From Brown v. Board to Parents v. Seattle: The Future and Constitutionality of Desegregation in American Public Schools

Jeree Harris

College of William and Mary

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From Brown v. Board to Parents v. Seattle
The Future and Constitutionality of Desegregation in American Public Schools

A thesis submitted in partial fulfillment of the requirement
for the degree of Bachelors of Arts in Interdisciplinary Studies from
The College of William and Mary

by

Jeree Harris

Accepted for
(Honors, High Honors, Highest Honors)

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Anne Charity

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Deenesh Sohoni

Williamsburg, VA
April 18, 2008
From *Brown v. Board* to *Parents v. Seattle*:
The Future and Constitutionality of Desegregation in American Public Schools

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PART I.
School Desegregation From *Brown v. Board*
Preface: School Integration in the 21st Century

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Brown v. Board of Education, 347 U.S. 483 (1954).

Over fifty years ago, in Brown v. Board the U.S. Supreme Court recognized de jure\(^1\) segregation as inherently unequal, and impermissible under the 14\(^{th}\) Amendment Equal Protection Clause of the Constitution. The Court found education to be an effective tool for social mobility, and prized school desegregation as a means to create social equality. Nevertheless, de facto\(^2\) segregation persists in classrooms across the country.

In 2005, approximately 48 million students were educated in America’s public school system. As Table A illustrates, minority students comprised over 42.4 percent of the system’s population, an increase in 20 percentage points since 1975.

Table A\(^3\)
Percentage distribution of total U.S. Public Elementary and Secondary School Enrollment by Race/Ethnicity

<table>
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<tr>
<th></th>
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<th></th>
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</thead>
<tbody>
<tr>
<td>White</td>
<td>76.2</td>
<td>69.6</td>
<td>65.5</td>
<td>57.6</td>
</tr>
<tr>
<td>Black</td>
<td>15.4</td>
<td>16.8</td>
<td>16.9</td>
<td>15.6</td>
</tr>
<tr>
<td>Hispanic</td>
<td>6.7</td>
<td>10.1</td>
<td>14.1</td>
<td>19.7</td>
</tr>
<tr>
<td>Asian</td>
<td>N/A</td>
<td>N/A</td>
<td>2.3</td>
<td>3.7</td>
</tr>
<tr>
<td>American Indian</td>
<td>N/A</td>
<td>N/A</td>
<td>0.6</td>
<td>0.7</td>
</tr>
<tr>
<td>Other</td>
<td>1.7</td>
<td>3.5</td>
<td>0.6</td>
<td>2.7</td>
</tr>
</tbody>
</table>

\(^1\) De jure segregation is defined as segregation mandated by law.
\(^2\) De facto segregation is defined as segregation “by fact” that is the result of social or economic factors.
Racial diversity in the overall composition of American public schools has increased over the last decade; however, the number of multiracial or integrated schools does not reflect this trend.\textsuperscript{4} Table B illustrates the racial composition of schools attended by the average white, black, Latino, Asian and American Indian student. White students are the most isolated in public schools. On average white students attend schools that are 77 percent white. Only 14 percent of white students attend multiracial schools. In addition, 2.4 million students, 1 in 6 black and Latino students, are hyper segregated, attending schools that are 99 to 100 percent minority.\textsuperscript{5}

**Table B\textsuperscript{6}**

<table>
<thead>
<tr>
<th></th>
<th>White</th>
<th>Black</th>
<th>Latino</th>
<th>Asian</th>
<th>American Indian</th>
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<tbody>
<tr>
<td>White Student</td>
<td>77</td>
<td>9</td>
<td>9</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Black Student</td>
<td>30</td>
<td>52</td>
<td>14</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Latino Student</td>
<td>27</td>
<td>12</td>
<td>55</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Asian Student</td>
<td>44</td>
<td>12</td>
<td>21</td>
<td>23</td>
<td>1</td>
</tr>
<tr>
<td>American Indian</td>
<td>44</td>
<td>7</td>
<td>12</td>
<td>3</td>
<td>35</td>
</tr>
</tbody>
</table>

*Brown* was a landmark for school desegregation; however, the fulfillment of its promise is an elusive goal for educators and policy makers. Research on the Florida

\textsuperscript{4} “Looking to the Future: Voluntary K-12 School Integration,” NAACP Legal Defense and Educational Fund, Inc., 2005: 10. Multiracial is defined as schools with at least three races representing 10 percent of the total school population.

\textsuperscript{5} Ibid. 10.

school system found that when controlling for expenditures, poverty levels, teaching quality, class size, and mobility of students, segregation was related to low pass rates on state tests for black students in isolated schools. The researchers concluded that, “segregated schools can be viewed as institutions of concentrated disadvantage, and that policies that attempt to resolve the achievement gap by funding equity or classroom size changes would probably fail if the segregation issue was not addressed.8

After decades of legal action to end school segregation the recent U.S. Supreme Court decision in Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 127 (2007), revealed a legal tide turning away from affirmative racial integration. Chief Justice Roberts and the majority struck down voluntary integration plans in Seattle, Washington, and Louisville, Kentucky. Their decision leaves thousands of school districts with difficult choices ahead concerning school desegregation efforts.

In this thesis, I will address several questions developed in the wake of the U.S. Supreme Court’s decision in Parents v. Seattle, 551 U.S. 127 (2007). First, how will school districts facing increased resegregation respond or react to the Court’s decision to limit the use of race conscious criteria in school assignments? Second, how will the distant relationship between the U.S. Supreme Court and school districts impact how school districts decide to implement or not to implement integration plans? What incentives will school districts have to comply with the Court’s race neutral suggestions? Finally, in light of the Court’s decision, what other criteria will arise in the placement of school children in desegregation plans?

Four case studies on the following districts: Seattle School District, in Seattle

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8 Ibid. 7.
Washington, the Lynn School District, in Lynn, Massachusetts, the Jefferson County School District in Louisville, Kentucky, and the Monroe County School System in Monroe County, New York, will shed light on school district behavior following the recent school integration case.\(^9\)

A historical survey of the U.S. Supreme Court’s relationships with school districts is an invaluable context for this research. The proceeding chapter will reflect on the historical relationship between the U.S. Supreme Court and school districts, followed by an overview of the theory and methods to research, and analyze the present and future behavior of school districts integration efforts in the wake of the Court’s decision.

\(^9\) See Appendix Tables 1-8 for comparative school, community, demographic, and income data on Seattle, Lynn, Jefferson County, and Monroe County School Districts.
Chapter 1
Historical Perspective of School Desegregation Following Brown v. Board

“The rights of children to equal educational opportunities are not to be denied, even for a brief time, simply because a school board situates itself so as to make desegregation difficult.” Dandridge v. Jefferson Parish School Board, 404 U.S. 1219 (1971).

The future and constitutionality of school desegregation is strongly linked to the historical relationship between the U.S. Supreme Court and school districts. The first section of this chapter will explore the historical relationship established between the Court and school districts from Brown v. Board to Parents v. Seattle. The second section will present an overview of theoretical frameworks to analyze school district behavior and reactions to Court decisions. Finally, this chapter will conclude with a discussion of why it is imperative to understand school district behavior, and decision-making regarding the future of voluntary school integration.

Following Brown v. Board

Following the Brown decision, massive resistance by segregationists resulted in several subsequent Supreme Court cases related to school desegregation.10 The ambiguous task to desegregate with “all deliberate speed” allowed some states to delay the inevitable order to integrate their schools. School districts employed many creative methods to avoid desegregation. In Little Rock, Arkansas, the Governor and Legislature used armed forces to keep black children from integrating into white schools. The state officials claimed that integration was too dangerous and too great a disturbance to the community. The Court decided in this case, entitled Cooper v. Aaron, 358 U.S. 1 (1958), that schools needed to integrate regardless of state officials’ reservations. As a result,

National Guardsmen escorted black students into their schools after originally being charged with keeping them out.

Another method to deter desegregation was to do the least possible to encourage integration. *Goss v. Board of Education*, 373 U.S. 683 (1963), involved a Tennessee plan that provided for rezoning of school districts with regard to race. However, the plan had a free transfer clause that permitted student transfers from the schools they were assigned. If a student was assigned a racially isolated school, he or she could not transfer out as easily as a student who was in the minority of a school’s racial demographic. A child in the majority of the isolated school would have to show a good cause for a transfer. The Court struck down the Tennessee plan for making it more difficult for children in the majority of a racially isolated school to transfer out.

Finally, in Virginia, drastic measures were utilized to resist school desegregation. Prince Edward County closed public schools in the 1959-1960 school year by refusing to levy taxes. The public schools remained closed for nearly five years. A private group called the Prince Edward School Foundation created all white private schools that rejected African American students. The Foundation offered to open up African American schools, but the community rejected the offer in favor of continuing the legal battle to open nondiscriminatory public schools. African American children in the County went without formal education from 1959 to 1963. In this case, entitled *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218 (1964), the Supreme Court ordered Prince Edward County authorities to collect taxes to reopen integrated public schools. Justice Black concluded his opinion in *Griffin* by stating, “the time for mere "deliberate speed" has run out, and that phrase can no longer justify denying these Prince
Edward County school children their constitutional rights to an education equal to that afforded by the public schools in the other parts of Virginia.”

The most widely used method of resisting school desegregation was the freedom of choice plan. In *Green v. County School Board of New Kent*, 391 U.S. 430 (1968), the New Kent, Virginia school system adopted a freedom of choice program that kept its two segregated schools isolated. While having a freedom of choice plan was not in itself unconstitutional, the Court found that its effect was to place the burden of desegregation on the parents and children in the district. *Brown II* required the burden to fall on the school board. In *Green*’s companion case, the Gould School District in Arkansas was segregated, and only attempted to desegregate to keep federal financial aid. The district had a freedom of choice program, but 85% of black children still attended the same segregated schools. A group of black children who applied to attend a white school were rejected because available space allegedly ran out. In *Raney v. Board of Education*, 391 U.S. 443 (1968) the court reaffirmed that the freedom of choice program was inadequate to eliminate dual systems. Finally, in *Alexander v. Holmes County School Board of Education*, 396 U.S. 1218 (1969), the standard of “all deliberate speed” became impermissible. School districts were ordered to immediately terminate segregated dual school systems.

Over 16 years after *Brown*, the Court continued an uphill battle to integrate school districts. In *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 24 (1971) the Court afforded districts greater flexibility to integrate schools. The school board in Charlotte-Mecklenburg created plans based on gerrymandering attendance zones to get a certain percentage of black students in each school. There was a range of 17-36 percent
black population in 9 of the 10 high schools. In 20 of the 21 junior high schools there was a 0-38 percent black population range. In the elementary schools segregation would remain, as 85 percent of the schools would have either all white or all black populations. The District Court ordered an expert to develop a desegregation plan after disapproving of the board’s plan. The expert created the Finger Plan, which adopted the school board’s zoning set up with modifications. Three hundred black students were ordered to attend the remaining segregated high school under the Finger plan. The junior high schools would have black students assigned to nine outlying white schools based on attendance zones. Finally, in elementary school the use of zoning, paring, and grouping schools would create a nine to 38 percent black population in each school. The plan included the grouping and pairing of nine inner city schools with 24 suburban schools.11 Justice Burger outlined four issues involved in Swann; (1) racial balancing and quotas, (2) one race schools (3) remedial altering of attendance zones (4) transportation. In Swann, Burger stated that the “constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.” However, Burger went on to assert that, “when school authorities present a district court with a ‘loaded game board’ affirmative action in the form of remedial altering of attendance zones is proper to achieve truly non discriminatory assignments.” Swann gave race-conscious plans a place in student assignments; however, conservative justices were opposed to race-conscious classifications.

In Columbus Board v. Penick, 443 U.S. 449 (1979), future Chief Justice

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Rehnquist wrote a dissent that foreshadowed the changing tide of opinion on the Court with regard to desegregation. He wrote, “A duty not to discriminate in the school board’s own actions is converted into a duty to ameliorate or compensate for the discriminatory conduct of other entities.” His dissent is directed toward the contentious de jure / de facto segregation distinction. Is it possible to distinguish where state mandated discrimination ends and societal discrimination begins? If so, do school districts have the obligation to remedy de facto segregation? In *Keyes v. School District No. 1*, 413 U.S. 189 (1973), the Court decided that systems outside the South without de jure segregation were held accountable for actions that yielded the same result. In the 60s and early 70s, every case was an opportunity for the Court to expand desegregation efforts. The Civil Rights Movement and federal legislation provided incentives to implement the Court’s decisions. Some Americans disapproved of the Court’s judicial activism. Politicians were pressured to support the appointments of more conservative justices.

*Milliken v. Bradley*, 418 U.S. 717, 783 (1974) is one of the earliest signs of the Court’s slow, but significant withdrawal of support from school desegregation. The case involved an interdistrict plan\(^\text{12}\), and the ability of lower courts to impose multidistrict-wide remedies for a single district’s problem with de jure segregation. The Detroit School Board drew attendance boundaries from north to south instead of east to west, even though east to west would lead to more school desegregation. The U.S. District Court of the East District of Michigan found black students were bused to predominantly black schools when white schools with open spaces were closer. The District Court ordered that 85 surrounding school districts become a part of a desegregation plan for the Detroit

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\(^{12}\) An interdistrict transfer plan allows students from outside school districts to attend schools within other school district with little to no cost to the student.
School District. A Detroit-only remedy was inadequate to desegregate the school district. The 6th U.S. Circuit Court of Appeals reaffirmed the desegregation plan outlined by the District Court. An interdistrict remedy was held to be “within the equity powers of the District Court.” The U.S. Supreme Court held that the lower courts were attempting to get a desegregated composition in each school that reflected the composition of the metropolitan area as a whole. The majority found that the District and Circuit Court were too lax in disregarding the boundary lines of the school districts. They wrote that, “an interdistrict remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race.” However, the Court held it was impermissible to make other districts a part of a desegregation plan for one district with de jure segregation. In Justice White’s dissent to Milliken he highlighted how de facto residential segregation complicated school integration. He stated, “a remedy confined to a district could achieve no more desegregation.” Justice Thurgood Marshall composed a blistering dissent in Milliken, and over 30 years later Justice Steven Breyer modeled Marshall’s dissent in his Parents dissent. Marshall wrote:

Today’s holding, I fear, is more a reflection of a perceived public mood that [the Court has] gone far enough in enforcing the Constitution’s guarantee of equal justice than it is the product of neutral principles of law. In the short run, it may seem to be the easier course to allow our great metropolitan areas to be divided up each into two cities- one white, the other black- but it is a course, I predict, our people will ultimately regret.14

Marshall was correct about the Court’s change in course. In the 1990s, several cases chipped away at most court-ordered desegregation efforts. *Oklahoma City Board of Education v. Dowell*, 498 U.S. 237 (1991), *Freeman v. Pitts*, 503 U.S. 467 (1992), and *Missouri v. Jenkins*, 515 U.S. 70 (1995), all involved releasing school districts from desegregation decrees, and judicial examination. In *Oklahoma*, the Court held that if a school district complied in good faith with its desegregation plan for a reasonable period of time, and if traces of segregation were practically eliminated, the district was eligible for release from its desegregation decree. Similarly, *Freeman* called for incremental release from desegregation orders, even if there were traces of segregation. Finally, in *Missouri*, the Court held that certain racial disparities were not up to the federal courts to address; therefore, oversight should be returned to local authorities. As court-ordered desegregation plans faded, many districts instituted voluntary integration plans in order to maintain racial diversity in schools.

Before *Parents v. Seattle*, most race-conscious voluntary integration plans were based on the precedent set in *Grutter v. Bollinger* and *Gratz v. Bollinger*, 539 U.S. 306 (2003). *Grutter* and *Gratz* involved the use of race conscious criteria in higher education. The Court found that race could be considered to obtain an undefined critical mass of diverse student populations. The Court upheld the University of Michigan Law School’s race-conscious admissions plan because it considered each applicant individually and holistically. Race was one factor among many factors for admissions, and it was not weighted higher than other factors. The Michigan’s Law School admissions plan was narrowly tailored to achieve not only racial diversity, but geographical, socioeconomic, and intellectual diversity as well. The exclusive and
competitive nature of higher education was an important factor in the state’s compelling interest in maintaining diversity.\textsuperscript{15} The University of Michigan’s Law School Plan was upheld, and contrasted with the University of Michigan’s undergraduate admissions plan, which was struck down. These cases provided models of what was and was not permissible according to the Court. They were critical in shaping and defending the integration plans in Seattle and Jefferson County.

\textit{Overview of Theory}

The previous section described the historical relationship between the Court and school districts in the struggle to eliminate vestiges of de jure segregation in education. I will use two theoretical frameworks; the principal-agent model and the constrained court model, to answer pressing research questions related to the future of school integration. In this section, I will provide a brief overview of these theories. Chapter two will expound on aspects of these theories.

The agency problem, particularly the principal-agent model, is the theoretical framework I used to hypothesize how present school districts would respond to the U.S. Supreme Court’s \textit{Parents} decision. The principal-agent theory is, “the ubiquitous agency relationship, in which one party (the principal) delegates work to another (the agent), who performs that work.”\textsuperscript{16} Two fundamental features of the principal-agent relationship are (1) asymmetric information, and (2) divergent preferences or interests of the

\textsuperscript{15} In \textit{Regents of the University of California v. Bakke}, 438 U.S. 265 (1978), the U.S. Supreme Court struck down in part the UC Davis Medical School admission policy. Justice Powell, the deciding majority vote found that the University’s rigid quota system (16 seats out of 100 were reserved for “qualified minorities”) was a violation of the 14\textsuperscript{th} Amendment Equal Protection Clause. The Court found that the use of race was permissible as one of several factors, and developed the idea that a compelling state interest exists in pursuing diversity.

principal and agent. In this research, the U.S. Supreme Court is the principal, and the school districts are its agents. I will evaluate the fundamental features of the principal-agent relationship to detail why and how school districts will adhere or stray from the majority opinion in *Parents*.

In social science, the principal-agent theory was applied to congressional oversight of state agents. This application furthered scholarship on the impact of a principal’s method of oversight on the behavior of its agent. There are two methods of oversight; police patrol and fire alarm. Police patrol oversight is “centralized, active and direct in its initiatives” while fire alarm oversight is “a system of rules, procedures, and informal practices that enable individual citizens, and organized interest groups to examine administrative decisions.” The U.S. Supreme Court utilizes fire-alarm oversight. As interpreters of the law the Court is dependent on individual and group enforcement of its interpretations. The use of fire-alarm oversight limits the Court’s ability to monitor the implementation of its decisions by its agents.

In conjunction with the principal-agent theory, I am using the theory of the constrained court developed in Gerald Rosenberg’s, *A Hollow Hope*. In his book, Rosenberg argues that the U.S. Supreme Court is constrained by the Constitution, its dependence on the executive and congressional branches, and its inability to implement

19 Ibid. 166.
decisions. For these reasons, the U.S. Supreme Court is limited in its ability to oversee and enforce its preferences. The Court must wait until cases are appealed before it reviews and interprets the permissibility of the issue in question. There are three hypotheses drawn from the principal-agent theory and the theory of the constrained court that frame my research.

First, the U.S. Supreme Court’s method of fire-alarm oversight will allow school districts to shirk the Court’s majority opinion. The Court cannot implement its decision or directly oversee it. The Court is dependent on school districts, acting as agents, to follow its instructions producing the feature of asymmetric information. The school districts are more likely to align with the most beneficial position regardless of the Court’s decision.

The second hypothesis is that the inherent ambiguity of multiple opinions in the Parents decision, (the plurality, the dissent, and Justice Kennedy) will allow school districts to behave and implement their plans in various ways. Ambiguity due to the number of opinions, and ambiguity within the language an opinion signal school districts to act with discretion. In the past, the Court used ambiguous language such as Brown’s ‘all deliberate speed,’ which resulted in school districts interpreting the phrase to mean desegregate later rather than sooner. In Alexander v. Holmes, Justice Black feared that the, “long denial of constitutional rights [to provide integrated and equal school access

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22 “Plurality” LexisNexis, 10 March 2008. <http://www. research.lawyers.com> A plurality is a group of justices on an appeals court who do not form a majority but with whose opinion enough other justices concur to render it the decision of the court.
for African American children was] due in large part to the phrase 'with all deliberate speed.'” He concluded by stating, “I would do away with that phrase completely.”

Justice Black was correct. For many school districts in the South, ‘all deliberate speed’ meant years and even decades of delayed desegregation efforts. In his article, “The Supreme Court and Federal Administrative Agencies: A Resource-Based Theory and Analysis of Judicial Impact,” James Spriggs wrote that; “agency policy changes are influenced by the specificity of Court opinions.”

His article refers to the actions of federal agencies; however, his statement is applicable to the school districts. Specificity in an opinion or instruction by a principal limits the actions of its agents. School districts were limited by the Court’s decision to strike down the voluntary integration plans in Seattle and Louisville; however, the decision was a plurality. Therefore, the inherent ambiguity of multiple opinions will leave enough room for school districts to disregard the Court’s preference articulated by Chief Justice Roberts’ opinion.

The third hypothesis is that multiple principals, state, local government officials, school administrators, teacher’s unions, and parents will influence the behavior of school districts because of their ability to offer incentives and sanctions. I hypothesize that school districts will be heavily influenced by incentives and sanctions offered by multiple principals in deciding how to react to the decision. These incentives and sanctions might encourage the school district to adhere to the Supreme Court’s

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24 Kiser 157.
decision or stray from it; either way, the multiple principals will ultimately influence district behavior more than the Court.

**Conclusion**

For decades the U.S. Supreme Court was an important advocate and ally of racial integration in American education and society. The Court’s recent decision in *Parents* has received strong criticism for straying from the intent of *Brown v. Board*. In a New York Times article, *Brown v. Board* attorney Jack Greenberg called Justice Robert’s interpretation and legal application of the precedent set in *Brown to Parents v. Seattle* preposterous. William T. Coleman, another *Brown* attorney, called the majority opinion “100 percent wrong.”

America’s public schools are reflections of larger racial, political, and socioeconomic issues. In “The Continuing Significance of Desegregation: School Racial Composition and African American Inclusion in American Society,” authors Marvin Dawkins and Jomills Braddock analyze the impact of desegregation on career attainment. They found that, “the role of segregated and desegregated school experiences is particularly important...because elementary and secondary desegregated school experiences affect not only social, psychological and academic achievement outcomes, but also such crucial factors as college attendance, and access to broader social networks that provide the job information, contacts, and sponsorships necessary for career advancement.”

Thus, the impact of the Court’s decision, school district interpretations, 

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and subsequent implementations could influence the future and quality of education and citizenship in American society.

In the next chapter, I will further develop and clarify the theoretical framework and hypotheses of the districts’ relationship and response to the Court. Part two of this work, containing chapters three through six, includes in depth case studies on each school district’s historical relationship with desegregation, legal background, and integration plan before and after *Parents*. Finally, Part three concludes this work with a discussion of race neutral alternatives, particularly the benefits and drawbacks of socioeconomic integration. Combating the negative impact of racial segregation and isolation in schools is now more compelling than ever. In the current competitive, diverse, and increasingly global society it is essential that scholarship offers resources and information on how to best facilitate educational equality and integration in American public schools.
Chapter 2
Principal Agent Theory and the Theory of the Constrained Court

“School authorities are traditionally charged with the broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students reflecting the proportion of the district as a whole. To do this as an educational policy is within the broad discretionary powers of the school authorities.” Swann v. Charlotte-Mecklenburg Bd. Of Educ., 402 U.S. 1 (1971).

The Parents v. Seattle decision is estimated to have affected 1,000 school districts with race conscious integration plans. Several research questions developed in the wake of the Court’s decision in Parents. First, how will school districts respond or react to the Court’s decision to greatly limit the use of race conscious criteria in school assignments? Second, how will the distant relationship between the Court, and school districts impact districts’ decision to change, keep or dispose of their integration plans? Third, what incentives will school districts receive to comply with or stray from the Court’s race neutral preference? Finally, in light of the Court’s decision, what other criteria will arise in the placement of school children in voluntary integration plans? To address these questions, I will use the foundational expectations found in the principal-agent theory and the theory of the constrained court.

This chapter contains three sections. The first section will detail the agency theory and its corresponding expectations with the constrained court model. The second section will describe how the agency theory and constrained court theory apply to the U.S. Supreme Court and school districts. Finally, the third section will provide critiques of the agency theory and constrained court theory, as well as how my research will account for these critiques.

27 Richard Kahlenberg, Email Correspondence, 15 Oct. 2007.
The Agency Problem

In economics, the agency problem begins with the principal-agent relationship between businesses and consumers, or employers and employees that are based on contractual agreements. The principal selects and allocates tasks to the agent to carry out. When the principal refers expectations and goals to the agent the principal is transferring risk and relinquishing control.\textsuperscript{28} According to this economic theory, the principal-agent relationship that results in this transaction will cause an agency problem.

The agency problem is essentially two-fold. First, the agent has more information than its principal. This is called information asymmetry. An example of information asymmetry is evident in the principal-agent relationship between a consumer and a business. The consumer (principal) has a need that he or she contracts a business (agent) to meet. The consumer is generally less informed about the way and means by which the business (agent) will meet his or her need. If a consumer (the principal) lacks information, he or she will have less ability to ensure his or her interest and preferences are being met. This is core of the second agency problem, which is the deviation of an agent’s goal from its principal. When the interest of the agent departs from the interest of the principal there are no clear guidelines as to whether the goals of the principal will be met. This aspect of the theory is also referred to as moral hazard, because it describes the agents’ ability to shirk their agreement with their principals.\textsuperscript{29}

Principal Oversight

The agency problems of asymmetric information and agent deviation from the preferences of the principal dictate a monitoring method (oversight) to provide incentives

\textsuperscript{28} Eisenhardt 59.
\textsuperscript{29} Ibid. 61.
for the agent to adhere to the principal’s interests.\textsuperscript{30} There are two agency monitoring methods: police-patrol oversight and fire-alarm oversight. Police patrol oversight is “centralized, active, and direct,” while fire-alarm oversight is “less centralized, and involves less active and direct intervention.”\textsuperscript{31} A principal using police-patrol oversight would regularly meet with its agent to evaluate the agent’s performance and outcomes. Alternatively, a principal using fire-alarm oversight creates a set of guidelines that the agent is expected to follow. If the agent breaches the principal’s guidelines a fire alarm will go off that will eventually reach the principal. The American federal system is designed to utilize fire alarm oversight as the most efficient and cost effective way for principals to oversee agents. In the judicial system, the U.S. Supreme Court, acting as a principal, must relegate power to district courts, circuit courts and other entities to keep watch over its agents. Fire alarm oversight contributes to the distant relationship between the Court and school districts. It also constrains the Court’s ability enact it preferences for social change.

\textit{Theory of Constrained Court}

In Gerald Rosenberg’s theory of the constrained court, he outlines three general constraints of the judiciary, (1) the “limited nature of constitutional rights, (2) the lack of judicial independence and (3) the judiciary’s lack of powers of implementation.”\textsuperscript{32} These constraints offer the basic framework of the theory of the constrained court. Table 2.1 expounds on the constraints identified in Rosenberg’s book.

\textsuperscript{30} Susan Shapiro, “Agency Theory” \textit{Annual Review of Sociology}, (Chicago: American Bar Foundation, 2005) 264
\textsuperscript{31} McCubbins and Schwartz 166.
\textsuperscript{32} Rosenberg 35.
Table 2.1
Constraints of the U.S. Supreme Court

<table>
<thead>
<tr>
<th>Constraint 1</th>
<th>The bounded nature of constitutional rights prevents courts from hearing or effectively acting on many significant social reform claims, and lessens the chances of popular mobilization.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constraint 2</td>
<td>The judiciary lacks the necessary independence from the other branches of government to produce significant social reform.</td>
</tr>
<tr>
<td>Constraint 3</td>
<td>Courts lack the tools to readily develop appropriate policies and implement decisions ordering significant social reform.</td>
</tr>
</tbody>
</table>

In addition to general constraints there are four important limitations that hinder the Court’s ability to enact social change. (1) Not all social reform goals invoke constitutional rights. “This may mean that ‘practically significant but legally irrelevant policy matters may remain beyond the purview of the Court.’” (2) Social reformers must argue to establish new rights because the Court is constrained by a dominant legal culture and precedent. Judges cannot go far beyond legal parameters set by their fellow justices. The Circuit Court and Supreme Court require a majority consensus. Thus, no one judge can champion a cause alone. (3) Procedures within the legal system focus on symptoms rather than causes of issues. The Council for Public Interest Law wrote that, “doctrines of standing and of class actions, the so-called political question doctrines, the need to have a live controversy, and other technical doctrines ‘deter courts from deciding cases on the merits.’” The legal system is meant to be objective, fair and balanced; however, it often narrows the perspective and ability of the Court to act. (4) Finally, legally framing an issue can detract from its political and purposive appeal. The theory

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33 Rosenberg 11.
34 Ibid. 11.
35 Ibid. 12.
of the constrained court, as well as the principal-agent theory, suggests a number of expectations related to the U.S. Supreme Court and school districts relationship.

**Principal-Agent Theory and Constrained Court Theory: Applications to the U.S. Supreme Court and School Districts**

There are three expectations from my theoretical frameworks that I used to form hypotheses about the U.S. Supreme Court, and the school districts affected by the Parents decision. The first expectation is that the Supreme Court’s method of fire-alarm oversight will allow school districts to shirk their decision. The second expectation is that the inherent ambiguity of a multiple opinion decision will allow school districts to behave along a spectrum of adherence and defiance. Additionally, school districts will greatly differ in how to implement their future plans regarding integration. The final expectation is that multiple principals in the form of state and local government officials, school administrators, teacher’s unions, and parents will gain agent alliances with incentives and sanctions to adhere to their preferences.

The first expectation is grounded in the constitutional constraints that demand the Court maintains a distant relationship from its agents and utilize fire-alarm oversight. Fire alarm oversight is the most effective oversight method given the multitude of school districts. The task of overseeing all of the Court’s agents would not only be overwhelming, but impossible. Therefore, the Court sets standards through legal precedents and delegates tasks with the assumption that other principals will monitor its agents. The Court’s distant relationship allows school districts to choose whether it is beneficial to adhere to the Court’s decision or shirk its decision. I hypothesize that school districts with race conscious integration plans will shirk the Court’s decision
outright or loosely interpret Justice Robert’s decision in light of the arguments made by Kennedy and the dissent for continued use of race conscious measures.

The second expectation is that the Supreme Court’s multiple opinions in *Parents* results in ambiguous instructions for the school districts. This ambiguity is in part a reflection of the ideological divide on the Court, but ambiguity can also underscore the Court’s attempt to leave some deference to school districts. Historically, the Court recognizes the unique needs of local communities, and therefore, offers some deference to school districts. However, this deference in the form of multiple opinions and ambiguous language within opinions has negative consequences on the implementation of the Court’s preference versus school districts’ preference. In *Brown*, the phrase “all deliberate speed” resulted in some school districts waiting a decade before they attempted to comply with the Court’s decision. Based on precedent school desegregation cases, school districts respond to the Court’s decisions in one of four ways. (1) School districts can refuse to integrate their schools.36 (2) School districts can initiate programs that passively desegregate students, while placing the burden of integration on parents37. (3) School districts can integrate using race neutral initiatives such as unifying segregated school districts, busing, and gerrymandering attendance zones.38 (4) School districts can actively confront desegregation by using race-conscious criteria to ensure integration.39

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38 Swann v. Charlotte-Mecklenburg, 402 U.S. 1, 24 (1971)
hypothesize that the inherent ambiguity of multiple opinions will account for several different interpretations and implementations of integration plans by school districts.

The final expectation is that multiple principals (state or local government officials, school administrators, teacher’s unions and parents) with incentives or sanctions to offer school districts will ultimately direct school district behavior and shape future integration plans. A historical example of the impact of incentives from multiple principals occurred in the 1960s. On December 3, 1964, the U.S. Department of Health, Education and Welfare (HEW) adopted a regulation that “allowed federal aid to school districts that either submitted assurances that their schools were totally desegregated, that were under court orders to desegregate and agreed to abide by such order, or that submitted voluntary desegregation plans.” Title VI of the regulation allowed the federal government to withhold federal funds from school districts that discriminated against racial minorities. The regulation and financial incentive is an example of the impact of multiple principals on an agent. While some parents and local government officials wished to maintain segregated schools, HEW required desegregation to receive federal funds under Title VI. Even with the financial incentive offered by HEW, the impact of multiple principals with incentives and sanctions shaped school district behavior. In 1977, a U.S. Commission on Civil Rights Survey of school district superintendents reported that the pressure to initiate desegregation was strongest from state and local pressure, followed by the courts, and the Department of Health, Education,

40 Kiser 157.
41 Rosenberg 48.
42 Ibid. 47.
43 Ibid. 48.
and Welfare.⁴⁴ Therefore, I hypothesize that incentives or sanction for race conscious versus race neutral plans by multiple principals will ultimately determine if and how the districts implement integration plans.

**Critiques of the Agency Theory & Constrained Court**

There are a few critiques of the agency theory and the theory of the constrained courts. The critiques provide insight into the limitations of both theories, and aid in developing strategies to overcome these limitations within my case studies.

The first critique is that the agency theory assumes that agents are “work averse, self-interested, utility maximizers.”⁴⁵ The counter theory to the agency problem is the stewardship theory. The stewardship theory claims that agents are stewards and team players that cooperate instead of simply remain in conflict with their respective principal. Some have argued that elementary models of the agency problem perpetuate and even inflame the problem. “Agency relationships are enacted in a broader social context and buffeted by outside forces- other agency relationships, competitors, interest groups, regulators, legal rules and the like- that sometimes right informational imbalances, offer or constrain incentives, exacerbate the risk of adverse selection or moral hazard, provide cover or opportunity for opportunism, and so forth.”⁴⁶

In my research, I acknowledge the limitations of traditional agency theory. My research considers the broader social and historical context of desegregation in the U.S. Additionally, my research notes school districts are not actively seeking to skirt the Court’s decision. Rather the Court’s, structure, function, and method of oversight within

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⁴⁴ Ibid. 53.
⁴⁵ Shapiro 268.
⁴⁶ Ibid. 269.
the American federal system, inherently constrains the ability of the Court to implement or enforce its preference. School districts must interpret and parse out what aspects of the decision are applicable as well as what aspects are beneficial to enforce. This process does not indict the school districts as self-interested, misbehaving agents.

Another critique is that the “superior-subordinate dyad” of the traditional principal-agent model does not account for multiple principals with conflicting interests. In cases where multiple principals are involved, “no matter how well the monitoring systems are designed or how well the principals structure incentives, one or perhaps all of the principals will be dissatisfied with the relationship…agents must choose between different principal goals.”

Again, this limitation is addressed by considering the incentives offered by multiple principals to the agents (school districts). Waterman and Meier argue that there is no hierarchy of principals; however, the incentives, and sanctions connected with each principal will create a makeshift hierarchy for the school districts. Additionally, different principals can offer greater oversight along with greater ability to reward and reprimand the districts. These principals will most likely rise to the top of the principal hierarchy.

Along with critiques of the principal-agent theory are critiques of the theory of the constrained court. In his book, Rosenberg outlines the argument against his theory of the constrained court. The alternative is called the dynamic court perspective. The following table lists the conditions under which the court can implement social reform.

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47 Waterman and Meier 178.. 48 Ibid. 179.
Table 2.2
Conditions Under Which Court Can Implement Social Reform\textsuperscript{49}

<table>
<thead>
<tr>
<th>Condition</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Condition 1</td>
<td>Courts may effectively produce significant social reform when other actors offer positive incentives to induce compliance.</td>
</tr>
<tr>
<td>Condition 2</td>
<td>Courts may effectively produce significant social reform when other actors impose costs to induce compliance.</td>
</tr>
<tr>
<td>Condition 3</td>
<td>Courts may effectively produce significant social reform when judicial decisions can be implement by the market.</td>
</tr>
<tr>
<td>Condition 4</td>
<td>Courts may effectively produce significant social reform by providing leverage or a shield, cover, or excuse for persons crucial to implementation who are willing to act.</td>
</tr>
</tbody>
</table>

I account for all of these conditions in this research. The Court’s decision can impact change if other principals offer incentives and sanctions. The Court and other principals have a reciprocal relationship. The Court can offer support for principals to challenge school districts that are not complying, and the principals can offer incentives and sanctions against those agents that are not acting in accordance with the Supreme Court’s preference. However, multiple principals with the ability to offer incentives and sanctions are not dependent on the Court as the Court is dependent on them. Principals with diverging preferences or ideological differences can encourage the Court’s agent to stray.

The agency theory and theory of the constrained court are useful frameworks for my research because of their versatility. Agency theory “emphasizes the importance of a common problem structure across research topics.”\textsuperscript{50} There are a number of research examples I can draw from involving the agency problem in social science and legal research. The wealth of prior research helps in develop sound hypotheses and research methods. The constrained court theory pinpoints my focus to the constraints unique to the legal system and the judiciary.

\textsuperscript{49} Rosenberg 33.
\textsuperscript{50} Eisenhardt 64.
Conclusion

The U.S. Supreme Court, acting as a principal of the Seattle and Jefferson County School Districts determined that race conscious measures to integrate their schools were impermissible. The Court ordered the plans to cease in favor of race neutral plans. The school districts, acting as agents, are now faced with carrying out the Court’s decision. My research will utilize the expectations drawn from the agency theory and the theory of the constrained court to hypothesize and answer how and why school districts will decide to relinquish, maintain or change their integration plans.

Part 2 of this paper will include an overview of case study methods, an overview of the Supreme Court’s opinions in the Parents decision, and four case studies on Seattle, Washington, Lynn Massachusetts, Jefferson County, Kentucky and Monroe County, New York. Each chapter is structured into segments detailed in the following methods section.
PART II.
School Integration Since *Parents v. Seattle*
Preface

Overview of Case Study Methods

“...the burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now.” Green v. County School Board of New Kent County, 391 U.S. 430 (1968).

The following chapters are case studies on four school districts, with race conscious integration plans, affected by the *Parents* decision; (1) Seattle School District No.1 in Seattle, Washington (2) Lynn School District in Lynn, Massachusetts, (3) Jefferson County School District in Jefferson County, Kentucky (4) and Monroe County School Districts, in Monroe County, New York. Each case study includes extensive research from scholarly journals, collected newspaper articles, academic performance data, interviews, statements from state, local and school officials, as well as parents within the communities.

There are several reasons why these school districts are particularly important to examine following the Court’s decision. First, Seattle and Jefferson County were the school districts directly affected and challenged by the Supreme Court’s decision. Both school districts used controlled choice programs and racial tiebreakers to integrate their schools. Lynn and Monroe County Schools, in contrast to Seattle and Jefferson County, use interdistrict plans. Lynn and Monroe County are the only school districts besides Seattle and Jefferson County with race conscious integration plans that were challenged

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51 Richard D. Kahlenberg, *All Together Now: Creating Middle-Class Schools Through Public School Choice*, (Washington, D.C.: Brookings Institution Press, 2001):117. Professors Charles Willie, and Michael Alves formulated the controlled choice program. Controlled choice allows parents, and students to choose and rank the public school they would like to attend within a region. It is used to promote both racial, and economic balance. Controlled choice is used in several big cities in Massachusetts including; Boston, Brockton, Cambridge, Chelsea, Fall River, Holyoke, Lawrence, Lowell, Northampton, Salem, Somerville and Springfield. Also in Milwaukee, Wisconsin; Little Rock, Arkansas; San Jose, California; Indianapolis, Indiana; Montclair, New Jersey; White Plains, New York; Yonkers, Buffalo, East Harlem, NY; and Glendale, California.
in Circuit Courts of Appeals and upheld. Their cases are cited as major victories in the cause of racial integration. Additionally, their integration programs became models of acceptable, race conscious integration programs before *Parents*.

I decided to perform case studies in this research to underscore the fact that Seattle, Jefferson County, Lynn, and Monroe County are models in voluntary school integration research. Initially, I considered a quantitative approach to track hundreds of districts impacted by the Supreme Court’s decision. However, there were several limitations to this approach. First, there was no data on who or where the 1,000 school districts were with race conscious integration plans. Court documents from previous challenges contain most of the information on school districts with race conscious plans. As stated previously, Seattle, Jefferson County, Lynn, and Monroe were the only school districts I found that were challenged, and upheld in Circuit Courts of Appeals. Secondly, case studies are more conducive to the amount of detail required to understand school district behavior, history, and the multiple principals affecting decision-making. The qualitative nuances of the agency problem in relation to school district and community reaction to the Court’s decision provides a better lens to analyze motivations and behavior. Finally, with the relatively short amount of time between the Court’s decision and my research, I am limited to school districts that were directly affected, and that should have some initial response to the decision. I hypothesized that school districts previously challenged and upheld would address the impact of the Supreme Court’s decision on their integration plans. Over the next five to ten years more information will be available on the impact of the decision, and reactions of a number of school districts. To balance the time limitation, I have extensively researched past responses to desegregation in order to frame its impact.
on the community and school district. Past responses provide some indication of how the school districts will adapt to the present challenge to integrate their schools.

**Format of Case Studies**

Each case study includes three sections. The first section will review the historical context of integration in the school district. This section will include details of the local community, and school district’s desegregation history. The second section is divided into two parts. The first part is entitled the facts of the case. This part provides the basic outline of why the school district was challenged. Particularly, who was challenging the school district, on what legal grounds, and why? The second part of this section synthesizes the history of the case in district and circuit courts of appeals. This part includes the progression of the case from its initial challenge to the district, appeals, and U.S. Supreme Court, in the cases of Seattle and Jefferson County. The legal reasoning from the district and circuit court opinions are outlined to determine how their legal reasoning led them to uphold race conscious voluntary integration plans. The final section will examine how the Court’s decision impacted the districts’ plans. This section will focus on whether or not the school district will choose to implement new plans, slightly change their old plans, keep their old plans or abandon them. I will look at factors that influenced school districts’ behavior, particularly incentives and sanctions offered by multiple principals surrounding school districts.

**Overview of the U.S. Supreme Court’s Legal Reasoning in Parents v. Seattle**

Expectations and preferences for school district behavior following *Parents* are outlined in the legal reasoning of the Court’s opinions. An overview of the Court’s
opinion is the framework for analyzing the ways in which school districts have adhered or shirk the Court’s decision.

The U.S. Supreme Court decided *Parents v. Seattle* and *Meredith v. Jefferson County* on June 27, 2007. The case was one of the most controversial on the docket and required a great amount of deliberation. In the past, the U.S. Supreme Court denied appeals of school integration cases because of their potential impact. However, changes on the Court toward more conservative ideology placed the issues of affirmative action and race consciousness at the center of judicial attention.

The Court split into a plurality on the decision. Chief Justice John Roberts, Justice Anthony Scalia, Justice Clarence Thomas and Justice Samuel Alito voted to strike down the integration plan. Justices Steven Breyer, Justice Ruth Bader Ginsburg, Justice John Paul Stevens and Justice David Souter voted to uphold the integration plans. The lynchpin decision was up to Justice Kennedy. Justice Kennedy joined Chief Justice Roberts’s opinion; however, he wrote a concurring opinion that outlined where he agreed and disagreed with Roberts. Justice Kennedy’s concurrence with the plurality is considered the overriding precedent in this decision.

The following table illustrates the division within the Court regarding the plurality’s decision. The opinions of the plurality, Justice Kennedy, and the dissent are summarized.
Table A.
Supreme Court’s Legal Reasoning in *Parents v. Seattle & Meredith v. Jefferson County* 52

<table>
<thead>
<tr>
<th>Standard of Review</th>
<th>Plurality Opinion</th>
<th>Justice Kennedy’s Opinion</th>
<th>Opinion of Dissent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The appropriate standard of review to evaluate governmental use of individual racial classifications is strict scrutiny.</td>
<td>Strict scrutiny applies to race-conscious measures that treat students differently solely on the basis of a systematic individual typing by race.</td>
<td>Strict scrutiny should not apply to Seattle and Jefferson County because race is not being used to distribute scarce resources, stigmatize or exclude, impose unfair burdens, or keep the races apart.</td>
</tr>
<tr>
<td>Compelling Interest</td>
<td>Compelling interest of remedying the effects of past intentional discrimination is not applicable to these plans. The Constitution is not violated by racial imbalance in the schools. <em>Grutter</em> does not govern these cases. Race is not considered as part of a broader effort to achieve diversity.</td>
<td>A compelling interest exists in avoiding racial isolation. School districts may consider a compelling interest to achieve a diverse student population.</td>
<td>Historical and remedial- An interest in setting right the consequences of prior conditions of segregation. Educational-An interest in overcoming the adverse education effects produced by segregated schools. Democratic-An interest in producing an educational environment that reflects that pluralistic society in which our children live.</td>
</tr>
<tr>
<td>Narrow Tailoring</td>
<td>Plans cannot rely on racial classifications in non individualized, mechanical ways. (ex: white and non-white or black and other) The district failed to show they considered race neutral alternatives. The minimal impact of the districts’ plan cast doubt on the necessity of racial classifications.</td>
<td>Plans lack precision and do not articulate adequate justifications for their specific racial classifications. Plans divide students into blunt racial categories i.e. white and non-white. The district could achieve its ends by a different means.</td>
<td>The race-conscious criteria at issue only help set the outer bounds of broad ranges. Not quotas These limits on voluntary school choice plans are less burdensome than others approved by the Court. Plan represents the much-modified product of a communities experience with desegregation. Use of race-conscious elements is diminished compared with prior plans in the community. There are no reasonably evident race neutral alternatives.</td>
</tr>
</tbody>
</table>

Table B. 
Supreme Court’s Legal Reasoning in Parents v. Seattle & Meredith v. Jefferson County

<table>
<thead>
<tr>
<th>Permissible Race Conscious Measures</th>
<th>Plurality Opinion</th>
<th>Justice Kennedy’s Opinion</th>
<th>Opinion of the Dissent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>There are no permissible race conscious measures.</td>
<td>Schools can pursue diversity through race-conscious measures such as (1) strategic site selection of new schools, (2) drawing attendance zones with recognition to residential segregation, (3) allocating resources for special programs, (4) recruiting students and faculty in a targeted fashion; (5) and tracking enrollments, performance and other statistics by race.</td>
<td>Seattle Plan and others that take race into account should be deemed permissible if they do not place undue harm on any one racial group.</td>
</tr>
</tbody>
</table>

| De Facto Segregation | Constitution mandates that state and local school authorities accept de facto segregation. | Cannot endorse the conclusion that “the Constitution requires school districts to ignore de facto segregation in schooling.” | Government may voluntarily adopt race-conscious measures to improve conditions of race even when it is not under a constitutional obligation to do so. 
**The distinction between de jure and de facto segregation cannot be rationally drawn.** |

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**Important Aspects of the Decision**

Justice Kennedy, Chief Justice Roberts’s plurality, and the dissenting opinion differ on three important aspects of the decision. First, *Parents* received a strict scrutiny standard of review.54 The dissent argued that the context of the case did not warrant strict scrutiny because “race is not being used to distribute scared resources, stigmatize or exclude, impose unfair burdens, or keep the races apart.”55 However, the majority disagreed. They believed the burden of proof was on the school district to prove they were not violating students’ rights under the Equal Protection Clause. This high standard of review greatly reduced the school districts’ chances of successfully arguing the case, as the school district was already presumed to be in violation of the Equal Protection Clause.

Another important aspect of the decision is the compelling interest measure of race conscious permissibility. Kennedy reaffirmed that school districts have a compelling interest in achieving diverse populations. While K-12 grade schools do not function in the same competitive and historically exclusive context as higher education, school districts can pursue desegregative measures regardless of the origin of segregation. Finally, the third aspect of the decision to note is Kennedy’s disagreement with Roberts’s opinion of de facto segregation. The common argument against legal intervention and support for voluntary integration programs is the lack of legal recourse for de facto segregation. Roberts’s and the plurality found that school districts should not concern

54 “Strict scrutiny.” U.S. Legal 1996, 10 Nov. 2007. <http://definitions.uslegal.com/about.php> “Strict scrutiny is one level of analysis used by the courts to determine the constitutionality of the actions of other governmental bodies. They may determine whether an act by the President, Congress, a national, state, or local administrative official, a state legislature, a local governing board, or a lower court is valid. It is a level of scrutiny applied to classifications that are alleged to violate constitutional rights to equal protection of the laws.

55 Decision Summary 2.
themselves with personal choices that result in residential segregation. Kennedy and the dissent disagreed, viewing de facto segregation as a critical social ill with roots in de jure segregation. De jure and de facto segregation are not always clearly distinguishable.

Justice Kennedy’s Opinion: A Door Ajar for Race-Conscious Plans

Justice Kennedy’s opinion in *Parents v Seattle* is viewed as a door ajar for race-conscious plans. He offers potential permissible race conscious plans that are race neutral in implementation. Kennedy suggests a number of options for school districts to consider in devising new plans. The following table names and defines the options articulated in Kennedy’s opinion.

Table C.
Justice Kennedy’s Permissible Race-Conscious Measures

<table>
<thead>
<tr>
<th>Types of Permissible Race Conscious Measures</th>
<th>Descriptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geography</td>
<td>Strategic site selection of new schools</td>
</tr>
<tr>
<td>Attendance Zones</td>
<td>Drawing attendance zones with general recognition of the demographics of a neighborhood.</td>
</tr>
<tr>
<td>Resource Support</td>
<td>Allocating resources for special programs. (Magnet Programs)</td>
</tr>
<tr>
<td>Recruitment</td>
<td>Recruiting students and faculty in a targeted manner.</td>
</tr>
<tr>
<td>Tracking</td>
<td>Track enrollment, performance and other statistics by race</td>
</tr>
</tbody>
</table>

Two methods to advance racial integration are identified in the *Parents* decision. The first method is race neutral measures. These measures allow districts to take individual family and student characteristics into account that are not related to race. These characteristics include, but are not limited to; socioeconomic status, parental

The second method is a holistic review of a student that can include race as one of several factors in student assignment. This method is risky and more likely to incite some challenge on the basis of Roberts’ opinion that race should not be a factor in K-12 voluntary student assignment plans.

The case studies in chapters 3 through 6 illuminate the tension and ambiguity resulting from Kennedy’s opinion on permissible race conscious measures, as well as, Chief Justice Roberts’s call to end race consciousness in the context of K-12 voluntary integration. Kennedy has left the door cracked for a gamut of school district responses to the decision, many of which are reflected in the following case studies.
Chapter 3
Case Study 1: Seattle School District No. 1, Seattle, Washington

Historical View of Desegregation in Seattle, Washington

Seattle, Washington in the 1960s was far from the hot bed of unrest that troubled African Americans in the South. African Americans could vote and access restaurants, hotels and public transportation much earlier than blacks in the South, still racial tension was present. There were three major issues for Seattle blacks: de facto school segregation, unemployment, and housing discrimination. Protests and campaigns resulted in great successes in the areas of unemployment and housing, but nearly, fifty years later, de facto school segregation remains a prominent issue for Seattle.

In Seattle schools, de facto segregation was evident in mid 1960s. 81 percent of black students in the city were concentrated in 9 of the 112 schools. Seattle did not have de jure segregation, but de facto segregation yielded similar results. White Seattle residents were isolated from the every day lives of African Americans in their city. One 1965 resident stated that, “the Central District [Seattle’s black community] might just as well be a foreign country, which they occasionally pass through in their automobiles, peering with mild distaste at ‘them’ and their funny way of life.” In 1963, the Seattle School Board was among the first boards in a major city to employ a district-wide school desegregation plan. The Board created a Voluntary Racial Transfer Program (VRT) to send 1,400 of its 7,000 black pupils to schools outside of the black central district.

58 Ibid. 2.
However, only 238 black students, and seven white students participated in the program.\textsuperscript{59}

Desegregating the majority black schools in the central district was difficult. Resistance from many black parents contributed to the tension. The working class blacks in central wanted to “maintain their own schools in the face of proposed closures, and dispersal of their children throughout the city.”\textsuperscript{60}

In 1962, Garfield High School had a 64 percent minority enrollment, and accommodated 75 percent of all African American high school students. The eight other high schools in the city remained more than 95 percent white.\textsuperscript{61} Over ten years later, segregation was still prevalent. In 1977, Franklin High School was 78 percent minority, Rainier Beach was 58 percent, Cleveland was 76 percent and Garfield was 65 percent. The other high schools’ minority demographic ranged from as low as 9 percent to 23 percent. The same year the district adopted the Seattle Plan. The Plan divided the district into zones and paired minority-dominated schools with majority-dominated schools. Mandatory busing was used to carry out the new plan.

Increasing anxiety over school desegregation resulted in the Seattle School District’s first dispute before the Supreme Court in 1982. In \textit{Washington v. Seattle School District No 1}, 458 U.S. 457 (1982), the Seattle district took the state of Washington to court over an initiative to end integrative bussing. Residents in Washington against the mandatory busing system drafted Initiative 350 in an attempt to force the Seattle School Board to assign students to their neighborhood schools barring overcrowded, unsafe or inadequate facilities. When the Initiative passed, the Seattle

\textsuperscript{59} Ibid. 8.
\textsuperscript{60} Ibid. 10.
\textsuperscript{61} Parents Involved in Community Schools v. Seattle School District No. 1, (Appendix F)
School District challenged its constitutionality. The school district successfully challenged the Initiative in the 9th Circuit Court of Appeals, so the state petitioned the U.S. Supreme Court. The Court found that it was impermissible for the state of Washington to end bussing for integration purposes. The majority agreed that forcing students seeking relief from school segregation to go to the state legislature was a greater burden on school integration proponents than those seeking an opposite, but comparable action. After Seattle won the case, the school board continued to employ progressive plans to integrate Seattle schools. In 1988, Seattle abandoned the original Seattle Plan with mandatory busing and adopted a controlled choice plan. In 1994, the School Board advised the district to develop an updated plan and in 1997, the Seattle district adopted its race-conscious controlled choice program for the 1998-1999 school year.

In the late 90s, Seattle was a diverse community. 70 percent of its residents were white and 30 percent were minorities. However, the percentages were nearly inversed for the school district’s student enrollment demographics. In Seattle, about 40 percent of the children were white, and 60 percent of the children were minorities. Despite historical efforts to thwart de facto segregation, about 66 percent of all white students in the district lived on the waterfront of north or downtown, while 84 percent of all African American students, 74 percent of all Asian American students, 65 percent of all Hispanic students, and 51 percent of all Native American students live south of Seattle’s downtown area.

The following table is a chronological timeline of Seattle’s desegregation plans. The table reveals how Seattle has voluntarily integrated its schools through policy, as well as the impact of legislation.

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63 See Parents Involved in Cmty, Sch. v. Seattle Sch. Dist. 137 F. Supp. 2d. 1224 (W.D. Wash. 2001)
<table>
<thead>
<tr>
<th>Year</th>
<th>Education Policy</th>
<th>Legal or Legislative Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960-1969</td>
<td>Seattle adopted voluntary racial transfer program (1963)</td>
<td>Mandatory assignment desegregation plan delayed for almost two years by a lawsuit filed by a citizen group, which opposed mandatory busing. (1971)</td>
</tr>
<tr>
<td></td>
<td>District developed a magnet school desegregation program. (1975-1976)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The school board adopted a mandatory student assignment plan, the “Seattle Plan.” (1977)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Controlling Principles for the new 1998-1999 Assignment Plan were (1) voluntary desegregation (2) open choice (3) choice areas (4) alternative schools (5) tiebreakers (6) mandatory assignments (7) remedies for racially isolated schools (8) transportation (9) comprehensive plan. (1998-1999)</td>
<td></td>
</tr>
<tr>
<td>Present</td>
<td>Oversubscribed schools had to be within 10 percent of the District’s demographic. 307 out of approximately 3,000 incoming freshman were affected by the tiebreaker. (2000-2001)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The trigger point for the racial tiebreaker was softened to plus or minus 15 percent of the District's demographic from 10 percent. (2001-2002)</td>
<td></td>
</tr>
</tbody>
</table>

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64 See *Parents Involved in Cmty Sch. v. Seattle Sch. Dist.* 551 U.S. 127 (2007) (Appendix F)
Facts of Parents Involved in Community Schools v. Seattle Case

In the 2000-2001 academic year the Seattle School District sought white enrollment between 31 and 51 percent, and nonwhite enrollment between 49 and 69 percent in five of its oversubscribed high schools. The oversubscribed schools were Ballard, Roosevelt, and Nathan Hale High Schools in northern Seattle, and Franklin and Garfield High Schools located in southern Seattle. The quality and status of these oversubscribed schools led 82 percent of students and parents to rank one of these five schools as their first choice. Only 18 percent of parents and students ranked the other five high schools as their first choice.

The incredible amount of interest in the five oversubscribed high schools led to the creation of tiebreakers for student assignments. There were four tiebreakers to determine student assignments employed by the school district in 2000. The first tiebreaker was the sibling tiebreaker. Students with siblings attending a school were assigned to their preferred school first. This tiebreaker on average accounted for 15-20 percent of the assignments. The second tiebreaker was the racial tiebreaker. The racial tiebreaker was triggered when an oversubscribed school was either less than 25 percent white or more than 75 percent minority. This tiebreaker accounted for 10 percent of high school assignments, and was not used once schools were considered in balance (i.e. between 31- 51 percent white enrollment 49-69 percent nonwhite enrollment). The third tiebreaker was distance. Remaining seats were allocated based on the proximity of the preferred school to the child’s residence. The distance tiebreaker accounted for 70-75

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65 Oversubscribed schools are schools that receive more applications or subscriptions for admission than there are spaces within the school.
66 See Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. 377 F.3d 949 (9th Cir. 2004).
percent of the assignments. Finally, the fourth tiebreaker was a lottery for any remaining assignments.

The following chart is an estimate from the Seattle School District of what the 9th grade classes in oversubscribed schools would look like demographically with and without the racial tiebreaker. Note that Garfield High School is not listed because its demographics fell within the districts percentages after using the sibling tiebreaker.

Table 3.2
2000-2001 Difference in % of Non-white students in 9th Grade With and Without the Racial Tiebreaker

<table>
<thead>
<tr>
<th>School</th>
<th>Without Tiebreaker</th>
<th>With Tiebreaker</th>
<th>Percentage Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Franklin</td>
<td>79.2</td>
<td>59.5</td>
<td>-19.7</td>
</tr>
<tr>
<td>Nathan Hale</td>
<td>30.5</td>
<td>40.6</td>
<td>+10.1</td>
</tr>
<tr>
<td>Ballard</td>
<td>33.0</td>
<td>54.2</td>
<td>+21.2</td>
</tr>
<tr>
<td>Roosevelt</td>
<td>41.1</td>
<td>55.3</td>
<td>+14.2</td>
</tr>
</tbody>
</table>

In 2000, of approximately 3,000 entering high school freshman, 307 white and minority students were affected by the racial tiebreaker. 209 of the students were assigned to a school that was one of their choices, and 87 of those attended the same school they would have attended without the racial tiebreakers. 52 students were ultimately affected adversely, and attended schools they did not prefer.67 In the 2001-2002 school year, Seattle softened the effect of the racial tiebreaker. The district increased the racial imbalance triggering number from 10 percent to 15 percent.

Therefore, an oversubscribed school was not considered racially imbalanced unless it was +/- 15 percent of the district’s average.

The Parents Involved in Community Schools (PICS) organization filed a suit against the Seattle District on behalf of its members. Most of its members were white parents whose children were negatively affected by the racial tiebreaker. They argued that the district’s race-conscious tiebreaker was unconstitutional. The constitutional provision at question by the parents was the violation of the Equal Protection Clause of the 14th Amendment that states, “Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State…subjects, or causes to be subjected, any citizen of the United States…to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.” In addition, the parents argued on the grounds that Title VI of the Civil Rights Act that states, “No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Finally, PICS argued that the 1998 Washington Civil Rights Act, also known as Initiative 200, affirmed that state governments cannot, “discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public education.” PICS contended that the Initiative prohibited more than just the reverse discrimination style of affirmative action, but it made any racial cognizant or conscious government decision unlawful. PICS believed that Seattle was not de jure segregated;

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68 U.S. Const., Amdt. 14 § 1.
therefore, there was no justification for using a racial balancing program to remedy de facto segregation. PICS championed neighborhood school assignments over Seattle’s controlled choice plan. However, PICS ceded on the fact that children did not have a right to attend the closest school to their home based on prior cases.\(^7\)

The Seattle School district suspended the use of the racial tiebreaker in 2002; however, it disputed the charge that the use of a racial tiebreaker violated Initiative 200, because no one race was given preference over members of another race. All students were potentially restricted depending on the demographic of the oversubscribed school. For example, 89 more white students were enrolled in the oversubscribed school Franklin because of its high concentration of minority students. In addition, the school district responded to PICS complaint claiming that placement of students depended on five “guiding principles,” the proximity of the school to the student’s home, equal access to quality programs, “increas[ing] the percentage of families assigned to their first choice school, maximiz[ing] diversity within each school, and minimiz[ing] mandatory assignments based on race.”\(^7\)

According to the Seattle School District, the racial composition criterion came about as an attempt to keep de facto housing segregation from deciding where, and what type of education students received. The school board used integration tiebreakers because they believed diversity “fosters racial and cultural understanding…increases the likelihood that students will discuss racial or ethnic issues, [and] enhances the educational process by bringing different viewpoints.” The Board added in its *Statement Reaffirming Diversity Rationale* that students should not be

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\(^7\) See *Citizens Against Mandatory Busing v. Palmason*, 80 Wn. 2d 445, 453, 495 P.2d 657 (1972); *Bustop, Inc. v. Bd. Of Educ.*, 439 U.S. 1389, 1382-83, 99 S. Ct. 40, 58 L. Ed. 2d 88 (1978). Cases established that school districts had the right to bus children based on school overcrowding, unsafe conditions, the need to balance case sizes and the accommodation of the bus route.

required to attend racially concentrated schools. The district considered racial diversity a compelling state interest, drawing from the Supreme Court’s decision in *Grutter* concerning higher education.

*Parents v. Seattle in the Federal District and Circuit Courts*

In 2001, the United States District Court for the Western District of Washington rendered a summary judgment per the request of both the Parents Involved in Community Schools Organization and the Seattle School District. Both groups wanted the court to determine the impact of Initiative 200 on the district’s open choice policy. The PICS organization argued that Initiative 200 outlawed the use of a racial tiebreaker in school assignments. The school district argued that the provision should not be interpreted as outlawing the tiebreaker, and that if it must be so construed as doing so the Initiative would be impermissible under the Washington and United States Constitutions.73

The District Court granted the school district’s motion holding that Seattle’s race-conscious tiebreakers did not violate state or federal law.74 The tiebreakers were held to serve a compelling government interest, and were considered narrowly tailored to do so. This decision often referred to as PICS I was overturned the following year by Judge Rothstein in PICS II 285 F.3d 1236 (2002); however, the justice’s opinion was soon withdrawn by PICS III 294 F. 3d 1084 (2002). Judge Rothstein found both arguments compelling depending on how narrow one reads the Washington Constitution. Rothstein reasoned that while Washington Initiative 200 could be interpreted as legislation to end voluntary integration; interpreting it in that manner would render it unconstitutional

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73 See Parents Involved in Community Schools v. Seattle School District No. 1, 137 F. Supp. 2d 1224, 1240 (W.D. Wash. 2001). (PICS I)

74 See PICS I
under article IX of the Washington Constitution. Attempting to ban voluntary integration plans, “forbade positive efforts to provide a general and uniform education to all students.” Concurrently, the judge found that a limited interpretation would not challenge the state constitution, and thus chose that interpretation to avoid holding the state statute unconstitutional. The judge asked the Washington Supreme Court to make a decision on the voluntary integration plan in light of state legislation. The Washington Supreme Court upheld the integration plan and found that it did not violate state law. The case was then appealed to the 9th Circuit Court of Appeals once again. However, this time the case merited an en banc judgment.

The en banc 9th Circuit Court of Appeals filed their opinion on October 20, 2005. They found that the school districts plan, and its use of racial tiebreakers served a compelling interest and was narrowly tailored. They believed the plan avoided the harms resulting from racially isolated and concentrated schools. Therefore, the plan did not violate state or federal statues. Table 3.3 illustrates the long legal road of Parents v. Seattle.

75 Article IX of Washington Constitution states: It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.
76 PICS V. 426 F. 3d 1162, 1166 (9th Cir. 2005)
77 En banc is a legal term referring to the hearing of a case by all the judges in the court. The U.S. Court of Appeals for the Ninth Circuit en banc court consists of 15 judges.
Table 3.3
Legal Decisions in Parents v. Seattle (PICS I-PICS VI)

<table>
<thead>
<tr>
<th>Chronological PICS Cases</th>
<th>Findings of the Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>PICS I. 137 F. Supp. 2d 1224, 1240 (W.D. Wash. 2001)</td>
<td>Federal District Court granted the school district’s motion holding that the open choice plan and its racial tiebreakers did not violate state or federal law.</td>
</tr>
<tr>
<td>PICS II. 1 285 F.3d 1236 (2002)</td>
<td>3-Judge Panel of Ninth Circuit Court overturned federal district court opinion.</td>
</tr>
<tr>
<td>PICS III. 294 F.3d 1084 (9th Cir. 2002)</td>
<td>3-Judge Panel withdrew PICS II opinion and certified the state law question to Washington Supreme Court.</td>
</tr>
<tr>
<td>PICS IV. 72 P. 3d 151, 166 (Wash. 2003)</td>
<td>Washington Supreme Court held that the open choice plan did not violate Washington Law.</td>
</tr>
<tr>
<td>PICS V. 377 F.3d 949 (9th Cir. 2004)</td>
<td>3-Judge Panel held that the District demonstrated a compelling interest in achieving the benefits of racial diversity. However, the Plan violated the Equal Protection Clause because it was not narrowly tailored. The School District petitioned for an en banc judgment.</td>
</tr>
<tr>
<td>PICS VI. 426 F. 3d 1162, 1166 (9th Cir. 2005) En banc court panel</td>
<td>Court found in favor of the School district and its use of the racial tiebreaker.</td>
</tr>
</tbody>
</table>

*Parents v. Seattle in the Supreme Court*

The Parents Involved in Community Schools Organization was dissatisfied with the 9th Circuit Court’s opinion. They petitioned the Supreme Court and were placed on the docket in 2006. In December 2006, the U.S. Supreme Court held oral arguments for *Parents v. Seattle School District No. 1*, 551 U.S. 127 (2007), and its companion case *Meredith v. Jefferson County Public Schools*. Parents and Meredith were the first school integration cases granted certiorari by the Court since its decision to uphold affirmative action admissions plans in higher education in 2003. The dynamic of the Supreme Court changed significantly since the 2003 decision. Prior to changes on the Court,

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78 Certiorari is Latin for “to be informed of.” It is an order that a higher appeals court issues to a lower court in order to review the decision and proceedings to determine whether there were any irregularities.
challenges to voluntary school integration were denied certiorari. The Lynn School district case, documented in the next chapter was one of the school integration cases denied certiorari.80

The Court was charged to determine the constitutionality of the race-conscious tiebreakers in the student assignment plans in Seattle, Washington and Jefferson County, Kentucky. In both cases, the school districts had choice programs and adopted racial tiebreakers to determine student assignments in oversubscribed schools. The districts adopted voluntary integration plans to combat residential segregation contributing to inequitable school opportunities. Ironically, Seattle had not used its racial tiebreaker in 4 years during oral arguments due to strong local and state opposition.

The Supreme Court held a 5-4-plurality opinion striking down the integration plans in Parents v. Seattle and Meredith v. Jefferson County. Chief Justice Roberts wrote the majority opinion. Justice Breyer wrote a dissent that was double the length of the majority opinion. Justice Kennedy, the fifth vote for the majority concurred, but outlined how his legal reasoning differed from the majority. Justice Clarence Thomas wrote a concurrence and Justice Stevens wrote an additional dissent. The plurality opinion in this case revealed how divided the Court was in reaching its decision.

In Justice Roberts’s majority opinion, the integration plans were unconstitutional, and could not meet the strict scrutiny standard. The school districts did not prove to the majority’s satisfaction that the use of race conscious tiebreakers was grounded in remedying the effects of past de jure discrimination or pursuing educational diversity.81

The majority felt that the broad categories of white and nonwhite were not narrowly tailored to meet the school districts goal of achieving diversity Justice Roberts mentions several times that hypothetically:

A school with 50 percent Asian-American students, and 50 percent white students, but no African American, Native American, or Latino students would qualify as balanced while a school with 30 percent Asian American, 25 percent African-American, 25 percent Latino and 20 percent white students would not.

Chief Justice Roberts concluded that, “simply because the school districts may seek a worthy goal does not mean they are free to discriminate on the basis of race to achieve it, or that their racial classifications should be subject to less exacting scrutiny.”

The context of higher education, and the circumstances in Grutter are not the only things that distinguished it from Parents. Grutter was about a plan that included an individualized, holistic review of each student instead of placing individuals in broad racial categories. “In Grutter the number of minority students the school sought to admit was an undefined ‘meaningful number’ necessary to achieve a genuinely diverse student body...here the racial balance the districts seek is a defined range set solely by reference to the demographics of the respective school districts… Allowing racial balancing as a compelling end in itself would effectively assure that race will always be relevant in American life.”

Justice Breyer and the dissent argued that there is no way to have individualized review for a non-competitive school system in which every student would have a seat. In the Meredith case, the students were elementary school students and the dissent pointed out the inability to judge kindergarteners on their merits.

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Finally, Roberts’s pointed out that Seattle did not suffer from de jure segregation. Remedies to end de facto segregation in education are respected, but they are not completely protected by the Court. Justice Roberts wrote that, “the distinction between segregation by state action, and racial imbalance caused by other factors has been central to our jurisprudence in this area for generations.” He cites precedent cases, *Milliken v. Bradley*, and *Freeman v. Pitts*, writing that, “Where resegregation is a product not of state action, but of private choices, it does not have constitutional implications.”

**Implementing a New Plan?**

Presently, Seattle is in the process of adopting a new student assignment plan. According to Seattle’s new Superintendent, Dr. Maria L. Goodloe, a new plan will not be in place until the 2009-2010 school year. Tracy Libros, the Enrollment and Planning Services Manager stated that, “the U.S. Supreme Court’s decision will not have any effect on the student assignment plan for 2008-2009.” Therefore, Court’s decision had no immediate effect on the Seattle School District. As mentioned previously, the District discontinued its use of race in student assignments shortly after it was challenged by the PICS organization. In 2008-2009, the District will use the same student assignment plan while the school board performs a comprehensive review of the effectiveness of the plan.

On June 20, 2007, prior to the Court’s decision, Seattle released, and the Board approved “The Framework for the Revised Student Assignment Plan.” The District stated that the high schools would be in designated assignment areas. The areas would be
predictable and provide accommodations to all students in that assignment area, if the
designated school is the student’s first choice. However, the schools would have seats for
the open choice program. Students affected by the new assignment plan would have a
continuity assignment that would grandfather them into their current school. All students
also receive metro transportation passes for transportation beyond school boundaries.
The plan would implement sibling priority as the first tiebreaker, a student’s residential
distance from the school, 1st choice, lottery, socioeconomic status, and geography would
be considered as other tiebreakers in the future plan.

Seattle is a unique case in this study because there is significant data on the
impact of Seattle’s integration plan with and without its race conscious tiebreaker. Table
3.5 represents the racial demographics of Seattle’s high schools in 2001-2002. 2001-2002 was the final year the district used its race conscious tiebreaker. Table 3.6
represents the 2005-2006 school year in which the Seattle School District has only
employed race-neutral tiebreakers. The demographics in both tables are in percentages
and compare Seattle’s ten high schools within the school system. The demographic
percentages in Seattle’s traditionally, oversubscribed high schools are bolded in the
tables.
Table 3.5  
School Demographics by % in 2001-2002

<table>
<thead>
<tr>
<th></th>
<th>American Indians</th>
<th>Asian</th>
<th>African American</th>
<th>Latino</th>
<th>Caucasian</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballard</td>
<td>4</td>
<td>18</td>
<td>10</td>
<td>12</td>
<td>57</td>
</tr>
<tr>
<td>Nathan Hale</td>
<td>4</td>
<td>17</td>
<td>11</td>
<td>6</td>
<td>62</td>
</tr>
<tr>
<td>Roosevelt</td>
<td>3</td>
<td>26</td>
<td>7</td>
<td>8</td>
<td>55</td>
</tr>
<tr>
<td>Franklin</td>
<td>1</td>
<td>40</td>
<td>33</td>
<td>6</td>
<td>21</td>
</tr>
<tr>
<td>Garfield</td>
<td>2</td>
<td>14</td>
<td>33</td>
<td>5</td>
<td>47</td>
</tr>
<tr>
<td>Cleveland</td>
<td>1</td>
<td>37</td>
<td>41</td>
<td>11</td>
<td>9</td>
</tr>
<tr>
<td>Ingraham</td>
<td>3</td>
<td>38</td>
<td>21</td>
<td>9</td>
<td>29</td>
</tr>
<tr>
<td>Rainer Beach</td>
<td>1</td>
<td>28</td>
<td>55</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>Chief Sealth</td>
<td>3</td>
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<td>33</td>
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<tr>
<td>West Seattle</td>
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<tr>
<td>District</td>
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<td>23</td>
<td>11</td>
<td>40</td>
</tr>
</tbody>
</table>

Table 3.6  
School Demographics by % in 2005-2006

<table>
<thead>
<tr>
<th></th>
<th>American Indians</th>
<th>Asian</th>
<th>African American</th>
<th>Latino</th>
<th>Caucasian</th>
<th>+/- Caucasian % from 2001-2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballard</td>
<td>3</td>
<td>14</td>
<td>9</td>
<td>12</td>
<td>62</td>
<td>+5</td>
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<td>Nathan Hale</td>
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<td>11</td>
<td>8</td>
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<td>-1</td>
</tr>
<tr>
<td>Roosevelt</td>
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<td>7</td>
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</tr>
<tr>
<td>Franklin</td>
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<td>49</td>
<td>33</td>
<td>7</td>
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<td>-11</td>
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<td>Garfield</td>
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<tr>
<td>Cleveland</td>
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<tr>
<td>Ingraham</td>
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<td>Rainer Beach</td>
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<td>7</td>
<td>=</td>
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<tr>
<td>Chief Sealth</td>
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<td>25</td>
<td>25</td>
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<td>-5</td>
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<tr>
<td>West Seattle</td>
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</tr>
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<td>23</td>
<td>22</td>
<td>11</td>
<td>41</td>
<td>+1</td>
</tr>
</tbody>
</table>
Evident from the most recent and complete demographic data on the Seattle School District, schools like Ballard, Roosevelt, Cleveland and West Seattle have increased their Caucasian population, while schools such as Franklin, Nathan Hale, Garfield, Ingraham, Chief Sealth have decreased their Caucasian population. Most of the increases have been slight; however, the trend is leaning toward progressive isolation of white and minority students. Franklin High School had the greatest loss in Caucasian percentages with an 11 percent decrease leaving the school 90 percent minority with an 82 percent Asian and African American population. Rainer Beach has remained the most segregated school with a 93 percent minority population, consisting of 86 percent Asian and African American students. The data indicates a clear need for integrative action in the new student assignment plan.

The President of the PICS organization, Kathleen Brose, acknowledges increased racial isolation, but she does not find it problematic. Currently, she is unhappy with the school district’s choice plan. She is campaigning for equal funding among schools and implementing a neighborhood school assignment plan. In a correspondence she wrote:

The biggest problem with the choice system is [this]... Why stay and help fix up your neighborhood school when you can leave? The popular schools become oversubscribed and the less-popular schools don’t improve. I personally would not like the use of the socioeconomic tiebreaker. Why? Not every neighborhood in Seattle has a high school. Once again, students would be denied access to their neighborhood school because there was no room (3 neighborhoods trying to get access to one high school). Now instead of discriminating against the student by race, it would be by your parents’ income. It’s still discrimination. So what
should the Seattle School District do? I think that they should quit worrying about the racial demographics of the schools and worry about academics. If every school has an effective principal, qualified teachers, discipline, excellent academic and programs, sports and other after school activities and most important, equal funding, neighborhood kids will go to neighborhood schools. Seattle’s neighborhoods are in what I would call ‘pockets.’ We have a few wealthier neighborhoods surrounded by middle class and lower class neighborhoods. We have few housing projects that are being replaced with mixed income development. An excellent high school in all our neighborhoods will attract kids from all the economic groupings. When this happens, we will have true diversity in our schools.”

The PICS organization boasts a number of accomplishments related to forwarding a neighborhood school agenda in Seattle. During litigation, PICS organized parents and teachers to campaign for school improvements to under-subscribed schools. Ingraham High School, in North Seattle, received a new principal and implemented an International Baccalaureate Program. Presently, PICS is petitioning for new high schools to relieve oversubscription to Ballard High School. PICS has already succeeded in relieving one of the oversubscribed schools with the creation of a small arts school for 9th to 11th grade students, called the Center School.

**South East Education Initiative**

The Seattle School District recognizes the need to overcome residential segregation, and improve neighborhood schools. In the “Framework for the Revised

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88 Kathleen Brose, Email Correspondence, 24 July 2007.
Student Assignment Plan,” the Southeast Education Initiative is an important component of improving the school system. The vision of the initiative is to ensure that local secondary schools are the schools of choice for residents of southeast Seattle by implementing a plan to provide resources and school renovations. The three schools that will be affected by this plan are Aki Kurose Middle School, Cleveland High School, and Rainer Beach High School.90

**Conclusion**

In conclusion, the Seattle School District suspended its racial tiebreaker in 2002; therefore, the Supreme Court’s decision did not have an immediate impact on its current assignment plan. The suspension of the racial tiebreaker took place when the PICS organization, a local “principal” representing dissatisfied parents in the District, disagreed with the racial tiebreaker. Even when the racial tiebreaker was upheld in the State and Circuit Court of Appeals, the tiebreaker remained out of use. Historically, the Seattle School District takes many of its cues from local and state “principals,” particularly parents. In past decades the voluntary integration plans have evolved depending on satisfaction or dissatisfaction with the plan. In 1982, when Seattle’s busing plan was validated by the Court’s the school district still altered its plan to discontinue busing.

The new student assignment plan has not been implemented; therefore, there has not been as much reaction from either side regarding the Court’s decision. However, the Seattle School District released a brief press report of the Supreme Court’s decision. The report highlighted some leeway to use race-conscious provisions articulated in Kennedy’s opinion. While Seattle has not stated whether or not it will use race-conscious criteria it is

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90 “Framework” 7.
important to note their attention to Kennedy’s opinion as the key precedent set by the case.  

Ultimately, the Court’s decision is about more than Seattle’s present or future integration plans. In the words of the former Seattle Superintendent:

“The children caught at the intersection of race and poverty are the children who stand to benefit the most from strong public schools, and they are the children our entire community most needs to nurture so that they have what they need to live up to their promise. All of our children need to come to school fed, housed, safe from harm and supported by caring adults involved in their education. This is the vision of a strong and vibrant community that has been unique to the American experience. Not a people divided by race and class, but a people united in our belief in the role excellent public education can play in every child’s life.”

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92 Ibid. 3.
Chapter 4  
Case Study 2: Lynn School District, Massachusetts  

Historical View of Desegregation in Lynn, Massachusetts  

“The Lynn Plan does not entail coercive student assignments or forced busing; nor does it prefer one race over another. The Plan seeks to encourage learning and good citizenship in a racially diverse environment. The message it conveys to the students is that our society is heterogeneous, that racial harmony matters—a message that cannot be conveyed meaningfully in segregated schools” Comfort v. Lynn 283 F. Supp. 2d 328 (D. Mass 2003).  

Lynn Public Schools are traditionally neighborhood schools. However, during the Civil Rights Movement of the 60s, a growing number of state officials became concerned with school segregation. In 1965, Massachusetts became the first state in the country to enact a law concerning racial imbalance to regulate integration in public education. The Racial Imbalance Act “RIA” was created to eliminate the damaging effect of racial isolation. The Kiernan Report, developed by the Massachusetts Board of Education concluded that, “racial imbalance represents a serious conflict with the American creed of equal opportunity.”93 The first section of the Racial Imbalance Act states:  

It is hereby declared the policy of the commonwealth to encourage all school committees to adopt as educational objectives the promotion of racial balance and the correction of existing racial imbalance in the public schools.94  

The RIA encourages school districts to seek racial balance through integration plans that affirmatively end racial isolation and imbalance.95 Additionally, the RIA authorizes power to the Massachusetts Commissioner of Education to sanction schools  

94 Mass St. 1965, c. 641, § 1  
95 The RIA defines the terms “racial imbalance,” “racial balance,” and “racial isolation” as follows: Racial imbalance is the condition of a public school in which more than 50 percent of the pupils attending such school are non-white. Racial balance is the condition of a public school in which more than 30 percent, but not more than 50 percent of the pupils attending such school are non-white. Racial isolation is the condition of a public school in which not more than 30 percent of the pupils attending such school are non-white. Mass. Gen. Laws c. 71, § 37D.
that are not acting to reduce severe racial imbalance. For example, the Commissioner can withhold school construction funds and state aid. Concurrently, the RIA awards school districts that offer voluntary integration plans with financial incentives. A few examples of past incentives include a “100% state reimbursement of certain student transportation costs, substantial funding of the costs of establishing magnet schools, and payments of $500 to the district for each student transfer that reduces racial imbalance or isolation.”

From 1974 to 1984, the RIA offered state reimbursements for up to 75 percent of the cost of school renovations directed at reducing racial isolation within Massachusetts’ school system. In 1984, the reimbursement rate increased to 90 percent. In 2001, the Massachusetts legislature eliminated the school construction reimbursement for future efforts in voluntary integration plans. Lynn School District is only one of twenty-two school districts within the state of Massachusetts receiving funds for its voluntary integration plan.

The funding from the RIA is overseen by the Massachusetts Department of Education. In addition to funding Lynn’s plan, the Department of Education oversees a state-funded grant program called Metco. The Metco program was established in 1966, and was originally funded through a grant by the Carnegie Foundation and the United States Office of Education. The Metco program was created to provide enhanced educational opportunities and reduce racial isolation in city and suburban schools. According to the Massachusetts Department of Education, with the Metco Program:

The school committee of any city or town or any regional school district may adopt a plan for attendance at its schools by any child who resides in another city,

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96 Mass. Gen Laws c. 15, § 11, §§ 3, 4
town, or regional school district in which racial imbalance exists. This plan "shall tend to eliminate racial imbalance in the sending district and, as the law states, to help alleviate racial isolation in the receiving district. In summary, 'racial imbalance' is the condition of a public school in which more than fifty percent of the pupils attending such school are non-white. Racial isolation' is the condition of a public school in which not more than thirty percent of the pupils attending such school are white. 98

Currently, thousands of students across Massachusetts are benefiting from the Metco Program. The Metco Program received 20.6 million dollars for 2008, which was a 1 million dollar increase from the 2007 fiscal year. 99 Lynn not only has legislative support, but a number of programs that offer incentives to desegregate its schools. Still, the path to school integration has not been easy for the Lynn School District.

In the mid-1970s, the Lynn School Board noticed extreme racial isolation within its neighborhood schools. In 1977, Washington Community Elementary School had a minority population of 57 percent, more than 6 times the minority percentage in the school system. Resource shortages, overcrowding, discipline problems, and low teacher quality, disproportionately affected the predominately minority schools within the district. The result of the disproportionately minority isolated schools was high absenteeism, racial tension, and low- test scores. In 1979, Lynn suffered from white flight. Statistics show that the overall enrollment of children in Lynn schools declined as

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In the 1980s and 1990s, the decrease in the number of white students, and increasing minority population caused a substantial demographic shift. The proportion of the city’s white population dropped from 93 percent to 63 percent. The white population and increased minority population segregated into enclaves within the city. According to a 1980 census, the northern and western areas of Lynn were 90 percent white. By 1987, seven of the city’s eighteen elementary schools had a greater than 90 percent white enrollment. City officials were accused of perpetuating racial segregation by allowing white students to leave minority schools, but not vice versa. In January 1988, state officials placed pressure on Lynn to implement a desegregation plan. They wrote a letter to the superintendent stating:

It appears that the condition of minority identifiable schools in Lynn is directly attributable to past actions and inactions by Lynn School officials. The most significant finding is that the School Committee failed to enforce its own controlled transfer policy and has admitted to that fact.

The State Department of Education did not believe that Lynn’s race neutral voluntary transfer and magnet programs were enough to affect change. Lynn’s Voluntary Integration Plan was created in February 1988. The Lynn School Committee, and the Massachusetts State Board of Education approved the Plan. It was amended in September 1989, February 1990, and November 1999.

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101 Ibid. 557
103 Jackson 557.
According to the Lynn School District, the Lynn Plan is based on the Intergroup Contact Theory. The Intergroup Contact Theory puts forth four criteria by which positive outcomes result from integration: “(1) equal status among racial groups, (2) the presence of teachers and staff trained to facilitate interaction between members of different groups, (3) common goals and cooperative activities, and (4) opportunities for personalized contact with a sufficient number of children from different racial groups to disrupt stereotypes.”\(^{105}\) The school district claimed two interests in sustaining the plan, “reaping the educational benefits that flow from having a racially diverse student body in each of Lynn’s Public schools, and avoiding the negative educational consequences that accompany racial isolation.”\(^{106}\)

The Lynn Plan provides all students with the unconditional right to attend their neighborhood school. It also allows students to transfer out of their neighborhood school if the student’s transfer would have the effect of decreasing racial isolation. Roughly 100 annual appeals ensue and have a 50 percent success rate.\(^{107}\)

The Lynn Plan addresses resource allocation, curricula, school assignments, transfers and other aspects of the classroom experience. If a student does not wish to attend their neighborhood school he or she can transfer. The Lynn school system receives $500 for every desegregative student transfer and money to defray the cost of cross-neighborhood transportation, and the creation of magnet schools. Lynn also receives 90 percent of its funding for school renovations and construction from its integration program, which is outlined in the 1990 voluntary integration plan.

The Lynn School District has come a long way since its integration plan was

\(^{105}\) Comfort v. Lynn 418 F. 3d 1, 24 (1 Cir. 2005) (en banc)

\(^{106}\) Comfort v. Lynn 418 F. 3d 1, 23 (1 Cir. 2005) (en banc)

\(^{107}\) Jackson 557.
singled out as ineffective. The following table is a timeline of Lynn’s desegregation progress from the 1970s to the present.

**Table 4.2  
Lynn’s Desegregation Timeline**

<table>
<thead>
<tr>
<th>Year</th>
<th>Education Policy Changes</th>
<th>Legislative and Legal</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980-1985</td>
<td>White students from schools that were 70 percent or more white had the right to transfer to Washington school. Non white students in the Washington school had the right to transfer to any school that was more than 70 percent white. (1980)</td>
<td></td>
</tr>
<tr>
<td>1986-1990</td>
<td>Lynn devised a long-term plan to defeat racial isolation at the urging of the Dept. of Ed. Lynn did not seek state approval of its plan and lost grant money. (April 1986)</td>
<td>107 out of neighborhood white students attended the 93 percent white Aborn high school as a result of the transfer program. More than half were zoned to attend their neighborhood school Ingalls, which was located in a minority neighborhood. (1987)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**Facts of Comfort v. Lynn Committee Schools Case**

In 2001-2002, the Lynn student population was 42 percent white and 58 percent nonwhite (15 percent African American, 29 percent Hispanic, and 14 percent Asian). According to the Lynn Plan, an elementary school that enrolled between 43 percent and 73 percent minorities would qualify as racially balanced. In middle and high school, between 48 percent 68 percent minority students would constitute a racially balanced school. Therefore, elementary schools with more than 73 percent minority students and middle or high school students with more than 68 percent minority students were considered racially imbalanced in 2001-2002. Elementary schools with fewer than 43 percent minority and middle or high schools with fewer than 48 percent minority students were racially isolated schools. Students denied a transfer could receive an override transfer on appeal if their denial would lead to their siblings attending a different school or a medical, safety, or extreme hardship.

In addition to issues of de facto racial segregation, Lynn struggles with issues of poverty. In 2001-2002, 65 percent of all the students in Lynn utilized the free or reduced-cost lunch program. 40.7 percent of white students, 72 percent of African American students, and 79.8 percent of Asian American students qualified for subsidized lunches. 14 of Lynn’s 18 elementary schools received Title I funding for their significant number of impoverished students. Table 4.3 outlines Lynn’s Plan in 2001-2002. It includes definition of racially balanced, isolated and imbalanced schools. Additionally, the table outlines the number of schools that fell into each category and their corresponding, remedial transfer policy. The table reveals that only the high schools in Lynn are racially balanced, while ten elementary and middle schools are in balance, ten others are
imbanced or isolated.

### Table 4.3
Lynn School District Plan 2001-2002

<table>
<thead>
<tr>
<th>Category definitions</th>
<th>Racially Balanced</th>
<th>Racially Isolated</th>
<th>Racially Imbalanced</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Definition</strong></td>
<td>A school in which the percentage of nonwhite students falls within a set range of the overall proportion of minorities in Lynn’s student population. (+/- 15% for elementary schools and +/- 10% for other schools.)</td>
<td>A school with a nonwhite population below the racially balanced range.</td>
<td>A school with a nonwhite population above the racially balanced range.</td>
</tr>
<tr>
<td><strong># Schools in the Category in 2001-2002</strong></td>
<td>9 Elementary schools 1 Middle school 3 high schools</td>
<td>5 Elementary schools 1 middle school</td>
<td>4 Elementary schools 2 Middle schools</td>
</tr>
<tr>
<td><strong>Transfer Policy</strong></td>
<td>Students in racially balanced schools are free to transfer to other racially balanced schools. There are no racial requirements or restrictions.</td>
<td>Students are permitted a desegregative transfer. A nonwhite student could transfer into a racially isolated school.</td>
<td>Students are permitted a desegregative transfer. A white student could transfer into a racially imbalanced school.</td>
</tr>
</tbody>
</table>

The Parent Information Center “PIC” implements the Lynn Plan. PIC’s role is threefold; (1) processing all admissions and transfers, (2) working with parents on appeals, and (3) monitoring enrollment and racial composition of individual schools and the district in general.

In 2000, the Harvard Civil Rights Project studied student perceptions of Lynn’s desegregation plan. Over 600 Lynn Public School juniors responded to the survey. Students filled out a diversity assessment questionnaire to explore four areas relating to students’ perception of racial and ethnic diversity: (1) future educational aspirations and goals; (2) perceptions for support by the school; (3) student learning and peer interaction, and (4) citizenship and democratic principles (2). Table 4.4 is a combination of student

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108 Students considered multi-racial are not subject to race conscious transfer limits.
responses to questions specifically related to students’ interest and preparedness to enter racially and ethnically diverse environments.

Table 4.4
Diversity Assessment Questionnaire Student Responses in % Spring 2000

<table>
<thead>
<tr>
<th>Question</th>
<th>Black</th>
<th>Asian</th>
<th>Latino</th>
<th>White</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>After H.S. how prepared do you feel to work in a job setting where people are of a different racial or ethnic background than you are? (somewhat or very prepared)</td>
<td>89</td>
<td>91</td>
<td>91</td>
<td>88</td>
<td>89</td>
</tr>
<tr>
<td>How interested are you in living in a racially/ ethnically diverse neighborhood? (somewhat or very interested)</td>
<td>70</td>
<td>69</td>
<td>64</td>
<td>37</td>
<td>53</td>
</tr>
<tr>
<td>How interested are you in working in a racially/ ethnically diverse setting when you are an adult? (somewhat interested or very interested)</td>
<td>70</td>
<td>70</td>
<td>68</td>
<td>42</td>
<td>56</td>
</tr>
<tr>
<td>Have classroom or extracurricular activities offered through your high school increased your interest in living in a racially/ ethnically diverse setting when you are an adult? (somewhat or greatly increased)</td>
<td>62</td>
<td>65</td>
<td>74</td>
<td>36</td>
<td>53</td>
</tr>
<tr>
<td>Do you believe your school experiences have helped you, or will help you in the future, to work more effectively and to get along better with members of other races and ethnic groups? (somewhat or greatly increased effectiveness)</td>
<td>76</td>
<td>82</td>
<td>85</td>
<td>69</td>
<td>76</td>
</tr>
</tbody>
</table>

Table 4.5 reveals that white students feel they are prepared to enter racially and ethnically diverse environments, but minority students are more likely to choose to enter diverse environments. The Lynn Plan seems to positively impact the social outcomes and perspectives of diversity for minority students, but not white students. This troubling report of the negative perspective of the impact of Lynn’s desegregation plan is at the center of the legal challenge.

In 1999, several white parents felt their children were discriminated against based on the color of their skin. Their children were unable to choose to transfer out of their neighborhood schools unless they transferred into a racially imbalanced school. The

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parents challenged the plan, and the Lynn School Committee countered by releasing information on the impact of the Lynn Plan. Table 4.6 illustrates the difference in percentage between non-white enrollment in five schools with and without the desegregation plan.

Table 4.5
2002-2003 Difference in % Non-White Students With and Without Lynn’s Desegregation Plan

<table>
<thead>
<tr>
<th>School</th>
<th>Without Plan</th>
<th>With Plan</th>
<th>Percentage Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lynn Woods</td>
<td>8</td>
<td>24</td>
<td>+16</td>
</tr>
<tr>
<td>Shoemaker</td>
<td>18</td>
<td>30</td>
<td>+22</td>
</tr>
<tr>
<td>Aborn</td>
<td>12</td>
<td>34</td>
<td>+22</td>
</tr>
<tr>
<td>Cobbet</td>
<td>85</td>
<td>80</td>
<td>-5</td>
</tr>
<tr>
<td>Connery</td>
<td>83</td>
<td>80</td>
<td>-3</td>
</tr>
</tbody>
</table>

In 2002-2003, the Lynn Plan significantly integrated 3 racially isolated schools, and slightly lowered racial imbalance. However, Lynn’s desegregation successes were overshadowed by the six-year legal battle over its integration plan.

Comfort v. Lynn in Federal District and Appeals Courts

In 1999, Chester Darling filed a suit on the behalf of parents with children in Lynn Public Schools. The first three opinions by the federal district court denied a temporary injunction of the transfer plan, and dismissed various other claims. Samantha J. Comfort was one of 7 parents to continue to challenge Lynn’s Plan. They sued the

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Lynn School Committee, its individual members, the Superintendent, the City of Lynn and its mayor. They challenged the Lynn Plan, as well as the Racial Imbalance Act under the Equal Protection Clause of the United States Constitution, Article III of the Massachusetts Declaration of Rights and federal Civil Rights statues.

As stated previously, the district court rejected the parents’ petition and upheld the Lynn Plan. A panel of the 1st Circuit Court reversed the district’s decision and found that the plan was not narrowly tailored to meet the district’s compelling interest in diversity. The NAACP Legal Defense Fund, and other civil rights organizations petitioned for an en banc 1st Circuit Court to review the case. In June 2005, the en banc 1st Circuit Court of Appeals upheld Lynn’s voluntary school desegregation plan. The same year, the U.S. Supreme Court denied a writ of certiorari to hear the Lynn case. On June 18, 2005, Education Commissioner David Driscoll from the Massachusetts Department of Education released a statement about the en banc decision. Driscoll stated:

This decision is a major victory for the Lynn Public Schools, and highlights the tremendous progress they have made. They have worked hard to improve their schools, and as part of that, developed a well thought-out student assignment plan. Today, they can boast a reduction in the racial imbalance in their schools, higher attendance rates, declining suspensions, a safer environment and improved test scores. I’m pleased the appeals court recognized their efforts and the progress that has been made and voted to overturn the previous ruling in this case, and I want to thank the Attorney General for the critical role his office played in achieving this victory. Educators in Lynn are going about their business in the right way, and
deserve to be congratulated for how far they have come for the children in their community.\textsuperscript{111}

The following table is an overview of the legal decisions in Comfort v. Lynn.

Judge Gertner presided over the earlier district cases. Gertner continuously found in favor of the school district. The plaintiffs soon challenged Gertner’s ability to hear the case because they felt she was biased. The plaintiffs requested her recusal from the case. They believed her history as a civil rights attorney rendered her unable to objectively rule on the facts of the case. These challenges to Gertner’s ability to hear the case were also dismissed.

<table>
<thead>
<tr>
<th>Table 4.6 Legal Decision in Comfort v. Lynn</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Chronological Lynn Cases</strong></td>
</tr>
<tr>
<td>Comfort II- 131 F. Supp. 2d 253 (D. Mass. 2001)</td>
</tr>
<tr>
<td>Comfort III- 150 F Supp. 2d 285 (D. Mass. 2001)</td>
</tr>
<tr>
<td>Comfort V. Lynn Sch. Comm., No. 03-2415, 2004 U.S. App. LEXIS 21791, at 7 (1 Cir. Oct. 20, 2004)</td>
</tr>
<tr>
<td>Comfort VI – 418 F. 3d 1 (1 Cir. 2005) (en banc)</td>
</tr>
<tr>
<td>Comfort v. Lynn, 126 S. Ct. 798 (2005)</td>
</tr>
</tbody>
</table>

Implementing a New Plan?

Weeks after the Parents decision, Chester Darling petitioned to reopen Comfort v. Lynn. Darling believes the ruling against Seattle and Jefferson County School Districts will strengthen his case against Lynn. In an interview with National Public Radio, Darling stated, “I would go after every single one of them [districts with race conscious desegregation plans].” In his opinion the Lynn Plan must “fall” and he believes it will under the new precedent set by the Court. However, the attorney general of Massachusetts, Martha Coakley, has told school districts that they should not act too fast to change their integration policies. In response to Darling’s challenge, Coakley has entered a petition for the federal court to leave Lynn’s Plan intact. In her interview with National Public Radio, she pointed to Justice Anthony Kennedy’s opinion as the true precedent. While Justice Kennedy ruled against Seattle and Louisville, he wrote, "a compelling interest exists in avoiding racial isolation, an interest that a school district may choose to pursue."

Darling and others are encouraging Lynn, and the entire state of Massachusetts to consider “race-neutral” alternatives. The state of Massachusetts is not supporting alternatives, particularly changes to Metco Program. Jean McGuire, the Executive Director of Metco since 1973, does not want to use socioeconomic status instead of race. She believes forcing all parents to declare their income to public schools is inappropriate.

On November 5, 2007, Governor Deval Patrick told reporters that he was confident that desegregation programs in Massachusetts are still constitutional.\textsuperscript{114}

There is overwhelming state and local support to maintain school desegregation plans in Massachusetts; however, government officials are not the only principals influencing the school district. Currently, the Lynn plan is intact, but under review by Judge Gertner. There are some Lynn parents, both black and white, that are frustrated with the school system. Ann Vaughan, a leader in Lynn’s Parent Teacher Association poignantly expressed the complexity of Lynn’s voluntary integration plan stating:

Lynn still runs its school system through a desegregation plan. I am white and my husband and father of our 4 children is black. So, in the school system my children are given some leeway as far as which school they can go to. I can choose from many that need more minorities. Now, my sister has 3 children and their father is white and she has no choice over where her children go to school until high school. The school system has a school selected for all whites by neighborhoods. Unless, there is a disability or need for special education services then they can have some choice. All high school students in Lynn can go to the high school of their choice within the 3 public schools that are in the city (2 regular and 1 technical). Much to the dismay of many Lynn residents, race is still a factor concerning which school you can attend.\textsuperscript{115}

Additional criticism has come from an unlikely source. Yolanda Morris, the president of the North Shore Lynn Branch of the NAACP is frustrated with the

\textsuperscript{115} Ann Vaughn. Correspondence with Jeree Harris. 26 Jan 2008.
desegregation plan. She does not believe that placing black students in white schools is worth the fight. In an interview with National Public Radio, she explained that she chooses to send her 4 children to their neighborhood school.\textsuperscript{116} However, she is upset by the fact that her children’s schools are less equipped than the majority white schools in Lynn. She commented on going into classrooms in black neighborhoods, and finding that there are not enough textbooks, computers or rigorous curriculum in place. Morris’s comments echo those of Kathleen Brose, the president of the Parents Involved in Community Schools Organization in Seattle, Washington. They both believe that equal funding and resources for schools should be their district’s first priority. Their opinion is becoming prevalent among parents in Lynn. In an interview, attorney Chester Darling stated:

> What benefit of integration in kindergarten do you get if you force a white kid to sit next to a black kid? There isn’t any. Without such relief, the plaintiffs would be the only school children in America who lack the equal protection rights established.\textsuperscript{117}

However, school desegregation is more than a white and black issue in Lynn. 42 different countries are represented in Lynn’s public school system.\textsuperscript{118} Some argue what is really at stake in the challenge of the Lynn Plan is local deference to school districts. In his article, \textit{Comfort v. Lynn School Committee: Illustrating the Untapped Potential of an Explicit Link Between Voluntary Desegregation and Local Constitutionalism}, Randall L. Jackson wrote:

Local constitutionalism explains that judicial acquiescence to local governments on some constitutional questions is not unprecedented. Since local school boards are specially situated in educating their students, and because they are a vital part of local democratic decision making, they should be granted a measure of deference when assigning students to schools in order to cultivate racial diversity.119

Conclusion

Comfort v. Lynn is still under review by the District Court of Massachusetts as of the completion of this research. Janet Birchenough, the Director of Equity for Lynn Public Schools was unable to comment on the case due to pending litigation.120 However, the school district has continued to use race as a factor for transfers, and has not put forth a new plan.

The Lynn School District has an incredible amount of influential local and state principals directing their behavior. The most influential principal is the state government. The state government has interpreted the plurality decision in Parents as ambiguous and; therefore, has offered incentives to Lynn and other school districts to shirk the decision of Chief Justice Roberts. Some Lynn parents are dissatisfied with the plan, but unlike in Seattle, Washington, the state government is not aligned with dissatisfied parents. If the Lynn Plan is overturned, the Racial Imbalance, Act and the Metco Program will inevitably face challenges. In light of the supportive stance of the Massachusetts’ legislators, Chester Darling and other opponents of race conscious criteria, have a long legal struggle ahead despite the Supreme Court’s decision.

119 Jackson 573.
120 Janet Bichenough. Correspondence with Jeree Harris. 22 Jan. 2008
Chapter 5
Case Study 3: Jefferson County Public School District in Louisville, Kentucky

Historical View of Desegregation in Jefferson County

"I have only one memory that stands out. A black girl that had been bused to my school walked into my class at PRP High School and was so scared she had been crying. I felt so sorry for her that I went against my father's instructions and spoke to her anyway. Denise or I never told our parents that we had become best friends that year because we both knew our parents would not understand." - Shari Bailey shares busing experience in Jefferson County.121

In the early 1970s, the Kentucky Civil Liberties Union, Legal Aid Society, and National Association for the Advancement of Colored People (NAACP) challenged segregation in the Jefferson County School system. The legal advocates filed a lawsuit requesting a legal intervention to desegregate the dual system in the County. Several lawsuits were consolidated into Newburg Area Council, INC et al. v. Board of Education of Jefferson County, 489 F. 2d 925, 932 (6th Cir. 1973), which later developed into Haycraft, et al. v. Board of Education of Jefferson County 560 F.2d 755 (6th Cir. 1977). Haycraft sought to enforce a 1975 district court order to integrate the school system by transferring 900 African American students.122 Fall 1973 to 1976, white enrollment in Jefferson County and Louisville fell by 23,000, nearly 21 percent, in the wake of integrating the district.123 In 1976, with the recommendation of the Kentucky Commission on Human Rights, the 6th Circuit Court of Appeals ordered that the Jefferson County School System and the Anchorage School System merge to encourage desegregation in the districts. Judge James Gordon directed the merger and subsequent desegregation plan. The plan utilized a busing model similar to the Charlotte-Mecklenburg School District in North Carolina. Busing proved to be a controversial

remedy that would inflame the Jefferson County community. 22,000 white and black students were bused across the large, combined district of Jefferson County. All of the students were bused according to the first initial of their last name and grade level. Black students were bused for 10 of their 12 years in school, and white students were bused only 2 of their 12 years. Paul Hosse, a student during the school districts’ merger and busing system reflected on his experience stating:

I remember law enforcement officers on the rooftop at Moore High School with rifles. I remember the armed bus compounds. I remember random locker searches and being frisked every morning. I remember security guards roaming the halls. I remember teachers unable to teach because of the chaos. I remember kids being bused to schools on the other side of town when they lived within walking distance of their old schools. I remember helping to organize a walkout or two at school. I remember gas stations refusing to serve buses or the police. I remember a lot of police violence during several of the anti-busing protests, especially at Valley High School.

June 15, 1978, Judge Gordon ended his active supervision of the school district. He found that Jefferson County was a unitary school system, but he left aspects of the desegregation plan in place to continue integration. In 1992, the district ended widespread busing in favor of a choice program entitled Project Renaissance. In 1995, the district created racial guidelines that required schools to have between 15 percent and 50 percent black students in each school. The guidelines angered black parents that wanted their children to attend their neighborhood schools, regardless of the segregated

124 Clotfelter 49.
housing patterns.

In 1998, six black parents sued Jefferson County for its enrollment guidelines restricting the percentage of black students at Central High School.126 The parents’ claim forced the school district into further litigation over the necessity of remaining aspects of the desegregation order. In 2000, U.S. District Judge John Heyburn II presided over an eight-day trial on the necessity of the desegregation decree. The parents argued that the desegregation decree should be lifted, and the school district argued that it should be maintained. Heyburn ruled in favor of the parents and banned the use of racial quotas at Central High School. He found that Jefferson County was a unified system, and that vestiges of past de jure segregation were eliminated.

Table 5.1 on the following page outlines the education policy changes, legal and legislative actions related to desegregation in Jefferson County.

### Table 5.1
**Jefferson County Desegregation Timeline**

<table>
<thead>
<tr>
<th>Year</th>
<th>Education Policy Change</th>
<th>Legal &amp; Legislative Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970-1979</td>
<td>Students are bused according to the first initial of their last name and their grade level. (1975-1976)</td>
<td>6th U.S. Circuit Court of Appeals, District Judge James Gordon ordered Jefferson County to desegregate &amp; adopted a plan to merge the school systems. (1974)</td>
</tr>
<tr>
<td></td>
<td>Under the plan, black students are to be bused up to 10 of their 12 years in school and white students only 2 of their 12 years. (1975-1976)</td>
<td></td>
</tr>
<tr>
<td>1980-1989</td>
<td>Desegregation plan for middle and high schools are switched to a system of zones and satellite areas. (1984)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Racial guidelines: elementary; 23 percent to 43 percent black, middle schools, 22 to 42 percent; high schools 16 to 36 percent. (1984)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Racial guidelines for elementary schools: 15 percent to 50 percent black; middle schools, 16 to 46 percent; high schools 12 to 42 percent. (1992)</td>
<td>U.S. District Judge John Heyburn II rules that Gordon’s desegregation order is still in effect. (1999)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>David McFarland files a lawsuit claiming racial discrimination against his white sons. (2002)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Heyburn refuses to issue an injunction to suspend the desegregation policy. (2003)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Heyburn finds the district can use its student-assignment plan, with the exception of separating applicants by race and gender before for enrollment at traditional magnet schools. (2004)</td>
</tr>
<tr>
<td>2005-2008</td>
<td>School District school board unanimously adopted an interim plan for 2008-2009. Uses geography to ensure that elementary schools draw 15 percent to 50 percent of their enrollment from areas with minority populations of at least 45 percent. (2008)</td>
<td>A three-judge panel of the 6th U.S Circuit Court of Appeals affirms Heyburn’s ruling. Plaintiff’s attorney seeks a review by the full 6th Circuit Court. (2005)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>U.S. Supreme Court strikes down JCPS student assignment plan. (2007)</td>
</tr>
</tbody>
</table>

Facts of Meredith v. Jefferson Case

In 2003-2004, Jefferson County enrolled approximately 97,000 students in 150 Jefferson County Schools. 5,000 students were enrolled in preschool, 42,500 were enrolled in elementary school, 21,650 were enrolled in middle school, 24,750 were enrolled in high school, about 2,100 were enrolled in alternative schools, and approximately 1,000 enrolled in special schools and special education centers. 36 percent of elementary school children were classified as black and 64 percent were classified as other. In middle school, 36 percent were black and 64 percent were other. Finally, in high school, 31 percent were black and 69 percent were other. 76.5 percent of black students enrolled in Jefferson County Public Schools participated in the free and reduced lunch program.

Every Jefferson County Public School with the exception of 13 schools have designated geographic attendance areas called “resides areas.” Resides areas indicate schools for those students whose parents’ or guardians’ residence address is within the schools’ geographic attendance area. The 13 schools without designated geographic areas are magnet schools. From February to March, elementary school students submit their applications ranking their top 4 choices. They must rank their first and second choice from their “resides” cluster schools, and a first and second choice among magnet schools. If a student does not submit his or her application he or she is automatically assigned to a school within their “resides area” school cluster. Middle and high school students go through this application or admissions process from November to January each year.

129 Joint Appendix for Meredith v. Jefferson (JA-29)
The admissions process for non-traditional magnet schools, magnet programs, and optional programs were based on objective criteria established by the school such as: a survey, essay, recommendations, attendance data, audition or interview, course grades, and standardized test scores. In addition, the availability of space in the school or random draw list and place of residence decided student placement in magnet programs. Racial guidelines were also a factor in magnet placement.

In 2003-2004, 10 percent of students submitted applications to attend magnet schools. Half of the applications to the Magnet schools were granted. About 7 percent of the students applied for transfers, and the majority of the request were granted. 95-96 percent of elementary students attended a “resides area” school or their first choice cluster resides school. According to Jefferson County administration, admissions decisions are influenced by space and program limitations much more than racial guidelines. In the brief for Meredith v. Jefferson, the school district highlighted that the Jefferson County School Board periodically polled students, graduates, parents, and the community.130 Their polls showed very strong support for a student assignment plan that provides choice and maintains racially integrated schools. However, the enrollment process and the use of racial guidelines for their Traditional Magnet Schools131 rekindled the controversy over the district’s desegregation plan.

Racial guidelines in Traditional Magnet Schools were implemented slightly different than they were in other Jefferson County schools. Applicants are separated and

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130 Brief for the Respondent in Meredith, 551 U.S. 127 (2007) (No. 05-915)
131 Traditional Magnet Schools offer the same curriculum as non-magnet schools; however, these schools emphasize basic skills in a highly structured educational environment, discipline and dress codes, learning with daily follow up assignments, and concepts of courtesy, patriotism, morality and respect for others. The traditional program is offered as the sole structure at nine schools. - McFarland v. Jefferson County Public Schools aff’d. 416 F. 3d 513 (6th Cir. 2006)
randomly sorted into four lists at each grade level: black male, black female, white male and white female. Traditional Magnet School principals draw candidates from these lists in order to stay within racial guidelines for the entire school population.

In November 2001, David McFarland’s son, Stephen McFarland applied to Jefferson County’s Traditional Magnet School (JCTMS) for the 2002-2003 school year. JCTMS was his first choice. He did not indicate a second choice. He was not accepted to JCTMS, and was assigned to another school. On November 14, 2002, he applied for a seventh grade school assignment at JCTMS. He was accepted to JCTMS for the 2003-2004 school year. Stephen’s younger brother, David had a similar experience. In February 2002, his parents applied to Fern Creek Elementary School within his school cluster for his first grade school assignment for 2002-2003. They also applied to Schaffner Traditional Elementary Magnet School. He was not accepted into Schaffner Traditional School. However, the following year, David was accepted into Schaffner for his second grade school assignment. McFarland believed the delay in his sons’ selection was related to their classification as white students. Brandon Pittenger, Kenneth Aubrey, and Joshua McDonald, son of Crystal Meredith, joined David McFarland’s complaint against the school district after experiencing similar delays, which they believe were the result of the racial guidelines.

*Jefferson County Cases in Federal District and Circuit Court*

In 2004, litigation for McFarland v. Jefferson County School Board entered the United States District Court of the Western District of Kentucky at Louisville. On June 25, 2004, Judge John Heyburn II found in favor of Jefferson County’s desegregation plan. He stated that it served a compelling interest, and was narrowly tailored; however,
its student assignment process for traditional magnet schools was problematic. He asked the district to revise its traditional magnet school assignment plan, but he upheld the plan overall.

McFarland and his attorney, Ted Gordon, appealed the decision to the 6th Circuit Court of Appeals, and in 2006 the District Court’s decision was reaffirmed by the 6th Circuit Court. Gordon then filed a writ of certiorari to the U.S. Supreme Court. He stated in his brief that, “The Jefferson County Public School System is the only state actor who denigrates a 5-year old’s self worth and self-esteem by comporting him to be color coded throughout his educational career.”

The U.S. Supreme Court was the first court to strike down Jefferson County’s student assignment plan. Unlike Seattle and Lynn, Jefferson County’s history with de jure segregation bolstered legal and community support for the voluntary integration plan. The following table outlines the legal history of McFarland v. Jefferson County, which became Meredith v. Jefferson County in 2006.

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132 Brief for the Petitioner in Meredith (No. 05-915)
### Table 5.2

**Legal Decisions In Meredith v. Jefferson County**

<table>
<thead>
<tr>
<th>Chronological Cases</th>
<th>Findings of the Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motion filed to Chief Judge John Heyburn II in the Western District of Kentucky at Louisville on July 24, 2003</td>
<td>Denied a motion to suspend the desegregation plan until the case was decided. Denied a motion to extend time for additional plaintiffs to join action.</td>
</tr>
<tr>
<td><em>McFarland v. Jefferson County Public Schools</em>, 330 F. Supp. 2d 834 (W.D Ky. 2004)</td>
<td>The JCPS District’s plan complies with the Equal Protection Clause of the 14th Amendment. JCPS shall revise the student assignment process for traditional magnet schools. All other aspects of the JCPS plan are preserved and upheld.</td>
</tr>
<tr>
<td><em>McFarland v. Jefferson County Public Schools</em> aff’d. 416 F. 3d 513 (6th Cir. 2006)</td>
<td>6th Circuit Court affirms the Western District’s finding.</td>
</tr>
<tr>
<td><em>Meredith v. Jefferson County Public Schools</em>, 551, U.S. 127 (2007)</td>
<td>U.S. Supreme Court strikes down integration plan 1. “Black” and “other” binary categorization of students. 2. Race neutral strategies were not researched thoroughly. 3. Use of racial quotas is impermissible. 4. De facto segregation does not violate the constitution, thus racial imbalance caused by de facto segregation is not protected. 5. Race is only one form of diversity. Race should not be a deciding factor. A holistic approach is appropriate.</td>
</tr>
</tbody>
</table>

### Implementing a New Plan?

The U.S. Supreme Court’s decision was surprising for the school district, which had successfully defended its plan up to the Supreme Court. Jefferson County’s history of school desegregation made implementing a new plan, not a question of if, but when and by what means. After the decision, Jefferson County released a framework outlining the guiding principles for developing a new student assignment plan. Table 5.3 articulates the guiding principles, and their definitions provided by the Jefferson County Public School System.

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133 Timeline: Desegregation in Jefferson County Public Schools Courtier News. 29 Jan 2008 &lt;http://www.courier-journal.com&gt;
Table 5.3
Jefferson County Public School Plan Sept. 2007 New Plans

<table>
<thead>
<tr>
<th>Guiding Principles</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diversity</td>
<td>Create schools that reflect the diversity of the community by including students from different ethnic, racial and economic groups and students with disabilities.</td>
</tr>
<tr>
<td>Quality</td>
<td>Enhance the quality of the instructional program.</td>
</tr>
<tr>
<td>Choice</td>
<td>Provide families the opportunity to choose from a variety of facilities and programs that are strategically placed to enhance diversity and contribute to the attractiveness of the district.</td>
</tr>
<tr>
<td>Predictability</td>
<td>Offer predictability to parents at every point in child’s educational career. Families will understand their choices and the process for assignment.</td>
</tr>
<tr>
<td>Stability</td>
<td>The student assignment plan will provide the opportunity for students to have continuity in the schools they attend, and it will provide each student with connectedness to the school staff, peers and the social and academic community of the school.</td>
</tr>
<tr>
<td>Equality</td>
<td>The student assignment plan will provide equitable access to programs and resources for all students.</td>
</tr>
</tbody>
</table>

The Jefferson County School System unveiled its interim desegregation plan on January 28, 2008. The School Board unanimously adopted the plan the same night it was unveiled. The interim desegregation plan for the 2008-2009 school year will use geography instead of race to desegregate the school district. Officials will assign students so that elementary schools have 15 and no more than 50 percent of their enrollment from school residential areas with minority populations of at least 45 percent. The new diversity guidelines consider race, economic status, and parental education equally and holistically. This plan would only apply to children entering first grade, students new to the district or who have moved and those wishing to transfer. The plan is predicted to provide 93 percent of students in the district with their first school choice. The interim plan will exist in lieu of a similar longer-term plan that will take affect in the 2009-2010 school year. Public forums will allow residents and parents to voice their opinions of the
interim plan. On April 28, 2008, the board will discuss the details of a long-term plan, and vote to accept or reject the plan during their May 12th meeting.134

Jefferson County has sought out feedback from parents and local residents on how they should proceed. The school district is highly concerned with their local principals (parents and residents). On the JCPS website there are 14 surveys that parents can take concerning the student assignment plan, the educational environment, testing, and general administration. On February 24, 2008, Jefferson County held the first of five public forums on the student assignment plan. According to Antoinette Konz, The Louisville Courier Journal’s education reporter, 150 people attended the forum and there were varied reactions to the integration plan from the crowd. A reverend of Green Street Baptist Church commented on the dramatic nature of the plan. He stated:

I think this plan is meant to divert us from the real problem, which is the overall quality of education in Jefferson County Public Schools. Maintaining diversity is important, but I think the number 1 priority should be addressing the achievement gap of students first.135

A common theme in Seattle, Lynn and Jefferson County is the belief by some parents and residents that focusing on integration is taking away from focusing on quality education. The rallying cry to improve neighborhood schools is prominent. Deborah Stallworth, a parent opposed to the district’s previous desegregation plan, simply does not trust that the school board will listen to parents’ that disagree with the interim plan. She stated, “it seems like the [school board members] were in a rush to get this interim plan in

place. Why is there such a rush? The assignment process doesn’t even start until March. It makes me think they are trying to be sneaky.”

Other parents and residents at the forum and in the community are speaking out about the importance of integrated schools. Sharon Lewis, a grandmother of a Byck Elementary School student stated, “Having diverse schools is very important… I do not want my granddaughter to attend a segregated school like I attended.” Steve MacGruder challenged some of his fellow residents that seemed not only to question desegregation, but diversity as a whole. He wrote on a community message board for the voluntary desegregation plan that:

Some people seem to be thinking that the Supreme Court ordered [Jefferson County Public Schools] to allow everyone to attend their neighborhood schools. I'm afraid not. The decision was that race cannot be the single factor in determining where students go. This mixture of considering geography, income, and race should easily pass muster with the courts. And I continue to feel sickened by so many nasty racists living around here, making their ignorant justifications against diversity, as if there's nothing good for society that has come of it. The reality is the reverse -- society benefits in major ways when we all have to deal with each other, no matter our differences. And in my case, as one of the first people to be bused, I am proud I went through that very important education.

137 Ibid. 2.
Meredith attorney, Ted Gordon, believes parents have grounds to be concerned with the interim plan. He contends that the district is trying to shirk the Supreme Court’s decision with its interim plan. On February 5, 2008, he filed a motion to request that a federal judge review the interim plan, and determine its constitutionality in light of the Supreme Court’s decision in Meredith v. Jefferson County, 551 U.S. 127 (2007). Gordon believes that the interim plan will institute another quota system that is still based on race. If the judge refused to review the plan, he threatened to find a plaintiff with standing to challenge the interim plan.

Superintendent Sheldon Berman claims that the interim plan is an attempt to keep the schools from resegregating. Judge Heyburn II heard Ted Gordon’s petition, and reviewed the interim plan. On March 11, 2008, he rejected Gordon’s challenge and decided not to strike down the interim plan. Heyburn told Gordon, “If someone tomorrow is denied choice of admission under circumstances that you think are problematic, the court will address that as a new case” and decide on the case before the next school year.139

Conclusion

Currently, Jefferson County is adopting a long-term desegregation plan similar to its holistic interim plan. Despite the U.S. Supreme Court’s decision and little overt incentive, such as Lynn’s $500 desegregative transfer incentive, Jefferson County has continued to press the importance of school integration. Its difficult history with de jure segregation is key to its persistent efforts to uphold school integration. Its local principals (parents, residents, local officials) provide a regional memory that will not

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allow the school district to act without taking the past into account. In the 70s, Jefferson County bused students and faced great opposition from residents. Protests, rallies, and burning buses were only a few of the measures taken to voice dissent to the integration plan. In light of its painful history, Jefferson County is making a concerted effort to listen to residents, while taking full advantage of the ambiguity provided by the Supreme Court’s plurality decision. As Steve MacGruder mentioned in his comments, Kennedy’s opinion has left the door open for the use of race in a holistic review of a child’s school assignment. Jefferson County’s history in the Courts have also influenced its willingness to comply in part with the U.S. Supreme Court’s insistence for race neutral tiebreakers and measures for student assignments.

The future of school desegregation in Jefferson County appears to be safe for now, as the district has continued to champion integration. However, the struggle is far from over for some opponents of the district’s plan. On March 12, Ted Gordon released a statement following Judge Heyburn’s decision to uphold the interim integration plan. Gordon stated; "If someone else wants to contact me because they believe their child has been deferred or kept out of another school because of race, my name is Ted Gordon, my phone number is in the phone book, and we will come right back [to court]."\textsuperscript{140}

Chapter 6
Case Study 4: Monroe County, New York

Historical View of Desegregation in Monroe County, New York
“Disadvantaged Negro pupils in compensatory and integrated classes for the same time showed similar outcomes in scholastic development. Similar pupils enrolled in segregated classes where no major efforts were directed toward remediation, enrichment, or integration were significantly lower [in academic achievement] than those who had these scholastic experiences.” – O. Bowman “Scholastic Development of Disadvantaged Negro Pupils, 1973 Dissertation on Monroe County Integration”

The demographic contrasts between the urban and suburban areas of Monroe County in the mid 20th century were stark and problematic. In 1950, the City of Rochester’s population peaked at 332,488, while suburbs of Monroe County numbered 155,144. In the following decades the population in the city decreased by 25,000. However, the non-white population tripled through the 1950s. Henrietta, the fastest growing suburb in Monroe County had a 192 percent increase in its African American population, which resulted in a total African American population of 72.

In 1962, the unsubstantiated arrest of an African American male named Rufus Fairwell inflamed the community. The NAACP, Human Relations Commission, and other organizations began to look into the treatment of African Americans by police in the County. The Integrated Non-Violence Committee staged a sit in vigil at the police station, but tensions did not cease. Two years later, in July 1964, a race riot occurred that led to the arrest of 792 African Americans, 153 whites and 31 Puerto Ricans.

143 Ibid. 32.
144 Ibid 32.
145 Ibid 32.
146 Ibid. 32.
The community was in turmoil and concerns over race relations deeply impacted the public school system.

Residential segregation was no longer an excuse for segregated schools. In 1963, the Rochester Board of Education accepted the charge to reduce racial imbalance. The District implemented several programs including an open enrollment plan, summer programs to invite urban students to suburban schools, and a regular transfer program during the school year. Not all of the parents were happy with the slow, but steady integration of the suburban schools. Several parents filed a legal complaint to end what they saw as “black invasion” of their schools. A number of lawsuits against the desegregative transfer program led to incredible racial tension in the area. The interaction between blacks and whites became limited. White membership in groups like the NAACP was discouraged, and many who viewed their city as tolerant were overwhelmed by the racial division within the community.

The first transfer program began in 1963 between two high schools, but the Interdistrict Transfer Program officially began in 1965. It originally enrolled 25 first grade students from the City of Rochester, into Monroe County’s, West Irondequoit School District. Currently, seven school districts participate in the interdistrict transfer program, the only transfer program of this type in New York. Monroe County claims, “the first nationally recognized voluntary desegregation program in the United States.”

Between 1969 and 1971, the interdistrict desegregation plan was modified, and approved several times. However, a number of private schools noticed increases in their

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147 Ibid 33.
enrollment as parents attempted to escape desegregation. In 1971, a new president of a local integration organization changed the organization’s main initiatives by advocating for improved inner city schools instead of busing. As mandatory busing lost community support, alternative means of desegregation developed. In 1979, the magnet program was put into place. Despite the best efforts of the school district the city and suburbs of Monroe County were still racially divided. Table 6.1 is a desegregation timeline of Monroe County.

**Table 6.1**

**Monroe County Desegregation Time Line**

<table>
<thead>
<tr>
<th>Year</th>
<th>Education Policy Changes</th>
<th>Legal/Legislative Action</th>
</tr>
</thead>
</table>
| 1960-1969| First trans-suburban exchange from Marshall High School in Rochester to Madison High School in the suburbs. Madison High School had 1 non-white student before the transfer program. (fall 1963)
Rochester and Brighton have a summer school exchange program. (1964)  
Interdistrict Program Begins between Rochester and West Irondequoit Districts in Monroe County. (1965) |                                                                                         |
| 1970-1979| Magnet Programs put into place. (1979)                                                   | Emergency School Aid Act (ESAA) provided incentives and monetary assistance to Monroe County for its desegregative transfer program. (1972) |
| 1980-1989| 200 suburban students and 1,100 city students were a part of the inter district plan. This is the highest number in the program’s history. (1982-1983) | Magnet School Assistance Act replaces ESAA. (1984)                                      |
| 1990-1999|                                                                                         | Litigation against Monroe County School filed for desegregative transfer program (1998) |
| 2000-Present| Fairport School District is the first suburban school added to the interdistrict program since the 1960s. (2003) | 2nd Circuit Court of Appeals upholds Monroe County’s interdistrict transfer program (2000) |

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149 Stave 39.
The Board of Cooperative Educational Services (BOCES) administers the interdistrict program. There are no definitions of racial balance or quotas in the plan. The seven suburban school districts that participate in the program include; Brighton, Brockport, Fairport, Pittsford, Penfield, West Irondequoit and Wheatland-Chili. Minority students from the City of Rochester voluntarily attend the suburban schools that allocate space for them.

For years the federal government funded the interdistrict transfer program through the Emergency School Aid Act (ESAA) of 1972. This act was established to further eliminate and prevent racial isolation; however, it was repealed in 1982, and replaced with the Magnet Schools Assistance Program of 1984. The state of New York began funding the interdistrict program in the wake of ESAA’s repeal.

The interdistrict program allows students to matriculate into schools without being residents of the district or paying tuition. However, only minority students are allowed to transfer from city schools to suburban schools. A minority pupil is “a pupil who is of Black or Hispanic origin or is a member of another racial minority group that historically has been the subject of discrimination.” The restrictions of the plan reflect the fact that around 80 percent of the students in the Rochester school district are African American or Hispanic American.

Monroe County School officials recognize that the plan has a long way to go before it fully integrates all schools in the County. It has put into place a strong framework for continuing racial desegregation. The following table lists the mission statement and main tenets of the plan.
Table 6.2
Mission Statement of Monroe County Urban-Suburban Interdistrict Transfer Program

<table>
<thead>
<tr>
<th>Mission Statement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The program is designed to enhance and enrich the participating schools and their communities by “reducing minority group isolation, encouraging intercultural learning, promoting academic excellence and fostering responsible civic leadership.”</td>
</tr>
<tr>
<td>2. Promote education options and intercultural opportunities for children from multiple ethnic backgrounds as they attend school together.</td>
</tr>
<tr>
<td>3. Maintain dedicated efforts to foster student and adult appreciation of their cultural commonalities and diversities.</td>
</tr>
<tr>
<td>4. Provide experiences in multiple, non-mandated intercultural activities that will benefit students coming from varied ethnic and social backgrounds.</td>
</tr>
<tr>
<td>5. Develop academic and personal challenges that correlate with the skills, abilities and experiences of both urban and suburban students.</td>
</tr>
<tr>
<td>6. Enhance and improve the quality of intercultural learning for both urban and suburban students from different ethnic environments.</td>
</tr>
</tbody>
</table>

Facts of the Brewer v. West Irondequoit Case

In the 1996-1997 school year, the suburban districts had an overall minority student population of less than ten percent while Rochester had a minority population of 80 percent. In 1996, 591 minorities transferred to the 7 participating suburban school districts, while only 29 white students transferred into the Rochester School District. The transfer numbers reveal the obvious disparity between parent and student preference to attend the urban schools versus the suburban schools.

In 1996, the parents of Jessica Haak submitted a request to transfer to a suburban school under the interdistrict transfer program. The transfer was requested after the principal at Jessica’s School, Number 39 in Rochester, suggested she transfer because of her high academic performance. In July 1998, Jessica and her mother were informed that there was space available at Iroquois Elementary School in the West Irondequoit School District. Jessica, her mother, the assistant principal, and program staff met twice on

\[150\) *Brewer v. West Irondequoit*, 212 F. 3d 738 (2nd Cir. 2000) Amicus Brief No. 99-7186
August 21\textsuperscript{st} and August 27\textsuperscript{th}. After the Program director met with Jessica she checked Jessica’s Rochester City School District records, and confirmed that she was considered white/Caucasian. The program director called the assistant principal and informed her that Jessica would not be eligible to participate in the transfer program. The material distributed to Jessica and her family did not state that only minority students would be accepted as transfers to a suburban school without cost under the program.

\textit{Brewer v. West Irondequoit in Federal District and Circuit Court}

On September 18, 1998 the parents of Jessica Haak filed a petition seeking a preliminary injunction against the Monroe County Interdistrict Transfer Program. On January 14, 1999, the district court granted the injunction.\textsuperscript{151} The District Court of the Western District of New York found that the plan violated Jessica’s equal protection rights. The District Court argued that diversity based solely on race was only facial diversity and not true diversity.\textsuperscript{152} Additionally, the plan did not seem to be narrowly tailored, but rather it seemed to use the most drastic measures available by baring the transfer of white students. The court concluded that, “socioeconomic status; family constellation, and educational pedigree could meet the same ends without using race.”\textsuperscript{153}

The school board filed its notice of appeal a month later on February 11, 1999. They argued that the program was narrowly tailored. Only children in 80 percent minority urban schools could transfer to suburban schools that are 90 percent white and white children in suburban schools may transfer to the predominantly minority urban

\textsuperscript{151} A party seeking a preliminary injunction must argue a couple of things. (1) that irreparable harm will result from the absence of an injunction and (2) either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits of the case to make them a fair ground for litigation, and a balance of hardships tipping decidedly in its favor. See Forest City Daly Hose, Inc. v. Town of North Hempstead, 175 F.3d 144, 149 (2d Cir. 1999).

\textsuperscript{152} See also Wessman v. Gittens, 160 F. 3d 790 (1\textsuperscript{st} Cir. 1998)

\textsuperscript{153} Brewer v. West Irondequoit 32 F. Supp. 2d at 634 (1998)
The school district assigned most students to their neighborhood schools. The voluntary transfer program only involves a small number of students who choose to participate. In 1998-1999 approximately 580 students were a part of the interdistrict plan and attended schools in the suburbs. Only 67 of the students were new participants; the rest were continuing transfer students from the previous school year.

In 2000, the 6th Circuit Court of Appeals heard Brewer v. West Irondequoit, 212 F. 3d 738 (2nd Cir. 2000). The Assistant Attorney General of the U.S. entered an amicus brief in support of the interdistrict transfer program. The Circuit Court reversed the District Court’s decision, and upheld Monroe County’s Interdistrict plan. The following table compares the findings of the District Court and 6th Circuit Court of Appeals on a number of issues related to the validity of the case according to the different courts.

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154 Brief of the United States as Amicus Curiae for Brewer v. West Irondequoit, 212 F. 3d 738 (2nd Cir. 2000) (No.99-7186)
<table>
<thead>
<tr>
<th>Standard for an injunction</th>
<th><strong>District Court Decision</strong> 32 F. Supp. 2d at 634 (1998)</th>
<th><strong>Circuit Court Decision 2000</strong> 212 F. 3d 738 (2nd Cir. 2000)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Irreparably harmed in the absence of an injunction</td>
<td>The injunction was vacated and remanded the case for trial consistent with the opinion.</td>
</tr>
<tr>
<td></td>
<td>either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits of the case to make them a fair ground for litigation, and a balance of hardships tipping decidedly in its favor.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Injunction was granted by the district court.</td>
<td></td>
</tr>
<tr>
<td>Irreparable Harm</td>
<td>When an alleged deprivation of a constitutional right is involved most courts hold that no further showing of irreparable injury is necessary.</td>
<td>Federal Circuit Court agreed that the plaintiffs met their burden of irreparable harm.</td>
</tr>
<tr>
<td>Likelihood of Success on the Merits</td>
<td>The program is not narrowly tailored.</td>
<td>The program serves a compelling government interest.</td>
</tr>
<tr>
<td></td>
<td>The Court could not conclude that the plaintiffs met their burden in demonstrating a likelihood of success on the merits.</td>
<td></td>
</tr>
<tr>
<td>Compelling Government Interest</td>
<td>Programs preparing students to function in adult society, in which they will encounter and interact with people from many different backgrounds. Making students more tolerant and understanding of others throughout their lives. Eliminating de facto segregation District Court concluded that de facto segregation was not proven to exist in the school districts by the defendants.</td>
<td>Court stated they could not conclude that reduction of racial isolation was not a compelling government interest because: binding authority of precedent in the Circuit Court. The absence of a Supreme Court decision dealing with permissible race-based justifications in the educational context. The lack of a clear majority from the Supreme Court regarding permissible justifications for race-based classifications generally.</td>
</tr>
<tr>
<td>Narrow Tailoring</td>
<td>The program is not narrowly tailored.</td>
<td>The appropriate question is whether the program is narrowly tailored to achieve its primary goal of reducing racial isolation resulting from de facto segregation. The circuit ordered the district court to again explore the Program’s administration on a more fully developed factual record.</td>
</tr>
</tbody>
</table>
Implementing a New Plan?

The interdistrict transfer plan for Monroe County has been called problematic and “ripe for a challenge” following the Supreme Court’s decision in *Parents.* However, the challenge has not come for Monroe County. The mission statement of Monroe County’s Urban-Suburban Transfer Program remains prominently placed on Monroe County’s webpage. It cites the New York State Education Law § 3602, that states:

The purpose of the Urban-Suburban Interdistrict Transfer Program is to voluntarily reduce racial isolation in the elementary and secondary schools of New York State in order to enhance, racial/ethnic awareness and sensitivity between and among students, teachers, and parents in the elementary and secondary schools of the State.

New York continues to offer monetary incentives to Monroe County. Additionally, state legislation supports the County’s ability to outspokenly shirk the Supreme Court’s decision. Jeff Crane, West Irondequoit’s Superintendent, made a strong statement in support of school integration by race conscious means. In a correspondence he wrote:

Our 42 year-old interdistrict transfer program was intended to deal with racial isolation in the Rochester City School and the Monroe County suburban schools. That remains our focus and the purpose for our program. As a result of the court decision, we were advised to use SES [socioeconomic status] to determine transfers. We voted unanimously to reject that advice. If forced to change, we

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will probably lose the program. 156

In 2003, the interdistrict transfer plan was at the forefront of Monroe County’s attention. Fairport District, a suburban school, became the first district since the 1960s to request to become a part of the interdistrict plan. Matt Cummings, a reporter from the Public Broadcasting Channel, interviewed Bill Cala, the Superintendent of Fairport District. Cala told Cummings that:

[The Interdistrict] program won't cure racial imbalance, it won't cure bigotry, and it won't make Fairport a diverse community. What it does, however, is offer an ingredient towards a goal. Looking at this as one element in a multifaceted approach to dealing with diversity is how we look at it. 157

In the same interview, Theresa Woodson, the program director of the interdistrict plan joined Bill Cala to discuss the program. Matt Cummings asked Woodson if there was any pressure building from school districts in Boston and Hartford that discontinued their race conscious plans after being successfully challenged. Woodson replied:

I don't think at this point there are any pressures. I think the big things about those other two programs were primarily that they were court-ordered, and I think what makes urban-suburban special is that it is voluntary. Districts seek out participation in our program, so I think that's what makes this different than the other two programs. 158

Adam Urbanski, the President of the Rochester Teacher Association challenged

156 Jeff Crane. Email Correspondence.
both Cala and Woodson during the interview. He argued that the interdistrict program
was doing more harm than good for the City of Rochester’s students. Only around 500 of
the 36,000 school students in Rochester benefit from the program. Urbanski argued that
500 students out of 36,000 are not enough, and the plan is covering the real issue
underneath. He believes Rochester schools are in bad shape, and the interdistrict plan
allows “loud parents” to place their kids in other schools, while the rest of the children
are left behind.\footnote{Ibid. 3} He advocates for school choice to give all students the opportunity to transfer.

Other school districts, including Webster and East Rochester, considered joining
the transfer program before Fairport Central joined in 2003. However, the districts opted
not to join the program. Since 2003, Monroe County has focused its attention on school
funding.

In September 2007, Monroe County Legislature approved the F.A.I.R. plan to
end the county's two-year budget gap of $101 million. The plan proposes to use local
sales tax to pay for Medicaid expenses, and gives the rest of the money to school districts.
Previously, the school districts benefited from all of the sales tax. The F.A.I.R. plan
reduces the portion of sales tax revenue allocated to the schools by 50 percent.\footnote{“Monroe County Legislature and Our Students,” Monroe County Education Coalition, 10 Oct. 2007, 10 Feb 2008 <www.mcsba.org/mcec>}
In the 2007-2008 school year, the school districts will lose almost $14 million. In 2008-2009,
the districts will lose nearly $29 million under the F.A.I.R Plan.

Monroe County parents, teachers, and administrators have rallied against the F.A.I.R
Plan. The Monroe County Education Coalition, that represents 60,000 members,
launched a $50,000 campaign subsidized by the Monroe County Federation of Teachers
and New York State United Teachers.\textsuperscript{161} On Unfairtokids.org, members of the Monroe County Federation of Teachers released a number of statements against the Monroe legislature’s plan. Barbara Shapiro, Pittsford District Teachers Association president wrote; "we teach our students to play fair. What kind of lesson does it teach our kids if the county legislature can make a last minute deal to divert funds already promised to schools?"\textsuperscript{162}

In December, New York State Supreme Court Judge Kenneth Fisher upheld Monroe County’s F.A.I.R. plan despite the major impact it would have on Monroe County Schools. He found that Monroe County could “unilaterally change state-approved sales tax law.”\textsuperscript{163} The school districts immediately appealed the decision. On March 27, 2008, the appellate court overturned the previous New York State Supreme Court decision. The appellate judges found that Monroe County was responsible for sharing all of its sales tax revenue with the school districts. The decision might be a little to late for some school districts. West Irondequoit Schools have already lost $600,000, and it is unknown whether they will be compensated.\textsuperscript{164}

\textit{Conclusion}

Monroe County, like Seattle, Lynn and Jefferson County, is highly concerned with educational equality, particularly funding for its schools. School integration remains an integral part of the district with little indication of any changes in wake of the Court’s decision. It appears that Monroe County, and its residents are satisfied with the school

\textsuperscript{162} Ibid 2.
\textsuperscript{163} “Monroe County Legislature and Our Students." 3.
integration plan, or perhaps they are far more dissatisfied with the loss of millions of dollars from their school systems. The incredible support and unification around the school districts in relation to the recent school funding case indicates a very strong tie between residents, parents, and the school system. The bond between the parents and the district could account for the fact that there has not been a challenge to the transfer plans. Additionally, Monroe County’s Interdistrict Plan has a Parent Advisory Council that advocates on behalf of parents and students that are in the urban-suburban transfer program. There is also a Monroe County School Business Partnership Program, in which local businesses owners collaborate with the school district to create a number of workforce development opportunities for students in the district. Overall, it appears that parental, community, and state support for the interdistrict transfer plan is key to its sustainability.

Monroe County exemplifies the nature of the complicated principal agent relationship that exists with the introduction of multiple state and local principals with incentives and sanctions. Monroe County not only has a strong historical connection to school desegregation, as the district implementing the first nationally recognized voluntary school integration program, but it has the support of its parents, local, and state officials in a way that has superceded the authority of the Court’s decision. In an interview Superintendent Jeff Crane reaffirmed this conflict between the Court, the school district, and its local multiple principals stating:

Now with the Supreme Court’s latest decision, people have been wondering how this will affect us. I don’t think this will, because everyone is a volunteer, it’s not a municipality making a decision. It is parents saying they want their kid to be in
the urban-suburban program.”¹⁶⁵

PART III.
The Future of School Integration in American Public Schools
Preface: Conclusion

“The enduring hope is that race should not matter; the reality is that too often it does.”


The *Parents* decision sparked discussion and controversy. Some scholars admonished it would have an immediate, negative impact on school integration. As this research has shown, the principal agent relationship that exists between the Court and school districts has allowed multiple principals to persuade the school districts to not only continue integration plans, but to continue race-conscious policies. Multiple principals might not offer incentives to shirk the Court’s opinion; but they offer a balance between the Court’s opinion, and the needs of the local school district.

For example, in Seattle, state officials and local residents offered sanctions in the form of legal challenges, and legislation against Seattle’s racial tiebreakers. However, these sanctions existed prior to the Court’s decision. Therefore, Seattle’s multiple principals did not help the school district to shirk the Court’s decision, but rather inadvertently helped the school district adhere to the decision. As the Seattle school official stated, the Court’s decision did not impact their plans because they had already altered their plans to match the preferences of their local principals (residents). Seattle is an example of local principals directing the school district to adhere to the needs of the local community, which happen to align with the Court’s decision.

In Jefferson County, the district altered its plan to integrate using attendance zoning that is conscious of residential segregation. Aspects of Jefferson County’s interim desegregation strategy were mentioned in Kennedy’s opinion. Ted Gordon and other residents disagree with the holistic approach of using race-conscious and race neutral measures equally because it does not coincide with Chief Justice Robert’s opinion.
However, the ambiguity inherent in the plurality opinion has allowed Jefferson County to strike a balance. Jefferson County is still focusing on racial integration because of its historical plight with segregation; however, the County is not looking at an individual’s race as a sole deciding factor in school assignments.

In Lynn and Monroe County, the principals are offering monetary incentives instead of sanctions to shirk the Court’s decision. In the Lynn School District, the challenge to Lynn’s plan could negatively affect state legislation (Racial Imbalance Act), and state funded integration programs (Metco). The principals impacting the Lynn School District are invested in maintaining the constitutionality of state legislation and state programs. Their incentives are for Lynn to shirk the Court’s decision. In Monroe County, the state of New York continues to financially support the interdistrict transfer plan. The state’s monetary incentive is particularly important for Monroe County with its current battles in school funding. Now more than ever, Monroe County has the incentive to remain racially integrated in order to acquire extra state funding.

Chief Justice Roberts’s opinion addressed the need for “colorblind” or race neutral solutions to school integration. The following final chapter of this thesis will discuss the most widely used race-neutral alternative, socioeconomic integration. The first section discusses the arguments and supporting evidence for the use of socioeconomic status instead of race for school integration. The second section counters the first, with arguments for why socioeconomic policies will not meet the same goals of racial diversity as race-conscious policies. Finally, the third sections offers suggestions for future research and discussion of the best ways to create educational equality through racial diversity.
Chapter 7
Race Neutral Alternatives: The Socioeconomic Integration Debate

“...Probably the most important thing you can do to raise the achievement of low-income students is to provide them with middle-class schools.” – Richard Kahlenberg

“...The gap in poverty rates between schools and their corresponding neighborhoods is greater in schools with higher percentages of non-white children than it is in areas with higher percentages of white children.” – Salvatore Saporito and Deenesh Sohoni

“Mapping Educational Inequality”

Race Neutral Alternatives: Socioeconomic Integration

The opening quotes from Richard Kahlenberg, Salvatore Saporito, and Deenesh Sohoni offer insight into the conflict over the future of school integration, and the use of socioeconomic status instead of race. Century Foundation Scholar, Richard Kahlenberg believes controlled-choice programs that use socioeconomic integration are the answer to providing educational equality. In fact, he purports that creating middle class schools is a better and more effective educational goal than racial integration. In his book, All Together Now, he criticizes Brown as “primarily concerned with dismantling segregation, not creating an optimal educational environment.”

Supporting research has shown that, “involuntary desegregation programs appear to weaken the link between the quality of schooling experienced by blacks and their nonwhite schoolmates.” Some argue that race and economic status are so intertwined that a socioeconomic tiebreaker or integration program would achieve racial diversity as well as class diversity.

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168 Kahlenberg, All Together Now 111.

Socioeconomic diversity is important and has had positive academic outcomes for minorities. The Harvard Civil Rights Project reported that, “minority students who attend middle-upper class schools had higher educational achievement, and college attendance rates than their peers concentrated in poverty.” Proponents argue that class integration is the future of school integration.

Kahlenberg cites a number of successful controlled choice, socioeconomic integration programs in La Crosse, Wisconsin; Manchester, Connecticut; South Orange-Maplewood, New Jersey; Coweta County, Georgia, and Wake County in Raleigh, North Carolina. Wake County is deemed the model of economic integration success.

In 2000, the Wake County School Board adopted a new integration plan. Its original race conscious plan mandated each school to be composed of 15 percent to 45 percent minorities. The replacement plan focused on socioeconomic integration. For seven years, since the adoption of the new plan, Wake has sought to have its 143 schools with a proportion of low-income students around 40 percent. Additionally, no one school can have more than 25 percent of its students performing below grade level. To achieve this balance the district created magnet schools to attract affluent students to lower income areas. They also employed busing. The short-term achievement gains of the students are notable. In 1995, only 40 percent of black students in grades 3 through 8 scored at grade level. In the spring of 2006, 82 percent of black students were at grade level. Wake has improved student academic outcomes without race-based assignments.

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170 Orfield, Why Segregation Matters 16.
172 Ibid. 7.
The Argument Against Socio Economic Integration as a Race Neutral Alternative

The counter argument to Wake County’s success is the increase in minority isolation since the implementation of the socioeconomic plan. The NAACP Legal Defense and Educational Fund released an updates report entitled, “Still Looking Toward the Future: Voluntary K-12 School Integration.” The report notes that even Wake County’s successful use of socioeconomic integration has some setbacks. In 2003, 39 percent of African American students attended schools with 50 percent or more minority enrollment, in comparison with 21 percent of African American students in 1999. The report cites three reasons why race neutral plans alone are inadequate in integrating schools:

1. Income and race are not proxies for one another for a number of reasons including the flawed free or reduced-price lunch measure for socioeconomic status. 2. Residential segregation is driven by race much more strongly than class. Therefore race neutral policies in neighborhood school assignment plans will not lead to significant desegregation. 3. Each school district is different and requires a plan shaped to meet their demographic needs. While small, predominately white student enrolled school systems might have success with race-neutral plans other districts might struggle.

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174 See Appendix Tables 10 and 11 for Wake County Academic Outcome Data.
176 Ibid. 93.
A recent article evaluated the impact of income-based school assignment policies on racial integration. The researchers found that socioeconomic integration did not lead to much if any racial integration. To see any correlation between socioeconomic and racial integration the integration plan would have to use exact family income levels instead of “dichotomous measures” such as poverty status or free and reduced price lunch eligibility. School districts are generally limited in their ability to procure the exact income levels of parents. Therefore, common forms of socioeconomic integration are not as effective at racially integrating schools.

New York Times reporters, Jonathan D. Glater and Alan Finder, wrote about the impact of the San Francisco School District’s income-based integration plan. For over 20 years San Francisco’s School District has been under a court order to desegregate. Abraham Lincoln High School in San Francisco is an example of a school with great income diversity. The school has a reputation for its number of Advance Placement courses and other programs. However, 50 percent of the students are Chinese. The principal, Ronald J.K. Pang told the reporters, “If you look at diversity based on race, the school hasn’t been as integrated. If you don’t look at race, the school has become much more diverse.” The district began using socioeconomic status in response to a complaint about the use of race. Glater and Finder noted increases in the number of schools with 60 percent or more students of a single racial or ethnic group making up at least one grade. In 2005-2006, about 50 schools were segregated according to a court-
appointed monitor. In 2000, 30 schools were segregated, thus the number of segregated schools has nearly doubled in 5 years.

Chris Kenning, a journalist at Jefferson County’s Courier Journal reported on West Charlotte School District in North Carolina. West Charlotte was a part of a large unified school district similar to Jefferson County. In the 1970s, the U.S. Supreme Court upheld Charlotte’s mandatory busing program in the landmark desegregation case *Swann v. Charlotte-Mecklenburg*, 402 U.S. 1(1971). The district was a symbol of positive desegregation results. Around 2002, the school district’s mandatory busing plan was challenged, and the district stopped using race-conscious assignments. The school district has now resegregated as middle-class families have left the school district. The district is 64.2 percent minorities, with 45.7 percent African American and 12 percent Hispanic students.

Table 7.1 contains academic outcome data that reveals the potential impact of resegregated schools on students in Charlotte-Mecklenburg. In 2002, the year the school district ended race conscious integration measures 86.5 percent of 5th grade students were proficient in math. In 2006 only 67.4 percent of 5th grade students were proficient. However, the decline in 5th grade proficiency is only part of the story. Reading the chart diagonally reveals the proficiency data of cohorts of students. For example, 5th grade students in 2002 were 86.5 percent proficient in math. In 2003, the same cohort, in 6th grade was 86 percent proficient in math. In 2004, the same cohort, in 7th grade was 81.4

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179 Ibid. 2.
180 Ibid. 2.
<http://www.schoolmatters.com>
percent proficient in math. Declining proficiency rates among entire cohorts of students is a trend for nearly every cohort listed.

Table 7.1
Charlotte-Mecklenburg Math Proficiency Over Time\textsuperscript{182}

<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
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<tr>
<td>Grade 5</td>
<td>86.5</td>
<td>88.8</td>
<td>92</td>
<td>89.9</td>
<td>67.4</td>
</tr>
<tr>
<td>Grade 6</td>
<td>85.3</td>
<td>86</td>
<td>87.5</td>
<td>87</td>
<td>61.5</td>
</tr>
<tr>
<td>Grade 7</td>
<td>79.4</td>
<td>80.4</td>
<td>81.4</td>
<td>82.1</td>
<td>58.3</td>
</tr>
<tr>
<td>Grade 8</td>
<td>79</td>
<td>79.1</td>
<td>82.2</td>
<td>80.5</td>
<td>61.8</td>
</tr>
</tbody>
</table>

Charlotte is described as, “a cautionary tale for the entire nation” by Reverend William Barber, the president of the North Carolina NAACP. The number of schools with high concentrations of the poor has more than doubled from the 2001-2002 school year, from 17 to 38\textsuperscript{183} The response of the community is mixed to Charlotte’s changes. Pam Grundy, a Charlotte parent and historian said, “If there's a warning for Louisville (Jefferson County), it's that once you lose the diversity, it's almost impossible to get it back.”\textsuperscript{184}

However, Grundy’s admonishment represents only one perspective in Charlotte. Lori Carter, a PTA President at Hawk Ridge Elementary School believes diversity is not as important as under funded and overcrowded neighborhood schools. For Carter, mandatory busing is inconsequential in comparison to other school equity issues. She stated, “I don't want my kids to be on a bus for 45 minutes to go to school … on the other

\textsuperscript{182} Ibid. 2.
\textsuperscript{183} Kenning 1.
\textsuperscript{184} Ibid 1.
side of town. A racial mix shouldn't matter a darn bit.”¹⁸⁵

However, research has shown that racial isolation does matter. In “Mapping Educational Inequalities,” Salvatore Saporito and Deneesh Sohoni found that:

The typical white child lives in a school attendance boundary in which 20 percent of the children are poor. But the typical white public school student attends a school in which 38 percent of the children are poor. The typical black or Hispanic child lives in an attendance boundary in which 36 percent of the children are poor, the typical black or Hispanic public school student attends a school in which 63 percent of the students are poor.¹⁸⁶

While socioeconomic status is an important measure of diversity, minority racial status remains a strong indicator of poor schools. If school districts use socioeconomic based choice programs incredible and potentially harmful amounts of racial segregation will remain. Poverty not only impacts minorities more frequently in public schools, but school choice seems to lead to forms of self-segregation. The choice process for some parents is racially motivated. In “School Selection as a Process: The Multiple Dimensions of Race in Framing Educational Choice,” Salvatore Saporito and Annette Lareau find that “white families avoid ‘black’ schools. They do so even when these ‘black’ schools have substantial numbers of affluent, academically able students.”¹⁸⁷ Saporito and Lareau argue that the assumption that school choice will lead to racial integration because families have a race neutral selection process is not true.

¹⁸⁵ Ibid. 2.
¹⁸⁶ Saporito and Sohoni 1246.
The discourse over racial and socioeconomic integration is critical to the formation of beneficial education policy and reform. In the beginning of this thesis, I highlighted Gary Orfield’s research and others that verified the incredible impact of racially integrated learning environments for minority students. The frustration of many parents has caused doubt in the importance of racial integration. Future research must address the concerns and frustrations of parents and other principals with academic and behavioral outcome data that quantifies the impact of racial integration versus socioeconomic integration.

**Suggestions for Future Research on School District Behavior and the Court**

Several variables were revealed through this research that could not be quantified in the study. Future research on school district behavior and the Courts should look at the impact of political affiliation or ideology and the impact of multiple principals. Does a certain ideology have more or less power to influence the school district? What racial integration plans are the most effective at desegregating as well as improving student achievement? Time is another important variable to research in relation to school district behavior. On average, how long does it take from the Court’s decision for school districts to address their race conscious integration plan? Are schools in certain geographical regions more likely to address their plans first or last? Does the categorization of a district as rural, urban or suburban influence the time it takes to address integration?

Future research on school integration is vital to the development of educational equality that takes into account the limitations of race neutral plans, and the constitutional constraints on race conscious plans. A comparison between the responses of school districts with integration plans that have not been challenged before the Supreme Court’s
decision versus those that were upheld before the Court’s decision would provide additional information on school district behavior. Time restricted the number and type of school districts for this research. A longitudinal study would provide an in depth look into the impact of the decision in relation to how attitudes, discussion and methods of implementation change over time toward certain integration plans.

Additional research focused on implementation and outcomes of integration plans are imperative to explore in relation to changing integration plans. Outcome-based studies on the impact of race-conscious voluntary integration plans are key. For example, research on the correlation between race-conscious integration plans, and dropout rates for minority students. Previous research based on mandatory desegregation in the 60s, 70s and early 80s found that desegregation plans led to declines in the dropout rates of black students.\(^\text{188}\) Research utilizing the data and methods in this study could compare whether present voluntary integration plans have the same effect. Other outcomes to assess include the impact of race-conscious versus race neutral plans on standardized testing, SAT scores, GPA, and other academic measures.

Tangential studies of interest include the behavioral outcomes for students in integrated environments in comparison with students in isolated schools when socioeconomic status is controlled. There is some prior research on segregation, and its impact on African American students’ behavioral outcomes. One study by David and Tamela Eitle looked as segregation and school violence. They found that desegregation under improper conditions could increase the rate of school violence for African

Desegregation under improper conditions referred to what the authors identified as second-generation school discrimination. Second generation discrimination is school segregation tactics such as “ability grouping, curriculum tracking, and discriminatory use of suspensions and expulsions for minority group members” within “desegregated schools.” Desegregation programs that ignore discrimination within schools result in negative outcomes. In the past, federal mandates, such as mandatory busing, resulted in greater discontent and protesting than local mandates that acknowledged the history of the local community. There is not a one-size fit all solution for school integration, which is why some worried about the limitations created in Parents to integrate schools. However, this research supports the claim that local multiple principals with incentives and sanctions will ultimately impact the behavior of school districts, and their willingness to comply with the Supreme Court’s decision.

Finally, future research should focus on the disproportionate number of African Americans in the penal justice system. A recent study by the Pew Foundation reported that 1 in 106 white men ages 18 and older were incarceration in comparison to 1 in 15 African American men age 18 or older. When age is increased to 20 and over, 1 in 9 African American males are incarcerated. There is research to suggest that integration reduced the rates of adult incarceration for black students. Current research on the

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190 Eitle and McNulty Eitle, 590.
193 Ibid. 6
impact of racial isolation on students in the juvenile justice system would be fascinating and timely considering incarceration rates are reaching epidemic proportions for African Americans in the United States.

**Conclusion: Seattle, Lynn, Jefferson County, and Monroe County in Review**

The Seattle, Lynn, Jefferson County, and Monroe County School districts remain models of school integration. Their support for racial integration is notable in the first year following the U.S. Supreme Court’s decision. The future of racial integration in these districts, as in other districts, will depend on several factors. Residential segregation, racial isolation, and a lack of affordable housing remain barriers to the colorblind policies outlined by the plurality of the Court. Over the next several years the complex principal agent relationship between the U.S. Supreme Court and school districts will become even more pertinent as increasing resegregation is admonished to occur without stronger support for desegregation. The promise of *Brown* was not dismantled by the *Parents* decision. However, millions of children’s education, career attainment, and social mobility rest in the hands of school districts across the country. Thus research must continue to actively seek the best means to increase diversity and educational equality for all children.
Appendix^{195}

Table 1. School District Classroom Comparison for Seattle, Lynn, and Jefferson County

Table 2. School District Community Comparison for Seattle, Lynn, and Jefferson County

Table 3. School District Income Data for Seattle, Lynn, and Jefferson County

Table 4. School District Racial Demographic Data for Seattle, Lynn, and Jefferson County

Table 5. Monroe County School Districts Classroom Comparison

Table 6. Monroe County School Districts Community Comparison

Table 7. Monroe County School Districts Income Data

Table 8. Monroe County School Districts Racial Demographic Data

Table 9. Supreme Court Cases & Corresponding Desegregation Plans

Table 10. Wake County Math Proficiency 5^{th}-8^{th} Grade

Table 11. Wake County Reading Proficiency 5^{th}-8^{th} Grade

Cases Cited

References

^{195} The Following School District data is from School Matter: A Service of Standard and Poor’s, a division of the McGraw-Hill Companies, Inc. 2008 http://www.schoolmatters.com
### Table 1. School District Comparison for Seattle, Lynn, and Jefferson County

**Classroom Comparison of School Districts**

<table>
<thead>
<tr>
<th>School District</th>
<th>Seattle No.1</th>
<th>Lynn</th>
<th>Jefferson</th>
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<tr>
<td>District Enrollment</td>
<td>46,085</td>
<td>13,955</td>
<td>92,090</td>
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<tr>
<td>Economically disadvantaged</td>
<td>40.3%</td>
<td>75.1%</td>
<td>58.5%</td>
</tr>
<tr>
<td>Reading Proficiency</td>
<td>75.2%</td>
<td>47.6%</td>
<td>63.9%</td>
</tr>
<tr>
<td>Math Proficiency</td>
<td>55.5%</td>
<td>38.3%</td>
<td>52.4%</td>
</tr>
</tbody>
</table>

### Table 2. School District Comparison for Seattle, Lynn, and Jefferson County

**Community Comparison of School Districts**

<table>
<thead>
<tr>
<th>School District Data</th>
<th>Seattle No.1</th>
<th>Lynn</th>
<th>Jefferson</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Households</td>
<td>263,054</td>
<td>34,271</td>
<td>288,674</td>
</tr>
<tr>
<td>Single-parent Households</td>
<td>5.7%</td>
<td>12.6%</td>
<td>12.5%</td>
</tr>
<tr>
<td>Adults with at least a High school Diploma</td>
<td>91.9%</td>
<td>86.9%</td>
<td>87.0%</td>
</tr>
<tr>
<td>Adults with at least a Bachelor’s Degree</td>
<td>53.8%</td>
<td>28.1%</td>
<td>28.9%</td>
</tr>
</tbody>
</table>

---

Table 3. School District Community Comparison for Seattle, Lynn and Jefferson County Income Data represented in Percentages (%)\textsuperscript{197}

<table>
<thead>
<tr>
<th>Income Data in $</th>
<th>Seattle</th>
<th>Lynn</th>
<th>Jefferson</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-14,999</td>
<td>13.1</td>
<td>19.9</td>
<td>15.6</td>
</tr>
<tr>
<td>15,000-29,999</td>
<td>15.1</td>
<td>17.4</td>
<td>18.1</td>
</tr>
<tr>
<td>30,000-49,999</td>
<td>20.5</td>
<td>20.5</td>
<td>21.5</td>
</tr>
<tr>
<td>50,000-74,999</td>
<td>18.5</td>
<td>18.2</td>
<td>19.1</td>
</tr>
<tr>
<td>75,000-99,999</td>
<td>12</td>
<td>11.5</td>
<td>10.7</td>
</tr>
<tr>
<td>100,000-149,000</td>
<td>12.2</td>
<td>9.4</td>
<td>9.2</td>
</tr>
<tr>
<td>150,000+</td>
<td>8.7</td>
<td>3.2</td>
<td>5.7</td>
</tr>
</tbody>
</table>

Table 4. School District Racial Demographic Data for Seattle, Lynn, and Jefferson County Represented in Percentages (%)

<table>
<thead>
<tr>
<th></th>
<th>Seattle</th>
<th>Lynn</th>
<th>Jefferson</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>42.4</td>
<td>30.2</td>
<td>56.0</td>
</tr>
<tr>
<td>Black</td>
<td>21.8</td>
<td>13.3</td>
<td>35.7</td>
</tr>
<tr>
<td>Hispanic</td>
<td>11.4</td>
<td>42.4</td>
<td>3.6</td>
</tr>
<tr>
<td>Asian</td>
<td>22.3</td>
<td>N/A</td>
<td>2.2</td>
</tr>
<tr>
<td>American Indian</td>
<td>2.2</td>
<td>.3</td>
<td>.1</td>
</tr>
<tr>
<td>Multi-racial</td>
<td>N/A</td>
<td>3.4</td>
<td>N/A</td>
</tr>
</tbody>
</table>

\textsuperscript{197} Source: School Matters: A Service of Standard and Poor’s, a division of the McGraw-Hill Companies, Inc. 2008  \url{http://www.schoolmatters.com}  15 Feb 2008
Table 5. Monroe County School Districts’ Data Classroom Comparison

<table>
<thead>
<tr>
<th>School District Data</th>
<th>Rochester</th>
<th>West Irondequoit</th>
<th>Brighton</th>
<th>Brockport</th>
<th>Fairport</th>
<th>Pittsford</th>
<th>Penfield</th>
<th>Wheatland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enrollment</td>
<td>34,096</td>
<td>3,942</td>
<td>3,604</td>
<td>4,255</td>
<td>7,129</td>
<td>6,006</td>
<td>4,842</td>
<td>825</td>
</tr>
<tr>
<td>Total Expenditures</td>
<td>$15,865</td>
<td>$14,162</td>
<td>$14,381</td>
<td>$13,048</td>
<td>$11,861</td>
<td>$22,417</td>
<td>$13,468</td>
<td>$16,476</td>
</tr>
<tr>
<td>Economically Disadvantage</td>
<td>72.4%</td>
<td>12.5%</td>
<td>6.7%</td>
<td>27.2%</td>
<td>8.0%</td>
<td>2.6%</td>
<td>8.0%</td>
<td>28.6%</td>
</tr>
<tr>
<td>Reading Proficiency</td>
<td>38.4%</td>
<td>79.3%</td>
<td>86.2%</td>
<td>73.6%</td>
<td>77.1%</td>
<td>89.1%</td>
<td>80.2%</td>
<td>73.3%</td>
</tr>
<tr>
<td>Math Proficiency</td>
<td>34.8%</td>
<td>84.2%</td>
<td>86.9%</td>
<td>78.2%</td>
<td>81.6%</td>
<td>91.4%</td>
<td>76.9%</td>
<td>71.7%</td>
</tr>
</tbody>
</table>

Table 6. Monroe County School Districts’ Data Community Comparison

<table>
<thead>
<tr>
<th>School District Data</th>
<th>Rochester</th>
<th>West Irondequoit</th>
<th>Brighton</th>
<th>Brockport</th>
<th>Fairport</th>
<th>Pittsford</th>
<th>Penfield</th>
<th>Wheatland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Households</td>
<td>87,164</td>
<td>9,841</td>
<td>10,688</td>
<td>9,024</td>
<td>15,669</td>
<td>11,471</td>
<td>11,893</td>
<td>2,468</td>
</tr>
<tr>
<td>Single-parent Households</td>
<td>22.7%</td>
<td>7.9%</td>
<td>6.6%</td>
<td>11.1%</td>
<td>7.3%</td>
<td>5.1%</td>
<td>7.5%</td>
<td>12.5%</td>
</tr>
<tr>
<td>Adults with at least a High school Diploma</td>
<td>80.9%</td>
<td>91.7%</td>
<td>94.9%</td>
<td>90.8%</td>
<td>95.4%</td>
<td>96.4%</td>
<td>94.5</td>
<td>92.2%</td>
</tr>
<tr>
<td>Adults with at least a Bachelor’s Degree</td>
<td>23.7%</td>
<td>37.5%</td>
<td>62.0%</td>
<td>29.4%</td>
<td>50.5%</td>
<td>64.2%</td>
<td>49.5</td>
<td>33.4%</td>
</tr>
</tbody>
</table>

Table 7. Monroe County School Districts’ Comparison Income Data represented in Percentages (%) 199

<table>
<thead>
<tr>
<th>Income Data in $</th>
<th>Rochester</th>
<th>West Irondequoit</th>
<th>Brighton</th>
<th>Brockport</th>
<th>Fairport</th>
<th>Pittsford</th>
<th>Penfield</th>
<th>Wheatland</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-14,999</td>
<td>26.5</td>
<td>6.8</td>
<td>6.5</td>
<td>10.9</td>
<td>5.1</td>
<td>3.1</td>
<td>5.5</td>
<td>7.6</td>
</tr>
<tr>
<td>15,000-29,999</td>
<td>22.7</td>
<td>14.4</td>
<td>12.3</td>
<td>14.8</td>
<td>10.9</td>
<td>7.4</td>
<td>11.5</td>
<td>13.7</td>
</tr>
<tr>
<td>30,000-49,999</td>
<td>21.3</td>
<td>19.9</td>
<td>19.3</td>
<td>19.3</td>
<td>13.2</td>
<td>10.7</td>
<td>17.4</td>
<td>21.8</td>
</tr>
<tr>
<td>50,000-74,999</td>
<td>15.3</td>
<td>22.8</td>
<td>20.8</td>
<td>23.7</td>
<td>17.8</td>
<td>15</td>
<td>19.1</td>
<td>22.1</td>
</tr>
<tr>
<td>75,000-99,999</td>
<td>7.1</td>
<td>16.2</td>
<td>12.8</td>
<td>15.5</td>
<td>18</td>
<td>13</td>
<td>15.3</td>
<td>15.1</td>
</tr>
<tr>
<td>100,000-149,000</td>
<td>4.9</td>
<td>14.2</td>
<td>16</td>
<td>12.7</td>
<td>21.3</td>
<td>23.5</td>
<td>19.3</td>
<td>14.5</td>
</tr>
<tr>
<td>150,000+</td>
<td>2.2</td>
<td>5.8</td>
<td>12.5</td>
<td>3.1</td>
<td>13.7</td>
<td>27.2</td>
<td>11.8</td>
<td>5.3</td>
</tr>
</tbody>
</table>

Table 8. Monroe County School Districts’ Racial Demographic Data in Percentages (%)

<table>
<thead>
<tr>
<th>Race</th>
<th>Rochester</th>
<th>West Irondequoit</th>
<th>Brighton</th>
<th>Brockport</th>
<th>Fairport</th>
<th>Pittsford</th>
<th>Penfield</th>
<th>Wheatland</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>12.2</td>
<td>86.0</td>
<td>77.6</td>
<td>89.6</td>
<td>90.3</td>
<td>89.9</td>
<td>89.6</td>
<td>87.6</td>
</tr>
<tr>
<td>Black</td>
<td>65.6</td>
<td>7.4</td>
<td>6.6</td>
<td>5.0</td>
<td>3.7</td>
<td>2.7</td>
<td>3.6</td>
<td>9.1</td>
</tr>
<tr>
<td>Hispanic</td>
<td>20.3</td>
<td>4.3</td>
<td>2.9</td>
<td>3.6</td>
<td>1.7</td>
<td>1.2</td>
<td>2.5</td>
<td>1.9</td>
</tr>
<tr>
<td>Asian</td>
<td>1.6</td>
<td>2.2</td>
<td>12.6</td>
<td>1.3</td>
<td>4.2</td>
<td>6.2</td>
<td>4.3</td>
<td>1.3</td>
</tr>
<tr>
<td>American Indian</td>
<td>0.3</td>
<td>0.2</td>
<td>0.3</td>
<td>0.5</td>
<td>0.2</td>
<td>0.1</td>
<td>0.1</td>
<td>N/A</td>
</tr>
</tbody>
</table>

### Table 9. U.S. Supreme Court Cases and Corresponding Desegregation Plans

<table>
<thead>
<tr>
<th>Types of Desegregation Plans</th>
<th>Court Cases</th>
</tr>
</thead>
</table>
| **Massive Resistance**       | • Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964)  
                               • Cooper v. Aaron, 358 U.S. 1 (1958) |
                               • Green v. New Kent County School Board, 391 U.S. 430 (1968)  
| **Mandatory Busing**         | • Swann v. Charlotte Mecklenburg, 402 U.S. 1971  
### Table 10. Wake County Math Proficiency 5th-8th Grades in Percentages (%)\(^{200}\)

<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grade 5</td>
<td>93.8</td>
<td>93.3</td>
<td>95</td>
<td>93.9</td>
<td>72.8</td>
</tr>
<tr>
<td>Grade 6</td>
<td>90.2</td>
<td>89.9</td>
<td>91.5</td>
<td>92.5</td>
<td>73.1</td>
</tr>
<tr>
<td>Grade 7</td>
<td>90.3</td>
<td>86.3</td>
<td>87.7</td>
<td>88.5</td>
<td>72.6</td>
</tr>
<tr>
<td>Grade 8</td>
<td>88.4</td>
<td>87.1</td>
<td>87.4</td>
<td>87.7</td>
<td>71.8</td>
</tr>
</tbody>
</table>

### Table 11. Wake County Reading Proficiency 5th-8th Grades in Percentages (%)

<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grade 5</td>
<td>92.2</td>
<td>91.3</td>
<td>93.1</td>
<td>93.7</td>
<td>91.8</td>
</tr>
<tr>
<td>Grade 6</td>
<td>82.8</td>
<td>85.8</td>
<td>86.4</td>
<td>87.4</td>
<td>88</td>
</tr>
<tr>
<td>Grade 7</td>
<td>86.7</td>
<td>88.4</td>
<td>89.4</td>
<td>89.9</td>
<td>90.7</td>
</tr>
<tr>
<td>Grade 8</td>
<td>91.4</td>
<td>90.5</td>
<td>91</td>
<td>91.4</td>
<td>90.9</td>
</tr>
</tbody>
</table>

\(^{200}\) **Source:** School Matters: A Service of Standard and Poor’s, a division of the McGraw-Hill Companies, Inc. 2008 [http://www.schoolmatters.com](http://www.schoolmatters.com) 15 Feb 2008
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Brewer v. West Irondequoit Central School Dist., 212 F.3d 738 (2d Cir. 2000).


Comfort VI. 418 F. 3d 1 (1 Cir. 2005) (en banc)

Comfort VII. 418 F. 3d 1 (1st Cir. 2005).


Cooper v. Aaron, 358 U.S. 1, Supreme Ct. of the U.S. 12 September 1958.


Forest City Daly Hose., Inc. v. Town of North Hempstead, 175 F.3d 144, 149 (2d Cir. 1999).


Ho v. San Francisco Unified District 147 F. 3d 854 (9th Cir. 1998).


McFarland v. Jefferson County Public Schools aff’d. 416 F. 3d 513 (6th Cir. 2006).


Newburg Area Council, INC et al. v. Board of Education of Jefferson County, 489 F. 2d 925, 932 (6th Cir. 1973),


Parents Involved in Community Schools v. Seattle School District No. 1, 137 F. Supp. 2d 1224, 1240 (W.D. Wash. 2001)

PICS II. 1 285 F.3d 1236 (2002)

PICS III. 294 F.3d 1084 (9th Cir. 2002)

PICS IV. 72 P. 3d 151, 166 (Wash. 2003)

PICS V. 377 F.3d 949 (9th Cir. 2004)

PICS VI. 426 F. 3d 1162, 1166 (9th Cir. 2005) En banc court panel


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