbs and 343 remained in predominately black city schools.¹²⁶ The students educated in predominately white suburban schools were (1) more likely to graduate from high school, (2) more likely to complete more years of college, and (3) involved in fewer incidents with the police.¹²⁷ Although Project Concern suggests promising results from integration, racial integration alone will not address the impoverished backgrounds that necessarily affect how children learn.¹²⁸

Poverty is a key issue in the *Sheff* lawsuit and is a key issue in educational reform.¹²⁹ A study of school desegregation in San Francisco suggests that the factor that makes the most difference for poor children is whether they attend schools with significant numbers of children who are *not* poor.¹³⁰ This is the case, researcher Peter Edelman asserts, because wealthier children have completely different expecta-

¹²¹ PROSPECTUS, *supra* note 82, at 23; *see also* EAI 1994 ANNUAL REPORT, *supra* note 85, at 4.

¹²² *See* G. Alfred Hess, Jr., *Restructuring the Chicago Public Schools*, in EDUCATION REFORM IN THE '90s 53, 56 (Chester E. Finn, Jr. & Theodor Rebarber eds., 1992); Edelman, *supra* note 5, at 1741-42; Judson, *In Hartford, Data Portray Schools in Crisis of Poverty*, *supra* note 61, at 26.

¹²³ *See* PROSPECTUS, *supra* note 82, at 23; Hess, *supra* note 122, at 56.

¹²⁴ *Sheff*, No. CV89-3060977S, slip op. at 2 (Conn. Super. Ct. Apr. 12, 1995); Brittain, *supra* note 5, at 173.

¹²⁵ *Education Study Finds Desegregation Is An Effective Social Tool*, N.Y. TIMES, Sept. 17, 1985, at C1.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *See* Edelman, *supra* note 5, at 140-41; Maeroff, *supra* note 27, at 157-58.

¹²⁹ *See generally Sheff*, No. CV89-0360977S (Conn. Super. Ct. Apr. 12, 1995); *see* Edelman, *supra* note 5, at 1740-41; Maeroff, *supra* note 27, at 157.

¹³⁰ Edelman, *supra* note 5, at 1740-41.

tions for their futures and as a result, the expectations and outcomes for poor children change as well.¹³¹

However, at the same time, Edelman argues that “multidimensional initiatives” are necessary to vitalize the inner city.¹³² He suggests that in order to vitalize the children “there need to be schools that teach.” Children need “to be safe going to and from school as well as in school itself. . . . They need access to decent health care.”¹³³ The problem with integration is that there is always going to be a constant cycle of some successful students who leave the inner-city system for the affluent suburbs while the inner city schools remain unchanged.¹³⁴ Reform efforts have to look more long-term such that they seek to maintain an equal educational opportunity for succeeding generations.¹³⁵ EAI takes into account the particular area within which it is working and seeks to work with the problems that poverty, violence, and dysfunctional families bring with them.¹³⁶

Integration through a school choice model is inherently flawed in that it assumes that parents and students flock to schools which provide the best services and those schools that are the best managed will receive the most students.¹³⁷ The choice model ignores the most important factor necessary for its success: educationally oriented parents and children (“educational connoisseurs”) demand higher quality services.¹³⁸ Integration of poor, disadvantaged students with “educational connoisseurs” gives the poor children the benefit of being surrounded by those who have higher expectations.¹³⁹ However, the flaw with this argument is that it fails to consider what happens to those children who must stay in the inner-city schools; what happens to their equal opportunity for education?¹⁴⁰ What about the bilingual and pov-

¹³¹ *Id.* at 1740.

¹³² *Id.* at 1738. Edelman asserts that “multidimensional initiatives” should be designed to recognize “the physical, educational, economic, and service needs of the people.” *Id.*

¹³³ *Id.*

¹³⁴ See Brittain, *supra* note 5, at 175; Edelman, *supra* note 5, at 1740–41 (demonstrating examples of such long-term policies that concentrate on the inner city learning environment and its inherent problems).

¹³⁵ See Hess, *supra* note 122, at 56, 61; Peterson, *supra* note 30, at 115–16.

¹³⁶ See EAI 1994 ANNUAL REPORT, *supra* note 85, at 11; PROSPECTUS, *supra* note 82, at 20; COMMUNITY ALLIANCE, *supra* note 115.

¹³⁷ Liebman, *supra* note 27, at 292.

¹³⁸ *Id.* at 261. “Connoisseurs” are “consumers who get the highest degree of return for each increment of quality.” *Id.* at 295. Therefore, they are willing to spend more time to find what they want (i.e. “good schools”) and are willing to spend more once they do (the connoisseurs Liebman discusses are those who take an active role in their child’s education). *Id.*

¹³⁹ See *id.* at 308–09; see also, Edelman, *supra* note 5, at 1741.

¹⁴⁰ See *Sheff*, No. CV89–0360977S, slip op. at 2–4 (Conn. Super. Ct. Apr. 12, 1995).

erty-stricken student who does go to a white suburban school? The teachers there are hardly prepared for his or her particular problems.¹⁴¹ Thus, the student may be advancing but might be able to advance more with a program like Tesseract which considers his individual needs, understands the importance of the particular characteristics of a school district, and is working with the community to ameliorate the problems of urban blight.¹⁴²

Despite the *Sheff* lawsuit's assertions, black and Hispanic students cannot be expected to just start over.¹⁴³ The tenet of the "American Dream" that everyone can participate equally and can always start over is just not true.¹⁴⁴ This myth creates deep misunderstandings and political tensions.¹⁴⁵ Urban students have already become products of their environments and will continue to live in these environments despite the chance to "start over."¹⁴⁶ Privatization efforts and EAI allow schools to effectively manage themselves schools so as to provide funding for programs that include the community and parents.¹⁴⁷ Thus, equalization can begin from the start of children's lives, rather than after the fact.¹⁴⁸

2. Overcoming Criticisms: EAI's Privatization Approach

Many in Hartford have not exactly thrown open the doors for EAI and its programs.¹⁴⁹ The Hartford Federation of Teachers originally filed suit on August 1, 1994, seeking to enjoin the Hartford Board of Education, the City of Hartford, and certain officers of the City from negotiating a contract with EAI.¹⁵⁰ Three members of the School Board also voted against it although they are now standing behind EAI because "[i]t is in the best interests of Hartford's students [to do so]

¹⁴¹ See *Plan Offered on Training of Teachers*, *supra* note 19, at 23.

¹⁴² See PROSPECTUS, *supra* note 82, at 23.

¹⁴³ See Jennifer Hochschild, *The Word American Ends in "Can": The Ambiguous Promise of the American Dream*, 34 WM. & MARY L. REV. 139, 150 (1992).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 151.

¹⁴⁶ See *id.*; Edelman, *supra* note 5, at 1738.

¹⁴⁷ See EAI 1994 ANNUAL REPORT, *supra* note 85, at 11; PROSPECTUS, *supra* note 82, at 23.

¹⁴⁸ See generally *Sheff*, No. CV89-0360977S (Conn. Super. Ct. Apr. 12, 1995).

¹⁴⁹ See Mike McIntire & Rick Green, *City Panel To Urge Rejection Of EAI Plans; Sources Say Cautious Approach Favored*, HARTFORD COURANT, July 13, 1994, at A1. George Judson, *Parents Wary of Change As Integration Looms*, N.Y. TIMES, Feb. 26, 1993, at B5 [hereinafter Judson, *Parents Wary of Change As Integration Looms*].

¹⁵⁰ Hartford Fed'n of Teachers Local 1018, CSFT, AFT AFL-CIO v. Hartford Bd. of Educ. et al., 1994 WL 495175, 495175 (Conn. Super. Ct. 1994) (dismissed for lack of standing).

. . . .”¹⁵¹ A further argument is that the Hartford School system is giving up on its students and turning over an essentially public function to private control.¹⁵²

Moreover, incentive for profit concerns many opponents.¹⁵³ Using Hartford’s \$200 million school budget, EAI has a five-year contract to radically improve efficiency and student achievement by introducing classroom technology, innovative teaching methods, and state-of-the-art budgeting processes.¹⁵⁴ EAI earns a profit by finding less expensive ways to buy supplies and by trimming non-teaching staff.¹⁵⁵ Critics allege, therefore, that there is the potential for cutting corners and sacrificing Hartford children’s education further so that EAI can turn a profit.¹⁵⁶

In fact, EAI ended the 1994 fiscal year with a \$236,000 deficit.¹⁵⁷ Critics seemingly have reason for concern at first glance at EAI’s economic situation.¹⁵⁸ However, EAI can expect only to maintain a profit-making enterprise through the continuance of its current contracts and its successful acquisition and implementation of new school management contracts.¹⁵⁹ Therefore, the incentive for EAI to earn a profit is to improve and maintain the schools it undertakes to manage.¹⁶⁰

Another potential area of criticism is that privatization is not going to solve the problems alleged in *Sheff*, but rather EAI is just going to “throw more money” at social programs and perpetuate current prob-

¹⁵¹ Telephone Interview with Elizabeth Brad Noel, Board Member of Hartford School Board, in Hartford, CT. (Jan. 30, 1995).

¹⁵² See Dorothy Gilliam, *Keeping Communities in the Classroom*, WASH. POST, Mar. 5, 1994, at B1; see also Solomon, *supra* note 1, at 920.

¹⁵³ Chris Pipho, *Will Privatized Schools Pass or Fail?*, NEWSDAY, Nov. 21, 1994, at A27. Opponents are concerned that EAI will create a “schlock shop” from the Hartford school system—“built on empty promises of higher student achievement but really cutting corners, at students’ expense, in order to turn a profit.” *Id.*

¹⁵⁴ See PROSPECTUS, *supra* note 82, at 20; *News Release*, Sept. 29, 1994, *supra* note 80, at 7.

¹⁵⁵ See PROSPECTUS, *supra* note 82, at 5, 20–21. EAI has thus far negotiated a contract with the teachers union to freeze salaries for one year while increasing their workload. This contract will save the Board millions of dollars. EAI also recognized savings for the Board in utility bills and employee benefits. Rick Green, *EAI Board Heading in Right Direction*, HARTFORD COURANT, Nov. 5, 1995, at E1.

¹⁵⁶ See Piphoo, *supra* note 153, at A27.

¹⁵⁷ SECURITIES & EXCHANGE COMM’N FORM 10–Q (for Quarterly Period ended September 30, 1994) [hereinafter EAI FORM 10–Q]. However, EAI lessened its debt from 1993 where it had a \$330,000 loss. *Id.*

¹⁵⁸ See *id.*

¹⁵⁹ See PROSPECTUS, *supra* note 82, at 5.

¹⁶⁰ *Id.*

lems by concentrating too much on environmental factors.¹⁶¹ EAI's record is not proven but it appears that even the small strides it has made in Baltimore may provide hope.¹⁶² *Brown v. Board of Education* was decided over forty years ago and there are still desegregation cases like *Sheff* coming forward on courts' dockets.¹⁶³ EAI attempts to deal with the problems in inner city schools like Hartford's rather than send the students to schools that appear problem-free.¹⁶⁴ Although studies demonstrate achievement of such programs, full achievement has not been reached.¹⁶⁵ Thus, while integration methods continue, EAI and others like it can attempt to work with the schools and the community to formulate programs that work with the special needs of the individual students within the inner city spectrum.¹⁶⁶ The state cannot begin to force white people and the "educational connoisseurs" to live in places such that there is proper balance of races.¹⁶⁷ Therefore policy-makers should begin to look at the realities of inner city schools and apply such factors to the implementation of innovative learning strategies.¹⁶⁸

EAI includes parental involvement as integral to its success.¹⁶⁹ Critics argue that parents, such as those in Hartford, may be too drug-dependent or too busy working too many jobs to be able to attend even one parent conference or even participate in a phone interview with a child's teacher.¹⁷⁰ The answer to this problem is that by integrating as many parents as possible, EAI is attempting to create the environment that disadvantaged students have often thrived in when integrated into white public schools.¹⁷¹ By involving the community and its parents in the education process, EAI attempts to emulate the "educa-

¹⁶¹ See *Sheff*, No. CV89-0360977S, slip op. at 2-4 (Conn. Super. Ct. Apr. 12, 1995); Robert A. Frahm, *Michigan Town Considers EAI Education Plan*, HARTFORD COURANT, May 2, 1994, at A1; Celis, *supra* note 22, at A1; Telephone Interview with Santa Herman, *supra* note 37.

¹⁶² See EAI 1994 ANNUAL REPORT, *supra* note 85, at 2.

¹⁶³ See generally *Brown v. Board of Educ.*, 347 U.S. 483 (1954); *Sheff*, CV89-0360977S, slip op. (Conn. Super. Ct. Apr. 12, 1995).

¹⁶⁴ See EAI 1994 ANNUAL REPORT, *supra* note 85, at 7; PROSPECTUS, *supra* note 82, at 20.

¹⁶⁵ See *Education Study Finds Desegregation is an Effective Social Tool*, *supra* note 125, at C1 (discussing integration study, Project Concern, in Hartford, Connecticut); see also *supra* notes 125-27 and accompanying text.

¹⁶⁶ See *Sheff*, No. CV89-0360977S, slip op. at 2-4 (Conn. Super. Ct. Apr. 12, 1995); EAI 1994 ANNUAL REPORT, *supra* note 85, at 7; PROSPECTUS, *supra* note 82, at 20.

¹⁶⁷ See Liebman, *supra* note 27, at 261; Gary Orfield, *School Desegregation after Two Generations: Race, Schools, and Opportunity in Urban Society*, in RACE IN AMERICA 234, 250 (Herbert Hill & James E. Jones, Jr. eds., 1993).

¹⁶⁸ See Hess, *supra* note 122, at 56.

¹⁶⁹ See PROSPECTUS, *supra* note 82, at 23.

¹⁷⁰ See Solomon, *supra* note 1, at 925.

¹⁷¹ Liebman, *supra* note 27, at 313.

tional connoisseur" environment that keeps white middle-class children ahead of their disadvantaged peers.¹⁷² Parents need to be encouraged to be involved because of the barriers of race, class, and educational level.¹⁷³ They need an outside force like EAI to actively participate in the civic process.¹⁷⁴

3. Applying *Sheff v. O'Neill*: The Failure of Integration in Attacking Educational Inequality

Even if the plaintiffs in *Sheff* are successful in their appeal and the Connecticut Supreme Court imposes a declaratory judgment on the state to integrate Hartford students with neighboring districts' students, there will still be inequitable educational opportunity.¹⁷⁵ The *Sheff* case holds the potential of redefining an integral component in many Connecticut communities:¹⁷⁶ "the local school district, an element of great pride in wealthy suburbs and of frustration in poor cities and towns."¹⁷⁷ However, this redefinition may lead to trends of "white flight" into the suburban public schools not as greatly affected by integration plans, into the private schools, or out of the state completely.¹⁷⁸

Many parents in communities neighboring Hartford are hoping that the plaintiffs in *Sheff* lose their suit not because these parents do not sympathize with their difficulties, but because they do not want to empathize with their difficulties; many of these parents do not want their children to attend Hartford's schools, partly from experience and partly due to ignorance.¹⁷⁹ As one West Hartford parent remarked,

¹⁷² See *id.* at 261.

¹⁷³ See STRATEGIC SCHOOL DISTRICT PROFILE, *supra* note 40, at 2.

¹⁷⁴ See EAI 1994 ANNUAL REPORT, *supra* note 85, at 11.

¹⁷⁵ See *Sheff*, No. CV89-0360977S, slip op. at 2-4 (Conn. Super. Ct. Apr. 12, 1995); Edelman, *supra* note 5, at 1740-41; Maeroff, *supra* note 27, at 157.

¹⁷⁶ *Sheff* also has the potential of redefining the local school district in communities of other states, if the plaintiffs in *Sheff* are successful. See No. CV89-0360977S, slip op. at 2-4 (Conn. Super. Ct. Apr. 12, 1995).

¹⁷⁷ See Judson, *Merge City and Suburban Schools, Lawsuit Urges*, *supra* note 9, at B1.

¹⁷⁸ Orfield, *supra* note 167, at 250. James Coleman's 1975 study links urban desegregation with increased "white flight" from those public schools. *Id.* Mandatory desegregation plans limited to central cities with large minority populations, like Hartford, and nearby white suburbs, like West Hartford, accelerate the decline in attendance of white students more than other plans. *Id.* White flight is partially the reason that a case like *Sheff* has come forward: the economically disadvantaged cannot escape urban blight while white middle class families have fled the cities and placed their children in suburban school districts. See *id.*; *Sheff*, No. CV89-0360977S, slip op. at 31 (Conn. Super. Ct. Apr. 12, 1995).

¹⁷⁹ Judson, *Parents Wary of Change as Integration Looms*, *supra* note 149, at B5.

"Hartford's not safe. . . . Why should we send our children in? I don't want the city's [West Hartford's] children there."¹⁸⁰

Lawyers for the State of Connecticut put forth expert testimony in the *Sheff* case which concluded that mandatory desegregation plans drive middle-class white children out of public schools, resulting in "greater segregation not only by race but also by class, as those with the means to leave do so, while the poor remain."¹⁸¹ The results of a survey conducted in the surrounding Hartford area by the State of Connecticut support this proposition.¹⁸² Fifty-one percent of the whites questioned said they would move or resort to private schools if their children were assigned to new schools under a desegregation plan compared with 45% of the Hispanic people questioned and 23% of the blacks questioned.¹⁸³

Integration holds little hope for educational equity which benefits rich and poor, suburban and urban, white and nonwhite alike, if its efforts will be thwarted by parental gerrymandering which seeks to avoid integration's social costs while ignoring its gains.¹⁸⁴ Privatization and EAI's Tesseract program hold greater promise for achieving equity for Hartford's students because they attack the root of the problem: urban students have social problems which need to be individually addressed by effectively managed and tailored educational programming.¹⁸⁵ EAI attempts to establish a budget which includes programs such as bilingual education, parenting programs, and violence-prevention programs, as well as a core educational program.¹⁸⁶

VI. ALTERNATIVES TO EAI AND PRIVATIZATION

Educational commentators like Jonathan Kozol, who argue against the trend toward privatizing the public schools, are slow to produce effective alternatives.¹⁸⁷ Kozol advocates equal spending per pupil within and across school districts to ensure the equality of education for each

¹⁸⁰ *Id.*

¹⁸¹ See Judson, *Failings but No Solutions for Hartford Schools*, *supra* note 71, at 13CN1.

¹⁸² George Judson, *State's Case Links Poverty to Students' Performance*, N.Y. TIMES, Feb. 28, 1993, at 13CN1 [hereinafter Judson, *State's Case Links Poverty to Students' Performance*].

¹⁸³ *Id.*

¹⁸⁴ See Brittain, *supra* note 5, at 181; Orfield, *supra* note 167, at 250.

¹⁸⁵ See Haynes & Heard, *supra* note 6, at 1; Johnson, *supra* note 57, at 29; PROSPECTUS, *supra* note 82, at 23.

¹⁸⁶ See *News Release*, Sept. 29, 1994, *supra* note 80, at 5-6. The core educational program includes the individualized PEPs which encourage maximum intellectual growth in the subjects of math, science, reading, history, etc. See PROSPECTUS, *supra* note 82, at 23.

¹⁸⁷ See generally JONATHAN KOZOL, *SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS* (1991).

and every pupil.¹⁸⁸ However, Hartford spends more per pupil¹⁸⁹ than its wealthier and "more successful" neighboring districts, thus disproving the thesis that equal spending leads to equal educational opportunity and relative levels of success.¹⁹⁰ However, alternatives to privatization are important to consider in evaluating privatization's success in achieving equal educational opportunity for Hartford's students and future generations of students across the United States.¹⁹¹

A. Decentralization

Decentralization in education involves the shift in power from the established bureaucracy to local school councils.¹⁹² For example, on December 2, 1988, the Illinois State Legislature voted to pass the Chicago Reform Act¹⁹³ which established almost 600 local school councils, each consisting of two teachers, six parents, two community representatives, a principal, and in high schools, a nonvoting student.¹⁹⁴ Chicago's school system operated under a desegregation consent decree that virtually eliminated all predominantly white schools.¹⁹⁵ The system itself, however, was only 15% white and schools, thus, remained *de facto* segregated.¹⁹⁶

The effectiveness of such a reform effort as Chicago's School Reform Act is unknown. It is still too early to predict its success. However, one apparent flaw is that these local school councils still have little fiscal expertise.¹⁹⁷ Therefore, even though the perils of bureaucracy gone awry have been limited, innovative fiscal planning is still

¹⁸⁸ *Id.*

¹⁸⁹ Hartford currently spends approximately \$8,450 per student which exceeds both the state and national averages. Celis, *supra* note 22, at A1; see Judson, *In Hartford, Data Portray Schools in Crisis of Poverty*, *supra* note 61, at 26; see also Judson, *Merge City and Suburban Schools*, *supra* note 9, at B1 (citing that Hartford spends more per pupil than all but two of its suburban neighbors).

¹⁹⁰ "Success" as measured by test scores. See generally STRATEGIC SCHOOL DISTRICT PROFILE, *supra* note 40; REPORT IN BRIEF, *supra* note 4.

¹⁹¹ See A NATION AT RISK, *supra* note 4, at 23-36.

¹⁹² MARVIN CETRON & MARGARET GAYLE, EDUCATIONAL RENAISSANCE: OUR SCHOOLS AT THE TURN OF THE CENTURY 3, 38 (1991); Hess, *supra* note 122, at 53.

¹⁹³ Chicago Reform Act, P.A. 85-1418 (1988).

¹⁹⁴ Hess, *supra* note 122, at 53. The scheme was found unconstitutional because the voting mechanisms diluted the vote of community residents. Illinois changed the scheme to make it constitutional by giving parents and community residents the right to vote for both parent and community representatives on the Local School Councils. Chicago Reform Act, P.A. 86-1477 (1991); Hess, *supra* note 122, at 74.

¹⁹⁵ Hess, *supra* note 122, at 54.

¹⁹⁶ *Id.*

¹⁹⁷ See *id.* at 62. Of course there is always the possibility that a community board member may possess the necessary fiscal expertise. *Id.*

necessary to provide students with as much as possible under the limited constraints of individual budgets.¹⁹⁸

The Alliance for Schools That Work will work in Hartford with school governance teams, similar to the local councils in Chicago, consisting of educators, parents, and community leaders who will decide how to reach the curriculum and select standards set by the Hartford Board of Education.¹⁹⁹ However, the advantage that a decentralization program coupled with a privatization effort has over a decentralization program alone is that for-profit companies like EAI have officers which have both educational and fiscal expertise.²⁰⁰ Therefore, although decentralization alone has the potential for incorporating the specific needs of individual communities, decentralization coupled with privatization provides both community, parent-based input and fiscal expertise which provide greater hope for real improvement in desperately failing urban schools like Hartford's.²⁰¹

B. *Multiracial and Multicultural Teacher Training*

The Holmes Group, a consortium of deans of eighty-nine university-based schools of education,²⁰² released a report on January 27, 1995, which stated that their graduates, most of whom are white, are ill-prepared to face the realities of racially mixed classrooms.²⁰³ Judith E. Lanier, education professor at Michigan State University stated, "We need a faculty that is much more familiar with the problems and challenges of today's children. A dissertation alone is not enough."²⁰⁴ The Holmes Group has begun to realize that students are failing in schools because teachers are taught how to teach the "easy" students,²⁰⁵ and the students from economically disadvantaged and minority backgrounds are lost not because they cannot be taught, but because

¹⁹⁸ See 1994 EAI ANNUAL REPORT, *supra* note 85, at 12; PROSPECTUS, *supra* note 82, at 30-31 (the executive officers and directors of EAI have vast experience in both fiscal and education management).

¹⁹⁹ THE HARTFORD Bd. OF EDUC., *supra* note 119, at 1.

²⁰⁰ See PROSPECTUS, *supra* note 82, at 30-31.

²⁰¹ See Edelman, *supra* note 5, at 1740-41; Liebman, *supra* note 27, at 308-309; Maeroff, *supra* note 27, at 157. Moreover, Hartford hired EAI in the face of mounting fiscal difficulties, including a \$2 million budget gap. Celis, *supra* note 22, at A1.

²⁰² The 89 institutions together educate an estimated 20% of the nation's three million teachers. *Plan Offered on Training of Teachers*, *supra* note 19, at 23.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ The "easy" students are those who come to school ready to learn: those who speak English and/or have parental support at home. *See id.*

teachers are not trained to teach children with these types of problems.²⁰⁶

Multiracial and multicultural teacher training is an important contribution to educational reform.²⁰⁷ However, such training alone is not enough because parental and community support is integral to educational success.²⁰⁸ EAI, for example, works with teachers and provides increased training for them, but in addition, provides community and parental support through the PEP™ to help teachers provide a maximum benefit for their students.²⁰⁹ In addition, as Hartford's budget stands without EAI, there is no money for such training.²¹⁰ EAI's experienced budget team, however, in combination with initial outlays from the company itself, can provide such training.²¹¹ Ideas for education reform cannot lie in a vacuum.²¹² A revised curriculum for future college and graduate students studying to be teachers is an important step, but many of those who will benefit from such a curriculum will not be teaching for another three to five years.²¹³

VII. CONCLUSION

EAI's privatization in conjunction with community involvement is the best way to attack educational inequality. The financial and contractual disputes which have plagued the Hartford Board of Education and EAI's relationship do not negate the strength of EAI's privatization of public education program. EAI's approach tailors its programs to the needs of inner city school districts, like Hartford, Connecticut, whose students often have special needs as a result of their economically impoverished and disadvantaged backgrounds. EAI's approach includes students that the integration approach pronounced in *Sheff*

²⁰⁶ *Id.*

²⁰⁷ See GOALS REPORT, *supra* note 4, at xi; A NATION AT RISK, *supra* note 4, at 36.

²⁰⁸ See Liebman, *supra* note 27, at 261 (arguing that "educational connoisseurs"—educationally oriented parents—are integral to the success of children in school); Maeroff, *supra* note 27, at 160 (arguing if parents value education, chances are greater that their children will value education).

²⁰⁹ See PROSPECTUS, *supra* note 82, at 23.

²¹⁰ See Celis, *supra* note 22, at A1 (citing Hartford's \$2 million existing budget gap).

²¹¹ See PROSPECTUS, *supra* note 82, at 30–31; *News Release*, Oct. 3, 1994, *supra* note 6, at 1 (citing EAI's intended investment of approximately \$14 million for classroom and office technology in the first year of management).

²¹² See A NATION AT RISK, *supra* note 4, at 23 (although the report urges immediate reform it concentrates only on traditional educational factors thereby ignoring the impact of environmental factors).

²¹³ See *Plan Offered on Training of Teachers*, *supra* note 19, at 23.

v. O'Neill inherently excludes—the students who remain in the Hartford public schools.

The *Sheff* lawsuit presents the theory that segregation by race, ethnicity, and poverty places Hartford schoolchildren at a severe educational disadvantage, denying them an education equal to that afforded to suburban, virtually all white, schoolchildren. However, the integration approach pronounced in *Sheff* fails to take into account the social, racial, and economic factors which necessarily impact upon students' abilities to learn regardless of the location of the school they attend—suburban or urban.

Because of inner city students' often impoverished and disadvantaged backgrounds, inner city school districts, like Hartford, often need a myriad of social and educational programs that are difficult to accommodate with limited budgets. In its first year in Hartford, EAI has established new curriculums and curriculum standards for each grade level based upon *Goals 2000* standards; school governance teams composed of parents, teachers, administrators, and community representatives; and physical improvements. Furthermore EAI is overhauling the system's financial management.²¹⁴ EAI seeks to maximize budget constraints through private management and financial expertise. Moreover, EAI seeks to work with the community to improve the quality of education each student receives.

Community involvement is the touchstone toward equalizing educational opportunity. Inner city students need community support to overcome the overbearing effects that violence, poverty, and dysfunctional family life can have on their ability to receive an equal education. EAI's privatization approach seeks to maximize budget constraints in order to provide the social and educational programs inner city students may, in particular, require. At the same time, it maximizes community involvement so as to minimize the environmental factors which necessarily impact upon an inner city student's opportunity for an equal education.

EPILOGUE

After the writing of this Note, on January 23, 1996, the Hartford School Board voted to cancel its contract with EAI.²¹⁵ As in Baltimore,

²¹⁴ Tom Condon, *EAI Board Heading in Right Direction*, HARTFORD COURANT, Nov. 5, 1995, at E1.

²¹⁵ George Judson, *Hartford Plans to End the Private Management of Its Public Schools*, N.Y. TIMES, Jan. 23, 1996, at B1.

the cancellation was the result of a struggle over finances and not over educational policy.²¹⁶

However, Hartford's cancellation of its contract is not the final blow to EAI nor to the privatization of education's viability. EAI's loss of its contracts in both Hartford and Baltimore can most greatly be attributed to its promising great educational revolution within a short five-year period in the face of mounting social ills and political opposition from both local and national teacher unions.²¹⁷ Clearly, in less than a year and a half in Hartford schools, EAI could not produce dramatic changes in educational achievement when so many students arrive scarred by poverty.²¹⁸

Furthermore, Hartford and EAI's contractual terms were flawed by ambiguities and permitted the school board to terminate the contract for any reason given ninety days notice.²¹⁹ EAI in its zeal for obtaining contracts left itself vulnerable to the political and economic pressures which inherently plague municipal management. The cancellation clause permitted both Hartford and Baltimore to terminate their contracts in the face of shrinking school resources.²²⁰ The contract itself never spelled out EAI's nor Hartford's accountabilities and how they were to be measured.²²¹ Future contracts will need to include such specificities and state the conditions precedent which permit termination of the contract such that EAI is no longer at the mercy of the vagaries of municipal budgeting.²²²

EAI's contractual difficulties are not a liability for the company. It can learn from its mistakes and improve both its product and its organization.²²³ EAI clearly still faces opposition from teacher unions. Therefore, it is probably best for it to seek out contracts for management of individual schools in smaller school districts as management of entire school systems in larger districts inevitably includes the involvement of firmly entrenched teacher unions and powerful political infrastructures. EAI is currently seeking such "smaller" contracts including one with the school board in Wappingers Falls, New York.²²⁴

²¹⁶ *Id.*

²¹⁷ *Education and Inertia*, PROVIDENCE J. BULL., Jan. 8, 1996, at B4.

²¹⁸ *Id.*

²¹⁹ Mike Bowler, *EAI Fell to High Hopes, Unmet Promises; Company Ran Into Political Reality*, BALTIMORE SUN, Nov. 23, 1995, at 18A.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ Salganik, *supra* note 100, at 11C.

²²⁴ *Education and Inertia*, *supra* note 217, at B4.

EAI's successes should not be overlooked. An Associated Press analysis found that in Baltimore last year, students in EAI schools had made sizeable gains on statewide standardized tests, averaging a 67% improvement over 1994's scores. The systemwide improvement was also good, but smaller—27%.²²⁵ EAI's privatization reform effort may be flawed in its early implementation but results are clear: privatization of public education remains a viable vehicle for equalizing educational opportunity in the United States.

²²⁵ *Id.*