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Achieving Educational Excellence for All:

A Guide to Diversity-Related Policy Strategies for School Districts

With a foreword by former
U.S. Secretary of Education
Richard W. Riley



Participating Organizations

American Association of School Administrators
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National School Boards Association
School Social Work Association of America
The College Board

This publication does not offer legal advice.
When faced with questions regarding school district policies on diversity,
school districts should seek the advice of their school attorney.

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A joint publication of

The National School Boards Association (NSBA)

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The importance of student diversity in our schools has never been greater than during the opening of the new millennium. In today's digital age, connections between nations, corporations, and individuals are measured in micro-seconds, quickened by smart phones and text messages. And, just as the speed of developing technology accelerates the speed of our communications, so does it decrease the virtual distances between us.

In this dynamic environment, the need to appreciate and navigate the ever increasing diversity of our nation and the world is an essential part of the education of our students. Global business and homegrown firms alike demand workers that can relate to, understand, and engage people from all walks of life and from diverse backgrounds. Colleges and universities aim to form yearly classes of students with sufficient diversity capital. And the challenges of maintaining a democratic society require an appreciation for our inherent plurality.

And yet, despite the rapidly changing pace of our new global society, a longstanding need remains for schools to carry the promise of *Brown v. Board of Education* into the new millennium—to translate our 20th century vision of equality and fairness into a workable plan that lifts the academic achievement of all students in the 21st century. While our society has become increasingly diverse, too many of our communities are becoming increasingly segregated. Voluntary migration patterns and economic segregation have replaced legally imposed divisions.

In this post-integration society, school board members, educators, and their local partners can play a significant role in leading their communities toward the development of district-specific student diversity policies that advance educational achievement for all students—and that do so in different, multifaceted ways. We are therefore, pleased that so many national organizations who care about education have joined us as partners in this guide. This publication is one way of informing that necessary work. Our hope is that local leaders at all levels of the school community, from school board members to educators, to superintendents and parents, use this resource to move the conversation forward about the importance of diversity as a means for achieving educational goals, and that they do so in a way that is not only legally sound, but also reflects the best values of the communities they serve.

Anne L. Bryant
Executive Director
National School Boards Association

Gaston Caperton
President
The College Board

This Guide at a Glance:

Foundations for Action

These key takeaways are derived from principles discussed in *Achieving Educational Excellence for All*.

Chapter 1 Student Diversity—Then and Now

1. School district policymaking is a dynamic process that must reflect and respond to demographic, political, legal, and practical changes. In the second half of the 20th century, many school districts, particularly in the South, were legally obligated to implement policies that remedied the current effects of *past de jure* segregation. Today, most school districts are no longer under desegregation orders, but there are important educational reasons why a school board might seek to achieve a diverse student population in its schools.

2. School boards and other education leaders should approach and support student diversity efforts as a means to educational and lifelong benefits. Diverse learning environments provide benefits for all students, including improved academic achievement, the inculcation of democratic and civic values, and critical thinking, collaboration, and communication skills.

Chapter 2 Defining Diversity in the Elementary and Secondary Setting

3. School boards and other education leaders should ensure that diversity-related policies reflect an inclusive definition of diversity, tailored to specific district and/or school needs. In the context of student assignment and placement-related decisions, common factors considered include: race, ethnicity, sex, socio-economic status, neigh-

borhood, language status, special education needs, academic performance and potential, record of achievement, and community or civic engagement or interest.¹

4. School boards and other education leaders can enhance the potential legal sustainability of any policies in which educational opportunities or benefits are provided to students based on their race or ethnicity with the right kind and quality of evidence. In the realm of race and ethnicity preferences, that evidence must establish:

- The specific and compelling interests in diversity that such policies further;
- That the design and implementation of such policies is appropriately calibrated, so as to neither over-rely nor under-rely on race and ethnicity as factors in meeting those interests; and
- A process pursuant to which such policies are periodically reviewed and evaluated, and where necessary, modified.²

Chapter 3 Community Engagement: Building Diversity Capital

5. Community engagement is a vital component of developing and implementing a successful diversity policy. School boards can anticipate and address community concerns over a diversity policy by working proactively with a wide range of stakeholders, including educators, parents, community leaders, businesses, and academics. A district's diversity policy likely will have greater traction and success where it reflects the expertise, needs, and input of community members.

6. School boards should identify opportunities, both formal and informal, for community input. Citizen advisory committees whose membership reflects the composition of the larger community may serve an instrumental role in improving the policy.

7. Policymaking must be a continuous process to result in continuous improvement. Initially, school boards should communicate the objectives and goals of diversity policies that are being contemplated. Upon those foundations, they should seek input from stakeholders, both internal (district leaders, educators, staff) and external (parents, community leaders and organizations, businesses, other government agencies), and use that input to design and implement relevant policies and practices.

Chapter 4 **Developing and Implementing Diversity-Related Student Assignment Policies**

8. School boards and education leaders have a wide range of options to consider when designing student assignment policies to create diverse student bodies, in an effort to realize the educational benefits of diversity, and to avoid the harms of student isolation. Such policies can consider numerous individual characteristics—including race, ethnicity, sex, socioeconomic status, family status, geographic location, personal or family preference, etc.—or can draw on other means for assignment, including strategic site selection for new schools, carefully determined school attendance zones, or consideration of neighborhood demographics, for example.

9. Where a school board adopts a policy that takes into account the race or ethnicity of individual stu-

dents, the board must ensure that it satisfies the significant legal test of “strict scrutiny.” School boards must be able to demonstrate that the consideration of race or ethnicity serves a compelling interest—namely that the policy is educationally focused with respect to creating a diverse student population and/or avoiding racial isolation; and that the particular policy is carefully calibrated (“narrowly tailored”) to achieve those compelling interests. Further, the school board must be able to show that it examined other race- or ethnicity-neutral options and determined that they would not be successful at achieving the school district’s goals. (See also No. 4, above.)

10. The complex process of developing and implementing diversity-related policies requires school boards to grapple with significant policy and often legal considerations. Certainly, where issues of race and ethnicity, and perhaps to a lesser extent socioeconomic status, are raised, a school board also may face skepticism or opposition from some facets of the community. Nonetheless, numerous school boards around the country have taken up this important work. Ultimately, school boards should feel empowered by the many options and tools they possess that allow them to take advantage of an important resource—the diversity of their students—and the potential that resource has to improve the educational outcomes for all children.

Foreword

I am proud to be part of the team that has produced this policy guide, *Achieving Educational Excellence for All*, and am pleased to share my views about the important issues that it addresses.

Now, more than ever, we as a nation must work together to ensure that we appropriately value the diversity within and among our schools. We also must be resolute in our focus on how to best leverage that diversity to meet the demands of the dramatically changing social and economic fabric of the 21st century. As I have remarked in other settings, today we are educating students for jobs that may not yet exist, and technologies that haven't been invented, to solve problems that we can't yet conceive. If we're not resolute in our focus on developing the knowledge and skills of students that will allow them to meet those challenges, we will have failed as education leaders. To succeed, we must ensure that a diversity focus is an integral part of a high-quality, content-rich education for *all* students, in which they learn to think critically, work collaboratively, and communicate effectively.

We also should not lose sight of the fact that our educational focus here has important historical antecedents that reverberate to this day. When our nation's schools were going through the process of integration during the second half of the last century, we made great strides in closing the achievement gap for African-American students. I know from first-hand experience the difficulties of this process, but I also know the positive outcomes. We are a better nation because of *Brown v. Board of Education* and all that has followed in its wake—including new ways of thinking about (and defining) diversity. As this policy guide points out, the diversity issues of today are not only about race—even as they are very much about race.

America has always been a rich stew of many cultures and races, backgrounds and perspectives—all of which come together in our quest for liberty and justice for all. Exposure to, appreciation for, and involvement with students and adults who exhibit these differences will help prepare our students for the workplace and for our democracy.

Our nation's diversity is our nation's strength. America's motto, *E Pluribus Unum*—"out of many, one"—says it all.

Richard W. Riley
Former U.S. Secretary of Education
Senior Partner, EducationCounsel LLC

School is where children learn to appreciate, respect, and collaborate with people different from themselves.

- Arne Duncan, United States Secretary of Education³

Introduction

Education in the United States is at an important crossroads. Challenges abound—ranging from our ability to educate students with the knowledge and skills required of a 21st century workforce to the ongoing challenges of budgets and the need to “do more with less.” Amplifying our collective national challenge is the demographic reality that significantly larger segments of our emerging workforce⁴ in future years will come from low-income and racial and ethnic groups that often have been the least well-served by our schools and, correspondingly, have had the lowest rates of educational achievement and high school and college completion.

With these challenges come opportunities. As a nation, we have clear national and non-partisan agreement that education plays a critical role in ensuring that we produce citizens who can meet the challenges facing our nation—and that we must invest, and invest wisely, if those aims are to be achieved.

Part of that investment must include a focus on the resources that we have and the ways in which we can leverage those resources for the benefit of all. Among the kinds of strategic investments we can make is to ensure that we are paying attention to a resource that for many districts is a given—the diversity of their student population—and capitalize on this resource to enhance the learning, achievement, and success of all students. Indeed, to address successfully the issue of student diversity in public schools is no more about numbers for numbers sake than it is about diversity for diversity’s sake. Meaningful strategies will, rather, focus on leveraging and enhancing existing diversity among students as part of the *educational* enterprise—working to promote academic and educational outcomes that school district leaders seek through programmatic efforts in and outside of the classroom.

This Policy Guide is intended to help chart that course of reflection and action.

This publication provides school boards, school district leaders, district staff, community leaders, and parents with practical guidance on policy issues associated with student diversity. More specifically, this Policy Guide provides information regarding ways to frame conversations regarding student diversity, with particular emphasis on education policy

development and community stakeholder engagement. (It is also informed by and references relevant legal principles that may bear on policy-related strategies.) With a focus on the opportunity that diversity-related policies offer to assist school districts in realizing their educational goals:

- **Chapter 1** presents an **overview of the concept of diversity**, tracing the historical evolution of the concept, particularly as an area of focus for school districts, to present day political and legal realities.
- **Chapter 2** discusses the **multiple dimensions of diversity** typically associated with district efforts today, and how a district's particular settings, characteristics, and needs should influence the development and implementation of diversity goals and strategies.
- **Chapter 3** recommends points of consideration when contemplating the development, implementation, and/or modification of diversity-related policies, focusing particularly on practical, on-the-ground process steps related to **consensus building and community engagement**.
- **Chapter 4** examines **avenues for action through and beyond student assignment** by which school districts can capitalize on student diversity to improve educational outcomes for all, focusing specifically on student assignment policies.

A SNAPSHOT OF RESEARCH AND DATA ON DEMOGRAPHICS AND DIVERSITY

- ➔ By 2050, racial and ethnic minority groups that have the lowest rates of high school and college completion will comprise 55% of the working-age population.
- ➔ Today, roughly two of every five black or Latino students attend intensely segregated schools (in which 90-100% of students are minorities), up from less than one-third in 1988. Meanwhile, only 8% of white students attend schools with 50-100% minority student populations, and the average white student attends a school that is nearly 80% white—a considerably higher percentage than the overall public school enrollment.
- ➔ Segregation tends to be multidimensional, with corresponding levels of socioeconomic and language isolation. More than 80% of segregated black and Latino schools are poverty-concentrated, while only 5% of segregated white schools are.
- ➔ Economically and racially isolated schools result in limited student access to opportunity networks for employment and postsecondary education. These schools generally provide fewer educational offerings and resources—with higher teacher turnover and lower teacher quality.
- ➔ Diverse schools produce educational and lifelong benefits, enhancing students' civic values, improving student learning and preparation for employment, and increasing educational opportunities. Diverse schools provide all students with deeper ways of thinking, higher aspirations, and positive interactions with students of other races and ethnicities—experiences that translate into positive, long-term benefits for living and working in diverse settings.

See, e.g., Orfield, *Reviving the Goal of an Integrated Society* (The Civil Rights Project, 2009), pp. 12-14; *Still Looking to the Future: Voluntary K-12 School Integration* (NAACP Legal Defense Fund and The Civil Rights Project, 2008); Kahlenberg, *Rescuing Brown v. Board of Education: Profiles of Twelve School Districts Pursuing Socioeconomic School Integration* (The Century Foundation, 2007); *Divided We Fail: Coming Together through Public School Choice* (The Century Foundation Task Force on the Common School, 2002). *See also, e.g.,* Slavin and Madden, *School Practices that Improve Race Relations*, 16 AM. EDUC. RES. J. 169 (1979); Banks, *Multicultural Education: Its Effects on Students' Racial and Gender Role Attitudes*, HANDBOOK OF RESEARCH ON MULTICULTURAL EDUC. 617 (Banks and McGee Banks eds., 1995). *See also* Brief of 553 Social Scientists as *Amici Curiae* in Support of Respondents, *Parents Involved*, 551 U.S. 701 (2007) (Nos. 05-908 & 95-915).



Chapter 1
Student Diversity—Then and Now

Student Diversity—Then and Now

This chapter outlines key foundations that school leaders must grasp if they are to engage effectively with the community on diversity-related issues. By understanding the history of desegregation efforts and the foundations those efforts established for today’s political and legal realities surrounding diversity initiatives, school districts will be better equipped to conceptualize and actualize diversity-related policies in a manner relevant to 21st century elementary and secondary education.

The Past: A Historical Overview of Diversity

School district efforts to promote student body diversity in education initially addressed remedial and associated social justice interests. Following *Brown v. Board of Education* (1954),⁵ school districts that previously administered segregated schools had an *affirmative* duty to take action to desegregate schools—and to do so “with all deliberate speed,” based on the U.S. Supreme Court’s *Brown II* (1955) decision.⁶ Ultimately, serious school desegregation efforts (and successes) followed the 1964 Civil Rights Act, which prohibited racial discrimination in all programs receiving federal aid (including schools).

School district efforts during this time focused on curing problems of the past. In other words, districts were acting to end legally-imposed (*de jure*) segregation of students on the basis of race (in practically all cases, segregation of black and white students). When determining whether and how school districts could consider race in their practices and policies, federal courts consistently held that the districts’ remedial interest (i.e., remedying the present effects of past discrimination) was a compelling interest that could justify these race-conscious considerations in appropriate circumstances.

Thus, to overcome the effects of prior discrimination, school districts were authorized to consider

student race in various policies (including student assignment). Spurred by *Brown’s* progeny and the Civil Rights Act, the most intensive period of school desegregation occurred from 1968-1972. During this period, the percentage of black students in severely segregated schools dropped from 64.3% to 38.7%.⁷

Later Supreme Court cases established scope and time limitations for these remedial policies. Specifically, the Court indicated that it would require desegregation efforts only as long as they were necessary to eliminate continuing discrimination or the effects of previously *de jure* systems. Once a school district established that it no longer operated separate school systems for white and nonwhite students (achieving so-called unitary status), it had satisfied the remedial purposes of the desegregation order, established to end intentional discrimination by government actors.

School districts are not required to implement desegregation policies in perpetuity. Said differently, they are not obligated to overcome the legacy of societal discrimination—an endeavor that the U.S. Supreme Court in various cases has characterized unlimited in reach and time, so ill-defined that success could not be readily assessed, and too broadly based for a single district to have a realistic chance of having a positive impact on the goal.

And, perhaps more to the point, although numerous school districts still are implementing court—or federal government—mandated desegregation obligations, the concept of legally mandated racial integration supported by a historical, remedial rationale is one that has significantly less relevance to school districts in the second decade of the 21st century than in decades past. It therefore should be contrasted with the diversity efforts to promote the benefits of diversity and avoid the harms of racial isolation that characterize much of district action today—in which districts are seeking the educational, civic, and economic benefits that often result

from well-developed policies and strategies that are mission-focused and forward-looking.

The Present: Diversity’s Evolution—with an Educational Focus Reflecting District Choices

The current association of a diverse learning environment, educational excellence, and positive student learning outcomes reflects a major shift in how education leaders think—and act—with respect to diversity issues. Notably, although legal issues are never far removed from the conversation⁸ (or so it seems), this shift reflects movement from an externally imposed set of obligations required by courts or federal agencies to correct for past wrongs to institutional choices associated with student diversity goals, which must comport with relevant legal standards that guide multiple aspects of district action.

A growing body of social science evidence suggests that attending diverse schools is positively related to educational and lifelong

benefits for all students—enhancing students’ civic and democratic values and preparing them for employment and a multicultural society. Meta-analyses of empirical studies show that diverse learning environments that provide intergroup contact can have substantial effects in reducing prejudice and inculcating critical thinking, social reason-

ing, and social learning skills in school children.⁹ Similarly, students who attend diverse learning

settings at the

elementary and

secondary levels learn to respect cultural differences

in a multicultural environment.¹⁰

Diverse schools also increase academic opportunities compared to schools in which students are isolated by socioeconomic status and/or race and ethnicity. For example, regression analysis of No Child Left Behind test data indicates that African-American and Hispanic students perform less well on assessments in high-minority schools as compared to students in more racially diverse schools, suggesting a relationship between a school’s racial composition and student learning gains.¹¹ Likewise, a recent study of Montgomery County, Maryland, found that students who lived in public housing but attended the school district’s most-advantaged schools far outperformed in math and reading those students in public housing who attended the least-advantaged schools.¹² And a 1996 study determined that, controlling for individual ability and family home environment, attending a middle-class school reduced a student’s chance of adult poverty by more than two-thirds.¹³

Correspondingly, and with a focus on issues of race (among other potential diversity factors), social science research indicates that attending racially isolated schools can yield significant educational harms on students’ educational and life outcomes. For example, minority student attendance at a racially isolated school is a significant predictor of low graduation rates, even when the effects of other school performance indicators are held constant.¹⁴ Studies conducted in one Southern district indicated that the more time students spent in predominantly

Putting it into Practice

A good policy will:

Articulate clearly why diversity is important to your school district.

Ensure your district’s diversity policies promote core educational benefits—not diversity for its own sake.

“Properly understood and used, the term “diversity” is not code for race or ethnicity, by themselves. While a school board’s conception of diversity can (and often should) include race and ethnicity, it should reflect a far more comprehensive array of factors, encompassing relevant attributes and experiences that can influence the learning that takes place in the classroom.”
—See Chapter 2, page 20

black elementary schools, the lower their scores on state-wide tests, their grade point averages, and their secondary track placements—even when controlling for factors such as family background, prior achievement, peer effects, and self-reported academic effort.¹⁵

Based in part of this body of research, numerous school districts premise their policies on research and experience that reflect the association between diverse learning environments and improved critical thinking skills, improved race relations, improved minority student achievement, better preparation of students for a diverse workplace and citizenry, the creation of a perception that the community's schools are roughly equal, and a communal sense of participation in the school system.¹⁶

Against this backdrop, school districts should ensure that their diversity-related policies and strategies are pursued as tools that promote core educational benefits—not to achieve diversity for its own sake. By doing so, they can ensure that they are on solid footing—both legally and practically.

The Future: Expanding Core Values for Educational and Economic Success

To meet our nation's 21st century goals, much will be required of elementary and secondary educators, who are charged with preparing students for a workforce in a rapidly changing and more connected global economy, as well as for citizenship in a new age of democratic engagement.

To ensure that we are graduating students who can lead and thrive in rapidly changing times, amidst ever-shifting demographics and more interconnectivity with others than ever before, our nation must graduate students who couple content mastery with the vital skills of thinking critically, working collaboratively, and communicating effectively. This is education's moment, with the demand for students

“To succeed, we must ensure that a diversity focus is an integral part of a high-quality, content-rich education for all students, in which they learn to think critically, work collaboratively, and communicate effectively.”

—Foreword by former U.S. Secretary of Education, Richard W. Riley

who are prepared to “know and master core academic content; think critically and solve complex problems; work collaboratively; communicate effectively; and be self-directed and able to incorporate feedback.”¹⁷

The imperative is clear—when student diversity already exists, school leaders must seize the opportunity to lead on key educational issues. In the absence of diversity, they must work diligently to promote policies and strategies that will lead to high levels of student engagement and learning to equip all students for a 21st century reality.

Key Takeaways: Foundations for Action

- School district policymaking is a dynamic process that must reflect and respond to demographic, political, legal, and practical changes. In the second half of the 20th century, many school districts, particularly in the South, were legally obligated to implement policies that remedied the current effects of past *de jure* segregation. Today, most school districts are no longer under desegregation orders, but there are important educational reasons why a school board might seek to achieve diverse student populations in its schools.
- School boards and other education leaders should approach and support student diversity efforts as a means to educational and lifelong benefits. Diverse learning environments provide benefits for all students, including improved academic achievement, the inculcation of democratic and civic values, and critical thinking, collaboration, and communication skills.

CONTEXT MATTERS:**Understanding the Benefits of Diversity in Higher Education**
Key Points of Alignment and Key Distinctions**In Elementary and Secondary Education:**

Student diversity, including but not limited to racial and ethnic diversity, results in improved student learning, improved student preparation for employment, and enhanced civic values. Research indicates that racially isolated environments have a negative effect on educational opportunity while diverse environments provide greater educational opportunities. For example, schools with high percentages of students of color, particularly those that also experience concentrated poverty, tend to be inferior in terms of teacher quality and consistency, educational resources, and curriculum quality and tend to produce lower student achievement scores and graduation rates.

In Higher Education:

The benefits of diversity in higher education are associated with significant educational benefits and outcomes including:

- **Improved Student Learning:** A diverse learning environment provides students with multiple perspectives and experiences that enrich the learning environment, both inside and outside the classroom. Evidence shows that student diversity can promote broader and deeper understanding of relevant issues among all students and can improve critical thinking skills by challenging existing perspectives.
- **Improved Preparation for Employment:** Diversity helps students appreciate the value of multiple perspectives, become better problem solvers, and function and communicate more effectively in diverse settings. These skills are increasingly relevant in our global economy.
- **Enhanced Civic and Democratic Values:** A diverse learning environment can instill tolerance, respect, and confidence in students, traits necessary for citizenship in and the social cohesion of our increasingly pluralistic democracy. Studies show that students educated in diverse settings exhibit an increased sense of civic engagement, are less likely to harbor negative racial stereotypes, and are more likely to live and work in integrated settings.

Sources: See, e.g., Gurin, *The Compelling Need for Diversity in Higher Education*, Expert Report (Jan. 1999); Slavin, *Cooperative Learning and Intergroup Relations*, HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION 628 (1995); Slavin, *Effects of Biracial Learning Teams on Cross-racial Friendships*, 71 J. OF EDUC. PSYCH. 381 (1979); Dawkins and Braddock, *The Continuing Significance of Desegregation: School Racial Composition and African-American Inclusion in American Society*, 63 J. OF NEGRO EDUC. 394 (1994); Sonleitner and Woods, *The Effect of Childhood Interracial Contact on Adult Antiracial Prejudice*, 20 INT'L J. OF INTERCULTURAL REL. 1 (1996); Slavin and Madden, *School Practices that Improve Race Relations*, 16 AM. EDUC. RES. J. 169 (1979); Banks, *Multicultural Education: Its Effects on Students' Racial and Gender Role Attitudes*, HANDBOOK OF RESEARCH ON MULTICULTURAL EDUC. 617 (Banks and McGee Banks eds., 1995). See also [Brief for 553 Social Scientists as Amici Curiae Supporting Respondents](#), *Parents Involved*, 551 U.S. 701 (2007) (Nos. 05-908 & 95-915).



Defining Diversity in the Elementary and Secondary Setting



Defining Diversity in the Elementary and Secondary Setting

Diversity is a multidimensional, broadly inclusive concept that acknowledges and embraces the richness of human differences. Attention to diversity is part and parcel of any meaningful conversation about improving the educational experience and outcomes for all students. This chapter examines the multidimensional nature of diversity and the ways in which each school board should establish its diversity goals in light of its own particular settings, contexts, and needs.

First, as a practical matter, it is vital that a school board define diversity with sufficient clarity, given the inherent ambiguity of the term and the frequently ill-informed debates that surround it. Properly understood and used, the term “diversity” is not code for race or ethnicity by themselves.¹⁸ While a school board’s conception of diversity may include race and ethnicity, it likely should in most instances reflect a far more comprehensive array of factors, encompassing relevant attributes and experiences that can influence the learning that takes place in and out of the classroom.

Indeed, when addressing student body diversity, multiple factors may be considered by school boards and policy leaders. As reflected in many district policies across the country, they may include, in addition to race, ethnicity, and sex, socio-economic status, neighborhood, language status, special education needs, academic performance and potential, record of achievement, community or civic engagement or interest, and more.¹⁹

School boards across the country have considered the multiple dimensions of diversity that are relevant to their district contexts and necessary to recognize and incorporate into policies aimed at advancing educational goals. The following examples illustrate ways in which school boards have framed their diversity interest:

- **Berkeley Unified School District:** Elementary

students are assigned to schools based on parental choice, a diversity index of the student’s neighborhood (determined by the racial, socioeconomic, and adult education levels of all residents in the neighborhood), and priority categories relating largely to proximity of the school of choice and siblings attending the school of choice. For assignment to small, specialized programs at Berkeley’s one high school, the assignment policy also takes into account special education and English language learner status.

- **San Francisco Unified School District:** Student assignment factors include parental choice, geographical proximity to school, and a “diversity index,” which measures socioeconomic status, academic achievement, home language, and extreme poverty of individual students.
- **St. Louis Public Schools:** The district’s inter-district assignment policy reflects consideration of the following factors for participating students: parental choice, residential address, race, behavioral history, and special education status.²⁰

Further, a school board’s conception of student diversity need not remain static. For example, one Texas school board met the challenge of maintaining diversity head on by redefining the term diversity after being released from a mandatory desegregation order.²¹ In light of its changed circumstances,²² the Ector County Independent School District Board of Trustees changed its definition of diversity with the assistance of the U.S. Department of Education’s Office for Civil Rights. The district now defines diversity beyond traditional classifications such as white, black or Hispanic, adding new factors to make campuses diverse. The district’s new diversity definition provides that, “[d]iversity in Ector County ISD is a reflection of the complexity of humanity. Ector

Putting it into Practice

A good policy focused on student diversity will be clear, and address the following:

- How does your policy define diversity?
- Is diversity defined inclusively?
- What will success look like, and how will you evaluate it?

County ISD defines diversity broadly by including giftedness, socioeconomics, primary language, special learning needs and race in recognition of humanity’s complexity.” The district believes this new definition will result in a “critical mass” of students in racial and ethnic groups that achieve a reduction in racial isolation and confer educational benefits.²³

As these examples make clear a district’s definition of diversity should not reflect a one-size-fits-all model. Diversity should, instead, be defined in light of the district’s specific goals and needs—and with consideration of the district’s (or particular relevant program’s) history and present day realities. In other words, school leaders should consider the particular educational needs and relevant community perspectives when making judgments associated with diversity efforts. For example, growth in the student

that maximize the equitable distribution of financial and human capital.

Ultimately, diversity-related policies should be framed in light of the educational objectives the board seeks to achieve, not around the attainment or maintenance of numerical population-related targets (even as that kind of data may be particularly relevant in analyzing the kinds of opportunities provided to all students).

Key Takeaways: Foundations for Action

- School boards and other education leaders should ensure that diversity-related policies reflect an inclusive definition of diversity, tailored to specific district and/or school needs. Common factors considered include: race, ethnicity, sex, socio-economic status, neighborhood, language status, special education needs, academic performance and potential, record of achievement, and community or civic engagement or interest.
- School boards and leaders can enhance the potential legal sustainability of any policies in which educational opportunities or benefits are provided to students (at least in part) based on their race or ethnicity with evidence that establishes:
 - The specific and compelling interests in diversity that such policies further;
 - That the design and implementation of such policies is appropriately calibrated, so as to neither over-rely nor under-rely on race and ethnicity as factors in meeting those interests; and
 - A process pursuant to which such policies are periodically reviewed and evaluated, and where necessary, modified.²⁴

Legal Links

Student diversity should be part of a broad effort to achieve “exposure to widely diverse people, cultures, ideas, and viewpoints.” Student diversity can play a role in serving public education’s civic mission of preparing citizens for participation in our democratic processes and an increasingly global economy.

Grutter v. Bollinger, 539 U.S. at 330.

While “some attention to numbers” is permissible, diversity for diversity’s sake is likely to be viewed as little more than an effort to achieve numerical goals, rather than educational objectives—and as a result, unlikely to survive legal review.

See, e.g., *Parents Involved*, 551 U.S. 701. See also *Grutter*, 539 U.S. 306; *Gratz v. Bollinger*, 539 U.S. 244; *Bakke*, 438 U.S. 265.

population of English language learners, coupled with the native English-speaking population’s desire for world language educational opportunities, may present both a need and an opportunity to re-examine a school district’s student placement policy. A primary goal might be to ensure that the educational needs of all students are met in multilingual environments



Community Engagement: Building Diversity Capital



Community Engagement: Building Diversity Capital

No serious discussion of diversity in our public schools can or should take place without community involvement. Public schools are institutions of our communities, and in many ways, school boards are the most grassroots of all our political institutions. School board members (whether elected or appointed) come from and live

in the communities they represent, from all walks of life, and from a variety of cultural, socioeconomic and professional backgrounds.²⁵ And school boards “are more ethnically diverse than most state and national elective bodies.”²⁶

Perhaps more than any other governmental entity, school boards and their decisions directly affect the citizens in a community. In many communities—particularly in urban or county-wide school districts, but also in more remote, rural areas, school districts tend to be the largest employer. Further, because students always are at the center of school board decisions, school board policies affect families in unique and intimate ways.

This unique role in the community places school boards in a prime position for enlisting the input and support of parents and community leaders on a variety of issues, including advancing a school district’s diversity goals. Community engagement and stakeholder outreach requires that school boards carefully frame conversations about a diversity-related policy like student assignment so that stakeholders understand the purpose, rationale, and substance of the policy. For instance, the building of new schools and the drawing or re-drawing of attendance zones may draw strong public comment that centers on the proposed action’s potential effect on personal interests. But this issue presents a unique opportunity for the board to lead the community by shifting the conversation to one about diversity as an educational value.

When established, diversity-related policies should be pursued to advance larger educational goals, including realizing higher student achievement, preparing students to be competitive in a global economy, and inculcating civic and democratic values. School boards must be clear about these larger goals, ensuring that educational and lay

Putting it into Practice

1. Build Diversity Capital

Partner with natural allies:

- Chambers of Commerce
- Local clubs
- PTOs
- Developers

Explore intergovernmental agreements:

- City and county governments
- Zoning ordinances
- Master growth plans
- Inter-district agreements

2. Share Data on Academic Value of Diversity for All Students

- Develop evidence to support achievement goals
- Use State Association of School Boards as a Resource

3. Listen to Your Communities

- Create a diversity committee/ citizen advisory committee
- Periodically revisit the diversity policy and assess impact

communities fully understand the purpose of and rationale behind any diversity-related policy. School boards and district leaders seeking to adopt diversity-related policies have the obligation to educate stakeholders about the benefits to students on an individual level and to shared social and economic wellbeing. In effect, school leaders must ensure that they clarify the concept of diversity and its value as an educational proposition. In the post-integration world, this means helping the public understand that a diversity program is not necessarily remedial and intended to correct past wrongs, nor is it about racial balancing, affirmative action, or special benefits to a particular group. Rather, diversity is about reaping the academic and educational benefits for all students that can flow from a diverse student body in a social setting where the practices at the school complement and reinforce the diversity policy. Examples include curricular and extracurricular offerings and student services that create a school culture that acknowledges and celebrates student differences.

Community Engagement: The Work Involved

Generally, community engagement is a “two-way communication between a school district and the community it serves.”²⁷ School boards routinely engage the public in a variety of ways, and many of those avenues of communication are assets for carrying out the diversity conversation.

“A fair summary is that most [if not all] boards have created formal opportunities for community members to voice their concerns.”²⁸ For instance, many districts conduct regular workshops and hearings with specific time slots on their agendas for

citizen input. In fact, because school board policy-making is often governed by state laws, many boards are required to conduct public hearings, known as rule-making, around the adoption of formal policies.

“The danger of failing to engage the community is obvious: No community support means a diversity policy has little hope of succeeding.”

In addition to these formal processes, many school boards also rely on citizen advisory committees to inform district policy choices. Committee input provides both lay and professional perspectives and can prove invaluable to the creation of workable policies.

For instance, in communities with universities or institutions of higher learning, it may be useful to include academics and practitioners with knowledge of demographics, social science, or business to complement the perspectives of parents and educators. Businesses (including local chambers of commerce and business leagues) in particular have a strong interest in diversity in education “because it prepares all students to succeed in and enhance the global community.”²⁹

Even where a diversity plan is not ultimately successful, community business leaders are important voices in the discussion, often offering potential solutions that enrich the public debate and highlighting the importance of diversity to the business community. In fact, business interests are not divergent from the public school interest in diversity. For instance, after Wake County changed a student assignment plan based on socioeconomic factors to one in favor of assigning students to neighborhood schools, the Greater Raleigh Chamber of Commerce proposed a student assignment plan it felt would

retain diversity in the county schools.³⁰

Similarly, citizen advisory committees, especially when a school board is addressing controversial policy areas, can help to reduce tensions and garner support for a diversity policy. For instance, in Rock Hill, South Carolina, the school district sought to minimize racial isolation in its elementary schools through a student assignment policy targeting new elementary schools.³¹ That effort “generated fierce debate, a lawsuit, and a reconfigured school board.”³² The school district learned a valuable lesson in community engagement, seizing the opportunity to connect with its stakeholders in a proactive way when it extended its diversity efforts to the high school level. A citizen committee was appointed to inform its work, and the result was markedly different. Not only were tensions reduced, but the district was able to educate its stakeholders about the benefits of its plan. “Community members spoke of how seeing and talking about the data on projected school composition (that is, under different school boundary scenarios) convinced them of the importance of assigning students in ways that would minimize student isolation.”³³

The danger of failing to engage the community is obvious: No community support means a diversity policy has little hope of succeeding. In 2010, the Boston Public Schools faced such a challenge when a number of leading civil rights groups expressed dismay that the student assignment process being implemented by the school district lacked a sufficient degree of public involvement.³⁴ The group broke from formal cooperation with the school district because of the “lack of meaningful engagement with the community.”³⁵ The group made a series of recommendations to improve engagement, including creating a task force to address specific challenges, involving community organizations and local foundations in the diversity dialogue, and expanding

Putting it into Practice

Listening to your community is an important part of determining a workable student assignment policy.

Questions to ask

- What are the community needs with regard to a diversity policy?
- What are the community’s concerns and fears?
- How will the district address those concerns?
- Can the concerns be addressed with real data?
- How can community input inform the district’s choices in implementing the plan?

media awareness. While these suggestions specifically addressed concerns in Boston, generally they are mechanisms that school districts nationwide can use to communicate their messages and receive valuable input from their stakeholders.

Additionally, it would be a mistake to assume that communities (particularly majority white communities) naturally balk at the diversification of their schools. To the contrary, in 2011 in suburban Fairfax County, Virginia, affluent, predominantly white parents objected to a school district proposal to rezone their children out of a highly diverse high school into a less racially and economically diverse one with a student population that was two-thirds white and only 6% low-income.³⁶ The original school, which ran a “well-regarded International Baccalaureate program,” was “49% low-income... one-third Latino, 29% white, 23% Asian, and 15% black.” Importantly, the parents opposing the rezoning cited the diversity of the original school as one of its positive influences and argued keeping the school diverse was “the right civic decision, the best policy for future generations.”³⁷

The Community Engagement Process

School leaders should not view public engagement

merely as a defensive exercise meant to avoid criticism. Rather, it is an “opportunity to strengthen their school systems.”³⁸ Indeed, with respect to the consideration of the array of strategies and options that merit evaluation by districts, Supreme Court Justice Anthony Kennedy’s advice in *Parents Involved*, discussed more fully in Chapter 4, is well-placed: School districts should engage “the creativity of experts, parents, administrators, and other concerned citizens to find a way to achieve the compelling interests” associated with diversity policies.³⁹ In doing so, school board members and other school leaders should generally observe a three-step process of public engagement.⁴⁰



Step 1. Share Information: Communicate Objectives and Goals of the Diversity Policy.

School boards and other school leaders should be clear about their goals and objectives to reach a common or mutual understanding of what the

school district aims to achieve through its prospective diversity policy.

Step 2. Seek Input from Internal and External Stakeholders and Use Input to Craft the Policy.

Open communication is needed between the various stakeholders and school leaders in order to ascertain community perspectives and strengthen district policies. School boards should learn what is important to the community in implementing a diversity policy by asking questions such as:

- What are the community needs with regard to a diversity policy?
- What are the community’s concerns and fears?
- How can the district address those concerns?
- Can the concerns be addressed with real data?
- How can community input inform the district’s choices in implementing the plan?

This process is about ensuring that the public understands that the district’s actions are not about “public ratification of predetermined plans.”⁴¹ Rather, the school district encourages the public to provide input, participate in crafting a workable policy, and exercise ownership in the final outcome. Although the process sometimes may be contentious, it may elicit new ideas and plans at least worth vetting to evaluate whether they have the potential to meet the district’s educational goals and to garner public approval.

Step 3. Adopt, Implement, and Reevaluate Policy (returning to Steps 1 and 2).

The community engagement process is a loop—once in place, a diversity policy should be subject to periodic review and adjustment as necessary.

This is true as a legal requirement for policies that consider an individual student's race or ethnicity as factors in student assignment. Under federal law, a school board must periodically review such policies to evaluate the results of the policy in the context of district goals; and to ensure that the consideration of race and ethnicity is appropriately tailored to those goals. To evaluate whether its policy has been successful in accomplishing the district's goals, including goals for diversifying student bodies and schools, the board again should engage the community in the review exercise and solicit input from a wide variety of stakeholders. The school board should evaluate this input along with district-generated data to determine its impact and modify its plan as necessary if the objectives are not met.

These three steps are not one-time actions. Instead, they should be repeated over and over in the continuous improvement of a district's diversity policy.

Major Takeaways: Foundations for Action

- Community engagement is a vital component of developing and implementing a successful diversity policy. School boards not only can anticipate, and therefore diminish, any community disagreement over a diversity policy by working proactively with a wide range of stakeholders, including educators, parents, community leaders, businesses, and academics; the diversity policy likely will have greater traction and success where it reflects the expertise, needs, and input of community members.
- School boards should identify opportunities, both formal and informal, for community

Useful Resources

- Seek the assistance of your state school boards association
- See Michael A. Resnick's, *Communities Count—A School Board Guide to Public Engagement* (NSBA, 2000)—a useful guide to successful community engagement with examples from state associations
- See “*Spectrum of Public Participation*,” International Association for Public Participation (IAPP) that outlines one methodology for carrying out the public engagement function (*Inform, Consult, Involve, Collaborate and Empower* are each a discreet step in IAPP's model)
- Consider a simplified community engagement process that collapse IAPP's model into three areas: clear communication of the goals of a diversity policy, open communications, and implementation

input. Citizen advisory committees whose membership reflects the composition of the larger community may serve an instrumental role in improving the policy.

- Policymaking must be a continuous process to result in continuous improvement. Initially, a school board must communicate the objectives and goals of its diversity policy. Next, it should seek input from stakeholders, both internal (district leaders, educators, staff) and external (parents, community leaders and organizations, businesses, other government agencies), and use input to design and implement the policy.



Chapter 4
**Developing and Implementing Diversity-Related
Student Assignment Policies**



Developing and Implementing Diversity-Related Student Assignment Policies

School leaders, and the public they serve, place a high priority on student achievement, as measured by a number of indicators from student engagement to academic performance to postsecondary matriculation. The most effective school leaders commit to a vision of high expectations for student achievement and define clear goals toward that vision.

As the previous chapters have shown, there is a strong empirical foundation that a diverse learning environment—one that complements and reinforces student diversity through curricular and extracurricular offerings and student services that create a school culture that acknowledges and celebrates student difference—can have a profoundly positive impact on all students, academically and socially. Student body diversity therefore is a foundation upon which schools and districts can realize improved student outcomes, particularly where racially and economically segregated schools face challenges that must be overcome if students are to avoid many lifelong negative consequences. Thus, student assignment, as a primary method for achieving a diverse student body, has emerged as a central policy issue on which many school leaders seek guidance.

There are a variety of options a school board may consider when crafting

“There is a strong empirical foundation that a diverse learning environment can have a profoundly positive impact on all students.”

a student assignment policy (also referred to as student placement policy). A school board must be aware of both the practical barriers to and legal im-

plications of the assignment options it is considering. This chapter introduces the concept of student assignment generally, examines options for student assignment, and notes important legal and practical considerations in developing and implementing a student assignment policy.

The Policy of Student Assignment

School districts can craft and implement student assignment policies that promote diversity and avoid racial, socioeconomic, or other types of student isolation in an effort to produce the educational benefits associated with integrated learning environments. As such, a student assignment policy may serve as an effective mechanism for creating and maintaining diverse and inclusive learning environments, providing an important foundation for all students with a high-quality education.⁴²

Student Assignment Design Options and Potential Barriers

A school board preparing to develop a student assignment policy should consider a wide range of options that take into account the district’s geographic, demographic, historical, and political characteristics. There is no one “right way” to design an assignment policy. Instead, a school board should be creative in efforts to promote student diversity and reduce racial or socioeconomic isolation as a means to achieve the district’s educational goals. School boards and district leaders also should consider surveying and evaluating the types of student assignment policies and their implementing mechanisms that districts around the nation have adopted.

The following examples of student assignment policies illustrate the wide variety of options from which a school board can choose when designing and implementing its own policy:

- **Jefferson County Schools, Kentucky (JCS) [Neighborhood Demographics]:** After the Supreme Court invalidated its assignment policy, which classified students as either

Broader Realities and Cross-District Possibilities

Present and shifting demographics present diversity-related opportunities within certain districts, but those opportunities are not universally present. Thus, intra-district student assignment strategies and policies (the focus of this chapter) will not be viable where districts are racially, ethnically, or economically homogeneous.

Many school districts seeking to create greater school-level student diversity through intra-district student assignment policies may not have the necessary combination of size and student diversity to justify the establishment of diversity-oriented student assignment policies.

A school board cannot, for instance, create school diversity through a district-wide assignment policy if it has only enough students to fill a single high school or one middle school. And fewer than 10% of the nation's 13,892 school districts enroll at least 5,000 students. Correspondingly, districts that have homogeneous populations (e.g., more than 80% Hispanic, more than 80% low-income, etc.) cannot achieve the desired student diversity merely by rearranging the schools to which students are assigned.

Notably, most black and Hispanic students do not attend districts that educate at least 5,000 students and that have a public school student population that is at least 25% white.* Similarly, a sizeable number of districts serve student populations that are majority low-income.º

School leaders may, therefore, want to consider *inter-district* policies to enhance the size and diversity of the participating student pool. Some assignment options, including specialized programs and schools, may be better suited for cross-district efforts than others. Potential legal, logistical, and political challenges to inter-district policies exist, including transportation time, resource constraints, and community resistance. But for at least some school boards, inter-district policies may be an option worth considering.~

* See Carey, "[The Trouble with Desegregation](#)," *The Chronicle of Higher Education* (Feb. 1, 2011).

º See Kahlenberg, [Rescuing Brown v. Board of Education: Profiles of Twelve School Districts Pursuing Socioeconomic School Integration](#) (The Century Foundation, 2007).

~ See Richards, Stroub, and Holmer, [Can NCLB Choice Work? Modeling the Effects of Interdistrict Choice on Student Access to Higher-Performing Schools](#) (Century Foundation, 2011); Dillon, [Plotting School Choice: The Challenges of Cross District Lines](#) (Education Sector, August 2008).

black or non-black, JCS revised its student assignment policy. Rather than considering individual student race, the revised policy requires all elementary schools to enroll at least 15% and no more than 50% of its students from neighborhoods that have household income and adult educational attainment levels below the district average and higher than average number of minorities. Six contiguous clusters of elementary schools were created under the revised policy to create a more equitable distribution of the multiple criteria across the clusters.

- **Cambridge Public Schools, Massachusetts (CPS) [Individual Student Characteristics]:** CPS's Controlled Choice Plan considers parental choice and a range of diversity factors and assignment preferences to assign students to schools. The plan uses the following diversity factors: socioeconomic status, race, special education status, English language learner status, and gender. Generally, CPS aims to have the percentages of students by school approximate, or to be within a certain range of, the district-wide percentages. The plan also considers sibling placement and geographic proximity to the school.
- **Omaha Public Schools, Nebraska (OPS) [Multi-district Approach]:** OPS joined with 11 surrounding school districts to create a metropolitan-wide learning community with the goal of integrating schools to reflect the socioeconomic diversity of the district and the larger learning community. Under the open enrollment plan, priority is first given to OPS students where either a sibling is in attendance or where the student will improve

the socioeconomic diversity of the school. Second priority is given to students in other districts who will improve the diversity of the school.

- **La Crosse Public Schools, Wisconsin (LCPS) [Attendance Boundaries]:** As the oldest example of public school integration by socioeconomic status, LCPS first shifted its attendance boundaries to create more economic balance between its two high schools. Spurred by the district's decision to build two new schools, LCPS next redistricted the attendance zones for its elementary schools—with substantial impetus coming from the district's teachers and all nine elementary school principals. Attendance boundaries were drawn to achieve a socioeconomic balance in each school that reflected the socioeconomic student profile for the total district.⁴³

Reflective of various strategies and approaches, these examples also illustrate the variety of student demographic and personal factors potentially relevant to the design of assignment policies. Examples of factors a school board might identify as relevant include the socioeconomic status of students, parental income, student/parental choice,⁴⁴ sibling placement, record of academic achievement, geographic location of students' homes, neighborhood demographics, and/or housing status.⁴⁵

A school board also may include a consideration of individual student race and/or ethnicity as a variable (thus choosing to make the assignment plan “race-conscious” and/or “ethnicity-conscious”). As discussed below, policies that differentiate or classify persons on the basis of race and ethnicity are not categorically illegal (at least as a matter of federal

Putting it into Practice

Beyond assignment policies that consider individual student characteristics, a school board might choose to employ other methods to create greater student diversity as a way to improve student outcomes such as:

- Strategic site selection of new schools
- Attendance zones drawn with neighborhood demographics in mind
- Allocation of resources for special programs
- Student and faculty recruitment
- And more.

in a “nuanced, individual evaluation of school needs and student characteristics.”⁴⁷ Further, the school board should be prepared to defend its use of race or ethnicity, demonstrating that a consideration of these factors is necessary to achieve the purpose of the assignment policy—and that considering race or ethnicity makes a material difference, at least for some students, in where students are assigned.⁴⁸

After selecting the student factors it will consider for assignment, a school board can determine the appropriate weight for each factor and the mechanism by which students will be placed in particular schools. This can be done with input from various experts, including statisticians, planning departments, and community leaders, as well as with technological planning software.

In addition to assignment policies that consider individual student characteristics, there are other methods a school board might choose to employ to create greater student diversity as a way to improve student outcomes. In *Parents Involved*, Justice Ken-

edy⁴⁶), but they implicate significant legal questions that must be addressed. If a school board chooses to include individual student race or ethnicity in its student assignment policy, it is clear that this cannot be the sole assignment factor and instead should be but one element

nedy’s opinion, generally viewed as reflecting the “center of the Court,” outlined a number of permissible options a district might implement to enhance diversity in its schools.⁴⁹ A majority of the Supreme Court (Justice Kennedy and the four dissenting Justices) agreed that these methods can reflect racial and ethnic interests, even where they may be facially neutral. Specifically, Justice Kennedy identified the following options for student assignment:⁵⁰

- **Strategic site selection of new schools**
When the need or opportunity for a new school arises, a school board may choose to place the new school in a location that will draw a diverse student population. Throughout the United States, housing patterns tend to be racially and ethnically segregated; a school board therefore might place a new school where it will serve several different neighborhoods, the combination of which results in a diverse (e.g., racial, ethnic, socioeconomic, etc.) student population.
- **Attendance zones drawn with neighborhood demographics in mind**
A school district may choose to promote diverse student bodies by drawing attendance zones that take account of the district’s neighborhood demographics (including racial, ethnic, socioeconomic, student achievement, etc.) and residential patterns. Attendance lines might be strategically located to create diverse (e.g., racial, ethnic, socioeconomic, etc.) student bodies.⁵¹
- **Allocation of resources for special programs**
A school board may evaluate the degree to which locating special programs—or special

schools—in the district can attract students to certain schools and incubate diverse student bodies. Examples of special programs that may be high demand include magnet schools and programs within a school, such as Advanced Placement, International Baccalaureate, and dual language programs, as well as programs focused on specific disciplines or concentrations. To encourage student diversity through these special programs, a school board could place the program in a school that traditionally serves students with lower achievement, reserve a certain number of seats for those students, and draw the remaining students from other areas of the district. Additionally, a school board may consider whether inter-district special programs and schools also can serve a role in enhancing the student diversity that supports student achievement goals.

- **Student and faculty recruitment**

A school district may attempt to enhance its schools' student diversity through recruitment and outreach efforts. This type of policy is particularly relevant where a school board adopts a student choice or open enrollment plan, which enables students to select from among the district's schools, rather than always attend their neighborhood schools. School boards can undertake efforts to inform through various media (including printed material, information sessions, webinars, etc.) students and their families about school options and opportunities and to encourage student choice that results in greater student diversity. School boards also may consider recruitment and incentive

programs that encourage teachers to work in certain schools to create greater educator diversity throughout the district's schools.

In addition to these options, school boards may consider other assignment policies that are intended to achieve student diversity and do not incorporate individual student characteristics. For example, a school board may choose to renovate or expand existing schools to attract diverse student populations. School boards also may consider pairing and merging schools (or particular grade levels) with different student body compositions to achieve greater diversity. And multi-district consolidation that creates a more diverse student pool also may serve a school board's interest.⁵²

When analyzing these many options, a school board should take into account the possible barriers to particular policies, including the following:

1. **Distance traveled.** Several of the options discussed above may require that students travel longer distances to arrive at school. Families may be resistant to longer transportation times—particularly for younger students, and the district may need to assess its ability to pay for the potentially higher transportation costs. Transporting students to schools located far from their neighborhoods may also have social costs such as reduced feelings of community within the school and less social interaction among students outside of school.
2. **Neighborhood school preferences.** Certain constituents may resist assignment policies that deviate from neighborhood or com-

munity schools. Some taxpayers may contest an assignment plan that does not “reward” their choice of residential location, which they may have selected largely in an effort to ensure their children attend certain schools. School boards must think carefully about how to balance the needs and preferences of individual families and students with the needs and responsibilities of the district as a whole.⁵³

As media headlines and experiences of school boards around the nation illustrate, few issues generate more political heat than opening or closing a school or changing the student assignment policies in which constituents have become vested. While these issues certainly are not insurmountable, school boards should consider these and other practical issues as they examine the wide range of possible student assignment policies.

Legal Considerations

School boards also must examine potential legal implications of student assignment policies, particularly to the extent that the policies include consideration of race or ethnicity as factors in student assignment. Federal courts use different legal tests for policies, depending on whether persons are classified on the basis of race, ethnicity and national origin (which requires the most stringent test, strict scrutiny); sex and gender (which requires intermediate scrutiny); or other characterizations (which requires the lowest level of scrutiny, rational basis).⁵⁴

Student assignment policies that consider the race or ethnicity of students are subject to strict scrutiny. This requires that such policies serve a very significant educational end (a “compelling inter-

est”), vital to the success of the district in pursuing that goal, and that the methods used be carefully calibrated (“narrowly tailored”) to achieve those ends.

In *Parents Involved* (2007), a case examining student assignment policies, a majority of Supreme Court Justices, in separate opinions, found that school districts may have compelling interests in 1) achieving the benefit of a diverse student population and 2) avoiding the harms associated with racially isolated schools.⁵⁵ The Justices also examined whether the districts had satisfied the narrow tailoring requirement, with a particular focus on whether the use of race was necessary to achieve these compelling interests and whether the school districts had considered viable race-neutral alternatives.⁵⁶

When determining the need to include race and ethnicity as part of a diversity policy, a number of race-neutral alternatives may merit consideration, including the following: assignment of students based on student socioeconomic status or achievement status,⁵⁷ and establishment of magnet schools, lotteries, or multi-factor indexes to determine student placement.⁵⁸

Ultimately, a school board can employ various means to pursue diversity-related goals aligned with evidence-based educational goals. When deliberating about the proper design of a student assignment policy, a school board should take the following

Legal Link

Strict scrutiny requires that a district demonstrate that a race- or ethnicity-conscious policy

1. Serve a compelling (very significant educational) interest, and
2. Be narrowly tailored (carefully calibrated) to achieve those ends.

steps to ensure legal sustainability of any race-conscious components:⁵⁹

1. Connect the use of race to educational goals, not merely district demographics (which could result in an impermissible quota system).
2. Review social science research that examines the interplay between racial diversity and academic achievement or other educational benefits, and apply that research to the district's context.
3. Clearly articulate how and when race is employed to assign students, and avoid using blunt racial categories that ignore important racial and ethnic nuances within a student population, reflecting "a limited notion of diversity" (e.g., "white" and "nonwhite").
4. Ensure that the use of race or ethnicity in student assignment is necessary to realize a discernable effect on student assignment.
5. Consider and, where appropriate, try race-neutral alternatives first.

Notably, the conversations around these issues will themselves become a part of the record in a legal challenge. Consequentially, the terms used and the purposes stated in meetings (including public meetings) are particularly important pieces of evidence that can support the school board's policy by demonstrating, among other things, its defensible intent. If, for instance, questions arise about racial balancing in the course of a discussion, those supporting the particular student assignment policy must be able to rebut racial balancing as a motivation so that the record shows—preferably through discussion, motions, and, finally, resolutions—that board's real focus was not on conferring special benefits based

Process-Based Questions

A school board's steps for ensuring the success of a student assignment policy must be grounded in its vision of high expectations for student achievement and its establishment of clear educational goals to support that vision. Specifically, a school board should reflect on and reach agreement about the following process-based questions:

1. Why do we want to implement a new student assignment policy?
2. Why is diversity important to the educational mission of our district?
3. What kinds of student achievement will this kind of policy likely further?
4. Does educational data and research support the district's contemplated action?
5. Who will/how will we design the student assignment policy?
6. What student data will we evaluate in the development of the student assignment policy?
7. Where can we look for advice on designing a student assignment policy that will work best for us?
8. How will we disseminate information about the student assignment policy, and how will we ensure that constituents and stakeholders understand it?
9. What role will resource availability and distribution play in our consideration?
10. How will success be evaluated?

on race, but rather on educational goals of student achievement.

Ultimately, a student assignment plan may face the greatest risk of litigation, and a successfully legal challenge, if the district is unable to explain persuasively the connection between the race-/ethnicity-conscious means used in the policy and the compel-

ling ends sought. If the district cannot show that it has tried or seriously considered a race-/ethnicity-neutral alternative; if the plan results in race-/ethnicity-based determinations on an individual, rather than systemwide, basis; or if the use of race/ethnicity is so minimal it suggests that other methods might be as or more effective, the plan may not satisfy legal requirements.

Process Considerations

In addition to addressing the legal requirements discussed above, a school board's consideration of a new or revised student assignment plan should entail a carefully deliberated process of evaluation. In other words, it should "do its homework" to ensure the success and sustainability of a new or revised assignment policy. Ultimately, diversity-related policies must be developed using a transparent process that is well understood and followed by all stakeholders and constituents.

As these inquiries suggest, a school board should gather relevant information about its context and history before establishing or refining a policy. This collection exercise may take weeks, months, or, for some large districts, even a year or two. Specifically, the school board should examine district demographic information (including race and socioeconomic status), any governing court orders, relevant local or state laws, the educational effects of any current or previous assignment plans (both race-conscious and race-neutral), and political structures.⁶⁰ Further, the board should give substantial consideration to community values and interests.

Ultimately, the board should scrutinize student assignment, both generally and within the context of its specific district needs and circumstances.

As discussed more fully in Chapter 3, a school board must provide a strong communications structure to inform and engage internal and external stakeholders, building and maintaining public support for a policy, like student assignment, that may be controversial or raise concerns with some constituents. Public outreach can and should be informed by the background information collected, and school boards should anticipate criticisms by preparing persuasive responses and by considering public messaging. "[T]he goal of public engage-

"A school board should examine district demographic information (including race and socioeconomic status), any governing court orders, relevant local or state laws, the educational effects of any current or previous assignment plans (both race-conscious and race-neutral), and political structures."

ment by local school boards is the same everywhere: to forge ties with the community the school board serves, in a collaborative effort to enhance the quality of public education there."⁶¹

Finally, school districts periodically must review and evaluate the design and operation of policies to ensure that they are achieving their desired results. Periodic review is also legally necessary for policies that are race- and ethnicity-conscious; such review ensures that any consideration of race and ethnicity continues to serve compelling interests in appropriately calibrated, narrowly tailored ways (for example, to ensure that race is not weighted too heavily, or too lightly, in light of the district's goals).⁶²

While the Supreme Court has not specified how

often periodic review should occur, it is advisable that school board review its student assignment policy (and other diversity-related policies) every few years, and more often when necessary. This review should be conducted by board members with the input of an interdisciplinary team of key district officials, knowledgeable staff, experts in research and evaluation, and lawyers. The board and team members should examine all relevant data, including student body demographics at district schools and academic achievement data over time, to determine whether the policy is having its intended effect. This periodic review also can be informed by conversations with other school districts around the nation that have tried different means, including race-neutral means to achieve similar outcomes. The board further should hold public hearings and be receptive to public feedback to examine community support and hear about student and family experiences. During this periodic review, the board should consider whether other design options (including race-neutral alternatives) would be as or more effective at achieving district goals—and should document its rationale for discarding alternatives, where appropriate.

Beyond the legal requirement of periodic review for race- and ethnicity-conscious policies, evaluation is a critical part of the successful development and implementation of any diversity-related policy, race-/ethnicity-conscious or not. Meaningful evaluation empowers a school board to improve, enhance, or initiate the conditions that must be in place for the benefits of diversity to be achieved through student assignment policies. An effective school board will embrace and monitor its policies and data to ensure that, even when faced with negative information, it can drive continuous improvement and realize its objectives.

Major Takeaways: Foundations for Action

- School boards and education leaders have a wide range of options to consider when designing student assignment policies to create diverse student bodies, in an effort to realize the educational benefits of diversity, and to avoid the harms of student isolation. Such policies can consider numerous individual characteristics—including race, ethnicity, sex, socioeconomic status, family status, geographic location, personal or family preference, etc.—or can draw on other means for assignment, including strategic site selection for new schools, carefully determined school attendance zones, or consideration of neighborhood demographics, for example.
- Where a school board adopts a policy that takes into account the race or ethnicity of individual students, the board must ensure that it satisfies the significant legal test of “strict scrutiny.” School boards must be able to demonstrate that the consideration of race or ethnicity serves a compelling interest (namely, to create a diverse student population and/or to avoid racial isolation) and must show that the particular policy is carefully calibrated (“narrowly tailored”) to achieve those compelling interests. Further, the school board must be able to show that it examined other race- or ethnicity-neutral options and determined that they would not be successful at achieving the school district’s goals.

- The complex process of developing and implementing diversity-related policies requires school boards to grapple with significant policy, and often legal considerations. Certainly, where issues of race and ethnicity, and perhaps to a lesser extent socioeconomic status, are raised, a school board also may face skepticism or opposition from some facets of the community. Nonetheless, numerous school boards around the country have taken up this important work. Ultimately, school boards should feel empowered by the many options and tools they possess that allow them to take advantage of an important resource—the diversity of their students—and the potential that resource has to improve the educational outcomes for all children.



The Supreme Court in *Brown v. Board of Education* acknowledged that schools are the “very foundation of good citizenship,” and education is “a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.”⁶³ School boards are tasked with the critical responsibility of ensuring that our nation’s children receive an education that prepares them to participate meaningfully in our 21st century democracy.

As our nation becomes increasingly diverse—racially, ethnically, and linguistically—school boards should recognize an important resource they may possess, yet too often may underutilize: a diverse student population. School district policies, including the policy of student assignment, can produce diverse learning environments that result in profoundly positive results for all students. Diverse schools not only increase academic opportunities compared to schools in which students are isolated by socioeconomic status and/or race and ethnicity. They also enhance students’ civic and democratic values, preparing them for employment and civic demands in our multicultural society. Students who participate in diverse learning environments learn to think critically, work collaboratively, possess social reasoning and social learning skills, and communicate effectively, and are more likely to respect cultural differences.

To state the obvious, the educational benefits that accrue in diverse learning environments will not be accomplished by a school district policy alone, without a clear strategy for implementation. Rather, a school board must ensure that the goals of the diversity policy are reflected, complemented, and reinforced in the classrooms and hallways of its schools. For example, a student assignment plan will do little good if a school’s students are separated into academic tracks that afford little opportunity for interactive and collaborative opportunities. School boards should work with schools to support their diverse student bodies through curricular and extracurricular offerings and student services that create a culture in which student differences are acknowledged and celebrated.

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About the Project/Grant

The K-12 Diversity Collaborative between the National School Boards Association, The College Board, and EducationCounsel LLC began in the months following the Supreme Court’s landmark 2007 decision in *Parents Involved*, as a way of informing school boards and school districts about the new landscape in the use of race and ethnicity in student assignments. That Collaborative’s work is synthesized in this guide, which follows four years and countless hours of workshops and conversations with school board members, administrators and educators about the significance of that decision and about the positive links between diversity and educational success.

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Endnotes

1. While outside the scope of this publication, given its focus on student assignment and related placement decisions, other diversity factors such as sexual orientation and gender identity; extracurricular and career interests; and community service and related activities may be part of a broader diversity policy framework considered by school and district leaders, particularly with respect to high school level programs and offerings.
2. School districts can pursue diversity-related goals through various means—including race- and ethnicity-conscious policies aligned with evidence-based educational goals. School boards must consider and, when deemed appropriate, try viable race-neutral policies, which in some circumstances may obviate the need for race- and ethnicity-conscious policies.
3. Arne Duncan, “Maintaining Racial Diversity in Schools,” *Washington Post* (Jan. 13, 2011).
4. While the United States once boasted the largest number of 25- to 36-year olds with college degrees, it now ranks 12th among 36 developed nations. ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *Education at a Glance 2010: OECD Indicators* (2010). This deficit threatens the nation’s competitiveness in an increasingly global marketplace in which employers seek more knowledgeable workers who satisfy 21st century workforce demands, including the need for critical thinking, collaboration, effective communication, and ethical decision-making.
5. 347 U.S. 483 (1954).
6. 349 U.S. 294, 301 (1955).
7. Harris, D. *Lost Learning, Forgotten Promises: A National Analysis of Racial Segregation, Student Achievement and “Controlled Choice” Programs* (Center for American Progress, 2006).
8. In 2007, the Supreme Court reviewed two student assignment plans that school districts in Jefferson County, Kentucky, and Seattle voluntarily had adopted to create racially diverse schools. 551 U.S. 701 (2007). A majority of the Justices determined that the districts had compelling interests in achieving a diverse student population—and avoiding the damaging effects of racial isolation that accompany segregated schools. The Court ultimately found, however, that the school districts had not demonstrated that the consideration of individual students’ races was necessary to achieve those goals—in part because the districts did not show that other mechanisms (“race-neutral alternatives”) could not achieve the same results and because the districts used blunt racial categories (e.g., “white” and “nonwhite”) that masked the complex nature of student identity.

Under the precedent of this decision, student assignment plans established to achieve diversity are constitutionally permissible, but must be carefully constructed, and in instances where race and ethnicity are factors in making assignments, they must be based on strong, clear educational evidence to withstand legal scrutiny. They must serve a compelling educational interest, and they must be designed and implemented in ways that will be effective, without an overreliance (or under reliance) on race or ethnicity. *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007).
9. Brown, *The Educational Benefits of Diversity: The Unfinished Journey from “Mandate” in Brown to “Choice” in Grutter and Comfort, LEADERSHIP AND POLICIES IN SCHOOLS 5* (2006) (citing About & Levy, 2000; Dovidio, Kawakami, & Gaertner, 2000; Pettigrew, 1998; Pettigrew & Tropp, 2000).
10. See, e.g., Hallinan, *Diversity Effects on Student Outcomes: Social Science Evidence*, 59 OHIO ST L. J. 733 (1998). See also Brief for 553 Social Scientists as Amici Curiae Supporting Respondents, *Parents Involved*, 551 U.S. 701 (2007) (Nos. 05-908 & 95-915).
11. Harris, *supra* note 7, at 21. (concluding that “minority students make greater learning gains in schools with more white peers—not because of race itself, but because of the economic and academic advantages of students in these schools and the important influence that classmates have on minority learning”).
12. Schwartz, *Housing Policy is School Policy: Economically Integrative Housing Promotes Academic Success in Montgomery County, Maryland* 5 (The Century Foundation, 2010). Conversely, studies indicate that schools with high concentrations of students from low-income families perform less well than schools with low concentrations of poverty. In 2010, more than one-half of fourth- and eighth-graders who attended high-poverty schools failed the national reading test—compared to fewer than one in five students who attended low-poverty schools. *Id.* at 8.
13. Fischer et al., *Inequality by Design: Cracking the Bell Curve Myth* 83-84 (Princeton Univ. Press, 1996). See Context Matters text box, *infra*, page 17.
14. Brief for American Educational Research Association as Amicus Curiae Supporting Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1* (No. 05-908/05-915), at *18, 19.
15. *Id.*
16. See Coleman, Palmer, and Winnick, *Not Black and White* 6 (National School Boards Association Council of Urban Boards of Education & College Board’s Access & Diversity Collaborative, 2007); Harris, *supra* note 7.
17. *A Time for Deeper Learning: Preparing Students for a Changing Work* 2 (Alliance for Excellent Education, May 2011) (addressing the critical importance in the 21st century of an education focused on critical thinking, problem solving, collaboration and teamwork, communication, and adaptability, and quoting the Organisation of Economic Co-operation and Development for the position that schools must “seek[] to develop the capacity of students to learn to learn, think creatively and critically, participate in social life, and promote social welfare”).
18. To the extent that a school board policy’s conception of student diversity encompasses race and ethnicity and confers opportunities based on race and ethnicity, then, as a matter of federal law, it is highly unlikely that those opportunities and benefits can be conferred solely on the basis of race or ethnicity. Otherwise, the policy is likely to reflect more of an interest in racial balancing than in educational diversity.

It is also important to note that relevant laws and regulations regarding race-, ethnicity- and gender-conscious practices and policies are not within the exclusive province of federal courts and the federal government. Through governors’ executive orders and voter initiatives, several states have adopted partial

- or total bans on the consideration of race, ethnicity, and/or sex in public education policies. See Coleman et al., *From Federal Law to State Voter Initiatives* (College Board, March 2007); see also Coleman, Lipper, and Keith, *Beyond Federal Law: Trends and Principles Associated with State Laws Banning the Consideration Of Race, Ethnicity, And Sex Among Public Education Institutions* (AAAS, in press).
19. While these student characteristics are aimed at moving away from strictly race-based assignments, some of the criteria noted in fact are correlated with race and ethnicity. School districts adopting such criteria need not (pretend to) ignore this correlation but should create a record that shows the educational basis for selecting criteria to demonstrate that the policy was not created with the sole goal and focus of race-based diversity.
 20. For further information, including operational details of the policies not reflected here, see Kahlenberg, *Rescuing Brown v. Board of Education: Profiles of Twelve School Districts Pursuing Socioeconomic School Integration* (The Century Foundation, 2007) (with discussions of Berkeley and San Francisco); *BUSD Student Assignment Plan/Policy*; SFSUD, Student Assignment (March 18, 2011); Freivogel, *St Louis: Desegregation and School Choice in the Land of Dred Scott* (Century Foundation Press, 2002); *Voluntary Interdistrict Choice Corporation* (outlining St. Louis inter-district choice policy).
 21. As further explored in Chapters 3 and 4, a dynamic policy is one that is reviewed over time. Such review can help ensure that community engagement is maintained, and that the policy is working to achieve the educational goals.
 22. Like many districts across the country, but particularly in the Southern United States, ECISD was under a federal court desegregation order for nearly two decades until 2010, when a federal court declared it had achieved unitary status, meaning that it no longer operated a segregated (dual) school system such that court intervention is required. ECISD developed its new diversity policy in order to maintain diversity in its schools without relying solely on race as mandated by the earlier court order. Folsom, J., *ECISD Closer to Diversity*, ODESSA AMERICAN (April 27, 2011).
 23. *Id.*
 24. School districts can pursue diversity-related goals through various means—including race- and ethnicity-conscious policies aligned with evidence-based educational goals. School boards must consider and, when deemed appropriate, try viable race-neutral policies, which in some circumstances may obviate the need for race- and ethnicity-conscious policies. For relevant legal background on the pursuit of neutral policies, see Coleman et al., *supra* note 16.
 25. Hess, *School Boards at the Dawn of the 21st Century: Conditions and Challenges of District Governance*, 26-27 (National School Boards Association 2001).
 26. *Id.* at 25.
 27. Resnick, *Communities Count: A School Board Guide to Public Engagement 1* (National School Boards Association, 2000).
 28. Hess, *supra* note 25, at 16.
 29. *Brief of 65 Leading American Businesses as Amici Curiae Supporting Respondents*, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (Nos. 02-241/02-516), at *3.
 30. Winerip, M. *Seeking Integration, Whatever the Path*, THE NEW YORK TIMES (Feb. 27, 2011).
 31. For another look at a diversity policy with extensive community involvement in its development, see the Berkeley Unified School District Student Assignment Plan/Policy, established after two years of consideration by a “large community task force formed for the purpose of examining the issues around [BUSD’s] student assignment system.”
 32. Orfield, Frankenberg, and Siegel-Hawley, *Integrated Schools: Finding a New Path*, CLOSING OPPORTUNITY GAPS, 68: 3, at 23 (Nov. 2010).
 33. *Id.* (citing Smith, 2010).
 34. Charles Hamilton Houston Institute for Race & Justice, ACLU, and Lawyers’ Committee for Civil Rights Under Law, *An Open Letter Related to Student Assignment in Boston Public Schools* (July 7, 2010).
 35. *Id.*
 36. Mathews, J. *Why Parents Love a Lower-Rated School*, The Washington Post (July 10, 2011).
 37. Goldstein, *What School Integration Teaches Kids (and Adults, Too)* (July 12, 2011).
 38. Resnick, *supra* note 27.
 39. *Parents Involved*, 551 U.S. at 798 (Kennedy, J., concurring in part and concurring in the judgment).
 40. Resnick, *supra* note 27.
 41. *Id.*
 42. As noted earlier, research demonstrates the positive correlation between student achievement and racially and/or socioeconomically diverse learning environments. Specifically, minorities attending schools with more white peers make greater learning gains than underserved, racially-isolated students—because of the economic and academic advantages afforded to students in these more racially diverse schools and the important influence that classmates have on learning. See Harris, *supra* note 7. And all students benefit from diverse learning environments that promote cross-racial understanding and improve critical thinking skills. Brief for 553 Social Scientists as Amici Curiae Supporting Respondents, *Parents Involved*, 551 U.S. 701 (2007) (Nos. 05-908 & 95-915). For example, research in a multi-institution study found that students experiencing classroom diversity “showed the greatest engagement in active thinking processes, growth in intellectual engagement and motivation, and growth in intellectual and academic skills.” *Id.*
 43. See Kahlenberg, *supra* note 18 (with discussions of Cambridge, Omaha, and La Crosse); JCPS, *No Retreat: The JCPS Commitment to School Integration*; JCPS, *It’s Unanimous! School Board Votes to Approve New Student Assignment Plan*, *News Spotlight*; Cambridge Public Schools, *Controlled Choice Plan*; Fisk, *Controlled Choice in Cambridge, Massachusetts* (Century Foundation Press, 2002); OPS, *Student Assignment Plan: Open Enrollment School Choice Fact Sheet*; OPS, *The Student Assignment Plan* (April 1999); Lerner, “Segregation Nation,” *The American Prospect* (June 20, 2011) (discussing Omaha’s student assignment policy); Zehr, “Socioeconomics Replacing Race in School Assignments,” EDUCATION WEEK (May 12, 2010); Mial, *La Crosse: One School District’s Drive to Create Socioeconomic Balance* (Century Foundation Press, 2002).
 44. For a substantive discussion of using a student’s stated prefer-

- ence as a factor when selecting the school for the student to attend, see Shneyderman and Froman, *Matching Students with Schools: The Fine Art of Student Assignment*, AM. SCH. BD. J. 30-32 (July 2005).
45. National School Boards Association Office of the General Counsel, *An Educated Guess: Initial Guidance on Diversity in Public Schools after PICS v. Seattle School District* (2007).
 46. See *supra* text accompanying note 18, discussing state law considerations.
 47. *Parents Involved*, 551 U.S. at 790 (Kennedy, J., concurring in part and concurring in the judgment).
 48. See *id.* at 790.
 49. Although no other Justice joined Justice Kennedy's opinion in *Parents Involved*, scholars and policymakers consider his opinion (concurring in part with the majority opinion) as the guidepost to the case, given that points articulated in his opinion aligned both with the majority opinion and with many points raised by the dissent. See also Coleman et al., *supra* note 16. In that context, Justice Kennedy squarely rejected certain restrictive views of the majority opinion, just as he rejected some of the more liberal views of the dissenting Justices. See, e.g., Rachel Moran, *Let Freedom Ring: Making Grutter Matter in School Desegregation Cases*, 63 U. MIAMI L. REV. 475, 477, 482-83 (2009) (discussing Justice Kennedy's "crucial swing vote" in *Parents Involved*); Robert A. Garda, Jr., *The White Interest in School Integration*, 63 FLA. L. REV. 599 (2011) (calling Justice Kennedy's opinion in *Parents Involved* "the controlling opinion").
 50. *Parents Involved*, 551 U.S. at 789 (Kennedy, J., concurring).
 51. Courts appear to be following Justice Kennedy's lead. Under a state law that is more restrictive (in public education) than relevant federal laws when addressing race- and ethnicity-conscious practices, a California appellate court upheld Berkley Unified School District's (BUSD) student assignment plan that used neighborhood demographics when assigning students to schools. The court ruled that BUSD's student assignment plan, "which aims to achieve social diversity by using neighborhood demographics when assigning students to schools," does not violate article I, § 31 of the California Constitution, also known as Proposition 209, which prohibits discrimination against, or granting preferential treatment to, any individual or group on the basis of race. *American Civil Rights Found. v. Berkeley Unified Sch. Dist.*, 90 Cal. Rptr. 3d 789 (Cal. App. 2009).
- In a corresponding way, a federal court in Pennsylvania upheld a school district's use of racial demographics to redraw attendance zones for its two high schools. The rezoning plan removed the ability of students living in a highly concentrated African American neighborhood to attend the high school of their choice. Though the court found that the decision-making and contemporaneous statements by district officials indicated racial demographics were factored into the plan, it concluded, "The Supreme Court has never prohibited a school district from taking into account the demographics of a neighborhood as one of many factors in assigning students to schools." *Student Doe 1 v. Lower Merion Sch. Dist.*, No. 09-2095 (E.D. Pa. June 24, 2010).
- And in Montclair, New Jersey, the school district sought to preserve the diversity of its schools in the wake of the *Parents Involved* decision. It devised a plan that divided the district into three geographic zones and assigned students based on the following five factors: 1) median household income, 2) household poverty rate, 3) number of free and reduced-price lunch students, 4) parental education levels, and 5) neighborhood racial demographics. The school district posited that according to academic research, the plan it selected would have "a discernible impact on individual student academic achievement." Burkholder, *The Future of Racially Integrated Schools: A Perspective from Montclair, N.J.*, EDUCATION WEEK, May 26, 2010.
52. *Still Looking to the Future* (NAACP Legal Defense and Educational Fund, 2008). See also text box, page 33.
 53. See Hardy, *The New Integration: Will Focusing on Socioeconomic Status in School Enrollment Raise Achievement?* AM. SCH. BD. J. 193(4): 46-50 (Apr. 2006).
 54. See *supra* text accompanying note 18, discussing state law considerations.
 55. Justice Kennedy observed that school districts should not be prevented "from continuing the important work of bringing together students of different racial, ethnic, and economic backgrounds." 551 U.S. at 798 (Kennedy, J. concurring in part and concurring in the judgment). See generally Coleman et al., *supra* note 16.
 56. The Court ruled that the districts failed to satisfy constitutional standards in this regard, principally because the districts had failed to show that 1) the consideration of race was necessary to achieve the districts' goals and 2) they had considered viable race-neutral alternatives to their race-conscious plans. See Coleman et al., *supra* note 16.
 57. A difficulty in designing an income-based assignment policy is that school board's may have available only the measure of free-lunch status, which often fails to capture fully a family's economic situation. See *Brief for American Educational Research Association as Amicus Curiae Supporting Respondents, Parents Involved*, 551 U.S. 701 (2007) (No. 05-908/05-915). Additionally, where a district uses socioeconomic status as a proxy for race, the use of socioeconomic status may mitigate some legal risk, but the use of the proxy may not insulate the policy from strict scrutiny review. See Coleman, Palmer, and Winnick, *Race-Neutral Policies in Higher Education* (College Board, June 2008); see also *In re Wake County Public School System*, OCR Complaint Nos. 11-02-1044, 1104, and 1111 (Aug. 29, 2003) (opining that strict scrutiny would be applied to a district's use of the facially-neutral socioeconomic status factor if the district intended to use the factor "as a racial definition and for a racial purpose").
 58. When Justice Kennedy discussed the student assignment policy options he identified in *Parents Involved* (discussed above), he noted that "[t]hese mechanisms are race conscious but do not lead to different treatment based on a classification that tells each student he or she is to be defined by race, so it is unlikely any of them would demand strict scrutiny to be found permissible." *Parents Involved*, 551 U.S. at 789 (Kennedy, J., concurring in part and concurring in the judgment).
 59. For a more thorough discussion of these steps, see *An Educated Guess, supra* note 45.
 60. *Still Looking, supra* note 52, at 62-63.
 61. *Brief for National School Boards Association as Amicus Curiae Supporting Respondents, Parents Involved*, 551 U.S. 701 (2003) (Nos. 05-908 & 95-915), available at <http://www.nsb.org/SchoolLaw/COSA/Search/AllCOSAdocuments/ParentsInvolvedinCommunitySchoolsvSeattleSchoolDistrictNo1etalandCrystalMeredithvJeffersonCountyBoar.pdf>
 62. See, generally, Coleman et al., *supra* note 16.
 63. 347 U.S. 483, 493 (1954).



Participating Organizations

American Association of School Administrators
American Federation of Teachers
Association of Teacher Educators
EducationCounsel, LLC
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National Education Association
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