

Integrating Schools Post-PICS
By Elizabeth Nelson

“Unless our children begin to learn together,
there is little hope that our people will ever learn to live together.”¹

I. Introduction: The PICS Case

On June 28, 2007, in a five-four decision, the Supreme Court ruled that Seattle’s and Louisville’s school assignment plans were unconstitutional and held that school districts could no longer integrate elementary school classrooms by assigning students to schools based on race.² The decision in *Parents Involved in Community Schools v. Seattle School Dist. No. 1 (PICS)* was hailed by individuals who favor race-blind policies, but sharply criticized by many civil-rights groups as a further erosion of the landmark case *Brown v. Board of Education (Brown)*.³ Chief Justice Roberts, writing the majority opinion, stated that by classifying students by race, school districts perpetuated the unequal treatment that *Brown* outlawed.⁴ He further commented, “the way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”⁵

In opposition, Justice Stevens wrote in his dissent that citing *Brown* to rule against integration was “a cruel irony.”⁶ Similarly, Justice Breyer concluded in his dissent that invalidating the plans under review was to threaten the promise of *Brown* and would be a decision the Court and the Nation will come to regret.⁷ Justice Thomas, writing separately to address Justice Breyer’s dissent, noted that “because ‘our Constitution is

¹ *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 127 S.Ct. 2738, 2835 (2007). (Breyer, J., dissenting, citing *Milliken v. Bradley*, 418 U.S. 717, 783 (1974)).

² *PICS*, 127 S.Ct. at 2768.

³ Linda Shaw, *Integration Is No Longer Seattle School District’s Top Priority*, *The Seattle Times*, June 3, 2008, available at http://seattletimes.nwsource.com/html/education/2004453782_reseg03m.html.

⁴ *PICS*, 127 S.Ct. at 2768.

⁵ *Id.*

⁶ *Id.* at 2797 (Stevens, J., dissenting).

⁷ *Id.* at 2837 (Breyer, J., dissenting).

colorblind and neither knows nor tolerates classes among citizens,’ such race-based decision-making is unconstitutional.”⁸

Justice Kennedy, though concurring in the judgment, acknowledged that the Court’s ruling “should not prevent school districts from continuing the important work of bringing together students of different racial, ethnic, and economic backgrounds” and that race could sometimes be a component of school efforts to achieve diversity.⁹ He further found that “diversity...is a compelling goal a school district may pursue”¹⁰ and that “a compelling interest exists in avoiding racial isolation.”¹¹ While reaffirming that a district’s use of race-conscious decision-making must be narrowly tailored to achieve this compelling interest,¹² Justice Kennedy left the door opened for districts that wanted to pursue diversity by more creative means.

II. Why Districts Should Pursue Diversity as a Goal

In order to determine how school districts might best pursue diversity in schools, it is important to first articulate the short- and long-term benefits that flow from integrated schools. In the short-term, racially integrated schools enhance students’ learning and provide for higher academic achievement of black and Hispanic students.¹³ Integrated school environments help children adopt multiple perspectives and avoid making artificial assumptions, improving the critical thinking process.¹⁴ Additionally, students of all backgrounds attending diverse schools benefit from “enhanced classroom

⁸ *Id.* at 2788 (citing *Plessy v. Ferguson*, 163 U.S. 537, 559 (U.S. 1896)).

⁹ *Id.* at 2792, 2797.

¹⁰ *Id.* at 2789.

¹¹ *Id.* at 2797.

¹² *Id.* at 2789.

¹³ The Civil Rights Project, *Social Science Findings About School Integration Fact Sheet*, available at <http://civilrightsproject.ucla.edu/policy/SSTalkingPoints.pdf>.

¹⁴ *One Year Later: The Civil Rights Project/Proyecto Derechos Civiles at UCLA Reflects on the Anniversary of the Supreme Court’s Voluntary Integration Decision*, UCLA Civil Rights Project, June 2008, available at <http://www.civilrightsproject.ucla.edu/policy/court/voltint-anniversary.php>.

discussion, improved racial and cultural awareness, and higher levels of student persistence.”¹⁵

In the long-term, racially integrated student bodies prepare students to be global citizens in our increasingly diverse society.¹⁶ Diversity in schools promotes social cohesion: research demonstrates that areas with fully integrated schools experience declining residential segregation.¹⁷ Additionally, later in life, students who come from integrated schools are more likely to live in integrated neighborhoods, develop interracial friendships, and work in higher-status occupations.¹⁸

Low high school graduation rates – about 50 percent nationally for black, Hispanic, and Native American students as opposed to 75 percent for white students – show a strong relationship with indicators of school segregation independent of poverty.¹⁹

These statistics are especially meaningful when one considers that high school dropouts are far more likely to be unemployed, imprisoned, and living in poverty.²⁰ The negative outcomes associated with school segregation may be avoided when integration is a goal.

Studies demonstrate that the majority of segregated minority schools have a lack of resources, fewer and less qualified teachers, higher teacher turnover rates, larger class sizes, few advanced classes, and inferior infrastructure.²¹ Racially isolated minority schools are often unequal to schools with higher percentages of white students in terms of

¹⁵ *Id.*

¹⁶ Social Science Findings, *supra* note 13.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Gary Orfield, Daniel Losen, Johanna Wald, and Christopher B. Swanson, *Losing Our Future: How Minority Youth Are Being Left Behind by the Graduation Rate Crisis*, A Joint Release By The Civil Rights Project At Harvard University, The Urban Institute, Advocates for Children of New York, and The Civil Society Institute, March 11, 2004, at 4, *available at* http://www.civilrightsproject.ucla.edu/research/dropouts/LosingFuture_Executive.pdf.

²⁰ *Id.* at 1.

²¹ Social Science Findings, *supra* note 13.

these tangible and intangible resources, all which are associated with positive higher educational outcomes.²² Therefore, universities tend to draw successful minority applications from interracial high schools because many segregated schools fail to prepare students well enough to succeed in college.²³

In *Grutter v. Bollinger*, Justice O'Connor indicated her hope that successful K-12 school integration would make college affirmative action unnecessary 25 years from that decision.²⁴ In that same case, the Court affirmed that integrated colleges are necessary for training future leaders of our country.²⁵ In order to achieve this goal of building a better democracy and one led by educated citizens, students must have the opportunity to attend integrated universities, an opportunity that oftentimes begins with attending an integrated elementary school. Thus, it is essential to ensure that every student has the opportunity for an excellent education where diversity is a key component.

III. The Current State of School Integration

There are two significant implications for higher education to consider when looking at the *PICS* decision: (1) rising segregation is likely to bring a rise in educational inequality and less prepared minority students, and (2) all incoming students are likely to have fewer interracial experiences prior to attending college and will be less prepared to function in a diverse society.²⁶ Accordingly, now that limitations that prevented increased segregation are gone, “districts have to decide whether to do something more complex and multidimensional or abandon their integration efforts.”²⁷

²² Gary Orfield, Erica Frankenberg, and Liliana M. Garces, *Better Than Expected, Worse Than It Seems*, Inside Higher Ed, July 24, 2007, available at <http://www.insidehighered.com/views/2007/07/24/orfield>.

²³ *Id.*

²⁴ *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

²⁵ *Id.* at 332.

²⁶ Orfield, *supra* note 22.

²⁷ *Id.*

In June 2008, civil rights activist Gary Orfield observed that, since the *PICS* decision, “we have seen a disturbing pattern develop among school districts deciding that the easiest and safest response to the ruling is to eliminate existing desegregation plans altogether.”²⁸ Because school choice without desegregation goals often leads to increased segregation, both within schools and within communities,²⁹ districts must actively work to encourage diversity within schools.

This goal is especially poignant when one observes the current demographics of our country: the population of students of color is much more racially and ethnically diverse than it was years ago. Today, students of color comprise over 40 percent of all U.S. public school students, more than twice their share of students during the 1960s.³⁰ About 40 percent of students of color attend schools that are 90-100 percent minority, and many more attend schools where the majority of students are non-white.³¹ Therefore, desegregation is a critical step in achieving integration and diversity within our schools.³²

IV. Permissible Means of Achieving Diversity in Schools

In order to achieve the goal of diversity, districts can and should look to some of the race-conscious measures Justice Kennedy articulated in his concurrence, which include “strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special

²⁸ One Year Later, *supra* note 14.

²⁹ *Id.*

³⁰ NAACP Legal Defense and Education Fund, Inc. and The Civil Rights Project, *Voluntary K-12 School Integration: A Manual for Parents, Educators, & Advocates*, at 10 (2008) available at http://www.naacpldf.org/content/pdf/voluntary/Still_Looking_to_the_Future_Voluntary_K-12_School_Integration_A_Manual_for_Parents_Educators_and_Advocates.pdf.

³¹ Philip T.K. Daniel and Patrick D. Pauken, *The PICS Decision – Academic Freedom v. Federalism: Consider the Constitutional Implications*, 18 Temp. Pol. & Civ. Rts. L. Rev. 111, 121 (2008) (citing Erica Frankenberg et al., The Civil Rights Project, Harvard University, *A Multiracial Society with Segregated Schools: Are We Losing the Dream?* 31 (2003)).

³² Aaron Munter, *May it Please the Justice: Justice Kennedy and School Desegregation After PICS*, 12 Lewis & Clark L. Rev. 695, 696 (2008).

programs; recruiting students and faculty in targeted fashion; and tracking enrollments, performance, and other statistics by race.”³³ Other legally permissible options include consolidating several school districts into a larger district, pairing schools to merge neighboring educational facilities, and renovating existing school sites to attract students of all backgrounds.³⁴

A. Developing New School Sites

School districts can attempt to put schools in locations that are likely to create a racially diverse school, though this opportunity is relatively rare,³⁵ as districts do not build new schools if enrollment is declining or if the district is not wealthy enough to fund construction.³⁶ When possible, however, locating schools in designated population centers where they are likely to draw a diverse pool of applicants may be one way to achieve integration.³⁷ Absent a massive increase in school construction around the country, however, this strategy will have a minimal impact on school integration.³⁸

B. Adjusting Attendance Lines

Today, many districts assign students to schools based on where they live, to a “neighborhood school.”³⁹ Where housing patterns are segregated, however, this type of assignment can lead to significant racial isolation,⁴⁰ as segregated housing patterns often result in segregated schools.⁴¹ Because districts are called upon to redraw attendance

³³ *PICS*, 127 S.Ct. at 2792.

³⁴ *One Year Later*, *supra* note 14.

³⁵ *Manual*, *supra* note 30, at 36.

³⁶ *Munter*, *supra* note 32, at 705.

³⁷ Meaghan Hines, *Fulfilling the Promise of Brown? What Parents Involved Means For Louisville and The Future of Race In Public Education*, 83 *Notre Dame L. Rev.* 2173, 2212 (2008).

³⁸ Craig R. Hereen, “*Together at the Table of Brotherhood*”: *Voluntary Student Assignment Plans and The Supreme Court*, 24 *Harv. BlackLetter L.J.* 133, 186 (2008).

³⁹ *Manual*, *supra* note 30, at 35.

⁴⁰ *Id.* at 36.

⁴¹ *Hines*, *supra* note 37, at 2212.

boundaries relatively frequently, districts can utilize software that demonstrates how a change in an attendance boundary may impact each school's demographics.⁴² Districts must also consider the political sensitivities that surround this approach.

C. Allocating Resources for Special Programs

This facially race-neutral measure is already operational in many large, urban districts.⁴³ Schools can allocate resources to create special programs in specific schools that may attract a racially diverse group of students.⁴⁴ This strategy might include making a magnet school or providing for International Baccalaureate (IB), Advanced Placement (AP), or dual language programs at a specific school site.⁴⁵ In a conventional model, these programs are placed at schools with high minority populations and draw students voluntarily from other parts of the district.⁴⁶ This strategy may be effective in certain schools, but it is unlikely that a district would have the resources to replicate these programs in every school,⁴⁷ potentially leading to limited success.

D. Recruiting Students and Faculty In A Targeted Fashion

Schools can initiate strategic recruitment and outreach programs in order to obtain a more diverse faculty and student body.⁴⁸ These strategies may include holding open houses for students of designated racial groups, initiating mentoring programs for students of specific racial groups, partnering with community organizations, and grassroots outreach in particular communities.⁴⁹ This plan is advantageous because it is less likely to receive an adverse public reaction. However, because a plan such as this

⁴² Manual, *supra* note 30, at 36.

⁴³ Munter, *supra* note 32, at 707.

⁴⁴ Manual, *supra* note 30, at 36.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Hereen, *supra* note 38, at 186.

⁴⁸ Manual, *supra* note 30, at 36.

⁴⁹ *Id.* at 37.

cannot mandate compulsory movement of students, “it is unlikely that a recruiting effort alone will lead to any immediate reform.”⁵⁰

E. Tracking Statistics by Race

Schools can continue to collect student enrollment and performance data as provided for by the No Child Left Behind Act.⁵¹ By having the ability to report this data for each racial subgroup, the data can help identify schools in need of improvement.⁵² Though tracking identifies problems within racial subgroups, it does not cure it, as Justice Breyer noted in his dissent in *PICS*.⁵³

F. Pairing Schools to Merge Neighboring Educational Facilities

Two existing schools with differing racial compositions could be combined so that one school has an enlarged attendance area,⁵⁴ for example, taking two K-8 schools and making one K-4 and the other 5-8. This strategy could have a large impact but is limited in scope, in that only two schools are involved in each joint venture.

G. Renovating Existing School Sites

Similar to placing a special program at an existing school, schools can apply for or allocate funds to renovate an existing school district in a manner that would attract a more diverse student population.⁵⁵ This may encourage students who weren’t otherwise interested in a particular school to become more invested in the school site.

⁵⁰ Hereen, *supra* note 38, at 186.

⁵¹ Manual, *supra* note 30, at 37.

⁵² *Id.*

⁵³ *PICS*, 127 S.Ct. at 2828 (Breyer, J., dissenting).

⁵⁴ Manual, *supra* note, at 37.

⁵⁵ *Id.*

H. Consolidating School Districts

Some regions have consolidated their school districts to create a single, larger, more racially diverse district.⁵⁶ In theory, urban centers could diversify their schools by persuading many more middle-class and white parents to choose public over private school or by joining forces with the wealthier suburbs that surround the city.⁵⁷ Though “district consolidation can do more to promote integration than any single district’s policy,”⁵⁸ a district seeking to combine must consider the political climate of the area. One success story of consolidation occurred in 2007, when Omaha Public Schools joined with eleven surrounding school districts to make a metropolitan-wide district.⁵⁹

The Court in *Milliken v. Bradley* concluded that, absent an interdistrict violation, there could be no interdistrict remedy when attempting to integrate schools.⁶⁰ Accordingly, one school district cannot force another district to consolidate. Districts can, however, voluntarily consent to consolidation. In the abstract, and especially in districts where white flight is prevalent, district consolidation may be the most effective method of integration. Realistically speaking, however, there would likely be significant political and community opposition to such efforts.

V. A Creative Plan to Desegregate Post-PICS: Looking at Louisville

Though the most popular alternative to race-conscious strategies has been utilizing race-neutral alternatives such as socioeconomic status and language background,⁶¹ some districts have taken into account these variables in a race-conscious

⁵⁶ *Id.*

⁵⁷ Emily Bazelon, *The Next Kind of Integration*, N.Y. Times, July 20, 2008, available at <http://www.nytimes.com/2008/07/20/magazine/20integration-t.html?emc=eta1>.

⁵⁸ Manual, *supra* note 30, at 37.

⁵⁹ *Id.*

⁶⁰ *Milliken v. Bradley*, 418 U.S. 717, 745 (1974).

⁶¹ One Year Later, *supra* note 14.

way. Louisville’s student population, at nearly 100,000 students, is 35 percent black and 55 percent white.⁶² Before the *PICS* decision, Louisville used a race-based plan to achieve the goal of desegregation by seeking a black student enrollment between 15 and 50 percent at every school.⁶³ In order to achieve this same goal post-*PICS*, John Powell, Director of the Kirwan Institute for the Study of Race and Ethnicity at Ohio State University, used a “class-plus-race” methodology to define the district’s areas of low opportunity by measuring income and educational levels of adults, creating a map to use as a guide for school integration.⁶⁴ Instead of making schools between 15 and 50 percent black, Louisville made schools between 15 and 50 percent from a certain geographic area – the higher-minority, lower-income, and less-educated side of town.⁶⁵

This recommendation rearranged the district’s elementary schools into six clusters, aspiring to preserve the goal of diversity and contribute to a higher quality of education for students.⁶⁶ In response to the introduction of this plan, Byron Leet, an attorney who represented the school district in *PICS*, cited Kennedy’s concurrence and said that the new plan is constitutional because officials do not use an individual’s race in assigning them to a school.⁶⁷

Similarly, the Berkley Unified School District in California clusters and assigns racially and socio-economically diverse groups of students to schools based on certain neighborhood characteristics – including racial composition, average family income, and

⁶² Bazelon, *supra* note 57.

⁶³ *McFarland v. Jefferson County Pub. Schs.*, 330 F.Supp.2d 834, 842 (W.D. Ky. 2004).

⁶⁴ Bazelon, *supra* note 57.

⁶⁵ *Id.*

⁶⁶ Antoinette Konz, *Board Gets Student-Assignment Plan Monday*, The Courier Journal, May 9, 2008, available at <http://www.courier-journal.com/article/20080509/NEWS01/805090453>.

⁶⁷ Antoinette Konz, *New Jefferson School Plan: Is it Constitutional?*, The Courier Journal, September 26, 2008, available at <http://www.courier-journal.com/apps/pbcs.dll/article?AID=/20080926/NEWS0105/809260446/1008/NEWS01>.

parent education levels.⁶⁸ These two districts “serve as a reminder that carrying out Justice Kennedy's decree is still possible, even with the current legal restrictions in place.”⁶⁹ The question remains, however, as to what happens in districts that are not racially and socio-economically diverse.

VI. What About Racially Isolated Districts?

Unlike Louisville, where 60 percent of its students are low-income and 34 percent of those students are white, many urban school districts have student populations that are heavily minority or heavily low-income, making it extremely difficult to integrate schools by either race or class.⁷⁰ For example, 85 percent of Chicago students are low-income,⁷¹ and these students are 46 percent black, 39 percent Hispanic, 8 percent white, 3 percent Asian, and 3 percent multi-racial.⁷² In Detroit, 75 percent of students are low-income,⁷³ and 89 percent of the students are black, 7 percent are Hispanic, 3 percent are white, and 1 percent is Asian.⁷⁴

Professor James Ryan has noted that “[R]acial integration is an implausible if not impossible goal in thousands of school districts that are predominantly or exclusively white or predominantly or exclusively minority.”⁷⁵ For racially isolated districts, significant integration can likely come only as a result of measures designed to re-attract

⁶⁸ One Year Later, *supra* note 14.

⁶⁹ *Id.*

⁷⁰ Bazelon, *supra* note 57.

⁷¹ Interactive Illinois Report Card, City of Chicago SD 299 Report Card, *available at* <http://iirc.niu.edu/District.aspx?districtID=15016299025>.

⁷² Chicago Public Schools, Office of Research, Evaluation, and Accountability, Citywide Demographic Report: Demographic Report Over Time, *available at* http://research.cps.k12.il.us/export/sites/default/accountweb/Reports/Citywide/citywide_demographic_report.pdf.

⁷³ Detroit Public Schools, Detroit City School District Summary, *available at* http://www.detroitk12.org.nyud.net/schools/reports/pdfs/district_profile.pdf/.

⁷⁴ Detroit Public Schools, DPS Facts, *available at* <http://www.detroit.k12.mi.us/data/dpsfacts/>.

⁷⁵ James E. Ryan, *The Supreme Court and Voluntary Integration*, 121 Harv. L. Rev. 131, 145 (2007).

students lost to private schools, suburban districts, or home-schooling.⁷⁶ Additionally, the layout of the districts may affect integration efforts. Some districts, like Jefferson County, encompass the metropolitan area as well as the surrounding suburbs, thereby precluding families from moving a short distance to avoid integration efforts.⁷⁷

Recent survey data indicates that 73 percent of whites and 76 percent of blacks support “integration in the abstract.”⁷⁸ Almost two thirds of whites supported the idea of integrated schools in the mid-1960s, and, twenty years later, the support for school integration grew to 93 percent.⁷⁹ Professor Michelle Adams notes, however, that while “[m]ost white Americans agree with integration in principle . . . there is noticeably less support among whites for the implementation of integration principles.”⁸⁰ Districts need to work to encourage all community members to support integration and diversity in schools, not only in the abstract, but also in the concrete reality of their communities.

In order to achieve the goal of diversity in schools, racially isolated districts need to focus on improving communication with neighboring districts regarding the positive benefits of integration in education. Districts should hire a Superintendent and appoint a school board that has a vision of educational excellence and that will implement a series of measurable goals and objectives to facilitate the attainment of a high quality of education for all students. The district should utilize its funds both to place an emphasis on diversity in schools as well as to obtain more qualified teachers, access to resources, and smaller class sizes in order to improve each school’s quality.

⁷⁶ Michelle Renee Shamblin, *Silencing Chicken Little: Options for School Districts After Parents Involved*, 69 La. L. Rev. 219, 248 (2008).

⁷⁷ Shaw, *supra* note 3.

⁷⁸ Ronald Turner, *The Voluntary School Integration Cases and The Contextual Equal Protection Clause*, 51 How. L.J. 251, 329 (2008) (citing Sheryll Cashin, *The Failures of Integration: How Race and Class are Undermining The American Dream*, 11 (2004)).

⁷⁹ *Id.* at 330.

⁸⁰ Michelle Adams, *Radical Integration*, 94 Cal. L. Rev. 261, 265 n.11 (2006).

Districts that are racially isolated must recognize that diversity alone does not equate with educational equality. Therefore, these districts must work to improve the quality of their schools while facilitating the beginning of what is likely to be a long and politically charged discussion about the possibility of engaging in district consolidation or partner-school programs with neighboring districts.

VII. Conclusion

Justice Kennedy called upon “experts, parents, administrators, and other concerned citizens to find a way to achieve the compelling interests” in diversity and in preventing racial isolation.⁸¹ Studies have demonstrated the positive impact of diverse schools on all students, and educational advocates should work to determine how to provide an excellent, integrated education for all of our nation’s students. These goals of providing a high-quality education and a diverse education are not mutually exclusive: communities must expect excellence from their schools, and a critical factor that contributes to this excellence is a diverse student body.

In districts across the nation, there must be rigorous standards and high expectations for *all* schools, as well as an increased emphasis on achieving diversity in schools. As Justice Kennedy noted in the *PICS* decision, “the enduring hope is that race should not matter, the reality is that too often it does.”⁸² Those who advocate for diversity in schools and for excellence in public education must recognize this reality and do all that they can to integrate districts. Relatively diverse districts should follow in Louisville’s example and utilize Justice Kennedy’s race-conscious measures to create creative integration plans. Racially isolated districts, on the other hand, should focus

⁸¹ *PICS*, 127 S.Ct. at 2797.

⁸² *Id.* at 2791.

first on building relationships with neighboring districts and seeking to bridge any existing political divides. In the interim, these districts should hire leaders who are passionate about creating high-quality schools. These leaders, in turn, must be willing and able to invest the district's teachers, students, parents, and other community members in the mission to achieve a high-quality, diverse school system so that, one day, all children will have an opportunity for an excellent education.