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After Unitary Status: Examining Voluntary Integration Strategies for Southern School Districts

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AFTER UNITARY STATUS: EXAMINING VOLUNTARY INTEGRATION STRATEGIES FOR SOUTHERN SCHOOL DISTRICTS*

DANIELLE HOLLEY-WALKER**

This Article provides empirical data on student assignment plans that are currently being used by Southern school districts that have recently attained unitary status. As the facts of Parents Involved in Community Schools demonstrate, Southern school districts will likely continue to be at the forefront of the struggle over voluntary integration efforts. Many Southern school districts are being released from desegregation orders that allowed the district to use race-conscious remedies to address previous de jure racial segregation. Without those court orders, the school district is faced with a choice about whether to continue to make racial integration a priority and what legally permissible strategies the school district may employ. The goal of this Article is to provide a snapshot of how many Southern school districts are facing this dilemma and what choices the school districts are making.

This Article presents an empirical study that identifies school districts in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina that have attained unitary status since 2004. Part I then goes on to identify the important commonalities with respect to these cases, including examining the role of the United States Department of Justice in assisting school districts in unitary status proceedings.

This Article builds on these initial findings by providing a study of the post-unitary status student assignment plans adopted by the

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Southern school districts. This Article then analyzes the trends in post-unitary status student assignment plans: the prevalence of small districts with only one school at each grade level, the continued use of race-conscious student assignment plans by a few districts, the emergence of socioeconomic status as a factor in student assignment, and the strategic drawing of attendance zones.

This Article also presents an overview of strategies to encourage voluntary racial integration in Southern school districts. These strategies are examined from several different viewpoints: strategies that may be employed by school districts that seek to adopt voluntary integration plans, the need for additional desegregation litigation under state constitutions, and the role of the federal government in promoting the goal of racial integration in public schools.

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INTRODUCTION

In the years since the Supreme Court's decision in *Parents Involved in Community Schools v. Seattle School District No. 1*,¹ scholars have speculated on the long-term impact of the case.² The argument has been made that *Parents Involved* will have little practical effect on school districts because racial integration is off of the agenda of most school districts.³ Others have predicted that the case will lead to fewer school districts utilizing race-conscious student assignment plans.⁴

This Article seeks to enter this debate and the larger conversation about the future of racially integrated public schools by providing empirical data on student assignment plans that are currently being used by Southern school districts that have recently attained unitary status.⁵ As the facts of *Parents Involved* demonstrate, Southern school districts will likely continue to be at the forefront of the struggle over voluntary integration efforts. One of the school districts at the center of *Parents Involved* was Jefferson County,

1. 551 U.S. 701 (2007).

2. Erica Frankenberg & Chinh Q. Le, *The Post-Parents Involved Challenge: Confronting Extralegal Obstacles to Integration*, 69 OHIO ST. L.J. 1015, 1015 (2008) (noting that commentators are beginning to assess *Parents Involved* to determine its impact on student assignment plans).

3. See, e.g., James E. Ryan, *The Supreme Court and Voluntary Integration*, 121 HARV. L. REV. 131, 132 (2007).

4. See, e.g., Derek W. Black, *The Uncertain Future of School Desegregation and the Importance of Goodwill, Good Sense, and a Misguided Decision*, 57 CATH. U. L. REV. 947, 980 (2008) (arguing that the holding of *Parents Involved* places significant restraints on school districts and that risk-averse school boards will read the opinion narrowly); Sharon L. Browne & Elizabeth A. Yi, *The Spirit of Brown in Parents Involved and Beyond*, 63 U. MIAMI L. REV. 657, 672-73 (2009).

5. The term "unitary status" is given to school districts that have had their desegregation decrees lifted, thus closing the desegregation case. See *Green v. County Sch. Bd. of New Kent County*, 391 U.S. 430, 436 (1968) (articulating the goal of *Brown v. Board of Education*, 347 U.S. 483 (1954), as a "transition to a unitary, nonracial system of public education"); see also Wendy Parker, *The Decline of Judicial Decisionmaking: School Desegregation and District Court Judges*, 81 N.C. L. REV. 1623, 1631 n.50 (2003) (defining "unitary status").

This Article uses several terms interchangeably to indicate that the school district's desegregation decree has been terminated. It uses the terms "unitary," "desegregation decree lifted," and "desegregation order dissolved" to indicate that a court order was entered that ended the school district's desegregation order.

Kentucky.⁶ The Jefferson County school district was under a desegregation order for several decades, and after attaining unitary status, the school district sought to maintain racially integrated schools through the use of a voluntary integration plan.⁷ Ultimately, the Supreme Court invalidated this race-conscious plan.⁸

Jefferson County provides an example of the broader struggle that Southern school districts face if racial integration is a school district priority. Many Southern school districts are being released from desegregation orders that allowed the districts to use race-conscious remedies to address previous de jure racial segregation. Without those court orders, the school districts are faced with choices about whether to continue to make racial integration a priority and what legally permissible strategies the school districts may employ. The goal of this Article is to provide a snapshot of how many Southern school districts are facing this dilemma and what choices the school districts are making.

An underlying premise of this Article is that racial integration continues to be an important goal for our public schools. An impressive array of literature documents that minority children reap educational, social, and economic benefits from racially integrated schools.⁹ In terms of academic benefits, student achievement

6. *Parents Involved*, 551 U.S. at 715.

7. *Id.* at 715–16 (describing the history of the Jefferson County school system and the adoption of the voluntary integration plan after the dissolution of the district's desegregation order). A “voluntary integration plan” is one where a school district decides to use student assignment plans and other methods to achieve racial diversity. The efforts are seen as “voluntary” when the school district is not under court order to desegregate.

8. *Id.* at 748.

9. See, e.g., Damian B. Gosheff, *Brown's Unfulfilled Promise. Education Finance Reform and the Separate but Equal Effect of State Education Clause Remedies—New York as a Model*, 35 U. TOL. L. REV. 889, 922 (2004) (quoting Justice O'Connor's majority opinion in *Grutter v. Bollinger*, 539 U.S. 306, 331 (2003), where she notes that diverse schools improve student learning, better prepare individuals for diverse workplaces, and help maintain a cultural fabric); Maureen T. Hallinan, *Diversity Effects on Student Outcomes: Social Science Evidence*, 59 OHIO ST. L.J. 733, 741–42, 744–45 (1998) (summarizing the conclusion from studies that demonstrate the academic benefits to minority students from integrated learning environments); Osamudia R. James, *Business as Usual: The Roberts Court's Continued Neglect of Adequacy and Equity Concerns in American Education*, 59 S.C. L. REV. 793, 807–08 (2008) (citing the Coleman Report as “one of the first studies to document the benefit of integrated schools for black children”); Richard D. Kahlenberg, *Socioeconomic School Integration*, 85 N.C. L. REV. 1545, 1555 (2007) (arguing that racial integration is important for furthering the goals of fostering tolerance and good citizenship); John A. Powell, *Living and Learning: Linking Housing and Education*, 80 MINN. L. REV. 749, 789–90 (1996) (“The beneficial effects of social integration run deep and continue to influence the lives of [minority and White] students in integrated schools long after their formal education.”); Sharon Elizabeth Rush,

improves for African Americans that attend integrated schools, especially in the earlier grades.¹⁰ Moreover, empirical evidence also shows that African Americans who attend integrated schools are more likely to attend two- or four-year colleges and get higher grades while in college.¹¹

Social benefits of integrated school settings have been identified for both minority and White students. Students who graduate from desegregated schools are more likely to live in integrated neighborhoods and to work in integrated work places.¹² Integrated schools also help to promote important social benefits like breaking down racial stereotypes and developing long-term relationships across racial lines.¹³ Beginning with the premise that racial integration is still an important and worthwhile goal, this Article examines the future of desegregation cases and voluntary integration plans in Southern school districts.¹⁴

Part I of this Article presents an empirical study that identifies school districts in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina that have attained unitary status since 2004.¹⁵ Part I then goes on to identify the important commonalities in unitary status cases for these districts, including examining the role of the United States Department of Justice (“DOJ”) in assisting school districts in unitary status proceedings.¹⁶ Part II builds on the findings of Part I by providing a study of the post-unitary status student assignment plans adopted by the Southern

The Heart of Equal Protection: Education and Race, 23 N.Y.U. REV. L. & SOC. CHANGE 1, 25 (1997) (“A racially integrated environment is optimal for learning emotional intelligence skills as they apply to race relations.”); Ryan, *supra* note 3, at 143–44 (“The defense of integration has always been on surer footing when one also considers its social benefits—the ways in which integration can break down or prevent stereotypes and prejudice, lead to long-term relationships across racial and ethnic boundaries, and increase the possibility that students will continue to seek out integrated colleges, workplaces, and neighborhoods.”).

10. See Hallinan, *supra* note 9, at 741–42, 744–45; Kimberly Jenkins Robinson, *The Constitutional Future of Race-Neutral Efforts to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools*, 50 B.C. L. REV. 277, 331–35 (2009).

11. See James E. Ryan, *Schools, Race, and Money*, 109 YALE L.J. 249, 302 (1999).

12. *Id.* at 303.

13. Ryan, *supra* note 3, at 143–44.

14. This Article focuses on Southern school districts due to the original theme of the *Looking to the Future* conference, which focused on the future of racial integration in Southern schools. One of the goals of this Article is to identify school districts that face similar challenges.

15. See *infra* Table 1.

16. See *infra* Part I.B.

school districts identified in Part I.¹⁷ It then analyzes the trends in post-unitary status student assignment plans: the prevalence of small districts with only one school at each grade level, the continued use of race-conscious student assignment plans by a few districts, the emergence of socioeconomic status as a factor in student assignment, and the strategic drawing of attendance zones.¹⁸ Part III presents an overview of strategies to encourage voluntary racial integration in Southern school districts. Part III looks at these strategies from several different viewpoints: strategies that may be employed by school districts that seek to adopt voluntary integration plans, the need for additional desegregation litigation under state constitutions, and the role of the federal government in promoting the goal of racial integration in public schools.¹⁹

I. POST-UNITARY STATUS IN SOUTHERN SCHOOL DISTRICTS

A. *Background and Methodology*

Almost fifteen years after the Supreme Court's landmark 1954 decision in *Brown v. Board of Education*²⁰—in which the Supreme Court declared that de jure racially segregated schools violated the Fourteenth Amendment's Equal Protection Clause²¹—there was little progress toward desegregation in Southern schools. In 1968, the Supreme Court, in *Green v. County School Board of New Kent County*,²² outlined more concretely the goals and benchmarks for desegregation cases.²³ The Court declared that *Brown* required the dismantling of the “dual systems” of public education in which there were identifiable White and Black schools.²⁴ The Court found that school districts have a duty “to create a unitary, nonracial system.”²⁵ The Court in *Green* pointed to six areas where school systems should be made nonracial and unitary: students, faculty, staff, facilities, transportation, and extracurricular activities.²⁶

17. See *infra* Table 2.

18. See *infra* Part II.C.

19. See *infra* Part III.

20. 347 U.S. 483 (1954).

21. *Id.* at 495.

22. 391 U.S. 430 (1968).

23. *Id.* at 439.

24. *Id.* at 435.

25. *Id.* at 440 (quoting *Bowman v. County Sch. Bd. of Charles City County*, 382 F.2d 326, 333 (4th Cir. 1967) (Sobeloff, J., concurring)). The *Green* Court misquoted *Bowman*, though the substance of the quotation is accurate.

26. *Id.* at 435.

In a series of cases in the 1990s, the Supreme Court explained that in order for a school district to demonstrate that it is entitled to have its desegregation decree lifted, the district court should examine (1) whether the school board “complied in good faith with the desegregation decree since it was entered;”²⁷ and (2) “whether the vestiges of past discrimination had been eliminated to the extent practicable.”²⁸ In determining whether the vestiges of past discrimination have been eliminated to the extent practicable, the district court “should look not only at student assignments, but ‘to every facet of school operations—faculty, staff, transportation, extra-curricular activities and facilities.’”²⁹ The Supreme Court’s decisions in the early 1990s cases *Board of Education of Oklahoma City Public Schools v. Dowell*,³⁰ *Freeman v. Pitts*,³¹ and *Missouri v. Jenkins*³² made it easier for school districts to achieve unitary status and resulted in more school districts having their desegregation decrees lifted.³³

This Part identifies the school districts in Southern states that have achieved unitary status since 2004. The year 2004 was chosen as the starting date for this study for a couple of reasons. First, it provided a five-year period (2004–09) to study to be able to identify a significant sample of cases. Second, the litigation in *Parents Involved* took place during this period, so in order to be able to identify school districts that might be making decisions based on that case, it was important to choose a time period that encompassed when the case was pending and after the Supreme Court rendered its decision.

The information displayed in Table 1 was compiled using two methods. First, the list was compiled by referencing *Becoming Less*

27. *Bd. of Educ. of Okla. City Pub. Sch. v. Dowell*, 498 U.S. 237, 249–50 (1991).

28. *Freeman v. Pitts*, 503 U.S. 467, 491 (1992); *Dowell*, 498 U.S. at 250; see also Parker, *supra* note 5, at 1645 (noting that in determining unitary status courts also examine the “defendant’s commitment to further compliance with the Fourteenth Amendment”).

29. *Dowell*, 498 U.S. at 250 (quoting *Green*, 391 U.S. at 435).

30. 498 U.S. 237 (1991).

31. 503 U.S. 467 (1992).

32. 515 U.S. 70 (1995).

33. *Jenkins*, 515 U.S. at 100 (holding that school districts can achieve unitary status student achievement levels below national norms); *Freeman*, 503 U.S. at 471 (permitting district courts to grant unitary status in some categories and cease to supervise a school system in those categories); *Dowell*, 498 U.S. at 248 (emphasizing the importance of local control of schools and that a desegregation decree should be dissolved once a school district has demonstrated compliance for a reasonable period of time); see also GARY ORFIELD & CHUNGMEI LEE, THE CIVIL RIGHTS PROJECT (UCLA), *BROWN AT 50: KING’S DREAM OR PLESSY’S NIGHTMARE* 9 (2004), available at <http://www.civilrightsproject.ucla.edu/research/resseg04/brown50.pdf>; Wendy Parker, *The Future of School Desegregation*, 94 NW. U. L. REV. 1157, 1158 (2000) (arguing that these cases demonstrate the Supreme Court’s hostile view of desegregation cases).

Separate? School Desegregation, Justice Department Enforcement, and the Pursuit of Unitary Status, a study completed by the United States Commission on Civil Rights in September 2007.³⁴ *Becoming Less Separate* included in its data Southern school districts that were granted unitary status from 2004 to 2007. Those school districts are included in Table 1. *Becoming Less Separate* also identified school districts that planned to seek unitary status.³⁵ A Westlaw search was then conducted for any school districts on the “plan to seek unitary status” list in order to determine whether unitary status had been reached since the completion of *Becoming Less Separate* in September 2007. Once the unitary school districts were identified, searches were conducted in the Public Access to Court Records (“PACER”) database³⁶ for federal courts in order to gather the court filings (e.g., motions for unitary status, opposition motions, court orders) related to the unitary status proceedings.

Table 1. Southern School Districts that Have Recently Attained Unitary Status

School District	Year Unitary Status Granted
Alabama³⁷	
Alexander City	2004
Attalla City	2006
Autauga County	2005
Bessemer City	2006
Bibb County	2006
Blount County	2005
Cherokee County	2005
Coffee County	2004
Coosa County	2006
Covington County	2006
Crenshaw County	2006
Cullman City	2004
Dale County	2005
Dekalb County	2006
Dothan City ³⁸	2007

34. U.S. COMM’N ON CIVIL RIGHTS, BECOMING LESS SEPARATE? SCHOOL DESEGREGATION, JUSTICE DEPARTMENT ENFORCEMENT, AND THE PURSUIT OF UNITARY STATUS 111–71 (2007) [hereinafter BECOMING LESS SEPARATE].

35. See, e.g., *id.* at 114–17 (identifying Alabama districts planning to seek unitary status).

36. PACER provides online access to opinions for federal cases. PACER, Administrative Office of the U.S. Courts, Overview, <http://pacer.psc.uscourts.gov/pacerdesc.html> (last visited Jan. 30, 2010).

37. BECOMING LESS SEPARATE, *supra* note 34, at 111–13.

School District	Year Unitary Status Granted
Elba City	2004
Elmore County	2004
Gadsden City	2005
Henry County	2006
Houston County ³⁹	2008
Lee County	2005
Macon County	2006
Midfield City	2006
Mountain Brook City	2005
Oneonta City	2005
Phoenix City	2005
Pike County	2007
Roanoke City	2007
Tallapoosa County	2004
Troy City	2005
Winston County	2004
Florida⁴⁰	
Marion County	2007
Seminole County	2006
Wakulla County ⁴¹	2009
Georgia⁴²	
Baker County	2007
Bibb County ⁴³	2007
Bleckley County	2006
Brooks County	2005
Butts County	2005
Chattahoochee County	2006
Clay County	2006
Echols County	2005
Hancock County	2007
Jasper County	2006

38. ABBIE COFFEE & ERICA FRANKENBERG, TWO YEARS AFTER THE *PICS* DECISION: DISTRICTS' INTEGRATION EFFORTS IN A CHANGING CLIMATE 11 (The Civil Rights Project ed., 2009) [hereinafter *DISTRICTS' INTEGRATION EFFORTS*], available at http://www.civilrightsproject.ucla.edu/research/deseg/districts_integration_efforts_in_a_changing_climate.pdf.

39. See *Lee v. Houston County Bd. of Educ.*, No. 1:70CV1058, 2008 WL 166954, at *2 (M.D. Ala. Jan. 16, 2008).

40. *BECOMING LESS SEPARATE*, *supra* note 34, at 121.

41. See Minutes of Wakulla County School Board Meeting, Nov. 17, 2008, available at <http://www.wakullaschooldistrict.org/pdfs/MinNov17.pdf>; *DISTRICTS' INTEGRATION EFFORTS*, *supra* note 38, at 12; Dave Weber, *Vestiges of Segregation? After 50 Years, Lawsuits over the Integration of Florida's Public Schools Still Linger*, ORLANDO SENTINEL, Feb. 15, 2009, at B1, available at http://articles.orlandosentinel.com/2009-02-15/news/deseg15_1_florida-school-districts-school-board-florida-public-schools/2.

42. *BECOMING LESS SEPARATE*, *supra* note 34, at 127-28.

43. *Adams v. Bd. of Pub. Educ. of Bibb County*, No. 5:63-CV-1926, 2007 WL 841945, at *4 (D. Ga. Mar. 20, 2007).

School District	Year Unitary Status Granted
Lowndes County	2006
McIntosh County	2006
Morgan County	2006
Pelham City	2006
Putnam County	2007
Quitman County	2006
Schley County	2005
Seminole County	2006
Thomas County	2006
Treutlen County	2007
Webster County	2006
Wilkes County	2005
Louisiana⁴⁴	
Ascension Parish	2004
Grant Parish	2007
Lafayette Parish	2006
Rapides Parish	2006
Red River Parish	2005
Saint Bernard Parish	2006
Tensas Parish	2005
West Feliciana Parish	2007
Mississippi⁴⁵	
Calhoun County	2007
Coffeeville	2007
Hazlehurst City	2005
Indianola ⁴⁶	2008
Leflore County	2005
Madison County	2006
Marshall County	2005
Noxubee County	2004
South Delta	2004
Tishomingo County Special Municipal	2005
West Tallahatchie	2006
Wilkinson County	2004
North Carolina⁴⁷	
Alamance-Burlington Schools ⁴⁸	2009

44. BECOMING LESS SEPARATE, *supra* note 34, at 139–40.

45. *Id.* at 147–48.

46. DISTRICTS' INTEGRATION EFFORTS, *supra* note 38, at 12; *see also* BECOMING LESS SEPARATE, *supra* note 34, at 150 (noting that the district was seeking unitary status as of September 2007).

47. In Pitt County, North Carolina, the Eastern District of North Carolina recently approved a consent decree that delays a decision on unitary status until 2012. *Everett v. Pitt County Bd. of Educ.*, No. 6:69-CV-702-H, slip op. at 4 (E.D.N.C. Nov. 4, 2009), available at http://www.pitt.k12.nc.us/pitt/lib/pitt/Court_ruling.pdf.

48. *See* Mike Wilder, *Law Limits Schools' Racial Balance*, TIMES-NEWS (Burlington, N.C.), Aug. 14, 2009, at A1.

School District	Year Unitary Status Granted
Bertie County ⁴⁹	2009
South Carolina⁵⁰	
Anderson County Dist. 03	2005
Bamberg County Dist. 02	2004
Berkeley County	2004
Clarendon County Dist. 02	2004
Colleton County	2004
Fairfield County	2006
Florence County Dist. 04	2005
Hampton County Dist. 01	2004
Hampton County Dist. 02	2005
Lexington County Dist. 01	2005
Orangeburg County Dist. 03	2006

B. Trends in the Dissolution of Desegregation Orders

As Table 1 details, there are eighty-nine school districts in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina that have had their desegregation decrees lifted from 2004 to the present. There are two important trends that are evident from these unitary status cases: the integral role of the DOJ in the cases and the racially homogenous demographics of many of these districts.

1. The Role of the Department of Justice

In many of the cases where the school district achieved unitary status since 2004, the DOJ played an integral role in having the desegregation order dissolved. Often the unitary status proceeding in the Table 1 cases commenced only after a review conducted by the DOJ.⁵¹ After these status reviews were completed, often the DOJ and the school district made a joint motion to the district court for unitary

49. Thadd White, *Bertie Gains Unitary Status*, ROANOKE-CHOWAN NEWS-HERALD (Ahoskie, N.C.), Sep. 1, 2009, <http://www.roanoke-chowannews herald.com/news/2009/sep/01/bertie-gains-unitary-status/>.

50. BECOMING LESS SEPARATE, *supra* note 34, at 167.

51. See, e.g., *United States v. Hampton County Sch. Dist. No. 2*, No. 70-611, slip op. at 1 (D.S.C. Feb. 15, 2005) (noting that the DOJ commenced a review of the desegregation case in August 2003 and then informed the school district that it believed the school district had met its obligations under the desegregation order); *Albert v. Denmark-Olar Sch. Dist. No. 2*, Nos. 68-830 & 69-44, slip op. at 1-2 (D.S.C. July 6, 2004) (noting that in September 2002 the DOJ began a review of the desegregation case by seeking information from the school district). After the review was complete, the DOJ informed the school district that it believed the school district had met its obligations under the desegregation order. *Id.*

status.⁵² In these motions, the DOJ and school district typically argued that the school district had complied with all six of the *Green* factors (student assignment, faculty, staff, transportation, extracurricular activities, and facilities), indicating that the school district had eliminated the vestiges of the formerly de jure segregated school system.⁵³

The key role of the DOJ in the unitary status cases is not surprising because in many instances the United States was the original plaintiff in the desegregation case.⁵⁴ The timing, however, is noteworthy. Many of the school districts identified above have been under desegregation orders since the late 1970s, but the DOJ under President George W. Bush undertook an affirmative review of many desegregation cases, and these reviews led to motions for unitary status.⁵⁵

The Hampton County school district in South Carolina provides an example of the DOJ's key role in the recent unitary status cases. In Hampton County, the United States filed the desegregation action against the school district in 1970.⁵⁶ The district court ordered a desegregation plan that focused on combining all of the schools in the district into one elementary school, one middle school, and one high school.⁵⁷ The school district continued this plan through the 2003–04 school year.⁵⁸ In 2003, the DOJ initiated a review of the desegregation order and, after the review, informed the school district that it had met its obligations under the desegregation order.⁵⁹ The DOJ and

52. See, e.g., Joint Memorandum in Support of Declaration of Unitary Status and Dismissal at 1, *United States v. Fairfield County Sch. Dist.*, No. 70-608 (D.S.C. Sept. 11, 2006).

53. See, e.g., *id.* at 2–6 (arguing that unitary status should be granted due to the school district's compliance with the six *Green* factors); see also *Green v. County Sch. Bd. of New Kent County*, 391 U.S. 430, 435 (1968) (listing the six factors for consideration).

54. See, e.g., *Fairfield County Sch. Dist.*, No. 70-608, slip op. at 1 (noting that the United States filed the initial desegregation case); *Hampton County Sch. Dist.*, No. 70-611, slip op. at 1 (noting that the United States filed the initial desegregation case); *Denmark-Olar Sch. Dist.*, Nos. 68-830 & 69-44, slip op. at 2 (noting that a private plaintiff and the United States both filed desegregation cases against the school district in 1968 and 1969 respectively, and the cases were consolidated in 1969).

55. BECOMING LESS SEPARATE, *supra* note 34, at 28 (“Since FY [fiscal year] 2000, the DOJ has actively pursued the closure of school desegregation cases.”).

56. *Hampton County Sch. Dist.*, No. 70-611, slip op. at 1.

57. *Id.* at 2.

58. *Id.*

59. *Id.* at 1.

school district filed a joint motion for unitary status in February 2005, which was granted by the district court.⁶⁰

The role of the DOJ in the school desegregation cases has a long and complex history that will not be fully explored here,⁶¹ but two key points are worth mentioning. First, the sitting president strongly impacts the tone of the executive branch—and thus the DOJ—regarding desegregation cases. The eight years of George W. Bush's presidency did not mark the first time the executive branch has been hostile toward desegregation litigation and the race-conscious remedies that are often associated with these cases.⁶² In the Nixon administration, the President spearheaded the passage of the Equal Educational Opportunities Act of 1974,⁶³ “which set forth the federal government's policy favoring neighborhood schools and rejecting racial balance as the goal of school desegregation.”⁶⁴ Under the Reagan administration, “[p]olitical operatives from the White House formulated a civil rights policy that consisted of a resistance to traditional school desegregation remedies in favor of voluntary transfer programs, magnet schools, and neighborhood schools; opposition to race-conscious remedies; [and] minimal civil rights enforcement”⁶⁵

The integral role of the Bush DOJ in the Southern school district cases identified in this study has important implications for the future of desegregation in Southern schools. Although the standards for unitary status have eased under the Supreme Court desegregation cases of the 1990s, without the assistance of the federal government many school districts will not seek unitary status.⁶⁶ This may be due to a lack of school district or private party resources or to a perception that the lingering desegregation case is unimportant to the daily operations of the school district.⁶⁷ This suggests that the activity and philosophy of the DOJ will be a crucial aspect of the future of

60. Joint Memorandum in Support of Declaration of Unitary Status and Dismissal at 1, *Hampton County Sch. Dist.*, No. 70-611.

61. See generally Chinh Q. Le, *Racially Integrated Education and the Role of the Federal Government*, 88 N.C. L. Rev. 725, 731–48 (2010) (exploring the role of the federal government in the effort for racial and ethnic integration of the public schools).

62. *Id.* at 748.

63. Equal Educational Opportunities Act of 1974, Pub. L. No. 93-380, 88 Stat. 515.

64. *Id.* at 739.

65. *Id.* at 742; see also GARY ORFIELD & SUSAN E. EATON, *DISMANTLING DESEGREGATION* 16–18 (1996) (detailing the handling of school desegregation cases during the Reagan administration and in particular the DOJ's opposition to race-conscious remedies such as busing).

66. See Parker, *supra* note 33, at 1192.

67. *Id.* at 1207–09.

desegregation cases. If the DOJ continues to take an active and hostile approach to continuing Southern desegregation cases, it is likely that more school districts will have their desegregation orders lifted.

Second, a pro-unitary status DOJ calls for a balancing arm of the executive branch to assist in maintaining integrated schools. If the DOJ utilizes its resources to assist school districts in achieving unitary status, then other agencies in the federal government, particularly the Department of Education, should use their resources to counsel and assist school districts in maintaining integrated schools.⁶⁸ In school districts where demographics make racial integration difficult because the entire district is single race, the U.S. Department of Education should assist school district officials in developing strategies for positive educational outcomes in these racially isolated settings.⁶⁹ The Department of Education's Office of Civil Rights should also provide support for states and school districts that want to combat racially isolated school districts by adopting interdistrict remedies.⁷⁰ The federal government should not view its role as solely focused on ending desegregation cases, but should instead take a comprehensive approach to providing a vision and resources for high quality education for students in every school district that was previously under a desegregation order.

2. Demographic Considerations in the Dissolution of Desegregation Orders

Another commonality in the recent unitary status cases in Southern states is that many of the school districts are populated predominately by one race.⁷¹ In many of the small school districts in this study that have achieved unitary status since 2004, the African American student population is approximately eighty percent or higher.

This trend comports with national research on the shifting nature of school segregation. “[R]ecent research shows that racial

68. See *Le*, *supra* note 61, at 769 (arguing that the Department of Education should help “educate the public about the benefits of integration and the harms of racial isolation”).

69. See Eboni S. Nelson, *Examining the Costs of Diversity*, 63 U. MIAMI L. REV. 577, 625 (2009).

70. See *Le*, *supra* note 61, at 775 (arguing that the Department of Education's Office of Civil Rights should actively encourage school districts to explore legally permissible strategies that expand educational opportunities by exposing students to diverse educational settings).

71. Frankenberg & *Le*, *supra* note 2, at 1027–28.

composition differences across district boundary lines contribute more to segregation today than do differences within them. Charles Clotfelter, for example, estimated that sixty-nine percent of segregation in metropolitan areas was due to segregation between districts.”⁷²

These findings validate the suggestion of some scholars that the Supreme Court’s decision in *Parents Involved* may not significantly impact racial desegregation because integration is “not on the radar” of many school districts.⁷³ Integration may be off the radar in these school districts because the racial demographics of the school districts do not lend themselves to an obvious integration strategy.⁷⁴

C. Summary of Findings Regarding Attainment of Unitary Status

Identifying the Southern school districts that have recently attained unitary status provides a roadmap for the future of desegregation cases. If the DOJ under the Obama administration continues the Bush administration’s priority of ending desegregation, there will be even more school districts left to determine whether to adopt voluntary racial integration strategies after the end of the court decrees.

Part II reveals the next steps for school districts that attain unitary status. When the school district is no longer under a court order, what type of student assignment plan will the district adopt? Will school districts adopt race-conscious student assignment plans with the goal of attaining racially diverse schools, or will race cease to be a factor in the school districts’ plans?

II. STUDENT ASSIGNMENT PLANS IN POST-UNITARY STATUS DISTRICTS

This Part focuses on the types of student assignment plans that are being adopted by Southern school districts that have recently achieved unitary status. The goals of this Part are two-fold. This Part will identify and examine the most frequently used types of student assignment plans. Next, it will identify trends in the type of student assignment plans adopted and isolate some of the key reasons why certain assignment plans are becoming most prevalent.

72. Frankenberg & Le, *supra* note 2, at 1027–28.

73. Ryan, *supra* note 3, at 132.

74. See *infra* Part II.C.1.

A. *Student Assignment Plans: Four Major Methods*

Post-unitary status school districts use four major methods of student-assignment plans: attendance zones, racial diversity transfers, socioeconomic status (“SES”) transfers, and magnet schools. Student assignment plans that rely on attendance zones are plans that divide the school district along residential lines and then assign students to a school that is close to their home.⁷⁵ This Article uses the term “racial diversity transfer” student assignment plans to encompass all race-conscious student assignment plans.⁷⁶ Most of the “racial diversity transfer” plans identified below use attendance zones as the first method for assigning students to schools and then allow students to transfer on a voluntary basis to a school in which they are not of the majority race in that school. The “SES diversity transfer” plans include student assignment plans where the school district allows students to transfer based on their socioeconomic status.⁷⁷ Some school districts that no longer use race as a factor in student assignment have begun to examine SES as a factor in student assignment to produce a more diverse learning environment.⁷⁸ Nationally, about forty school districts that serve 2.5 million students pursue some form of socioeconomic integration.⁷⁹

One of the leading districts to pursue socioeconomic school integration is Wake County, North Carolina, a dynamic and growing jurisdiction of more than 120,000 students, which includes the City of Raleigh and its surrounding suburbs. In 2000, the Wake County School Board voted to replace a longstanding racial integration plan with a goal that no school in the district should have more than 40% of students eligible for free and reduced-price lunch, and no school should have more than 25% of students performing below grade level. Wake County’s plan is receiving considerable national attention because the early results suggest it is working to raise

75. Leland Ware, *Turning Back the Clock: The Assault on Affirmative Action*, 54 WASH. U. J. URB. & CONTEMP. L. 3, 21 (1998) (stating that school attendance zones are based on residential districts).

76. Deborah N. Archer, *Moving Beyond Strict Scrutiny: The Need for a More Nuanced Standard of Equal Protection Analysis for K Through 12 Integration Programs*, 9 U. PA. J. CONST. L. 629, 665 (2007) (“Race-conscious student assignment plans are those where, although race is considered, the plan ultimately impacts all races equally.”).

77. See Robinson, *supra* note 10, at 337.

78. Craig R. Heeren, “*Together at the Table of Brotherhood*” *Voluntary Student Assignment Plans and the Supreme Court*, 24 HARV. BLACKLETTER L.J. 133, 183 (2008).

79. Kahlenberg, *supra* note 9, at 1551–52.

achievement of all students and narrow the gap between socioeconomic groups.⁸⁰

Another method used in student assignment plans is a magnet school structure. “Magnet schools are those that offer a specialized school curriculum organized around a particular subject matter . . . or theme, or that use a distinctive teaching methodology, and seek to attract both white and minority students from all parts of the city, and away from their neighborhood schools or private schools.”⁸¹ Magnet schools are also being used in settings that employ socioeconomic status diversity initiatives. For example, in Cambridge, Massachusetts, each school is a magnet school, and all schools must have “comparable percentages of students who are eligible for free or reduced-price lunch.”⁸²

The findings displayed in Table 2 indicate what type of student assignment plan a school district currently has in place and when that plan was adopted. If a school district uses a combination of the methods listed above, Table 2 indicates each method used by the district.

B. Methodology and Findings

There were several methods used for compiling the information on student assignment plans displayed in Table 2. Internet searches were performed to identify the student assignment plan used by the school district. When an Internet search did not reveal the student assignment plan, the school district was sent a survey that asked the school district official to submit a copy of a student assignment plan and to answer questions about the motivations for the student assignment plans. In circumstances where it was difficult to obtain an e-mail address for school district officials, phone interviews were conducted with an appropriate school district official to answer the

80. *Id.* The Wake County program may be reshaped soon. The issue of socioeconomic diversity became a divisive issue in recent school board elections, and the new majority on the school board “is calling for a return to neighborhood schools” and to eliminate the current diversity policy. T. Keung Hui, *A Diversity of Methods to Teach the Poor*, NEWS & OBSERVER (Raleigh, N.C.), Jan. 18, 2010, at 1B, available at <http://www.newsobserver.com/politics/local/story/290021.html>; see also The Integration Report, Issue 22 (Dec. 23, 2009), <http://theintegrationreport.wordpress.com/2009/12/23/issue-22/> (listing newspaper articles that follow the developments of the Wake County student assignment plan controversy).

81. MARK G. YUDOF ET AL., EDUCATIONAL POLICY AND THE LAW 414 (4th ed. 2002); see also Frankenberg & Le, *supra* note 2, at 1047 (“What makes a magnet school different from the typical specialty school . . . is its explicit desegregative purpose.”).

82. Kahlenberg, *supra* note 9, at 1553.

survey questions.⁸³ In a few instances, the student assignment plan was not available through public searches and school district officials did not answer the research survey. In those cases, Table 2 indicates that the student assignment plan is not available.

Table 2. Student Assignment Plans Adopted in Post-Unitary Status Southern School Districts

School District	Student Assignment Plan	Year Unitary Status Granted
Alabama		
Alexander City	Attendance zones with out of district transfer option	2004
Attalla City	Attendance zones (small district) ⁸⁴	2006
Autauga County	Attendance zones, transfer option	2005
Bessemer City	N/A ⁸⁵	2006
Bibb County	N/A	2006
Blount County	Attendance zones	2005
Cherokee County	Attendance zones	2005
Coffee County	Attendance zones	2004
Coosa County	Attendance zones (small district)	2006
Covington County	Attendance zones	2006
Crenshaw County	Attendance zones	2006
Cullman City	Attendance zones, transfer option	2004
Dale County	N/A	2005
Dekalb County	Attendance zones	2006
Dothan City	Attendance zones, magnet schools	2007
Elba City	Attendance zones (small district)	2004
Elmore County	Attendance zones (small district)	2004
Gadsden City	Attendance zones	2005
Henry County	Attendance zones	2006
Houston County	Attendance zones	2008
Lee County	Attendance zones	2005

83. A copy of the Internet search results and surveys are on file with the North Carolina Law Review.

84. The term "small district" is used to indicate that these school districts have a single elementary, middle, and high school. This is important because it means a student assignment plan would not enhance racial integration given that there is only one school for all students in the district.

85. The designation "N/A" indicates the author was unable to obtain the student assignment plan for this district.

School District	Student Assignment Plan	Year Unitary Status Granted
Macon County	Attendance zones	2006
Midfield City	Attendance zones	2006
Mountain Brook City	Attendance zones	2005
Oneonta City	Attendance zones (small district)	2005
Phoenix City	Attendance zones, magnet school	2005
Pike County	Attendance zones	2007
Roanoke City	Attendance zones (small district)	2007
Tallapoosa County	Attendance zones	2004
Troy City	Attendance zones (small district)	2005
Winston County	N/A	2004
Florida		
Marion County	Attendance zones, racial diversity transfer, magnet schools	2007
Seminole County	Attendance zones, SES diversity transfer, magnet schools	2006
Wakulla County	Attendance zones	2009
Georgia		
Baker County	Attendance zones (small district)	2007
Bibb County	Attendance zones	2007
Bleckley County	Attendance zones (small district)	2006
Brooks County	Attendance zones, transfer option	2005
Butts County	Attendance zones, race, SES considered in attendance zones	2005
Chattahoochee County	Attendance zones (small district)	2006
Clay County	Attendance zones (small district)	2006
Echols County	Attendance zones (small district)	2005
Hancock County	Attendance zones (small district)	2007
Jasper County	Attendance zones (small district)	2006
Lowndes County	Attendance zones, hardship transfer option	2006
McIntosh County	Attendance zones (small district)	2006
Morgan County	Attendance zones (small district)	2006
Pelham City	Attendance zones (small district)	2006
Putnam County	Attendance zones (small district)	2007
Quitman County	Attendance zones (small district)	2006
Schley County	Attendance zones (small district)	2005
Seminole County	Attendance zones (small district)	2006
Thomas County	Attendance zones (small district)	2006
Treutlen County	Attendance zones (small district)	2007

School District	Student Assignment Plan	Year Unitary Status Granted
Webster County	Attendance zones (small district)	2006
Wilkes County	Attendance zones (small district)	2005
Louisiana		
Ascension Parish	Attendance zones	2004
Grant Parish	Attendance zones	2007
Lafayette Parish	Attendance zones, SES transfer, magnet schools (diversity)	2006
Rapides Parish	Attendance zones	2006
Red River Parish	Attendance zones	2005
Saint Bernard Parish	Attendance zones	2006
Tensas Parish	Attendance zones (small district)	2005
West Feliciana Parish	Attendance zones	2007
Mississippi		
Calhoun County	Attendance zones	2007
Coffeeville	Attendance zones (small district)	2007
Hazlehurst City	Attendance zones (small district)	2005
Indianola	Attendance zones (small district)	2008
Leflore County	Attendance zones	2005
Madison County	Attendance zones	2006
Marshall County	Attendance zones	2005
Noxubee County	Attendance zones	2004
South Delta	Attendance zones (small district)	2004
Tishomingo County Special Municipal	Attendance zones	2005
West Tallahatchie	Attendance zones (small district)	2006
Wilkinson County	N/A	2004
North Carolina		
Alamance-Burlington Schools	Attendance zones	2009
Bertie County	N/A	2009
South Carolina		
Anderson County Dist. 03	Attendance zones	2005
Bamberg County Dist. 02	Attendance zones (small district)	2004
Berkeley County	Attendance zones (small district)	2004
Clarendon County Dist. 02	Attendance zones (small district)	2004
Colleton County	Attendance zones, transfer option	2004
Fairfield County	Attendance zones	2006
Florence County Dist. 04	Attendance zones (small district)	2005

School District	Student Assignment Plan	Year Unitary Status Granted
Hampton County Dist. 01	Attendance zones	2004
Hampton County Dist. 02	Attendance zones (small district)	2005
Lexington County Dist. 01	Attendance zones	2005
Orangeburg County Dist. 03	Attendance zones	2006

C. *The Trends in Post-Unitary Status Student Assignment Plans*

1. Small Districts

A key commonality that is clear from the study is the large number of post-unitary status school districts that are small school districts. These “small districts” are defined as districts that have a single school for each grade level. Thirty-eight of the school districts in this study were identified as small districts. That means that the racial integration of individual schools in the district will not be impacted by shifting students from one school to another school because there is only one school for each grade level. Also, the level of integration in the individual schools depends solely on the racial makeup of the school district as a whole.

For a second significant group of the post-unitary status school districts, the school district may have more than one school for each grade level, but the district is still too small for student assignment plans to have a significant impact on the integration of individual schools.⁸⁶ Many of these districts have fewer than five elementary schools, one middle school, and one high school. In Alabama, three school districts (Alexander City, Bessemer City, and Bibb County) are in this category.⁸⁷ In Georgia, three school districts fall into this category (Brooks County, Butts County, and Lowndes County).⁸⁸

The Wakulla County, Florida, school district is an example of a smaller school district that is currently utilizing an attendance zone student assignment plan.⁸⁹ In the 2007–08 school year, the district had

86. For the purposes of this Article, including Table 2, districts in this second group are not considered “small districts.” Nevertheless, they are discussed in this section due to their similar characteristics with small districts.

87. *See supra* Table 2.

88. *See supra* Table 2.

89. Wakulla County is located in north Florida, just south of Tallahassee. *See* Wakulla County School District, Find a School in Wakulla County, <http://www.wakullaschooldistrict.org/busgarage> (last visited Feb. 6, 2010); Wakulla County School District, WCSB School List, <http://wakulla.fl.schoolwebpages.com/education/components/scrapprook/default.php?sectiondetailid=1458&> (last visited Feb. 25, 2010)

a student population of 84.7% White, 10.5% Black, 1.5% Latino, and 0.6% Asian.⁹⁰ The district has four elementary schools, two middle schools, and one high school. The school district has residential attendance zones, and students are required to attend the school in the attendance zone of their residence.⁹¹ The only reasons for student transfer under the policy are educational needs, physical health needs, and discipline or emotional problems.⁹² The Wakulla County school district acquired unitary status in 2008 after a review of the desegregation order initiated by the DOJ.⁹³ It appears that, even prior to unitary status, the Wakulla County schools used an attendance zones plan. The school district adopted its current student assignment plan in 1999 and revised it in 2000, 2005, and 2007.⁹⁴ There is no indication that *Parents Involved* impacted the student assignment plan. For the small districts identified in this study, interdistrict remedies may prove to be the most effective method for increasing racial diversity.⁹⁵

2. Socioeconomic Status as a Replacement for Race

Another trend in post-unitary school district assignment plans is to replace racial criteria for student assignments with SES criteria. The Jefferson County school district—the district involved in one of the *Parents Involved* cases—is a large, metropolitan district with a multiracial population. At the elementary school level, there are 48,404 students, with 48% White students and 36% African American students.⁹⁶ The school district has approximately ninety elementary

(indicating four elementary schools, two middle schools, one high school, and one charter school).

90. FLA. DEPT OF EDUC., NCLB SCHOOL DISTRICT AND STATE PUBLIC ACCOUNTABILITY REPORT FOR WAKULLA COUNTY SUPERINTENDENT'S OFFICE (2007–08), http://doeweb-prd.doe.state.fl.us/eds/nclbspar/year0708/nclb0708.cfm?dist_schl=65_9001.

91. See Wakulla County School District, *supra* note 89.

92. WAKULLA COUNTY SCH. DIST. SCH. BD., STUDENT ASSIGNMENT POLICY 2–3 (2007) [hereinafter WAKULLA ASSIGNMENT POLICY], available at <http://wakulla.fl.schoolwebpages.com/education/components/docmgr/default.php?sectionidetailid=842&fileitem=104&catfilter=10>.

93. Weber, *supra* note 41.

94. WAKULLA ASSIGNMENT POLICY, *supra* note 92, at 7.

95. See *infra* Part III.B.

96. DEPT OF ACCOUNTABILITY RESEARCH & PLANNING, JEFFERSON COUNTY PUB. SCH., 2008–2009 SCHOOL PROFILES (elementary schools) 185, http://www.jefferson.k12.ky.us/Departments/AcctResPlan/Profiles/2008_2009_Profiles/ElemProfile2008_2009.pdf. For the 2008–09 school year, Jefferson County middle schools enrolled 20,439 students, with 54% of them White and 36.2% Black. DEPT OF ACCOUNTABILITY RESEARCH & PLANNING, JEFFERSON COUNTY PUB. SCH., 2008–2009

schools, twenty-four middle schools, and twenty-one high schools.⁹⁷ Therefore, the school district choices regarding student assignment may actually impact the integration of the public schools.

The following school districts in this study resemble Jefferson County, Kentucky, in that the school district size and demographics allow student assignment to impact the integration of the schools: Marion County, Florida; Seminole County, Florida; Bibb County, Georgia; and Lafayette Parish, Louisiana.

The Seminole County, Florida, school district provides an example of how SES can be used to achieve successfully integrated schools. The district is located in the middle portion of the state, in the I-4 corridor. The school district is large and racially diverse, with 64,977 students, of whom 57.3% are White, 13.6% are African American, and 18.5% are Hispanic.⁹⁸ The district includes thirty-seven elementary schools, thirteen middle schools, and nine high schools.⁹⁹

The attendance zone and SES transfer program in Seminole County were clearly crafted with an eye toward compliance with the Supreme Court's decision in *Parents Involved*.¹⁰⁰ Prior to the decision, Seminole County used race as a consideration in the drawing of attendance zones and approving transfers.¹⁰¹ The district states that the purpose of its post-unitary status student assignment policy is to

SCHOOL PROFILES (middle schools) 55, http://www.jefferson.k12.ky.us/Departments/AcctResPlan/Profiles/2008_2009_Profiles/MiddleProfile2008_2009.pdf. For the same year, the high school statistics show 26,375 students enrolled, with 56.3% being White and 35.5% Black. DEP'T OF ACCOUNTABILITY RESEARCH & PLANNING, JEFFERSON COUNTY PUB. SCH., 2008–2009 SCHOOL PROFILES (high schools) 49, http://www.jefferson.k12.ky.us/Departments/AcctResPlan/Profiles/2008_2009_Profiles/Hig hProfile2008_2009.pdf.

97. Jefferson County Public Schools, About Us, <http://www.jefferson.k12.ky.us/AboutUs/About.html> (last visited Jan. 11, 2010).

98. SEMINOLE COUNTY PUBLIC SCHOOLS, SEMINOLE COUNTY PUBLIC SCHOOLS FACTS 2009–2010, http://www.scps.k12.fl.us/community_involvement/_doc/SCPSFacts.pdf (last visited Feb. 6, 2010).

99. Seminole County Public Schools, Schools, <http://www.scps.k12.fl.us/index7b.cfm?portalid=schools7> (last visited Jan. 15, 2010) (listing nine schools in the “High Schools” drop-down menu).

100. See *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 789 (2007) (Kennedy, J., concurring) (noting that school districts may pursue racial diversity by drawing attendance zones with recognition of demographics, and school districts may use race neutral means).

101. Dave Weber, *Mixing Rich and Poor Is New Goal—Seminole Schools, Among Others, Seek to Supplant Racial Integration with Socioeconomic Diversity*, ORLANDO SENTINEL, Aug. 5, 2007, at B1 (quoting Seminole County school board attorney as pleased that the new socioeconomic status diversity plans, adopted as part of the consent decree that ended the desegregation case, also are in line with *Parents Involved*).

“promote[] and support[] the Board’s Excellence and Equity policy, minimize[] overcrowding conditions, [and] promote[] and maintain[] a diverse student enrollment consistent with Constitutional requirements”¹⁰² The policy also adopts a broad definition of “diversity by including socioeconomic status, gender, race/ethnicity, English Speakers of Other Languages (ESOL), and disability.”¹⁰³ This broad definition of diversity is the type that the Supreme Court approved in the Michigan Law School affirmative action case, *Grutter v. Bollinger*.¹⁰⁴

The Seminole County school district currently operates primarily under an attendance zone student assignment plan. The school board organizes the schools into “attendance zones” and “cluster zones” that “reflect the diversity of the community.”¹⁰⁵ “If the residential areas surrounding a school site do not provide diversity, and/or if a proposed change in attendance zones creates less diverse student enrollments, the Board may merge several geographic areas into a cluster zone, and/or establish a magnet program.”¹⁰⁶

The Seminole County student assignment plan also allows for SES diversity student transfers.¹⁰⁷ The school board approves transfers that help align schools with the average percentage of free or reduced lunch students in the entire district.¹⁰⁸ According to the Seminole County school student attendance zones policy, “students qualifying for free/reduced price lunch who attend a school with a high percentage of free/reduced price lunch students may transfer to any school with a low percentage of free/reduced price lunch students.”¹⁰⁹ The policy also allows students who do not qualify for free or reduced lunches and who are in “low percentage” schools to transfer to a “high percentage” school.¹¹⁰ The policy provides for free

102. SEMINOLE COUNTY SCH. DIST. SCH. BD., SCHOOL BOARD POLICY MANUAL FOR THE SEMINOLE COUNTY SCHOOL BOARD § 5.30 (2009) [hereinafter SEMINOLE ASSIGNMENT PLAN], available at <http://www.scps.k12.fl.us/index7b.cfm?portalid=schoolboard7> (select “Board Policies” from “Policies and Procedures” drop-down menu).

103. *Id.* § 5.30, at 2.

104. 539 U.S. 306, 325 (2003) (“[T]he diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element.”).

105. SEMINOLE ASSIGNMENT PLAN, *supra* note 102, § 5.30, at 4.

106. *Id.*

107. *Id.* § 5.30, at 12.

108. *Id.*

109. *Id.*

110. *Id.*

transportation if the transfer is within the student's attendance zone.¹¹¹

On the whole, the Seminole County student assignment plan may prove to be a model program for other school districts seeking integration after *Parents Involved*. The policy considers racial integration, SES, and other forms of diversity in a manner that seems likely to achieve integrated schools.

3. Some School Districts Continue to Consider Race as a Factor

Despite the Supreme Court's ruling in *Parents Involved*,¹¹² a few school districts in this study continue to maintain race-conscious student assignment plans. These school districts are in a very small group regionally and nationally based on the fact that a "vast majority" of school districts across the nation do not use race as a factor in student assignment.¹¹³ The Marion County school district—a large school district in north central Florida serving approximately 43,000 students—continues to use a race-conscious student assignment plan.¹¹⁴ The school district is also racially diverse, with approximately 52% White students, 20% Black students, and 16% Latino students in 2008.¹¹⁵ It has twenty-eight elementary schools, eight middle schools, two combined elementary and middle schools, and eight high schools.¹¹⁶

Currently, the Marion County schools use a neighborhood school assignment plan, with the availability of racial majority-to-minority transfers. The policy "authorizes and supports diversity transfers, which are the voluntary transfer of a student from a school in which his/her race is in the majority to a school in which his/her race is in the

111. *See id.*

112. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 710 (2007).

113. Ryan, *supra* note 3, at 144–45 (noting that even the highest estimates for school districts considering race as a factor in student assignment would be 1,000 school districts nationally, leaving 15,000 school districts that do not consider race).

114. Marion County Public Schools, Schools, <http://www.marion.k12.fl.us/schools/> (last visited Feb. 24, 2010) (reporting system-wide enrollment at 41,826 students as of October 20, 2009).

115. *See* FLA. DEP'T OF EDUC., FLORIDA COMPREHENSIVE ASSESSMENT TEST, STUDENT PERFORMANCE RESULTS: DISTRICT READING DEMOGRAPHIC REPORT, <https://app1.fldoe.org/FCATDemographics/Selections.aspx?level=District&subj=Reading> (for Year, select "2009," for Grade, select "3," then select "Continue"; on resulting screen, select "Total Students," for Ethnicity, select "Asian/Pacific Islander," "Black," "Hispanic," and "White," for Statistics, select "Number of Students," for District, select "MARION," then choose "View Report") (last visited Feb. 17, 2010).

116. Marion County Public Schools, *supra* note 114.

minority.”¹¹⁷ As of 2009, the current plan was virtually the same as the student assignment plan in place before the district achieved unitary status.¹¹⁸ The school board was concerned that after unitary status the district would revert to having predominately one race schools, and therefore the district decided to maintain the racial diversity transfer policy.¹¹⁹

The Marion County majority-to-minority transfer provision may face a legal challenge under *Parents Involved*. The plurality opinion in the case held that the voluntary integration plans in question violated the Equal Protection Clause because they were not narrowly tailored.¹²⁰ The plurality offered a broad condemnation of the use of race in student assignment plans:

For schools that never segregated on the basis of race, such as Seattle, or that have removed the vestiges of past segregation, such as Jefferson County, the way to achieve a system of determining admission to the public schools on a nonracial basis, is to stop assigning students on a racial basis.¹²¹

The plurality also offered a more specific critique as to why the types of racial classifications used by school districts were not narrowly tailored: they had a limited view of racial diversity by “viewing race exclusively in white/nonwhite terms in Seattle and black/other terms in Jefferson County.”¹²²

The Marion County plan differs, however, in some key ways from the Seattle and Jefferson County plans that were struck down by the Supreme Court in *Parents Involved*. Most important, the Marion County plan does not have racial guidelines or numeric targets.¹²³ A majority of the Court was highly critical of the use of specific numeric targets for racial composition of schools.¹²⁴ In Marion County, the

117. MARION COUNTY SCH. BD., SCHOOL BOARD POLICIES—STUDENT ASSIGNMENT 2 (2007) [hereinafter MARION ASSIGNMENT PLAN], available at http://www.marion.k12.fl.us/dept/hrm/docs/policies/Board%20Policy%205_20.pdf.

118. Telephone Interview with Anthony Burke, Supervisor of Student Assignment and Records, Marion County Pub. Sch. (Feb. 12, 2009) (transcript on file with the North Carolina Law Review).

119. *Id.*

120. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 735 (2007).

121. *Id.* at 747–48 (quoting *Brown v. Bd. of Educ.*, 349 U.S. 294, 300–01 (1955)).

122. *Id.* at 723.

123. MARION ASSIGNMENT PLAN, *supra* note 117, at 3.

124. *Parents Involved*, 551 U.S. at 729 (“This working backward to achieve a particular type of racial balance, rather than working forward from some demonstration of the level

focus of the student assignment plan is on attendance zones, with a transfer option. Also, in the Seattle and Jefferson County plans, schools became oversubscribed and some students were prevented from attending the school of their choice or the school closest to their residence.¹²⁵ The Marion County policy only guarantees majority-to-minority transfer where there is space available at the school to which the student seeks to transfer.¹²⁶ This will likely make it more difficult for potential plaintiffs to establish that they were injured by the majority-to-minority transfer policy.

In light of *Parents Involved*, Marion County would improve its student assignment policy regarding Equal Protection Clause concerns by including in its written policy the goals and purposes of the entire policy and how the majority-to-minority transfer policy assists in achieving these goals. To achieve greater integration results, the school district should also consider race-neutral alternatives—such as socioeconomic transfers—and make formal, specific findings as to why the school district prefers to maintain a race-conscious transfer policy instead of a race-neutral policy.¹²⁷

4. Strategic Attendance Zones

Another important trend evident from the study is the need to reimagine the traditional attendance zone student assignment plans. Justice Kennedy, in his key concurrence in *Parents Involved*, suggested that one constitutional method of considering race would be for school districts to study the racial makeup of their district as they draw the attendance zone boundaries.¹²⁸

Lafayette Parish school district, located in southern Louisiana, includes twenty-one elementary schools, twelve middle schools, and eleven high schools.¹²⁹ The district serves approximately 30,000 students.¹³⁰ The current student assignment plan for the district is

of diversity that provides the purported benefits, is a fatal flaw under our existing precedent.”).

125. *See id.* at 711–13.

126. MARION ASSIGNMENT PLAN, *supra* note 117, at 3.

127. *See Parents Involved*, 551 U.S. at 735 (“The districts have also failed to show that they considered methods other than explicit racial classifications to achieve their stated goals. Narrow tailoring requires ‘serious, good faith consideration of workable race-neutral alternatives.’” (quoting *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003))).

128. *Id.* at 789 (Kennedy, J., concurring).

129. Lafayette Parish Sch. Sys., LPSS Schools, <http://www.lpssonline.com/schools> (last visited Feb. 24, 2010).

130. LAFAYETTE PARISH SCH. SYS., 2006–2007 ANNUAL REPORT, <http://www.lpssonline.com/site3165.php>.

primarily based on attendance zones.¹³¹ Students are required to attend school in the attendance area where they reside,¹³² and the Lafayette Parish school district considered racial demographic concentrations in the drawing of attendance zone boundary lines.¹³³

The school district also includes a number of magnet schools (schools of choice) that favor the admission of “low income, low performing students” and are not based on attendance zones.¹³⁴ According to the district, the purpose of these schools is to “give students a more exciting and fulfilling educational experience and improve the ethnic diversity of [the] schools.”¹³⁵

The student assignment policy also allows for “student educational advantage” (“SEA”) transfers.¹³⁶ This policy is essentially an SES diversity transfer program that allows students who receive free or reduced lunch to transfer to any school in the district provided there is space available.¹³⁷ In sum, Lafayette Parish is an example of a school district that uses attendance zones in combination with other student assignment strategies to allow for the possibility of racially diverse student bodies.

All of the trends identified from this study—the prevalence of small districts, the use of socioeconomic status as a factor, the continued but limited use of race as a factor, and the possibility of strategic attendance zones—suggest the types of considerations that may influence school districts in creating or maintaining racially diverse schools. These strategies are the focus of Part III of this Article.

III. STRATEGIES FOR RACIAL INTEGRATION AFTER UNITARY STATUS

This Part briefly canvasses a number of possible strategies that may allow Southern schools to promote racially integrated learning environments after unitary status. This Part is intended to provide

131. LAFAYETTE PARISH SCH. SYS., SCHOOL BOARD POLICIES: ASSIGNMENT OF SCHOOLS 1 (2008), available at <http://www.lpssonline.com/uploads/JBCCAAssignmentofSchools.pdf>.

132. *Id.*

133. See Stephen J. Caldas, Roslin Growe & Carl L. Bankston III, *African American Reaction to Lafayette Parish School Desegregation Order: From Delight to Disenchantment*, 71 J. NEGRO EDUC. 43, 47 (2002).

134. LAFAYETTE PARISH SCH. SYS., *supra* note 131, at 3.

135. *Id.* at 4.

136. *Id.* at 1.

137. *Id.*

only a brief overview and synopsis based on the trends identified in the two-part study above.

A. *School District Initiative*

School districts will be the primary source for the creation and adoption of student assignment plans that foster racial diversity. As noted above, many school districts are currently experimenting with methods such as socioeconomic diversity to improve student achievement and create more racially diverse student bodies.¹³⁸ Despite these experiments, if the goal of a school district is to reap the benefits of racially diverse schools, then more school districts may want to consider using race as a factor in student assignment.¹³⁹

Race-conscious student assignment plans will have to be carefully crafted to ensure that they comply with *Parents Involved*. This will likely mean that school districts crafting race-conscious student assignment plans will need considerable assistance from academics and practicing lawyers.¹⁴⁰ Jefferson County, Kentucky, provides an example of the type of effort that will be necessary if school districts seek to implement race-conscious student assignment plans. After the Supreme Court struck down Jefferson County's plan, the school district received considerable assistance in crafting a new race-conscious student assignment plan.¹⁴¹

B. *The Need for Interdistrict Remedies*

Many of the post-unitary status school districts in this study are small school districts with a student population of predominately one race.¹⁴² The issue for these school districts is how to promote racially integrated schools when the demographics of the school district do

138. See *supra* Part II.C.2.

139. See Erica Frankenberg & Liliana M. Garces, *The Use of Social Science Evidence in Parents Involved and Meredith: Implications for Researchers and Schools*, 46 U. LOUISVILLE L. REV. 703, 748 (2008). As a whole, the article provides an overview of social science research that demonstrates that race-conscious plans are more effective than socioeconomic status diversity plans at creating racial diversity. See generally *id.*

140. See Frankenberg & Le, *supra* note 2, at 1021 ("Rather than lament the state of the law, we believe that advancing the integration agenda requires us not only to continue fashioning carefully designed voluntary integration policies (and have them tested in courts), as others advocate, but also to devote more attention to the practical, extralegal hurdles that have long stood in the way of integration, constitutional uncertainties aside.").

141. Danielle Holley-Walker, *Educating at the Crossroads: Parents Involved, No Child Left Behind and School Choice*, 69 OHIO ST. L.J. 911, 928 (2008) (describing the post-*Parents Involved* Jefferson County, Kentucky, student assignment plan).

142. See *supra* Part I.B.2.

not allow for effective intradistrict voluntary integration. For these school districts, interdistrict remedies become a crucial option. Since the Supreme Court's decision in *Milliken v. Bradley*,¹⁴³ the availability of interdistrict remedies has been severely limited.¹⁴⁴ The Supreme Court has even limited some intradistrict remedies that the Court found were effectively interdistrict in nature. In *Missouri v. Jenkins*,¹⁴⁵ for instance, the Supreme Court struck down a plan to improve Kansas City, Missouri, schools by making these schools more attractive to the surrounding suburbs.¹⁴⁶ "[T]he Court found that the purpose motivating these seemingly intra-district remedies exceeded the scope of the constitutional violation because they were effectively interdistrict in nature."¹⁴⁷

Despite the obstacles presented by these Supreme Court rulings, there may still be avenues for producing racially integrated schools by using interdistrict and state-wide remedies.¹⁴⁸ One example of these possibilities is demonstrated in *Sheff v. O'Neill*,¹⁴⁹ where the Connecticut Supreme Court ruled that de facto racial segregation of the Connecticut public schools violated the state's constitution.¹⁵⁰ The plaintiffs in *Sheff* argued that the Hartford schools were racially and ethnically segregated and that de facto segregation violated the two equal protection provisions in the state constitution and the state's

143. 418 U.S. 717 (1974).

144. *Milliken v. Bradley* centered on a plan to use interdistrict remedies to reduce segregation in the Detroit, Michigan, schools. *Id.* at 721–23. In a 5–4 decision, the Supreme Court held that

absent a finding that the suburbs had contributed to the segregation in Detroit, the trial court could not implement a remedy that included the suburbs. Doing so, the majority determined, would interfere with the tradition of "local control" in the public schools. Due to the patterns of interdistrict segregation . . . , the *Milliken* decision has profoundly limited the ability of courts to address the major cause of current segregation.

Frankenberg & Le, *supra* note 2, at 1030 (footnotes omitted).

145. 515 U.S. 70 (1995).

146. *Id.* at 97–98.

147. Frankenberg & Le, *supra* note 2, at 1031.

148. See generally Rachel F. Moran, *Milo's Miracle*, 29 CONN. L. REV. 1079, 1090 (1997) ("In light of the federal courts' growing disenchantment with school desegregation, the *Sheff* decision truly seems like a miraculous break-through for Milo and other students who suffer the harms of racially and economically isolated schooling.")

149. 678 A.2d 1267 (Conn. 1996).

150. *Id.* at 1270–71; see also John C. Brittain, *Why Sheff v. O'Neill Is a Landmark Decision*, 30 CONN. L. REV. 211, 211 (1997) (noting that *Sheff* was a landmark decision in finding that de facto racial segregation violated the state constitution).

education clause.¹⁵¹ The initial response by the State to the Connecticut Supreme Court ruling was to recommend voluntary integration and the increase of targeted funds to programs in the urban school districts and to carefully avoid interdistrict remedies like busing.¹⁵² Eventually, after significant debate, the Connecticut legislature adopted an “Open Choice” program that would “allow students in certain urban school districts to transfer to suburban schools where space was available.”¹⁵³ The new legislation also established grants to fund the creation of “racially diverse interdistrict magnet schools.”¹⁵⁴ After the passage of this legislation, the plaintiffs felt there was little actual progress being made toward desegregating the Hartford schools, so in a settlement between the parties in January 2003, the State agreed to set specific goals for reducing racial isolation and committed to building new magnet schools to reach this goal.¹⁵⁵

There are important lessons to derive from *Sheff* for proponents of racial integration in the public schools. In order to secure the interdistrict remedies that provide meaningful desegregation when school districts are racially isolated, there is a need for a new round of desegregation litigation under state constitutional provisions. If plaintiffs are successful in disrupting de facto racial segregation through findings of state constitutional violations, they may gain access to interdistrict remedies like the Open Choice plan in Connecticut.

C. *The Federal Government*

School district initiatives and continuing desegregation litigation will play a key role in the future of racial integration in Southern schools. Beyond these two avenues, the federal government also has a key role to play in revitalizing the movement for racial diversity.

1. The Department of Justice

As discussed in Part I, the DOJ has played an active role in dismantling desegregation decrees.¹⁵⁶ The Department should make a

151. Lauren A. Wetzler, Essay, *Buying Equality: How School Finance Reform and Desegregation Came to Compete in Connecticut*, 22 YALE L. & POL'Y REV. 481, 496 (2004); see CONN. CONST. art. I, §§ 1, 20; CONN. CONST. art. VIII, § 1.

152. Wetzler, *supra* note 151, at 500.

153. *Id.* at 502.

154. *Id.*

155. *Id.* at 504–05.

156. See *supra* notes 51–54 and accompanying text.

wholesale change in its approach to ongoing desegregation cases to ensure the integration goals can actually be achieved. The DOJ should immediately end its recent practice of actively assisting school districts in achieving unitary status. Without the active assistance of the DOJ, many school districts will remain under their desegregation orders.¹⁵⁷

Why should the DOJ encourage the status quo in desegregation cases? After *Parents Involved*, it is clear that once a desegregation case has ended, the school district will have significantly less flexibility to take affirmative steps to maintain racially integrated schools.¹⁵⁸ Desegregation cases have also provided the impetus for school districts to invest additional resources for the education of minority students.¹⁵⁹ Due to the requirements of desegregation decrees, school districts have built magnet schools, increased teacher pay, and modernized facilities.¹⁶⁰ Thus, in order to provide resources for students and to preserve school districts' option for race-conscious student assignment plans, the DOJ should view ongoing desegregation cases as positive for students and school districts.

The desegregation case in Tangipahoa Parish, Louisiana, is an example of the opportunities that may arise from an ongoing desegregation case. Tangipahoa Parish is located in the eastern tip of Louisiana.¹⁶¹ The school district has been under a desegregation order since 1965.¹⁶² Recently, African American plaintiffs filed a motion requesting that school district officials be required to meet certain requirements under the desegregation order.¹⁶³ In response, the school district has proposed \$187.4 million dollars in school construction and \$12 million in operating costs to develop magnet

157. See Parker, *supra* note 33, at 1187–206.

158. See *id.*

159. For example, after the Connecticut Supreme Court's decision in *Sheff*, the state increased education funding by \$200 million. Wetzler, *supra* note 151, at 503.

160. See Wendy Parker, *The Supreme Court and Public Law Remedies: A Tale of Two Kansas Cities*, 50 HASTINGS L.J. 475, 570–74 (1999) (noting that a desegregation case in Kansas reached new school construction); David S. Tatel, *Desegregation Versus School Reform: Resolving the Conflict*, 4 STAN. L. & POL'Y REV. 61, 64 (1992–93) (noting that desegregation orders often force the reallocation of resources to minority community schools).

161. Tangipahoa Parish School System, www.tangischools.org/info.html (last visited Feb. 24, 2010).

162. See *Moore v. Tangipahoa Parish Sch. Bd.*, 594 F.2d 489, 491 (La. 1979).

163. David J. Mitchell, *Tangipahoa School Desegregation Hearing Set*, ADVOCATE (Baton Rouge, La.), June 9, 2009, at B4, available at www.2theadvocate.com/news/livingston_tangipahoa/47271792.html.

schools with the goal of further desegregation and improving school quality.¹⁶⁴

2. The Role of the Department of Education

The Department of Education (“DOE”) should also begin to play a more active role in this area by assisting post-unitary status school districts in developing constitutional voluntary integration policies. First, the DOE should provide funding to study voluntary integration policies that produce educational and social benefits for students. In many areas of school policy, the DOE’s Office of Innovation and Improvement funds studies to identify and gather data on effective school reforms and policies.¹⁶⁵ The DOE’s Office of Innovation and Improvement should begin a “best practices” project to identify voluntary integration programs that meet the parameters described by the Supreme Court in *Parents Involved*.¹⁶⁶ This program would be important for a number of reasons. A DOE best practices study would send a clear message from the federal government to school districts that racial integration is back on the agenda and is important for student outcomes and the promotion of crucial societal and educational values. Federally funded data collection and model programs for voluntary education would provide valuable information and guidance to many school districts that may not have the resources to develop voluntary integration policies.¹⁶⁷ Research funded by the federal government would be able to provide a blueprint for voluntary integration, and a blueprint that the executive branch endorses as in compliance with *Parents Involved*.

CONCLUSION

There have been a significant number of Southern school districts to declare unitary status between 2004 and the 2008–09 school year. In a few of these districts, student assignment plans will

164. *Id.*

165. See, e.g., Frankenberg & Le, *supra* note 2, at 1050–52 (describing the federal government’s effort to conduct research and provide support for magnet schools through the Magnet School Assistance Program).

166. See Danielle Holley-Walker, *The Accountability Cycle: The Recovery School District Act and New Orleans’ Charter Schools*, 40 CONN. L. REV. 125, 159–61 (2007) (describing the purpose of DOE’s Office of Innovation and Improvement and the best practices studies conducted regarding charter schools).

167. See ORFIELD & EATON, *supra* note 65, at 353 (“For most of a generation, there has been little serious intellectual work on race relations in American schools or on conditions of successful multiracial education. . . . Basic research and reliable data are essential for improving policy.”).

play a key role in helping to maintain racial integration and to sustain the benefits that flow from racial diversity. As illustrated by Part II, school districts currently provide socioeconomic transfer plans, magnet schools, and carefully tailored race-conscious student assignment plans to ensure continued integration. These schools—and their successful practices maintaining integration—will become important models for other school districts.

For the majority of Southern school districts, where size and demographics may prevent racial integration, additional strategies must be developed to ensure that students receive the quality education that they deserve. The post-unitary status prospects of the school district should become a more central focus of the DOE's and DOJ's efforts in desegregation cases.