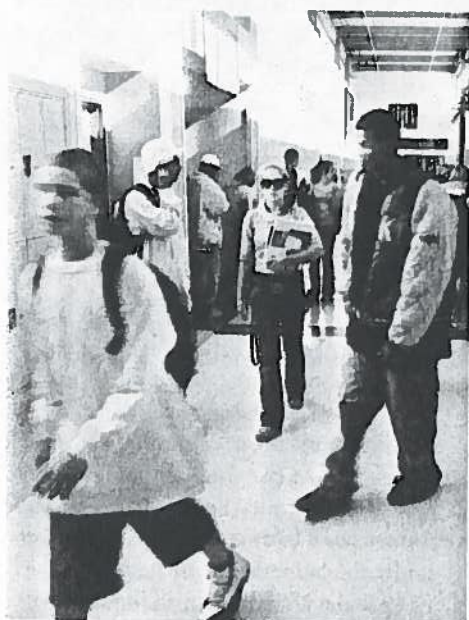


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Racial Diversity in Public Schools

*Has the Supreme Court Dealt
a Blow to Integration?*

Kenneth Jost



AP Photo/Ted S. Warren

White enrollment at Seattle's Ballard High School is above previous guidelines five years after a racial-diversity plan was suspended because of a legal challenge. The Supreme Court's June 28 decision invalidating racial-balance plans in Seattle and Louisville, Ky., bars school districts from using race for student-placement decisions but may permit some race-conscious policies to promote diversity.

From *CQ Researcher*,
September 14, 2007.

Hannah MacNeal's parents were glad to learn of an opening at the popular magnet elementary school near their upscale neighborhood in eastern Louisville, Ky. When they applied in mid-August for Hannah to enroll as a fourth-grader at Greathouse/Shryock Elementary, however, school system officials said she could not be admitted.

The reason: Hannah is white.

Only six weeks earlier, the U.S. Supreme Court had ruled that Jefferson County Public Schools (JCPS) — which includes Louisville — was violating the Constitution by assigning students to schools on the basis of their race.

Hannah's stepmother, Dana MacNeal, was surprised and upset when she learned Hannah would have been admitted to the school if she had been black. And she was all the more upset when JCPS Student Placement Director Pat Todd insisted on Aug. 14 that the Supreme Court ruling allowed the school system to continue maintaining separate attendance zones for black and white students for Greathouse/Shryock and two of the system's other three magnet elementary schools.

The school system's lawyers were surprised as well to learn of the policy. After the MacNeals decided to fight the decision keeping Hannah in her regular elementary school, officials agreed to enroll her at Greathouse/Shryock and scrap the racially separate boundary zones beginning in 2008.¹

"Of course, they backed off from the position, knowing they were wrong," says Louisville attorney Ted Gordon, who represented

School Racial-Balance Plans in Louisville and Seattle

The Supreme Court's June 28, 2007, ruling on the school racial-diversity plans in Seattle and Jefferson County (Louisville) bars the use of racial classifications in individual pupil assignments but appears to permit some "race-neutral" policies aimed at racial diversity.

Jefferson County (Louisville) (98,000 students; 35 percent African-American)

History: County was racially segregated before *Brown v. Board of Education* ruling; court-ordered desegregation plan in 1975 called for crosstown busing between predominantly African-American West End and mainly white neighborhoods in eastern suburbs; court order dissolved in 2000; school board adopts pupil-assignment plan with use of racial classifications to promote diversity; assignment plan still in effect after Supreme Court decision, pending new plan expected for 2009-2010 academic year.

Details: Plan classifies students as "black" or "white" (including Asians, Hispanics and others); guidelines call for each elementary, middle or high school to have between 15 percent and 50 percent African-American enrollment; residence-based system assigns students to school within residential "cluster"; most West End neighborhoods assigned to schools outside area; student applications for transfer from assigned school evaluated on basis of several factors, including effect on racial makeup; under Supreme Court decision, individual transfer requests will no longer be denied on basis of race.

Seattle (45,000 students; 58 percent "non-white")

History: No history of mandatory segregation, but racially identifiable neighborhoods: predominantly black south of downtown, predominantly white to the north; racial-balance plan with crosstown busing voluntarily adopted in 1978; school choice introduced in 1990s, with race as one "tiebreaker" to distribute students among oversubscribed schools; school board suspended the plan in 2002 because of legal challenge; Supreme Court ruling held plan invalid.

Details: Ninth-graders permitted to apply to up to three of district's 10 high schools; tiebreakers used for applications to oversubscribed schools; sibling preference was most important factor, race second; race used if school's enrollment deviated by specified percentage from overall racial demographics: 40 percent white, 60 percent non-white.

the MacNeals in the latest round in his long-running battle to overturn Jefferson County's school racial-diversity policies. "They have to follow the law."

The Supreme Court's fractured ruling struck down pupil-assignment policies adopted in 2000 limiting African-American enrollment at any individual school in Jefferson County to between 15 percent and 50 percent of the student body. The ruling also rejected the Seattle school system's use of race as a "tiebreaker" for assigning students to high schools; the plan had been suspended in 2002 because of the litigation.² (See box, above.)

In response to the MacNeals' case, Todd's office drew up new boundary zones for the four magnet elementary schools that were approved by the school board on Sept. 10. For the longer term, officials are trying to find ways to

maintain a measure of racial balance in the 98,000-student school system under the Supreme Court decision, which bars the use of racial classifications in individual pupil assignments but appears to permit some "race-neutral" policies aimed at racial diversity. (See box, p. 72.)

"We are going to do our best to achieve it," says JCPS Superintendent Sheldon Berman. "We are deeply committed to retaining the qualities of an integrated environment."

The court's June 28 decision dealt a blow to hundreds of school systems around the country that have adopted voluntary race-mixing plans after court-ordered desegregation plans lapsed in recent years.

Five of the justices — led by Chief Justice John G. Roberts Jr. — said using racial classifications in pupil

assignments violated the Equal Protection Clause of the 14th Amendment. That is the same provision the court cited a half-century earlier in the famous *Brown v. Board of Education* (1954) ruling that found racial segregation in public schools unconstitutional.³

In a strong dissent, the court's four liberal justices — led by Stephen G. Breyer — said the ruling contradicted previous decisions upholding race-based pupil assignments and would hamper local school boards' efforts to prevent "resegregation" in individual schools. But one of the justices in the majority — Anthony M. Kennedy — joined the liberal minority in endorsing racial diversity as a legitimate goal. Kennedy listed several "race-neutral" policies, such as drawing attendance zones or building new schools to include students from different racial neighborhoods, that schools could adopt to pursue the goal.

The ruling drew sharp criticism from traditional civil rights advocates. "It's preposterous to think the 14th Amendment was designed to permit individual white parents to strike down a plan to help minority students have better access to schools and to prevent school districts from having integrated schools that are supported by a majority of the community," says Gary Orfield, a longtime civil rights advocate and director of the Civil Rights Project at UCLA's Graduate School of Education and Information Sciences.

Ted Shaw, president of the NAACP Legal Defense Fund, said the ruling blocks school boards from using "one of the few tools that are available" to create racially diverse schools. "The court has taken a significant step away from the promise of *Brown*," says Shaw. "And this

Racial Classifications Barred But Diversity Backed

The Supreme Court's June 28 decision in *Parents Involved in Community Schools v. Seattle School District No. 1* invalidating pupil-assignment plans in Seattle and Louisville bars school systems from assigning individual students to schools based on their race. In a partial concurrence, however, Justice Anthony M. Kennedy joined with the four dissenters in finding racial diversity to be a legitimate government interest and in permitting some race-conscious policies to achieve that goal.

Roberts (plurality opinion)



"Racial balancing is not transformed from 'patently unconstitutional' to a compelling state interest simply by relabeling it 'racial diversity.'"

Kennedy (concurring in part)



"... [A] district may consider it a compelling interest to achieve a diverse student body. Race may be one component of that diversity. ... What the government is not permitted to do ... is to classify every student on the basis of race and to assign each of them to schools based on that classification."

Breyer (dissenting)



"The plurality ... undermines [*Brown v. Board of Education*]'s promise of integrated primary and secondary education that local communities have sought to make a reality. This cannot be justified in the name of the Equal Protection Clause."

Credits: AFP/Getty Images/Paul J. Richards (Alito, Kennedy, Roberts, Souter, Scalia, Thomas); Getty Images/Mark Wilson (Ginsburg, Stevens); AFP/Getty Images/Brendan Smialowski (Breyer)

comes on top of the reality that many school districts are highly segregated by race already."

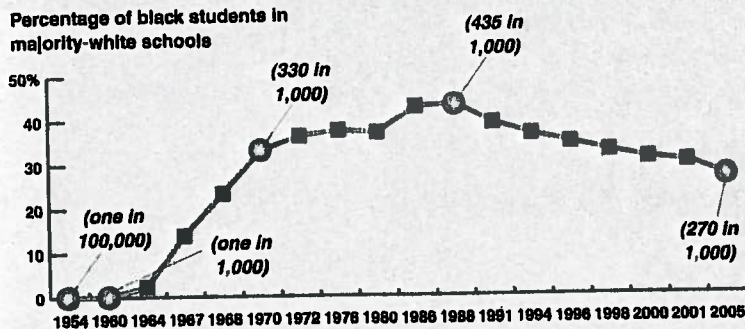
Conservative critics of race-based school policies, however, applauded the ruling. "I don't think school districts should be drawing attendance zones or building

Southern Schools Least Segregated, But Slipping

Schools in the South were the least segregated in the nation in the 1970s and '80s, a distinction they maintained in the 2005 school year. But Southern schools have been resegregating steadily since 1988.

Change in Black Segregation in Southern Schools, 1954-2005

Percentage of black students in majority-white schools



Source: Gary Orfield and Chungmel Lee, "Historic Reversals, Accelerating Resegregation, and the Need for New Integration Strategies," Civil Rights Project, UCLA, August 2007

schools for the purpose of achieving a politically correct racial mix," says Roger Clegg, president of the Center for Equal Opportunity, which joined in a friend-of-the-court brief supporting the white families that challenged the Seattle and Louisville school policies.

"A lot of parents out there don't like it when their students are treated differently because of race or ethnicity," Clegg adds. "After these decisions, the odds favor those parents and those organizations that oppose school boards that practice racial or ethnic discrimination."

School officials in Louisville and Seattle and around the country are generally promising to continue race-mixing policies within the limits of the court's decision. "School boards are going to have to do the hard work to find more tailored ways of approaching diversity in their schools," says Francisco Negrón, general counsel of the National School Boards Association.

The evidence in Louisville and nationally suggests, however, that the goal will be hard to achieve. In Louisville, nine schools are now outside the district's 15/50 guidelines, with several having more than 55 percent African-American enrollment, according to Todd. "If the board wants to continue to maintain

diversity, we've already had some significant slippage at some selected schools," he says.⁴

Nationally, a new report by the UCLA Civil Rights Project concludes that African-American and Latino students are increasingly isolated from white students in public schools. Overall, nearly three-fourths of African-American students and slightly over three-fourths of Latino students attend predominantly minority schools. Both figures have been increasing since 1980, the report says.⁵ (See graphs, p. 75.)

Critics of race-based pupil assignments are unfazed by the trends. "We're past guidelines, we're past quotas and we need to move on," says Gordon of the Louisville statistics. He calls instead for an array of reforms focused on schools with high concentrations of low-income students.

"All other things being equal, I like racially diverse schools," says Abigail Thernstrom, a senior fellow at the conservative Manhattan Institute and a former member of the Massachusetts Board of Education. "But I do not think it works from any angle to have government entities — whether they are federal courts or local school boards — try to engineer diversity."

Supporters of racial-balance plans argue that diversity in the classroom helps boost academic achievement for minority students without adversely affecting achievement for white students. Opponents dispute those claims. (See sidebar, p. 85.)

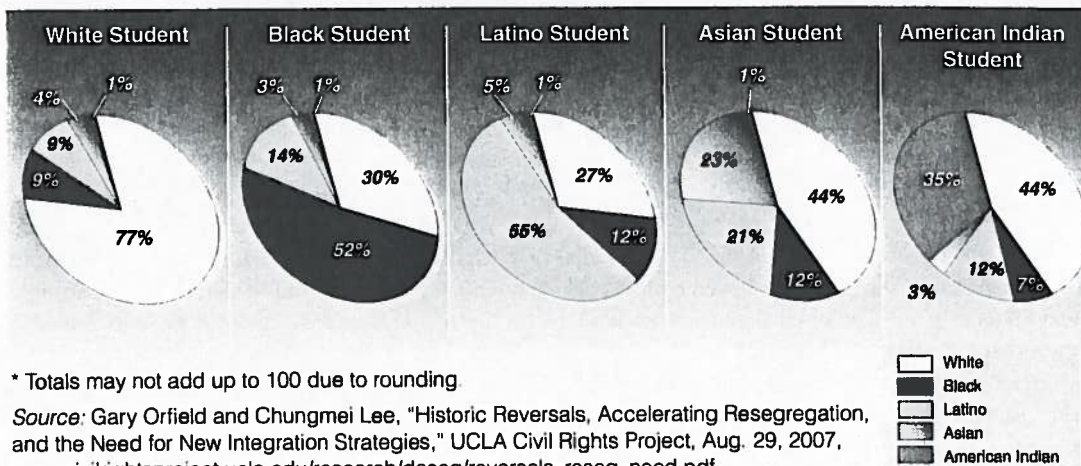
The debate over diversity also highlights a secondary dispute over the widespread practice of "tracking" — the offering of separate courses for students based on ability or previous achievement. Supporters say the practice matches curriculum to students' needs and abilities, but critics say it results in consigning already disadvantaged students — including a disproportionate number of African-Americans — to poor-quality education. (See sidebar, p. 82.)

Meanwhile, some experts and advocates are calling for shifting the focus away from race and instead trying

White Students Are Racially Isolated

Segregation remained high in 2005-06 for all racial groups except Asians. White students remained the most racially isolated, although they attended schools with slightly more minority students than in the past. The average white student attended schools in which 77 percent of their peers were white. Meanwhile, more than half of black and Latino students' peers were black or Latino, and fewer than one-third of their classmates were white.

Racial Composition of Schools Attended by the Average . . .



to promote socioeconomic integration — mixing low-income and middle- and upper-class students. Richard Kahlenberg, a senior fellow with the left-of-center Century Foundation who is most closely associated with the movement, says policies aimed at preventing high concentrations of low-income students will produce academic gains along with likely gains in racial and ethnic diversity.

"Providing all students with the chance to attend mixed-income schools can raise overall levels of achievement," Kahlenberg writes in a report released on the day of the Supreme Court decision.⁶

As the debate over diversity in public-school classrooms continues, here are the major questions being considered:

Should school systems promote racial diversity in individual schools?

School officials in Lynn, Mass., a former mill town 10 miles northeast of Boston, take pride in a

pupil-assignment system that has helped maintain racial balance in most schools even as the town's Hispanic population has steadily increased over the past decade. "We work very hard to promote integration and cultural diversity so that our children are able to get along with each other," says Jan Birchenough, the administrator in charge of compliance with the state's racial-balance law.

But attorney Chester Darling says Lynn's policy of denying any transfer requests that would increase racial imbalance at an individual school "falls squarely within" the kinds of plans prohibited by the Supreme Court decision in the Louisville and Seattle cases. "It can't be race-neutral if you use the word race," says Darling, who is asking a federal judge in Boston to reopen a previously unsuccessful suit filed by parents challenging the policy.⁷

Critics of race-based assignment plans hope the Supreme Court decision will persuade or force school districts like Lynn's to drop any use of racial classifications in pupil placement. "Most school districts will look

at the decision's bottom line, will consider that the Louisville and Seattle plans were not sloppily done, and yet at the end of the day were declared unconstitutional," says Clegg of the Center for Equal Opportunity. "This cost the school boards a lot of time and money, and they're going to have to pay the other side's lawyer."

But school board officials say the court's fractured ruling leaves room for local systems to consider race in trying to create racial and ethnic mixing in individual schools. "Race is still not out of the question," says Negrón of the school boards' association. "A plurality of the court said certain things that are not the law of the land. What the majority has done is invalidate these particular programs, but certainly left the door wide open to the use of race — which continues to be a compelling government interest."

Apart from the legal issue, supporters and opponents of racial-diversity plans also disagree on their educational and other effects. "There's a consensus in the academic world that there are clear educational benefits, and the benefits aren't just for minority students," says UCLA Professor Orfield.

Conversely, "racial isolation leads to reduced achievement," says Negrón.

Critics of racial-diversity policies, however, say those benefits are unproven and the logic of the claimed cause-effect relationship unconvincing. "There is very little empirical evidence," says Thernstrom, the Manhattan Institute fellow.

"I don't think how well you learn or what you learn depends on the color of the skin of the person sitting next to you," says Clegg. "Students in overwhelmingly white schoolrooms in Idaho and in overwhelmingly African-American classrooms in Washington, D.C., can each learn."

Critics cite as one concrete disadvantage the time spent on buses when students are transported out of their neighborhoods for the sake of racial balance. "There's no educational benefit there, and it's a waste of their very precious time," says Thernstrom. The travel burdens also hamper student participation in extracurricular activities and parental involvement, the critics say.

In traditional desegregation plans, those burdens typically fell for the most part on African-American students, who were transported out of their

neighborhoods to schools in predominantly white areas. Busing was "usually a one-way street" for African-Americans, says James Anderson, head of the department of educational-policy studies at the University of Illinois, Champaign-Urbana.

In recent years, however, school-choice policies in some communities have meant increased busing for whites as well as minority students. Negrón cites the example of Pinellas County (Clearwater), Fla., which has a universal-choice program allowing students to enroll in any school in the county and providing transportation if requested. "It is a cost," Negrón says. "But school districts are finding that it depends on the facts and circumstances."

Civil rights advocates counter that racial isolation imposes much more serious costs for minority students. "The consequences of segregation of African-American students in public schools — and it is increasingly true for Latino students — have been concentration of poverty, deprivation of resources and a host of other problems that do impact on the quality of education," says the Legal Defense Fund's Shaw.

Like many of the critics, Thernstrom stops short of absolute opposition to any race-conscious school policies. "I don't mind" redrawing attendance zones for racial mixing, she says, "but I don't think we should be starry-eyed about what it's going to achieve."

Michael Rosman, president of the Center for Individual Rights, says schools should try to prevent "racial isolation" in individual schools "if it is shown to have deleterious educational effects."

But Illinois Professor Anderson says school boards should take affirmative steps to "take advantage" of diversity. "We could build wonderful, intellectually rich environments where kids really do have an exchange of ideas and an exchange of cultures and come out of that with a cosmopolitan sense of culture that is unique," he says. "How can you be global," he adds, "yet at the same time so parochial?"

Should school systems seek to promote socioeconomic integration in individual schools?

The consolidated school system in Wake County, N.C. — encompassing the rapidly growing Research Triangle Park area (near Raleigh and Durham) — made nationwide news in 2000 by dropping the use of racial

guidelines in favor of socioeconomic integration policies. The "Healthy School" assignment guidelines call for limiting individual schools to no more than 40 percent enrollment of students receiving free or reduced-price lunches or 25 percent enrollment of students performing below grade level.

Seven years later, the policies are a bragging point for the school system and exhibit No. 1 for advocates of socioeconomic integration. "Classrooms that are balanced from a diversity point of view are important to maintaining academic performance," says Michael Evans, the school system's communications director, citing the district's declining achievement gap for African-American, Hispanic and low-income students.

Some Wake County parents are not sold, however. Dave Duncan, the one-time president of the now largely inactive advocacy group Assignment by Choice, discounts the claimed academic gains by pointing to the relatively small percentage of students assigned under the guidelines and the comparable academic gains statewide. The school system "used the diversity issue as a smoke screen when there is criticism or opposition to the way they do the student-assignment process," Duncan says.

As the most prominent advocate of socioeconomic integration, the Century Foundation's Kahlenberg acknowledges varied results in districts with such policies. But he strongly argues that the policy of mixing students by socioeconomic background offers educational benefits in its own right and practical advantages for districts trying to promote racial diversity without running afoul of the Supreme Court's new limits on race-based assignments.

Non-Racial Approaches to Integration

Some 40 school districts around the country are seeking to diversify enrollment in individual schools through socioeconomic integration—typically, by setting guidelines for the percentage of students eligible for free or reduced-price lunch. Here are some of the districts taking such approaches, as drawn from a report by the Century Foundation's Richard Kahlenberg, a strong advocate of the policies.

School District Enrollment: Percentage of whites (W), African-Americans (B), Hispanics (H), Asian-Americans (A)

Berkeley, Calif. (9,000: 31% W, 29% B, 17% H, 8% A)

Socioeconomic and racial diversity guidelines were adopted in 2004 to replace a voluntary racial integration plan; plan being phased in one grade at a time; in 2005-06, eight of 11 elementary schools were within 15% of the districtwide average of 40% of students receiving subsidized lunches; most parents (71%) still receive first choice of schools.

Brandywine, Del. (11,000: 54% W, 39% B, 3% H, 4% A)

The district—comprising parts of Wilmington and surrounding suburbs—was granted an exception in 2001 by state Board of Education to law mandating neighborhood schools; plan limits subsidized lunch enrollment to between 16% and 73%; plan credited with maintaining racial diversity; some evidence of academic gains in higher grades.

Cambridge, Mass. (8,000: 37% B, 35% W, 15% H, 11% A)

Plan adopted in 2001 to replace race-conscious "controlled choice" system says individual schools should be within 15 percentage points of districtwide percentage of free/reduced lunch students; race remains a potential factor in assignments; racial diversity maintained, socioeconomic diversity increased; limited evidence finds academic gains for low-income students, no negative effect on middle-income students.

Charlotte-Mecklenburg, N.C. (129,000: 42% B, 36% W, 14% H, 4% A)

School board dropped racial desegregation effort, adopted public school choice plan after school system was declared "unitary" in 2001, or no longer a dual system based on race; plan gives some priority to low-income students in schools with concentrated poverty, but transfers to higher-performing schools are permitted only if seats are available; plan seen as unsuccessful in creating racial or socioeconomic integration.

La Crosse, Wis. (7,000: 20% minority)

Was first district to adopt socioeconomic integration policy in 1991-92 in response to influx of Hmong refugees; plan used redrawn attendance zones and busing to spread low-income students among elementary schools and two high schools; plan largely survived political battle in 1992-93 that included recall of several school board members; plan touted as success, but enrollments at most elementary schools have been and still are outside guidelines.

(Continued)

"There's a wide body of research that the single, best thing you can do for low-income kids is to give them the opportunity to attend a middle-class school," says

(Continued)

School District Enrollment: Percentage of whites (W), African-Americans (B), Hispanics (H), Asian-Americans (A)

Manatee County, Fla. (42,000: 60% W, 20% H, 15% B, 4% other)

District south of Tampa Bay has had limited success with a plan adopted in 2002 admitting students to schools based on maintaining socioeconomic balance. Only 10 elementary schools were within guidelines in 2005-06; among 14 schools with above average low-income enrollment, only four showed adequate academic gains.

McKinney, Tex. (20,000: 64% W, 21% H, 11% B, 3% other)

Dallas suburb adopted socioeconomic-balance policy in 1995 by redrawing attendance zones; low-income students perform better on statewide tests than low-income students statewide; some opposition to longer bus rides, but plan said to have broad support.

Minneapolis, Minn. (36,000: 41% B, 28% W, 16% H, 10% A)

Desegregation suit settled in state court in 2000 with agreement to adopt four-year experiment to encourage socioeconomic integration; plan provides transportation for low-income students to suburban schools; also requires wealthier magnet schools in Minneapolis to set aside seats for low-income students; 2,000 low-income students attended suburban schools over four-year period; legislature voted to extend program after end of experiment.

Omaha, Neb. (47,000: 44% W, 32% B, 21% H)

School board adopted plan aimed at socioeconomic integration after system was declared unitary in 1999; low-income students given preference in weighted lottery for admission to magnet schools; 2006 proposal to expand plan to recently annexed neighborhoods prompted backlash in state legislature, but education groups won passage of 2007 bill to establish goal of socioeconomic diversity throughout metropolitan area.

Rochester, N.Y. (33,000: 64% B, 22% H, 13% W)

Managed-choice plan adopted in city in 2002 includes socioeconomic fairness guidelines; vast majority of elementary school students (83%) are economically disadvantaged; plan seen as likely to have limited effect unless interdistrict choice program is established between city and suburbs.

San Francisco (55,000: 32% Asian, 22% H, 13% B, 9% W)

Student-assignment plan adopted in 2001 replaced racial-desegregation scheme with plan aimed at socioeconomic diversity; seven-part definition includes SES, (socioeconomic status), academic achievement, language, other factors; plan seen as fairly successful in balancing schools by SES, less so in producing racial diversity; district is consistently top performing urban district in state.

Wake County (Raleigh), N.C. (136,000: 54% W, 27% B, 10% H, 5% A)

Guidelines adopted in 2000 replacing racial guidelines limit schools to 40% free/reduced lunch, 25% reading below grade level; policies credited with maintaining racial diversity; role in academic gains questioned; school-zone changes due to growth draw criticism from some families.

Sources: Richard D. Kahlenberg, Century Foundation, "Rescuing Brown v. Board of Education: Profiles of Twelve School Districts Pursuing Socioeconomic School Integration," Century Foundation, June 28, 2007, www.tcf.org/news/accounts

Kahlenberg. Despite some well-publicized exceptions, schools with "concentrated levels of poverty" tend to have more student-discipline problems, lower caliber teachers and principals and less parental involvement than predominantly middle- or upper-class schools, he explains. Socioeconomic integration, he says, results in

higher academic achievement for low-income students and no adverse effect on others as long as there is "a strong core of students with middle-class background."

Kahlenberg says socioeconomic integration is also likely to produce some racial and ethnic mixing since the poverty rate among African-Americans and Latinos is higher than among whites. In educational terms, however, he says socioeconomic diversity is more valuable than racial diversity because the academic gains of mixing by class and income appear to be well established, while the claimed gains of race mixing are in dispute.

Traditional civil rights advocates like the Legal Defense Fund's Shaw do not quarrel with socioeconomic integration but insist that it is "not an adequate substitute for racial integration."

Orfield agrees that socioeconomic integration is "a good idea" but quickly adds, "You can't achieve racial integration very well by using social and economic integration."

"If you talk to districts that have relied solely on that, it doesn't reach all of the students that they need to reach," says Negrón at the school boards association.

For their part, conservatives raise fewer objections to mixing students by socioeconomic background than by race, but they worry the practice may merely be a pretext for racial classifications. "It has fewer constitutional problems," says Thernstrom.

"It is less politically controversial."

"It's better than race-based student assignments," says Clegg at the Center for Equal Opportunity. "But if you're using socioeconomic status simply as a proxy for race, many of the same policy and legal problems remain."

Thernstrom is unconvinced, however, of the claimed academic benefits. "There are no proven results from it," she says. She scoffs at what she calls "the notion that if you sit next to somebody, differences [in values] are going to somehow melt away."

In any event, Clegg says he opposes either racial or socioeconomic mixing if it requires assigning students to schools distant from their homes. "Neighborhood schools are the preferable means of assignment," he says, "because you're not having to pay for busing and you're not having to put children on long bus rides, which keep them from engaging in extracurricular activities."

Kahlenberg disagrees. "I haven't heard anyone make a convincing case that from an educational perspective the best way to assign students is the place where their parents can afford to live," he says. "That's the way we do it, but there's no argument that's the best way to educate kids in our society."

From opposite perspectives, however, both Orfield and Thernstrom agree that socioeconomic integration engenders some of the same kinds of opposition that racial integration does. "You do have a lot of middle-class flight as a result," Thernstrom says. "It's not really more popular than racial integration," Orfield says.

Despite the resistance, Kahlenberg believes the policy would fulfill a fundamental goal of public education in the United States. "Most people believe at least in theory that education is the way for kids of any background to do well," he says. "As long as we have economically segregated schools, that promise is broken."

Is the focus on diversity interfering with efforts to improve education in all schools?

As he wrapped up his legal challenge to the Louisville pupil-assignment plan before the Supreme Court, attorney Gordon depicted the case as a choice between "diversity" and "educational outcome."

"For me," Gordon told the justices during the Dec. 4 arguments, "I would use all these millions of dollars. I would reduce teacher-student ratio. I would give incentive pay to the better teachers. I would [build] more magnet schools, more traditional schools."

"We presuppose that we're going to have bad schools and good schools in this country," he continued. "I don't think we can no [sic] longer accept that."

Gordon describes himself as a civil rights liberal, but his argument parallels the views of conservatives like Clegg. "School districts should be worrying less about the racial and ethnic mix than about improving the education that's offered at all schools," Clegg says.

"If you're just focusing on racial diversity, as it's called, for its own sake without trying to assess whether you're improving the educational outcomes," says Rosman, "then you're detracting from the overall goal of achieving educational excellence. In some instances, that's happened."

"The solution is to reduce the gap, the racial gap, the ethnic gap, the socioeconomic gap," says Thernstrom. "Then kids will be looked at as just kids without any kind of assumptions made about, you know, are they like me?"

Traditional civil rights groups and advocates insist that diversity and educational reform complement rather than conflict with each other. In any event, they say, the push for diversity is neither so strong nor so extensive as the critics contend.

"We haven't had any federal policy of promoting diversity since 1981," says Orfield, referring to the first year of Ronald Reagan's presidency. "We haven't had any new lawsuits to integrate schools for a long time. Ever since 1980, most desegregation plans have had voluntary choice and magnet schools, and almost all of them are part and parcel of educational reform plans."

John Trasviña, president and general counsel of the Mexican American Legal Defense and Educational Fund (MALDEF), calls the claimed conflict between diversity and educational quality "a diversion." Referring to educational reform, he says, "We aren't doing that either. It's always easy to say let's address some other issue. When it comes to do that, it's not done."

Diversity advocates dispute critics' suggestion that racial or economic integration has been pursued solely for its own sake with no attention to improving educational quality. "I don't think anybody ever thought that school integration by itself was a sufficient policy," Orfield says.

"The whole reason for economic integration is to promote academic achievement and raise the quality of schooling," says Kahlenberg. "No one has figured out how to make separate schools for rich and poor work well, certainly not for poor kids."

Orfield and Kahlenberg also dismiss concerns that the transportation costs entailed in some diversity plans take scarce dollars from other, more promising school-improvement initiatives. "We've spent billions and billions of dollars on low-income schools, which hasn't produced a lot of results," Kahlenberg says.

Orfield is even blunter about recent efforts to reduce the racial gap. "It's been a failure," he says. Desegregation and anti-poverty programs of the 1960s and '70s did narrow the racial-achievement gap, Orfield writes in the recent UCLA Civil Rights Project report. But he says "most studies" find that President Bush's No Child Left Behind law — which specifically calls for narrowing the achievement gap between white and minority pupils — has had "no impact" on the disparities so far.⁸

From opposite perspectives, Thernstrom and Trasviña lay out demanding agendas for schools to try to close the racial gap. "I want more learning going on," says Thernstrom. "You need really good schools. The day should be longer, the teachers should be better, the principals should have more authority.

"Our kids aren't learning enough in school," she continues. "That will level the playing field."

"We clearly need to improve the quality of our schools," says Trasviña. He calls for steps to reduce the dropout rate and to channel more students into so-called STEM courses (science, technology, engineering and math). But diversity helps, not hurts reform efforts, he says.

"While it is true that simply putting children of different backgrounds in seats in the same classroom does not necessarily improve the classroom experience by itself, [diversity] adds to it," Trasviña says. "And it adds to the political will to make sure that people understand that these are our schools."

BACKGROUND

The 'Common School'

The idea of free, universal public education has been espoused in the United States since the Revolutionary Era and still holds a central place in American thought as a tool for personal development and social cohesion. But the ideal of equal educational opportunity for all has never

been obtained in practice. Even as education became more nearly universal in the 20th century, African-Americans and other racial and ethnic minorities faced blatant discrimination that was only partly alleviated by landmark court rulings outlawing legally mandated segregation.⁹

George Washington and Thomas Jefferson were among the nation's early leaders to call in general terms for mass public education, but the educational "system" of the early 19th century consisted of private academies, rural district schools and a handful of "charity" schools in cities. Horace Mann, the so-called father of American public education, used his appointment as Massachusetts' first commissioner of education in 1837 to advocate the "common school" — publicly supported and open to all. As University of Wisconsin educational historian William Reese explains, Mann saw education as a way to restore social harmony at a time of social tensions between rich and poor and between native-born and immigrants. Others saw the same connection. His fellow New Englander Alpheus Packard wrote in the 1840s of the "sons of wealth and poverty" gaining mutual respect by sitting side by side in a public school.¹⁰

Abolitionist Mann's vision had no practical meaning, however, for African-American slaves before the Civil War and only limited significance for their descendants for decades after slavery was abolished. Both before and after the Civil War, the vast majority of African-Americans "lived in states that were openly and explicitly opposed to their education," according to the University of Illinois' Anderson.

After emancipation slaves who had learned to read and write became teachers in rudimentary schools, aided by Northern missionaries and philanthropists and some sympathetic white Southerners. With the end of Reconstruction, however, Southern leaders "pushed back the gains that had been made," Anderson says. In a racially segregated system in the early 20th century, per capita spending for black pupils in the South amounted to one-fourth to one-half of the amount spent on whites.¹¹

Education was becoming nearly universal for white Americans, even as racial segregation became entrenched for African-Americans and, in many places, for Mexican- and Asian-Americans.¹² Elementary school attendance was nearly universal by the 1920s. High schools — once viewed as fairly selective institutions — began doubling

CHRONOLOGY

Before 1950 *Free, universal public education is enshrined as American ideal and advances in practice, but African-Americans, Hispanics and Asian-Americans are consigned to separate and unequal schools in much of the country.*

1950s-1960s *Racial segregation in public schools is ruled unconstitutional, but desegregation is slow.*

1954, 1955 Supreme Court's unanimous decision in *Brown v. Board of Education* (1954) outlaws mandatory racial segregation in public schools; a year later court says school districts must dismantle dual systems "with all deliberate speed" (*Brown II*). "Massive resistance" in South stalls integration.

1964, 1965 Civil Rights Act of 1964 authorizes Justice Department to file school-desegregation suits; Title I of Elementary and Secondary Education Act provides targeted aid to school districts for low-income students.

1968 Supreme Court tells school districts to develop plans to dismantle dual systems "now."

1970s-1980s *Busing upheld as desegregation tool but draws strong protests in North and West as well as South; Supreme Court, Justice Department withdraw from desegregation cases.*

1971 Supreme Court unanimously upholds federal courts' power to order crosstown busing to desegregate schools.

1973 Supreme Court rejects federal constitutional right to equal school funding; one month later, New Jersey supreme court is first to sustain funding-equity suit under state constitution.

1974 U.S. Supreme Court, 5-4, bars court-ordered desegregation between inner cities and suburbs; decision is first in series of closely divided rulings that limit desegregation remedies.

1983 U.S. Department of Education report "A Nation at Risk" paints critical picture of rising mediocrity in U.S. schools, shifts agenda away from equity issues.

1990s *Racial isolation increases for African-Americans, Latinos; "reverse discrimination" suits by white students backed in some federal courts, fail in others.*

1991 La Crosse, Wis., becomes first school district to aim to balance enrollment by students' income status: "socioeconomic integration."

1995 Supreme Court signals federal courts to wrap up desegregation cases; lower courts respond by generally granting "unitary" status to school systems seeking to be freed from desegregation orders.

1998, 1999 Federal appeals courts in Boston, Richmond, Va., bar racial preferences in public school admission.

2000-Present *Socioeconomic integration advances; Latinos become largest ethnic minority; Supreme Court ruling bars racial classifications in pupil assignments.*

2000 Wake County (Raleigh), N.C., becomes largest school district to try socioeconomic integration.

2001 President George W. Bush wins congressional approval of No Child Left Behind Act, requiring school districts to meet achievement benchmarks, including closing racial gap.

2001-2005 White families challenge racial-diversity plans in Seattle and Louisville, Ky; federal courts back school districts, ruling plans are "narrowly tailored" to achieve "compelling" interest in diversity.

2005, 2006 Bush nominates John G. Roberts Jr. and Samuel A. Alito Jr. to Supreme Court; both win Senate confirmation, strengthening conservative majority on court.

2007 Supreme Court ruling in Louisville and Seattle cases limits use of race in pupil assignments, but five justices say race-neutral measures can be used to promote compelling interest in diversity; school boards vow to try to maintain racial diversity; advocates push socioeconomic integration on legal, political grounds.