

'Tracking' Leads to Racial Separation in Classes

But grouping students by ability has wide support.

Ballard High School sits on a spacious campus in an overwhelmingly white suburban neighborhood in the eastern end of Jefferson County, Ky. As part of Jefferson County Public Schools' racial balance policies, however, Ballard's attendance zone includes neighborhoods on the opposite side of the county in Louisville's predominantly African-American West End section.

By drawing students from the West End, the school achieved around 25 percent black enrollment in the 2006-07 academic year. But despite the measure of racial balance in overall enrollment, Ballard students say blacks and whites are less than fully integrated inside. "Kids naturally separate," remarks Ben Gravel, a white 12th-grader, as he arrives at school on Aug. 13 for the opening of a new school year.

At Ballard — and in schools around the country — the racial separation is especially pronounced in the classroom itself. African-American students are disproportionately enrolled in less challenging, "low-track" classes and under-represented in higher-track classes, such as advanced placement (AP) courses and international baccalaureate (IB) programs. In 2006, for example, African-Americans comprised about 13 percent of graduating high school seniors but only 6 percent of the total number of students who took advanced placement exams administered by the College Board.¹

The widespread practice of tracking — or "ability grouping" as supporters prefer to call it — has been a contentious issue within education circles for more than two decades. "Detracking" advocates have had occasional success in pushing reforms, but the practice has persisted — in part because of strong resistance from parents of students enrolled in higher-track courses.²

Supporters say the practice matches curricular offerings to students' abilities and achievement level. "It doesn't make sense to the average person that you would put a non-reader in the same English classroom as some kid who's reading Proust," says Tom Loveless, director of the Brown Center on Educational Policy at the Brookings Institution in Washington.

Critics say the practice simply keeps already-disadvantaged students on a path to lower academic achievement. "If you have classes that are structured to give kids less of a challenge, those kids tend to fall farther behind," says Kevin Welner, an associate professor at the University of Colorado's School of Education in Boulder.

Civil rights advocates say the enrollment patterns reflect what they call "segregation by tracking." In her critique of the practice, Jeannie Oakes, director of urban schooling at UCLA's Graduate School of Education and Information Studies, cited research evidence indicating that African-American and Latino students were more likely to be assigned to low-track courses than white students even when they had comparable abilities or test scores.³

in enrollment each decade after 1890 thanks to a declining market for child labor and the growing enforcement of new compulsory education laws. Secondary school enrollment increased from 50 percent of 14-17-year-olds in 1920 to nearly 95 percent of that age group by the mid-1970s. Meanwhile, the average school year was also increasing — from 144 days in 1900 to 178 days in 1950. And per capita investment in education rose during the same period from 1.2 percent of national income to 2 percent.

The Supreme Court's 1954 decision in *Brown* outlawing racial segregation in public schools capped a

half-century-long campaign by the NAACP to gain a measure of equal educational opportunity for African-Americans.¹³ The legal campaign — directed by the future Supreme Court justice, Thurgood Marshall — was waged at a deliberate pace even as many black students and families were agitating for better schools at the local level. The eventual decision seemed far from inevitable beforehand. Only after 1950 did the NAACP decide to ask the court to abolish segregation rather than try to equalize the separate school systems. And the justices were closely divided after the first round of arguments in 1952; they joined in the unanimous ruling

"I wouldn't use the phrase 'segregation by tracking.' A lot of it is self-tracking," counters Abigail Thernstrom, a senior fellow at the conservative Manhattan Institute and co-author of a book on the educational gap between white and minority students. "Is it terrible that we have so few Latino and black students who are prepared to take the most educationally rigorous courses?" she adds. "Of course, it's terrible."

Welner acknowledges minority students often choose low-track courses, but faults school systems instead of the students. Minority parents and students often lack the information needed to understand the different course offerings, he says. And students "sometimes don't want to be the only minority in the high-track class," he says.

Loveless acknowledges the critics' complaints about low-track classes, but says the solution is to reform not to abolish them. "Let's fix the low-track classes," he says. Despite the critics' doubts, he says many private, charter and parochial schools have developed low-track curricula that more effectively challenge students than those often found in public schools.

"If we know how to create a high-track class, why would we then create a separate set of classes that don't have those opportunities?" Welner asks. "Why would we let students opt for a lesser education?"



Sixth-graders study science as part of the international baccalaureate curriculum at Harbour Pointe Middle School in Mukilteo, Wash.

AP Photo/Tae Herald/Elizabeth Armstrong

Loveless says under a random-assignment system, high-achieving students "would lose quite a bit," middle-range students "would lose a bit" and lowest-achieving students "would probably benefit a little bit" — mainly by reducing the concentration of students with behavioral issues in low-track classes.

Welner disagrees that high-achieving students are necessarily harmed by reforms. "Good detracking doesn't take anything

away from these kids," he says. "The high achievers are not only holding their own but are doing better after the reform."

Despite the recurrent clashes at the local level, Loveless predicts that tracking will continue to be a widespread practice. "Polls are very clear," he says. "Parents, teachers and students favor ability grouping. Those are three important constituency groups."

¹ College Board, "Advanced Placement: Report to the Nation 2006," p. 11 (www.collegeboard.com). For background, see Marcia Clemmitt, "AP and IB Programs," *CQ Researcher*, March 3, 2006, pp. 193-216.

² For opposing views, see Tom Loveless, *The Tracking Wars: State Reform Meets School Policy* (1999); Jeannie Oakes, *Keeping Track: How Schools Structure Inequality* (2d ed.), 2005.

³ *Ibid.*, pp. 230-231.

in 1954 only after a second round of arguments and shrewd management of the case by the new chief justice, Earl Warren.*

The high court's "remedial" decision one year later in *Brown II* directed school districts to desegregate "with all deliberate speed." Many Southern politicians

lent support to a campaign of "massive resistance" to the ruling by diehard segregationists. A decade after *Brown*, fewer than 5 percent of black students in the South were attending majority-white schools; more than three-fourths were attending schools with 90 percent minority enrollment.¹⁴ In 1968, an evidently impatient Supreme Court declared that school districts had to develop plans to dismantle dual systems that promised "realistically" to work — and to work "now." Three years later, a new chief justice, Warren E. Burger, led a unanimous court in upholding the authority of local federal courts to order school districts to use

* California, home to the nation's largest concentration of Asian-Americans and the second-largest concentration of Mexican-Americans after Texas, had abolished racial segregation in schools by law in 1947.

More Blacks and Latinos Attend Poorest Schools

The vast majority (79 percent) of white students attend schools where less than half the student body is poor, compared with 37 percent of black students and 36 percent of Hispanics. For schools where at least 91 percent of the students are poor, whites made up just 1 percent of the student body compared with 13 and 15 percent, respectively, for blacks and Hispanics.

Distribution of Students in Public Schools by Percentage Who Are Poor, 2005-2006

Percent Poor	Percentage of each race				
	White	Black	Latino	Asian	American Indian
0-10%	20	5	7	23	17
11-20%	17	8	5	14	6
21-30%	16	7	7	12	8
31-40%	14	9	8	11	9
41-50%	12	11	9	9	11
51-60%	9	11	10	8	11
61-70%	6	12	11	6	11
71-80%	3	13	12	6	10
81-90%	2	14	14	6	8
91-100%	1	13	15	4	9

* Totals may not add up to 100 due to rounding.

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

Total number of students (in millions)

White	29
Black	8
Latino	10
Asian	2
American Indian	1

cross-neighborhood busing as part of a desegregation plan.¹⁵

'Elusive' Equality

The campaign to desegregate schools stimulated broader efforts in the late 20th century to equalize educational opportunity at national, state and local levels. Initially, desegregation advanced in the South and to a lesser extent in other regions. But integration eventually stalled in the face of white opposition to busing, ambivalence among blacks and Supreme Court decisions easing pressure on local school districts to take affirmative steps to mix white and black students. School funding reform efforts produced some

results, but as the 21st century began educational equality remained — in Professor Reese's word — "elusive."¹⁶

The Supreme Court's unanimity in school race cases broke down in the 1970s, and a continuing succession of closely divided decisions reduced districts' obligations to develop effective integration plans. In one of the most important rulings, the justices in 1974 divided 5-4 in a case from Detroit to bar court-ordered desegregation between predominantly black inner cities and predominantly white suburban districts. Three years later, the court essentially freed school districts from any obligation to prevent resegregation after adopting a racially neutral assignment plan. The decisions coincided with widespread opposition to busing for racial balance among white families in many communities, most dramatically in Boston in the 1970s, where police escorts were needed for buses taking pupils from predominantly black Roxbury to predominantly white South Boston.

African-American students and families, meanwhile, had mixed reactions to desegregation generally and busing in particular, according to Professor Anderson. In many districts, desegregation meant the closing or

transformation of historically black schools that had provided a good education for many students. In the South, desegregation also often meant the loss of black principals and teachers. And busing was a "one-way street" for African-Americans: most plans entailed the transportation of black students away from their neighborhoods to a mixed reception at best in predominantly white communities.

From the start, the NAACP and other civil rights groups had viewed desegregation not only as a goal in its own right but also — and perhaps more importantly — as an instrument to equalize educational opportunities for black and white pupils. In the heady

Do Racial Policies Affect Academic Achievement?

Most studies find beneficial effects from integration.

When the Supreme Court outlawed racial segregation in schools in 1954, it relied heavily on research by the African-American psychologist Kenneth Clark purporting to show that attending all-black schools hurt black students' self-esteem. Over time, the court's reliance on Clark's study drew many critics, who questioned both the research and its prominent use in a legal ruling.

A half-century later, as they considered challenges to racial-diversity plans in Seattle and Louisville, Ky., the justices were deluged with sometimes conflicting research studies on the effects of racial policies on educational achievement. Among 64 friend-of-the-court briefs, nearly half — 27 — cited social science research. Most found beneficial effects from racial integration, but a minority questioned those claims.

The National Academy of Education, a select group of education scholars, created a seven-member committee to evaluate the various studies cited in the various briefs. Here are the committee's major conclusions from the research, released on June 29 — one day after the court found the school districts' plans unconstitutional:

Academic achievement. White students are not hurt by desegregation efforts or adjustments in racial composition of schools. African-American student achievement is enhanced by less segregated schooling, although the magnitude of the influence is quite variable. The positive effects for African-American students tend to be larger in the earlier grades.

Near-term intergroup relations. Racially diverse schools and classrooms will not guarantee improved intergroup relations, but are likely to be constructive. The research identifies conditions that need to be present in order for diversity to have a positive effect and suggests steps schools can take to realize the potential for improvement.

Long-term effects of school desegregation. Experience in desegregated schools increases the likelihood over time of greater tolerance and better intergroup relations among adults of different racial groups.

The critical-mass question. Racial diversity can avoid or mitigate harms caused by racial isolation, such as tokenism and stereotyping, particularly when accompanied by an otherwise beneficial school environment. Some briefs suggest a minimum African-American enrollment of 15 percent to 30 percent to avoid these harms, but the research does not support specifying any particular percentage.

Race-neutral alternatives. No race-neutral policy is as effective as race-conscious policies for achieving racial diversity. Socioeconomic integration is likely to marginally reduce racial isolation and may have other benefits. School choice generally and magnet schools in particular have some potential to reduce racial isolation, but could also increase segregation.

Source: Robert L. Linn and Kevin G. Welner (eds.), "Race-Conscious Policies for Assigning Students to Schools: Social Science Research and the Supreme Court Cases," National Academy of Education, June 29, 2007 (www.naeducation.org/Meredith_Report.pdf).

days of the civil rights era, Congress had put educational equality on the national agenda in 1965 by passing a law as part of President Lyndon B. Johnson's "war on poverty" to provide federal aid targeted to poor children.¹⁷ By the end of the century, however, Title I of the Elementary and Secondary Education Act was seen as having produced mixed results at best — in part because allocation formulas shaped by the realities of congressional politics directed much of the money to relatively well-to-do suburban districts.

Meanwhile, advocates of educational equity had turned to the courts to try to reduce funding disparities between school districts — with mixed results.¹⁸ The Supreme Court ruled in 1973 that funding disparities between

districts did not violate the federal Constitution. One month later, however, the New Jersey Supreme Court became the first state tribunal to find differential school funding to run afoul of a state constitutional provision. Over the next three decades, school funding suits resulted in court rulings in at least 19 states finding constitutional violations and ordering reforms. But funding disparities persisted. In a wide-ranging survey in 1998, *Education Week* gave 16 states a grade of C- or below on educational equity between school districts.¹⁹

At the same time, school policymakers were focusing on clamorous calls to improve educational quality stimulated by the publication in 1983 of a report by the Reagan administration's Department of Education sharply



Time & Life Pictures/Getty Images

Minnijean Brown, 15, one of the Little Rock Nine, arrives at Central High School on Sept. 25, 1957, guarded by soldiers sent by President Dwight D. Eisenhower. Brown and eight other African-American students desegregated the Arkansas school three years after the Supreme Court's landmark *Brown v. Board of Education* ruling.

criticizing what was depicted as rising mediocrity in U.S. schools. The debate generated by "A Nation at Risk" brought forth all manner of proposals for imposing educational standards, revising curricula or introducing competition within public school systems or between public and private schools. The debate diverted policymakers' attention to some extent from diversity issues and led many white parents to worry more about their own children's education than about educational equity or diversity.²⁰

By the end of the 1990s, federal courts were all but out of the desegregation business, and racial isolation — "resegregation" to civil rights advocates — was on the rise. In a trio of cases in 1991, 1993 and 1995, the Supreme Court gave federal courts unmistakable signals to withdraw from superintending desegregation plans. School districts that sought to be declared "unitary" — or no longer dual in nature — and freed from desegregation decrees, like Jefferson County, invariably succeeded. By 2001, at least two-thirds of black students and at least half of Latino students nationwide were enrolled in predominantly minority schools. And after narrowing in the 1980s, the educational-testing gaps between white and black students began to widen again in the 1990s. In 2000, the typical black student scored below about 75 percent of white students on most standardized tests.²¹

'Diversity' Challenged

Even as courts reduced the pressure on school districts to desegregate, hundreds of school systems adopted voluntary measures aimed at mixing students of different racial and ethnic backgrounds. Some plans that made explicit use of race in pupil assignments drew legal challenges from white families as "reverse discrimination." Meanwhile, several dozen school systems were adopting — and achieving some success with — diversity plans tied to socioeconomic status instead of race. Support for socioeconomic integration appeared to increase after the Supreme Court's June 28 decision in the Seattle and Louisville cases restricting the use of race in pupil assignments but permitting race-neutral policies to achieve diversity in the classroom.

School boards that voluntarily sought to achieve racial and ethnic mixing claimed that the policies generally improved education for all students while benefiting disadvantaged minorities and promoting broad political support for the schools. Many plans — like those in Seattle and Louisville — explicitly considered race in some pupil assignments, and several drew legal challenges. In November 1998 the federal appeals court in Boston struck down the use of racial preferences for blacks and Hispanics for admission to the prestigious Boston Latin School. Then in fall 1999, the federal appeals court in Richmond, Va., ruled in favor of white families challenging race-based policies in two districts in the Washington, D.C., suburbs. The rulings struck down a weighted lottery that advantaged blacks and Hispanics in Arlington County, Va., and a transfer policy in Montgomery County, Md., that limited students from changing schools in order to maintain racial balance.²²

The idea of socioeconomic integration first gained national attention when the midsized town of La Crosse, Wis., redrew attendance zones in the early 1990s to shift students from an overcrowded, predominantly affluent high school to the town's second high school in the blue-collar section with a growing Hmong population. In Kahlenberg's account, the plan survived concerted political opposition, produced measurable educational progress and now enjoys widespread support. Cambridge, Mass., substituted socioeconomic integration policies for racial busing in 1999 after the federal appeals court ruling in the Boston Latin case. Wake County, N.C., similarly dropped its racial balancing plan in 2000 in favor of an assignment plan

AT ISSUE

Is racial diversity in the classroom essential to a good education?

YES

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Education in a democratic society serves three basic purposes. It provides students with workforce skills, prepares them to function as thoughtful and informed citizens in a cohesive country and enriches their lives by awakening them to new knowledge, perspectives and possibilities. Racial diversity in schools and classrooms enhances the attainment of each of these goals.

The ability to work effectively with individuals from diverse backgrounds is a fundamental workplace skill, as the well-known report "What Work Requires of Schools," issued by President George H.W. Bush's administration, points out. Yet, many students never develop this skill because our country's neighborhoods, social institutions and religious organizations are often highly segregated. Racially diverse schools provide a milieu essential to the development of this crucial skill.

Racially diverse schools also have a vital role to play in developing fair-minded citizens and in promoting social cohesion. Research demonstrates that in-school contact with individuals from different backgrounds typically reduces prejudice, a fundamentally important outcome in our increasingly diverse society. In addition, students who attend diverse schools are more likely than others to choose diverse work and residential settings as adults, thus promoting social cohesion.

Racially diverse schools also enrich students' understanding and expand their perspectives by placing them in contact with others whose views and life experiences may be very different. Just as visiting a foreign country is a much richer and more powerful experience than reading about it, interacting with students from different backgrounds brings their perspectives and experiences alive in a way not otherwise possible.

Even individuals who discount the arguments above must acknowledge that heavily segregated minority schools disadvantage the very students most in need of an excellent educational environment. Such schools typically have relatively impoverished curricular offerings, great difficulty recruiting experienced teachers and high teacher-turnover rates, all of which may help to explain why research suggests that attending such schools typically undermines students' achievement relative to similar peers in more diverse schools.

Racial diversity in and of itself does not guarantee a good education, but as a recent report by the National Academy of Education suggests, it creates preconditions conducive to it. In our increasingly diverse democracy, the educational cost of segregated schools is too high for majority and minority students alike.

NO

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Racial Gap in Learning*

Written for *CQ Researcher*, September 2007

Racially diverse classrooms are desirable — of course. But are they essential to a good education? Absolutely not. If they were, big-city school districts would be stuck providing lousy educations for America's most disadvantaged children into the indefinite future. A large majority of students in 26 out of the 27 central-city districts with a public school population of at least 60,000 are non-white. The white proportion in these districts averages 16 percent. Thus, big-city schools will not be racially "diverse" unless we start flying white kids from Utah into, say, Detroit.

Or rather, they will not be racially "diverse" according to the Seattle school board's definition in the racial balancing plan the Supreme Court condemned last term. Seattle had divided students into only two racial groups: white and non-white. If schools were half-Asian, half-white, that was fine; if they were 30 percent white with the rest Asian, they weren't sufficiently "diverse," and educational quality would be somehow lacking.

What racial stereotyping! Do all non-white students express the same non-white views — with all white students having a "white" outlook? In fact, why is racial diversity the only kind that counts for those concerned about the group clustering in certain schools? What about a social class or religious mix?

And on the subject of racial stereotyping, do we really want to embrace the ugly assumption that black kids are incapable of learning unless they're hanging around some white magic? Good inner-city schools across the country are teaching the children who walk through the door. In excellent schools, if every one of the students is black — reflecting the demography of the neighborhood — the expectations for educational excellence do not change. And happily, there are no compelling studies showing enormous positive gains for black students when they attend schools with large numbers of whites.

Good education is not confined to academic learning. But there is no evidence that schools engaging in coercive racial mixing build a lifelong desire to "socialize with people of different races," as Seattle assumed. Visit a school lunchroom! Racial and ethnic clustering will be very much in evidence.

Those who insist school districts should turn themselves inside out to engineer racial diversity haven't a clue as to the limits of social policy. And they demean the capacity of non-Asian minority kids to learn, whatever the color of the kid in the seat next to them.

ried to free or reduced-lunch status to comply with the rulings by the Richmond-based appeals court in the Arlington and Montgomery County cases. By 2003, Kahlenberg claimed some 500,000 students nationwide were enrolled in school systems that used economic status as a factor in pupil assignments.²³

However, the main school districts that had adopted racial balancing plans stuck with them despite legal challenges. Seattle adopted its "open choice" plan in 1998 — some two decades after it had become the largest school district in the nation to voluntarily adopt a racial busing plan. The ad hoc group Parents Involved in Community Schools filed its suit challenging the use of race as a "tiebreaker" in pupil assignments in July 2000. That same year, Jefferson County Public Schools adopted its controlled choice plan after a federal judge freed the system from a desegregation decree dating to 1975. Parent Crystal Meredith challenged the race-based assignments in April 2003. Federal district judges upheld the plans — in April 2001 in the Seattle case and in June 2004 in the Jefferson County case. The 4th U.S. Circuit Court of Appeals in Cincinnati then upheld the Jefferson County plan in July 2005. The Seattle case followed a more complicated appellate route. The school district suspended the plan after an initial setback in 2002, but eventually the 9th U.S. Circuit Court of Appeals in San Francisco upheld the plan in October 2005.

The Supreme Court's decision to hear the two cases immediately raised fears among civil rights advocates that the conservative majority fortified by President George W. Bush's appointments of Chief Justice Roberts and Justice Samuel A. Alito Jr. would strike down the plans. Questions by Roberts and Alito during arguments on Dec. 4, 2006, left little doubt about their positions. The high-drama announcement of the decision on June 28 lasted nearly 45 minutes with Roberts, Kennedy and Breyer each delivering lengthy summaries of his opinion from the bench.

"The way to stop discrimination on the basis of race," Roberts declared as he neared his conclusion, "is to stop discriminating on the basis of race."

Breyer was equally forceful in his dissent. "This is a decision that the court and this nation will come to regret," he said.

Almost immediately, however, Kennedy's pivotal concurrence began to draw the closest scrutiny as advocates

and observers tried to discern what alternatives remained for school boards to use in engineering racial diversity. The National School Boards Association urged local boards to continue seeking diversity through "careful race-conscious policies." Administrators in Seattle and Louisville said they planned to do just that.

But Clegg of the Center for Equal Opportunity said school systems would be better off to drop racial classifications. "At the end of the day, these two plans didn't pass muster," he said. "And the impact will be to persuade other school districts that this is not a good idea."²⁴

CURRENT SITUATION

'Resegregation' Seen

The Louisville and Seattle school systems are in the opening weeks of a new academic year, with few immediate effects from the Supreme Court decision invalidating their previous pupil-assignment plans. Officials in both districts are working on new pupil-assignment plans to put into effect starting in fall 2009, with racial diversity still a goal but race- or ethnic-based placements no longer permitted.

Both school systems, however, are reporting what civil rights advocates call "resegregation" — higher percentages of African-American students in predominantly minority schools. Critics of racial-diversity policies object to the term, arguing that segregation refers only to legally enforced separation of the races. Whatever term is used, a new report documents a national trend of "steadily increasing separation" in public schools between whites and the country's two largest minority groups: Latinos and African-Americans.

The report by the UCLA Civil Rights Project shows, for example, that the percentage of black students in majority-white schools rose from virtually zero in 1954 to a peak of 43.5 percent in 1988 before beginning a steady decline. In 2005 — the most recent year available — 27 percent of black students attended majority-white schools.

Meanwhile, the proportion of African-Americans attending majority-minority schools has been slowly increasing over the past two decades — reversing gains in integration in the 1960s and '70s — while the percentage of Latino students in majority-minority schools has grown steadily since the 1960s. In 2005, 73 percent of

black students were in majority-minority schools, and more than one-third — 38 percent — were in “intensely segregated” schools with 90 to 100 percent minority enrollment. For Latinos, 78 percent of students were in majority-minority schools.

By contrast, Asian-Americans are described in the report as “the most integrated” ethnic group in public schools. In 2005, the average Asian student attended a school with 44 percent white enrollment — compared to 30 percent white enrollment for the average black student and 27 percent white enrollment for the average Latino. The report attributed the higher integration for Asians to greater residential integration and relatively small numbers outside the West.

Seattle was already experiencing increasing racial isolation after suspending its previous placement plan, which included race as one “tiebreaker” in pupil assignments. “There has been a decline in racial diversity since suspension of the plan,” says Seattle Public Schools spokeswoman Patti Spencer.

In Louisville, nine schools now have African-American enrollment above the previous guideline limit of 50 percent — most of them in predominantly black neighborhoods in Louisville’s West End or the heavily black areas in southwestern Jefferson County. Black enrollment in some schools in the predominantly white East End has declined, though not below the minimum figure of 15 percent in the previous guidelines.

The 15/50 guidelines remain “a goal,” according to Student Placement Director Todd. “We’re trying to prevent as much slippage as possible.”

In Seattle, outgoing Superintendent Raj Manhas told reporters after the Supreme Court ruling that the school district would look at “all options available to us” to try to preserve racial diversity in the schools.²⁵ The new superintendent, Maria Goodloe-Johnson, is an African-American who was sharply critical of racial policies in her previous position as superintendent in Charleston, S.C. Since taking office in Seattle in July, however, Goodloe-Johnson has not addressed racial balance, according to Spencer.²⁶

Opponents of the race-based policies say school districts should refocus their efforts. “Where school districts should focus is on education standards, not creating a specific racial mix of students,” says Sharon Browne, a staff attorney with the Pacific Legal Foundation, the conservative public

interest law firm that supported the legal challenges in Louisville and Seattle.

“The guidelines are gone,” says attorney Gordon in Louisville. “They’re past tense.”

In Seattle, Kathleen Brose, the longtime school activist who founded Parents Involved in Community Schools to challenge the use of race for high school placements, says diversity is “important,” but parental choice is more important. “The school district has been so focused on race,” she adds, “that, frankly, I think they forgot about academics.”

Legal Options Eyed

School boards around the country are re-examining their legal options for promoting diversity. At the same time, they are bracing for new legal challenges to their diversity plans that, so far, have not materialized.

The National School Boards Association plans to provide local boards with advisories on what policies can be used under the Supreme Court’s decision to promote racial balance. But General Counsel Negrón expects few changes as a result of the ruling.

“School districts are not going to be changing their policies drastically to the extent that they will be abandoning their choices of diversity or integration as their goal, if that’s what they’ve chosen to do,” Negrón says. “School districts are going to comply with the law as they understand it. And there’s a lot of room in Justice Kennedy’s concurrence for school districts to be creative and innovative.”

Barring any consideration of race, Negrón adds, “was just not what the decision stood for.”

Pacific Legal Foundation attorney Browne, however, worries that school districts are not complying with the ruling. “We are very disappointed that there are school districts who are ignoring the decision by the U.S. Supreme Court and continuing to use race [in pupil assignments],” she says.

Browne says school districts should have begun developing contingency plans for assigning students on a non-racial basis after the oral arguments in the Seattle and Louisville cases in December indicated the court would find both plans unconstitutional.

The Louisville and Seattle cases themselves are still pending in lower federal courts, with winning lawyers in both cases asking the courts to order the school boards to pay attorneys’ fees.

In Seattle, the firm of Davis Wright Tremaine is seeking \$1.8 million in attorneys' fees despite having previously said that it was handling the parents' case pro bono — for free. "Congress specifically and explicitly wrote into the law that if the government is found to have violated citizens' civil rights, then the prevailing party should seek fee recovery," explained Mark Usellis, a spokesman for the firm. The school system reported spending \$434,000 in legal fees on the case.²⁷

Louisville solo practitioner Gordon is asking to be paid \$200 per hour for the "hundreds of hours" he devoted to the case plus a bonus for the national impact of the case. Without specifying a figure, he also wants to be reimbursed for spending his own money on expenses and court costs. Meanwhile, plaintiff Crystal Meredith is asking for \$125,000 in damages, which she attributes to lost wages, invasion of privacy and emotional distress.²⁸

Gordon says he received several complaints from parents whose applications for transfers for their children had been denied on the basis of limited capacity at the school they had chosen. Gordon says he suspected school officials were actually denying the transfers on racial grounds, but the MacNeals' case was the only "smoking gun" he found.

The Pacific Legal Foundation is following up on "many inquiries" received from parents since the Supreme Court ruling, according to Browne, but no new cases have been filed. She declined to say where the complaints originated. The foundation has suits pending in California courts against the Los Angeles and Berkeley school districts over race-based policies.

If any new legal challenges are filed, Negrón expects federal courts will defer to local school boards' decisions, for the most part. "The [Supreme Court] didn't tell us exactly what to do," he explains. "School districts will be trying their best to come up with something that meets the requirements of the law and at the same time meets their educational interest in regard to diversity."

OUTLOOK

'Minimal Impact'?

In striking down the Seattle and Jefferson County racial-balance plans, Chief Justice Roberts cited figures from

the two school districts showing that the policies actually affected relatively few students — only 52 pupils in Seattle and no more than 3 percent of the pupil assignments in Jefferson County. The "minimal impact," he wrote, "casts doubt on the necessity of using racial classifications."

Writing for the dissenters, however, Justice Breyer cast the stakes in broader terms by citing the growing percentage of black students in majority non-white schools nationwide. The Louisville and Seattle school boards, Breyer said, were asking to be able to continue using tools "to rid their schools of racial segregation." The plurality opinion, he concluded, was "wrong" to deny the school boards' "modest request."

Two months after the ruling, civil rights advocates are continuing to voice grave concerns that the decision will hasten what they call the resegregation of public schools nationwide. "We're going to have a further increase in segregation of American schools," says UCLA's Orfield. "School districts are going to have to jump through a whole series of hoops if they want to have some modest degree of integration."

Legal Defense Fund President Shaw fears new challenges not only to pupil-assignment plans but also to mentoring and scholarship programs specifically targeting racial minorities. "Our adversaries are not going to go away," says Shaw. "They're going to continue to attack race-conscious efforts to address racial inequality."

Opponents of racial-balance plans either discount the fears of increased racial isolation or minimize the harms of the trend if it materializes.

"I don't think there will be dramatic consequences from these decisions," says Rosman of the Center for Individual Rights. School systems with an interest in racial diversity "will find a way to do that legally," he says. "For schools that use race explicitly, it will still be a contentious matter."

"There's going to be less and less focus on achieving politically correct racial and ethnic balance and more focus on improving education," says the Center for Equal Opportunity's Clegg. "That's where the law's headed, and that's where policy's headed. We ought to be worrying less about integration anyhow."

For his part, the Century Foundation's Kahlenberg stresses that the number of school districts with race-conscious policies — guesstimated at around 1,000 — is

a small fraction of the nationwide total of 15,000 school systems. Many of the districts that have been seeking racial balance will likely shift to socioeconomic integration, he says, "because that's a clearly legal way to raise academic achievement for kids and create some racial integration indirectly."

In Louisville, the county school board did vote on Sept. 10 to broaden its diversity criteria to include socioeconomic status. "Race will still be a factor," Superintendent Berman said, "but it will not be the only factor."²⁹ Meanwhile, Student Placement Director Todd says Jefferson County's use of non-contiguous school-attendance zones to mix students from different racially identifiable neighborhoods is likely to be continued.

In his concurring opinion, Justice Kennedy suggested "strategic site selection" as another permissible policy to promote racial diversity — placing new schools so they draw students from different racial neighborhoods. The suggestion may prove impractical in many school districts. Jefferson County opened one new school this fall — in the rapidly growing and predominantly white eastern end, far removed from the African-American neighborhoods in the West End. As Breyer noted in his opinion, many urban school systems are unlikely to be building new schools because they are losing not gaining enrollment.

Changing demographics and changing social attitudes are inevitably bringing about changes in the schools. Within a decade or so, demographers expect white students will no longer comprise a majority of public school enrollment. And, as Abigail Thernstrom notes, young people have different attitudes toward race than their parents or grandparents.

"In terms of racial attitudes, we're on a fast track," Thernstrom says. "Young kids are dating across racial and ethnic lines. America is changing in very terrific ways and has been for some time. I expect that change to continue."

But University of Wisconsin educational historian Reese cautions against expecting racial issues to disappear. "It's like a never-never land to imagine that racial issues can somehow disappear," he says. "It's a nice thing to say that we should live in a kind of perfect world, but we don't. I can't imagine that it will disappear. It couldn't have disappeared in the past, and it won't disappear in the future."

NOTES

1. For coverage, see Chris Kenning, "Separate attendance zones voided," *The [Louisville] Courier-Journal*, Aug. 29, 2007, p. 1A.
2. The decision is *Parents Involved in Community Schools v. Seattle School District No. 1*, 552 U.S. ____ (2007); the companion case was *Meredith v. Jefferson County Public Schools*. For a detailed chronicle of the cases, see Kenneth Jost, "Court Limits Use of Race in Pupil Assignments," in *The Supreme Court Yearbook 2006-2007*, <http://library.cqpress.com/scyb/>.
3. For background, see Kenneth Jost, "School Desegregation," *CQ Researcher*, April 23, 2004, pp. 345-372.
4. See Chris Kenning, "JCPS sees change in racial makeup," *The [Louisville] Courier-Journal*, Sept. 2, 2007, p. 1A.
5. Gary Orfield and Chungmei Lee, "Historic Reversals, Accelerating Resegregation, and the Need for New Integration Strategies," UCLA Civil Rights Project (formerly based at Harvard University), August 2007, pp. 29, 35.
6. Richard D. Kahlenberg, "Rescuing *Brown v. Board of Education*: Profiles of Twelve School Districts Pursuing Socioeconomic School Integration," June 28, 2007, p. 3.
7. For coverage, see Peter Schworm, "AG Urges Court to Uphold Lynn Plan," *The Boston Globe*, July 18, 2005, p. B4.
8. Orfield and Lee, *op. cit.*, pp. 7-8. For background, see Barbara Mantel, "No Child Left Behind," *CQ Researcher*, May 27, 2005, pp. 469-492.
9. Background drawn in part from William J. Reese, *America's Public Schools: From the Common School to "No Child Left Behind"* (2005); R. Freeman Butts, *Public Education in the United States: From Revolution to Reform* (1978).
10. Reese, *op. cit.*, pp. 10-11, 25-26.
11. For background, see James Anderson, *The Education of Blacks in the South, 1860-1935* (1988). See also Heather Andrea Williams, *Self-Taught: African American Education in Slavery and Freedom* (2003).
12. For background, see "School Desegregation," *op. cit.*, p. 350 (Latinos), pp. 356-357 (Asian-Americans), and sources cited therein.

13. Some background drawn from James T. Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (2001).
14. For data, see *ibid.*, pp. 228-230.
15. The decisions are *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968), and *Swann v. Charlotte-Mecklenburg County Board of Education*, 402 U.S. 1 (1971).
16. Reese, *op. cit.*, p. 246. For background on later school desegregation cases, see Patterson, *op. cit.*
17. For background, see H. B. Shaffer, "Status of the War on Poverty," in *Editorial Research Reports*, Jan. 25, 1967, available at *CQ Researcher Plus Archive*, <http://library.cqpress.com>.
18. Background drawn from Kathy Koch, "Reforming School Funding," *CQ Researcher*, Dec. 10, 1999, pp. 1041-1064.
19. The decisions are *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), and *Robinson v. Cahill*, 62 A.2d 273 (N.J. 1973).
20. For background, see Charles S. Clark, "Attack on Public Schools," *CQ Researcher*, July 26, 1996, pp. 649-672.
21. See Patterson, *op. cit.*, p. 214 n.19, p. 234.
22. The decisions are *Wessmann v. Gittens*, 160 F.3d 790 (1st Cir. 1998); *Tuttle v. Arlington County School Board*, 195 F.3d 698 (4th Cir. 1999), *Eisenberg v. Montgomery County Public Schools*, 197 F.3d 123 (4th Cir. 1999). For coverage, see Beth Daley, "Court Strikes Down Latin School Race Admission Policy," *The Boston Globe*, Nov. 20, 1998, p. A1; Jay Mathews, "School Lottery Loses on Appeal," *The Washington Post*, Sept. 26, 1999, p. C1 (Arlington County); Brigid Schulte, "School Diversity Policy Is Overruled," *ibid.*, Oct. 7, 1999, p. A1 (Montgomery County).
23. See Richard D. Kahlenberg, *All Together Now* (2003 ed.), p. xiii.
24. Quoted in Andrew Wolfson, "Desegregation Decision: Some Find 'Sunshine' Amid Rain," *The [Louisville] Courier-Journal*, June 29, 2007, p. 6K.
25. Quoted in Jessica Blanchard and Christine Frey, "District Vows to Seek Out Diversity Answers," *Seattle Post-Intelligencer*, June 29, 2007, p. A1.
26. See Emily Heffter, "First Day of School for Chief," *Seattle Times*, July 10, 2007, p. B1.
27. See Emily Heffter, "Law firm wants school district to pay \$1.8M," *Seattle Times*, Sept. 6, 2007, p. B5.
28. Chris Kenning and Andrew Wolfson, "Lawyer in schools case seeks fees, bonus," *The [Louisville] Courier-Journal*, July 29, 2007, p. 1A.
29. Quoted in Antoinette Konz, "Schools adopt guidelines for assignment plan," *The [Louisville] Courier-Journal*, Sept. 11, 2007.

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Books

Frankenberg, Erika, and Gary Orfield (eds.), *Lessons in Integration: Realizing the Promise of Racial Diversity in American Schools*, University of Virginia Press, 2007.

Twelve essays by 19 contributors examine the educational and social effects of desegregation and the disadvantages to students in segregated schools. Orfield is co-director of the Civil Rights Project, UCLA Graduate School of Education and Information Studies (formerly, the Harvard Civil Rights Project); Frankenberg is a study director for the project. Includes notes, 46-page bibliography.

Loveless, Tom, *The Tracking Wars: State Reform Meets School Policy*, Brookings Institution Press, 1999.

The director of the Brown Center on Educational Policy at Brookings depicts tracking as a traditional educational practice and detracking as "a gamble" that may hurt rather than help students in low-achievement schools. Includes detailed notes.

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Reese, William J., *America's Public Schools: From the Common School to "No Child Left Behind,"* Johns Hopkins University Press, 2005.

A professor of educational-policy studies at the University of Wisconsin-Madison provides an accessible overview of the history of U.S. public education from Horace Mann's advocacy of the "common school" through 20th-century developments.

Thernstrom, Abigail, and Stephan Thernstrom, *No Excuses: Closing the Racial Gap in Learning,* Simon & Schuster, 2003.

The authors decry the persistent achievement gap between white and black students but discount the importance of racial isolation in schools as a cause. Includes extensive statistical information, notes. Both authors are senior fellows with the Manhattan Institute; Abigail Thernstrom is vice chair of the U.S. Civil Rights Commission, Stephan Thernstrom a professor of history at Harvard.

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Simmons, Dan, "A Class Action: Leaders Tried to Rein In Effects of Poverty in Public Schools; Voters Were in No Mood for Busing," *La Crosse (Wis.) Tribune*, Jan. 21, 2007, p. 1.

The story and an accompanying sidebar ("Balance by Choice") examine the history and current status of the La Crosse school district's 15-year experiment with socioeconomic integration.

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

The 42-page report describes the mixed results of socioeconomic integration in 12 school systems, with lengthy treatment of three: La Crosse, Wis.; Cambridge, Mass.; and Wake County (Raleigh), N.C. For a book-length treatment, see Kahlenberg, *All Together Now: Creating Middle-Class Schools through Public School Choice* (Brookings Institution Press, 2001).

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The 50-page report finds "accelerating isolation" of African-American and Latino students in public schools and recommends a variety of measures to counter the trend, including an attack on housing segregation, socioeconomic integration of schools and congressional initiatives "to require and/or to support racial progress."

On the Web

The *Courier-Journal* has an extensive compilation of articles, photographs and information on the course of school desegregation in Louisville and Jefferson County (www.courier-journal.com/desegregation). Current coverage can be found on the Web sites of Seattle's two newspapers, the *Seattle Times* (<http://seattletimes.nwsourc.com/html/education/>) and the *Seattle Post-Intelligencer* (<http://seattlepi.nwsourc.com/>).

For More Information

American Educational Research Association, 1430 K St., N.W., Suite 1200, Washington, DC 20005; (202) 238-3200; www.aera.net. National research society encouraging scholarly research in efforts to improve education.

Center for Individual Rights, 1233 20th St., N.W., Suite 300, Washington, DC 20036; (202) 833-8400; www.cir-usa.org. Nonprofit public-interest law firm opposed to racial preferences.

Center for Equal Opportunity, 7700 Leesburg Pike, Suite 231, Falls Church, VA 22043; (703) 442-0066; www.ceousa.org. Think tank devoted to equal opportunity and racial harmony.

Century Foundation, 41 E. 70th St., New York, NY 10021; (212) 535-4441; www.tcf.org. Public-policy institution promoting methods for socioeconomic integration in education.

Mexican American Legal Defense and Educational Fund, 634 S. Spring St., Los Angeles, CA 90014; (213) 629-2512; www.maldef.org. Protects and promotes the civil rights of Latinos living in the United States.

NAACP Legal Defense and Educational Fund, 99 Hudson St., Suite 1600, New York, NY 10013; (212) 965-2200; www.naacpldf.org. Serves as legal counsel on issues of race, with emphasis on education, voter protection, economic justice and criminal justice.

National School Boards Association, 1680 Duke St., Alexandria, VA 22314; (703) 838-6722; www.nsba.org. Seeks to foster excellence and equity in public education by working with school board leadership.

Here is contact information for the school districts involved in the Supreme Court decision, *Parents Involved in Community Schools v. Seattle School District No. 1*:

Jefferson County Public Schools, VanHoose Education Center, 3332 Newburg Rd., P.O. Box 34020, Louisville, KY 40232-4020; (502) 485-3949; www.jefferson.k12.ky.us.

Seattle School District No. 1, 2445 Third Ave. South, Seattle, WA 98134; (206) 252-0000; www.seattleschools.org.