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# Separate But (Still Un)equal: Challenging School Segregation in New York City

Gabrielle Kornblau

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**SEPARATE BUT (STILL UN) EQUAL:  
CHALLENGING SCHOOL SEGREGATION IN  
NEW YORK CITY**

*Gabrielle Kornblau\**

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## INTRODUCTION

In 2017, Public School (P.S.) 199 and P.S. 191 of District 3 were located<sup>1</sup> on Manhattan's Upper West Side, on West 70th Street and West 62nd Street, respectively. Serving kindergarten through fifth grade, P.S. 199 was an award-winning school where students' test scores were almost two times higher than the citywide average.<sup>2</sup> For the 2017–2018 school year, only 10% of the students received free lunch,<sup>3</sup> and the student body was 64% white and 19% black and Latino.<sup>4</sup> The prior year, the school's Parent Teacher Association (“PTA”) raised \$777,000.<sup>5</sup> In stark contrast stood P.S. 191, which was categorized by the state as a “persistently dangerous school.”<sup>6</sup> During the 2017–2018 school year, the school served kindergarten through eighth grade,<sup>7</sup> students' test scores fell considerably below

1. P.S. 199 and 191 underwent a redistricting in 2017. *See infra* note 13.

2. *P.S. 199 Jessie Isador Straus: Our Insights*, INSIDESCHOOLS, <https://insideschools.org/school/03M199> [<https://perma.cc/B8L2-SBCQ>] [hereinafter *Insights to P.S. 199*]. According to the 2018 State ELA and Math Results Summary, 45.2% and 44.5% of students throughout New York City public schools scored 3s or 4s out of 4 on their ELA and math state tests, respectively. *See* Press Release, N.Y. State Educ. Dep't, State Education Department Releases Spring 2018 Grades 3-8 Ela & Math Assessment Results (2018), <http://www.nysed.gov/news/2018/state-education-department-releases-spring-2018-grades-3-8-ela-math-assessment-results> [<https://perma.cc/Q5G8-62SB>] [hereinafter Spring 2018 Assessment Results] (describing the score ranges and performance levels the numbers represent); *How Are the NYS Assessments Scored*, TESTING MOM, <https://www.testingmom.com/tests/nys/nys-assessments-scored/> [<https://perma.cc/8FSB-PXVV>] (describing how the assessments are scored).

3. *See Insights to P.S. 199, supra* note 2. The percentage of children who utilize free school lunch programs is indicative of the socioeconomic status of the school's population. *See* Tom Snyder & Lauren Musu-Gillette, *Free or Reduced Price Lunch: A Proxy for Poverty?*, INST. EDUC. SCI., NCES BLOG (Apr. 16, 2017), <https://nces.ed.gov/blogs/nces/post/free-or-reduced-price-lunch-a-proxy-for-poverty> [<https://perma.cc/6NT9-X9HT>].

4. *See Insights to P.S. 199, supra* note 2. At P.S. 199, 90% of students scored 3s or 4s out for 4 on their ELA test, and 85% scored similarly in math. *Id.* (quoting the 2018 State ELA+Math Results Summary in a section of the website devoted to documenting how the students perform academically).

5. *See* Patrick Wall, *The Privilege of School Choice*, ATLANTIC (Apr. 25, 2017), <https://www.theatlantic.com/education/archive/2017/04/the-privilege-of-school-choice/524103/> [<https://perma.cc/9JWD-YCKB>].

6. *See id.*

7. *Riverside School for Makers and Artists: Our Insights*, INSIDESCHOOLS, <https://insideschools.org/school/03M191> [<https://perma.cc/TD6G-5SZS>] [hereinafter *Insights to Riverside School*].

the city average,<sup>8</sup> and approximately 73% of the students received free lunch.<sup>9</sup> Many of them resided in the Amsterdam Houses, a nearby public housing community.<sup>10</sup> The student body during that same school year was 70% black and Latino,<sup>11</sup> and in the previous year the PTA raised only \$27,000.<sup>12</sup> These schools, although separated by only a few blocks, were worlds apart in terms of quality, resources, and student achievement.<sup>13</sup>

Given the disparity between wealthy, mostly white schools and poorer, mostly black and Latino schools, parents face a choice: Do they send their children to their zoned schools, despite their unpropitious reputation, or do they shop around for a charter or private school option for their children in hopes of obtaining for them a more promising academic experience? This question is racially-loaded, as evident in the stories of two mothers — Alie Stumpf and Saratu Ghartey — who were forced to prioritize their children's academics and social experience over their racial identities when deciding which school their children will attend.<sup>14</sup> Stumpf, a white mother, made the decision to send her daughter to their neighborhood school, although she will be a racial minority in the classroom.<sup>15</sup> In making this decision, Stumpf considered not only her

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8. *See id.* At P.S. 191, 38% of elementary school students scored 3s or 4s out of 4 in ELA, while 40% scored as highly in math; this is quite a few points below the citywide averages of 49% in ELA and 48% in math. *See id.* Middle schoolers at P.S. 191 fall even further below the citywide averages. *Id.*

9. *See id.*

10. *See* Wall, *supra* note 5.

11. *See Insights to Riverside School, supra* note 7.

12. *See* Wall, *supra* note 5.

13. Importantly, P.S. 191 and 199 underwent a redistricting in 2017. *See* Kate Taylor, *Upper West Side School Change, but Not All Parents Went Along*, N.Y. TIMES (Nov. 10, 2017), <https://www.nytimes.com/2017/11/10/nyregion/ps-191-ps-199-ps-452-rezoning-schools-manhattan.html> [<https://perma.cc/85CH-M8S2>]. The redistricting plan distributed students living in the Amsterdam Houses amongst P.S. 452, P.S. 199, and P.S. 191, the last of which was moved to a new building and is now called Riverside School for Makers and Artists. *See id.* The impact of this new redistricting plan on student success and experience is yet to be determined. *See id.*

14. *Compare* Alie Stumpf, *I'm a White Teacher Who Chose a High-Poverty School for My Daughter. Here's Why.*, CHALKBEAT (Jan. 11, 2019), <https://www.chalkbeat.org/posts/ny/2019/01/11/white-teacher-mother-school-choice-segregation-nyc/> [<https://perma.cc/BBZ9-WZN2>], *with* Saratu Ghartey, *We're a Middle-Class Black Family. Here's Why We've Skipped Our Local Schools for Now.*, CHALKBEAT (Oct. 17, 2018), <https://www.chalkbeat.org/posts/ny/2018/10/17/were-a-middle-class-black-family-heres-why-weve-skipped-our-local-schools-for-now/> [<https://perma.cc/F5E2-QHEH>].

15. *See* Stumpf, *supra* note 14.

child's experience, but also that of other students.<sup>16</sup> She said that "school integration will only be achieved when white families like mine commit to integrated schools in their own neighborhoods."<sup>17</sup> Further, Stumpf acknowledged that the "rocks" her white daughter may face in attending a less privileged school will not feel as sharp as they would to students of minority identities, such as Gharthey's child.<sup>18</sup>

Gharthey, a mother in a black family, came to a different conclusion than Stumpf in deciding whether to send her child to their neighborhood school or seek an academically stronger option.<sup>19</sup> Gharthey's story involves a search for a pre-K program, not an elementary school.<sup>20</sup> However, the conflict exists in either context. Gharthey is less enthusiastic about "tak[ing] a chance on [these] work-in-progress schools," noting that when "raising a little black boy in America" there is "little room for error."<sup>21</sup> Gharthey participated in a pre-K lottery program through which applicants rank the available pre-K schools in order of preference and are assigned to a school.<sup>22</sup> She opted to rank two reputable schools as her son's top two choices, but was assigned to her fifth choice, a less desirable option in their own district of Bedford-Stuyvesant.<sup>23</sup> Ultimately, Gharthey decided to enroll her son in a school in lower Manhattan.<sup>24</sup> She noted in her accounts of this experience that because she and her son live in Brooklyn, they will need to revisit this school choice process once he is ready for kindergarten.<sup>25</sup> Thus, inequality in school programs and resources impacts not only students' individual academic experiences, but also their parents' choice of residence and the way in which parents seek to balance the value of their children's potential for academic success with their exposure to diversity.<sup>26</sup>

The differences in public schools in New York City highlight the problematic reality that the New York City school system is segregated along economic and racial lines. One highly regarded

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16. *See id.*

17. *Id.*

18. *See id.*

19. *See* Gharthey, *supra* note 14.

20. *See id.*

21. *Id.*

22. *Id.*

23. *See id.*

24. *See id.*

25. *See id.*

26. *See id.*

study, known as the UCLA Study, noted that New York City, despite being one of the most diverse cities in the United States, has one of the most racially and socioeconomically segregated school systems in the country.<sup>27</sup> In 2010, nineteen of the public school system's thirty-two community school districts maintained a student population that was, at most, 10% white, even though white students made up 14% of the public school population in the 2009–2010 school year.<sup>28</sup> As of the 2016–2017 school year, about 30.7% of New York City public schools are “racially representative.”<sup>29</sup> Further, about 70% of schools are “economically stratified.”<sup>30</sup> This means that the school's economic need, as measured by the Economic Need Index, is more than ten percentage points from the citywide average.<sup>31</sup> These demographics illustrate that New York City's public schools do not reflect the City's, and the school system's, highly diverse population.<sup>32</sup>

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27. See JOHN KUCSERA & GARY ORFIELD, *NEW YORK STATE'S EXTREME SCHOOL SEGREGATION: INEQUALITY, INACTION AND A DAMAGED FUTURE* vi (2014), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/ny-norfler-report-placeholder/Kucsera-New-York-Extreme-Segregation-2014.pdf> [<https://perma.cc/V9N8-74D3>].

28. *Id.* at viii. In the 2009–2010 school year, the New York Public School system included about 30% white and Asian students, 40% Hispanic students, and 30% black students. See NEW YORK CITY PUBLIC SCHOOL INDICATORS: DEMOGRAPHICS, RESOURCES, OUTCOMES, N.Y.C. INDEP. BUDGET OFFICE 5 (2011), <http://www.ibo.nyc.ny.us/iboreports/2011edindicatorsreport.pdf> [<https://perma.cc/PWM7-VE6V>].

29. N.Y.C. DEP'T OF EDUC., *EQUITY AND EXCELLENCE FOR ALL: DIVERSITY IN NEW YORK CITY PUBLIC SCHOOLS* 4 (2017), <https://www.schools.nyc.gov/docs/default-source/default-document-library/diversity-in-new-york-city-public-schools-english> [<https://perma.cc/X5D6-22J5>] [hereinafter N.Y.C. DEP'T OF EDUC., *EQUITY & EXCELLENCE FOR ALL*]. Given that, as of 2017, black and Latino students constituted 70% of the citywide population, schools were considered racially representative if at least 50% of its population was made up of black or Latino students. See *id.* Only 30.7% of public schools in New York City have less than 90% or more than 50% black and Latino students. *Id.* Therefore, 70% of schools are either more than half white, or less than 10% nonwhite. See *id.*

30. See Alexandria Neason, *Integrating NYC Schools Will Take More than A 'Diversity Plan'*, VILLAGE VOICE (June 29, 2017), <https://www.villagevoice.com/2017/06/29/integrating-nycs-schools-will-take-more-than-a-diversity-plan/> [<https://perma.cc/B7VV-FNEZ>].

31. See EQUITY AND EXCELLENCE FOR ALL, *supra* note 29, at 4 (“A school can be stratified in either direction — by serving more low-income or more high-income children.”).

32. See Nikole Hannah-Jones, *Choosing a School for My Daughter in a Segregated City*, N.Y. TIMES (June 9, 2016), <https://www.nytimes.com/2016/06/12/magazine/choosing-a-school-for-my-daughter-in-a-segregated-city.html> [<https://perma.cc/H69T-PVWF>].

School segregation has a significant negative impact on students within the New York City public school system.<sup>33</sup> Students in primarily poor, black and Latino schools achieve magnitudes less than students in wealthy, white schools.<sup>34</sup> There are also various psychological harms associated with segregated schools, such as students' feelings of inferiority within their greater communities, which limit their potential for professional and economic success.<sup>35</sup> Although school segregation is widely regarded as problematic, there is little to no constitutional basis to combat the effects of *de facto* segregation — segregation resulting from societal disparity — as opposed to *de jure* segregation — segregation enshrined in law.<sup>36</sup> This is derived from two illustrious Supreme Court cases: *Brown v. Board of Education*<sup>37</sup> and *Washington v. Davis*.<sup>38</sup> In *Brown*, the Supreme Court invalidated laws that allowed for racial discrimination in public schools, thus holding that *de jure* segregation of public schools is unconstitutional.<sup>39</sup> Yet, as previously described, it is clear that school segregation still exists in a variety of ways *de facto*, for which *Brown* does not provide recourse. Courts are reluctant to treat instances of *de facto* segregation with the same scrutiny as they treat cases of *de jure* segregation. This position is grounded in the Court's decision in *Washington v. Davis*, which requires that a plaintiff provide a finding of discriminatory purpose in order to prove that a *de facto* segregated school system violates the Constitution.<sup>40</sup>

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33. See *infra* Section I.C.

34. See Linda Darling-Hammond, *Unequal Opportunity: Race and Education*, BROOKINGS (Mar. 1, 1998), <https://www.brookings.edu/articles/unequal-opportunity-race-and-education/> [<https://perma.cc/5VDJ-7D79>].

35. See *Segregation Ruled Unequal, and Therefore Unconstitutional*, AM. PSYCHOL. ASS'N (May 28, 2003) (analyzing the findings from the studies used to support the Court's decision in *Brown v. Board of Education*); see also Richard Kahlenberg, *The Fall and Rise of School Segregation*, AM. PROSPECT (Dec. 10, 2001), <https://prospect.org/article/fall-and-rise-school-segregation> [<https://perma.cc/2BMQ-HMPG>] (quoting *Brown*, 347 U.S. at 494 (“To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”) and *Jenkins v. Missouri*, 593 F. Supp. 1485, 1492 (W.D. Mo. 1984) (“The general attitude of inferiority among blacks produces low achievement which ultimately limits employment opportunities and causes poverty.” (internal citations omitted))).

36. See *Segregation*, BLACK'S LAW DICTIONARY (10th ed. 2014).

37. See 347 U.S. 483 (1954).

38. See 426 U.S. 229 (1976).

39. See *Brown*, 347 U.S. at 495.

40. See *Davis*, 426 U.S. at 238 (“[C]ases have not embraced the proposition that a law or other official act, without regard to whether it reflects a racially discriminatory purpose, is unconstitutional solely because it has racially disproportionate impact.”).

Namely, it must be established that there is intentional discrimination at play.<sup>41</sup> New York City's school segregation problem falls between these two Supreme Court decisions, without the protection of either. On one hand, the alleged discrimination resulting from segregated schools is not a product of legislation. But in the absence of a law explicitly mandating the segregation, it is difficult to prove that the schools are intentionally segregated.

The extent to which New York City school zones are drawn with the intent to divide socioeconomic and racial populations is unclear. Arguably, the lack of congruency between school demographics and New York City's population is a result of racial patterns present in housing, which is often highly segregated due to a variety of factors.<sup>42</sup> Therefore, if school segregation is regarded as a residential segregation problem, and not as a product of discriminatory intent, it will be difficult to mandate integration or remedial action.

In addition to the authority that *Brown* and *Davis* provide, there exists a body of jurisprudence that supports alternative resolutions for *de facto* segregation.<sup>43</sup> These cases refer to considerations, in addition to pure intent and purpose, that are relevant to a determination that a practice is unconstitutionally discriminatory.<sup>44</sup> Without overturning or explicitly countering the rules established in *Davis*, they suggest that impact and effect are significant factors that weigh in favor of a finding that a practice is unconstitutional.<sup>45</sup> These cases indicate that judges are not only reviewing these matters with respect to the intent and purpose behind them, but rather analyzing the results of certain practices in their entirety when deciding whether such practices should be upheld. Although these cases do not minimize *Davis*'s precedential value, they are equally authoritative and worth considering here.<sup>46</sup>

This Note aims to close the gap between *Brown* and *Davis* in hopes of providing a remedy that will allow for greater racial and socioeconomic integration. It does not propose that *Davis* should be overruled or that discriminatory purpose should not be a fundamental

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41. *Id.* at 239 (quoting *Akins v. Texas*, 325 U.S. 398, 403–04 (1945) (“A purpose to discriminate must be present which may be proven by systematic exclusion of eligible jurymen of the proscribed race or by unequal application of the law to such an extent as to show intentional discrimination.”)).

42. *See infra* Section I.D.

43. *See infra* Section II.B.

44. *See infra* Section II.B.

45. *See infra* Section II.B.

46. *See infra* Section II.B.



component of analyzing equal protection cases. However, it does suggest that the problem of school segregation should be considered through the lens of the equally authoritative and persuasive precedents that put greater emphasis on impact and effect rather than sole purpose. Further, it argues that even if there are no constitutional grounds for mandating school integration, the government, through legislation or incentive and diversification programs, should incentivize schools to adopt socioeconomic integration policies. The reality is that the harms of school segregation transcend individual race and class: affluent, white students and poorer, minority students alike perform worse in primarily poor and minority schools than in more affluent, white schools.

Part I of this Note provides background about the New York City public school system, the relationship between residential and school segregation, and the extent and impact of school segregation. Part II addresses the legal doctrine relevant to this issue. Part III proposes, and analyzes the potential success of, constitutional, statutory, and policy remedies to the problem of school segregation.

## I. HOW SCHOOLS ARE SEGREGATED

### A. An Overview of the New York City Public School System

It is helpful to understand the workings of the New York City public school system in order to understand the context in which school segregation persists in the City. This section first addresses the administration of the school system, discusses the school system's zoning practices, and provides an overview of the system's budget. The New York City public school system is the largest public school system in the country, serving approximately one million students.<sup>47</sup> The school system includes thirty-two districts, each led by a superintendent and comprised of several school zones.<sup>48</sup> These zones consist of traditional community schools, charter schools, and magnet schools, but this Note focuses only on traditional community

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47. See N.Y.C. DEP'T OF EDUC., *ACHIEVE NYC: A COMPLETE GUIDE TO NEW YORK CITY PUBLIC SCHOOLS 2* (2018), [https://infohub.nyced.org/docs/default-source/default-document-library/achieve\\_2018-19\\_english.pdf](https://infohub.nyced.org/docs/default-source/default-document-library/achieve_2018-19_english.pdf) [<https://perma.cc/85KE-6BHX>] (including students enrolled in charter schools).

48. See *Guide: Understanding New York City Schools*, WNYC, <http://www.wnyc.org/schoolbook/guides/understanding/> [<https://perma.cc/V4N3-TNPB>] [hereinafter *Guide to Understanding NYC Schools*].

schools.<sup>49</sup> The chancellor of New York City's Department of Education is appointed by the mayor and supported by a leadership team.<sup>50</sup> Every district maintains a Community Education Council (CEC) made up of elected parent leaders.<sup>51</sup> CECs approve zoning lines, which are proposed to them by the superintendents in coordination with the Office of District Planning.<sup>52</sup>

This Note focuses on elementary schools, because middle schools and high schools use application-based enrollment and thus are not subject to the implications of public school zoning practices.<sup>53</sup> Elementary schools, on the other hand, are zoned by a student's home address, and children living within a particular zone have priority enrollment status in their zoned schools.<sup>54</sup> If a family is unsatisfied with its zoned school, a student may apply to another school or program.<sup>55</sup> New York City public school districts are zoned in a way that, intentionally or not, segregates students by race and socioeconomic status.<sup>56</sup> Most schools are zoned geographically, meaning they are attended by students living within a particular area.<sup>57</sup> Unlike districts, which span large portions of New York City, zones cover only a few blocks.<sup>58</sup> School zones can vary greatly, and a

49. *See id.*

50. The current Chancellor of the Department of Education, Richard Carranza, was appointed by Mayor Bill DeBlasio in 2018. *See* William Neuman & Elizabeth A. Harris, *Trying Again, de Blasio Names a New Schools Chancellor*, N.Y. TIMES (Mar. 5, 2018), <https://www.nytimes.com/2018/03/05/nyregion/nyc-schools-chancellor-carranza.html> [<https://perma.cc/7SW6-HLNF>].

51. *See Guide to Understanding NYC Schools*, *supra* note 48.

52. *See District Planning*, N.Y.C. DEP'T OF EDUC., <https://www.schools.nyc.gov/about-us/school-planning/district-planning> [<https://perma.cc/U28W-3T5A>].

53. *See Middle School*, N.Y.C. DEP'T OF EDUC., <https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade/middle-school> [<https://perma.cc/E6YB-BAPO>]; *High School*, N.Y.C. DEP'T OF EDUC., <https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade/high-school> [<https://perma.cc/25F8-H8JM>].

54. *See Kindergarten*, N.Y.C. DEP'T OF EDUC., <https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade/kindergarten> [<https://perma.cc/WX47-RMEX>]. Districts 1, 7, and 23 do not have any zoned schools, so students living in these districts may apply to any school. *See id.*

55. *See How to Enroll, INSIDE SCHOOLS*, <https://insideschools.org/elementary/how-to-enroll> [<https://perma.cc/C44F-S2Z7>].

56. *See infra* Section I.B.

57. *See Guide to Understanding NYC Schools*, *supra* note 48.

58. *See* Cait Etherington, *Stuff You Should Know: How NYC School Zones and Districts Work*, 6SQFT (Apr. 28, 2016), <https://www.6sqft.com/stuff-you-should-know-understanding-how-nycs-school-zones-and-districts-work/> [<https://perma.cc/T9F3-FAWC>].

student living on one block may have an entirely different school experience than a student living on a neighboring block.<sup>59</sup>

In order to properly consider and evaluate aspects of New York City's public education system, which could be modified to better facilitate equal education opportunity for students, it is critical to first understand the ways in which schools are funded. The New York City Department of Education's preliminary budget for the 2019 school year is \$25.6 billion.<sup>60</sup> This includes a \$24.3 billion operating budget that is the primary source of school funding, used to pay principals and teachers, purchase supplies and textbooks, and finance after-school programs, standardized tests, transportation, school lunches, safety, and building utilities.<sup>61</sup> The primary source of school funding comes from Fair Student Funding (FSF) and covers "basic instructional needs" of the schools.<sup>62</sup> A School Leadership Team advises principals on how to allocate these funds, the amount of which is based on the number of students and the particular needs of these students at each school.<sup>63</sup> The allocation of the operating budget to individual schools is recorded in School Allocation Memorandums (SAMs).<sup>64</sup> SAMs' accounting of schools' budgetary needs allows schools to receive funding additional to that provided through FSF for specific purposes, such as teachers and material.<sup>65</sup>

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59. *See id.*

60. COUNCIL OF THE CITY OF N.Y., REPORT OF THE FINANCIAL DIVISION ON THE FISCAL 2019 PRELIMINARY BUDGET AND THE FISCAL 2018 PRELIMINARY MAYOR'S MANAGEMENT REPORT FOR THE DEPARTMENT OF EDUCATION 1 (Mar. 23, 2018), <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2018/03/FY19-Department-of-Education-Expense.pdf> [<https://perma.cc/WG38-DBNH>].

61. *See* N.Y.C. DEP'T OF EDUC., FINANCE DIVISION BRIEFING PAPER 1 (2017), <http://council.nyc.gov/budget/wp-content/uploads/sites/54/2017/03/040-DOE-1.pdf> [<https://perma.cc/NMB8-JX7Q>].

62. *See id.* Additional sources of funding noted in SAMs include externally restricted funds that are subject to federal, state, and city government or donor restrictions, internally restricted funds that are subject to the Department of Education's restrictions "in order to meet core priorities," special education funds, and budget and technical adjustments. *See* SCHOOL ALLOCATION MEMORANDUMS BY CATEGORY: FISCAL YEAR 2019, N.Y.C. DEP'T OF EDUC., [https://www.nycenet.edu/offices/finance\\_schools/budget/DSBPO/allocationmemo/fy18\\_19/am\\_fy19\\_cat.htm](https://www.nycenet.edu/offices/finance_schools/budget/DSBPO/allocationmemo/fy18_19/am_fy19_cat.htm) [<https://perma.cc/27EE-2BXA>].

63. *See Funding Our Schools*, N.Y.C. DEP'T OF EDUC., <https://www.schools.nyc.gov/about-us/funding/funding-our-schools> [<https://perma.cc/TGX3-N2Y7>].

64. *Id.*

65. *Id.*

### B. A Snapshot of School Segregation in New York City

As of the 2018–2019 school year, there are about 1,135,334 students in the New York City Public School system.<sup>66</sup> Of them, 74% are “economically disadvantaged.”<sup>67</sup> Fifteen percent of students are white, 40% are black, 26% are Latino, and 16% are Asian.<sup>68</sup> As this Note purports, schools are highly concentrated by race, such that white students tend to go to one group of schools, while black and Latino students go to another set of schools.<sup>69</sup>

School segregation is evidenced by racially or socioeconomically homogenous student bodies. Given the correlation between race and socioeconomic status, segregated schools often maintain a high concentration of either low-income black and Latino students or more affluent white students.<sup>70</sup> As a result of this concentration pattern, white students attend school with more white students, referred to as “overexposure,” and black and Latino students attend school with fewer white students, so-called “underexposure,” than the proportion of white students enrolled in the school system.<sup>71</sup> The UCLA Study found that in the New York Metro area, over the last twenty years, white students have become increasingly “overexposed” to white students, and black students have become increasingly “underexposed” to white students.<sup>72</sup> In 2010, white students typically attended schools with twice as many white students compared to the total proportion of white students enrolled in the public school system.<sup>73</sup> Asian students had the second most exposure to white students.<sup>74</sup> Interestingly, Asian students currently represent only about 16% of the New York City public school population — the high representation of this otherwise small population in white schools is suggestive of an inorganic distribution of races, and consequentially

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66. See *DOE Data at a Glance*, N.Y.C. DEP’T OF EDUC., <https://www.schools.nyc.gov/about-us/reports/doe-data-at-a-glance> [<https://perma.cc/C9JG-8HDH>].

67. See *id.*

68. See *id.*

69. See *infra* Section I.C.

70. See Russel W. Rumberger, *Parsing the Data on Student Achievement in High-Poverty Schools*, 85 N.C. L. REV. 1293, 1295 (2007) (noting that black and Latino people generally live at higher poverty rates than do other racial groups, including whites — in 2004, 14% of white children lived in poverty and almost one third of black and Latino children lived in poverty).

71. See KUCSERA & ORFIELD, *supra* note 27, at 63.

72. See *id.* at 64.

73. See *id.*

74. See *id.*

socioeconomic status, among schools in New York City. On the other hand, black students attended school where only 20% of the students were white, despite the fact that white students made up about 50% of the enrolled student population.<sup>75</sup> Latino students also experienced severe underexposure to white students.<sup>76</sup> Further, 50% of low-income students attend schools with less than 1% white student enrollment.<sup>77</sup> This racial concentration translates into poverty concentration, and separates students based on the color of their skin and the income of their households.

### C. The Impact of School Segregation

Studies indicate that four factors heavily contribute to student success: smaller school size, smaller class size, having a challenging curriculum, and having higher-qualified teachers.<sup>78</sup> Students who attend poorer, majority black and Latino schools are generally disadvantaged in all of these categories.<sup>79</sup> They usually attend larger schools with larger class sizes, receive lower quality learning materials and have less access to higher level class offerings, and learn from less qualified teachers in terms of education, certification, and training.<sup>80</sup> The quality of these minority students' education ultimately yields worse performance and less access to educational opportunity.<sup>81</sup> This merely scratches the surface of the disadvantage black and Latino students experience as a result of attending minority-dominated segregated schools, as is more adequately discussed in this section.

Further, data indicates that a high level of poverty in a school negatively impacts student achievement, more so than a student's individual socioeconomic status or race.<sup>82</sup> Results from the 2003 National Assessment of Education Progress (NAEP) indicate that poor students who attend high-poverty schools have lower achievement rates than poor students who attend low-poverty

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75. *See id.*

76. *See id.*

77. *See id.* at 58. Schools with less than 1% white student enrollment are sometimes called "apartheid schools." *See id.* at 3.

78. *See* Darling-Hammond, *supra* note 34, at 4.

79. *See id.*

80. *See id.* The average majority black and Latino school has a population of 3,000 students or more in most cities, with class sizes 15% larger than those in non-minority schools, and 80% larger for non-special education classes. *See id.*

81. *See id.*

82. *See generally* JAMES S. COLEMAN ET AL., U.S. DEP'T OF HEALTH EDUC. & WELFARE, EQUALITY OF EDUCATIONAL OPPORTUNITY (1966).

schools.<sup>83</sup> Further, the NAEP shows that more affluent students performed worse in high-poverty schools than poor students performed in low-poverty schools.<sup>84</sup> This suggests that the impact of school segregation transcends individual socioeconomic status; *any* student who attends a high-poverty school is likely to perform worse than they would at a low-poverty school.<sup>85</sup> This data is consistent with the Coleman Report, a study mandated by the Civil Rights Act of 1964 in order to remedy educational inequality between white and black students.<sup>86</sup> The Coleman Report found that the “composition” of a school’s student body is the best indicator of student achievement.<sup>87</sup>

Additional research indicates that socioeconomic status is actually more indicative of an achievement gap than race.<sup>88</sup> In Sean F. Reardon’s article, *The Widening Academic Achievement Gap Between the Rich and the Poor*, Reardon states that the income achievement gap, measured as the income difference between a child from a family at the 90<sup>th</sup> percentile and the 10<sup>th</sup> percentile of the family income distribution, is two times as large as the achievement gap between black and white students.<sup>89</sup> He considers studies measuring student achievement in terms of student test scores against socioeconomic status based on family income and parental education level, to produce results showing an increasing trend of a socioeconomic achievement gap — the gap is about 75% larger in 2001 than 1940.<sup>90</sup>

Of course, one source of the rising income achievement gap may be the overall increasing socioeconomic gap.<sup>91</sup> However, when

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83. See Rumberger, *supra* note 70, at 1295 (citing NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., *THE CONDITION OF EDUCATION* 33 (2003)).

84. *See id.*

85. *See id.* at 1295.

86. *See id.* at 1294.

87. *See id.* at 1313. The report notes that the makeup of the student body had a greater impact on student achievement at a school than did the school itself. *See id.* Further, the report identified student body composition as a more important factor in student achievement than teacher characteristics or school facilities. *See id.*

88. *See* WHITHER OPPORTUNITY? RISING INEQUALITY, SCHOOLS, AND CHILDREN’S LIFE CHANCES 110 (Greg J. Duncan & Richard J. Murnane eds., 2011) [hereinafter WHITHER OPPORTUNITY?].

89. Sean F. Reardon, *The Widening Academic Achievement Gap Between the Rich and the Poor: New Evidence and Possible Explanations*, in WHITHER OPPORTUNITY?, *supra* note 88, at 91.

90. *See id.* at 95.

91. *See id.* at 100–04. Income inequality has “grown substantially” over the last forty years. *Id.* Although there is no existing research investigating the relationship

considering income as a factor influencing student achievement, it must be recognized that there are two forces at play: the actual disparity of wealth between poor and wealthy families, and the way that, on a per dollar basis, higher income yields higher achievement. Put more clearly, “a dollar of income (or factors correlated with income) appears to buy more academic achievement than it did several decades ago.”<sup>92</sup> The latter, it seems, contributes more significantly to the achievement gap.<sup>93</sup>

The difference in student achievement between wealthy, predominantly white schools and poor, majority black and Latino schools is also due in part to differences in parental involvement and educational backgrounds between the schools.<sup>94</sup> Even though there is a growing correlation between parental education and family income, however, this relationship has remained stagnant and is therefore not likely a sole contributor to the growing achievement gap.<sup>95</sup>

The impact of demographics on student achievement is further evidenced by data showing that poor students that attend schools with higher socioeconomic demographics outperform poor students that attend less affluent schools, even if those poorer schools have better resources.<sup>96</sup> Thus, it is the demographic makeup of a school, not merely the extent of a school’s resources, that determines student achievement rates. Still, a school’s material wealth and access to resources positively correlate to student achievement.<sup>97</sup> Schools with better learning tools, facilities, and teachers promote greater

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between increased income gaps and income achievement gaps, a look at the more established relationship between income gaps and educational attainment gaps, as well as the relationship between family income and a child’s level of achievement, suggests that there is some correlation between rising income inequality and the achievement gap. *Id.*

92. *See id.* at 104.

93. *See id.*

94. *See id.* at 91–92.

95. *See id.* at 107.

96. *See* Richard Kahlenberg, *From All Walks of Life: A New Hope for School Integration*, AM. EDUCATOR, Winter 2012–2013, at 4–5. In one study, the Montgomery County Study, research indicates that low-income students who attend more-affluent schools performed better than low-income students who attended low-income schools with superior resources. *See id.*

97. EDBUILD, FAULT LINES: AMERICA’S MOST SEGREGATING SCHOOL DISTRICT BORDERS 9 (last updated Aug. 25, 2015). One study suggests that increasing school spending by 25% per pupil could “eliminate” differences in academic achievement between poor and affluent students. *See id.* (citing C. Kirabo Jackson et al., *The Effects of School Spending on Educational and Economic Outcomes: Evidence from School Finance Reforms*, Q.J. ECON. 131, 157–218 (2016)).

academic success amongst students.<sup>98</sup> Equalizing the financial “means” of poorer and more affluent schools effectively narrows the achievement gap between students in these schools.<sup>99</sup>

Interestingly, however, high-poverty schools in New York City are better funded than low-poverty schools, yet the high-poverty schools continue to lag in achievement. Consider, for example, the two schools mentioned at the outset of this work, P.S. 191 and P.S. 199. The poorer of these schools, P.S. 191, received \$7,158 in FSF per audited student for the 2016–2017 school year; P.S. 199, the low-poverty school, received \$5,077 per audited student.<sup>100</sup> In terms of overall funding according to the SAM for 2016–2017, P.S. 191 received almost double the funding that P.S. 199 received.<sup>101</sup> P.S. 191 received significantly more funding than P.S. 199, but this did not impact the academic performance of students at these schools as one might imagine.

Consider another contrast between two schools in District 13 in Brooklyn, P.S. 8 and P.S. 307. The funding disparity is stark: P.S. 8 receives \$6,490 per audited student, while P.S. 307 receives \$18,113 per audited student.<sup>102</sup> Nonetheless, it is P.S. 307 that struggles to produce high student achievement, while P.S. 8 is continuously highly regarded.<sup>103</sup> This data indicates that the Department of Education’s allocation of funds is not necessarily responsible for inequality

98. *See id.*

99. *See id.*

100. *See* N.Y.C. DEP’T OF EDUC., FY 2017 BUDGET SUMMARY DISTRICT 03 6 (2016),

[https://www.nycenet.edu/offices/finance\\_schools/budget/DSBPO/allocationmemo/fv1617/fv17\\_pdf/SAM1\\_03\\_SBD/District\\_03.pdf](https://www.nycenet.edu/offices/finance_schools/budget/DSBPO/allocationmemo/fv1617/fv17_pdf/SAM1_03_SBD/District_03.pdf) [<https://perma.cc/SU7P-294E>]. For the 2016–2017 school year, P.S. 199 received \$4,580,784 in FSF, which, divided by the school’s 903 audited students for that school year, is \$5,077 per student. *Id.* During that same year, P.S. 191 received \$2,734,533 in FSF, which, divided by the school’s 382 comes out to \$7,158 per student. *Id.* These numbers were calculated by dividing total funding by the number of audited students from the previous school year. *Id.*

101. *See id.* at 10. The Budget Summary indicates that P.S. 191 was allocated a total of \$5,093,477 for 382 audited students, while P.S. 199 was allocated \$6,654,625 for 903 audited students. *Id.* This means that P.S. 191 received \$13,333 is overall funding while P.S. 199 received only \$7,369. *Id.* These numbers were calculated by dividing total funding by the number of audited students from the previous school year. *Id.*

102. *See* N.Y.C. DEP’T OF EDUC., FY 2017 BUDGET SUMMARY DISTRICT 13 1–3 (2016),

[https://www.nycenet.edu/offices/finance\\_schools/budget/DSBPO/allocationmemo/fv1617/fv17\\_pdf/SAM1\\_03\\_SBD/District\\_13.pdf](https://www.nycenet.edu/offices/finance_schools/budget/DSBPO/allocationmemo/fv1617/fv17_pdf/SAM1_03_SBD/District_13.pdf) [<https://perma.cc/7O7M-TZJC>]. These numbers were calculated by dividing total funding by the number of audited students from the previous school year. *Id.*

103. *See id.*



amongst schools within the same district, and that financial disparity alone does not account for New York City's school segregation problem.

#### D. Residential Segregation as a Possible, but Not Sufficient, Explanation for Segregation

Much of New York City is residentially segregated by race and socioeconomic status,<sup>104</sup> which naturally leads to school segregation, because the two are inherently connected: districts are supposed to be drawn to encompass students living in a particular neighborhood.<sup>105</sup> However, as explained in this section, residential segregation alone is not responsible for the many examples of school segregation within the public school system.<sup>106</sup>

Residential patterns and segregation within neighborhoods likely contribute to the problem of school segregation.<sup>107</sup> Property taxes and neighborhood value dictate who can afford to live in any given neighborhood,<sup>108</sup> which ensures that people in similar income brackets have access to some neighborhoods, resulting in a city that is socioeconomically and, relatedly, racially stratified.<sup>109</sup> Because school zones in New York City are drawn geographically, they thus necessarily include students of similar socioeconomic status.

Schools in wealthier districts benefit from the high-income levels of residents within that district—parents in wealthier neighborhoods have greater financial means to personally funnel money into their

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104. *See infra* Section I.D.

105. *See infra* Section I.D.

106. *See infra* Section I.D.

107. *See* WHITHER OPPORTUNITY?, *supra* note 88, at 109 (noting that this proposition is not necessarily supported by empirical evidence).

108. *See* Chris Seabury, *How Property Taxes Are Calculated*, INVESTOPEDIA (Nov. 6, 2017), <https://www.investopedia.com/articles/tax/09/calculate-property-tax.asp> [<https://perma.cc/FUH3-T5J3>].

109. *See id.* In contrast, though, is the proposition that schools are generally less diverse than the neighborhoods in which they reside. *See* Etherington, *supra* note 58. It is worth noting that urban neighborhoods over the past forty years have become more racially integrated and less socioeconomically unified. *See* WHITHER OPPORTUNITY?, *supra* note 88, at 462 n.19 (citing Paul Jargowsky, *Take the Money and Run: Economic Segregation in U.S. Metropolitan Areas*, 61 AM. SOC. REV. 984 (1996); Tara Watson, *Inequality and the Measurement of Residential Segregation by Income*, 55 REV. INCOME & WEALTH 820 (2009)) (“The prototypical ‘neighborhood school’ of 2010 would simultaneously be more racially integrated and less economically integrated than the neighborhood school of 1970. Increased economic segregation could have an impact on racial achievement gaps to the extent that the effects of exposure to students—or neighbors—of different income levels vary by race.”).

children's schools.<sup>110</sup> Further, these parents often have the social capital to organize fundraising efforts for the school.<sup>111</sup> Parents of students in a wealthier school are also often more involved with the school itself, and this contributes to student achievement.<sup>112</sup> Wealthier, white parents are more likely than poorer, minority parents to attend general and teacher meetings, attend school or class events, and volunteer or serve on a committee.<sup>113</sup> Parents in wealthier school zones generally participate more in their children's academic lives and take part in PTA committees.<sup>114</sup> Further, in schools where affluent and white parents and poorer minority parents are present, the affluent white voices tend to receive more attention and are able to more meaningfully advocate for their children.<sup>115</sup> The heavy parental influence in children's educational experience factors into student achievement such that white, wealthy students benefit from their parents' involvement and educational background, whereas poor, minority students lack access to that benefit.<sup>116</sup>

Just as segregated neighborhoods yield segregated schools, the existence of segregated schools perpetuates residential segregation.<sup>117</sup> This relationship is due to the interest parents have in sending their children to the best possible school.<sup>118</sup> Although some parents suggest that they want to send their children to more diverse

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110. See Casey Quinlan, *How Marginalized Families Are Pushed out of PTAs*, ATLANTIC (July 13, 2016), <https://www.theatlantic.com/education/archive/2016/07/how-marginalized-families-are-pushed-out-of-ptas/491036/> [https://perma.cc/S849-HCB3] (noting that schools often rely on parents to supplement the school budget).

111. See Laura McKenna, *How Rich Parents Can Exacerbate School Inequality*, ATLANTIC (Jan. 28, 2016), <https://www.theatlantic.com/education/archive/2016/01/rich-parents-school-inequality/431640/> [https://perma.cc/K5BR-TP2A].

112. See Sabrina Tavernise, *Education Gap Grows Between Rich and Poor*, *Studies Say*, N.Y. TIMES (Feb. 9, 2012), <https://www.nytimes.com/2012/02/10/education/education-gap-grows-between-rich-and-poor-studies-show.html> [https://perma.cc/A7W6-PPRQ].

113. See CHILD TRENDS, PARENTAL INVOLVEMENT IN SCHOOLS: INDICATORS ON CHILDREN AND YOUTH 12–13 app. 2 (2012).

114. See Quinlan, *supra* note 110.

115. See *id.*

116. See *infra* Section I.C.

117. See Nick Morrison, *It's Not Government that's Creating 2-Tier Schools — It's Parents*, FORBES (Apr. 27, 2016), <https://www.forbes.com/sites/nickmorrison/2016/04/27/its-not-government-thats-creating-two-tier-schools-its-parents/#3868fa8f1879> [https://perma.cc/5ZXX-XYQ2] (noting that parents primarily consider sending their children to a good school when deciding where to live).

118. See *id.*

schools,<sup>119</sup> in practice, most parents prioritize sending their children to a well-performing community school over a diverse school.<sup>120</sup> Parents who can afford to do so move to wealthier neighborhoods with higher quality schools, while lower-income parents are forced to settle or stay in poorer neighborhoods with lower quality schools, thereby perpetuating the cycle of income inequality that exacerbates segregation in neighborhoods and schools.<sup>121</sup>

Data shows that this relationship between residential and school segregation exists in New York City. The least racially and socioeconomically representative school district in New York City is District 7 in the South Bronx.<sup>122</sup> There, every school is made up of at least 90% black and Latino students, and 95% of the students “skew towards lower incomes.”<sup>123</sup> This is reflective of the South Bronx’s overall population, where 57.1% of the residents are Hispanic and 39.8% are black.<sup>124</sup> The median household income is just over half of the citywide median.<sup>125</sup> Similarly, in Queens, all 100,000 students in Districts 25 and 26 attend schools with primarily white and Asian

119. See Kate Taylor, *Family by Family, How School Segregation Still Happens*, N.Y. TIMES (Apr. 28, 2017), <https://www.nytimes.com/2017/04/28/nyregion/school-segregation-nyc-district-3.html> [<https://perma.cc/W8DQ-5REH>].

120. See Rebecca Klein, *Surprise! White People Don’t Really Care About Racial Diversity*, HUFFINGTON POST (Jan. 21, 2016), [https://www.huffingtonpost.com/entry/racial-diversity-schools-poll\\_us\\_56830224e4b0b958f65ab2d6](https://www.huffingtonpost.com/entry/racial-diversity-schools-poll_us_56830224e4b0b958f65ab2d6) [<https://perma.cc/W6EC-87GL>].

121. See Morrison, *supra* note 117.

122. See Nicole Mader & Anna Carla Sant’Anna Costa, *No Heavy Lifting Required: New York City’s Unambitious School ‘Diversity’ Plan*, CTR. FOR N.Y.C. AFF., <http://www.centernyc.org/diversity-plan/> [<https://perma.cc/J48A-UXT8>].

123. See *id.* In the 2017–2018 school year, District 7 students performed alarmingly low on testing: only 38%, 33%, and 20% of third, fourth, and fifth graders, respectively, scored 3s or 4s on their ELA state exams; only 39%, 30%, and 23% of third, fourth, and fifth graders, respectively, scored a 3 or above on their math state exams. See *NYC Geographic District #7—Bronx New York State Report Card — 2017–8*, DATA.NYSED.GOV, <https://data.nysed.gov/essa.php?instid=800000046647&year=2018&createreport=1&38ELA=1&38MATH=1> [<https://perma.cc/6SQ8-4J86>]. This data supports the assertion that schools with high majorities of black and Latino students maintain worse academic performance statistics than schools with predominantly white populations.

124. *Race and Ethnicity in South Bronx, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/South-Bronx/Race-and-Ethnicity> [<https://perma.cc/K96K-GTNG>].

125. The median household income in the South Bronx is \$27,100 per year, while the median in New York City is generally over \$50,000 per year. See *Household Income in South Bronx, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/South-Bronx/Household-Income> [<https://perma.cc/RPQ6-A493>].

students.<sup>126</sup> This likely correlates with the populations of the neighborhoods zoned within District 25, including Flushing, Whitestone, College Point, and Bayside,<sup>127</sup> and District 26, including Bayside, Fresh Meadows, Bellerose, Floral Park, Little Neck, Queens Village, Jamaica, and Douglaston,<sup>128</sup> most of which, as of 2018, maintained heavily white and Asian populations. Many of the towns with primarily white and Asian populations maintain median incomes

126. See Mader & Costa, *supra* note 122.

127. See *Our Schools*, COMMUNITY SCH. DISTRICT 25, <https://sites.google.com/d25.nyc/home/our-schools> [<https://perma.cc/GLJ2-WP7K>]; *Race and Ethnicity in Flushing, New York, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/Flushing/Race-and-Ethnicity> [<https://perma.cc/Y9J7-4H6E>] (noting a 71% Asian population). See also *Race and Ethnicity in Whitestone, New York, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/Whitestone/Race-and-Ethnicity> [<https://perma.cc/TJ32-G7FB>] (noting a 22.7% Asian population and 60.7% white population); *Race and Ethnicity in College Point, New York, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/College-Point/Race-and-Ethnicity> [<https://perma.cc/VXS5-F9M6>] (noting a 32.2% Asian population and a 36.2% Hispanic population); *Race and Ethnicity in Bayside, New York, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/Bayside/Race-and-Ethnicity> [<https://perma.cc/RL9W-JKR4>] (noting a 43.5% Asian population and 41.3% White population).

128. See *District 26 Elementary and Middle Schools*, DISTRICT26.ORG, <http://www.district26.org/school-locations—contact-information.html> [<https://perma.cc/JL8C-DRM6>]; *Race and Ethnicity in Douglaston-Little Neck, New York, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/Douglaston-Little-Neck/Race-and-Ethnicity> [<https://perma.cc/J4WZ-XYLN>] (noting a 46.2% white population and 38.2% Asian population). See also *Race and Ethnicity in Fresh Meadows, New York, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/Fresh-Meadows/Race-and-Ethnicity> [<https://perma.cc/Y7F8-6NR6>] (noting a 50% Asian population and 33.4% white population); *Race and Ethnicity in Bellerose, New York, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/Bellerose/Race-and-Ethnicity> [<https://perma.cc/7T8W-9PTG>] (noting a 38.8% Asian population and 25.3% white population); *Race and Ethnicity in Floral Park, New York, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/Floral-park/Race-and-Ethnicity> [<https://perma.cc/TSV7-8C7F>] (noting a 51.5% Asian population and a 34.6% white population); *Race and Ethnicity in Queens Village, New York, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/Queens-Village/Race-and-Ethnicity> [<https://perma.cc/6YNQ-S4KC>] (noting here, unlike the other neighborhoods in this district, there is a 55.6% black population and only a 15.4% Asian population); *Race and Ethnicity in Jamaica, New York, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/Jamaica/Race-and-Ethnicity> [<https://perma.cc/7J8E-8MNA>] (noting that here, similar to Queens Village, there is a 47.6% black population and only a 17.2% Asian population).

close to or higher than the national median income.<sup>129</sup> This data supports the proposition that schools in New York City are highly segregated by race and socioeconomic status in ways that reflect the residential patterns of the neighborhoods within districts.

Although there is a clear correlation between residential segregation and school segregation in New York City, some trends suggest that residential patterns alone do not sufficiently explain the extent to which schools are segregated. Even socioeconomically and racially diverse neighborhoods experience significant school segregation.<sup>130</sup> Indeed, schools are often more segregated than the neighborhoods they serve.<sup>131</sup> In gentrified neighborhoods — those in which wealthier white families are increasingly moving to parts of the city historically considered poorer and minority areas — the problem of school segregation is not improved, despite socioeconomic and racial integration of the neighborhood.<sup>132</sup> This is likely because

129. See *Household Income in Flushing, New York, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/Flushing/Household-Income> [<https://perma.cc/WA9Y-BCGR>]. See also *Household Income in Whitestone, New York, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/Bellerose/Household-Income> [<https://perma.cc/RFM7-PTRB>]; *Household Income in Bayside, New York, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/Bayside/Household-Income> [<https://perma.cc/B6K3-7YFT>]; *Household Income in Whitestone, New York, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/Whitestone/Household-Income> [<https://perma.cc/2PSL-AKGH>]; *Household Income in Fresh Meadows, New York, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/Fresh-Meadows/Household-Income> [<https://perma.cc/HKJ6-DJTD>]; *Household Income in Bellerose, New York, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/Bellerose/Household-Income> [<https://perma.cc/M9VG-YUDW>]; *Household Income in Floral Park, New York, New York*, STAT. ATLAS <https://statisticalatlas.com/neighborhood/New-York/New-York/Douglaston-Little-Neck/Household-Income> [<https://perma.cc/FY7A-BFK6>]; *Household Income in Douglaston-Little Neck, New York, New York*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/New-York/New-York/Douglaston-Little-Neck/Household-Income> [<https://perma.cc/235K-MZPE>].

130. See Clara Hemphill & Nicole Mader, *Are Schools Segregated Because Housing Is? It Ain't Necessarily So*, CTR. FOR N.Y.C. AFF. (Dec. 16, 2015), <http://www.centrernyc.org/schoolsegregation> [<https://perma.cc/T9US-KXJR>].

131. See Clara Hemphill & Nicole Mader, *Segregated Schools in Integrated Neighborhoods: The City's Schools Are Even More Divided than Our Housing*, CTR. FOR N.Y.C. AFF. (2017), <http://www.centrernyc.org/segregatedschools/> [<https://perma.cc/PSX3-4AXU>].

132. See Nikole Hannah-Jones, *Gentrification Doesn't Fix Inner-City Schools*, GRIST (Feb. 27, 2015), <http://grist.org/cities/gentrification-doesnt-fix-inner-city-schools/> [<https://perma.cc/HSH8-NC62>]. Interestingly, there are simultaneous trends of the suburbanization and urbanization of concentrated poverty. On one hand,

wealthier white parents choose to send their children to private, charter, or magnet schools outside the neighborhood, rather than to their zoned community school.<sup>133</sup>

The zoning lines in New York City illustrate the fact that residential patterns alone do not explain school segregation. Consider, once again, the circumstances of P.S. 191 and P.S. 199. Until recently, District 3 was zoned such that most of the Amsterdam Houses, a public housing complex, was within the lines of P.S. 191, while students from other, presumably wealthier parts of the expensive Upper West Side, were zoned within the boundaries of P.S. 199.<sup>134</sup> Similarly, consider the zoning situation in Brooklyn's District 13, where the zoning lines are drawn so that students residing in the gentrified and primarily white neighborhood of DUMBO are sent to the well-regarded P.S. 8, while students in the neighboring area, including those living in a public housing community, the Farragut Houses, are zoned for the less reputable P.S. 307.<sup>135</sup> Although these zoning lines likely do not show discriminatory purpose, they certainly result in discriminatory impact. Even in neighborhoods that are not particularly segregated, the school districts remain segregated. It seems plainly untrue to suggest that the racial and socioeconomic makeup of schools is a product of the racial and socioeconomic composition of neighborhoods. Because the problem of school segregation begins outside the classroom, policymakers and courts ought to consider residential segregation in tandem with other factors to determine the source of the New York City public school's segregation problem.

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concentrated poverty, once a primarily urban problem, is expanding to the suburbs. See Kahlenberg, *supra* note 96, at 7. On the other hand, affluent, white families are increasingly settling in the cities, with the sometimes ironic hope of raising their family in a more diverse community. See Matt Collette, *Why New York City Is Experimenting with New Ways to Desegregate Public Schools*, SLATE: SCHOOLED (July 20, 2015), [http://www.slate.com/blogs/schooled/2015/07/20/desegregating\\_nyc\\_public\\_schools\\_the\\_city\\_is\\_trying\\_new\\_methods\\_this\\_one.html](http://www.slate.com/blogs/schooled/2015/07/20/desegregating_nyc_public_schools_the_city_is_trying_new_methods_this_one.html) [<https://perma.cc/6K5R-3ES8>] (noting that parents are now more interested in sending their children to diverse schools, but the “influx of wealthy, white families can lead to gentrification and further segregation if policy isn’t in place to support the development of diverse schools”).

133. See *id.*

134. See *2016–2017 School Zones*, N.Y.C. OPEN DATA (2017), <https://data.cityofnewyork.us/Education/2016-2017-School-Zones/ux7j-iww6> [<https://perma.cc/SLX4-JPPP>]; N.Y.C. HOUS. AUTH., MANHATTAN DEVELOPMENT MAPS: AMSTERDAM & AMSTERDAM ADDITION 1 (2011), <http://www1.nyc.gov/assets/nycha/downloads/pdf/Amsterdam.pdf> [<https://perma.cc/R3EG-UJS7>].

135. See Hannah-Jones, *supra* note 32.

### E. Previous Integration Efforts and Public Discourse Surrounding Integration

In response to the exposure of the segregated state of New York City public schools, community education councils, families, and local and federal governments have taken steps towards school diversification. The details regarding the execution of and responses to these efforts are indicative of both government and public sentiment towards integration and diversification plans. Most recently, the School Diversity Advisory Group — a product of the Department of Education’s own initiative to integrate schools — established a series of programs encouraging schools to bring greater socioeconomic diversity to primarily wealthy, white schools.<sup>136</sup> These programs are new but have already been adopted by several schools throughout the school system.<sup>137</sup>

As previously mentioned, in June 2017, the CEC for District 3 approved the Office of District Planning’s plan to rezone the Upper West Side.<sup>138</sup> In January 2016, the CEC for District 13 voted to make rezone to more evenly distribute students between P.S. 8 and P.S. 307.<sup>139</sup> In Brooklyn’s District 15, parents initiated an overhaul of the middle school admissions process.<sup>140</sup> In contrast to the old admissions system, which emphasized test scores and other “selective admissions criteria” when determining which students would be admitted into each school, the new policy, which approved by the New York City’s Department of Education,<sup>141</sup> calls for a lottery that numerically favors students who come from low-income, non-English

136. *See generally* SCH. DIVERSITY ADVISORY GRP., MAKING THE GRADE: THE PATH TO REAL INTEGRATION AND EQUITY FOR NYC PUBLIC SCHOOL STUDENTS, (2019), [https://docs.wixstatic.com/ugd/1c478c\\_4de7a85cae884c53a8d48750e0858172.pdf](https://docs.wixstatic.com/ugd/1c478c_4de7a85cae884c53a8d48750e0858172.pdf) [<https://perma.cc/V4FC-UYQ2>].

137. *See id.* at 46.

138. *See supra* note 13; N.Y.C. Dep’t of Educ., Office of District Planning 21, *Rezoning Presentation to CEC 3* (Nov. 14, 2016), [https://docs.wixstatic.com/ugd/a806f4\\_d906ba7be5604381a33d39dcbad9ad89.pdf](https://docs.wixstatic.com/ugd/a806f4_d906ba7be5604381a33d39dcbad9ad89.pdf) [<https://perma.cc/QR73-E227>].

139. Heather Chin, *CEC Votes 6-3 in Favor of Supporting School Rezoning Plan for PS 8 and PS 307*, BKLYNER (Jan. 7, 2016), <https://bklyner.com/cec-13-votes-6-3-in-favor-of-supporting-school-rezoning-plan-for-ps-8-and-ps-307-citykidcorner/> [<https://perma.cc/6JDJ-X9LG>].

140. *See* Christina Veiga, *Brooklyn Middle Schools Eliminate ‘Screening’ as New York City Expands Integration Efforts*, CHALKBEAT (Sept. 20, 2018), <https://www.chalkbeat.org/posts/ny/2018/09/20/brooklyn-middle-schools-eliminate-screening-as-new-york-city-expands-integration-efforts/> [<https://perma.cc/ET59-28SW>].

141. *See id.*

speaking, and non-permanent housing backgrounds.<sup>142</sup> The goal of this initiative is to ensure that 52% of every school's population is made up of students from these more marginalized students.<sup>143</sup>

City and state governments have also acted to improve diversity within school districts. New York City's School Diversity Accountability Law, for example, mandates that the Department of Education publish demographic information about students attending community schools.<sup>144</sup> At the state level, the New York State Education Department created a Socioeconomic Integration Pilot Program, which provides certain low-performing schools with grants up to \$1.25 million to support programs designed to increase socioeconomic diversity.<sup>145</sup>

The divided discourse about these integration plans suggests that the public is hesitant to embrace desegregation efforts. On *InsideSchools*, a website dedicated to providing insight to families about New York City public schools, the page for the new P.S. 191 informs parents that “[t]he attendance zone for PS 191 has been redrawn to include less low-income housing and more middle class housing[.]”<sup>146</sup> In a similar tone, the *InsideSchools* page for P.S. 199 states that although the new zoning “includes a sliver of the Amsterdam Houses public housing development, most of the housing in the attendance zone is very expensive.”<sup>147</sup> These descriptions seem downplay or hide the presence of low-income students in the school zone, and have two implications. First, in trying to hide the presence of low-income populations within the district, the webpages present an unfavorable perception of these low-income students, further

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142. *See id.*

143. *See* Christina Veiga, *With a Bold Integration Plan in Place, Brooklyn Parents Begin to Sweat the Details*, CHALKBEAT (Sept. 24, 2018), <https://chalkbeat.org/posts/ny/2018/09/24/with-a-bold-school-integration-plan-in-place-brooklyn-parents-begin-to-sweat-the-details/> [<https://perma.cc/HJS7-E9SR>]. This 52% is reflective of the District's population, which includes wealthy white families in neighborhoods like Park Slope, as well as poorer, non-white families in Red Hook and Sunset Park. *See* Veiga, *supra* note 140.

144. *See* Sabrina Rodriguez, *De Blasio Signs Law Requiring New School Diversity Reports*, CHALKBEAT (June 17, 2015), <https://www.chalkbeat.org/posts/ny/2015/06/17/de-blasio-signs-law-requiring-new-school-diversity-reports/> [<https://perma.cc/YDD4-ULHT>].

145. Press Release, N.Y. State Educ. Dep't, *NYS Schools to Receive Grants to Promote Socioeconomic Integration* (Dec. 30, 2014), <http://www.nysed.gov/news/2015/nys-schools-receive-grants-promote-socioeconomic-integration> [<https://perma.cc/8VRU-CW4Z>].

146. *See Insights to Riverside School*, *supra* note 7.

147. *See Insights to P.S. 199*, *supra* note 2.



perpetuating problems of racial and socioeconomic discrimination. Second, the webpages show that the Department of Education is completely aware of how low-income students are distributed throughout the districts, and has the ability to make change even if just through public discourse.

The hesitation to accept desegregation can be even more palpable from parents. District 7 experienced strong parental opposition to various attempts at diversifying its schools.<sup>148</sup> District 15 also faced pushback from parents who were particularly vocal against the District's plan to eliminate the use of test scores from the application process.<sup>149</sup> With regard to District 13, the CEC and Office of District Planning's proposals for rezoning, discussion were focused on rezoning as a remedy to school overcrowding with an additional benefit of promoting diversity.<sup>150</sup> This may be an indicator of the Office of District Planning's interest in, or ability to, call for integration based on socioeconomic status and race. Still, the use of overcrowding as a motivating factor for redistricting suggests that school segregation is not sufficient, on its own, to drive people to diversify the school system.

Clearly, parents are not eager to send their children to schools with students of lower socioeconomic backgrounds. Schools are aware of this sentiment and focus part of their marketing campaigns on highlighting a high-income student population. This sentiment, if prevailing, may be indicative of at least some discriminatory intent behind segregated school zones, even if it is not the primary motivation when drawing zoning plans. Therefore, it seems that in many cases the institutions involved in public school decision-making are perpetuating a segregated system that thwarts student achievement and maintains unfair castes within New York City public schools.

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148. See Wall, *supra* note 5.

149. See Veiga, *supra* note 143.

150. See Heather Chin, *CEC Votes 6-3 in Favor of Supporting School Rezoning Plan for PS 8 and PS 307*, BKLYNER (Jan. 7, 2016), <https://bklyner.com/cec-13-votes-6-3-in-favor-of-supporting-school-rezoning-plan-for-ps-8-and-ps-307-citykidcorner/> [<https://perma.cc/359C-QT2D>]; see also *Rezoning Presentation to CEC 3*, *supra* note 138, at 3 (including both "alleviat[ing] overcrowding" and "promot[ing] diversity" as objectives of the rezoning plan).

## II. THE LEGAL LANDSCAPE: *BROWN, DAVIS*, AND EVERYTHING IN BETWEEN

This Part lays out the legal lens through which school segregation in New York City may be considered. As aforementioned, the leading precedent on this issue are *Brown v. Board of Education* and *Washington v. Davis*.<sup>151</sup> There is additional precedent that, within the limits of *Brown* and *Davis*, provides an alternative perspective that may allow for more creative arguments in challenging allegedly discriminatory school districts.<sup>152</sup> Importantly, where a constitutional challenge would be possible and urges a legislative response, newly established policy would need to comply with precedent about using racial classifications when creating school zoning practices.<sup>153</sup> Finally, gerrymandering, the practice of drawing voting lines with for the sake of manipulating an electoral result, provides a helpful analogy to the present issue by showing that, when arguably arbitrary district drawing has a discriminatory impact on individuals within a particular district, intent is not the absolute and only consideration in determining whether such practice should be struck down as discriminatory.<sup>154</sup>

### A. *Brown v. Board of Education* and *Washington v. Davis*: Two Guiding Precedents

The Fourteenth Amendment's Equal Protection Clause provides that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."<sup>155</sup> In the seminal case of *Brown v. Board of Education*, the Supreme Court interpreted this language to conclude that when states established public school system that are "separate but equal" they violate the Fourteenth Amendment.<sup>156</sup> In coming to this holding, the Court reasoned that, in the case of schools, the intangible effects of racial segregation on minority children, not just the "tangible differences" between

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151. See *infra* Section II.A.

152. See *infra* Section II.B.

153. See *infra* Section II.C.

154. See *infra* Section II.D.

155. U.S. CONST. amend. XIV, § 1.

156. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

minority and white schools, should be considered to determine whether a public institution violated the Fourteenth Amendment.<sup>157</sup>

Whereas the decision in *Brown* responded to legislation-based, *de jure* segregation, the precedent established in a later case, *Washington v. Davis*, promulgated a rule for addressing *de facto* segregation. There, the Supreme Court upheld a police department's use of a written test as part of its recruitment procedure despite the discriminatory impact it had on African-American applicants.<sup>158</sup> In contrast to the majority in *Brown* that stressed the "effects" approach to analyzing equal protection claims, the Court in *Davis* held that a showing of discriminatory purpose is required to successfully challenge a practice on equal protection grounds.<sup>159</sup> As a result, *Davis* limits recourse under the Fourteenth Amendment to instances where discriminatory purpose, not just disparate impact, can be demonstrated.<sup>160</sup>

This results in a paradigm in which it is lawful to create conditions of *de facto* segregation as long as there is no discriminatory purpose or intent driving this creation.<sup>161</sup> Arguably, segregated schools exemplify *de facto* segregation when school zones are drawn along neighborhood lines because the schools are a result of residential patterns,<sup>162</sup> not a result of purposefully discriminatory state or Department of Education action. Per the majority in *Davis*, mere existence of predominantly black and predominantly white schools, however segregated *de facto*, is not sufficient to establish an Equal Protection violation.<sup>163</sup> Therefore, if courts and advocates strictly follow *Davis*, state actors would violate the Equal Protection clause in

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157. *See id.* at 493–94 (noting that attending separate facilities instills an inferiority complex in African-American students that challenges their ability to learn).

158. *See Washington v. Davis*, 426 U.S. 229, 232 (1976).

159. *See id.* at 239–40.

160. *See id.* It is relevant that, in his concurrence, Justice Stevens noted that the distinction between "purpose" and "effect" is insignificant when disparate impact is "dramatic." *See id.* at 254 (Stevens, J., concurring). This rationale is consistent with the alternative precedent discussed in the section to follow.

161. *See Keyes v. Sch. Dist. No. 1*, 413 U.S. 189, 208 (1973); *see also Davis*, 426 U.S. at 242 ("Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution. Standing alone, it does not trigger the rule . . . that racial classifications are to be subjected to the strictest scrutiny and are justifiable only by the weightiest of considerations." (internal citations omitted)).

162. *See Guide to Understanding NYC Schools*, *supra* note 48.

163. *See Davis*, 426 U.S. at 240; *see also Keyes*, 413 U.S. at 240 (noting that the existence of black and white schools is not dispositive of unconstitutionality).

the realm of school segregation only if the districts are drawn with an intent to discriminate.<sup>164</sup>

### B. Alternative Precedent

The majority holding of *Davis* seems to shut the door on combating *de facto* school segregation without meeting the higher bar of intent. However, other precedents offer substantial room to demonstrate and advocate for the unconstitutionality of a discriminatory purpose similar to the kind seen in the segregation of the New York City public school system.

In *Arlington Heights v. Metropolitan Housing Development Corp.*,<sup>165</sup> the plaintiffs challenged a village's denial of a rezoning proposal that aimed to rezone the village for the purpose of constructing a low-income housing project, on the grounds that the village was racially motivated in denying the proposal.<sup>166</sup> The Supreme Court noted that discriminatory purpose need not be explicit to strike down a policy; rather, purpose may be demonstrated in a number of different ways.<sup>167</sup> Factors that may be considered to determine whether such purpose is demonstrated include the extent to which the impact of the law is so clearly discriminatory as to allow no explanation other than that it was adopted for impermissible purposes, the history and/or circumstances surrounding the government's action, and the legislative and administrative history of the law.<sup>168</sup> The presence of these factors may yield a finding of discriminatory purpose, even if such discrimination is not the motivating factor of the action.<sup>169</sup> Ultimately, the Court upheld the lower court's holding that, absent the use of discrimination as a "motivating factor," the "discriminatory 'ultimate effect' is without independent constitutional significance."<sup>170</sup> However, the Court's analysis leaves open the possibility that discriminatory policies may be unconstitutional even without an explicit finding of discriminatory purpose.

Second, without eliminating purpose as a foundational element of a *prima facie* case for discrimination under the Fourteenth

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164. *See Davis*, 426 U.S. at 240.

165. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977).

166. *See id.* at 254.

167. *See id.* at 266–68.

168. *See id.*

169. *See id.*

170. *Id.* at 270–71.

Amendment, cases such as *Swann v. Charlotte-Mecklenburg Board of Education*<sup>171</sup> and *Keyes v. School District*<sup>172</sup> suggest that the scope of judicial review is not limited to narrow showings of purpose. In *Swann*, the Supreme Court held that state mandated segregation can be remedied through the use of racial quotas, the elimination of single-race schools, rezoning and the use of transportation facilities.<sup>173</sup> Although the Court noted that without a constitutional violation there is no authority for courts to order rezoning to achieve racial balance within a school, it also urged that, in a system that has been “maintained to enforce racial segregation,” burdensome and “inconvenient” remedies for such segregation may be warranted.<sup>174</sup> This suggests that perpetuating an existing segregating system is in violation of the Fourteenth Amendment, even if the intent of the policy in place was not to establish a segregated system.

In *Keyes*, plaintiffs alleged that the school board in Denver, Colorado “maintained racially or ethnically (or both[ ]) segregated schools throughout the district” through its use of zoning practices and neighborhood school policies.<sup>175</sup> In remanding the question of whether the district’s zoning practices constituted an equal protection violation, the Supreme Court noted that, when a purposefully discriminatory practice is conducted in one part of a school system, the school board bears the burden of proving that its actions pertaining to other parts of the school system were not also motivated by discriminatory intent.<sup>176</sup> This burden may include showing that a variety of factors, such as student-attendance zones, school site location, and assignment of faculty and staff, “were not taken in effectuation of a policy to create or maintain segregation in the core city schools, or, if unsuccessful in that effort, were not a factor in causing the existing condition of segregation in this schools.”<sup>177</sup> Although this remand still required a showing of discriminatory purpose, the Court’s opinion suggests that intent may be a “factor” in the school board’s decisions and that the school board’s actions need not “create” segregation, but may merely “maintain” existing segregation in order to constitute a violation.<sup>178</sup> Thus, the purpose

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171. *See* 402 U.S. 1 (1971).

172. *See* 413 U.S. 189 (1973).

173. *See* 402 U.S. at 22–32.

174. *See id.* at 28.

175. *Keyes*, 413 U.S. at 191.

176. *See id.* at 209.

177. *Id.* at 213–14.

178. *See id.* at 212.

requirement as later required by *Davis* arguably does not mandate direct, explicit proof of purpose — actionable segregation may be challenged based on a showing that practices are maintaining segregation. Further, the Court held that in a system with a history of segregation, a showing of a “white” or “Negro” school via evidence of “the racial composition of teachers and staff, the quality of school buildings and equipment, or the organization of sports activities can demonstrate a prima facie case of violation of substantive constitutional rights under the Equal Protection Clause is shown.”<sup>179</sup>

Finally, in *Wright v. Council of Emporia*, the Supreme Court established that while discriminatory purpose “may add to the discriminatory effect of an action,” it is near impossible and even “fruitless” to determine the primary “motivation” behind a policy, and therefore “the existence of a permissible purpose cannot sustain an action that has an impermissible effect.”<sup>180</sup> The Court used this rationale to strike down the establishment of a new school district because, contrary to desegregation efforts, the new district would ensure that schools maintained a high concentration of black students separate from schools with a high concentration of white students.<sup>181</sup>

Taken together, these precedents illustrate the way in which the Court is amenable to the use of discriminatory effect as a leading factor in determining whether or not a practice or policy is unconstitutionally discriminatory. These holdings support a plausible argument that racial and socioeconomic segregation in New York City public schools is unconstitutional. Even without a clear showing of discriminatory purpose, these cases may aid adjudicative bodies in using the discriminatory effects to impact zoning and district drawing practices in communities throughout New York City, to find that, intentional or not, these practices are unsound on equal protection grounds.

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179. *Id.* at 209.

180. *Wright v. Council of Emporia*, 407 U.S. 451, 462 (1972). Although this case was decided before *Davis*, it was not overruled. *See id.* In fact, in *Arlington Heights*, the Supreme Court noted *Wright* as a case that seemingly stood in contrast to the proposition held in *Davis*, which the Court ultimately upheld in *Arlington Heights*. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977).

181. *See Wright*, 407 U.S. at 451. “If Emporia had established its own system, and if total enrollment had remained the same, the city’s schools would have been 48% white and 52% Negro, while the county’s schools would have been 28% white and 72% Negro.” *Id.* at 464.

### C. The Use of Racial Classifications in Rezoning

Even if zoning practices were found unconstitutional under the *Davis* standard, *Parents Involved in Community Schools v. Seattle School District*<sup>182</sup> would likely serve as another obstacle for school integrationists. There, the Supreme Court struck down a school district's consideration of race in admissions for the sake of correcting the school segregation problem that resulted from "racially identifiable housing patterns[.]"<sup>183</sup> Although the Court acknowledged the state's compelling interest in achieving racial diversity, it upheld the appellate court's ruling that the district's policy was not narrowly tailored to furthering to this interest.<sup>184</sup> Again, the Court used the distinction between *de jure* and *de facto* segregation to discount the legality of mandated racial balancing.<sup>185</sup> The Court did not speak to the use of socioeconomic status as a factor in taking steps to better balance student body demographics; however, the fact that race, a suspect classification, is not a permissible factor suggest that the use of socioeconomic status, which is not a suspect classification, would not be allowed.<sup>186</sup>

However, this precedent does not entirely foreclose integrating schools based on race and, relatedly, socioeconomic status. The Court in *Parents Involved* did hold that "remedying the effects of past intentional discrimination" is a sufficiently compelling interest to warrant strict scrutiny over a school system practice.<sup>187</sup> To withstand strict scrutiny review, a law or practice must be necessary to achieve a

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182. See 551 U.S. 701 (2007).

183. *Id.* at 712; *cf.* *Grutter v. Bollinger*, 539 U.S. 306, 325 (2003) (holding that there is a sufficiently compelling interest in achieving student body diversity to justify the use of race in the University of Michigan Law School's admissions). In *Grutter*, the Court found a school's admissions policy narrowly tailored to the state's interest because race was only one of a series of factors used to ensure student body diversity rather than "simply an effort to achieve racial balance." See *Parents Involved*, 551 U.S. at 723 (citing *Grutter*, 539 U.S. at 308). Compare the *Grutter* decision with the Office of District Planning's District 3 rezoning plan, which included diversity amongst other factors used to establish new zoning lines such as "new residential construction," "geographic barriers," and "travel distance." See *supra* note 138.

184. See *Parents Involved*, 551 U.S. at 726.

185. See *id.* at 736 (noting the difference between state mandated segregation and "racial imbalance caused by other factors"). In the absence of historical state segregation, the Court found the use of racial classifications unconstitutional. See *id.* at 737.

186. See, e.g., *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 2 (1973); *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938).

187. See *Parents Involved*, 551 U.S. at 720–21.

compelling government interest.<sup>188</sup> Without satisfying this review standard, the challenged law in question will not be upheld under equal protection law. In *Parents Involved*, the Court held in part that practices aiming to fix the negative consequences of previous intentional discrimination satisfied a strict scrutiny review standard.<sup>189</sup> Therefore, if historical intentional discrimination were proven in the New York City school system, perhaps racial classifications could be justified as a tool for integrating schools.

#### D. An Analogy to Racial Gerrymandering

Racial gerrymandering is similar to school districting practices in several regards. First, and most obviously, both gerrymandering and districting require actual line drawing — the creation of boundaries by grouping areas together for the purpose of establishing particular voting and school districts. Second, in both instances, it is unclear whether the lines are drawn without considering the demographics within districts, or drawn in order to encompass certain populations. Third, as both gerrymandering and districting are inherently geographic because they include establishing boundaries between neighborhoods and carving out separate districts within a municipality, alleged injustices are easily, but falsely, explained by residential patterns. Finally, both gerrymandering and school districting have significant long-term consequences and impact the quality of life for those affected by the practices. In the gerrymandering context, the way in which a district votes in elections is largely determined by the way in which the lines are drawn: for instance, they may be drawn in a manner that excludes a particular group, that concentrates the majority of a particular group in one district, or that highly diversifies the composition of a district, which inevitably shapes the voting process. In regard to school districting, lines often determine the extent to which a school will be diversified and thus have a tremendous impact on students, families, and quality of education.

There is, however, a crucial difference between gerrymandering and school districting. Unlike school districting, gerrymandering is governed by a statute that prohibits the implementation of any practice that would have the effect of discriminating against particular groups. The statute aims to curb what otherwise may result in *de facto* segregation. The Voting Act of 1965 (Voting Act) states:

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188. See, e.g., *Carolene Prods. Co.*, 304 U.S. at 152 n.4.

189. See 551 U.S. at 722.



[N]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in [the rest of the section].<sup>190</sup>

As further provided by the Voting Act, a “totality of the circumstances” standard should be used to decide whether a practice limits the participation of a protected group.<sup>191</sup> In contrast to the discriminatory intent requirement, the application of this amendment removes from plaintiffs the burden of proving that the challenged voting practice was intentionally discriminatory, and allows them to bring claims based on the impact they experienced as a result of these practices.<sup>192</sup>

Although existing precedent limits the success of equal protection claims in the racial gerrymandering context in much the same way it does in the school segregation context, there is case law to suggest that showing discriminatory intent is not an absolute mandate.

Importantly, there are multiple equal protection decisions holding that when redistricting in such a “bizarre” way such that it is “unexplainable on grounds other than race,” the practice should be analyzed under a strict scrutiny standard.<sup>193</sup> In *Shaw v. Reno*, the Court suggested that this rule applied, and a practice may be “presumptively invalid” even without a clear “purported motivation” or “explicit racial distinction.”<sup>194</sup> Notably, the Court in *Shaw* barely mentions *Davis*. Rather, the Court relies on the alternative precedent laid out in Section II.B.<sup>195</sup> Perhaps the Court’s use of these cases in *Shaw* is an attempt to align itself with more impact-driven equal

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190. 52 U.S.C. § 10301 (2014). It is noteworthy that much of the Voting Act’s strength was diminished with the Supreme Court’s holding in *Shelby County v. Holder*, which rejected the Voting Act’s coverage formula, effectively invalidating Section 5 of the Voting Act. See 570 U.S. 529, 557 (2013). The Court specifically stated, however, that its decision did nothing to reduce the protections against racialized voter discrimination conferred in Section 2 of the Voting Act. See *id.*

191. See 52 U.S.C. § 10301 (2014); see generally *Gingles v. Thornberg*, 478 U.S. 30 (1986).

192. See Daniel D. Polsby & Robert D. Popper, *Ugly: An Inquiry into the Problem of Racial Gerrymandering Under the Voting Rights Act*, 92 MICH. L. REV. 652, 661 (1993).

193. See *Shaw v. Reno*, 509 U.S. 630, 644 (1993).

194. See *id.* at 643 (quoting *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) and *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977)).

195. *Arlington Heights*, 429 U.S. at 266; *Yick Wo v. Hopkins*, 118 U.S. 356, 368 (1886). But see *Washington v. Davis*, 426 U.S. 229, 242 (1976).

protection precedent rather than the intent-driven cases that fuel the Court's general treatment of equal protection cases.

The analogy of gerrymandering and school segregation is helpful for two reasons. First, gerrymandering jurisprudence illustrates that issues of discriminatory impact caused by "line-drawing" may and should be remedied through effects-based jurisprudence. Although *Davis* applies, here — as in the school segregation context — exists authoritative precedent that minimizes the absoluteness of the purpose requirement and suggests an alternative approach that is more focused on the impact of discriminatory practices.

Second, it offers a statutory solution to a problem that is not easily ameliorated through case law. The Voting Act serves as a circumvention around the holding of *Davis* because it allows plaintiffs to challenge practices even without a clear showing of discriminatory purpose. Although the practices being challenged in voting rights cases are different from that which was challenged in *Davis*, the ultimate inquiry — the extent to which there is a clear finding of intentional discrimination — is at play in both instances.<sup>196</sup> It is worth considering whether a similar legislative mechanism would be helpful in challenging school districting practices that, albeit not intentionally discriminatory, have a discriminatory impact on students and families in the New York City public school system.

### III. CONSTITUTIONAL SOLUTIONS, STATUTORY FIXES, AND INCENTIVIZING SOCIOECONOMIC INTEGRATION

It is clear that school segregation in New York City is widespread and requires remedy. Despite the difficulties of implementing a solution, this Note explores three potential outcomes. First, this Note explores and evaluates the use of the Equal Protection Clause to mandate school zone integration under the frameworks established in *Arlington*, *Swann*, *Keyes*, and *Wright*. Second, this Note proposes the implementation of a statute that would provide grounds to challenge a school districting practice without requiring a clear showing of discriminatory intent. Third, in the likely case that New York City's zoning practices do not violate the Equal Protection clause, this Note proposes that the federal and state governments better incentivize districts to adopt socioeconomic integration policies.

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196. Compare *Davis*, 426 U.S. at 239, with *Shaw*, 509 U.S. at 660 n.1.

### A. Equal Protection Clause Argument

The first step in establishing a violation of the Equal Protection clause is determining that the zoning practices make an impermissible or unconstitutional classification.<sup>197</sup> In the case of New York City, the zoning practices arguably classify students by socioeconomic status and race, thus marginalizing poor and racial minority students. The second step is to demonstrate whether the practices in question are either facially neutral with a discriminatory impact, or facially discriminatory.<sup>198</sup> In the present situation, the zoning practices are neutral on their face; they do not mandate that poor and minority students attend a different school than affluent and white students.<sup>199</sup> Rather, the practices are neutrally applied throughout the City and yield discriminatory effects on poor and minority students.<sup>200</sup>

When discriminatory impact is clear, the third step of the equal protection analysis is for plaintiffs to prove that the zoning practices are purposefully discriminatory.<sup>201</sup> This is the point of failure for an equal protection challenge against New York City, because even in consideration of alternative legal precedent, it is highly unlikely that requisite purpose can be established in the case of New York City's zoning practices. This is a problem because, as previously shown, New York City school zoning practices are facially neutral but have a discriminatory impact.<sup>202</sup> Therefore, it is impossible to demonstrate a discriminatory intent in this instance.

The rule established in *Wright* — that a non-discriminatory purpose does not preclude an equal protection violation when there is strong evidence of disparate discriminatory impact — is only applicable to cases where a zoning practice directly interferes with a federal anti-segregation policy.<sup>203</sup> The absence of such conflict in the case of New York City public schools likely prevents this rule being used to strike down New York City's zoning practices on constitutional grounds.

By contrast, *Keyes* could be solid ground for challenging New York City's zoning practices. In that case, the Court noted that racial composition and disparity in school quality may establish a prima

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197. See, e.g., *Davis*, 426 U.S. at 242; *Palmer v. Thompson*, 403 U.S. 217, 266–67 (1971); *Griffin v. Cty. Sch. Bd.*, 377 U.S. 218, 231–32 (1964); *Brown*, 347 U.S. at 483.

198. See, e.g., *Yick Wo*, 118 U.S. at 368; *Davis*, 426 U.S. at 242.

199. See *Yick Wo*, 118 U.S. at 368.

200. See *supra* Sections I.B. & I.C.

201. See *Davis*, 426 U.S. at 238.

202. See *supra* Section I.B.

203. See 407 U.S. 451, 459–60 (1972). See *Davis*, 426 U.S. at 243–44.

facie equal protection violation.<sup>204</sup> The segregated racial and socioeconomic makeup in many New York City schools is well established.<sup>205</sup> Further, as discussed in Section I.C, there is a wide achievement gap between highly segregated and more diverse schools.<sup>206</sup> Therefore, if discriminatory purpose were proven in some part of the New York City public education system, it is likely that many other zones would also be struck down as discriminatory. However, this analysis still requires a showing of purpose somewhere else in the system.<sup>207</sup> Given the difficulty of establishing discriminatory purpose anywhere within the New York City public school system, it is unlikely that a plaintiff would be able to demonstrate an Equal Protection Clause violation.

An equal protection challenge to New York City's zoning practices likely fails under the *Arlington Heights* analysis as well. The United States' extensive history of discrimination and segregation in education lends support to the view that the government is acting purposely in drawing zones along racial and socioeconomic lines.<sup>208</sup> However, it is highly unlikely that a Court would find that school segregation is caused solely by zoning practices. To the contrary, it is clear that the geographic nature of school zone lines and highly segregated residential patterns are partially responsible for segregated schools, even in consideration of the inverse relationship suggesting that residential segregation causes school segregation.<sup>209</sup>

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204. See *Keyes v. Sch. Dist. No. 1*, 413 U.S. 189, 209 (1973).

205. See *supra* Sections I.B. & I.C.

206. See *supra* Section I.C.; Gail Robinson, *Class in the Classroom: The Income Gap and NYC's Schools*, CITY LIMITS (Sept. 25, 2013), <https://citylimits.org/2013/09/25/class-in-the-classroom-the-income-gap-and-nycs-schools/> [<https://perma.cc/T8AY-7JEU>].

207. See *Davis*, 426 U.S. at 243–44. But see *Milliken v. Bradley*, 418 U.S. 717, 745 (1974) (holding that the Court lacked the authority to mandate desegregation in the Detroit metro area despite a finding of purposeful discrimination in the City of Detroit).

208. See, e.g., *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954); *Plessy v. Ferguson*, 163 U.S. 537 (1896). Although, as of 1868, black men were considered full citizens under the Fourteenth Amendment, “over the next 20 years, blacks would lose almost all they had gained.” *Id.* In 1890, the Court held in *Plessy v. Ferguson* that maintaining separate but equal institutions for black and white people was constitutional. See generally *Plessy v. Ferguson*, 613 U.S. 537 (1890). Following that decision, Jim Crow laws strengthened segregation of black and white Americans in various spheres including prisons, orphanages, and hospitals. See *A Brief History of Jim Crow*, CONST. RTS. FOUND., <http://www.crf-usa.org/black-history-month/a-brief-history-of-jim-crow> [<https://perma.cc/9LDX-8NCD>]. The Court eventually overturned *Plessy* in *Brown v. Board of Education*. See *supra* Section II.A.

209. See *supra* Section I.D.

Despite this, the *Arlington Heights* analysis probably does not support an equal protection challenge.<sup>210</sup>

*Swann* is similarly unhelpful here. Although *Swann* provides authority for remediating the negative impacts of discriminatory policies and requires that a closer look be given to policies that perpetuate existing segregation, the Court noted that the use of such methods is not warranted absent an initial constitutional violation.<sup>211</sup> *Swann*, therefore, does not allow for court-mandated integration.

All of these alternative avenues for challenging New York City's public-school system's zoning practices under the Equal Protection Clause require a showing of discriminatory purpose, and it is unlikely that a plaintiff could demonstrate a sufficient showing to bring a cognizable claim. Therefore, an equal protection claim will likely be an unsuccessful means of challenging school zoning practices.

It is worth noting that, if some iteration of the purpose requirement were satisfied, then the fourth step of the equal protection analysis would be to determine the appropriate standard of review for the classified group.<sup>212</sup> Here, racial classifications receive strict scrutiny and thus require the challenged action to be necessary to achieve a compelling government purpose.<sup>213</sup> Socioeconomic status classifications, on the other hand, receive rational basis review and thus only require that the action be rationally related to a legitimate government purpose.<sup>214</sup> Education is also not considered a fundamental right, so deprivation of proper education does not warrant strict scrutiny.<sup>215</sup> Therefore, unless a court determined that the classification was drawn on racial lines, the equal protection claim would likely only receive rational basis review.

The final step of the equal protection claim is to determine whether the actor's purpose is appropriately related, per the standard of

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210. *See supra* Section II.B.

211. *See Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 28 (1971) ("Absent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis. All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes.").

212. *See, e.g., United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938).

213. *See id.*

214. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 2 (1973) ("[T]he resulting class cannot be said to be suspect.").

215. *See id.* ("Though education is one of the most important services performed by the State, it is not within the limited category of rights recognized by this Court as guaranteed by the Constitution.").

review, to the challenged policy.<sup>216</sup> While it is impossible to clearly identify the government's singular purpose in drawing zoning lines, it may be that the current method is simply the most convenient way to divide districts. Alternatively, the government may simply maintain a purpose in protecting local authority, uninterrupted by federal interference, in handling education matters.<sup>217</sup> In any case, if the government is able to show that the zoning practice is rationally related to a legitimate government purpose, it will survive rational basis review and withstand an Equal Protection Clause.

### B. Implementing a Statutory Remedy

New York State or New York City may consider passing a statute that would prohibit the use of any districting practices that have the *effect* of maintaining an improper distribution of affluent, white, and poor, black and Latino students throughout New York City public schools. This statute could provide a cause of action for students and families who are unable to prove that districts were drawn with a discriminatory intent, but clearly suffer from the practice's impact. A statute of this nature is justified by the rationale behind cases like *Arlington Heights*, *Swann*, and *Keyes*, which recognize the harmful, long-term impact of discriminatory practices and arguably prohibit discrimination despite the absence of discriminatory intent.<sup>218</sup> However, a legislative remedy of this type is likely irreconcilable with *Parents Involved*, which held that, although there is compelling interest to desegregate schools, a district cannot use a districting plan involving racial classifications unless in an attempt to counter previous *de jure* segregation.<sup>219</sup> Therefore, without being able to prove that New York City intentionally zoned its school to segregate students based on race, a new zoning law that considered race, even for the sake of diversifying districts, would likely be unconstitutional under *Parents Involved*.

### C. Incentivizing Socioeconomic Integration

Although *Parents Involved* limits the use of race when making decisions about school districting, case law does not prohibit the use

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216. See, e.g., *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 702 (2007); *Rodriguez*, 411 U.S. at 51.

217. See *Milliken v. Bradley*, 418 U.S. 717, 743–44 (1974) (emphasizing the importance of judicial restraint in maintaining local autonomy of school districts).

218. See *supra* Section II.B.

219. See *supra* Section II.C.

of race amongst other factors in creating potentially more equitable school districting practices. Schools should focus on socioeconomic integration, which would in turn allow for greater racial integration as well. For example, the Diversity in Admissions pilot, as introduced by the Department of Education's School Diversity Advisory Group, seems like a step in the right direction. Under this program, schools may direct admissions efforts toward low-income and minority students evident by their status as multi-lingual learners, temporary housing residents, or reduced-price lunch receivers.<sup>220</sup> Programs like this are helpful in potentially exposing poor black and Latino students to more wealthy and white classrooms.

In the probable case that there are no constitutional grounds to force the Office of District Planning to integrate school zones, and that a statutory solution is not feasible, the federal, state and city governments should incentivize the Department of Education and school districts to implement pro-integration policies — particularly programs encouraging socioeconomic integration.

To accomplish this, existing schools should be given support to implement curriculums that attract more affluent students and families. An example of this is New York State's Socioeconomic Integration Pilot Program (SIPP), which provides low-income schools with \$1.25 million in grants if they institute programs in areas such as STEM, the Arts, or language education with the intention of appealing to more affluent students.<sup>221</sup> This solution is not suggesting that the districts implement broad school choice programs by which parents can choose to send their kids to any school throughout New York City. Rather, this solution aims to make existing schools more attractive to more affluent, likely white families so that they will settle in neighborhoods and send their children to local, otherwise less desirable schools. This will give poorer, minority students the benefit of a higher quality education and a more diverse student body. In

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220. See SCH. DIVERSITY ADVISORY GRP., MAKING THE GRADE: THE PATH TO REAL INTEGRATION AND EQUITY FOR NYC PUBLIC SCHOOL STUDENTS 47 (Feb. 2019),

[https://docs.wixstatic.com/ugd/1c478c\\_4de7a85cae884c53a8d48750e0858172.pdf](https://docs.wixstatic.com/ugd/1c478c_4de7a85cae884c53a8d48750e0858172.pdf) [<https://perma.cc/5HB3-2RSK>]. There are currently eighty-seven schools participating in the Diversity in Admissions pilot, including all of the elementary schools in District 1. See *id.*

221. See Press Release, N.Y. State Educ. Dep't, NYS Schools to Receive Grants to Promote Socioeconomic Integration (Dec. 30, 2014), <http://www.nysed.gov/news/2015/nys-schools-receive-grants-promote-socioeconomic-integration> [<https://perma.cc/A46M-YF9V>].

addition, programs like this maintain parents' autonomy in making decisions about their children's education.<sup>222</sup>

Programs favoring socioeconomic integration are a better alternative than other methods of decreasing academic inequality.<sup>223</sup> Although it is well-established that material resources significantly impact student achievement, merely increasing spending in low-performing schools *without* implementing a solution aimed at facilitating integration would be an insufficient remedy.<sup>224</sup> From a cost-benefit perspective, the benefits of socioeconomic integration outweigh the costs of implementing other integration programs.<sup>225</sup> In fact, socioeconomic integration programs offer one of the greatest returns on investment of all types of education intervention programs.<sup>226</sup>

Although the solution appears to lie in facilitating changes to residential patterns — such that families of different backgrounds and means disperse themselves more evenly — may seem to be the solution, this may not actually be the case; research indicates that the school a child attends has a greater influence on student achievement than the neighborhood in which he or she lives.<sup>227</sup> Further, in response to the argument that increasing affordable housing options in white, wealthy neighborhoods will not do the job, as evidenced by examples such as the Upper West Side, where affordable housing does exist amongst a wealthy New York City neighborhood, up until recently the affordable housing communities were zoned out of the primarily white and wealthy zone within the district.<sup>228</sup> Therefore, changing the demographics of schools through socioeconomic

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222. See Kahlenberg, *supra* note 96, at 11 (“Choice gives parents a feeling of ‘ownership.’”).

223. See *id.* at 6.

224. See *id.* (“[I]ntegration can produce far better achievement gains than pouring extra funds into high-poverty schools.”).

225. See *id.* The Montgomery Study analyzed the costs and benefits of reducing socioeconomic segregation by one-half nationally. *Id.* It concluded that the public benefit of the integration programs it considered was \$20,000 per student, “far exceeding the cost of \$6,340 per student.” *Id.* The study also notes that this return is greater than the return achieved through “almost all other investments in education, including private school vouchers, reduced class size, and improvements in teacher quality.” *Id.*

226. See *id.* (noting that the only intervention program with a greater return on investment is early childhood education).

227. *Id.*

228. See Michelle Chen, *New York's Separate But Unequal Schools*, NATION (Feb. 20, 2018), <https://www.thenation.com/article/new-yorks-separate-and-unequal-schools/> [https://perma.cc/3E7J-T999]; see *supra* Introduction.



integration policies is preferable to merely encouraging families to move to different neighborhoods with wealthier and whiter schools.

### CONCLUSION

New York City Public Schools are racially and socioeconomically segregated.<sup>229</sup> Of the approximately 1.1 million students in the New York City Public School system, almost 70% are black and Latino and only 15% are white.<sup>230</sup> It seems that white students and students of color are not equally distributed throughout the City's schools.<sup>231</sup> Instead, white students go to school with other white students, while black and Latino students go to school with other students of color.<sup>232</sup> Further, because white students generally come from wealthier families whereas black and Latino students are usually of a lower socioeconomic status, these schools are segregated based not only on race, but also socioeconomic status.<sup>233</sup> School segregation has a detrimental impact on student achievement.<sup>234</sup> Data shows that children who go to school with white, wealthy students outperform those who go to primarily minority and low-income schools.<sup>235</sup> This problem transcends students' individual race,<sup>236</sup> and it does not matter whether a student is white, black, Asian, or Latino — studies indicate that they will perform better in a school with primarily white, wealthier students than if they went to school with mostly poor, black and Latino students.<sup>237</sup>

School segregation is product of the way in which school zones coincide with residential patterns.<sup>238</sup> Neighborhoods are highly segregated by income and race, and because school zones are drawn geographically they often include only neighborhoods of similar socioeconomic and racial makeup.<sup>239</sup> This causes students to attend schools lacking in diversity.<sup>240</sup> However, residential patterns are probably not solely responsible for school segregation, because data

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229. *See supra* Section I.B.

230. *See supra* Section I.B.

231. *See supra* Section I.B.

232. *See supra* Section I.B.

233. *See supra* Section I.C.

234. *See supra* Section I.C.

235. *See supra* Section I.C.

236. *See supra* Section I.C.

237. *See supra* Section I.C.

238. *See supra* Section I.D.

239. *See supra* Section I.D.

240. *See supra* Section I.D.

indicates those neighborhoods are more diverse than their schools represent.<sup>241</sup> Still, the notion that segregated schools are a product of residential segregation, rather than intentional discrimination by New York City or the Department of Education, makes it difficult to challenge district lines that yield segregated schools.

Constitutionally mandated integration is limited to instances in which zoning lines are drawn with the purpose of discriminating against a class of students.<sup>242</sup> *Davis* urges that without a showing of purpose, there are little constitutional grounds to challenge New York City's zoning practices.<sup>243</sup> There is a series of precedents including *Arlington Heights*, *Swann*, *Keyes*, and *Wright*, which, without eliminating the purpose requirement established in *Davis*, arguably provide a broader measure by which purpose can be analyzed, such that these cases may allow a finding of purpose without showing explicit discriminatory intent in drawing school districts.<sup>244</sup> However, if, under any of these cases, New York City's school districts were to be found unconstitutionally discriminatory, the City could not rely heavily on racial considerations when redistricting because of *Parents Involved*, which held that a school admissions process that made decisions based on race, albeit in an attempt to correct past discrimination and segregation, was unconstitutional.<sup>245</sup> Therefore, case law provides little to no recourse regarding fixing the problem of segregation in New York City schools.

Still, race can be among other considerations when designing programs and processes to improve the City's segregation problem.<sup>246</sup> Therefore, the government should incentivize socioeconomic integration programs that would, in effect, yield racial integration.<sup>247</sup> In particular, programs that increase admissions of low-income students, as indicated by their temporary housing and reduced-price lunch status, may allow for the better distribution of these students in white, wealthy schools.<sup>248</sup> This aligns with the ultimate benefits of school segregation. As studies show that both poor, black and Latino students and wealthy, white students achieve better academic results

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241. *See supra* Section I.D.

242. *See supra* Section II.A.

243. *See supra* Section II.A. & Section III.A.

244. *See supra* Section II.B.

245. *See supra* Section II.C.

246. *See supra* Section III.C.

247. *See supra* Section III.C.

248. *See supra* Section III.C.

when they are in diverse classrooms, integrating schools via socioeconomic integration programs would expose both sets of students to each other, fostering an environment conducive to academic success and, importantly, encouraging of racial and socioeconomic justice.