

Our Immense Achievement Gap

*Embracing Proven Remedies While Avoiding
a Race-Based Recipe for Disaster*



Katherine Kersten

Center of the American Experiment is a nonpartisan, tax-exempt, public policy and educational institution that brings conservative and free market ideas to bear on the hardest problems facing Minnesota and the nation.

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THE REPORT AT A GLANCE

Minnesotans have always taken pride in our public schools. But today, an education train wreck looms just around the corner.

The coming crisis is two-fold:

FIRST: Our state’s racial and ethnic academic achievement gap is among the worst in the nation. But as a demographic sea change transforms Minnesota, this tragic gap is becoming a crisis.

In fourth grade reading, Minnesota’s black and Hispanic students are essentially three years behind their white peers. **In recent years, our state has had the widest gap of this kind of any state in the country.**

The story is even worse at higher grades. On 2011 state assessments, 55 percent of Minnesota’s white 11th grade students were proficient in math, while only 16 percent of black students and 22 percent of Hispanic students scored proficient.

Minnesota’s minority population—many of whom are low-income—is growing rapidly. The demographic shift is most apparent in suburban schools. In 1995, minority students comprised 8 percent of suburban enrollment. Today, they are 37 percent and 22 percent in inner-ring and outer-ring suburban schools, respectively, and 26 percent statewide. **In 20 years, it’s projected that almost 50 percent of Hennepin and Ramsey County**

residents will be members of minority groups.

The learning gap is caused by socioeconomic or family risk factors that leave many students lacking in the knowledge and skills they need for academic success. **Children who start behind their peers are in urgent need of educational reforms that will equip them to read, write and do math.** These include an intense focus on fundamentals, targeted intervention, and a school climate of discipline and high expectations.

Today, however, **the Minnesota Department of Education and three influential education policy organizations are promoting learning gap-related plans that would focus—not on vital reforms in the classroom—but on making “racially balanced schools” (misabeled “integration”) the centerpiece of our efforts to reduce the gap.**

The hope that racially balanced schools would improve minority achievement was tested across America in a massive and hugely expensive social science experiment between 1970 and the mid-1990s. It failed to boost minority achievement virtually everywhere it was tried. **A return to a policy of this kind—which insists on viewing children through the lens of race—would cost millions of dollars, fragment our communities, and do nothing to help children in urgent need of academic support.**



SECOND: *The four learning-gap related plans proposed by the MDE and other state-funded education players will not only inevitably fail to improve children’s learning. They will create catastrophic consequences of another kind—placing the State of Minnesota in legal peril. Below the radar screen, they will set up Minnesota for liabilities of a kind that have brought financial disaster to other states.*

The plans include provisions that would pave the way for a plaintiff victory in an “education adequacy” lawsuit against the State of Minnesota. Two prominent attorneys have already raised the threat of such a suit against the State.

In an education adequacy lawsuit, plaintiffs will portray the learning gap as evidence that Minnesota is failing to offer the state’s children a constitutionally mandated “adequate” education. **As a remedy, they will likely seek: 1) billions of dollars in additional K-12 funding and 2) a metro-wide, race-based busing plan—and insist these are necessary to “close the gap.”**

Education adequacy lawsuits can entangle courts and schools for decades. They cost staggering sums in taxpayer dollars, but **have failed to improve minority children’s academic performance** or to reduce the achievement gap in every state where plaintiffs have prevailed.

After plaintiffs won an adequacy suit in Colorado in December 2011, the state’s Democratic governor warned that their demand for an annual increase of up to \$4 billion in K-12 education spending—and up to \$17 billion for school construction—could “bankrupt” the state or require a 50 percent tax increase.

In Hartford, Connecticut, a court-ordered, metro-wide busing scheme of the kind Minnesota plaintiffs are likely to seek has produced a costly and divisive educational nightmare. Paradoxically, the Hartford school system—the suit’s intended beneficiary—is now aggressively working against the court’s racial balance plan.

Minnesota’s continued democratic vitality and economic health will depend in large measure on our ability to put in place education reforms that will help poor, minority children boost their performance in school.

Misguided plans that rely on racial balance to achieve this vital goal are doomed to fail, will make a bad situation worse, and threaten to bankrupt the State of Minnesota. We must reject these plans and devote our energy and resources to providing all children with an education that works.

FOREWORD

Whenever I'm asked about American Experiment's most important contributions over the last 22 years I invariably feature a multi-faceted Kathy Kersten project in the mid-1990s which saved Minnesota from a school busing plan which would have been massively expensive and equally unpopular in almost all quarters. Making matters worse, it would have significantly increased the likelihood of judicial intervention in a wide range of K-12 activities despite advocates' claims the initiative would result in the exact opposite reaction. Yet ironically and perversely so, the plan also would have done very little if anything in accomplishing its main stated goal of reducing immense achievement gaps between and among different groups of Minnesota students.

While I'm keenly *not* pleased to report that a number of groups and coalitions in town are again pushing similarly ineffective and counterproductive busing ideas in the Twin Cities, I *am* enormously grateful to report that Kathy—an American Experiment Senior Fellow and one of the Center's founders with me—once more has refuted such proposals in another minutely detailed and brilliant study.

It's no overstatement to note that Kathy Kersten is one of the few public players in Minnesota to challenge, energetically and with scholarly precision, arguments which contend that kids of color are bound to do better academically if something inaccurately and misleadingly labeled "segregation" decreases—and that it's government's job to guarantee such rearranging even if it has to do so coercively. Who, after all, other than confident writers who thoroughly know their stuff are willing to risk epithets questioning their decency? Who wants to be falsely portrayed as opposed to all varieties of American children learning and

growing up together—never mind the fact that fixating on racial ratios, when real segregation is not at issue, has done little in helping kids learn how to read, write, and compute? How many observers, moreover, are equipped to delve sufficiently deeply into the political, social, psychological, curricular, legal and other realms that are entwined in the hard problems examined in this report?

Let's just say these categories are not overpopulated, with Kathy Kersten one of their few occupants, as she is incapable of acquiescing to supposedly enlightened educational policies which are nonetheless inconsistent with academic success, minority upward mobility, and the right of all families to have real options in choosing where their children might do best in school.

"Failure to close the racial learning gap," Kathy writes, "is not the result of lack of monumental effort. In fact, for four decades our state has moved figurative mountains—and invested billions of dollars—in an unsuccessful attempt to significantly boost minority achievement." Nevertheless, a sizable number of Minnesota education policy-makers "continue insisting on placing 'integration' or 'racial balance' at the heart of our state's efforts to address the learning gap." This amounts, Kathy rightly concludes, to relying on "discredited race-based policies that have resoundingly—and tragically—failed in Minnesota and across the nation. In doing so, [these policymakers] act as if the last 40 years never occurred."

In the face of so much evidence that simply moving boys and girls around in search of optimal balancing acts hardly helps academically if it helps at all, Kathy asks why some educators and others remain so preoccupied with such attempts. One answer,



she argues, is their reluctance to acknowledge that family risk factors, starting with far too many missing fathers, are the principal source of learning gaps. Rather, they view “institutional white racism” as primary cause and contend that shortcomings will shrink only if and when white people change their own behavior. Somehow and in turn, this is taken as bolstering the case for more racially and socioeconomically diverse schools and, therefore, more busing.

Across the Twin Cities and the state, in fact, school districts are spending substantial dollars annually so as to convince teachers that their own supposedly embedded racist attitudes and practices are responsible for achievement gaps. As you will read in the always measured pages that follow, it’s very hard not to be amazed by the determined refusal of many good people to recognize that their ideas and grand plans, well-intentioned as they have been, have failed over and over again.

It is absolutely true—and Kathy has long been vocal on the point—that great schools and great teachers can, in fortunate fact, enrich the lives of all kids, even those with the biggest holes in their hearts, and do so every day. In that light, she writes extensively about the kinds of schools which have been shown to be most effective in helping kids growing up in often tough circumstances.

Attorney Kersten explains one more thing copiously clearly. Minnesota will wind up increasingly vulnerable in the courts to what’s known in the education trade as “adequacy” lawsuits if one or more of the plans she warns against come to be adopted in some fashion. Suffice it to say here such a development might well lead to enormous increases in judicially mandated state spending which, in doubtless turn, would fail to result in anything close to adequate progress on the part of poor and minority students—if any progress, once again, at all. Evidence for this last point can be found in every state where such court-ordered new spending has been tried.

This invaluable new study shows how we can truly best serve young people who most need our help—and how we best not. It’s another major contribution by my longtime friend and colleague Kathy Kersten which American Experiment is exceedingly proud to publish.

Mitch Pearlstein
President & Founder
Center of the American Experiment
February 2012

EXECUTIVE SUMMARY

The Coming Crisis

Minnesota has one of the widest racial learning gaps in the nation. In fourth grade reading, for example, our state's black and Hispanic students are essentially three years behind their white peers on the National Assessment of Educational Progress, "the nation's report card." In recent years, only Washington, D.C.'s reading gap has consistently been worse.

The racial and ethnic performance gap is even wider at higher grades. On 2011 state assessments, 55 percent of Minnesota's white 11th grade students were proficient in math, while only 16 percent of black students and 22 percent of Hispanic students scored proficient.

In our globally competitive economy, ***young people who can't read, write or do math well will face a bleak future.*** Eighty-eight percent of high school drop-outs are students who struggled with reading in third grade. Seventy percent of prison inmates have reading problems. By 2018, two-thirds of jobs will require some post-high school education. Yet today, only about half of Minnesota's black and Hispanic students graduate from high school in five years.

A demographic sea change in Minnesota is transforming our tragic learning gap into a full-blown educational crisis. Many Twin Cities suburban school districts that had few if any non-white students 15 years ago are now among the districts nation-wide with the fastest-growing minority enrollments. Bloomington has gone from 7 percent minority students in 1998 to 39 percent today. In Richfield and Roseville, the numbers are 14

to 68 percent and 9.6 to 40 percent, respectively. In 1996, Shakopee had 11 Hispanic students. In 2009, it had 700, ranking third in the nation for Hispanic growth. In greater Minnesota, Worthington has a minority enrollment of 62 percent.

This demographic trend—due to immigration and a higher birth rate among Minnesota minority citizens—will accelerate: In 20 years, nearly half of the residents of Hennepin and Ramsey County are projected to be members of minority groups.

Misguided and Ineffective Plans to Reduce the Learning Gap

The most effective way to boost the academic performance of students who start behind their peers is through education reforms that address these children's pressing academic needs. ***"Reforms that work" focus on an intense emphasis on fundamentals; targeted intervention; a school climate that emphasizes order, discipline and high expectations; and accountability and incentives for success.***

Today, however, the Minnesota Department of Education (MDE) and three other influential state education institutions are taking a very different course, which is doomed to fail. They are promoting plans that ***would make racial balance in schools—misleadingly "integration"—the touchstone of improved minority academic achievement.*** In addition to MDE, these organizations include the state-funded Minnesota School Integration Council (whose members include school districts that currently receive state "integration revenue"), and



the Institute on Race and Poverty at the University of Minnesota Law School. Another organization—the Education Equity Organizing Collaborative—is a non-profit, activist group with which the MDE has publicly partnered to create “integration” standards, metrics, timetables and benchmarks in the future.

The Minnesota School Integration Council envisions **“transforming” our state’s “schools, districts and communities” through racial balance, and defines educational “equity” as equal academic outcomes by all racial and ethnic groups.** The Institute on Race and Poverty is calling for a **seven-county metro-wide “integration district”** (or several “super-districts”) stretching from Forest Lake and Stillwater to Orono and Farmington. All metro school districts would be required to participate, with the goal of achieving racial balance in all metro-area schools.

The Forty-year Failure of Race-Based Attempts to Reduce the Gap

The hope that racially balanced schools would significantly improve minority academic achievement was tested across America in a massive and hugely expensive social science experiment between 1970 and 1995 or so.

Today, **a mountain of data demonstrates that efforts to reduce the gap by viewing children through the lens of race have failed overwhelmingly.** In fact, race-based busing advocates cannot point to one medium-to-large city where race-based busing has meaningfully improved student achievement. From Boston to Cleveland, from Kansas City to San Francisco, race-based busing has **led to huge tax bills, torn apart communities, and produced devastating middle-class flight,** while failing to help the children who are its intended beneficiaries.

In Minnesota, attempts to boost academic performance through racial balance—tried in many configurations—have repeatedly failed to achieve their objective.

- Schoolchildren in Minneapolis and St. Paul were bused on the basis of race for decades, yet in both districts the learning gap remains a yawning gulf. In 2011, the St. Paul public schools rejected a policy of racial balance, after a year-long study determined that **minority students performed as well or better at neighborhood schools than at expensive magnet schools.**
- Low-income Minneapolis students who attend school in ten suburban school districts through “The Choice Is Yours” program have **scored lower** on state tests than their peers who remained in Minneapolis public schools.
- **The track record of Twin Cities-area “integration districts”—set up to create racially balanced magnet schools that reduce the learning gap—is so disappointing** that the Minneapolis school district has announced its intention to withdraw from one (WMEP), and some suburban districts have pulled out of another (EMID).

Income-based Busing Has Failed to Raise Achievement

In recent years, school districts in Eden Prairie, Minnesota, and Wake County, North Carolina, have chosen to bus students on the basis of family income (socioeconomic status or SES), rather than race. Eden Prairie’s experiment is just beginning. But after 10 years of SES-based busing, **Wake County’s black students in SES-balanced schools perform no better than their peers in heavily black schools** in nearby Charlotte-Mecklenburg.

As we strive to improve low-income students’ academic performance, **we must take care not to inadvertently handicap high-performing students in the process.** Major new research suggests a troubling conclusion: SES “integration” may actually lower higher-income white students’

performance more than it raises lower-income black students' achievement—thus reducing student achievement overall. This research finds that students of all backgrounds learn best in schools with four traits: 1) high expectations; 2) significant homework; 3) rigorous coursework; and 4) a climate of safety. These are the very qualities that distinguish “beat the odds” schools that have remarkable track records of success with low-income, minority students.

The Real Causes of the Learning Gap

Race-based busing has failed to improve minority students' achievement because it doesn't address the learning gap's primary cause: socioeconomic or family risk factors that often leave children deficient in the skills and knowledge required for academic success. These SES factors include family structure (one or two parents); poor parental nurturance behavior; and low parental income, job status and educational attainment. For example, *in Hennepin County, the out-of-wedlock birth rate for U.S.-born black residents is 84.3 percent. The rate is 61.5 percent for Hispanics and 18.3 percent for whites.*

Children who suffer from disadvantages of this kind often start school less academically prepared than their peers. For example, by age three, children of professional parents have an average vocabulary of 1100 words, while the average vocabulary of welfare families' children is only 500 words.

Minnesota Education Organizations' Learning Gap-Related Plans Are Doomed to Fail

Unfortunately, the four major Minnesota education organizations that have proposed learning gap-related plans do not appear to have seriously considered—or even acknowledged—the real

causes of the racial gap. Instead, they assert that the best way for poor and minority children to master reading and math is to sit next to children of a different skin color in school.

The four plans are complementary, though they differ in degree of detail. For example:

- In a May 2011 report, the Minnesota Department of Education describes “integration” – that is, racial balance in schools—as a “compelling state interest” essential to improving the academic performance of the state’s minority students.
- In its January 2011 learning gap plan, *the Minnesota School Integration Council suggests that school and societal racism are the primary cause of the learning gap.* The council would require all Minnesota school districts to submit a multi-faceted “integration plan” to MDE. To enforce its vision of “true integration,” the council would create a sprawling new bureaucracy that would award power over Minnesota public schools to a mind-numbing array of special interest groups.
- The *Institute on Race and Poverty’s plan calls for busing as many as 20,000 students throughout the seven-county Twin Cities metro area on the basis of race.* Busing is portrayed as voluntary, but would likely need to be mandatory to ensure districts’ compliance with proposed racial ceilings and floors. The plan also proposes to achieve racial balance in all schools by disbursing low-income housing throughout the metro area.
- The Educational Equity Organizing Collaborative (EEOC)—with which the MDE is partnering to create integration standards for public schools—has a radical plan that would require all schools to close the learning gap on four measures: 1) academic performance, 2) graduation rates,



3) suspension and expulsion rates, 4) and rates of participation in honors and special education classes. Virtually no public school district in the nation has achieved this.

These Plans Put the State of Minnesota in Legal Peril

The four learning gap-related plans will not only inevitably fail to help poor, minority children learn to read, write and do math proficiently. ***Under the radar, the plans would also create grave legal risk.*** All are structured in a way that would set up the State for massive legal liabilities in an “education adequacy” lawsuit of the kind that has brought financial disaster to other states.

Two prominent attorneys have already raised the prospect of—or threatened—a suit of this kind. They are Michael Ciresi, who won a \$6 billion settlement against Big Tobacco in 1998, and Dan Shulman, who brought an adequacy suit against the State in 1995. Shulman’s suit may be imminent. “I’m prepared to do it,” he told the *Star Tribune* in December 2011. “I just need clients.”

Plaintiffs in an education adequacy lawsuit will claim that Minnesota children are not receiving a constitutionally mandated “adequate” education. They will blame the learning gap on: 1) underfunding of K-12 education by the Legislature, and/or 2) a lack of racial balance in Minnesota schools. ***As a remedy, they will ask a court to order a massive infusion of state funds for K-12 education, or a metro-wide, race-based busing plan, or both.*** Plaintiffs will claim these measures are necessary to close the gap.

Adequacy suits can entangle courts and schools for decades. However, ***these suits have not produced a meaningful increase in poor and minority students’ academic performance in any state where plaintiffs have prevailed.***

- In December 2011, plaintiffs won *Lobato v. State*, an adequacy suit in **Colorado**. They sought to increase K-12 spending by up to \$4 billion a year, and also demanded up to \$17 billion in capital improvements for schools. In response, Democratic Governor John Hickenlooper has warned that Colorado taxes may rise by 50 percent, and that funding may have to be cut on priorities like Medicaid, public safety, higher education and transportation as a result.
- In **New Jersey**, education finance litigation has been underway for 40 years. The litigation has produced gigantic tax hikes and state borrowing, and has led to a near revolt over property taxes among New Jersey’s citizens. ***New Jersey now spends up to \$30,000 a year per pupil in low-income school districts*** like Asbury Park, Camden and Newark. Experts have described K-12 spending in these districts as “staggering.”
- In **Ohio**, higher education spending is estimated to have dropped by 10 to 15 percent as a result of a court-ordered adequacy remedy.
- In **Hartford, Connecticut** in 1996, a court ordered a metro-wide busing scheme of the kind plaintiffs will likely seek here. Today, news reports say the plan’s monumental cost “has pushed state and local education budgets to the brink.” Yet a ***yawning racial achievement gap remains, and Hartford district schools remain deeply racially isolated.*** Ironically, in 2011, the Hartford public schools—the plan’s intended beneficiary—mounted an aggressive TV and radio ad campaign calling on Hartford parents to stay in district schools rather than bus their students to suburban or magnet schools, in accordance with the race-based plan.

The Learning Gap Plans Create Risk of a Similar Disaster in Minnesota

The four learning gap-related plans being advanced by Minnesota education policymakers—taken as a package—would lay the legal groundwork for a plaintiff victory in an education adequacy in our state. Three of the four organizations promoting the plans are public entities, funded by tax dollars, and so have a duty to protect the State’s interests. Yet they have failed to disclose the legal risk they are creating to the citizens of Minnesota.

The plans create legal risk in three ways:

- First, the plans would define “integration” as a “compelling state interest” in Minnesota law or education policy. **“Compelling interest” is a legal buzzword of profound significance.** If it is incorporated into state law or policy, plaintiffs in a future suit could argue that it creates—or confirms—a constitutional duty on the part of the State to balance Minnesota schools by race or income, and/or to greatly increase K-12 education spending in an effort to close the learning gap.
- The Minnesota School Integration Council’s plan would create another great legal risk. It would redefine educational “equity” in a way that would **shift the focus of fairness in schools from equal opportunities to equal outcomes** on the part of students of all racial and ethnic groups. If adopted, **this radical new definition of “equity” would likely become the framework a court would use to determine whether Minnesota students are receiving an “adequate” or “equitable” education under the state’s constitution.** School districts that failed to close the gap on all measures—something achieved virtually nowhere else—would be defined as violating the constitution.

- Other plan provisions would require the State of Minnesota to “ensure” that low-income students achieve academic outcomes equivalent to those of higher-income students. **This would foreclose the State from using one of adequacy defendants’ most potent defenses:** That the learning gap springs from family risk factors beyond schools’—and the State’s—control.

Collusion between Plaintiffs and State Defendants in Adequacy Lawsuits

In education adequacy suits, state education officials—though nominally defendants—often share plaintiffs’ goal of more money for the state’s K-12 education system. **Collusion between plaintiffs and state education officials is common, and can seriously compromise a state’s ability to defend itself in these suits.**

A notorious example occurred in New York in the 1990s. There, the state education commissioner operated a “study group”—under the auspices of the New York Department of Education—which he later acknowledged was intended to gather information that could be used to sue the State of New York in an adequacy suit. Eventually, the commissioner switched sides in the lawsuit and served as a witness for plaintiffs.

A similar situation occurred in Minnesota in 1994. That year, the Minnesota State Board of Education (SBE)’s Desegregation Roundtable drafted a proposed new “integration rule.” As a consultant, the SBE used an attorney who was nationally known for suing states in education adequacy lawsuits. The proposed rule—when unveiled—was an adequacy plaintiff’s dream. If adopted, it would have made elimination of the racial learning gap the new standard for an “adequate education” in Minnesota. (The Minnesota Legislature subsequently declined to authorize the rule’s adoption.) Months later, the Minneapolis School District did in fact retain



the same attorney to investigate an adequacy suit against the State of Minnesota.

Today, *state-funded educational institutions are again proposing race-based learning gap plans that would make elimination of the gap the standard for an adequate education in Minnesota. This would be highly adverse to the interests of the State, its citizens, and poor, minority children who urgently need education reform that works.*

The White Privilege Movement

Powerful social science evidence demonstrates that the racial learning gap is caused by socioeconomic and family risk factors. However, *many education policymakers appear to view institutional white racism as the learning gap's primary cause.* They seem to believe the gap will shrink only if white people change their behavior.

In Minnesota, this ideology is promoted by an influential “diversity” organization—the Pacific Educational Group (PEG)—which is active in many Twin Cities school districts. *PEG teaches that white teachers' racism, conscious or unconscious, is to blame for the racial learning gap.* As of April 2011, *Minnesota school districts had spent about \$2 million on PEG's services.*

PEG promotes crude racial stereotypes that mainstream American society abandoned long ago. For example, the organization teaches Minnesota educators and students that white “individualism” fosters “individual achievement,” and that white people are “intellectual” and capable of “quantitative” thinking. In contrast, “Black and Brown” culture promotes “collectivism.” Black and Brown people are “emotional,” interested in “feelings,” and communicate through “body motions” like “rolling of the eyes” and “other nonverbal expressions.”

Paradoxically, Minnesota schools that embrace this ideology—which many would consider racist—

are harming the very students they seek to help. *Children suffer when educators devote energy and resources to promoting such unfounded notions, instead of focusing on the crucial classroom reforms that many poor/minority students need to learn more effectively.*

The Way Forward

After 40 years of failure and dashed hopes, *we have an obligation to work to improve the academic achievement of poor and minority children,* and to do so by adopting reforms that are most likely to succeed.

To carry out this mission effectively, we must transcend ideology and dedicate ourselves simply to *doing what works.*

As a first step, *we must expand the range of top-notch educational options available to parents by replicating school models that have a track record of success* with poor, minority children. Documentary films like *Waiting for Superman* and *The Lottery* illustrate the sacrifices many parents will make to ensure their children can attend such a school.

At the same time, *we must embrace bold, innovative reforms of the kind that have enabled states like Florida to achieve dramatic improvements* in the learning of all students—but especially low-income and minority students. These far-reaching reforms include scientifically based reading instruction; grading schools A-F; expanding choice; ensuring accountability and creating incentives for success; and alternative teacher certification.

Minnesota policymakers who propose to address our state's catastrophic learning gap with the failed policies of the past bear a heavy burden of proof. Current race-based plans may create the comforting illusion that we're “doing something” about our looming education crisis. But children in need of serious reform deserve better.

CHAPTER I

INTRODUCTION

“Minnesotans have grown sadly accustomed to headlines announcing the gap between the academic performance and social well-being of our state’s white and minority children, especially the urban poor.”

I wrote those words in 1995, as the opening sentence of a report on a proposed plan for metro-wide “desegregation” of Twin Cities white and minority students. The report was entitled “Good Intentions Are Not Enough: The Peril Posed by Minnesota’s New Desegregation Plan.”

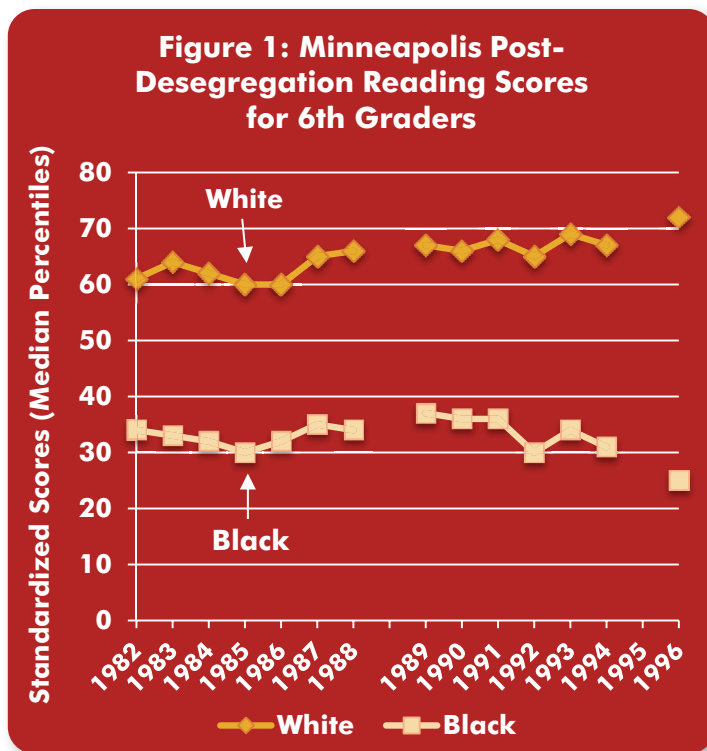
Today I could write that same sentence, but with even greater urgency. For tragically, little has changed in the academic performance of poor and minority children in Minnesota in the 17 years since 1995. Failure to close the racial learning gap is not the result of lack of monumental effort. In fact, for four decades our state has moved figurative mountains—and invested billions of dollars—in an unsuccessful attempt to significantly boost minority achievement.

How have we invested our time and treasure?

From the outset of our quest to close the learning gap, many Minnesota education policymakers have viewed racial balance in schools, or “desegregation,” as the key to success. With their approval, our state became part of a vast social experiment that unfolded

across the nation—from Boston to Chicago, from Kansas City to San Francisco—between the late 1960s and the mid-1990s.

Large-scale, costly race-based busing began in Minneapolis and St. Paul in the early 1970s.¹ Proponents of busing generally assumed that the racially balanced schools it produced would rapidly shrink the learning gap, which has existed nationally



Note: Gaps in test scores mean change in test instrument.
Source: David J. Armor, “Presentation to the Integration Revenue Replacement Advisory Task Force,” Dec. 20, 2011. Figures 2 through 5 are also drawn from this source.

¹ In 1972, a federal judge imposed a desegregation order on the Minneapolis School District. *Booker et al v. Special School District No. 1*, 351 F. Supp. 799 (D. Minn. May 24, 1972). In 1973, the Minnesota State Board of Education adopted a racial balance requirement, the “15-percent rule,” which prohibited the operation of schools having minority enrollments more than 15 percentage points higher than the district-wide average of minority students at grade levels served by those schools.

Failure to close the racial learning gap is not the result of lack of monumental effort. In fact, for four decades our state has moved figurative mountains—and invested billions of dollars—in an unsuccessful attempt to significantly boost minority achievement.

since testing began. But by 1995, more than 20 years later, black students' scores had failed to rise significantly, and middle-class flight had produced a disastrous concentration of poverty in the Twin Cities' urban core. Figure 1 above demonstrates that busing for racial balance in Minneapolis did not reduce the achievement gap in the 14 years between 1982 and 1996. In fact, black scores declined, and the gap widened, in the early 1990s.

In 1995, Minneapolis Mayor Sharon Sayles Belton joined other black mayors across the country—in Denver, Cleveland, Seattle, and St. Louis—in a campaign to end race-based busing and return to neighborhood schools. She lamented that the city's students were being “bused to the moon and back,” at the cost of fractured neighborhoods, millions of dollars, and the breakdown of community institutions that could otherwise have provided stability in poor children's lives. The Minneapolis School District ended race-based busing shortly after Sayles Belton made her recommendation. Just last year, the St. Paul School Board followed suit, citing the policy's consistent failure to improve minority academic achievement.

Nevertheless, race-based busing advocates continued to cling to the conviction that minority children must sit next to whites to improve their

learning. In 1993, as Minneapolis was considering abandoning its busing policy, the Minnesota Legislature requested the State Board of Education (SBE) to draft a new “desegregation” rule for the state. The existing rule, which required that no school have a minority enrollment more than 15 percentage points greater than the minority enrollment in its district, was becoming impossible to enforce, given the middle-class flight that busing produced.

The SBE—dominated by busing advocates—seized the opportunity to promote a social engineering dream: Race-based busing for the entire seven-county Twin Cities metro area. That dream almost came true.

In February 1994, the SBE unveiled its proposed new “desegregation” rule. The rule had two components. First, it would have imposed a racial quota—a racial ceiling and floor—on every school district in the metro area. If adopted, the rule would have required districts from New Prague to Forest Lake to “desegregate” Minneapolis and St. Paul schools. Second, the rule would have required Minnesota schools to “close the racial learning gap” on four measures: academic achievement, graduation and dropout rates, rates of suspension and expulsion, and rates of participation in remedial and honors classes.² Districts that failed to do so in four years would have faced onerous penalties.

The SBE unanimously endorsed this rule, whose scope was revolutionary, and prevailed on a supermajority of metro-area school superintendents to do the same.³ Then it launched a campaign to win legislative and public approval. The SBE argued that—though the “desegregation” rule might seem burdensome or unpalatable—if the legislature failed to approve it, a federal court would impose a much more costly and comprehensive “desegregation” plan. The SBE's message seemed to be: “Do it our way, or legal catastrophe is sure to follow.”

² Katherine Kersten, “Good Intentions Are Not Enough: The Peril Posed by Minnesota's New Desegregation Plan,” Center of the American Experiment, March 1995, 2-3.

³ Debra O'Connor, “Schools Give Nod to Integration Plan but Clutch Wallets,” *Pioneer Press*, March 9, 1994.

In reality, no grounds existed for a federal lawsuit, which would have required proof of intentional racial discrimination by Twin Cities suburban school districts. (No such proof existed.) Paradoxically, however, the SBE's proposed rule itself would have *created* grounds for a state court lawsuit against the State of Minnesota.

At the time, such suits—called “education adequacy” suits—were underway in a number of states, including New Jersey and Connecticut. Plaintiffs in those states claimed the racial learning gap demonstrated that the state was not meeting its obligation to provide an “adequate” or racially “equitable” education under its own constitution. As a remedy, plaintiffs sought either vast new sums of money for high-poverty districts or a city/suburb race-based busing plan, and occasionally both.

The State Board of Education did not disclose to Minnesota legislators or citizens that its proposed “desegregation” rule included provisions that would have embedded the legal architecture for just such a suit in Minnesota law. When the legislature became aware of the rule's true legal context, it rejected the SBE's request for enabling authority to adopt the rule in its February 1994 form.

Shortly afterwards, in September 1995, the Minneapolis NAACP *did* bring an education adequacy lawsuit against the State of Minnesota.⁴ If the SBE's proposed rule had been in effect, the NAACP would likely have won its suit, along with an expansive, city/suburb race-based busing plan and/or a massive court-ordered injection of taxpayer funds into Minneapolis schools.

As it was, the NAACP's lawsuit fell far short of its aims. The litigation was settled in 2000 on terms advantageous to the State.⁵ The settlement

produced a voluntary program, “The Choice Is Yours (CIY),” which allows low-income Minneapolis students to transfer to suburban schools, and also set aside places for low-income students in certain Minneapolis magnet schools.

Since 2000, attempts to close the learning gap in Minnesota have shifted from social engineering plans focused on race-based busing to greater school choice and new infusions of funding for low-income children. In the last decade or so, Minnesota taxpayers have invested more than \$3 billion in “compensatory” revenue for schools with a high concentration of students eligible for subsidized lunches and more than \$1 billion in “integration revenue” to promote “interracial contacts” and to close the learning gap.

School districts have also continued strenuous efforts to recruit more minority teachers and to improve race relations through “multi-cultural education” and “cultural competency” training. In addition, three “integration districts” in the Twin Cities metro area have operated magnet schools intended to reduce the gap and to achieve racial balance through student choice.⁶ All these initiatives have been costly.

Recently, some suburban Twin Cities school districts with a growing minority population have begun to consider busing again, but with a new twist. In 2011, the Eden Prairie School District began assigning elementary students to schools on the basis not of race but of socioeconomic status (SES), that is, eligibility for free or reduced-price lunches. Socioeconomic busing is a topic of growing interest across the country, and other Twin Cities-area districts will be watching the results in Eden Prairie, where the change has produced great controversy.

⁴ See *Minneapolis Branch of the NAACP v. State of Minnesota*, No. 95-14800 (Minn. Dist. Ct. Sept. 19, 1995). The lawsuit was followed by a similar suit in 1998. See *Xiong v. State of Minnesota*, No. 98-2816 (Minn. Dist. Ct. Feb. 23, 1998).

⁵ See Settlement Agreement, *Minneapolis Branch of the NAACP v. State*, No. 95-14800 (Minn. Dist. Ct. May 8, 2000). For a description of that agreement, see Note 497 ***.

⁶ They are the West Metro Education Program, the East Metro Integration District, and the NorthWest Suburban Integration School District.

Unfortunately, after 40 years of herculean effort and billions of dollars, Minnesota's racial learning gap remains a chasm.

In 2011, for example, our state's black and Hispanic fourth graders performed almost three grade levels below white fourth graders in reading on the National Assessment of Educational Progress (NAEP), "the nation's report card." On state math tests, the Minnesota Comprehensive Assessments (MCA II's), 55 percent of white eleventh-grade students scored proficient, while only 16 percent of black students and 22 percent of Hispanic students did. In recent years, Minnesota's black students have posted NAEP scores as low as or lower than those of their peers in the Deep South.⁷ Only Washington, D.C., has consistently had a wider achievement gap.

In the early 1970s, the learning gap was a serious problem in Minnesota. Today, it has become a full-blown crisis. This escalation in urgency is the result of a demographic sea change that is transforming our state's educational landscape.

In 1970, Minneapolis and St. Paul schools were 17 percent and 15 percent minority, respectively, and few suburban schools had more than a handful of minority students. Today, Minneapolis and St. Paul schools are 68 percent and 75 percent minority, respectively, while 37 percent of inner-ring suburban students and 22 percent of outer-ring students are members of minority groups.⁸ Minnesota's non-white population is growing much faster than its white population. By 2035, it is projected that almost half of all Hennepin and Ramsey County residents will be members of minority groups.⁹

Today, it is imperative to rethink the path we've chosen and to explore bold, innovative approaches to improving minority students' academic performance. By 2018, 63 percent of all jobs will

require post-high school education, according to a recent Georgetown University study. Our state's continued economic and democratic vitality depend, in good measure, on our ability to find effective ways to do this.

As we proceed, we can look for guidance to promising educational experiments underway in our own backyard, as well as across the nation. These experiments focus not on viewing students through the lens of race but on making changes in the classroom that successfully address struggling children's pressing academic needs. Generally, reforms of this kind rely on scientifically based instruction and intervention, content-rich curricula, a school climate that emphasizes order and discipline, and accountability and incentives for success.

Here in Minnesota, schools like Harvest Preparatory School and Hiawatha Leadership Academy in Minneapolis and Concordia Creative Learning Academy in St. Paul have strong track records of success with student bodies that are overwhelmingly minority and low income. In some cases, test scores at these "beat-the-odds" schools rival those of affluent suburbs such as Edina and Wayzata.

Nationally, Florida—a "majority minority state"—has dramatically increased students' academic performance on a variety of measures through policies that focus on accountability, choice, and the creation of incentives for school success. Fifteen years ago, Florida's black and Hispanic students lagged far behind Minnesota's black and Hispanic students in academic performance. In 2011, the Sunshine State's black students scored more than a year-and-a-half ahead of their Minnesota peers on NAEP's fourth-grade reading test, while its Hispanic fourth-graders performed two years ahead of their peers in Minnesota.

⁷ See "The State of Minnesota Public Education," Minnesota Campaign for Achievement Now (MinnCAN), January 2011, 8-9.

⁸ Presentation of Tom Melcher, MDE Director of Program Finance, to the Commissioner's Education Finance Working Group, May 4, 2011.

⁹ Martha McMurry, "Minnesota Population Projections by Race and Hispanic Origin, 2005-2035," Minnesota State Demographic Center, January 2009.

As we proceed, we can look for guidance to promising educational experiments underway in our own backyard, as well as across the nation. These experiments focus not on viewing students through the lens of race but on making changes in the classroom that successfully address struggling children's pressing academic needs.

Unfortunately, many Minnesota education policymakers have chosen to ignore these formulas for success, and continue to place racial balance in schools at the center of our state's efforts to address the learning gap. They advocate recycled versions of the discredited race-based policies that have resoundingly and tragically failed in Minnesota and across the nation. In doing so, they act as if the last 40 years never occurred.

Recently, four such organizations have proposed learning gap-related plans that make "integration" the touchstone of improved minority achievement. They are 1) the Minnesota Department of Education (MDE); 2) the Education Equity Organizing Collaborative; 3) the Minnesota School Integration Council; and 4) the University of Minnesota's Institute on Race and Poverty.

The MDE's proposal is set out in a May 2011 report entitled "Funding Education for the Future."¹⁰ This

report makes clear that MDE views "integration"—that is, racial balance for its own sake—as a "compelling interest" essential to improving the academic performance of the state's minority students.¹¹

The report provides few details, however, as to how MDE intends to achieve its goal of "integrated schools and closing the achievement gap." Information of this kind can be gleaned from the more detailed plans of the Education Equity Organizing Collaborative (EEOC), a non-profit activist organization with which the MDE has publicly partnered to draft future integration-related rules, metrics and benchmarks. The EEOC has declared school "integration" to be one of its highest education policy priorities.

Another learning gap-related proposal has been put forward by the Minnesota School Integration Council, whose members include many of the 130-plus school districts that receive state integration revenue. As its name makes clear, the Integration Council views "integration" as a "key strategy" in improving minority learning and closing the achievement gap.¹² The council's plan to achieve these goals is set forth in a January 2011 report entitled "Every Child, Every Day: Educational Equity through Integration." Like the MDE, the Integration Council describes school integration as a "compelling interest" of the State of Minnesota.¹³

A fourth organization with a learning gap-related plan is the University of Minnesota's Institute on Race and Poverty (IRP).¹⁴ In a 2009 paper entitled "A Comprehensive Strategy to Integrate Twin Cities Schools and Neighborhoods," IRP director Myron

¹⁰ "Funding Education for the Future," Minnesota Department of Education, May 25, 2011.

¹¹ *Ibid.*, 11. The report, prepared by the Commissioner's Education Finance Working Group, recommended that in the future, the State roll "integration funding" under Minn. State. § 124D.86 into the basic skills portion of general education revenue and allocate it based on the number of a district's "students of color." This, according to the report, would "align funding more closely with the need to better support achieving integrated schools and closing the achievement gap."

¹² "Every Child, Every Day: Educational Equity through Integration," Minnesota School Integration Council, January 2011, 7.

¹³ *Ibid.*

¹⁴ See <http://www.irpumn.org/>. The Institute describes its mission as "research, education [and] advocacy" concerning "policies and practices [that] disproportionately affect people of color and the disadvantaged...."



Orfield and his co-authors portray racial balance in schools as the key to closing the achievement gap.¹⁵

Here in Minnesota, evidence that the racial balance model is deeply flawed has become an avalanche since 1994.

Taken together, these four proposals would resurrect central elements of the State Board of Education's failed 1994 "desegregation" rule, which the legislature rejected almost 20 years ago. If a reliance on racial balance to improve minority learning was imprudent then, it is unconscionable now. Today, there is overwhelming evidence that race-based social-engineering plans do not reliably or significantly improve minority youngsters' math and reading skills.

Racial balance plans of the most costly and elaborate kind were used for years in cities like St. Louis, Kansas City, and San Francisco, but failed to raise minority achievement. The approach was equally unsuccessful in metro areas like Wilmington, Delaware, and Charlotte-Mecklenburg, North Carolina, where city/suburb racial balance was ideal for many years. In fact, today, busing proponents can point to no major American city where busing for racial balance has produced significant improvement in minority academic achievement.

Here in Minnesota, evidence that the racial balance model is deeply flawed has become an avalanche since 1994:

- As noted earlier, the Minneapolis School District rejected race-based busing in the

late 1990s. In 2011, an exhaustive year-long study by St. Paul school officials determined that minority students in district schools there get similar or higher test scores than their peers at costly magnet schools, which were originally intended to improve racial balance and boost achievement. The St. Paul district has announced it will no longer take race into account in school assignment plans.

- Since 2000, the performance of minority students in The Choice Is Yours program, once touted as a model of city/suburb "integration," has been deeply disappointing. In recent years, low-income Minneapolis students who stayed in city schools have actually *outperformed* their CIY peers who chose to attend schools in the suburbs.
- Over the last ten years or so, magnet schools operated by the West Metro Education Program (WMEP) and the East Metro Integration District (EMID) have also failed to meet their designers' high expectations. In fact, these schools' results have been so poor and their cost so great that the Minneapolis School District has attempted to withdraw from WMEP, while some suburban districts have pulled out of EMID on the same grounds.

There is no reason to believe that future race-based attempts to improve minority achievement will succeed where those already tried have failed so unequivocally.

The four learning gap-related plans described above resemble the State Board of Education's 1994 rule in another, even more perilous way. Like that rule, they would embed in Minnesota law and education policy the legal architecture that would facilitate a plaintiff victory in an "education adequacy" lawsuit against the State of Minnesota. Like the SBE, the

¹⁵ Myron Orfield, Thomas Luce, Baris Gumus-Dawes, Geneva Finn and Eric Myott, "A Comprehensive Strategy to Integrate Twin Cities Schools and Neighborhoods," Institute on Race and Poverty, University of Minnesota Law School," 1 (Drft. October 2009), available at http://www.irpumn.org/uls/resources/projects/3_Regional_Integration_-_Schools_and_Housing.pdf.

organizations involved have not disclosed this fact to the citizens of Minnesota.

Minnesotans need to understand how great a threat the current plans represent in this respect. By now, education adequacy litigation has been initiated in dozens of states, including New York, New Jersey, Kentucky, Kansas, Wyoming, Ohio, Connecticut, and many more.

In light of our current knowledge, policymakers who propose to address our state's catastrophic learning gap with the failed policies of the past bear a heavy burden of proof.

In states where plaintiffs have been victorious, adequacy lawsuits have involved almost unimaginably large sums—billions of dollars—and have placed huge strains on state budgets. In New Jersey, for example, the Asbury Park schools now spend almost \$30,000 per pupil. Lavish spending of this kind in New Jersey's low-income districts has led to a near revolt by property tax payers. After plaintiffs prevailed in an adequacy suit in Ohio, state spending on higher education is estimated to have dropped by ten to 15 percent as the legislature scrambled to ramp up K-12 funding as ordered. The State of Connecticut has spent about \$2 billion on new magnet schools, and pours millions more into busing students across the Hartford metro area each year. Yet nowhere have such remedies, wrung from taxpayers, brought sustained, meaningful improvement in poor and minority students' academic performance.

Most recently, plaintiffs in Colorado won an education adequacy lawsuit in December 2011. Plaintiffs, a coalition of more than 100 school districts and parents, demanded additional school funding of up to \$4 billion annually, as well as up to \$17 billion in additional capital spending, in the name of closing the learning gap. Before the case went to trial in August 2011, Governor John Hickenlooper, a Democrat, declared that if plaintiffs won, Colorado would either have to raise taxes by at least 50 percent or devote 89 percent of its general fund budget to K-12 funding, thereby shortchanging Medicaid, public safety, higher education, and transportation.¹⁶ According to Hickenlooper, a plaintiff victory, which has now occurred, could bankrupt the state. The case has been appealed.

Here at home, lawyers are already waiting in the wings to bring such a legal catastrophe to Minnesota. In June 2011, trial attorneys Michael Ciresi and Roberta Walburn declared in the *Star Tribune* that unless the legislature substantially increases funding for poor/minority students, a state court lawsuit may be filed. In December 2011, attorney Dan Shulman, who represented the Minneapolis NAACP in its 1995 lawsuit against the State of Minnesota, threatened to bring another such suit, seeking a metro-wide, race-based remedy. "I'm prepared to do it," Shulman told the *Star Tribune*. "I just need clients."¹⁷

Minnesota's poor and minority children deserve better. They have been left behind far too long. Today we know what works best to boost these youngsters' academic performance. Schools using proven instructional practices are having remarkable success, and any serious reform effort must focus relentlessly on making their approaches as widely available as possible. The only question is: When are we going to do it?

¹⁶ Colorado Attorney General web site, at http://www.coloradoattorneygeneral.gov/departments/state_services/education/lobato.

¹⁷ Corey Mitchell, "Cost vs. benefit steers debate over future of integration aid," *Star Tribune*, Dec. 20, 2011.



In light of our current knowledge, policymakers who propose to address our state's catastrophic learning gap with the failed policies of the past bear a heavy burden of proof. In 2012, it's no longer credible to argue that we can improve minority children's learning by spending millions of dollars to bus them across town on the basis of skin color. It's hard to escape the conclusion that many who advocate such a course are "true believers," whose belief in the efficacy of race-based busing—after all these years—is essentially an article of faith.

Forty years ago, "good intentions" were not enough to help the poor/minority children most in need, and they're not enough today. Current plans to close the learning gap may create a comforting illusion that we are "doing something" about our education crisis. Unfortunately, these latest iterations of the social engineering vision that has demonstrably failed, both in Minnesota and across the nation, are unlikely to prove any more effective. If our state chooses to adopt the plans now on offer, those who suffer will be the very children who most need our help.

CHAPTER II

THE CHALLENGE: AN INTRACTABLE LEARNING GAP AND A DEMOGRAPHIC SEA CHANGE

A. The Nature of the Achievement Gap

(1) The Minnesota Gap

Minnesota’s sobering black-white and Hispanic-white learning gap exists at all grade levels and on every academic subject tested by the National Assessment of Educational Progress: reading, math, and science.

For example, on the 2011 NAEP reading exam, Minnesota’s fourth-grade white students scored 229 (the national average for white fourth graders is 230), while the state’s black students scored 199 and Hispanic students 201 (the national average for both groups is 205). Ten points on NAEP equals roughly a year of learning; thus, black and Hispanic fourth graders lagged about three years behind their white peers, reading at essentially a first-grade level.¹⁸

Grade-level reading proficiency is essential to academic success in all other subjects. A 2011 study by the Annie E. Casey Foundation found that students who struggled with reading in third grade comprise 88 percent of high school dropouts.¹⁹

Minnesota’s state tests, the MCA II’s, reveal a similar gap. In 2011, 82 percent of white fourth graders were proficient in reading, while only 53 percent of black and Hispanic fourth graders scored as proficient.

At higher grades, the racial and ethnic performance differential is even wider. On the 2011 MCA-II’s, 55 percent of white eleventh grade students were proficient in math—hardly impressive—while only 16 percent of black students and 22 percent of Hispanic students were.²⁰ In high school science, 61 percent of white students were proficient, but only 21 percent of black students and 27 percent of Hispanic students performed at that level.

¹⁸ For additional analyses of Minnesota’s learning gap, see Lori Sturdevant, “Achievement gap: A disaster in slow motion,” *Star Tribune*, Dec. 18, 2011; “New data shows Minnesota’s achievement gap widening,” MinnCan press release, Nov. 1, 2011; Maria Elena Baca and Emma Carew Grovum, “State students ‘deeply stuck,’” *Star Tribune*, Nov. 2, 2011; and “A Crisis in Our Community: Closing the Five Education Gaps,” African American Leadership Forum, October 2011, 1.

¹⁹ Donald J. Hernandez, “Double Jeopardy: How Third-Grade Reading Skills and Poverty Influence High School Graduation,” Publication of the Annie E. Case Foundation, April 8, 2011, available at <http://fcd-us.org/resources/double-jeopardy-how-third-grade-reading-skills-and-poverty-influence-high-school-graduation>.

²⁰ See Corey Mitchell, Sarah Lemagie and Glenn Howatt, “Math scores disappointing,” *Star Tribune*, Sept. 15, 2011: “Minneapolis Public Schools narrowed the achievement gap for the first time in six years, with increases in reading scores for black, Latino, Asian and American Indian students that outpaced the gains of their white peers. Despite that, Minneapolis has



The racial and ethnic performance gap is not confined to academic achievement. There are also very wide disparities in graduation rates, rates of suspension and expulsion, and rates of participation in honors and special education or remedial classes. For example, the five-year graduation rate for Minnesota white students is 95 percent, while the rates for black and Hispanic students are 51 percent and 52 percent, respectively.²¹

(2) The National Gap

Minnesota's learning gap, though particularly egregious, mirrors the national learning gap in many respects. That gap has existed since national statistics were first compiled. For example, the first NAEP tests, in 1971, showed black students to be 3.3 years behind whites in reading by age 13 and fully six years behind at age 17.

By 1990, the gap had narrowed almost by half,²² and in recent years, more progress has been made on some measures. For example, since 1990, the percentage of black and Hispanic fourth graders scoring "below basic" in math on the NAEP has fallen substantially, from 83 percent to 34 percent for black children and from 67 percent to 28 percent for Hispanic children.²³ But "proficiency," the measure of mastery, has continued to prove elusive for these students.

On the 2011 MCA-II's, 55 percent of white eleventh grade students were proficient in math—hardly impressive—while only 16 percent of black students and 22 percent of Hispanic students were.

A recent *New York Times* article on the achievement of America's black male students summarizes the challenge the gap represents. *The Times* states that "the picture [on the gap] is even bleaker than generally known," and cites "jaw-dropping data" from a 2010 report by the Council of Great City Schools. According to *The Times*, 2009 NAEP data revealed that nationally,

[o]nly 12 percent of black fourth-grade boys are proficient in reading, compared with 38 percent of white boys, and only 12 percent of black eighth-grade boys are proficient in math, compared with 44 percent of white boys.

Poverty alone does not seem to explain the differences: Poor white boys do just as well as African-American boys who do not live in poverty, measured by whether they qualify for subsidized school lunches.²⁴

the largest achievement gap for students in the metro area. White students are more than twice as likely to pass state reading tests than their black, Latino and American Indian classmates, data show." See also Corey Mitchell, "Unpopular 'No Child' leaving plenty of students behind," *Star Tribune*, Aug. 28, 2011: "On state test scores, [Minneapolis] hasn't budged the needle on No Child Left Behind's central goals, which target the achievement gap that separates white and nonwhite students and disadvantaged children and their more affluent peers.... The diagnosis has school Superintendent Bernadeia Johnson backing off a goal she set four years ago, as the district's chief academic officer: to slash the achievement gap between white students and those of color by 75 percent by 2012." The article notes that the gap on state reading tests between Minneapolis Asian and Latino students and their white peers more than doubled between 2003 and 2010.

²¹ "2010 Graduation Indicators," Minnesota Department of Education.

²² Abigail Thernstrom, "The Drive for Racially Inclusive Schools," *The ANNALS of the American Academy of Political and Social Science*, 523, Sept. 1992, 133.

²³ Erik W. Robelen, "New NAEP, Same Results: Math Up, Reading Mostly Flat," *Education Week*, Nov. 1, 2011, available at <http://www.edweek.org/ew/articles/2011/11/01/11naep.h31.html>.

²⁴ Trip Gabriel, "Proficiency of Black Students Is Found to Be Far Lower Than Expected," *New York Times*, Nov. 9, 2010.

Minnesota students' scores on the National Assessment of Educational Progress, which is significantly more challenging than Minnesota's state tests, make national comparisons possible. They reveal an alarming fact: Minnesota's minority students rank near the bottom in the nation in academic performance.²⁵ In 2009 on NAEP, our state had the second-largest achievement gap in the nation—a 32 percentage point gap—between black male students and white male students in eighth grade reading. Minnesota is tied for the tenth-worst achievement gap in graduation rates of black male students compared to white students.²⁶

B. Demographics in Central Cities and Suburbs

Minnesota's minority population has grown dramatically in the last two decades.²⁷ From an educational perspective, this demographic shift has profound consequences, given the size and stubborn nature of the racial and ethnic learning gap.

Minneapolis and St. Paul have had heavy concentrations of poor, minority students for several decades. In 1963, minority student enrollment in Minneapolis stood at 6.6 percent, while the figure was nine percent in St. Paul. Voluntary busing for desegregation purposes began in the late 1960s in

both cities. The early 1970s brought large-scale race-based busing. At that time, Minneapolis's minority student enrollment was 17 percent, and St. Paul's was 15 percent.

Today, Minneapolis enrollment is 68 percent minority, and St. Paul enrollment is 75 percent minority. Both middle-class flight—a result of the busing-related problems of which Mayor Sharon Sayles Belton warned—and immigration have contributed to this change.

A similar demographic shift is now underway in Twin Cities suburbs. In 1995, minority children constituted eight percent of students in Twin Cities suburban schools.²⁸ Today, the figures are 37 percent and 22 percent for inner and outer ring suburbs, respectively, and 26 percent state-wide.²⁹ Some suburbs that had few, if any, non-white students 15 years ago now rank near the top of lists of school districts nationwide with the fastest growing minority populations.³⁰

A 2009 *Star Tribune* article provides details:

As recently as the mid-1990s, only four south metro districts reported that immigrant children ... made up even one percent of their classrooms. Most were in the tenths of one percent.

²⁵ *The State of Minnesota Public Education 2012*, The Minnesota Campaign for Achievement Now (MinnCAN), Jan. 2012, 7.

²⁶ *Ibid.*, 11. See also "A Crisis in Our Community: Closing the Five Education Gaps," African American Leadership Forum, October 2011, 1; Baca and Grovum, "Minnesota students losing ground to peers in other states."

²⁷ Sarah Lemagie, "Minority growth in suburbs jumps," *Star Tribune*, March 31, 2009.

²⁸ Cynthia Boyd and Beth Hawkins, "Minority populations in suburbs rise—and so do number of segregated schools," *MinnPost*, Nov. 18, 2008.

²⁹ Presentation of Tom Melcher, MDE Director of Program Finance, to the Commissioner's Working Group on School Funding, May 4, 2011.

³⁰ Lemagie, "Minority growth in suburbs jumps." The article summarizes the results of a 2009 report issued by the Pew Hispanic Center: "A southern string of Twin Cities suburbs, from Farmington to Chaska, have posted some of the nation's most dramatic increases in minority students since the early 1990s.... A handful of fast-growing Twin Cities suburbs that had few students of color 15 years ago made Top 25 lists in the report that analyzed more than 2000 suburban districts for their growth rates either in minorities in general or in individual racial and ethnic groups."

But by 2009, the article continues,

[y]oung immigrant families are bailing out of Minneapolis and streaming into suburbs to such an extent that school districts south of the river could soon be teaching more immigrant children than Minneapolis is [K]ids in the Rosemount-Apple Valley-Eagan district now go home to far more different languages spoken by their parents than do their counterparts in the state's largest city, traditionally the No. 1 Minnesota gateway for foreign arrivals.³¹

Shakopee provides a good example of this trend. In 1996, the district had just 11 Hispanic students. In 2009, it had 700, ranking third in the nation for Hispanic growth.³² That year, Burnsville, with many affordable housing apartments, led the south metro in the number of free or reduced lunch students with 30 percent.³³

The situation is similar in many parts of the Twin Cities metro area. Today in Osseo, for example, minority students are 47 percent, up from seven percent about two decades ago. In Hopkins, they

Some Twin Cities suburbs that had few, if any, non-white students 15 years ago now rank near the top of lists of school districts nationwide with the fastest growing minority populations.

are 36 percent, up from eight percent in 1998. In Richfield, minority numbers soared from 14 percent in 1998 to 67 percent today, and in Bloomington, from seven percent to 39 percent. On the metro area's east side, North St. Paul-Maplewood-Oakdale went from less than five percent to 39 percent, Roseville from 9.6 percent to 40 percent.³⁴ Some communities in greater Minnesota are also seeing a demographic shift. Minority enrollment in the Worthington, for example, is 62 percent.

³¹ David Peterson, "Schools grow diverse as immigrant families migrate to suburbs," *Star Tribune*, March 4, 2009.

³² Lemagie, "Minority growth in suburbs jumps."

³³ *Ibid.*

³⁴ Percentages of minority students in these suburban districts in 1998 appear in Boyd and Hawkins, "Minority populations in suburbs rise," *MinnPost*, Nov. 18, 2008. Current numbers are from a document distributed to the Integration Revenue Replacement Advisory Task Force by the MDE and entitled "Comparison of Integration Revenue in FY 2012 and Minority Student Enrollment."

CHAPTER III

THE TRACK RECORD OF RACE-BASED ATTEMPTS TO CLOSE THE LEARNING GAP

The hope that racially balanced schools would significantly improve minority academic achievement—which continues to animate the MDE and other Minnesota education policy organizations—was tested across America in the most dramatic way possible: a massive and hugely expensive social science experiment between 1970 and 1995 or so. No social science proposition has been so widely and repeatedly tried.

During this period, in city after city throughout the nation, millions of children were bused far from their neighborhoods to achieve racial balance in schools. Today, the huge body of data generated allows an exhaustive review of this monumental experiment's long-term results.

A. The Impact of Race-Based Busing on Student Achievement in Minneapolis

From 1974 to the mid-1990s, Minneapolis students were bused on the basis of race, first under federal court order, then in compliance with a state rule that prohibited the operation of schools having minority enrollments more than 15 percentage points higher than the district-wide average of minority students at grade levels served by those

schools. By 1995, the Minneapolis School District was spending \$8 million each year to cover the costs of school desegregation. “Every day, Minneapolis children are bused a total distance equal to a trip to the moon,” Mayor Sharon Sayles Belton declared in her State of the City Address in January 1996. The city’s children, she said, would “be better served if we spent the money on strategies that would get them, at age 18 or 21, not to the moon but to the door of a well-paying employer.”³⁵

By 1995, more than two decades after busing began, Minneapolis had little to show for its efforts but large tax bills. The district had attained substantial racial balance in 1982, and remained that way until race-based busing was abandoned. During that period, minority test scores did not appreciably improve—in fact, black students’ scores steadily declined in the last five years of busing.³⁶ (See Figure 1 on page 1).

The Minneapolis School District’s own studies bore this out. In 1995, I interviewed Bill Brown, then head of the Minneapolis Public Schools Office of Research, Evaluation, and Assessment. He told me his office had found that academic progress of black students in Minneapolis had very little relation to the racial composition of their schools. In fact, in some cases, he said, black students in schools with

³⁵ Rhonda Hillbery, “Black mayor urges end to busing for integration,” *Los Angeles Times*, Jan. 9, 1996.

³⁶ Katherine Kersten, “Good Intentions Are Not Enough: The Peril Posed by Minnesota’s New Desegregation Plan,” Center of the American Experiment, March 1995, ii.



high minority concentrations made relatively large gains, while black students in predominantly white schools made relatively low gains.³⁷

B. How Has Race-Based Busing Succeeded across the Nation?

Today, four Minnesota education organizations are advancing learning gap-related proposals that would encourage or require race-based busing policies of the kind that have been tested and abandoned over the last 40 years in our state and across the nation. Taken together, these proposals would transform Minnesota’s educational landscape—reorganizing schools, generating huge costs, and injecting racial considerations into most aspects of school life. Before deciding to adopt any or all of their provisions, Minnesota policymakers and citizens should carefully examine the track record of such policies’ effectiveness.

(1) The Effect of Busing on Black Academic Achievement

The first major studies of the effect of race-based busing on student achievement appeared in the early 1970s.³⁸ In the years that followed, important studies and literature reviews included the National Institute of Education’s comprehensive 1984 review of the relationship between racial balance and black

Today, four Minnesota education organizations are advancing learning gap-related proposals that would encourage or require race-based busing policies of the kind that have been tested and abandoned over the last 40 years in our state and across the nation.

achievement³⁹ and Janet Ward Schofield’s 1995 literature review—one of the most extensive ever undertaken.⁴⁰ (Schofield analyzed more than 250 studies dealing with all the educational and social outcomes of desegregation.) Both the National Institute of Education and the Schofield review concluded that busing for racial balance is not an effective way to raise minority achievement.

In 2006, desegregation experts David Armor and Abigail and Stephan Thernstrom reviewed 40 years of data on busing’s effect on achievement in a brief presented to the U.S. Supreme Court in connection with *Parents Involved in Community Schools v. Seattle School District No. 1*—a case in which the Court barred school districts in Seattle and Louisville, Kentucky, from using race-based school assignment plans.⁴¹ Armor is now Professor Emeritus of Public

³⁷ *Ibid*, 1.

³⁸ See, e.g., Nancy St. John, *School Desegregation: Outcomes for Children* (Wiley & Sons: 1975) and Harold B. Gerard and Norman Miller, *School Desegregation: A Long Term Study* (Plenum: 1975).

³⁹ Thomas Cook, et al., *School Desegregation and Black Achievement*, National Institute of Education, 1984.

⁴⁰ Janet Ward Schofield, “Review of Research on School Desegregation’s Impact on Elementary and Secondary Students,” in J.A. Banks & C.A. McGee Banks, eds., *Handbook of Research in Multicultural Education* (McMillan: 1995), 597.

⁴¹ Brief of David J. Armor, Abigail Thernstrom and Stephan Thernstrom as Amici Curiae in Support of Petitioners, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007). The brief examines a wide range of studies, starting with St. John’s 1975 literature review, which was the largest research review of the more rigorous studies at that time. It then discusses two major studies of desegregation and achievement conducted during the 1980s. These studies advanced scholarship by using formal meta-analysis, which quantifies the effects of desegregation across many studies. The first was by Crain & Mahard in 1983 and the second by the National Institute of Education, which convened a panel of experts to seek to clarify the wide variation in conclusions about desegregation’s effect on black achievement. Finally, the brief discusses important studies that appeared between 1995 and 2005; these again introduced new types of data and new analytical techniques. “By 1995, many school districts had operated desegregation plans for a long time, which allowed case studies that could assess the long-term effects of desegregation in a particular school district.”

Policy at George Mason University. Abigail Thernstrom is vice chair of the U.S. Commission on Civil Rights and is a co-author, with Stephan Thernstrom, of *No Excuses: Closing the Racial Gap in Learning*.⁴² Stephan Thernstrom, a professor at Harvard University, is an expert on the Voting Rights Act.

In the authors' words:

A comprehensive view of the literature reveals that there is no evidence of a clear and consistent relationship between desegregation and academic achievement.... When averaged over large numbers of studies, the effects are generally weak or nonexistent.

(1.1) Race-based Busing's Outcome in Large Cities

Case studies from many cities where race-based busing occurred corroborate the conclusions of the literature reviews just described. These case studies demonstrate that the failure of busing to improve minority learning in Minneapolis and St. Paul was repeated across the nation over the course of many years. In fact, supporters of race-based busing are unable to cite any medium-sized or larger school district (enrollment of 20,000 students or greater) in which desegregation has produced a substantial rise in minority achievement and any reduction in the black/white achievement gap.

The experience of five large school districts is particularly instructive for Minnesota policymakers, because these cities experienced complete desegregation—or racial balancing—of the kind some busing advocates are now advocating for the Twin Cities.

In the 1970s, for example, Pasadena, California, and Norfolk, Virginia, adopted total racial balance plans. Both districts saw no improvement in minority achievement.⁴³ After Dallas, Texas, adopted a partial desegregation plan in 1976, gains by black students did occur. But these gains were as great for black students in predominantly minority schools as for those in predominantly white schools.⁴⁴

The track record of race-based busing in Kansas City and St. Louis, Missouri, merits special attention. Both cities' desegregation plans involved extraordinary expenditures on city schools, as well as massive efforts to produce voluntary transfers of black and white students across city/suburban district lines—the very goal of some Minnesota busing advocates today. Efforts were so extensive that, by 1995, the State of Missouri was spending between six and eight percent of its entire state budget on desegregation aid to Kansas City and St. Louis, an amount that did not include regular school aids.⁴⁵

Kansas City's racial balance plan, which cost more than \$2 billion dollars to implement, was the most expensive ever ordered by a court.⁴⁶ To fund its ambitious plan, the court ordered a near doubling of education-related spending and local property

⁴² Abigail Thernstrom and Stephan Thernstrom, *No Excuses: Closing the Racial Gap in Learning* (Simon and Schuster: 2003). *No Excuses* was named by both the *Los Angeles Times* and the *American School Board Journal* as one of the best books of 2003. The Thernstroms also collaborated to write *America in Black and White: One Nation, Indivisible* (Simon & Schuster: 1997), which the *New York Times Book Review*, in its annual end-of-the-year issue, named as one of the notable books of 1997. Abigail Thernstrom's 1987 work, *Whose Votes Count? Affirmative Action and Minority Voting Rights* (Harvard University Press: 1987) won four awards, including the American Bar Association's Certificate of Merit, and the Anisfield-Wolf prize for the best book on race and ethnicity. It was named the best policy studies book of that year by the Policy Studies Organization (an affiliate of the American Political Science Association), and won the Benchmark Book Award from the Center for Judicial Studies.

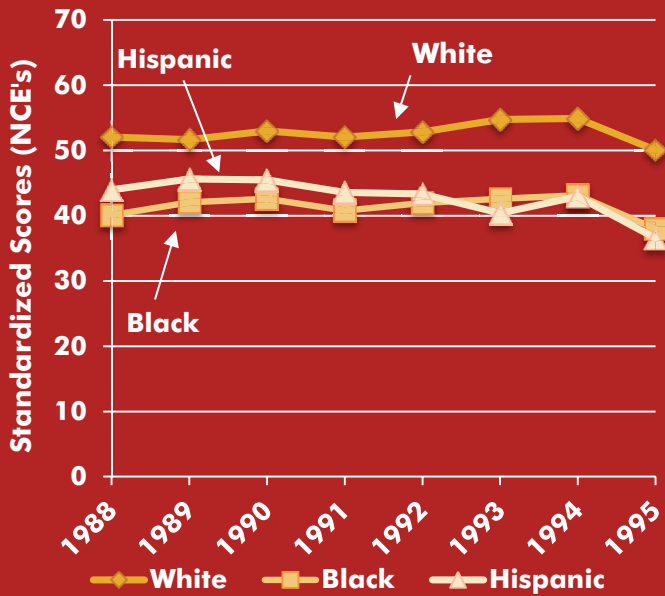
⁴³ Armor, et al., *Amici Curiae Brief*, 19.

⁴⁴ *Ibid.*

⁴⁵ Kersten, "Good Intentions," 73-74.

⁴⁶ Armor, et al., *Amici Curiae Brief*, 19.

Figure 2: Kansas City Post-Desegregation Composite Scores for 5th Graders



Source: David J. Armor.

taxes, over the objections of the Kansas City Council. The court's desegregation plan involved a massive reorganization of the city's schools. Most were turned into specialized magnets intended to radically improve black students' educational opportunities and to attract white suburban students on a voluntary basis. The court also instituted comprehensive remedial programs, and even required that every school be made "visually pleasing." One school had 800 computer terminals for its 1,200 students, as well as a full-time staff that included a weight trainer, a diving instructor, and a Russian fencing instructor and his interpreter.⁴⁷

Despite the Kansas City plan's exorbitant price tag and its extraordinary attempt to achieve racial

balance through inter-district busing, minority students' achievement failed to improve, and even declined (see Figure 2). In 1994, Gary Orfield, then director of the Harvard Project on School Desegregation, expressed his disappointment:

This story is a disappointing one for me, since I appeared as a final witness for plaintiffs ... more than a decade ago. In contrast to almost all U.S. central cities, Kansas City now has the newest, most elaborate school buildings and the most extraordinary special schools and programs in the state.... Clearly, it is much more difficult to substantially improve education for disadvantaged children than we had hoped.⁴⁸

The St. Louis school district's experience with race-based busing was similar. There, a 1983 consent decree created a "voluntary" plan that involved busing 13,000 minority students from the St. Louis School District to largely white suburban schools, and 1,200 white suburban students to city magnet schools. In some cases, students were bused hours away from their home neighborhoods.⁴⁹ The plan was extremely expensive and by 1995 had cost the city and state over \$1 billion. Transportation costs were as high as \$3,500 a year per student, and some white students were even chauffeured to school in taxi-cabs, at an annual cost to taxpayers of nearly \$2 million.⁵⁰

In a 1994 study of student achievement in the St. Louis metro area, Robert Lissitz concluded, "After controlling for [the] initial ability difference, there was virtually no difference in the achievement of students in desegregated schools, suburban schools, racially isolated schools, or magnet schools."⁵¹

⁴⁷ Kersten, "Good Intentions," 74.

⁴⁸ Alison Morantz, *Money, Choice and Equity: Major Investments with Modest Returns* (Cambridge, MA: Harvard Project on School Desegregation, April 1994), foreword by Gary Orfield.

⁴⁹ Brief of Amici Curiae Drs. Murphy, Rossell and Walberg in Support of Petitioners, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), 8.

⁵⁰ Kersten, "Good Intentions," 73; see generally Stephen Braun, "A Surprise Roadblock for Busing," *Los Angeles Times* (Washington Edition), Nov. 16, 1993.

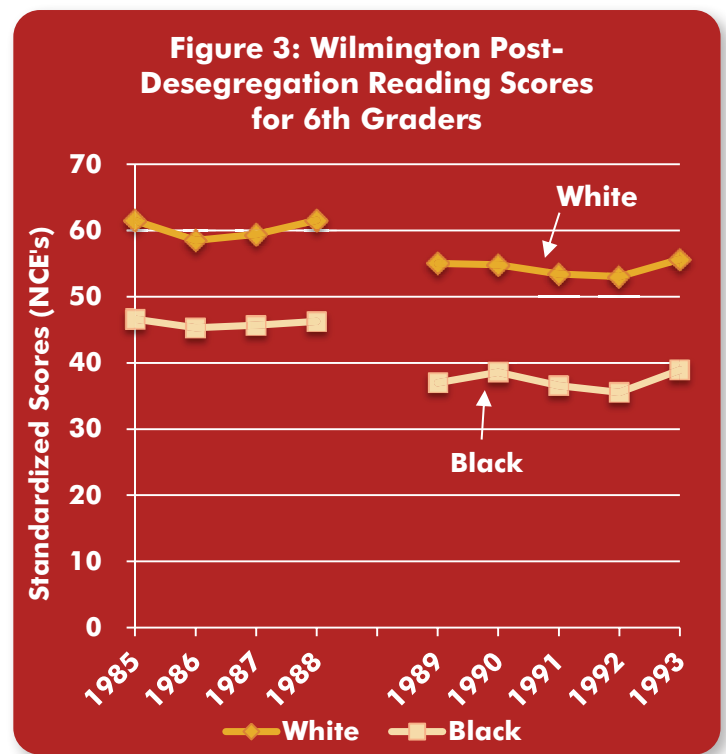
⁵¹ Robert Lissitz, "Assessment of Student Performance and Attitude: St. Louis Metropolitan Area Court Ordered Desegregation Effort," Report Submitted to the Voluntary Interdistrict Coordinating Council (1994).

Today, almost 30 years after these massive upheavals and financial outlays began, minority students' academic performance remains so low in Kansas City and St. Louis that the State of Missouri has stripped both districts of academic accreditation.⁵² The St. Louis schools are now being run by a three-member board appointed by state and local officials. In 2011, the Kansas City district met only three of 14 academic standards in the state's annual performance report.⁵³ Kansas City schools' fate is not yet clear: In the future, the district may be governed by a special administrative board, merged with another district, or split into several new school systems.⁵⁴

(1.2) Race-Based Busing's Impact in Metro Areas with Ideal Racial Balance

Advocates of race-based busing may argue that the experience of school districts such as Pasadena, Norfolk, Dallas, Kansas City, and St. Louis is not instructive for Minnesota. They may contend that busing must be both *mandatory* and *metro-wide* to minimize the middle-class flight that can erode racial balance over time. If Minnesota adopts "integration" of this kind, they may say, minority academic achievement will rise.

Yet the outcome of race-based busing in Wilmington, Delaware, and Charlotte-Mecklenburg, North Carolina, belies this contention. In the 1980s, these two districts implemented unusual, mandatory, county-wide desegregation plans encompassing both city and suburban schools. In both places, not only were minority children exposed to middle-class white environments, but the predominantly white enrollments in the counties enabled high levels of racial balance for many years, despite significant white flight. Although conditions in both districts



Note: Gaps in test scores mean change in test instrument. Source: David J. Armor.

were ideal, their black/white achievement gaps remained essentially unchanged.

(a) Wilmington, Delaware

The Wilmington-New Castle County desegregation plan was adopted in 1976 and modified in 1982. New Castle districts were among the most desegregated (in terms of racial balance) in the nation, according to a 1994 study of the plan's results. Gary Orfield himself characterized the New Castle plan as "virtually eliminate[ing] segregated education in the Wilmington area."⁵⁵

Nevertheless, the achievement gap among black and white students in New Castle remained flat (see Figure 3.) Between 1989 and 1993, the reading

⁵² "Board strips Kansas City schools' accreditation," *MSNBC News Services*, Sept. 20, 2011, available at http://news.mobile.msn.com/en-us/article_us.aspx?aid=44599913&afid=1.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ David J. Armor, "Evaluation of Desegregation in New Castle County," Nov. 28, 1994. See Kersten, "Good Intentions," 57.

(b) Charlotte-Mecklenburg, North Carolina

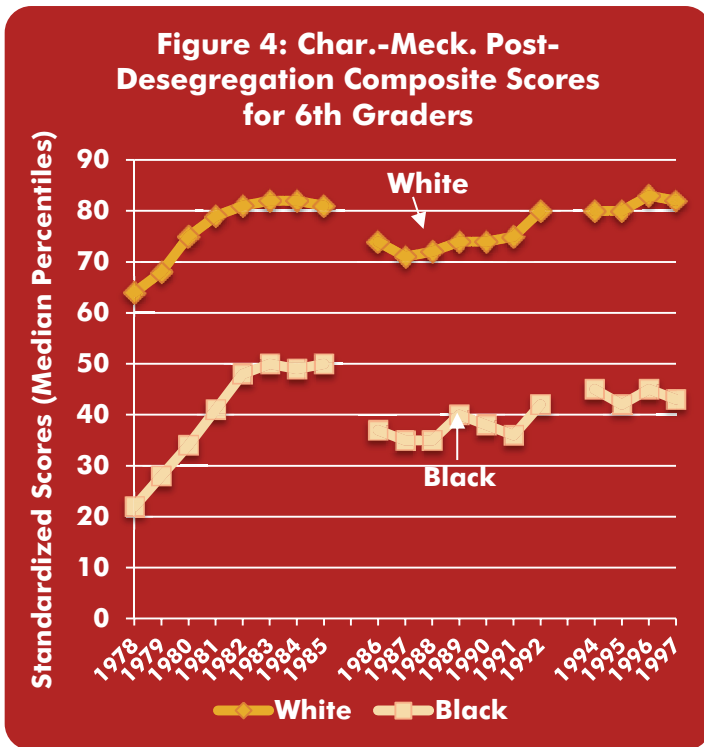
In 1971, as a result of the Supreme Court's landmark decision in *Swann v. Charlotte-Mecklenburg Board of Education*, Charlotte-Mecklenburg adopted a comprehensive racial balance plan and maintained highly racially balanced schools for the next two decades. Both black and white achievement rose significantly between 1978 and 1985. However, black achievement rose faster, and the achievement gap decreased from 40 to 30 percentile points.⁵⁸

In 1986, a new achievement battery was introduced, and both black and white achievement declined. The achievement gap returned to 40 percentile points, where it remained until 1992. An analysis revealed that in 1998 there was no significant relationship between school racial composition and either reading or math achievement for black elementary students.⁵⁹ Thus, Charlotte-Mecklenburg, often described as the best example of desegregation in the nation, showed no net reduction in the achievement gap over a 20-year period (see Figure 4).⁶⁰

(2) The Effect of Racial Balance on Hispanic Achievement

Decades of experience demonstrate that busing for racial balance does not consistently or reliably boost black students' academic performance. Do racially balanced schools have an effect on Hispanic students' achievement? This subject, though less studied, is of special relevance in Minnesota, given

Figure 4: Char.-Meck. Post-Desegregation Composite Scores for 6th Graders



Note: Gaps in test scores means change in test instrument.
Source: David J. Armor.

gap was actually slightly larger than the national reading gap.⁵⁶ An analysis of achievement scores and dropout rates for New Castle County students for the 1991-92 school year found large differences between white and black children at all test grade levels and for both reading and mathematics achievement. For example, the mean reading score for white sixth graders on the Stanford Achievement Test was about 56; it was about 39 for black sixth graders. White eighth graders averaged 54 in math, while black eighth graders averaged 38.⁵⁷

⁵⁶ Armor, "Evaluation of Desegregation in New Castle County," 21. See Kersten, "Good Intentions," 57.

⁵⁷ Armor, "Evaluation of Desegregation in New Castle County," 21.

⁵⁸ Armor, et al., Amici Curiae brief, 20.

⁵⁹ *Ibid.* See also David J. Armor, "Desegregation and Academic Achievement," in C.H. Rossell et al., eds., *School Desegregation in the 21st Century* (Greenwood Publishing Group: 2002), 174.

⁶⁰ Armor, et al., Amici Curiae Brief, 20.

the dramatic increase in the number of Hispanic students in the state's schools.

A 2006 study by Armor, using 2003 National Assessment of Educational Progress data, analyzed the national relationship between school racial and ethnic composition. The study found no relationship between Hispanic concentration and Hispanic achievement, after controlling for student socioeconomic status.⁶¹ This finding held true for both California and Texas, the states with the largest number of Hispanic students in predominantly Hispanic schools.

An earlier study of the effect of racial/ethnic balance on Hispanic students was conducted by Gerard and Miller.⁶² In their comprehensive evaluation of the desegregation plan adopted in Riverside, California, the authors concluded that racial “desegregation did not significantly influence the achievement level of any [student] groups, including the Mexican-American children.” They continued:

Analysis of standardized reading achievement data offers a picture that provides little encouragement to those who see desegregation as a panacea for reducing the achievement gap that so ubiquitously characterizes minority academic performance. While the achievement of Anglo children did not suffer, minority

Thus, Charlotte-Mecklenburg, often described as the best example of desegregation in the nation, showed no net reduction in the achievement gap over a 20-year period.

students showed no overall benefit.⁶³

In recent years, the only credible study finding significant achievement benefits from racial balance in schools is a 2009 study by Hanushek, Kain and Rivkin, using data from Texas.⁶⁴ However, the study found significant effects only when white and black students were combined in the analysis. Historically, the overwhelming finding of research on this issue is that the effects of racial isolation are different for blacks and whites. A key table in the Hanushek study shows that when black and white students are analyzed separately, the small effects of racial balance for black students are not statistically significant.

In a 2007 study, Armor performed a longitudinal analysis of statewide data of the kind used by Hanushek for both North Carolina and South Carolina.⁶⁵ He found no significant effect of black concentration on black achievement in either state.⁶⁶

⁶¹ David J. Armor, Statement to the U. S. Commission on Civil Rights, *The Outcomes of School Desegregation in the Public Schools* (July 28, 2006).

⁶² Gerard and Miller, *School Desegregation*.

⁶³ *Ibid.* In 1995, Janet Ward Schofield published one of the most complete literature reviews ever performed of all the educational and social outcomes of desegregation. (Janet Ward Schofield, “Review of Research on School Desegregation’s Impact on Elementary and Secondary Students,” in J.A. Banks & C.A. McGee Banks eds., *Handbook of Research on Multicultural Education* 597 (McMillan: 1995). Schofield also reviewed Hispanic achievement, pointing out that little empirical evidence exists on the subject, and concluding that the Gerard and Miller study remains the most important source of information on the topic. She repeated their conclusion: “Desegregation did not significantly influence the achievement level of any of the groups, including the Mexican American children.”

⁶⁴ Eric A. Hanushek, et al., “New Evidence about Brown v. Board of Education: The Complex Effects of School Racial Composition on Achievement,” *Journal of Labor Economics*, Vol. 3, No. 1 (2009).

⁶⁵ David J. Armor and Stephanie Duck, “The Effect of Black Peers on Black Test Scores,” Education Working Paper Archives, University of Arkansas, September 2007.

⁶⁶ Armor’s finding was consistent with that of Hanushek in Table 3 of his 2009 study. Both Hanushek’s and Armor’s studies were carried out on statewide achievement data bases tracking tens or hundreds of thousands of students over multiple years. Hanushek’s study did not actually show longitudinal effects in Texas, as Armor’s studies did for North and South Carolina. Armor found only very small effects of desegregation as students progressed from grade three to grade eight.



(3) Has Race-Based School Assignment Brought Social and Long-Term Benefits?

The data are clear: Race-based busing does not reliably or consistently improve minority academic achievement or reduce the racial and ethnic learning gap. However, busing proponents often claim that the practice produces non-academic benefits, including decreased racial prejudice and improved long-term outcomes in terms of college attendance, occupational status, and other factors. These claims will be examined in turn.

(3.1) Has Busing Improved Race Relations?

One of the most frequently heard defenses of race-based school assignment is that it improves race relations and racial understanding and prepares children to live in a multicultural or globally diverse world. Unfortunately, improvement in racial attitudes is the one area in which the benefits of racial balance have been hardest to demonstrate and, indeed, where some of the most negative effects have been found.

(a) Minnesota's Experience

Today, proponents of race-based busing, including the Minnesota School Integration Council and the Institute on Race and Poverty, routinely claim that greater racial understanding is one of the primary benefits of racially balanced schools.⁶⁷

Such empirically unsupported assertions were often

Unfortunately, there is scant evidence that decades of race-based busing improved race relations in Minneapolis and St. Paul schools.

heard in Minneapolis and St. Paul in the 1970s, when race-based busing began. They were heard again in the mid-1990s, during the State Board of Education's campaign to convince the legislature to approve the SBE's proposed desegregation rule.⁶⁸ At the time, the claim was echoed by organizations such as the Council of Metropolitan Area Leagues of Women Voters, which asserted in a 1995 report that busing leads to better race relations, enhanced minority self-esteem, and long-term benefits in educational and occupational attainment.⁶⁹

Unfortunately, there is scant evidence that decades of race-based busing improved race relations in Minneapolis and St. Paul schools. This disappointing result occurred despite the fact that both districts made improved race relations a central goal, offered extensive racial "sensitivity training" for teachers and students, and used "multicultural" curricula.

Minneapolis school officials confirmed busing's failure to improve race relations in 1994. That year, the district announced it had renewed its commitment to root out "embedded racism" from its schools. "The hope is to have schools combat racism by being able to identify how it slips into procedures and affects performance," the *Star Tribune* reported at the time.⁷⁰ After 20 years of race-based school

⁶⁷ The Eden Prairie School District also made many such claims. See "Summary of Research: Integrated Schools," 1-2., available at http://www3.edenpr.org/public/documents/ContinuedExcellence/boundary_doc/Benefits_of_Integration_2010.pdf. Claims of this kind generally assert that students of all backgrounds in racially balanced schools are more likely to have friends from other races, to work in integrated workplaces, to live in integrated neighborhoods, and generally to have reduced levels of prejudice.

⁶⁸ See Kersten, "Good Intentions," 54-55.

⁶⁹ Council of Metropolitan Area Leagues of Women Voters, "Metropolitan School Desegregation and Integration: A Study of Proposals for Integrating Schools of the Metropolitan Twin Cities Area of Minnesota," St. Paul, Minnesota: January 1991.

⁷⁰ Laurie Blake, "Search is On for Embedded Racism," *Star Tribune*, Dec. 5, 1994.

assignment, racism in Minneapolis public schools was still perceived as rampant, despite millions of dollars spent on busing.

In St. Paul that same year, 1994, a study of district schools by People for the American Way suggested that race relations may actually have worsened in the district after the advent of race-based busing in the early 1970s.⁷¹ After two decades of racially balanced schools, the report found that “even in this age of increasing diversity, race relations and tolerance at St. Paul area high schools is [sic] crumbling.” Eighty percent of teachers and administrators interviewed for the report stated their belief that race relations were getting worse in St. Paul area schools.

Apparently, neither St. Paul nor Minneapolis personnel considered that racial resentments may have sprung, in part, from coercive busing requirements and from the emphasis on racial “differences” that characterizes so many multicultural programs.

(b) The National Experience

Minneapolis and St. Paul’s experience of desegregation’s effect on race relations is not

unusual. Individual studies of the effect of race-based busing on race relations and racial prejudice vary greatly in their findings. Social scientists have performed a number of comprehensive reviews of the many studies on desegregation and race relations, and they have generally come to the same conclusions regarding variability.

For example, a major 1975 review of 50 studies by Nancy St. John found that desegregation appeared to increase racial prejudice by both blacks and whites in some studies and to decrease it in others, while in a third group of studies, it had no or mixed effects.⁷² A later comprehensive review of studies on the topic by Walter Stephan reached similar conclusions.⁷³ Both St. John and Stephan found that, overall, desegregation may actually have a tendency to *increase* white students’ prejudice against blacks—a clearly troubling finding.

St. John also reviewed a separate group of 17 studies that used friendship choices as the outcome measure of the effect of desegregation on race relations. She found a mixed picture,⁷⁴ though there was some evidence that desegregation may worsen white prejudice. In her analysis, St. John commented that the conditions for reducing prejudice and improving

⁷¹ The Blue Ribbon Commission on Diversity and Equity, “Report to the Superintendent of the Saint Paul Public Schools,” St. Paul Public Schools, May 4, 1994. The report quoted a student from Como Park Senior High in St. Paul (more than half minority at the time) who said that though most people get along well, “There’s more cliques among African-Americans and more cliques among whites.” Two white students were quoted as saying, “People ... look at me and assume that I’m prejudiced just because I’m white.” On the other hand, 66 percent of black students consulted said they felt they had been treated unfairly because of their race.

⁷² St. John reviewed 27 studies that compared the prejudicial attitudes of students in segregated and desegregated schools. She found that for blacks, desegregation had negative effects (increased racial prejudice) in six studies, positive effects (prejudice decreased) in five studies, and no or mixed effects in three studies. For whites, the breakdown was eight, eight and three, respectively. Nancy St. John, *School Desegregation: Outcomes for Children* (Wiley & Sons: 1975).

⁷³ Stephan, writing in 1986, looked at studies that compared the prejudicial attitudes of students in segregated vs. desegregated schools, i.e., schools with students of predominantly one race vs. racially balanced schools. For blacks, he found that desegregation worsened anti-white prejudice in four studies, decreased it in eight studies, and had no or mixed effects in eight studies. For whites, prejudice grew worse in 11 studies, got better in four studies, and had no or mixed effects in nine studies. In other words, Stephan found that positive studies outnumbered negative studies for blacks, but he found that the reverse was true for whites—that desegregated schools increased racial prejudice. Walter G. Stephan, “The Effects of School Desegregation: An Evaluation 30 Years after *Brown*,” in *Advances in Applied Social Psychology* 181 (M. Saks and L.Saxe, eds., Erlbaum Assoc.:1986).

⁷⁴ For black students, one study was positive (desegregation produced more cross-race friendships), four were negative (fewer friendships), and nine had mixed or no effects. For whites, three studies found more friendships, three found fewer, and ten had mixed or no results.



race relations may not exist in many school settings where large differences in academic attainment exist between racial groups.⁷⁵

While reviews of groups of studies can yield important findings, case studies of the effects of desegregation in individual school districts can also be informative. Two such studies of social outcomes in integrated schools are often cited for their sophistication and thoroughness.

The first is Gerard and Miller's study of desegregation in Riverside, California. Among other topics, the authors evaluated the effects of racial balance on race relations over a six-year period following the school district's implementation of a desegregation plan.⁷⁶ Gerard has written that he began his work confident that racial balance would produce a significant improvement in race relations. However, he and Miller found that five years after desegregation, when most fourth to sixth graders had been desegregated from the beginning of their schooling, little racial mixing had occurred. The authors concluded that

[L]ittle or no real integration occurred during the relatively long-term contact situation represented by Riverside's desegregation program. If anything, we found some evidence that ethnic cleavage became somewhat more pronounced over time.⁷⁷

⁷⁵ St. John, *School Desegregation*, 72.

⁷⁶ Harold B. Gerard, "School Desegregation: The Social Science Role," *American Psychologist*, August 1983, 869. In this article, Gerard described his 1975 study. Gerard noted that "We have the dubious distinction of having collected more desegregation data than anyone since [James] Coleman.... [W]e studied 1,800 children in a single school district over a period of six years, collecting detailed data on each child from a number of perspectives." *Ibid.*, 869. "We had hoped that our data would still the critics," he wrote, "by demonstrating that minority achievement, achievement-related attitudes, and self-esteem would improve from pre- to post-desegregation."

⁷⁷ Gerard and Miller, *School Desegregation*, 237. Gerard observed that "stereotypes tend to persist rather than dissolve in the mixed classroom. Furthermore, we found only a minuscule number of cross-ethnic work partner or friendship sociometric choices, especially by whites, with virtually no change over the postdesegregation years we studied. The evidence, thus, is strong that self-segregation occurred within the classroom. There was little meaningful contact, let alone contact that would permit learning about each other as individuals." "School Desegregation," 872. "Self-segregation was as true for the younger children—those who started with desegregation in the first and second grades—as it was for the older ones." *Ibid.*, 874.

⁷⁸ The study found that white students chose 1.5 blacks and Hispanics as friends after one year of desegregation. After six years, the rates fell to 1.0 for blacks and 1.1 for Hispanics.

⁷⁹ Martin Patchen, *Black-White Contact in Schools* (Purdue University Press: 1982).

⁸⁰ Janet Ward Schofield, "School Desegregation and Intergroup Relations: A Review of the Literature," *Review of Research In Education*, Vol. 17, 335-412 (American Educational Research Association: 1991).

Gerard's and Miller's study was among the few to focus on friendship measures involving Hispanic as well as black and white students. The study found that, far from increasing over time, the number of black and Hispanic students chosen as friends by whites decreased.⁷⁸

The second important case study, done by Martin Patchen, examined the effect of racial composition in the classroom on race relations in 12 Indianapolis high schools, several years after desegregation began in the district.⁷⁹ Patchen found that both blacks and whites had the most positive attitudes toward the opposite race in classrooms that averaged more than 70 percent black and the most negative attitudes in integrated classes averaging between 20 and 40 percent black. He concluded that the "ideally" integrated classrooms—between 20 and 40 percent black—had the highest levels of friction, in part due to academic competition.

Since Patchen's work, one of the few important new studies of the effect of racial balance on race relations is Janet Ward Schofield's 1995 comprehensive literature review. Schofield concluded, as St. John had, that "there is no guarantee that desegregation will promote positive intergroup behavior."⁸⁰

Most recently, a 2006 study by Pettigrew and Tropp examined intergroup contact and prejudice across the world, and analyzed the effect of contact—

not only on racial groups—but on groups such as the elderly and mentally ill. This study was the first meta-analysis to show a positive benefit of interracial contact.⁸¹ Pettigrew and Tropp found that interracial contact improved racial tolerance by about .2 standard deviations, on average, across a variety of settings. However, the study’s major limitation is that the authors did not break out interracial contact for American K-12 schools experiencing mandatory desegregation—a situation in which other studies have shown worsening race relations.

(3.2) Has Busing Improved Long-Term Outcomes for Minority Students?

Some researchers have concluded that long-term outcomes of racial balance, including increased college attendance and higher wages for minority students, are more significant than short-term outcomes like test scores.

There are far fewer studies of busing’s long-term outcomes than of its effects on academic achievement and race relations. Most of these studies face serious methodological hurdles in isolating the effects of busing from other factors.⁸² Where voluntary busing programs are concerned, researchers must try to account for self-selection. Under other circumstances, researchers must take into account the fact that black students who live in

racially mixed neighborhoods may differ from those who live in predominantly black neighborhoods, either in socioeconomic terms or in terms of family preference for “integrated” environments.

However, in their review of major studies, Armor and the Thernstroms conclude that there is no evidence of a clear and consistent relationship between desegregation and such long-term outcomes as college attendance, occupational status, and wages.⁸³

The authors note that there is a statistically significant relationship for black students between attending a racially balanced high school and attending a predominantly white college. But they point out that the causal factor here could simply be self-selection—black families’ preference for integrated environments generally—rather than the racial composition of the high school attended.

Three major studies on educational attainment (Crain & Mahard, Eckland, and Braddock & McParland) suggest that there is no relationship, or at best a very weak relationship, between school desegregation and college attendance.⁸⁴ The studies used the same data but different analytical models, and found the relationship between high school desegregation and college attendance to be virtually zero.

Crain and his colleagues also performed a major study of data from Project Concern, a long-running

⁸¹ T.F. Pettigrew and L.R. Tropp, “A meta-analytic test of intergroup contact theory,” *Journal of Personality and Social Psychology*, Vol. 90, No. 5, 751-783.

⁸² See Armor, et al., Amici Curiae brief, 22-25, and David J. Armor, *Forced Justice: School Desegregation and the Law* (Oxford University Press: 1995), 98-111.

⁸³ Armor et al., Amici Curiae Brief, 21-25.

⁸⁴ *Ibid.*, 22-23. Robert L. Crain and Rita Mahard, “School Racial Compositions and Black College Attendance and Achievement Test Performance,” *Sociology of Education*, Vol. 51, 81-101 (1978); Bruce K. Eckland, “School Racial Composition and College Attendance Revisited,” *Sociology of Education*, Vol. 52, 122-125 (1979); and Jomills H. Braddock II and James M. McParland, “Assessing School Desegregation Effects: New Directions in Research,” *Research in Soc. of Educ. and Socialization*, Vol. 3, 259-282 (1982). The Crain & Mahard and Braddock & McParland studies came to similar conclusions: They found no relationship between desegregation and college attendance in the South and a small positive relationship in the North that was not statistically significant.

desegregation program involving voluntary transfers of black students from Hartford, Connecticut, schools to suburban schools.⁸⁵ The study compared Project Concern students to a control group of students who remained in largely black Hartford schools. After controlling for family background, gender and test scores, there was no difference in college attendance between all Project Concern students and the Hartford control group.⁸⁶

In addition, a study by Boozer, Krueger and Wolkon used data from the National Survey of Black Americans to investigate the relationship between the percent of black students in a high school and total years of education. The relationship was not statistically significant after controlling for the effect of self-selection.⁸⁷

There is relatively little research on the link between school desegregation and occupation or wage attainment.⁸⁸ The studies that do exist have established little connection.⁸⁹

In sum, voluminous data—compiled over decades—demonstrate that race-based busing does not consistently or reliably reduce the learning gap or lead to significant and consistent improvement in either race relations or long-term outcomes such as college attendance or higher wages. Yet advocates of race-based busing maintain that “numerous studies” document the value of racial balance in all these respects.⁹⁰ The four Minnesota education policy organizations that are currently advancing learning gap-related proposals all take this position.

⁸⁵ Robert L. Crain et al., “Finding Niches: Desegregated Students Sixteen Years Later,” Columbia University: Teachers College, January 1989.

⁸⁶ Crain reported that “participation in Project Concern increases the chance of graduating from high schools, and, for males, increases the number of years of college they attend....” However, about half of Project Concern students left the program before finishing, and most returned to Hartford schools. Students who volunteered for Project Concern had higher SES profiles than those from the control group. Students who withdrew from the program were having more academic and behavioral problems than those who stayed in. When both college attendance and high school dropout rates are compared for *all* original Project Concern students and the Hartford control groups, Project Concern did not produce significantly better educational outcomes than the Hartford schools. See Armor et al., *Amici Curiae Brief*, 23-24: “Moreover, some students spent a substantial number of years in desegregated suburban schools, but then returned to the Hartford schools, and they were no more likely to attend college than those who had remained in the city all along.” See Armor, *Forced Justice*, for a more detailed explication of the Project Concern study.

⁸⁷ Michael A. Boozer et al., “Race and School Quality since Brown v. Board of Education,” *Brookings Institution Papers on Economic Activity. Microeconomics*, 269-338 (1992). The effect associated with attending a 90 percent vs. a 30 percent black high school would be a reduction of approximately one-quarter year in total years of education. See also Armor et al., *Amici Curiae Brief*, 24.

⁸⁸ Armor et al., *Amici Curiae Brief*, 24. “Because of the weak relationship between desegregation and college attendance, we would not expect much of a connection between desegregation and the rate of white collar (vs. blue collar) jobs, since college is the primary determinant of this distinction.”

⁸⁹ *Ibid.*, 24. Regarding occupations and wages, the brief continues: “An unpublished study by Dawkins in 1991 finds some relationship between desegregation and higher occupational relationship for younger adults, but the relationships are ‘weak and inconsistent for respondents from the South....’” [citing Marvin P. Dawkins, “Long-term Effects of School Desegregation on African Americans” (unpublished paper, University of Miami, 1991); the quote is from Amy Stuart Wells and Robert L. Crain, “Perpetuation Theory and the Long-Term Effects of School Desegregation,” *Rev. of Educ. Res.*, Vol. 64, 531-556 (1994)]. The brief cites two additional studies on this topic. The first, by Crain and Strauss, used the Project Concern data and found that school desegregation has little effect on occupational attainment of black men who lack college education. The second, by Boozer, studied the relationship between high school black composition and wages. It found a small negative effect on wages, which was not statistically significant after controlling for self-selection bias.

⁹⁰ An example from a 2008 series of articles in *MinnPost* is typical. “[M]ore than four decades of studies suggest that the most effective way to close the achievement gap and prepare all children for success in the global marketplace is to integrate schools along both racial and class lines.” Cynthia Boyd and Beth Hawkins, “A better way to integrate schools: by race and class,” *MinnPost*, Nov. 21, 2008.

Unfortunately, many studies on desegregation-related topics are of low quality, as social scientists who have reviewed the literature have frequently pointed out.⁹¹ This is particularly true of studies of the effect of racial balance on social attitudes. These are often hampered by a lack of standardized measures of racial prejudice, which adds to the difficulty of legitimately generalizing their results.

“Advocacy research” is particularly prone to methodological flaws. This is research by authors who focus primarily on promoting certain policy positions, rather than acting as disinterested social scientists.⁹² Such authors and the institutions they

represent rarely cite or discuss research that doesn’t agree with their own conclusions.⁹³ Prominent examples include the Harvard Civil Rights Project, a self-described advocacy organization for school desegregation and racial balance plans once directed by Gary Orfield,⁹⁴ who now co-directs the Civil Rights Project at UCLA. Richard Kahlenberg and his Century Foundation are another example. (*The Washington Post* has described the Century Foundation as “a think tank that advocates for economic integration.”)⁹⁵ Minnesota advocates of race-based busing tend to rely heavily on the work of authors and institutions such as these.

⁹¹ About the methodological problems associated with desegregation research, see Janet Ward Schofield, “Review of Research on School Desegregation’s Impact on Elementary and Secondary Students.” See also R. W. Rumberger and G.J. Palardy, “Does Segregation Still Matter? The Impact of Student Composition on Academic Achievement in High School,” *Teachers College Record*, Vol. 107, 9, Sept. 2005, 1999-2045. The authors explain that “a great many studies have examined the impact of segregation (and desegregation) on student achievement, but many of these ... are plagued by a host of methodological problems.” *Ibid.*, 2001.

⁹² Armor et al., *Amici Curiae Brief*, 11, n. 17. David Armor provided a vivid idea of the scope of the methodological flaws that can mar the value of research when he visited Minneapolis in 1994, to address a Center of the American Experiment Luncheon Forum and to speak at a roundtable with legislators, school superintendents, and members of the State Board of Education. In response to his visit, the Minneapolis school district produced three articles suggesting that busing raises black students’ achievement.

Armor commented on each of these. Regarding the first—a literature review by Jomills Braddock and James McPartland—he commented: “Like much of the writing in this field, [the article does] not cite or discuss any contrary conclusions. The only original research cited that specifically studied the relationship between desegregation and black academic achievement is that by Robert Crain, which is one of the few competent studies that finds academic benefits from desegregation.”

Regarding another article, by Christina Meldrum and Susan Eaton, which criticized Armor’s own work on desegregation in Norfolk, Virginia, Armor noted that:

There are so many methodological problems with this paper (as there are with many papers produced by the Harvard Project on School Desegregation [then directed by Gary Orfield]) that I hesitate even to comment on it. Their analysis of black achievement is especially flawed: (1) They fail to compare black achievement in segregated and desegregated schools; (2) they cite another study that analyzes test scores for only one year after returning to neighborhood schools; and (3) they claim that the original desegregation plan benefited black achievement, when in fact it fell after desegregation and did not even reach the pre-busing levels until eight years after the start of desegregation!.... The report misses the essence of the argument, that mandatory busing causes white flight and that ending busing can actually produce a return of fleeing whites.

⁹³ Armor et al., *Amici Curiae Brief*, 11.

⁹⁴ *Ibid.*, 11-12. “The Harvard Project’s numerous publications rarely cite studies that do not find significant academic gains from desegregation,” according to Armor and the Thernstroms.

⁹⁵ Stephanie McCrummen, “Republican school board in N.C. backed by tea party abolishes integration policy,” *Washington Post*, Jan. 12, 2011. The Century Foundation describes itself as advocating for “progressive ideas that advance security, opportunity and equality.” See The Century Foundation website, at <http://tcf.org/>.



Today, racial clustering does exist in many Minnesota public schools. However, this is not the result of illegal government discrimination but of racial housing and residential patterns that reflect the choices and economic circumstances of black and white citizens.

(4) Busing Brings No Consistent Benefits, but Is It Legally Compelled?

Social science evidence makes clear that race-based busing does not reliably or consistently produce the academic, social, or long-term benefits that its proponents claim. Yet is busing for racial balance nevertheless legally required in school districts with “racially isolated” schools? Some busing advocates appear to hold this position.

(4.1) When is Busing Constitutionally Required, and When is It Not?

In 1954, the U.S. Supreme Court ruled in *Brown v. Board of Education* that racial separation that results from *discriminatory intent*—that is, deliberate discriminatory government action—violates the Equal Protection Clause of the U.S. Constitution. Almost 60 years later, few, if any, school districts are still intentionally and illegally separating children on the basis of race.

Today, racial clustering does exist in many Minnesota public schools. However, this is not the result of illegal government discrimination but of racial housing and residential patterns that reflect the choices and economic circumstances of black and white citizens. The U.S. Supreme Court has ruled repeatedly that racial clustering in schools is not unconstitutional.⁹⁶ Most recently, the Court reaffirmed this in *Parents Involved in Community Schools v. Seattle School District No. 1*, a 2007 case that struck down race-based school assignment plans in Seattle and Louisville, Kentucky.⁹⁷ In *Parents Involved*, the Court again warned against conflating racial balance—i.e., diversity for its own sake—with illegal *intentional* segregation.

Minnesota’s current voluntary integration rule is consistent with federal law. The rule states clearly that schools need not be racially balanced, and it requires proof of illegal government intent to discriminate on the basis of race to label a school “segregated.”⁹⁸

⁹⁶ For an extensive discussion of this topic, see Cindy Lavorato and Frank Spencer, “Back to the Future with Race-Based Mandates: A Response to *Missed Opportunity*,” *William Mitchell Law Review*, vol. 36, 1747 (2010), 1763-68.

⁹⁷ *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007).

⁹⁸ Minn. R. § 3535.0110, Subp. 9 states “‘Segregation’ means the intentional act or acts by a school district that has the discriminatory purpose of causing a student to attend or not attend particular programs or schools within the district on the basis of the student’s race and that causes a concentration of protected students at a particular school.” The rule continues, “It is not segregation for a concentration of protected students or white students to exist within schools or school districts: (1) if the concentration is not the result of intentional acts motivated by discriminatory purpose....”

Yet despite the rule's clear language and 30 years of U.S. Supreme Court jurisprudence,⁹⁹ some busing advocates continue to insist that the State of Minnesota must mandate "desegregation" of its "racially identifiable" schools."¹⁰⁰ As a matter of law, this is simply wrong. Yet busing proponents often frame their claim in these terms, because describing these schools as "segregated" allows them to appropriate the moral mantle of the *Brown* decision and to portray those who oppose race-based busing as racists.

It's important, then, to clarify that the debate about race-based busing in Minnesota is not about "integration," as the commissioner of education and other advocates choose to call it. It is about racial and ethnic balance for its own sake—that is, the belief that "diversity," in itself, brings academic and social benefits.

(4.2) Is Busing Necessary to Prevent "Resegregation" in the Twin Cities?

Busing advocates also make the argument that race-based school assignment is necessary because Minnesota schools are "resegregating," to the detriment of "racially isolated" poor and minority students. For example, in a 2009 law review article entitled "A Missed Opportunity: Minnesota's Failed Experiment with Choice-Based Integration,"

Myron Orfield and his co-authors claimed, "Today, children of color in the Twin Cities are far more likely to attend a racially isolated school than they were ten years ago."¹⁰¹

Clearly, minority enrollments are growing in many Minnesota schools. However, this likely simply reflects the fact that our state's minority population is increasing much faster than its white population.¹⁰² In a response to "Missed Opportunity," attorney Cindy Lavorato—then program director of the Public Policy and Leadership Program at the University of St. Thomas School of Education—and an associate put it this way:

While it is true that the number of racially identifiable schools in the Twin Cities has increased over the past ten years, what is also true is that here—as in most places around the country—the number of white students is declining while the overall number of students of color is rising. In fact, some have argued that the claimed trend towards "resegregation" in this country is erroneous; rather, if racial isolation is increasing, it can be attributable to an increase in the student-of-color population overall.¹⁰³

Lavorato points out that in Minnesota, the number of white students attending majority white schools has actually *decreased* in recent years.¹⁰⁴ She cites a 2007 report by Gary Orfield and others that describes Minnesota as ranking consistently in

⁹⁹ See Lavorato and Spencer, "Back to the Future with Race-based Mandates," 1764-65, reviewing "nearly thirty years of United States Supreme Court precedent" on this point: "Beginning in the 1973 decision *Keyes v. School District No. 1*, the Supreme Court clearly articulated the distinction between 'intentional segregation,' which *Brown* prohibited, and 'racial imbalance,' which was never at issue in *Brown*.... Three years later, in *Milliken v. Bradley (Milliken II)*, the Supreme Court ... stated, '[T]he Court has consistently held that the Constitution is not violated by racial imbalance in the schools, without more.'"

¹⁰⁰ *Ibid.*

¹⁰¹ Margaret C. Hobday, Geneva Finn and Myron Orfield, "A Missed Opportunity: Minnesota's Failed Experiment with Choice-Based Integration," *William Mitchell Law Review*, vol. 35, p. 936 (2009), 949. In assessing this claim, Lavorato and Spencer write, "Interestingly, no authority is given for that assertion; moreover, it is unclear what the authors mean by 'racially isolated school'. The authors also claim that '[t]oday, students of color are more likely to attend a segregated school than they were in 1990'.... It is ... not clear whether this reference is to segregated schools in Minnesota—or rather to the conditions of segregated schools across the country." "Back to the Future," 1806 (citations omitted).

¹⁰² Lavorato and Spencer, "Back to the Future with Race-based Mandates," 1807.

¹⁰³ *Ibid.*, 1806-07 (citations omitted).

¹⁰⁴ *Ibid.*, 1807. Lavorato and Spencer note that the authors of "Missed Opportunity" acknowledge this fact.



the top 15 states on a scale that measures highest levels of integration for black students.¹⁰⁵ Quoting Gary Orfield, Lavorato notes that “[w]e are in the last decade of a white majority in American public schools....”¹⁰⁶ Given current demographics, she concludes,

it will be increasingly difficult to achieve any degree of racial balance based on the presence of white students in school classrooms.... [F]ocusing on moving students around to achieve racial balance will be an increasingly futile policy initiative.¹⁰⁷

(5) Have Previous Busing Plans Failed Because They Have Not Gone Far Enough?

Some race-based busing advocates assert that Minnesota’s achievement gap will remain until the state tries “true integration,” which goes far beyond “just moving bodies.”¹⁰⁸ They claim that multi-faceted learning gap proposals like that of the Minnesota School Integration Council will succeed where conventional plans have failed because they require racial “equity” on many dimensions.

A 2007 report describes Minnesota as ranking consistently in the top 15 states on a scale that measures highest levels of integration for black students.

In fact, court orders on integration have required school districts across the nation to do much more than “move bodies” for 40 years. In 1968, the Supreme Court ruled in *Green v. New Kent County* that desegregation remedies must deal with all aspects of school operations, including the six factors of student assignment, hiring and assignment of faculty and staff, equity of facilities and resources, and nondiscrimination in transportation and extracurricular activities.¹⁰⁹ All these factors and more have been implemented by busing plans in cities such as Chicago, Dallas, Indianapolis, Nashville, Wilmington, Cleveland, Buffalo, St. Louis, and Kansas City.¹¹⁰ Unfortunately, even the most comprehensive of these efforts has failed to raise minority achievement substantially.

¹⁰⁵ *Ibid.*, 1807, citing Gary Orfield and Chungmei Lee, ULCA Civil Rights Project, “Historic Reversals, Accelerating Resegregation, and the Need for New Integration Strategies,” 21-30 (2007). For example, Lavorato and Spencer note that “Minnesota is fifth in the nation in terms of the percentage of black students who are enrolled in majority white schools, with 47 percent of black students attending such schools. Further, only 18 percent of Minnesota’s black students attend highly segregated schools (which are defined as schools with fewer than 10 percent white students). Both of these categories have improved markedly since 1992. At that time, Minnesota did not make the list of most integrated states in any category.” *Ibid.* (citations omitted).

¹⁰⁶ *Ibid.*, 1808, citing Orfield and Lee at 4.

¹⁰⁷ *Ibid.*, 1808-09.

¹⁰⁸ See, e.g., “Every Child, Every Day,” 9.

¹⁰⁹ *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968). The Court went farther in the 1977 *Milliken II* case, approving court-ordered “remedial or compensatory” programs to alleviate what it saw as the effects of “racial isolation” on minority children. *Milliken v. Bradley*, 433 U.S. 267 (1977).

¹¹⁰ See David S. Tatel, Maree F. Sneed, Kevin J. Lanigan, and Steven J. Routh, “The Responsibility of State Officials to Desegregate Urban Public Schools.” (Prepared for the National School Desegregation Project, University of Chicago (undated)), 26. In 1995, the Minnesota State Board of Education’s legal consultant Hogan & Hartson provided a sample of the compensatory and remedial education programs included in desegregation plans across the country: “Among the programs that have gained particular attention because of their potential for improving the quality of education ... are the following: capital improvements, to renovate existing facilities and construct new ones; ‘effective schools’ programs, to increase student achievement; general class size reductions; early childhood programs; remedial reading and communication skills programs; general curriculum development; student testing; counseling and career guidance; staff development programs; student behavior programs; and parent involvement and school/community relations programs.” *Ibid.*

(5.1) A Case Study: An Attempt to Close the Gap on Every Measure

San Francisco's experience illustrates the extent to which attempts to address the racial learning gap through a race-based approach can actually make educational problems worse. Minnesota education policymakers considering the Minnesota School Integration Council's or Education Equity Organizing Collaborative's learning gap-related plans would do well to study that city's example.

In 1982, a consent decree divided San Francisco students into nine racial and ethnic groups and imposed quotas on most of the district's schools. The decree was conceived as a "pathbreaking" plan that "broke fundamentally with the traditional pattern of big city desegregation in the U.S."¹¹¹ Its goals were desegregation and improved academic performance, to be achieved through programs "designed to help close the [racial learning] gap."¹¹² Its underlying theory, like that of the learning gap-related plans being proposed in Minnesota today, was that "disadvantaged minority students will gain either by the upgrading and desegregation of their local school or by transferring to a better school."¹¹³

The San Francisco decree required that every school include students from at least four racial/ethnic groups and that no racial or ethnic group exceed 45 percent of the enrollment of any regular school.¹¹⁴ The decree included provisions designed to ensure

racial "equity" in discipline and special education assignment. It also required district administrators to increase the percentage of minority faculty and staff and to ensure that faculty and staff were "equitably assigned" throughout the district. All staff received year-long training in "teaching in a diverse racial/ethnic environment" and in "improv[ing] faculty attitudes towards minority students." All these efforts were lavishly funded.¹¹⁵

(5.2) The Plan's Devastating Failure

Gary Orfield, brother of Myron Orfield, was involved in formulating the San Francisco consent decree and the desegregation plan to which it gave rise. In 1992, ten years after the plan's implementation, he chaired a court-appointed committee to evaluate its success.

The Orfield report painted a bleak picture of the plan's results. The committee found that the San Francisco district had "largely achieved" its racial and ethnic balance goals but that it had "not realized the goals for academic achievement for the overwhelming majority of African-American and Hispanic students in the critical areas of educational attainment..." After eight years and an expenditure of over \$200 million, "huge gaps" remained, and "African-American students and Hispanic students still face devastating levels of educational failure,"¹¹⁶ according to the report. The committee complained

¹¹¹ Gary Orfield, "Desegregation and Educational Change in San Francisco: Findings and Recommendations on Consent Decree Implementation." (Submitted to Judge William Orrick, U.S. District Court, San Francisco, California, July 1992), 12-13. For an extensive discussion of this plan and the Orfield report, see Kersten, "Good Intentions," 75-85.

¹¹² Orfield, "Desegregation and Educational Change in San Francisco," 38.

¹¹³ *Ibid.*

¹¹⁴ Nineteen schools with varying enrollment standards were exempted from this requirement. These aspects of the plan are summarized in Kersten, "Good Intentions," 75-85.

¹¹⁶ Orfield, "Desegregation and Educational Change in San Francisco," 1. The Orfield report found that, in cases where poorly performing inner-city schools had been given "large amounts of new money and staff, there were no overall academic gains for African American and Hispanic students." Specifically:

After eight years of programs under the Consent Decree ... the 1991 District-wide test data show that in reading, language arts, and mathematics, at every grade level tested, African American and Hispanic students performed at the bottom. The results show radically different patterns of educational attainment among the city's ethnic groups, with little overlap.



of “large budgets and small results,”¹¹⁷ noting that “achievement data shows that money by itself often has very little impact.”¹¹⁸

In addition, the Orfield committee found that, despite ten years of cultural competence-type training, the district’s racial/ethnic gap in special education¹¹⁹ and discipline rates¹²⁰ persisted. The district had also “fallen far short” of its goal to have a staff whose racial and ethnic composition (at each school site) “reflect[ed] the student population of the district.”¹²¹

The committee concluded that “the District must do more than it has done to educate Hispanic and African-American children.” Not surprisingly, the committee urged San Francisco administrators to adopt even more coercive and race-conscious measures going forward. Among many other measures, the report recommended more “multicultural sensitivity and race relations training” for staff,¹²² along with a “new recruiting plan for African-American and other underrepresented groups of teachers ... and faculty desegregation at the building level.”¹²³

Far from promoting racial/ethnic harmony, the San Francisco desegregation plan significantly escalated racial tensions in the city. In fact, it prompted a 1995 lawsuit by Chinese-American students who charged that the plan was illegally discriminating against them.

The San Francisco case study is striking for another reason: It highlights the fact that many “experts” and advocates who promote social-engineering plans to address the learning gap never seem to lose faith in such measures, no matter how often these measures fail to produce the desired outcomes. Significantly, Gary Orfield, who helped design the San Francisco desegregation plan,¹²⁴ is often cited by Minnesota busing advocates as an authority whose counsel school districts in our state should follow.

(6) Has Voluntary Busing Reduced the Learning Gap in the Twin Cities?

Families of all backgrounds and income levels should have access to schools that will provide a high-quality education for their children. School choice

¹¹⁷ *Ibid.*, 32. Paradoxically, while the Orfield report called for increasingly coercive quota-based, race-conscious remedies, it insisted that its “improved plan ... will not subtract from some groups to pull others up.” Unfortunately, however, San Francisco’s high-achieving Chinese-American students—the district’s largest ethnic group—paid a price for the consent decree’s well-intentioned efforts to achieve “equity.” Administrators altered standardized entrance exams to increase Asian students’ difficulty in qualifying, for example, for popular Lowell High School. As a result, Chinese parents in San Francisco sued in federal court, asking that the school district’s desegregation plan be thrown out because it was based on racial quotas and because it discriminated against them. “Minority Sues to End Desegregation Plan,” *Wall Street Journal*, July 23, 1995.

¹¹⁸ *Ibid.*, 36.

¹¹⁹ *Ibid.*, 62. The Orfield committee found that “Chinese, Filipino, Korean, Japanese and Other Non-White groups are under-represented in ... special education groupings. The Committee found that African American youth participation is double that which would be expected from examination of total District enrollment percentages and concluded that the District must take steps to correct this disproportion.”

¹²⁰ *Ibid.*, 68. On discipline rates, the report found that “African Americans, less than 20 percent of the student population, account for almost half of all school suspensions. Their suspension rate of 10.4 percent is two and one half times higher than the District-wide rate. The only other group that even approaches this level is Hispanic. The seven remaining ethnic groups have a suspension rate of only 2.0 percent. The Committee found that such a disparity in suspension rates is highly significant statistically and concluded that the District must take steps to correct it.”

¹²¹ *Ibid.*, 71. When the decree was implemented in 1982, 66 percent of the certified teaching staff were white; in 1990-91, the figure was 62.4 percent. The greatest increase took place among Hispanic faculty, which grew from 5.9 percent to 7.3 percent of total faculty.

¹²² *Ibid.*, 60.

¹²³ *Ibid.*, 8.

¹²⁴ Kersten, “Good Intentions,” 75.

of this kind is a hallmark of educational equity and is especially important for low-income families, who are likely to face more obstacles than others in obtaining educational opportunities. However, evidence suggests that even voluntary programs in which low-income or minority children are bused to largely white suburban schools generally do not result in markedly higher achievement by those students.

The disappointing results of Hartford’s Project Concern program, as well as Kansas City’s and St. Louis’s voluntary city-suburb busing programs, have already been discussed. Minneapolis’s city-suburb transfer program, The Choice Is Yours (CIY), has also fallen short of its promoters’ expectations in terms of enhanced minority academic achievement.

CIY began in 2000 as part of the settlement of the Minneapolis NAACP’s education adequacy lawsuit against the State of Minnesota. Attorney Dan Shulman, who represented the NAACP in that suit, has stated that CIY was intended to serve as a model and a “start” for the kind of metro-wide busing plan that the NAACP was seeking in the 1995 litigation—and that many busing advocates still seek.¹²⁵

When CIY began, busing proponents expected it to lead to significant academic gains on the part of students who participated. Under the program, low-income students from Minneapolis can choose to attend school in a number of western suburbs: Columbia Heights, Hopkins, Robbinsdale, St. Anthony/New Brighton, St. Louis Park, Wayzata, Edina, Richfield, or Eden Prairie.¹²⁶ The state picks up transportation costs.

In 2004-05, the first year for which comparative test results were released, CIY students who attended

Many “experts” and advocates who promote social-engineering plans to address the learning gap never seem to lose faith in such measures, no matter how often these measures fail to produce the desired outcomes.

suburban schools outperformed low-income students who stayed in Minneapolis. In the following year, by contrast, low-income students who stayed in Minneapolis schools performed better than their peers who attended suburban schools.¹²⁷ In 2006-07, the most recent year for which comparative data are available, Minneapolis students again scored higher at every grade level in reading than their peers who chose suburban schools.¹²⁸

According to a Minneapolis Public Schools news release dated March 3, 2008,

On the whole, MPS students showed nearly twice as much gain in reading achievement as did suburban choice students.... According to the [report on 2006-07 CIY performance], “These annual ‘gains’ translate into reading scores for suburban choice students that were, on average, nine percentile point *lower* than those of comparable non-participants (emphasis added).”¹²⁹

The poorer performance of CIY students who chose suburban schools may result from the fact that few of them tend to stay in the program for long. In 2007, for example, only half the suburban choice students

¹²⁵ Shulman made this statement at a Dec. 20, 2011, meeting of the Integration Revenue Replacement Advisory Task Force.

¹²⁶ The program operates under the auspices of the West Metro Education Program.

¹²⁷ Terry Collins, “Busing to suburbs didn’t boost test scores,” *Star Tribune*, March 3, 2008.

¹²⁸ News Release, “The Choice Is Yours report released,” Minneapolis Public Schools, March 3, 2008.

¹²⁹ *Ibid.*

had been enrolled in their schools the previous year, which means that different students are tested every year.¹³⁰ Though CIY is popular (nearly 5,000 students had participated at the time the 2006-07 comparative data were released), almost 80 percent had not returned since the program began.¹³¹ Nevertheless, 96 percent of suburban choice parents stated in an evaluation that they would recommend the program to others, a trend that has been consistent over the years.¹³²

CIY also involves hefty transportation costs. For example, in 2009-2010, the Wayzata School District paid close to \$230,000 for taxis to transport participating students to their homes in Minneapolis—primarily in conjunction with extra-curricular activities.¹³³

Both the Minnesota School Integration Council and the Institute on Race and Poverty advocate making CIY a model for the inter-district “integration” plans they propose as a solution to the racial learning gap. Though CIY has doubtless benefitted some students, its lackluster track record on achievement highlights the challenges that can occur when children are bused to schools that are a significant distance from their home communities. If CIY’s failure to retain students is any indication, these challenges outweigh the advantages of attending suburban schools for most students.

¹³⁰ Collins, “Busing to suburbs didn’t boost test scores.”

¹³¹ News Release, “Department of Education Releases Report on The Choice Is Yours Program,” Minnesota Department of Education, March 3, 2008.

¹³² Collins, “Busing to suburbs didn’t boost test scores.”

¹³³ Author interview with Wayzata School Board member Susan Gaither, Dec. 10, 2011. Gaither compiled this information from data provided by the Wayzata School District.

CHAPTER IV

DOES SOCIOECONOMIC BALANCE OFFER A VIABLE ALTERNATIVE TO CLOSING THE RACIAL LEARNING GAP?

Given the dismal results of race-based busing plans nationwide and the federal courts' current hostility to such plans, interest is growing in non-race-based approaches to achieving demographic balance in schools. Increasingly, some busing proponents regard SES rather than racial balance in school composition, as the wave of the future. Often, these advocates seek to use income as a proxy for race, given the large overlap between race and poverty.

The theory behind SES-based busing proposals is known as the “middle-class peer effect.” This theory holds that education in the company of middle-class students is essential to improving low-income students' academic performance and social development. The theory's supporters maintain that higher-SES students transmit the habits, motivations, and aspirations necessary to success to their lower-SES peers. All four learning gap-related proposals put forward by Minnesota educational organizations are grounded in the idea that undergirds the theory: That some children need to be seated next to certain other children to learn effectively.

The Eden Prairie School Board's 2010 adoption of an SES-based, elementary school busing plan will give Minnesotans an opportunity to assess how the issue of SES balance in schools may play out

here. Institute on Race and Poverty director Myron Orfield and other race-based busing advocates have endorsed Eden Prairie's approach and have praised SES-based school assignment plans across the country.¹³⁴

A. Why This New Approach? The U.S. Supreme Court Case of Parents Involved

The shift in interest from race- to SES-based busing is motivated primarily by developments in the legal landscape over the last 15 years or so.

In 1954, the U.S. Supreme Court ruled in *Brown v. Board of Education* that the government cannot intentionally establish separate, or “dual,” school systems for black and white children. Today, many proponents of race-based busing claim that “racially identifiable” schools are equivalent to the segregated schools of the pre-*Brown* era and that government-imposed racial balance plans are therefore necessary to ensure equal educational opportunity for minority students.¹³⁵

In fact, however, racial balance in schools was never at issue in *Brown*, which involved only segregation resulting from a *governmental intent to discriminate*.

¹³⁴ Kelly Smith, “All eyes on Eden Prairie school boundary vote,” *Star Tribune*, Dec. 20, 2010.

¹³⁵ The argument that follows is drawn, in part, from Lavorato and Spencer, “Back to the Future with Race-Based Mandates,” where a much more extensive analysis appears. *Ibid.*, 1764-68.



Since 1954, the Supreme Court has repeatedly articulated the difference between “intentional discrimination,” which *Brown* prohibited, and “racial imbalance,” which it did not. In the 1977 case of *Milliken v. Bradley (Milliken II)*, for example, the Court reiterated this, stating, “The Court has consistently held that the Constitution is not violated by racial imbalance in the schools, without more.”¹³⁶

The Supreme Court has consistently held that the Constitution is not violated by racial imbalance in schools, without more.

In fact, under the U.S. Constitution, *all* governmental classifications based on race are inherently suspect, even if they are intended to confer a protection or benefit.¹³⁷ For decades, the Court has held that, to pass constitutional scrutiny, racial classifications—municipal, state or federal—must 1) satisfy a “compelling governmental interest,” and 2) be narrowly tailored to meet that interest.¹³⁸ Over the years, only a handful of racial classifications have met this “compelling interest” standard and thus passed constitutional muster.

In 2007, the Supreme Court finally turned to the question of whether it is constitutional to use race-based student assignment plans at the K-12 level to

achieve diversity, i.e., racial balance. In other words, the Court considered whether diversity of this kind in public schools is a compelling governmental interest.¹³⁹ In *Parents Involved in Community Schools v. Seattle School District No. 1*, the Court ruled that using race as a primary factor in school assignments is unconstitutional, absent a finding of intentional governmental discrimination.¹⁴⁰

Parents Involved concerned school assignment policies in Louisville and Seattle.¹⁴¹ Both plans were designed by school boards in those cities to achieve racial balance at district schools, and both classified students by race to do so.

In Louisville, for example, students could apply to the school they preferred, but each school was required to attempt to manage its enrollment to achieve specific racial targets. The minimum number of black students at a school was fixed at 15 percent and the maximum at 50 percent.¹⁴²

In Seattle, students could request a school, but if it were oversubscribed, a series of “tiebreakers” determined admission. Siblings were given preference, and then, if the school was “racially imbalanced”—that is, if it was not within 10 percentage points of the district’s overall white/non-white racial balance—the applicant’s race was considered. (At the time, Seattle schools were approximately 41 percent white and 59 percent non-white.) In the 2000-01 school year, about ten percent of incoming students entering Seattle high schools were assigned to their schools based on the race-based tiebreaker.¹⁴³

¹³⁶ 433 U.S. 267, 280 n. 14, citing an earlier opinion.

¹³⁷ See Lavorato and Spencer, “Back to the Future with Race-Based Mandates,” 1768.

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*, 1777

¹⁴⁰ *Ibid.*, 1778.

¹⁴¹ Louisville had once been under court order to desegregate, but had been released by the court. Seattle had never been under court order.

¹⁴² Armor, et al., *Amici Curiae Brief*, 2.

¹⁴³ *Ibid.*

The Court ruled that racial balance in schools is not a “compelling state interest” that justifies the use of race-based measures such as those employed by the Louisville and Seattle school districts. Writing for a plurality of the Court, Chief Justice John Roberts put it this way: “Racial balancing is not transformed from patently unconstitutional to a compelling state interest simply by relabeling it racial diversity.”¹⁴⁴

After *Parents Involved*, school districts across the nation began to drop their race-based student assignment plans. (Many, including Minnesota, had already done so.) Today, policymakers who believe children of different races must sit next to each other to learn are increasingly turning to income-based school assignments to achieve the same goal.¹⁴⁵

B. Evidence Suggests SES-Based Busing Does Not Reduce the Learning Gap

(1) Eden Prairie’s School Assignment Plan

The Eden Prairie School District, with 9,600 students, has one middle school (grades 7-8) and one high school (grades 9-12). At these schools,

After *Parents Involved*, school districts across the nation began to drop their race-based student assignment plans. Many, including Minnesota, had already done so.

district students of all races and ethnicities are educated together. However, district authorities have long sought to increase demographic balance at the elementary level as well. In December 2010, the Eden Prairie School Board approved a plan to reassign the district’s elementary students to schools on the basis of income, or SES, as measured by eligibility for free or reduced-price lunch.¹⁴⁶ Several years earlier, the district had taken steps to use race as the variable in this respect, but after the Supreme Court barred this course in *Parents Involved*, the district shifted its focus to SES balance.¹⁴⁷

In October 2010, one elementary school (Forest Hills) had 42.1 percent low-income students, while another (Eden Lake) had 23 percent and two others (Prairie View and Cedar Ridge) had 12.3 percent and 9.5 percent, respectively.¹⁴⁸ The new plan’s goal was to ensure that, in the future, the disparity between schools in free or reduced-price lunch student populations would be no greater than two percentage

¹⁴⁴ *Parents Involved*, 551 U.S. at 725.

¹⁴⁵ According to *Education Week*, “Since the Supreme Court essentially blocked a race-conscious path to racial diversity, some integration advocates are looking to socioeconomic status to reach the same goal.” Mary Ann Zehr, “Socioeconomics Replacing Race in School Assignments,” *Education Week*, May 7, 2010. See also Rumberger and Palardy, Does Segregation Still Matter?, 2002: “Over the last 20 years..., desegregation policies have been increasingly abandoned because of declining support from the executive and judicial branches of the federal government and the growing concentration of minorities in urban school districts.... Moreover, many education and government officials, as well as some civil rights leaders, have come to believe that integrating schools is less important than providing adequate resources and setting high standards for all students and schools.... As a result, there has been very little litigation that challenges the concentration of minority students in high-poverty schools in recent years.”

¹⁴⁶ Until the Eden Prairie School Board voted in December 2010 to reassign students on the basis of income, the district also had one upper elementary school, grades 5-6, which all district students attended. As part of the December 2010 reassignment plan, the board voted to change the district’s K-4 schools to K-6 schools, and also added a new K-6 school.

¹⁴⁷ Leah Shaffer, “Race won’t be considered in school boundary change,” *Star Tribune*, Nov. 9, 2007.

¹⁴⁸ See “Proposed Boundary Map Released,” Special Issue of the Eden Prairie Schools Accountability Report and Transformation Update, Oct. 2010, available at http://www3.edenpr.org/public/documents/ContinuedExcellence/boundary_doc/Transition_Update_2_English.pdf.

points, which was later changed to approximately ten percentage points.¹⁴⁹ The elementary school with the lowest number of low-income students was Eagle Heights Spanish Immersion School, which had a low-income enrollment of only two percent.¹⁵⁰ However, under the new plan, Eagle Heights was not subject to demographic change in the same way as other schools, because parents opt in by choice and the school did not have geographic boundaries.¹⁵¹ The district's new school assignment plan required approximately 1,065 elementary students to change schools. This is roughly one-third of Eden Prairie's K-4 schoolchildren.

Eden Prairie school administrators justified SES busing on grounds that poor/minority students perform best in the most SES-balanced (and racially balanced) schools.¹⁵² In support, administrators cited—among others—the work of Gary Orfield and Richard Kahlenberg, a prominent advocate of SES-based school assignment.¹⁵³

Paradoxically, however, at the time the board approved the new policy, Eden Prairie's top-performing low-income students were at Forest Hills Elementary, which had by far the highest concentration of these students. At Forest Hills (listed by MDE as 46 percent low-income and 47 percent minority), 68 percent of black students

were proficient in reading in reading in 2010. However, at Eden Lake Elementary—listed by MDE as 24 percent low-income students and 35 percent minority—just 49 percent of black students scored proficient in reading.¹⁵⁴ In other words, in Eden Prairie, disadvantaged students were learning most effectively in the school where they were most concentrated.

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A central reason for Forest Hills students' success was the special programs the school put in place to address its students' "unique needs."¹⁵⁵ These included a stronger focus on literacy and math instruction, continuous or weekly monitoring of students' progress, extended-day opportunities, and creation of a Family Service Center for parents,

¹⁴⁹ Karla Wennerstrom, "School board OK's 'discontiguous' boundaries," *Eden Prairie News*, Sept. 15, 2010. See http://www3.edenpr.org/public/documents/ContinuedExcellence/boundary_doc/Nov23_Motion.pdf. The 10 percentage point difference is to be achieved by 2014. Currently, variance in free- and reduced-price lunch enrollment between all K-6 schools is 26.16 percent with Eden Lake highest (34.06) and Eagle Heights lowest (7.90). Variance between boundaried elementary schools is 15.09 percent, with Eden Lake highest (34.06 percent) and Cedar Ridge lowest (18.97 percent), http://www.edenpr.org/district/schoolboard/agendas/agenda&packet_2011_10_11.pdf, at 99.

¹⁵⁰ "Proposed Boundary Map Released," Special Issue of the Eden Prairie Schools Accountability Report and Transformation Update, Oct. 2010, available at http://www3.edenpr.org/public/documents/ContinuedExcellence/boundary_doc/Transition_Update_2_English.pdf.

¹⁵¹ The Eden Prairie district administration held spots at Eagle Heights for free- or reduced-price lunch students in an attempt to increase the school's low-income enrollment. However, other students who desired admission were allowed into the program, because many of those slots were not filled.

¹⁵² See e.g., Eden Prairie Schools, "Summary of Research: Integrated Schools" (undated), available at http://www3.edenpr.org/public/documents/ContinuedExcellence/boundary_doc/Benefits_of_Integration_2010.pdf.

¹⁵³ *Ibid.*

¹⁵⁴ Information available at the Minnesota Department of Education's web site, at <http://education.state.mn.us/>.

¹⁵⁵ "New direction for Forest Hills," *Eden Prairie News*, June 4, 2008. *The Eden Prairie News* reported that "Forest Hills Elementary students will return to school next fall to a changed learning environment, an environment that sets out to be fine tuned to that school's unique needs. A new plan recently unveiled by the Forest Hills Design Team lays out a number of recommendations to help students and their families and ultimately to improve student achievement."

which offered English instruction and other services.¹⁵⁶

Forest Hills' unusual reading program was particularly important in boosting student achievement. The program uses scientifically based reading instruction that focuses on five core components of literacy. Each day, students get 120 minutes of uninterrupted literacy instruction, which includes built-in time for intense intervention for those who need it.¹⁵⁷ Forest Hills was also one of the few suburban schools to use the services of the Minnesota Reading Corps, whose tutors provide special, targeted intervention for struggling kindergarten-through-third-grade readers.¹⁵⁸

Eden Prairie's elementary school reorganization plan sparked intense disagreement in the community, though boundary changes were only one aspect of a much broader controversy regarding the administration's actions under Superintendent Melissa Krull.¹⁵⁹ Many parents who opposed the plan resented charges, made by Myron Orfield and other plan supporters, that parental opposition was motivated by white racism.¹⁶⁰

When the school reassignment plan went into effect in Fall 2011, the Eden Prairie district's enrollment fell by about 380 students.¹⁶¹ Many of the students who left transferred to neighboring school districts under Minnesota's open enrollment law. If these students fail to return to Eden Prairie schools in coming years, the district will lose millions of dollars

in state aid, according to school board member Dave Espe, who says the district can ill afford the loss.

In September 2011, Krull resigned as superintendent, accepting the school board's offer of an early buy-out of her contract.¹⁶² In November 2011, Eden Prairie citizens elected two new school board members and re-elected two board members, all of whom opposed the boundary changes.¹⁶³ Turnout in the election was heavy, as parents expressed their dissatisfaction with the previous board's actions. The candidates who were top vote-getters received more than 3,500 votes, while top vote-getters in the 2009 school board election received only about 1,500 votes, according to the *Eden Prairie News*.¹⁶⁴

It is too soon to predict the results of Eden Prairie's SES-based elementary school assignment plan, whose fate is now unclear. In recent years, the district has made some progress in boosting minority achievement. However, improvement of this kind is not attributable to SES-based busing, which began in September 2011 and involves only elementary students.

To its credit, the district is in the process of expanding the Forest Hills literacy program to elementary schools across the district, though questions remain as to how effectively this can be done. (Under the new school reassignment plan, about half of Forest Hills' 600 students have been moved to other schools, and many low-income parents whose children had to leave reportedly fear

¹⁵⁶ *Ibid.*

¹⁵⁷ Patrick Loch, "Minnesota Reading Corps serving Eden Prairie's Forest Hills Elementary," *Eden Prairie Sun*, Sept. 29, 2010.

¹⁵⁸ *Ibid.*

¹⁵⁹ Katherine Kersten, "Eden Prairie had to suffer a foolish plan," *Star Tribune*, Nov. 19, 2011, available at <http://www.startribune.com/opinion/otherviews/134147018.html>.

¹⁶⁰ Kelly Smith, "All eyes on Eden Prairie school boundary vote," *Star Tribune*, Dec. 20, 2010. "This is a big decision for the school board and for the region—whether we're going to have racially integrated school districts," Orfield said. "The implications [if the proposed plan fails] will be that there are a group of white racist parents who can stop integration in schools."

¹⁶¹ Author interview with Eden Prairie school board member Dave Espe, Jan. 27, 2012.

¹⁶² Kelly Smith, "Eden Prairie school chief is leaving 9 months early," *Star Tribune*, Sept. 15, 2011.

¹⁶³ Kelly Smith, "Four school board candidates opposed to Eden Prairie boundary changes win," *Star Tribune*, Nov. 8, 2011.

¹⁶⁴ Leah Shaffer, "Parker, Estall, Espe and Bratrud Elected," *Eden Prairie News*, Nov. 8, 2011.



that their children’s academic performance will suffer.)¹⁶⁵ Other aspects of the Forest Hills program are being expanded as well, though there is concern that this may prove difficult, costly, and ineffective. To date, the evidence suggests that Eden Prairie could have strengthened student achievement without the turmoil and dissension the boundary dispute produced.

(2) Has SES-Based School Assignment Worked Elsewhere?

As Eden Prairie’s experience demonstrates, education officials can expect parental resistance if they adopt SES-busing policies that require students to leave their neighborhood schools on the basis of income. That said, has SES busing led elsewhere to tangible benefits that could justify this disruption? The evidence from the nation’s longest-running SES-based busing program is not encouraging.

(2.1) The Wake County, North Carolina, Case Study

A number of American school districts include students’ socioeconomic status as one factor in school assignment plans, but only one district of substantial size has adopted a *mandatory* income-based assignment policy. This is Wake County, North Carolina: site of Raleigh and the famed “Research Triangle.”

“Wake has long been the most prominent example of a district that dropped race-based busing, which courts have ruled unconstitutional, in favor of

trying to achieve economic diversity in the schools,” according to *The New York Times*.¹⁶⁶

Wake County is an ideal location for America’s largest and longest-running income-based busing experiment. The district is very large and has a broad cross-section of students—including some from low-income urban neighborhoods and others from high-income suburban areas.¹⁶⁷ The district is also one of the most affluent in North Carolina. Its population is about 72 percent white, 20 percent black, and nine percent Latino, and only about ten percent live in poverty.¹⁶⁸

Wake County began busing for economic integration in 2000, after a federal court ended decades of race-based busing. In shifting from racial to economic integration, the district adopted the goal that no school should have more than 40 percent of its students qualify for free or reduced-price lunch.¹⁶⁹

Myron Orfield has cited Wake County’s income-based busing plan as a model for Minnesota. In a 2008 series on the need for school “integration,” *MinnPost* reported that “Myron Orfield, for one, is convinced Louisville [whose race-based plan was barred by *Parents Involved*] and Raleigh [Wake County] are far-sighted and right in their educational approach....”¹⁷⁰ The article continued, “He sees their approach, or something similar, as the solution to the learning gap and segregation in Minnesota schools.”¹⁷¹ Orfield described Wake County and Louisville to *MinnPost* as growing, “cohesive, business-oriented, less segregated, happy, well-off places, stronger cities with stronger workforces.”

¹⁶⁵ Kelly Smith, “Success story in Eden Prairie schools,” *Star Tribune*, June 22, 2011.

¹⁶⁶ Robbie Brown, “District may end N.C. economic diversity program,” *New York Times*, Feb. 27, 2010. The *Washington Post* has called Wake’s income-based busing program “one of the nation’s most celebrated integration efforts.” Stephanie McCrummen, “Republican school board in N.C. backed by tea party abolishes integration policy,” *Washington Post*, Jan. 12, 2011.

¹⁶⁷ The Wake County school district has approximately 140,000 students. Significantly, the district’s large size is a result of a merger of city and county school districts in the 1970s—an attempt by “civic leaders” to stem the “white flight” that resulted from race-based busing, according to the *Washington Post*. *Ibid.*

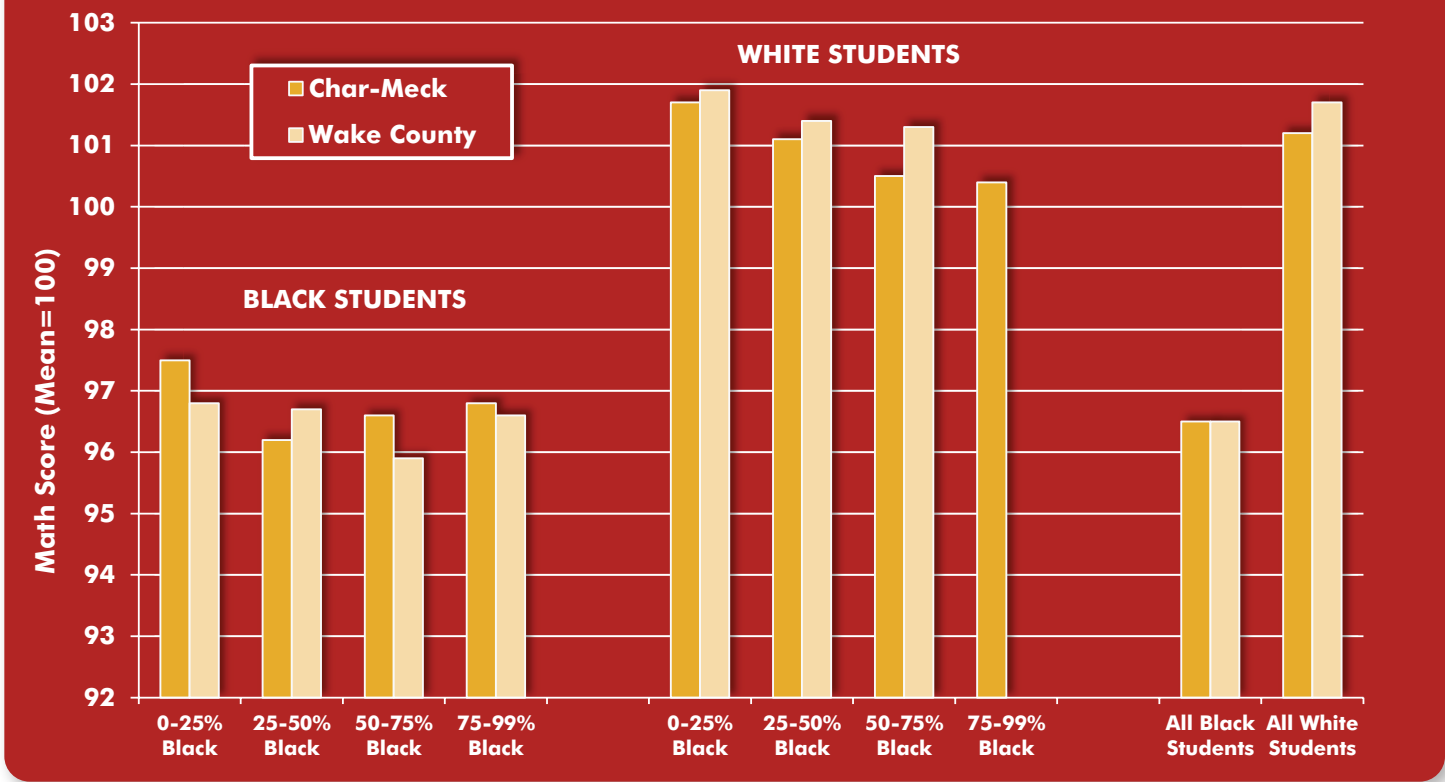
¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ Cynthia Boyd and Beth Hawkins, “A better way to integrate schools: by race and class,” *MinnPost*, Nov. 21, 2008.

¹⁷¹ *Ibid.*

Figure 5: Math Achievement for Elementary Students by School Racial Composition: Char-Meck County Compared to Wake County



SOURCE: DAVID J. ARMOR.

Orfield also praised Wake County in a 2007 opinion piece for the *Star Tribune*. “Integration has fostered academic excellence for all of the students in Wake County public schools,” he wrote. “The program resulted in greater achievement for these children and better prepared them for a multiracial society.”¹⁷²

In the article, Orfield asserted that Minnesota “now face[s] challenges much like those North Carolina faced in 2000,” including “[e]normous gaps among racial and economic groups in achievement scores, graduation rates, and other important performance measures....”¹⁷³ He urged Minnesota to follow Wake County’s lead and “to integrate schools on a

regional level—not just one suburb or one city at a time.” Significantly, Orfield failed to note that the “enormous” racial gaps Wake faced in 2000 followed several decades of just the sort of metro-wide, race-based busing he has long advocated as essential to closing the learning gap in Minnesota.

Many Wake County citizens, however, do not share Orfield’s rosy view of their school district’s income-based busing experiment. In November 2009, voters in this Democratic Party stronghold elected a new school board majority—rejecting the district’s income-based school assignment plan and choosing Republicans to fill all four open seats with an average of 64 percent of the vote.¹⁷⁴ Thereafter,

¹⁷² Myron Orfield, “Segregation is back, and our future is on the line,” *Star Tribune*, Dec. 6, 2007.

¹⁷³ *Ibid.*

¹⁷⁴ Brown, “District may end N.C. economic diversity program.”

the board began dismantling Wake’s celebrated busing program after voters resoundingly judged it a failure. The board voted to continue the program through 2012 and to adopt an alternative.

In fact, Wake County’s income-based busing experiment failed to deliver as promised on almost every measure.

Income-based busing “sounds like a noble idea,” new board member John Tedesco said at the time. “But it was terrible for kids and for the community. We took our eyes off the prize—academic achievement for all kids—and put it on trying to meet quotas in a balancing act.”¹⁷⁵

(2.2) The Wake County Plan’s Academic Results

In fact, Wake County’s income-based busing experiment failed to deliver as promised on almost every measure. In 2011, David Armor compared the academic performance of Wake County’s black students with those of their peers in nearby Charlotte-Mecklenburg, where schools rapidly re-polarized by race and income after race-based busing ended there around 2000 (see Figure 5 on the previous page).

Armor found that, after a decade of income-based busing, Wake County’s black students perform no better than their Charlotte-Mecklenburg peers. In fact, there is virtually no difference between Wake and Mecklenburg counties in reading and math black scores for both elementary- and middle-school students, after individual socioeconomic differences are taken into account. (Wake has more middle-class students than Charlotte-Mecklenburg.) Over 60 percent of Charlotte-Mecklenburg elementary students are in majority black schools, while 90 percent of Wake students are in majority white schools. But black students in majority-black Charlotte-Mecklenburg schools score about the same as black students in majority white Wake schools.¹⁷⁶

Today, Wake County’s black-white achievement gap remains very wide. In 2009, on state tests, 87 percent of white elementary-school students performed at or above grade level in reading, science, and math, compared with 48 percent of Hispanics and 46 percent of blacks, according to *The New York Times*.¹⁷⁷ That’s after 30 years of busing for racial balance and more than ten years of busing for income balance.

Wake County’s test scores and SAT scores are higher than those of most other North Carolina districts. Yet that’s misleading, Tedesco maintains. As home to the renowned “Research Triangle,” the county has one of the most highly educated workforces in America. “The academic success we do have is attributable to our demographics, not our busing program,” says Tedesco.¹⁷⁸

¹⁷⁵ Katherine Kersten, “A bad idea goes ‘round and ‘round,” *Star Tribune*, Nov. 13, 2010.

¹⁷⁶ Author interview with David Armor, January 17, 2011. Armor provided extensive information on the Wake County/Charlotte-Mecklenburg comparison to the Integration Revenue Replacement Advisory Task Force on Dec. 20, 2011. In his presentation to the task force, Armor compared elementary math scores in Wake County to those in Charlotte-Mecklenburg, which stopped mandatory desegregation in the late 1990s, resulting in more segregated schools. According to Armor, “We see that, once we adjust for individual student SES, black students in Wake County score identical to black students in Charlotte-Mecklenburg, most of whom attend segregated schools.” See also David J. Armor, “Busing for socioeconomic and ‘achievement’ balance fails the viability test,” *Eden Prairie Sun*, June 1, 2011.

¹⁷⁷ Brown, “District may end N.C. economic diversity program.”

¹⁷⁸ Kersten, “A bad idea goes ‘round and ‘round.”

Apparently, Wake is not the “happy, well-off” district of Orfield’s description. On the contrary, its experience reveals that income-based school assignment can bring a host of problems. “Income quotas impose a moving target that requires frequent reassignments,” according to *The New York Times*.¹⁷⁹ “There was just this constant reshuffling every year,” one frustrated parent told *The Washington Post* in 2011. “Basically, all the problems [here] have roots in the diversity policy.”¹⁸⁰

Busing students far from home imposes costs, including decreased parental involvement, as Minneapolis Mayor Sharon Sayles Belton recognized in 1995. It can also contribute to other problems.

For example, “[n]ew board members cite a countywide graduation rate that has fallen over the past five years, rising suspensions, and a widening performance gap between poor and wealthy students,” according to *The New York Times*.¹⁸¹ (Disruptive student behavior that leads to suspension often reflects schools’ loss of a sense of community, according to Tedesco.) Supporters of income-based busing

One of the most damaging results of Wake’s income-based busing policy is its injection of race into every aspect of school operation. The policy has provoked cultural division, not unity.

“are patting themselves on the back, and only 54 percent of [poor] kids are graduating,” according to a disgruntled parent quoted by *The Washington Post*. “I’m being painted a racist,” the parent added. “But isn’t it racist to have low expectations?”¹⁸²

Ironically, some critics claim that low expectations for low-income students have become systemic since the Wake County income-based busing plan began.¹⁸³ They say that qualified minority students are under-enrolled in advanced classes, which is, according to *The Washington Post*, “a problem that school officials said they’ve known about for years but that strikes many parents as revelatory.”¹⁸⁴

¹⁷⁹ Brown, “District may end N.C. economic diversity program.” *The Washington Post* concurs: “Many suburban parents have complained that their children are being reassigned from one school to the next,” according to the *Post*. McCrummen, “Republican school board in N.C. backed by tea party abolishes integration policy.”

¹⁸⁰ *Ibid.* It is difficult to determine how many Wake County students have been bused for diversity, and how far they have been bused. According to the *Washington Post*, “officials said fewer than ten percent are bused to a school to maintain diversity, and most bus rides are less than five miles.” On the other hand, the *New York Times* reports that in some cases, bus rides are an hour long. According to the *Times*, “‘Children from the 450 houses in our subdivision were being bused all across the city,’ said [one parent], for whom the final affront was a proposal by the Wake County Board of Education to send her two daughters to schools 17 miles from home.” Brown, “District may end N.C. economic diversity program.”

¹⁸¹ Ron Margiotta and John Tedesco, “Wake County Public Schools: The Problems,” September 30, 2010, 4. According to Margiotta and Tedesco, “Over the past five years, graduation rates of economically disadvantaged students remained flat at 56 percent, three percentage points lower than the state average. Since 2005, the overall WCPSS graduation rate declined consecutively from 82.6 to 78.4. Graduation rates for Whites, Black, Hispanic, Multi-Racial and Limited English Proficiency students have also all declined. Hispanic male and female students in Wake County graduate at rates six to eight percent lower than the state average. Similarly over the same period, black male and black female students in Wake County graduated at rates two to three percent lower than the state average.”

¹⁸² McCrummen, “Republican school board in N.C. backed by tea party abolishes integration policy.”

¹⁸³ See T. Keung Hui, “SAS and Wake’s achievement gap,” *News & Observer*, Oct. 4, 2009, available at <http://blogs.newsobserver.com/wakeed/sas-and-wakes-achievement-gap>. “The risk associated with the WCPSS E & R analyses is that it will tend to camouflage schooling inadequacies for disadvantaged populations.”

¹⁸⁴ McCrummen, “Republican school board in N.C. backed by tea party abolishes integration policy.” See Margiotta and Tedesco, “Wake County Public Schools: The Problems.” According to Margiotta and Tedesco, “A recent Educational Value-Added Assessment System (EVAAS) analysis found that 80 percent of high achieving WCPSS minority students were being turned away from higher-level gateway classes like Algebra I and being tracked into remedial classes.” See also T. Keung Hui, “SAS and

In addition, critics point out that the district's "healthy schools" policy masks low-income students' poor academic performance by dispersing them among schools across the district. Often, these students are assigned to relatively high-performing schools, which lack the special, intensive programs that poorly prepared youngsters need to catch up. Money that could be spent on targeted academic assessment and intervention has been diverted instead to inefficient and costly bus transportation. "No school looks bad, but kids suffer," explains Tedesco, the Wake County school board member. "The goal became shuffling kids around, rearranging deck chairs, so we could say, 'we have no bad schools, on paper.'"

Some Wake residents "have even come to see the diversity policy as a kind of profiling that assumes poor kids are more likely to suffer," according to *The Washington Post*. "I don't want to go back to racially isolated schools," said one biracial parent. "But right now, it's as if the best we can do is dilute these kids out so they don't cause problems. It sickens me."¹⁸⁵

One of the most damaging results of Wake's income-based busing policy is its injection of race into every aspect of school operation. The policy has provoked cultural division, not unity. "It started pitting us against one another, because it classified people in terms of groups and set school quotas," Tedesco explains. The tension and anger that have followed the district's attempt to dismantle the program are evidence of that.

The most important lesson of Wake County's experience may be that problems result when political correctness is given precedence over the good of children. Terry Stoops of North Carolina's John Locke Foundation put it this way: "We're losing sight of the educational mission of schools to make them into some socially acceptable melting pot."¹⁸⁶

(2.3) What Has Happened in Wake County Since 2009?

The Wake County school board's decision in 2010 to scrap the district's mandatory SES-based busing policy created turmoil. Protesters flocked to board meetings, and police began to attend the meetings regularly. Among the protesters arrested was the president of the North Carolina NAACP, who filed a civil rights complaint that prompted a civil rights investigation by the U.S. Department of Education.¹⁸⁷ Out of the limelight, many parents expressed great relief at the board's decision.

As months went on, Wake's new school board began to consider replacing the mandatory SES-busing plan with a "controlled choice" plan that would offer parents a choice of several schools for their children, using student test scores as one of several factors in creating that list of choices.¹⁸⁸ Though dissension has continued, the plan slowly gained bi-partisan support, and the board approved it in October 2011.¹⁸⁹

Wake's Achievement Gap", which explains that "[s]ome populations of disadvantaged students are not being placed in rigorous course sequences that their prior achievement would indicate their likelihood of success in those courses [sic]," according to a study by the University of Georgia. According to Hui, the report, which examines Wake's achievement gap, "could bolster the arguments of the critics of the diversity policy." Hui added that "[t]he SAS report questioned whether Wake might be hiding weaknesses in the performance of low-income students by expecting they'll score lower than affluent students.... The report also noted that Wake's achievement gap between low-income and non low-income students seemed to be wider than in other North Carolina school districts."

¹⁸⁵ McCrummen, "Republican school board in N.C. backed by tea party abolishes integration policy."

¹⁸⁶ *Ibid.*

¹⁸⁷ David Zucchini, "End of diversity policy leaves a Southern school district divided," *Los Angeles Times*, Feb. 5, 2011.

¹⁸⁸ Christina Samuels, "Wake County, N.C., Board Changes Political Majority," *Education Week On-line*, Nov. 9, 2011, available at http://blogs.edweek.org/edweek/District_Dossier/2011/11/wake_county_nc_board_changes_p.html.

¹⁸⁹ See Thomas Goldsmith, "Wake school board election run-off profile: Kevin Hill," *News & Observer*, Nov. 6, 2011, available at <http://www.newsobserver.com/2011/11/06/1622788/wake-runoff-deep-contrasts-of.html>.

Wake County's November 2011 school board elections—the most expensive in the district's history—were hotly contested.¹⁹⁰ Candidates, political parties, and independent organizations funneled at least \$500,000 into campaign mailers, TV and radio advertisements, and get-out-the-vote efforts in the battle for the five seats at issue. Democrats won four seats, and board control was then decided in a run-off election that the *Charlotte News & Observer* described as extraordinary for its “intensity, fundraising, and vituperation.”¹⁹¹ The Democratic candidate won the run-off, resulting in a shift in board control.

In fact, few, if any, districts—beyond Wake County and Eden Prairie—have mandatorily reassigned students away from their neighborhood schools on the basis of family income.

This shift, however, has not brought a return to mandatory SES-based busing. On January 10, 2012, the new school board majority endorsed the choice-based plan that the former, Republican-dominated board had approved in October 2011. According to the *Charlotte News & Observer*, the decision “means that the battle over how to assign Wake’s 146,000 students ... has reached a temporary milestone after three years of community conflict that included two hotly contested elections, multiple arrests of protesters, and fiery rhetoric on all sides.”¹⁹²

¹⁹⁰ T. Keung Hui, Thomas Goldsmith and Matt Garfield, “Democrats again control Wake school board,” *News & Observer*, Nov. 9, 2011.

¹⁹¹ *Ibid.*

¹⁹² Thomas Goldsmith and T. Keung Hui, “Wake schools assignment plan to go forward,” *News & Observer*, Jan. 11, 2012.

¹⁹³ Mary Ann Zehr, “Socioeconomics Replacing Race in School Assignments,” *Education Week*, May 7, 2010.

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.* According to *Education Week*, Pittsburgh’s decision was motivated by concern about the legality of using race after the Supreme Court’s *Parents Involved* ruling.

¹⁹⁶ *Ibid.*

Paradoxically, while Wake County has suffered from community turmoil and harshly negative national media attention throughout its battle over busing, nearby Charlotte-Mecklenburg has avoided these ills. A decade ago, Charlotte-Mecklenburg quietly embraced neighborhood schools, with a variety of choice options.¹⁹³ Wake County, on the other hand, tried to do what administrators and school board members considered “the right thing” and paid a serious price for its efforts. Today, the two districts’ minority students perform about the same academically. Minnesota education officials should consider whether Wake County’s SES-based busing experiment was worth the price the district—and its students—paid.

(3) How Widespread is SES-Based Busing?

Advocates of SES-based busing often assert that the policy’s popularity is increasing across the country. In fact, few, if any, districts—beyond Wake County and Eden Prairie—have mandatorily reassigned students away from their neighborhood schools on the basis of family income. Most districts with SES busing merely include student income as one of a number of elements in selection for magnet schools or other choice options.¹⁹⁴

In 2009, for example, Pittsburgh substituted income for race as an element in assigning students to magnet schools and programs.¹⁹⁵ The district makes student eligibility for subsidized lunches one of five to seven “weights” in enrollment for magnets in its lottery, depending on grade level. A student’s proximity to school is another weight.¹⁹⁶

The Chicago school district also recently switched from race to student income as a factor in assignment to magnet and selective-enrollment schools.¹⁹⁷ So did the Champaign, Illinois, district, whose new policy considers both students' proximity to a school and their economic status. Most students are able to attend the school of their choice.¹⁹⁸ San Francisco schools have adopted a similar policy.¹⁹⁹

In 2001, schools in Cambridge, Massachusetts, switched from race to income as a variable in school assignments.²⁰⁰ The district's elementary schools are magnets, and the percentage of low-income students at each must fall within a range of the district-wide average of these students. Under Cambridge's "controlled choice" assignment policy, parents rank their preferences among the district's elementary schools, and the district assigns students with the aim of income balance. An effort is made to allow as many students as possible to attend schools in their own neighborhood.²⁰¹

However, many Cambridge parents, like parents in other "controlled choice" districts, are frustrated and dissatisfied with the program. In an October 2010 article in the *Cambridge Chronicle*, parents described the program as "offering an illusion of choice," "causing a lot of pain" and creating a "history of suffering ... [that] is long and awful to watch."²⁰²

La Crosse, Wisconsin, is often cited as the nation's oldest example of income balance in schools. In

the early 1980s, the district redrew attendance boundaries for its two high schools to achieve an income mix.²⁰³ Yet in 1992, after the school board tried to do the same with elementary schools, voters recalled its members. Today, La Crosse attempts to maintain diversity through strategic location of charter schools and magnet programs.²⁰⁴

Minnesota education policymakers should understand that income-based busing policies across the country are more limited in nature and extent than some SES-busing supporters suggest. Mandatory SES "integration" has been rejected in Wake County, and parents in "controlled choice" districts often criticize the complexity and uncertainty such programs can bring.

(4) Could SES-Based Busing Have Unintended Negative Effects on High-Performing Students?

Improving the academic achievement of low-income and minority students is one of our nation's most important education policy goals. However, as we work toward this goal, we must remember that there are two ways to narrow a gap: by raising the performance of those at the bottom or by lowering the performance of those at the top. The second way is easier—and cheaper—than the first. In our efforts to help low achievers, we must take care not to adopt policies that have the unintended consequence of reducing high achievers' gains.

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

¹⁹⁹ See Lisa Schiff, "School Beat: SFUSD's New Student Assignment Plan," Beyond Chron blog, August 26, 2010, available at <http://www.beyondchron.org/news/index.php?itemid=8448>.

²⁰⁰ Edward Fiske, "Controlled Choice in Cambridge, Massachusetts," available at <http://tcf.org/publications/pdfs/pb377/fiske.pdf>.

²⁰¹ *Ibid.* See also Brian P. Nanos, "Cambridge schools begin controlled choice makeover," *Cambridge Chronicle*, Oct. 27, 2010, available at <http://www.wickedlocal.com/cambridge/news/x1272811466/Cambridge-schools-begin-controlled-choice-makeover#axzz1jShGsWi2>.

²⁰² *Ibid.*

²⁰³ Zehr, "Socioeconomics Replacing Race in School Assignments." In the early 1980s, the LaCrosse school district's administration redrew attendance boundaries to mix its two high schools, one with students primarily from working class families and the other with more affluent families. But in 1992, when the school board moved to do the same with elementary schools, its members were recalled. In 2009, LaCrosse had a student population of 7,000 students, of whom 79 percent were white, 12 percent were Hmong, and 6 percent were black. The remainder were American Indian or Hispanic.

²⁰⁴ *Ibid.* One low-income elementary school has chosen to retain busing for income balance, and 40 students are bused to another higher income school.

There is less research on the effect of school SES balance on academic achievement than on the effect of racial balance in this respect.²⁰⁵ Some research on SES balance shows modest achievement gains by low-income students who attend schools with students of higher-income backgrounds. However, studies in this area are often methodologically flawed. In many cases, for example, they fail to control adequately for students' family structure, past grade retention, or prior academic achievement.²⁰⁶

In a 2005 study, Russell Rumberger and Gregory Palardy sought to address the question of the impact of school social composition on academic achievement in a more rigorous way than any investigation before then had done. Their study was among the most sophisticated of attempts to explore the issue of SES balance and academic achievement from a theoretical perspective, as opposed to through real-world case studies such as those involving Wake County and Minnesota's The Choice Is Yours program. The Rumberger/Palardy study raised a troubling prospect: Attempts to improve low-income students' performance by busing for income balance may actually *lower* student achievement overall.

In our efforts to help low achievers, we must take care not to adopt policies that have the unintended consequence of reducing high achievers' gains.

Rumberger and Palardy studied the annual achievement gains of low-, middle-, and high-income students in 913 high schools nationwide.²⁰⁷ They divided these high schools into three categories: low-, middle-, and high-income schools—equivalent, for example, to Minneapolis North High School, Bloomington Kennedy High School, and Wayzata High School.²⁰⁸ The authors then modeled how students of each income level could be expected to perform at a high school of each type.

Rumberger and Palardy found that the most important factor in both a student's *initial* academic achievement and his or her annual learning gains is the student's socioeconomic background, including parental education, job status, and income.²⁰⁹ "Most of the variability in student achievement overall ...

²⁰⁵ Russell W. Rumberger and Gregory J. Palardy, "Does Segregation Still Matter? The Impact of Student Composition on Academic Achievement in High School," *Teachers College Record*, Vol. 107, No. 9, Sept. 2005, 2008. See also Christopher Jencks and S.E. Mayer, "The social consequences of growing up in a poor neighborhood," in L. Lynn Jr. and M.G.H. McGreary eds., *Inner-city Poverty in the United States* (Washington, D.C.: Brookings Institution), 111-186 ("Given the central role that everyone assigns to residential and school segregation, we were surprised by how little effort social scientists had made to measure the effect on individual behavior of either neighborhood or school composition.")

²⁰⁶ Rumberger and Palardy, "Does Segregation Still Matter?" 2004-05.

²⁰⁷ The study used data from the National Education Longitudinal Study (NELS). *Ibid.*, 2005, 2008. "In our analysis of NELS data, we examined the responses from a sample of 14,217 students who attended 913 high schools in 1990 across the country."

²⁰⁸ *Ibid.* 2008-09. "[W]e subdivided the schools into three groups: 151 high-SES schools (those with an average student SES at least one standard deviation above the overall average); 641 middle-SES schools (within one standard deviation of the mean SES), and 121 low-SES schools (average SES at least one standard deviation below the mean for all schools). As a result of this procedure, 17 percent were classified as high SES, 70 percent were classified as middle SES, and 13 percent of the schools were classified as low SES."

²⁰⁹ Regarding the Rumberger and Palardy study's findings, it is necessary to understand the difference between initial achievement—in this case, the academic achievement level of students as they begin high school—and the learning gains students make each year. Though annual learning gains are important, a student's overall achievement level is of greater significance. "Thus, even if differences among schools were completely eliminated, there would still be considerable variability in achievement growth among students and a limit to how much inequality in student outcomes can be eliminated through school reforms versus social policies that address inequalities in student and family circumstances that affect student learning." *Ibid.*, 2012. For example, according to Rumberger and Palardy, eighth graders entering low-SES high schools are, on average, a full

” they write, “is associated with students (and their families and communities), not the schools they attend.”²¹⁰ The authors’ finding on the over-riding importance of family background is consistent with the overwhelming thrust of the research on the topic.

Rumberger and Palardy also found that school SES composition can affect students’ annual learning gains. However, they determined that low-income students would *not*, on average, make more meaningful learning gains at a middle-income school than at a low-income school.²¹¹ As a result, reassignment of these students from a low-SES school to a middle-SES school would appear “to have little potential impact on their achievement,” according to the authors.²¹²

Rumberger and Palardy found that low-income students’ performance could be expected to rise more substantially at a high-SES school, though it is unlikely that such gains would substantially reduce the achievement gap.²¹³ However, the authors determined that whatever gains low-SES students might make would come at the expense of the performance of the school’s higher-income students. The result would be undesirable: *lower achievement* for the student body as a whole.

Socioeconomic integration improves the achievement gap more by lowering white achievement than by raising minority achievement.

(4.1) Why SES-Based Busing Can Lower Overall Student Achievement: The “Middle-Class Peer Theory” Is Unfounded

(a) Limited “Peer Effects”

There are two reasons for this harmful, unintended effect.

First, Rumberger and Palardy found that higher-income white students are affected by school SES as much as low-income black students.²¹⁴

Second, they found that an influx of significant numbers of low-SES students at a high-SES school would change (i.e., lower) that school’s SES and thereby change the learning environment that had contributed to higher learning gains in the first place.²¹⁵

four years behind their peers entering high-SES high schools in terms of academic knowledge and skills. Students who *finish high school* at low-SES schools have lower achievement levels, on average, than *eighth graders* entering high SES high schools. *Ibid.* 2017. Thus, even if low-SES high school students make *greater* learning gains during each year of high school than their higher SES peers, the “learning gap” between the two groups of students will still be very wide when they graduate.

²¹⁰ *Ibid.*, 2022.

²¹¹ For example, disadvantaged black students who moved from a low-SES to a middle-SES high school would grow in achievement, on average, by only two months over four years of learning, according to the Rumberger and Palardy model. *Ibid.*, 2019-20.

²¹² *Ibid.*, 2018.

²¹³ *Ibid.*.

²¹⁴ *Ibid.*, 1999. Rumberger and Palardy point out that “[o]ther researchers have also found that social composition has at least as strong, and in some cases, a stronger impact on advantaged students as disadvantaged ones.” *Ibid.*, 2020.

²¹⁵ In effect, such an influx would convert a high-SES school to a middle SES school. According to the authors, “Although moving small numbers of students from middle- to high-SES schools would have little impact on the social composition and the advantages that they enjoy, any large-scale integration of high-SES schools would effectively lower their SES composition and could lower their achievement advantage relative to middle-class schools by altering the school processes that make them

The authors conclude as follows: If “all low-SES and high-SES schools were integrated and consequently transformed into middle-class schools, the present analysis suggests that *gains in achievement to predominantly minority students moving from low-SES to middle-class schools would be less than the declines in achievement of White students moving from high-SES to middle-class schools* (emphasis added).”²¹⁶

Further, Rumberger and Palardy offer this astounding conclusion: “This suggests that integration would lower the achievement gap between Whites and Blacks, but it could also lower overall achievement levels.”²¹⁷ In other words, socioeconomic integration improves the achievement gap more by lowering white achievement than by raising minority achievement.

Here’s the explanation for this alarming outcome, which few policymakers or parents could favor:

In analyzing why students can theoretically be

expected to do somewhat better at high-SES schools than at low-SES schools, Rumberger and Palardy found that the traditional explanation—the “middle class peer effect”—is not supported by the evidence. According to this theory,²¹⁸ low-SES students perform better at SES-balanced schools because their middle-class peers *directly* transmit to them the values, habits, aspirations, study skills and social networks necessary for success.²¹⁹ The idea that better-off peers transmit positive academic and social traits to their disadvantaged classmates has long been “one of the central arguments for more school desegregation by race” as well as by income, the authors note.²²⁰ In fact, the theory is the fundamental premise underlying calls for both SES- and race-based school assignment in Minnesota.

In contrast, Rumberger and Palardy found that high-SES peers’ effect on low-SES student achievement is not direct, but *indirect*. The positive habits and aspirations of some students do not somehow “rub off” on others.²²¹ Instead, high-SES student body

so successful (e.g., lowering teacher expectations). If this occurred ... the achievement advantages enjoyed by White students in high-SES schools could decline, whereas the potential benefits to black students in moving to high-SES schools would be less than the present simulations suggest.” *Ibid.*, 2019-20. In short, this change would both lower the achievement of high-performing, high SES students and also make it likely that low-SES students would not make the sort of learning gains initially expected.

²¹⁶ *Ibid.*, 2019-2020.

²¹⁷ *Ibid.*, 2020.

²¹⁸ Richard Kahlenberg of the Century Foundation is the advocate Rumberger and Palardy cite as an example of those who promote the “middle class peer effect.” Minnesota busing advocates, including Eden Prairie school administrators, often cite Kahlenberg’s work. According to Rumberger and Palardy, Kahlenberg contends that school SES “directly affects student achievement through three peer mechanisms: the influence of peers on learning through in-class and out-of-class interactions (e.g., cooperative work groups, study groups), the influence of peers on the motivations and aspirations of fellow students, and the influence of peers on the social behavior of other students.”

²¹⁹ *Ibid.*, 2007.

²²⁰ *Ibid.*, 2001.

²²¹ Rumberger’s and Palardy’s conclusions in this regard confirmed those of Gerard and Miller in their six-year study of the effects of integration in Riverside, CA. On the basis of evidence generated there, Gerard and Miller dismissed the validity of the middle-class peer effect, which they called “this supposed transformation via elbow rubbing.” Gerard and Miller, *School Desegregation*, 873. In their words, “The hypothesis predicts that through classroom contacts with their white peers, who should outnumber them, minority pupils would experience what is tantamount to a personality change by absorbing the achievement-related values of the higher achieving whites and would thus start achieving themselves.” *Ibid.*, 872-73. On the contrary, Gerard and Miller concluded: “There is no systematic evidence supporting the idea that the majority can change deep-seated values held by the majority.... A good deal of damage has been done by recommendations that were based not on hard data but mostly on well-meaning rhetoric.” *Ibid.*, 875. For a discussion of Gerard’s and Miller’s conclusions, see Kersten, “Good Intentions Are Not Enough,” 63-64.

composition appears to shape teacher expectations and school processes and climate in a way that is conducive to learning.²²²

Rumberger and Palardy found that a concentration of high-SES students has a beneficial effect on four school process variables: 1) teachers' expectations about students' ability to learn, 2) the average hours of homework that students completed per week, 3) the average number of college prep courses taken by the school's students, and 4) the percentage of students who reported feeling unsafe at school.²²³ The authors found that students of all backgrounds tend to do better at schools that perform well in terms of these characteristics.²²⁴

Once the authors controlled for the effects of the four school policies and practices just described, they found that school socioeconomic composition had no significant impact on student learning.²²⁵ (The controls for these variables are done via regression, just as the controls for SES or race variables are.)

In addition to finding no basis in the evidence for the "middle class peer effect," Rumberger and Palardy determined that neither a school's racial balance²²⁶ nor increased funding²²⁷—both long-time goals of many Minnesota busing advocates—have any appreciable effect on student learning. They wrote:

Research suggests that the four school characteristics that lead to enhanced achievement can be improved at low-SES schools. These factors—high expectations, more homework, more demanding classes, and an orderly school environment—are among the qualities associated with "beat the odds" schools.

This suggests that policy efforts designed to ... redistribute resources will most likely *not be effective* at reducing the advantages associated with attending more affluent schools.... Further educational resources ... had no discernable effect on student learning, so equalizing educational resources would do little to equalize educational outcomes (emphasis added).²²⁸

Research suggests that the four school characteristics that lead to enhanced achievement can be improved at low-SES schools.²²⁹ (The traits are among those

²²² Rumberger and Palardy, "Does Segregation Still Matter?," 2015-16. "School SES is related to a number of school processes that predict achievement." The authors wrote that "schools serving mostly lower-income students tend to be organized and operated differently than those serving more-affluent students....", 1999.

²²³ *Ibid.*, 2015-16.

²²⁴ *Ibid.* 2019. In the authors' words, "[S]tudents in schools in which teachers have high expectations and students complete more homework, take more advanced classes and feel safe, have higher academic growth than students in schools without these characteristics."

²²⁵ *Ibid.*, 2021. This was true in all school subjects the authors studied except for science.

²²⁶ *Ibid.*, 2014. The authors set out to determine which aspect/s of school social composition matter to achievement gains: racial composition, socioeconomic composition, the prior achievement of classmates, or all of the above. *Ibid.*, 2001. They determined that the only aspect of school composition that matters in this respect is SES composition.

²²⁷ *Ibid.*, 2021.

²²⁸ *Ibid.*

²²⁹ *Ibid.* The authors note that the most difficult of these qualities to alter appears to be teacher expectations. "Nonetheless, reviews of so-called 'comprehensive school reforms' that alter school organization and instructional practices show that they can significantly improve student achievement even among high-poverty schools."

associated with “effective schools” research going back to the 1970s and ‘80s.) Not surprisingly, these factors—high expectations, more homework, more demanding classes, and an orderly school environment—are among the qualities associated with “beat the odds” schools such as Harlem Success Academies,²³⁰ the Knowledge Is Power Program (KIPP) schools, and other institutions featured in documentaries like *The Lottery* and *Waiting for Superman*. In Minneapolis, “beat the odds” schools such as Harvest Preparatory School and Cristo Rey High School exhibit these traits.

The Rumberger and Palardy study suggests that efforts to improve low-income students’ learning gains in Minnesota through SES- or race-based school assignment are likely to be ineffective. To the extent such efforts focus on moving students from low-SES to high-SES schools, they may actually lower the achievement of high-performing students there, and the achievement of the student body as a whole.

This would be a disastrous result both for the students involved, and for our state’s economy. America can ill afford to undermine the performance of our academic “high flyers” at a time when our nation’s students are already losing ground in a globally competitive economy.

(b) Seek Truly Effective Innovations

The lesson of the Rumberger and Palardy study for Minnesota education policymakers may be that the key to improving minority or low-SES students’ achievement is not more racial or socioeconomic balance in schools. Instead, policymakers should encourage replication of successful school models, offer greater school choice, and focus on ensuring that all neighborhood schools have the academic climate and processes necessary to promote and maximize academic achievement.

Some advocates of SES balance in schools suggest that parents who raise concerns about SES “integration” are motivated by racism. For example, in December 2010, Myron Orfield, who served as a consultant to the Eden Prairie district administration, told the *Star Tribune* that “white, racist parents” were responsible for community resistance to the district’s plan to bus some students away from neighborhood elementary schools to achieve income balance.²³¹

However, the Rumberger and Palardy study suggests that middle- or high-SES parents of all races have reason to be concerned about “integration” that will significantly lower the SES of their children’s schools. Many middle-class parents are likely to find it difficult to see how their children will benefit academically from a substantial influx of low-SES students at their schools.

²³⁰ See “Editorial: Arguing with Success: Eva Moskowitz’s aptly named Harlem charter schools,” *Wall Street Journal*, August 9, 2011: “Results released yesterday of test scores in the New York State Assessment Program showed that the most relentlessly attacked charter schools—Eva Moskowitz’s Harlem Success academies—have outperformed their public-school peers, often by a wide margin.”

“At all New York City’s public schools, 60 percent of third, fourth and fifth graders passed the math exam; at Harlem Success, 94 percent passed. In the state language arts exam, 49 percent from the city schools passed compared to 78 percent at the charters. The 94 percent pass rate for the academies’ black and Hispanic students surpassed the 73 percent pass rate for white students taking the exam in New York state.”

“Other New York City charters—such as Geoffrey Canada’s Promise Academies or the Democracy Prep charter schools—generally produce similar results, even compared to the state’s best public schools. In a 2009 study of New York City charter schools, Caroline Hoxby of Stanford concluded, ‘On average, a student who attended a charter school for all of the grades kindergarten through eight would close about 86 percent of the ‘Scarsdale-Harlem achievement gap’ in math and 66 percent of the achievement gap in English.’”

²³¹ Kelly Smith, “All eyes on Eden Prairie school boundary vote,” *Star Tribune*, Dec. 20, 2010.



(4.2) Additional Evidence that Attempts to Help Low-Achieving Students May Be Lowering High Achievers' Performance

(a) The Fordham “High Flyer” Study

Our society faces grave consequences if we fail to find ways of raising low-income students' academic performance. Yet we also face grave consequences if we inadvertently handicap high-performing students in the course of our attempts to reduce the learning gap.

Evidence is accumulating that an insufficiently nuanced focus on the lowest-performing students is adversely affecting our higher achievers. A September 2011 study from the Thomas B. Fordham Institute confirms the validity of parents' concerns in this respect.

The Fordham study is entitled *Do High Flyers Maintain Their Altitude? Performance Trends of Top Students*.²³² According to its authors, it is the first to analyze the performance of America's highest-achieving children over time at the individual-student level.²³³ The study found that today, many high-performing students are losing ground from elementary to middle school, and from middle school to high school.²³⁴ These young people often struggle to maintain their elite performance and fail

to improve their reading ability at the same rate as their average and below-average classmates.²³⁵

According to *Education Week*, the Fordham study “raises questions about whether, in the era of the No Child Left Behind Act and the widespread dismantling of policies that group students by ability, public schools have been forced to make a trade-off....”²³⁶ It confirms the conclusions of a 2008 Fordham report that found that “nationwide policies aimed at making schools more accountable for improving low-performing students' achievement are hurting the brightest students.”²³⁷ According to that earlier report, from 2000 to 2007, achievement for students who scored highest on the National Assessment of Educational Progress was flat, while the lowest-performing students improved dramatically.

It is true that students of all backgrounds benefit from schools that encourage more rigorous coursework. However, today, *eighth graders* entering high-SES high schools have higher achievement levels, on average, than *twelfth graders* who *finish* high school at low-SES schools, according to Rumberger and Palardy.²³⁸ This gulf in academic preparation means that the achievement of higher-performing students may suffer when lower-performing students are placed in the same advanced classrooms.

The Fordham study points out that many schools are now encouraging students to take college-level, Advanced Placement-type courses, without regard for their academic record or preparation. Yet in AP classes with a number of less-prepared students,

²³² Yun Xiang, Michael Dahlin, John Cronin, Robert Theaker, Sarah Durant, *Do High Flyers Maintain Their Altitude? Performance Trends of Top Students*, Thomas B. Fordham Institute, Sept. 20, 2011.

²³³ Thomas B. Fordham Institute website: <http://www.edexcellence.net/publications-issues/publications/high-flyers.html>.

²³⁴ Nirvi Shah, “Early Achievers Losing Ground, Study Finds,” *Education Week*, Sept. 20, 2011. Tracking the individual scores of nearly 82,000 students on the Measures of Academic Progress, a computerized adaptive test, the study found, for example, that of the students who scored at the 90th percentile or above in math (the “high flyers”) as third graders, only 57.3 percent manage to “maintain their academic edge through 8th grade.” “The story is similar for reading achievement and for 6th grade high flyers as they move to tenth grade.”

²³⁵ Thomas B. Fordham Institute, at <http://www.edexcellence.net/publications-issues/publications/high-flyers.html>.

²³⁶ Shah, “Early Achievers Losing Ground, Study Finds.”

²³⁷ *Ibid.*

²³⁸ Rumberger and Palardy, “Does Segregation Still Matter?,” 2017.

teachers may not be able to cover as many topics or teach in as much depth as they would if all students were high performers, according to Fordham Vice President Michael Petrilli.²³⁹ Teachers may also assign fewer (or shorter) papers, and cut back on homework in other ways. As a result, high performers may fail to develop their knowledge and skills as extensively as they would have if their classmates had been primarily high achievers, as well.

Frederick Hess, director of education policy studies at the American Enterprise Institute (AEI), has also raised concerns of this kind. “Pressure to close gaps has meant pushing more disadvantaged students into AP courses, even when it has compromised rigor or standards,” he writes.²⁴⁰

According to Hess, the number of high-school graduates who have taken at least one AP exam rose from one million in 2003 to 1.6 million in 2008. Some educators claim that enrolling more students in advanced classes doesn’t dilute instructional quality. Hess disagrees:

Unfortunately, the nation’s AP teachers tell a different story. In a 2009 study, education pollsters Duffett and Farkas noted that just 14 percent of AP teachers believed that the growth in AP enrollment was caused by growth in the pool of qualified students. Sixty-five percent, meanwhile, said their school’s policy was to encourage as many students as possible to take AP courses and exams, regardless of qualification. Indeed, just 29 percent said their school limited

access to AP via prerequisites such as maintaining a minimum grade point average or obtaining teacher approval. Duffett and Farkas reported that this phenomenon was most evident in high-poverty schools, where 34 percent of AP teachers believed “administrators [were] pushing unqualified minority or low-income students into AP” and 50 percent said that their African-American and Hispanic students were not adequately prepared for AP instruction.²⁴¹

Thus, observes Hess,

Fifty-six percent of the AP teachers surveyed said that too many students were in over their heads; 39 percent reported that the aptitude of AP students and their capacity to do the work had declined, while just 16 percent said it had improved. And the College Board, the organization that administers the AP program, reports that the share of AP exams receiving the minimum passing score of three or better declined by four percentage points between 2003 and 2008.²⁴²

A study released by the College Board in February 2012 provided more confirmation that underprepared students may be diluting the value and rigor of AP courses. In 2011, 43.8 percent of public school test-takers failed their AP exams. This included nearly 75 percent of black students and 60 percent of Hispanics who took the tests.²⁴³

²³⁹ Shah, “Early Achievers Losing Ground, Study Finds.”

²⁴⁰ Frederick M. Hess, “Our Achievement Gap Mania,” *National Affairs*, Fall 2011, available at <http://www.nationalaffairs.com/publications/detail/our-achievement-gap-mania>.

²⁴¹ *Ibid.*

²⁴² *Ibid.*

²⁴³ Mitch Smith, “AP enrollment grows along with questions of privilege,” *Inside Education*, Feb. 9, 2012, citing “The 8th Annual AP Report to the Nation,” College Board, Feb. 8, 2012.

Today, as programs for low performers flourish, proponents of increased attention for gifted students are struggling.²⁴⁴ In 2011, Congress dropped funding for the Jacob K. Javits Gifted and Talented Program. With the elimination of this \$7.5 million program, “there’s no funding at the federal level for high achievers,” Nancy Green of the National Association of Gifted Children told *Education Week*. “They are the ones who are going to solve our complex problems.”²⁴⁵

(b) Beyond AP: Are We Sacrificing Academic Rigor in an Effort to Close the Gap?

Other researchers have confirmed that an increasingly one-dimensional focus on low-performing students may be harming high achievers. For example, in 2008, Brookings Institution scholar Tom Loveless found that “children who are ready for new intellectual challenges pay a price when they sit in classrooms focused on their less-proficient peers.”²⁴⁶

Loveless concluded that “[i]t would be a mistake to allow the narrowing of test score gaps, although an important accomplishment, to overshadow the languid performance trends of high-achieving students.”²⁴⁷ Gaps are narrowing, he said, because the gains of low-achieving students are outstripping

Today, as programs for low performers flourish, proponents of increased attention for gifted students are struggling.

those of high achievers by a factor of two or three to one.²⁴⁸ Thus, while since 1990 the percentage of black and Hispanic fourth graders scoring “below basic” in math on the National Assessment of Educational Progress has fallen from 83 percent to 34 percent and from 67 percent to 28 percent, respectively,²⁴⁹ high performing students have failed to make commensurate gains.

A 1996 RAND Corporation study of student performance in “tracked” and “untracked” classes identified similar problems. The study found that, when low-achieving students were placed in mixed-ability classrooms, they did about five percentage points better than they would have in a low-ability classroom. High-achieving students, however, did six percentage points *worse* in mixed-ability classrooms. The report’s authors concluded that switching from tracked classes to mixed-ability classes in math would reduce aggregate achievement by two percent.²⁵⁰

²⁴⁴ In terms of the value of high-quality teachers for gifted students, Hess writes as follows: “There is, of course, the occasional extraordinary teacher who can make heterogeneous classes work for all students. But such teachers are the exception, not the rule. Value-added testing guru Bill Sanders has reported, based on Tennessee achievement data, that high-scoring students made adequate gains only with the top 20 percent of teachers. Students at lower achievement levels, however, made progress with all but the least effective teachers. In other words, Sanders’s research suggests that teacher quality may matter more for high-performing students than for their peers.” *Ibid.*

²⁴⁵ Shah, “Early Achievers Losing Ground, Study Finds.”

²⁴⁶ Hess, “Our Achievement Gap Mania.” “In 2008, Brookings Institution scholar Tom Loveless reported that, while the nation’s lowest-achieving students made significant gains in fourth-grade reading and math scores from 2000 to 2007, top students made anemic gains. Loveless found that students who comprised the bottom 10 percent of achievers saw visible progress in fourth-grade reading and math and eighth-grade math after 2000, but that the performance of students in the top decile barely moved.”

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*

²⁴⁹ Erik W. Robelen, “New NAEP, Same Results: Math Up, Reading Mostly Flat,” *Education Week*, Nov. 1, 2011, available at <http://www.edweek.org/ew/articles/2011/11/01/11naep.h31.html>.

²⁵⁰ Hess, “Our Achievement Gap Mania.”

Yet another study confirms the unintended downside of attempting to universalize access to advanced classes. As Hess reports,

Mark Schneider of [the American Enterprise Institute], formerly the commissioner of the National Center for Education Statistics, has concluded that decades of efforts to boost the number of students taking rigorous math classes has caused a substantial dilution of those courses. Schneider has noted that the average number of math credits completed by a high-school graduate rose from 3.2 to 3.8 between 1990 and 2005, and that average math GPAs rose over that time from 2.2 to 2.6. While only a third of students completed algebra II in 1978, more than half did in 2008. And yet NAEP scores for students in algebra I, geometry, and algebra II were higher in 1978 than in 2008. In other words, more students were taking more advanced math and getting better grades—and yet our students knew less in 2008 than they did 30 years earlier. Schneider terms this phenomenon the “delusion of rigor.”²⁵¹

Rumberger and Palardy acknowledge this reality in their study of the potential effects of SES “integration.” They observe that even in schools with SES balance, many classrooms may remain “segregated” or imbalanced by income (or race).²⁵² The same may be true of friendship patterns.²⁵³ Presumably, this is because low- and higher-income students are often in very different places in terms of academic preparation.

The Minnesota School Integration Council’s learning gap-related proposal, “Every Child, Every Day,” is critical of tracking, which it describes as “second generation segregation.” The Education Equity Organizing Collaborative’s plan, “16 Solutions,” also decries tracking, as does the Institute on Race and Poverty’s plan.

While it is important to ensure that all students take the most demanding and rigorous courses of which they are capable, Minnesota policymakers should seriously consider the negative consequences of diluting advanced courses in order to ensure that all classrooms are racially or ethnically balanced.

²⁵¹ *Ibid.*

²⁵² Rumberger and Palardy, “Does Segregation Still Matter?,” 2022.

²⁵³ *Ibid.*

CHAPTER V

THE REAL CAUSES OF THE LEARNING GAP

Why have race- and income-based busing, along with massive, decades-long infusions of extra funds, failed to close the racial learning gap? They have failed because they don't address the real causes of the gap, which is primarily a function of family risk factors beyond schools' control.

For decades, the factors most closely correlated with student achievement have been socioeconomic traits such as parental educational attainment, income, and job status, along with family structure (one- or two-parent household). Unfortunately, many minority students labor under significant disadvantages in these respects.

When mandatory busing began in Minneapolis in 1974, the out-of-wedlock birth rate among the district's black residents was 54 percent. Among whites, the figure was 17 percent. In 1993, 79 percent of the city's black babies were born out of wedlock, while 30.5 percent of white babies started life that way.²⁵⁴ In Hennepin County in 2009, the

out-of-wedlock birth rate for babies born to "U.S.-born African-Americans" was 84.3 percent, while the rate for white babies was 18.3 percent. The rate for Hispanic babies was 61.5 percent.²⁵⁵

Parents of children born outside marriage often have little education themselves, low incomes, and low job status. Their children, in turn, are at higher than usual risk for poor academic performance, criminal activity, and a host of other social pathologies. As long as social problems of this magnitude disproportionately affect minority students, the racial learning gap is likely to persist.

A. The Major Impact of Family Risk Factors on the Learning Gap

In a 2005 study, David Armor analyzed the socioeconomic factors behind the racial gap.²⁵⁶ "Existing achievement gaps are not caused by schools," he wrote. "[T]hey are caused by powerful family risk factors that impact children well before

²⁵⁴ Kersten, "Good Intentions," 54. Citing conversation with Shel Swaney, Minneapolis Department of Health, Feb. 6, 1995.

²⁵⁵ Response to data request from Shel Swaney, Supervisor, Assessment & Epidemiology, Hennepin County Human Services & Public Health Department, Aug. 3, 2011.

²⁵⁶ David J. Armor, "Can NCLB Close Achievement Gaps?," in Alan R. Sadovnik, Jennifer A. O'Day, George W. Bohrnstedt, & Kathryn M. Borman, eds., *No Child Left Behind and the Reduction of the Achievement Gap: Sociological Perspectives on Federal Educational Policy* (New York: Routledge 2008), 323-342. "The achievement gap has been in existence since the beginning of aptitude and achievement testing, and it is still large despite massive investments in many different educational policies and programs," Armor writes. "It was once thought that a combination of segregation and unequal school resources caused the gaps. After the dual school system was dismantled+ and school resources greatly equalized, achievement gaps remained. School reformers then turned to remediation, with billions of dollars spent on compensatory education, preschool programs like Head Start, and similar interventions. While the achievement gap did diminish somewhat during the 1970s and early 1980s, perhaps due in part to desegregation and remediation programs, the achievement gap stagnated and then widened again during the late 1980s." 325.



they enter school, and they continue to operate throughout the school years.”²⁵⁷

The achievement gap is well established by the time a child starts school, according to Armor. For example, five-year-old black children perform 1.2 standard deviations below white children on the Peabody Picture Vocabulary Test.²⁵⁸ (A difference of one standard deviation in percentile terms is 33 percentile points.) Vocabulary is one of the best predictors of academic success for children as they begin school.²⁵⁹ “Clearly, school characteristics cannot explain [such] preschool gaps,” Armor wrote. “We must look to families, not schools, for the sources of the gap.”²⁶⁰

Armor examined the relative importance of ten of the most significant risk factors for low academic achievement. These include parental education, income and poverty (SES), family structure (one or two parents), number of siblings and nutrition factors, as well as parenting behaviors involving instruction (cognition stimulation) and nurturance (emotional support).²⁶¹ Armor found very large black-white differences for all ten of the risk factors. In fact, on half these factors, black children have twice the risk of white children: having two parents, family income, mother’s education, teen mothers, and breast feeding.²⁶² Armor concluded,

Virtually all of the test score gaps at age 11 are explained by a combination of family

risk factors and age five verbal skills. In other words, by the end of the elementary grades, virtually none of the black-white achievement gap is attributed to school factors.²⁶³

The family risk factors that create the gap in the first place generally continue to operate in children’s lives as they move through school.

In Hennepin County in 2009, the out-of-wedlock birth rate for babies born to “U.S.-born African-Americans” was 84.3 percent, while the rate for white babies was 18.3 percent. The rate for Hispanic babies was 61.5 percent.

The serious gap that separates poor and minority children from their peers in the early years of schooling is a major reason why, even if these youngsters make greater annual learning gains than their better-off peers, the achievement gap is so difficult to close.

²⁵⁷ *Ibid.*, 323.

²⁵⁸ *Ibid.*, 327. In other words, if the average white student performed at the 50th percentile in reading, which is the midpoint, the average black student performed at the 17th percentile.

²⁵⁹ http://www.michigan.gov/documents/mde/PPVT-IV_training_10-08_258864_7.pdf.

²⁶⁰ Armor, “Can NCLB Close Achievement Gaps?,” 327. Armor used two national data sources in his study. They are the Children of the National Longitudinal Study of Youth (CNLSY) and the Early Childhood Longitudinal Study (ECLS). The CNLSY measures cognitive skills of children starting at age three using the Peabody Picture Vocabulary Test. The ECLS uses reading and math achievement tests designed for young children; it tracks children from kindergarten to fifth grade and beyond. The ECLS kindergarten math gap rises from .63 to .71 standard deviations from fall to spring. “While the ECLS kindergarten gap is somewhat smaller than the 8th grade National Assessment of Educational Progress gap, it is quite similar to the National Assessment of Educational Progress 4th grade math gap in 2003,” Armor writes. “It is likely, therefore, that the math gap does not reach its full magnitude until more complex math topics (e.g., algebra) are introduced in the 7th and 8th grades.” *Ibid.*

²⁶¹ *Ibid.*, 328.

²⁶² *Ibid.*, 329.

²⁶³ *Ibid.*, 330.

B. The Importance of Family Structure and Related Factors

There is strong evidence that the negative effects on academic achievement of growing up in a single-parent household are greatly multiplied in neighborhoods and communities where *most* children are raised without fathers. As already noted, in Hennepin County in 2009, 83.4 percent of the children of U.S.-born black parents and 61.5 percent of Hispanic children were born to single mothers. As a result, many of these youngsters live in neighborhoods of concentrated poverty.

A 2010 report from the Educational Testing Service, *The Black-White Achievement Gap: When Progress Stopped* by Paul E. Barton and Richard J. Coley, describes how a childhood spent in impoverished surroundings can affect school performance.²⁶⁴ Young people who grow up under such conditions tend to be “impaired in their development, lack family capital, and face hostile neighborhood environments,” according to the authors. These children are “hit with a triple whammy in the home, neighborhood, and school.”

Barton and Coley note that, though black children made substantial progress toward reducing academic gaps in the 1970s and 1980s, the gaps widened again in the 1990s. Since 1999, progress has been fitful, with black students making more progress in reading than in math.²⁶⁵

In analyzing why, the authors point out that the percentage of black children living with only one parent or no parents grew from 33 percent in 1960 to 67 percent in 1995.²⁶⁶ “If we are looking for a

There is strong evidence that the negative effects on academic achievement of growing up in a single-parent household are greatly multiplied in neighborhoods and communities where *most* children are raised without fathers.

‘shock’ that roughly coincides with the end of the long-term relative economic and educational gains for Black children...,” they write, the “steep rise in children being raised without fathers, and mostly without the benefit of earnings, coincides with the overall scenario of curtailed progress in narrowing the achievement gap.”

Children who live without fathers and in neighborhoods where most fathers are absent tend to have less structure and more tension and violence in their lives than those who live in two-parent families. In addition, these youngsters are generally more vulnerable to destructive peer pressures and to the influence of a popular culture that glamorizes attitudes and behaviors that undermine the focus and self-discipline necessary for school success.

Barton and Coley conclude, “It is very hard to imagine progress resuming in reducing the education attainment and achievement gap without turning these family trends around,” referring specifically to “increasing marriage rates and getting fathers back into the business of nurturing children.”²⁶⁷

²⁶⁴ Paul E. Barton and Richard J. Coley, *The Black-White Achievement Gap: When Progress Stopped*, Policy Information Report, Educational Testing Service, July 2010. For a fuller explanation of this study, see Mitch Pearlstein, *From Family Collapse to America's Decline: The Educational, Economic, and Social Costs of Family Fragmentation* (Rowman & Littlefield Publishers: 2011).

²⁶⁵ *Ibid.*, 5-7.

²⁶⁶ *Ibid.*, 24.

²⁶⁷ *Ibid.*, 35.



Another factor in the racial and ethnic performance gap is parental and peer expectations about school performance. In 1996, Laurence Steinberg and his colleagues studied 20,000 students in nine high schools in Wisconsin and California.²⁶⁸ The authors determined that children’s peer groups—the cliques they choose to spend time with—greatly influence their academic performance.

Asian students, for example, are much more likely than others to have friends who admire and support academic success and the character traits it requires. Black students, on the other hand, are more likely to choose friends who mock academic success and undermine the behaviors it requires. On average, Asian students do better academically than white students, who outperform Hispanic children, who do better than black children. Not surprisingly, Steinberg and his colleagues conclude that doing well in school and being “strongly engaged in school emotionally” are highly correlated.²⁶⁹

C. Many Poor/Minority Children Struggle in Learning to Read

The powerful effect of differences in children’s family background is evident in the racial and ethnic reading gap with which Minnesota and other states across the nation are struggling. The reading gap is arguably the most important of all academic gaps, because reading well is critical to success in every other academic subject, including mathematics.

The data on the consequences of failure to read proficiently are powerful and sobering. According to the National Institute for Literacy, 43 percent

of Americans with the lowest literacy skills live in poverty, while only five percent of those with strong literacy skills do. Seventy percent of Americans with the lowest reading skills have no job or only a part-time job. Likewise, 70 percent of inmates in our nation’s prisons can’t read above the fourth-grade level.²⁷⁰

(1) Early Literacy

A classic 1995 study by Hart and Risley demonstrated how profoundly family background can affect reading readiness and ability. Hart and Risley found that by age three, children from professional families have heard more than 30 million words, while children from welfare families have heard only ten million words. Professional parents also employ much richer language than welfare parents do. Better educated parents use more words of all kinds, more multi-clause sentences, more past and future verb tenses, more declaratives, and more questions than poorly educated parents do.²⁷¹

Not surprisingly, Hart and Risley found that three-year-old children from professional families have an average vocabulary of 1100 words. In contrast, children from welfare families have an average vocabulary of only 500 words. A limited vocabulary is a hallmark of language, literacy, and cognitive difficulties.²⁷²

It’s no wonder, then, that low-income children (many of them minority) often arrive at school poorly prepared to learn to read. When these youngsters start school, they are frequently unfamiliar with letters and letter-sound correspondence and are also seriously delayed in a wide range of pre-reading oral

²⁶⁸ Laurence Steinberg, B. Bradford Brown, and Sanford Dornbusch, *Beyond the Classroom: Why School Reform Has Failed and What Parents Need to Do* (Simon & Schuster: 1996).

²⁶⁹ For a fuller explanation, see Mitch Pearlstein, *From Family Collapse to America’s Decline*, 111-12.

²⁷⁰ Presentation of John Alexander, head of school at Groves Academy in St. Louis Park, Minnesota, to the Integration Revenue Replacement Advisory Task Force, January 10, 2012.

²⁷¹ B. Hart and T.R. Risley, *Meaningful Differences in the Everyday Experience of Young American Children* (Brookes Publishing Co.: 1995).

²⁷² For a useful explanation, see the website of the Peabody Picture Vocabulary Test, Fourth Edition, at http://www.michigan.gov/documents/mde/PPVT-IV_training_10-08_258864_7.pdf.

language skills.²⁷³ As Hart and Risley demonstrated, many of these children have a small vocabulary and a serious deficiency in the general knowledge necessary for good reading comprehension. To “catch up” to their more advanced peers, they need not a child of a different skin color next to them but intense assessment and remediation, a rich oral environment at school, and the content necessary to develop broad background knowledge across the curriculum.

A brief explanation of how children learn to read demonstrates how seriously early lags in vocabulary, and poor oral and early-reading skills in general, can handicap low-SES, minority youngsters throughout their school careers. At the same time, it illustrates why scientifically based academic instruction (along with targeted assessment and effective intervention) must be the central elements in a program to improve struggling students’ academic performance.

To learn to read, children must first master “decoding” skills and develop the ability to recognize numerous words automatically—that is, “by sight.” Once fundamental skills are mastered, a child’s sight vocabulary must quickly expand beyond words in daily use to more formal, academic words, such as “precipitation” and “migration,” if reading proficiency is to be attained.

Poor, minority students are often at a huge disadvantage in these respects. To build fluency and vocabulary, a child needs numerous hours of practice in reading texts of increasing difficulty. A major 1988 study found that the best predictor of a child’s growth in reading proficiency from the second to the fifth grade is the time the child spends reading books:

Average students (50th percentile) read less than five minutes a day—about 282,000 words per year. In contrast, students at the 90th percentile read more than 20 minutes per day—about 1.8 million words per year. Top-level readers, in other words, read five times more words than students in the middle of the pack—and almost 30 times more than students in the lowest group, who read for little more than 1 minute a day—about 106,000 words per year.²⁷⁴

Unfortunately, many poor/minority children are not exposed to print-rich environments at home or encouraged to devote significant time and effort to developing academic skills. This seriously handicaps their development as readers.

(2) Challenges Beyond Elementary School

As the child grows, so does the problem. “If you aren’t a good reader by third grade, you simply do not read as much as other children,” says Joseph Torgesen, emeritus director of the Florida Center for Reading Research. “And when you do read,” he adds,

you find yourself reading a lot of things you don’t understand. This greatly limits your ability to learn—to gain background knowledge. In fifth grade, even if you read as much as a kid with a good vocabulary, you won’t learn as much. Because for kids with a good vocabulary, it’s easy to learn new words.”²⁷⁵

²⁷³ Katherine Kersten, “Preparing All Minnesota Children to Read by Third Grade,” Center of the American Experiment Working Paper, April 2011, 10, available at <http://www.amexp.org/publications/reports/preparing-all-minnesota-children-to-read-by-third-grade>.

²⁷⁴ Barbara Foorman, “Ensuring Early Literacy Success,” Winter 2009, Research Points, American Educational Research Association, citing R.C. Anderson, P.T. Wilson and L.G. Fielding, 1988, “Growth in Reading and How Children Spend Their Time Outside of School,” *Reading Research Quarterly*, Vol. 23, No. 3, 285-303.

²⁷⁵ Author Interview with Dr. Joseph Torgesen, March 4, 2011.



It is especially difficult for children who start school with poor early reading skills to achieve high school level reading proficiency. Literacy at this level requires a rich, academic vocabulary and broad background knowledge. A “very large sight word vocabulary” is what makes a student a fluent reader in ninth and tenth grade, according to Torgesen.²⁷⁶

A sample passage from a grade-ten reading assessment²⁷⁷ illustrates why many poor, minority children find it increasingly difficult to maintain grade-level proficiency as they move through middle and high school. The passage, which follows, provides a sense of the broad background knowledge required to read high school level material:

The origin of cotton is something of a mystery. There is evidence that people in India and Central and South America domesticated separate species of the plant thousands of years ago. Archaeologists have discovered fragments of cotton cloth more than 4,000 years old in coastal Peru and at the MohenjoDaro in the Indus Valley.... Today cotton is the world’s major nonfood crop, providing half of all textiles. In 1992, 80 countries produced a total of 83 million bales, or almost 40 billion pounds.... “Cotton is a wonderful classic,” says Adrienne Vittadini, a New York designer of women’s sportswear, who uses cotton in 65 percent of her collection.... “You have combed cotton, with a dull finish; high twist cotton, with a crepey finish; all sorts of cotton boucles for hand knitting....” Modern fire hoses are usually made from synthetics, which are less expensive and last longer than cotton. But U.S. armed forces still use cotton hoses on

their ships, where scorching, sunbaked decks melt the man-made material. Scientists have found that cotton may even clean up oil spills better than polypropylene fibers.

And so on, for 18 more lines.

To read and comprehend a passage of this complexity, high school students need extensive “tacit” or background knowledge. What, for example, is plant domestication? Where are Peru and the Indus Valley relative to one another? What’s a bale? What is polypropylene?

Few students of any income level will have learned all this information in school. Those who do know it will likely have gained much of it from reading on their own. Poor and minority students are at a significant disadvantage in this respect. Policies that seek to address the learning gap must be designed to give these students the skills, vocabulary, and broad background knowledge they are likely to lack.

(3) Non-White Children’s Very Heavy Media Use

Another factor that contributes to the racial learning gap may be the difference in media use, on average, by white and non-white children. A January 2010 report by the Kaiser Family Foundation documented this in startling terms.

The report found that black and Hispanic youngsters aged 8 to 18 consume 13 hours of media content a day—about 4.5 more hours than their white counterparts.²⁷⁸ Specifically, minority children spend one to two more hours watching TV and

²⁷⁶ Author interview with Dr. Joseph Torgesen, March 4, 2011.

²⁷⁷ This passage is taken from the grade ten Florida Comprehensive Assessment Test, equivalent to the MCA II’s in Minnesota. The passage first appeared in the *National Geographic Magazine*. See E.D. Hirsch, “Essential Reading” in *Reforming Education in Florida* (Hoover Institution: 2006); and Kersten, “Preparing All Minnesota Children to Read by Third Grade,” 22.

²⁷⁸ Wendy Leopold, “Stark Difference in Media Use between Minority, White Youth,” *Northwestern University News Center*, June 8, 2011, available at <http://www.northwestern.edu/newscenter/stories/2011/06/media-usa-youth-wartella.html>. See also Victoria J. Rideout, Ulla G. Foehr, Donald F. Roberts, “Generation M2: Media in the Lives of 8- to 18-Year-Olds,” Kaiser Family Foundation Study, Jan. 2010.

videos, about an hour more listening to music, up to an hour and a half more on computers, and 30 to 40 minutes more playing video games than their white peers do.²⁷⁹

Black children under age six are twice as likely to have a TV in their bedroom as whites and more than twice as likely to go to sleep with the TV on.

In short, non-white young people spend more than 90 hours a week consuming television, music, video games, and other forms of entertainment. In the last ten years, the gap between minority and white youth's daily media use has doubled for blacks and quadrupled for Hispanics.²⁸⁰

"It's clear that, overall, American youth spend an enormous amount of time with media, but minorities spend most of their waking hours with media," says study director Ellen Wartella, head of the Center on Media and Human Development at Northwestern University.²⁸¹

Black youth spend more than 41 hours a week watching TV, while white children spend less than 25 hours a week doing so. Black children under age

six are twice as likely to have a TV in their bedroom as whites and more than twice as likely to go to sleep with the TV on. Black children under six are almost three times as likely to eat dinner in front of the TV than are white children the same age.²⁸²

The racial and ethnic gap in media use persists, regardless of children's family structure. According to the Kaiser report, "differences by race/ethnicity remain—even after controlling for other factors such as age, parents' education, and single vs. two-parent homes."

While the Kaiser report "cannot establish a cause-and-effect relationship between media use and grades," it does find a strong correlation between electronic media use and poor school performance. Nearly half of "heavy media users" (defined as the 21 percent of youth who consume more than 16 hours a day) report fair or poor grades (C's or lower). Only 23 percent of "light media users" (the 17 percent of youngsters who consume three hours a day or less) received such grades.²⁸³

The racial gap in media use is additional evidence that schools and institutional white racism do not cause the learning gap: Family risk factors do. This fact confirms that if plans to reduce the academic gap are to be effective, they must focus not on racial or SES-balance in the classroom but on scientifically based instruction and disciplined, content-rich learning environments.

²⁷⁹ Leopold, "Stark Difference in Media Use between Minority, White Youth."

²⁸⁰ *Ibid.*

²⁸¹ Michael Medved, "The 'TV Gap' Cripples Minority Kids," June 22, 2011.

²⁸² Leopold, "Stark Differences in Media Use between Minority White Youth."

²⁸³ Medved, "The 'TV Gap' Cripples Minority Kids."

CHAPTER VI

MINNESOTA ORGANIZATIONS' PROPOSALS TO ADDRESS THE LEARNING GAP

Social science research has determined that the racial learning gap is rooted in family risk factors that are extremely difficult to change, and beyond the control of schools. These factors range from very high out-of-wedlock birthrates to heavy overuse of media by black and Hispanic students.

Unfortunately, one looks in vain for serious consideration, or even acknowledgement, of these stubborn facts on the part of Minnesota education policy organizations that have put forward learning gap-related proposals. Too often, their plans seem based on the assumption that the gap is primarily a product of institutional white racism and that the key to its elimination is the old three-part formula of racial balance in schools, “cultural competency” training for teachers and students, and ever-increasing infusions of funds. Unfortunately, learning gap remedies that ignore the true nature of the challenge and focus instead on busing children for racial or SES balance are doomed to fail in the future, as they have in the past.

The discussion that follows highlights the fact that—when the sources of the learning gap become clear—the misguided nature of the four learning gap-related proposals now being put forward by

influential Minnesota education organizations also becomes evident.

A. The Minnesota Department of Education’s Report and Its Focus on Skin Color and “Compelling Interest”

The role of the Commissioner’s Education Finance Working Group, convened in March 2011, was to make recommendations to the legislature and the public concerning Governor Mark Dayton’s number-one K-12 education priority: funding.²⁸⁴ The resulting MDE report, entitled “Funding Education for the Future,” contains “a blueprint for our future—a future in which we meet Minnesota’s constitutional obligation to provide a ‘uniform system of public schools’ with improved education funding that takes what’s good and makes it better.”²⁸⁵

In “Funding Education for the Future,” the MDE attempted, among other things, to set the context for the upcoming legislative debate on integration revenue—funding used by qualifying Minnesota

²⁸⁴ “Funding Education for the Future,” Letter from Commissioner Brenda Cassellius, unnumbered first page. According to Cassellius, “When Governor Dayton introduced his 7 Point Plan for Achieving Excellence for all Minnesota students, education funding for the future was number 1 on the priority list.”

²⁸⁵ *Ibid.*



school districts to promote “inter-racial contacts” and close the achievement gap. The first of the report’s five listed goals was improving the “adequacy, equity, and stability of pre K-12 education funding.” Other goals were closing achievement gaps and promoting high achievement for all students.²⁸⁶

In its report, the MDE recommends retaining integration aid but rolling it into the basic skills portion of the states’s general education revenue and allocating it “based on the number of students of color in each district.”²⁸⁷ In addition, the report recommends that the legislature frame the debate on integration funds in terms of two fundamental questions:

- “Does the state have a compelling interest to integrate schools?”²⁸⁸ and
- “Does the state have a compelling interest to ensure the educational success of children whose families live in poverty?”²⁸⁹

Regarding the first question, the MDE recommends that the legislature clarify whether “portions of [integration] funding should be set aside for integrating schools (closing the achievement gap).”²⁹⁰ The MDE clearly favors such use and contends that it would “align funding more closely with [the] need to better support achieving integrated schools and closing the achievement gap.”²⁹¹ The report does not define what the MDE means by “integrated” schools.

Commissioner Cassellius has also employed the term “compelling interest” when articulating the state’s responsibilities concerning racial balance and the achievement gap. For example, in August 2011, she discussed the legislature’s decision to end integration revenue with the *Star Tribune* editorial board. She told the *Star Tribune*:

I’ve been framing this not as the end of integration aid but as integration 2.0. The state has a compelling interest in encouraging integrated schools.... I look forward to having a statewide conversation about meeting the needs of all Minnesota students, integrating schools and closing the achievement gap.²⁹²

In Fall 2011, the Minnesota Department of Education (MDE) submitted an application to the U.S. Department of Education for a waiver from compliance with various provisions of the No Child Left Behind Act (NCLB).²⁹³ The waiver proposed a different accountability system for Minnesota schools than that used under NCLB. The MDE’s proposed system used several measures for school accountability, including a school’s achievement gap reduction.²⁹⁴ In February 2012, the federal government granted the MDE’s waiver request. It is not clear how, or whether, the new accountability system will affect the MDE’s goal of promoting “integration” in Minnesota schools. States seeking a waiver were required to work within a specific set

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.*, 11. The report recommends that “[e]ach district currently participating in the integration revenue program would receive revenue equal to the lesser of the approved budget or \$600 times the number of students of color enrolled in the district.” Minneapolis would receive an additional \$150 per student of color as a transition adjustment, and funding would be 100 percent from state aid, as opposed to a portion coming from local levies.

²⁸⁸ *Ibid.*

²⁸⁹ *Ibid.*, 17.

²⁹⁰ *Ibid.*, 11.

²⁹¹ *Ibid.*

²⁹² Editorial, “Put a new focus on achievement gap,” *Star Tribune*, August 8, 2011.

²⁹³ These provisions include the law’s 2014 goal of 100 percent student proficiency, and sanctions on schools not making Adequate Yearly Progress.

²⁹⁴ Schools would be measured based on how the growth of their students from seven lower-performing subgroups—among them black, Hispanic and low-income students—compares to the statewide average growth of higher-performing subgroups. Schools would earn points based on their ability to reduce the achievement gap. Schools would be placed into one of several groups on the basis of these scores, with lower-performing schools required to work with MDE and/or their districts to implement interventions to improve low-performing students’ achievement.

of principles, and racial balance—or “diversity”—was beyond the purview of these principles, and so was not a matter to be raised within the context of the waiver application.²⁹⁵

B. The Education Equity Organizing Collaborative’s Proposal Expands on the MDE’s Recommendations

“Funding Education for the Future” provides few details about the MDE’s thinking on integration issues, beyond its recommendation that integration revenue be included in the basic funding formula; that it be distributed on the basis of the number of districts’ “students of color;” and that the legislature frame its thinking on integration issues in terms of “adequacy,” “equity,” and the state’s “compelling interests.” Commissioner Cassellius herself has often emphasized that she regards “integration” and “equity” as central to closing the learning gap, but to date she has offered few specifics in this respect.

One way to gain greater insight into the commissioner’s views on these matters is to study the positions of an organization with which she has publicly collaborated on “integration” issues: the Education Equity Organizing Collaborative (EEOC). The EEOC is an initiative of the Minneapolis-based Organizing Apprenticeship

Project (OAP), a “community organizing” group whose 11 members include groups with a strong ideological agenda, among them ISALAH, a coalition of activist churches.²⁹⁶ The EEOC’s mission is to build “racial, cultural, and economic equity at the state level.” Currently, the racial achievement gap is one of its primary focuses.

In December 2010, shortly after his election, Governor Mark Dayton joined ISALAH to “launch a statewide partnership aimed at eliminating the state’s racial and economic inequities.”²⁹⁷ At the Organizing Apprenticeship Project’s “Racial Equity Gathering” on June 12, 2011, Commissioner Cassellius committed herself and the governor to “achieving equity” and to making it “the center of [the MDE’s] excellence goals and measures.”²⁹⁸ She also committed to “actively partner with the EEOC over the next year to develop a system for taking equity practices and principles into the schools and districts themselves and for publicly measuring and rewarding progress towards equity practices in schools.”²⁹⁹ Presumably, then, Cassellius’s and Dayton’s notion of equity is consistent with that of the OAP and the EEOC.

On September 17, 2011, Cassellius spoke at ISALAH’s “Leadership for Racially Equitable Schools Action Day.” According to a flyer for the event, she discussed “statewide adoption of a co-

²⁹⁵ States were required to demonstrate that their proposed accountability system would incorporate four key principles: 1) college- and career-based academic standards; 2) differentiated recognition, accountability and support for schools; 3) support for effective instruction and leadership; and 4) reducing duplication and unnecessary burden.

²⁹⁶ Spayde, Jon. “The achievement gap is an equity gap,” *MinnPost*, Aug. 22, 2011. According to *MinnPost*, the organization’s “basic mission is to train community organizers and community organizations, and to bring those organizations together to address issues of concern.”

²⁹⁷ ISALAH Media Advisory, “1,500 People of Faith to Meet with Dayton and Transition Team: ISALAH Launches Partnership to Close Opportunity and Equity Gap in MN,” Nov. 30, 2010. See also Heron Marquez Estrada, “Faithful tell Dayton: Erase gaps,” *Star Tribune*, Dec. 6, 2010.

²⁹⁸ OAP Current Campaign, “The EEOC’s Vision [sic] for equity in excellence in education,” available at <http://www.oaproject.org/initiatives/eoc/current-campaign>. This document explains further: “To ensure that equity and excellence in schools lie hand in hand, the EEOC’s current campaign focuses on creation of equity standards that will be adopted by the Minnesota Department of Education. These equity standards will ensure districts are taking a hard look at practices in their schools and serve as a means to measure and reward progress towards equity. A rubric will be created in order for schools, districts and the state to monitor institution’s [sic] progress towards every student receiving a just and equitable education. Some of the things we are looking at include funding, teaching force and staff, parent and community engagement, curriculum, discipline, and school structure, climate and learning environment.”

²⁹⁹ *Ibid.*

created set of criteria and standards for measuring progress toward institutional equity and rewarding schools and districts for their progress (emphasis added).”³⁰⁰

The close working relationship between MDE and the Education Equity Organizing Collaborative appears to be unusual. In August 2011, Julia Freeman, EEOC’s Senior Organizer for Racial Justice, told *MinnPost*, “I’m not aware of any other program in the nation right now where a nonprofit like ours is partnering with state education authorities to do that.” *MinnPost* called the arrangement a “unique new partnership with Minnesota.”³⁰¹

The EEOC’s goal is to put its ideological vision of equity at the center of Minnesota’s efforts to narrow the gap.³⁰² This means making equal academic outcomes by demographic groups a primary focus of the state’s integration law and rules and also the centerpiece of its efforts to close the learning gap.

The EEOC’s views on the learning gap are summarized in a June 2011 document entitled “16 Solutions that Deliver Equity and Excellence in Education.”³⁰³ The document’s co-releasers included Growth and Justice, and the Minnesota Minority Education Partnership, whose executive director is State Representative Carlos Mariani.³⁰⁴ Its funders include the Northwest Area Foundation, the

In the EEOC’s view, educational “equity” means equal outcomes or results by all racial and ethnic groups—not only in academic performance but also in graduation rates, discipline rates, and rates of participation in special education and honors classes.

Minneapolis Foundation, the St. Paul Foundation, the Otto Bremer Foundation and the McKnight Foundation.

The fundamental assumption of “16 Solutions” is that the racial gap is a result of institutional white racism.³⁰⁵ Leaders of the Organizing Apprenticeship Project and the Education Equity Organizing Collaborative refer to the achievement gap as an “equity gap”³⁰⁶—that is, a gap attributable to racially discriminatory disparities in treatment, opportunity, and access to educational advantages within the schools and the larger society.³⁰⁷ According to the EEOC, racial gaps in academic performance, opportunity, and treatment are driven by state

³⁰⁰ Flyer, “10,000 Voices for One Minnesota,” “ISAIAH’s Third Leadership in Action Day: Leadership for Racially Equitable Schools,” Sept. 17, 2011.

³⁰¹ Spayde, “The achievement gap is an equity gap.”

³⁰² “We are going to commit to equity being at the center of excellence in goals and measures,” Freeman told *MinnPost*. “Our long-term goal is to have Minnesota’s education leadership adopt and implement practices and policies that remove institutional barriers to racial, cultural, and economic equity for kids of color in Minnesota.” *Ibid.*

³⁰³ Jermaine Toney and Hillary Rodgers, “16 Solutions that Deliver Equity and Excellence in Education,” Racial Equity Policy Brief, June 2011, Organizing Apprenticeship Project, available at http://www.oaproject.org/sites/default/files/OAP_REPP_2-final.pdf.

³⁰⁴ *Ibid.*, 19.

³⁰⁵ According to “16 Solutions,” education “inequities are deeply grounded in complex decisions and multiple systems. Our state’s unequal opportunities in access to employment, wealth, health, child care, transportation and housing have ripple effects on disparities in education.” *Ibid.*, 2.

³⁰⁶ *MinnPost* quotes Freeman as saying, “See, we consider what we have to be an equity gap, not an achievement gap. And we focus on the institutional aspect of equity.” Spayde, “The achievement gap is an equity gap.”

³⁰⁷ *Ibid.*

practices.³⁰⁸ In other words, the State of Minnesota is to blame for them.

In the EEOC’s view, educational “equity” means equal outcomes or results by all racial and ethnic groups—not only in academic performance but also in graduation rates,³⁰⁹ discipline rates,³¹⁰ and rates of participation in special education³¹¹ and honors classes.³¹² The organization has denounced what it calls the “school to prison pipeline” and maintains that “[i]nequity in school discipline is a key factor in the disproportionate number of students of color who are undereducated and over-incarcerated.”³¹³ It has also declared its intent to work against “tracking” students by ability,³¹⁴ a practice it views as racially discriminatory.

Given Commissioner Cassellius’s partnership with the Education Equity Organizing Collaborative, the EEOC’s highly ideological statements on integration and the achievement gap may concern Minnesotans who believe that improved instruction and intervention are vital to boosting the academic performance of children who start school behind their peers. The EEOC’s learning gap-related plan has little or nothing to say about these.

C. The Minnesota School Integration Council’s Proposal

The Minnesota School Integration Council is a statewide organization composed primarily of school districts that receive “integration revenue” from state and local government.³¹⁵ In the last decade or so, these funds have totaled more than one billion dollars. The council’s members have a significant stake in continuing this funding stream.

Like the Education Equity Organizing Collaborative, the Integration Council assumes that the racial achievement gap is a function not of family risk factors but of “unequal/uneven distribution of opportunity in the system.”³¹⁶ In other words, the council maintains that the gap is primarily caused by school and societal racism, which results in the withholding of “equal opportunities.” Like the MDE, the council describes school “integration” as a “compelling interest” of the State of Minnesota and a “key strategy” for closing the learning gap.³¹⁷

The Integration Council’s plan for achieving “integration” and closing the learning gap, released in January 2011, is entitled “Every Child, Every Day: Educational Equity through Integration.” The

³⁰⁸ “16 Solutions,” 2.

³⁰⁹ *Ibid.*, 9.

³¹⁰ *Ibid.*

³¹¹ Spayde, “The achievement gap is an equity gap.”

³¹² *Ibid.*

³¹³ “16 Solutions,” 3.

³¹⁴ *Ibid.*, 9. “The needed standards must measure, reward and hold schools accountable for equitably educating our students of color and low-income students.... Emerging equity standards include but are not limited to: ... proportional graduation and dropout rates; equal representation of all cultures throughout curriculums; the absence of tracking and unequal discipline rates; and clear pathways to post-secondary education for all students.”

³¹⁵ The Integration Council describes itself as a “statewide organization committed to equity and excellence for all.” According to “Every Child, Every Day,” the council convened a statewide task force to study school integration “with the knowledge and support of the Minnesota Department of Education....” “Every Child, Every Day,” 4.

³¹⁶ *Ibid.*, 7. “[A]chievement gaps’ demonstrate an uneven distribution of opportunity in the system.” The report continues: To achieve equity and “the full benefit of integrated learning, schools and districts must address structures and systems that serve as barriers to opportunity.” *Ibid.*, 8.

³¹⁷ *Ibid.*, 7. According to the council, “Minnesota has a compelling interest in creating an integrated society that ensures equal opportunity for all its children. Integration is one key strategy that will move our state toward achieving equitable outcomes for all learners. Strong integration policy is a critical component of a larger agenda focused on eliminating disparities and creating educational equity and opportunity for all Minnesotans.”

plan recommends repealing Minnesota’s current “voluntary integration” rule and statute (except the components prohibiting intentional segregation) and establishing a new Educational Equity through Integration policy and program.³¹⁸

In “Every Child, Every Day,” the Integration Council proposes a new definition of educational “equity” for the State of Minnesota. Henceforth, it recommends, “equity” should be understood as requiring identical academic outcomes by students of all demographic groups. In the plan’s tortured phrasing, educational “equity” requires academic outcomes that “are not predictable or disproportionate” for any racial or ethnic group.³¹⁹

If the council’s plan is adopted, Minnesota schools will be operating “equitably” only if all racial and ethnic groups perform the same academically—in other words, if the racial learning gap disappears. The plan presupposes that the gap is proof-positive that schools are operating in unfair ways. Not surprisingly, the council declares that achieving “equity” will require “transforming” Minnesota’s “schools, districts, and communities.”³²⁰

“Every Child, Every Day” resurrects a variety of aspects of the Minnesota State Board of Education’s proposed 1994 desegregation rule. Like the 1994 rule, it would require districts to close the learning gap or be labeled inequitable. The council would

require every school district in Minnesota—urban, suburban, and rural³²¹—to submit an integration plan and budget to the MDE for approval.³²² The MDE would have the power to determine which districts were operating equitably and which were not.

In their mandatory integration plans, school districts would have to describe how they aimed to achieve “equitable academic outcomes”³²³ by all demographic groups—not only in terms of test scores but also graduation and dropout rates. In addition, districts would be required to lay out their strategy for meeting at least one of four other “integration outcomes.”³²⁴ Parameters in this respect include, among others, “proportional enrollment in college prep classes,” “decreased racial prejudice,” “increased comfort in racially diverse settings,” “racial balance,” and “increased diversity of faculty.”³²⁵

In “Every Child, Every Day,” the Integration Council asserts that “true integration extends far beyond student assignment” and “requires much more than bringing students from different backgrounds in proximity to one another.”³²⁶ Indeed, in the council’s view, true integration requires racial and ethnic balance “within the school, the curricula, and the classroom”³²⁷—that is, in advanced and remedial classrooms and in all aspects of school life. According to the council, a

³¹⁸ *Ibid.*, 11. “The purpose of integration policy is to assist school districts in reducing racial isolation and promoting school diversity.”

³¹⁹ *Ibid.*, 12. Specifically, the suggested definition reads: “‘Equity’ is defined as high expectations and access to meaningful and relevant learning for all students so that outcomes are not predictable or disproportionate by protected class status.”

³²⁰ *Ibid.*, 8.

³²¹ Indeed, according to the council, in “racially segregated” urban and rural areas, “it is as, if not more, important to be mindful of the harms that attend racially isolated schools.” *Ibid.*, 9.

³²² *Ibid.*, 11, 13-15, 17. The plan would relate to integration of “protected students,” including black, Asian, Latino and Native Americans, as well as “multiracial students who self-identify or are identified as having origins in more than one” of these groups.

³²³ These outcomes would aim at increased achievement while eliminating predictability for protected class students. *Ibid.*, 14.

³²⁴ *Ibid.* These other outcomes are “access to opportunity,” “intercultural learning,” “racial balance” and “strong communities.”

³²⁵ *Ibid.*

³²⁶ *Ibid.*, 9. “True integration” requires a “diverse and inclusive environment within the school, the curricula, and the classroom.” This definition of “true integration” provides the context for the Integration Council’s conviction that “tracking”—or different rates of participation by racial and ethnic groups in more challenging courses—amounts to impermissible “within-school segregation.” *Ibid.*, 9, 15.

³²⁷ *Ibid.*, 9. The presumed benefits of true integration include “deeper ways of thinking, higher aspirations—both educational and occupational, and positive interactions with students of other races and ethnicities.” *Ibid.*

“two-pronged approach” is necessary for integration of this kind to emerge.³²⁸

Like the State Board of Education’s proposed 1994 rule, “Every Child, Every Day” advocates the creation of sweeping new government powers to impose its vision of school integration across the state.

First, “structural shifts” are imperative to address “the arrangement of schools and flow of students in a district or region.” Second, “in-school strategies” are required to address policies and practices that affect students and staff.³²⁹

The council advocates that racial balance in schools and districts be accomplished through “intra- and inter-district student-transfer plans” and “assignment plans” (both terms of uncertain meaning), as well as through magnet schools.³³⁰ Its proposal provides few details as to how these enrollment shifts would occur. To “integrate” classrooms, the council calls for “programming to address within-school segregation and tracking.”³³¹ Like the Integration Council, the Education Equity Organizing Collaborative regards the absence of ability tracking as an “emerging equity standard.”³³²

In addition to enrollment shifts, the council’s plan lists the in-school strategies necessary to achieve “true integration.” These include “culturally responsive instructional strategies,” professional development in “cultural competence,” and “race-conscious” programs and practices that would affect both students and staff.³³³ Again, few details are provided.

Like the State Board of Education’s proposed 1994 rule, “Every Child, Every Day” advocates the creation of sweeping new government powers to impose its vision of school integration across the state. The plan calls for a new state Office of Educational Equity through Integration at MDE, and a cabinet-level position in the governor’s office “to signal substantial commitment to the issue.”³³⁴

The Office of Educational Equity through Integration could conceivably touch almost every aspect of Minnesota schools’ operation, since the concept of integration on which the council’s plan is based is so broad. (Again, “Every Child, Every Day” asserts that schools, districts, and communities must be “transformed” for true integration to emerge.) The office would set criteria for and approve school districts’ integration plans. In addition, it would establish statewide and regional K-12 integration benchmarks, oversee schools’ progress toward them,³³⁵ and apparently disburse funds, including transportation grants for districts employing race-based busing.³³⁶ It would also “intervene”³³⁷ in unspecified ways with schools that fail to close the gap to achieve the MDE’s preferred racial balance or to meet the MDE’s expectations regarding “cultural

³²⁸ *Ibid.*, 15.

³²⁹ *Ibid.*

³³⁰ *Ibid.*

³³¹ *Ibid.*

³³² “16 Solutions,” 9.

³³³ “Every Child, Every Day,” 15.

³³⁴ *Ibid.*, 13. “Responsibilities of the Office include providing equity oversight, establishing accountability procedures that align with metrics for measuring success, and developing structures for feedback, support and intervention.”

³³⁵ *Ibid.*, 13-14.

³³⁶ *Ibid.*, 17.

³³⁷ *Ibid.*, 13.

competence” training.³³⁸ Districts would be required to publish an annual report documenting their progress towards achieving the goals, benchmarks, and metrics laid out by the MDE.³³⁹

The Office of Educational Equity through Integration would award positions of power and influence over Minnesota public schools to a mind-numbing array of special interest groups. “Every Child, Every Day” envisions a phalanx of new councils and advisory groups, including a “statewide cadre of equity and integration leaders to provide expertise, feedback, and technical assistance;”³⁴⁰ community collaborative councils to assist districts in developing integration plans and evaluating progress;³⁴¹ and an advisory committee of agencies “directly impacting” integration that would conduct “regular public hearings on integration implementation around the state.”³⁴² Presumably, racial and ethnic special interest groups—including Education Equity Organizing Collaborative members—would be well-represented in all these positions. It seems likely that on some matters, the new councils and advisory groups would replace local school boards in decision making.

In 1995, a legislative task force raised precisely this objection to the State Board of Education’s 1994 draft desegregation rule. In a report on the issue, the task force wrote that it was

opposed to the proposed rule’s statewide mandate to establish community learning and/or integration councils to set learning gap closure and integration goals.

These community councils would bypass the authority of the local school boards that are elected by the people. They could be dominated by appointees—not all of them local ... —who might place their own agendas over the best interests of all students.

In addition, the question of how these councils may be funded and their precise relation with local units of government has not been clearly addressed by the SBE. Are local taxpayers going to be asked to pay for a council that will duplicate what’s already being done by a school board?³⁴³

Like the State Board of Education in 1994, the Integration Council views racially balanced schools as just one element of a larger social engineering initiative. Eighteen years ago, the State Board of Education attempted to persuade the Minnesota Legislature to empower the Metropolitan Council to distribute low-income housing throughout the Twin Cities metro area in order to “desegregate” the schools. In 1995, the NAACP tried to join the Metropolitan Council in its education adequacy lawsuit against the State of Minnesota, arguing that the Met Council was obliged to promote and enforce such housing policies but had failed to do so. Today, “Every Child, Every Day” seems to advocate a similar vision, stating cryptically that “integration strategies must address the relationship of school, housing, and fiscal policy.”³⁴⁴

In terms of funding, “Every Child, Every Day” recommends that integration revenue become part of the state’s categorical educational funding

³³⁸ *Ibid.*, 15.

³³⁹ *Ibid.*, 14.

³⁴⁰ *Ibid.*, 16.

³⁴¹ *Ibid.*

³⁴² *Ibid.* In addition, the Office of Educational Equity through Integration would approve district integration plans using a “peer review process.” *Ibid.*, 13.

³⁴³ “Bridging Gaps & Breaking Barriers: A Minnesota Model for Student Achievement & Integration,” Report of the House Republican Task Force on Student Achievement & Integration, November 1995, 8.

³⁴⁴ “Every Child, Every Day,” 16.

based on district-wide pupil units.³⁴⁵ Though the Integration Council does not estimate the costs of its plan, the statewide “integration” regime it proposes would likely be very expensive.³⁴⁶

The council’s plan describes closing the learning gap as one of its primary goals. Unfortunately, the plan proposes to close the gap primarily by moving bodies to achieve a certain racial mix, by training teachers to promote “racial tolerance” and “comfort in inter-racial settings,” and by employing “race conscious strategies” in the classroom.³⁴⁷ “Every Child, Every Day” is essentially silent on the need to improve academic instruction and to target intervention in ways that meet the urgent needs of poor and minority children more effectively. As a result, the plan is unlikely to benefit the young people who need it most.

D. The Institute on Race and Poverty’s Proposal

In terms of moving students, the most detailed learning gap-related proposal for Minnesota schools is a plan proposed by Myron Orfield, director of the Institute on Race and Poverty (IRP) at the University of Minnesota, and his co-authors. IRP

is a self-described advocacy organization dedicated to “research, education, and advocacy” on issues of race and poverty.³⁴⁸ For years, IRP has sought to achieve metro-wide school “desegregation” in the Twin Cities area, and Orfield has worked closely with other organizations that share this goal.

In 2009, Orfield and others at the Institute on Race and Poverty proposed a plan for imposing racial balance and raising minority academic achievement in metro area schools. It is entitled “A Comprehensive Strategy to Integrate Twin Cities Schools and Neighborhoods.”³⁴⁹ The Commissioner’s Education Finance Working Group consulted the IRP plan’s funding recommendations as it prepared its own proposal,³⁵⁰ and the Minnesota Council on School Integration acknowledged Orfield’s “input, support, and assistance” as it formulated “Every Child, Every Day.”³⁵¹ In addition, Orfield served as an advisor to the Eden Prairie school district as it prepared its SES-based busing plan.

Orfield maintains that racial balance in schools is essential to improving minority student achievement and reducing the achievement gap.³⁵² In 2009, along with co-authors Margaret Hobday and Geneva Finn, he wrote, “To have any real

³⁴⁵ *Ibid.*, 17.

³⁴⁶ The report is silent on how much money its plan would require, but the new funding contemplated is clearly very great. Currently, about 130 Minnesota school districts participate in the state’s “integration revenue” program at an approximate cost of \$110 million a year. The Task Force plan would require every district in the state to participate, and to submit an integration budget. The report appears to envision new or expanded programs ranging from transportation grants to achieve inter- and intra-district racial balance, to dropout prevention programs, to programming to address “within-school segregation and tracking,” and additional “cultural competence” training for teachers. The new Educational Equity through Integration Office with all its advisory committees would also presumably require funding.

³⁴⁷ *Ibid.*, 14.

³⁴⁸ See, for example, title page of Myron Orfield, Thomas Luce, Baris Gumus-Dawes, Geneva Finn and Eric Myott, “A Comprehensive Strategy to Integrate Twin Cities Schools and Neighborhoods,” Institute on Race and Poverty, University of Minnesota Law School, 1(Drft. October 2009), available at http://www.irpumn.org/uls/resources/projects/3_Regional_Integration_-_Schools_and_Housing.pdf.

³⁴⁹ *Ibid.* The plan is also described in Myron Orfield and Thomas F. Luce, *Region: Planning the Future of the Twin Cities* (University of Minnesota Press: 2009).

³⁵⁰ The MDE’s Director of School Finance, Tom Melcher, reviewed these recommendations with the Working Group on May 4, 2011, available at <http://education.state.mn.us/MDE/Welcome/AdvBCT/EducFinanWork/004693>.

³⁵¹ “Every Child, Every Day,” 18.

³⁵² Orfield et al., *A Comprehensive Strategy*, 9: “A large body of research shows that integrated schools boost academic achievement, expand expectations, improve overall opportunities for students of color, and, perhaps most importantly, reduce the achievement gap between white students and students of color.”

impact on the racial composition of public schools, states must implement *comprehensive, mandatory integration rules* that proactively require schools to prevent racial imbalance and promote racial diversity in their schools (emphasis added).³⁵³

(1) Elements of the Institute on Race and Poverty’s Sweeping Plan

Orfield’s sweeping plan for engineering school “integration” would resurrect important aspects of the State Board of Education’s 1994 desegregation rule. He and his co-authors advocate busing students for racial balance across the entire Twin Cities metro area, stretching from Forest Lake, Stillwater, and Hastings in the east to Lakeville, Orono and Anoka-Hennepin in the west.³⁵⁴ The plan would achieve racial balance through three mechanisms: multi-district integration districts, “more effective targeting” of integration revenue, and “metro fair housing.”

To oversee the movement of students, Orfield proposes that the Minnesota Legislature create either a single seven-county integration district organized into five or so administrative regions, or multiple integration districts (“super-districts”) that would encompass all or most of the seven-county metro

Orfield and his co-authors advocate busing students for racial balance across the entire Twin Cities metro area, stretching from Forest Lake, Stillwater, and Hastings in the east to Lakeville, Orono and Anoka-Hennepin in the west.

area.³⁵⁵ The goal, he writes, is to “reach beyond areas of residential segregation to include enough schools and students to *ensure that all schools can be effective middle-class schools* (emphasis added).”³⁵⁶

In “A Comprehensive Strategy,” Orfield defines “integrated” schools—in the Twin Cities context—as schools with a black enrollment between seven and 35 percent.³⁵⁷ Working with 2005 numbers, he states that his plan could involve busing up to 20,000 students and describes its details as follows:³⁵⁸

If integrating all schools was achieved simply by having students of appropriate races in

³⁵³ Hobday, Finn and Orfield, “A Missed Opportunity,” 972-3.

³⁵⁴ Orfield et al., “A Comprehensive Strategy,” 29.

³⁵⁵ *Ibid.*, 28. Orfield and his co-authors state that a seven-county integration district would likely be too large for planning and administrative efficiency. *Ibid.* The idea of metro-wide, race-based busing harks back to the State Board of Education’s 1994 metro-wide desegregation plan. As Orfield and co-authors wrote elsewhere in 2009, “While many of the [SBE] Roundtable’s proposals are worth revisiting, including the proposal to reduce state funding to segregated school districts, the proposal to create a special integration district for the Twin Cities Metropolitan area shows the most promise.” “A Missed Opportunity,” 974. Orfield and his co-authors provide maps of five possible “super-districts” as of 2007-08. The proposed super-districts range from 64,000 students to 96,000 students in enrollment. The share of non-white students ranges from 30 percent to 36 percent, while the share of students eligible for free or reduced-price lunch ranges from 26 to 34 percent. *Ibid.*, 28. One district spreads from Anoka-Hennepin to North Minneapolis. Others spread from Orono to North Minneapolis, from Forest Lake to Stillwater to South Washington County, and from Westonka to Robbinsdale. The final district spreads from St. Paul almost to Cannon Falls. “A Comprehensive Strategy,” 29.

³⁵⁶ *Ibid.*, 13.

³⁵⁷ *Ibid.*, 38. Orfield and his co-authors defined an integrated school, in the context of simulations of housing policy reforms that would lead to metro-wide integration, as “one with a black enrollment between seven percent and 35 percent. Seven percent represents one-half the regional average share for black students, and 35 percent is a share often used to approximate the point at which continued racial transition is very likely.”

³⁵⁸ *Ibid.*, 38-39. In 2005, 375 of the roughly 1,000 schools in the seven-county region showed black student shares in the seven to 35 percent range; 443 showed shares less than seven percent and 184 schools had shares above 35 percent. *Ibid.*, 38.

the appropriate schools trade places, then roughly 9,900 black students in schools above the 35 percent ceiling would have to trade places with 9,900 white students in schools below the seven percent floor.³⁵⁹

He adds that if only 50 percent of the black students leaving predominantly black schools were replaced by white students, then a greater number of black students—about 12,500—would have to relocate to predominantly white and already-integrated schools in order for all schools to be below the 35 percent ceiling.³⁶⁰

Orfield acknowledges that his metro-wide integration plan would require up to 20,000 students to transfer schools. He seems to believe that a migration of this scope could occur as a result of voluntary choices by students and their families. However, he acknowledges that “[a] choice program would be unlikely to result in one-for-one trades across schools.”³⁶¹

Orfield appears to rely on financial incentives to spur voluntary student movement. He advocates rewarding districts on a per-student basis for “documented pro-integrative student movements” and for the number of district students attending “integrated” schools.³⁶² He also proposes incentives encouraging magnet schools and “targeted open enrollment programs within individual school districts and between two or more school districts.”³⁶³

Yet financial incentives aimed at school districts would do little to induce Twin Cities families to

make “pro-integrative” choices or to select magnet schools for their children. A voluntary plan’s success would depend on just such decisions by thousands of individual families. One of the lessons learned across the country about magnets is that these schools, whatever their other virtues, have been far from consistently successful in attracting the right number of students of the “right” skin color. As a result, many magnets have lost support and eventually shut down, having failed at their original and primary purpose.

Attorney Cindy Lavorato, who helped craft Minnesota’s current integration rule while at the Minnesota Attorney General’s Office in the late 1990s, has described the likely outcome. “[T]here is almost no way for a district to achieve [Orfield’s and his co-authors’] notion of racial balance, which they narrowly define as ‘one with a black enrollment between 7% and 35%,’ absent the use of race-based measures and mandates,” she and co-author Frank Spencer wrote in the *William Mitchell Law Review* in 2010.³⁶⁴ In other words, compliance with Orfield’s racial balance requirements would almost certainly require *mandatory* race-based reassignment of students.

To oversee a vast race-based movement of students, Orfield proposes the five or so metro-area integration “super-districts” described above. “For integration districts to actually serve a significant role in integrating schools within their boundaries—both within and between member districts—the consortium’s powers and programs will have to be expanded by the state legislature,” he and his co-authors write.³⁶⁵

³⁵⁹ *Ibid.*

³⁶⁰ *Ibid.*, 39.

³⁶¹ *Ibid.*, 38.

³⁶² *Ibid.*, 3. In “Every Child, Every Day,” the Minnesota School Integration Council also states that “intentional integration efforts require categorical funding tied to educational outcomes.” It advocates a funding formula that provides “incentives” for districts to “reduce racial isolation.” “Every Child, Every Day,” 17.

³⁶³ *Ibid.*, 4. Plans for magnet schools are described at 30-31.

³⁶⁴ Lavorato and Spencer, “Back to the Future with Race-Based Mandates,” 1782.

³⁶⁵ Orfield et al., “A Comprehensive Strategy,” 26.



Specifically, Orfield anticipates that the new integration districts would ensure that all schools in their area are “integrated.” He does not, however, make clear exactly how this would occur.³⁶⁶ He notes, among other things, that the new integration districts could “coordinate” individual school districts’ magnet schools and serve as a “clearinghouse for approval of local proposals for new magnets.”³⁶⁷

More importantly, Orfield proposes that the new “super-districts” could be empowered to redraw current district attendance boundaries to produce racial balance.³⁶⁸ Vesting boundary-setting power in integration districts “could be a highly contentious issue,” he and his co-authors write. “However, there could be advantages to member districts in granting some oversight of boundary-making decisions to a metro integration district.”³⁶⁹

(2) The Institute on Race and Poverty Plan’s Costs

The Institute on Race and Poverty’s metro-wide, race-based busing plan could add greatly to the costs of K-12 education in Minnesota. Costs would increase on at least two fronts. First, Orfield proposes rewarding school districts financially on a per-student basis for “documented pro-integrative student movements” and for the number of students in schools meeting a region-wide definition of “integrated.”³⁷⁰ In addition, to encourage pro-integrative inter-district moves, Orfield advocates

compensating both a student’s home district *and* the district to which the student transfers—double payment, so to speak.³⁷¹ He also urges consideration of “requirements or incentives” to discourage so-called “in-school segregation from tracking or special programs.”³⁷²

More importantly, Orfield proposes that the new “super-districts” could be empowered to redraw current district attendance boundaries to produce racial balance.

The costs of bus transportation would escalate markedly under Orfield’s plan. According to Lavorato, in 2000 or so, when Minnesota’s current voluntary integration rule was adopted, the cost of providing transportation across district lines to an adjacent school district added between \$387 and \$916 per student for each student transported. “Today,” she observes, “given the rise in transportation expenses, the cost would double to an estimated \$800 to \$2,000 per student, if not more.”³⁷³

Lavorato adds that the transportation cost estimates performed when the voluntary integration rule was adopted were based on busing students to an adjacent district. She points out that

³⁶⁶ See Lavorato’s and Spencer’s analysis of this in “Back to the Future with Race-Based Mandates,” 1786-87.

³⁶⁷ In “A Comprehensive Strategy,” Orfield and his co-authors state that integration districts could coordinate district-run magnet schools: “It will still often make sense for districts, especially large districts, to operate their own magnets aimed primarily at their own students. However, an uncoordinated system of magnets could also produce needless duplication. The integration district(s) would be the logical clearinghouse for approval of local proposals for new magnets. The regional district could also work with member districts to ensure that already-existing magnets fit into the regional system.” 5.

³⁶⁸ *Ibid.*, 31.

³⁶⁹ *Ibid.*

³⁷⁰ Financial rewards are spelled out at http://www.irpumn.org/uls/resources/projects/Integration_Revenue_Handout.pdf. They are also described in “A Comprehensive Strategy,” 3-4, 25-26.

³⁷¹ Institute on Race & Poverty, “Segregation in the Twin Cities: Reforming the Integration Revenue Program,” available at http://www.irpumn.org/uls/resources/projects/Integration_Revenue_Handout.pdf.

³⁷² *Ibid.*

³⁷³ Lavorato and Spencer, “Back to the Future,” 1787.

[i]f it were necessary to transport students to non-adjacent districts in such distant locations as Forest Lake or Hastings in order to achieve the “integration” [Orfield and his co-authors envision], the costs could be multiplied several times over. Ultimately, districts would be spending a sizeable portion of per-pupil funding they receive from the state simply to transport their students.³⁷⁴

Lavorato concludes with an obvious question:

[G]iven the current financial crisis school districts are facing—with budget cuts of millions of dollars every year, with fewer and fewer teachers, and with class sizes rising to as many as 40 students in a class—is it worth adding thousands of dollars per pupil to a district’s budget in order to achieve some arbitrary notion of racial balance?³⁷⁵

(3) The Institute on Race and Poverty’s Plan Would Require Massive Housing Relocation

Orfield calls for “integrating” schools in Minneapolis, St. Paul, and inner-ring suburbs by busing students throughout the metro area. He acknowledges that, under his plan, “the distances over which students would have to travel to fully integrate the system are daunting.” As a result, he

writes, “attendance zone decisions within districts [can] not do the job alone.”³⁷⁶

What’s needed, asserts Orfield, is to distribute low-income housing throughout the Twin Cities metro area. “Coordinating action on housing and schools on a regional basis is critically important,” he writes. In Orfield’s view, if the number of units in both the Low-Income Housing Tax Credit Program (LIHTC) and the HUD Section 8 program “were distributed to all parts of the region in proportion with population, and if units were assigned randomly by race (or in a pro-integrative fashion), then segregation in the region’s schools could be greatly reduced.”³⁷⁷ Orfield and his colleagues believe the Metropolitan Council has an important role to play in this respect.³⁷⁸

E. Minnesota Organizations’ Learning Gap Plans Would Repeat Old Problems and Create New Ones—All at Great Expense

The learning gap-related proposals just described—devised by the MDE, the Education Equity Organizing Collaborative, the Minnesota School Integration Council, and the Institute on Race and Poverty—all make racially balanced schools a centerpiece of efforts to improve minority academic achievement. What will be the impact, if the State of Minnesota adopts these plans in some form?

³⁷⁴ *Ibid.*

³⁷⁵ *Ibid.*, 1787-88. In n. 228, p. 1788, Lavorato and Spencer add: “The amount of money expended on busing is one reason why the Minneapolis Public School District has decided to move away from its current practice of busing seventy-four percent of its students at a cost of \$33 million a year. Given these costs, and facing declining enrollment, the district conceived the ‘Changing School Options’ plan, which is predicted to save more than \$6 million a year. Four schools will close and four magnet programs will become neighborhood schools” (citations omitted).

³⁷⁶ Orfield et al., “A Comprehensive Strategy,” 28.

³⁷⁷ *Ibid.*, 5-6.

³⁷⁸ *Ibid.*, 28. “Metro-wide school districts also make cooperative planning with local or regional land-use planning agencies much more feasible and efficient. In the Twin Cities, the ability of the Metropolitan Council to control urban sprawl, implement fair-share, affordable housing initiatives and to protect the environment could be greatly enhanced if coordinating its activities with local education decisions—like where to build new schools—involved dealing with a single metro-wide agency instead of 50 to 60 individual school districts.”



To begin with, the learning gap would be very unlikely to narrow in a meaningful way. All the plans neglect students' urgent academic needs and instead devote primary attention and resources to moving children into demographic configurations that reflect a vision of "ideal" racial balance. To do this, the Integration Council's and Institute on Race and Poverty's plans place heavy emphasis on three measures—integration districts, city/suburb busing, and themed magnet schools. All of these approaches have been used for years in Minnesota, with negligible effect on the learning gap.

"Integration" plans that set racial quotas for school assignments are highly vulnerable to attack in federal court after *Parents Involved*.

The Institute on Race and Poverty (IRP)'s plan is the most detailed, in terms of the student movement it prescribes. In addition, it seems to have influenced or inspired the other plans in significant respects. For this reason, it is important to explore the IRP proposal's shortcomings and likely unintended consequences. Lavorato and Spencer have analyzed both in a 2010 law review article entitled "Back to the Future with Race-Based Mandates: A Response

to *Missed Opportunity*."³⁷⁹ The Minnesota School Integration Council's learning gap-related plan shares these problems, to the extent it mirrors the Institute on Race and Poverty's plan.

(1) The Proposals' Questionable Legality

"Integration" plans that set racial quotas for school assignments are highly vulnerable to attack in federal court after *Parents Involved*. In 2007, the U.S. Supreme Court barred plans of this kind in Louisville and Seattle, ruling them unconstitutional. However, Orfield asserts that the plan he envisions is constitutionally permissible. Lavorato disagrees. In support of her analysis, Lavorato cites "more than 50 years of litigation around this issue."³⁸⁰

"To the extent that [Orfield and his co-authors] are suggesting that *Parents Involved* now enables Minnesota schools to easily use mandatory, race-based measures to avoid racial isolation, they are simply wrong," she writes.³⁸¹

In fact, an accurate analysis of *Parents Involved* reveals that "student assignments based on race remain impermissible in all but the most limited circumstances," according to Lavorato.³⁸² She concludes that no K-12 integration plan resembling the Institute on Race and Poverty's has ever passed constitutional muster.³⁸³

³⁷⁹ Lavorato and Spencer, "Back to the Future with Race-based Mandates: A Response to *Missed Opportunity*," *William Mitchell Law Review*, vol. 36, 1747 (2010). For Orfield's response, see Myron Orfield, "Regional Strategies for Racial Integration of Schools and Housing Post-*Parents Involved*," *Law & Inequality*, vol. 29, 149 (Winter 2011).

³⁸⁰ Lavorato and Spencer, "Back to the Future with Race-Based Mandates," 1781.

³⁸¹ *Ibid.*

³⁸² Lavorato and Spencer, "Back to the Future with Race-Based Mandates," 1752, 1781-2.

³⁸³ *Ibid.*, 1783. The Seattle and Louisville race-based assignment plans that the Supreme Court rejected in *Parents Involved* were far less prescriptive than the Institute on Race and Poverty plan appears to be, but the Supreme Court rejected them as unconstitutional. Lavorato points out that if the Minnesota Legislature had adopted the 1994 metro-wide busing plan that Orfield portrays as a "lost opportunity," that plan would now be unconstitutional under *Parents Involved*. *Ibid.*, 1769.

(2) The Proposals Would Revive the Harms and Ineffectiveness of Busing

Race-based busing brings costs of many kinds, in addition to the financial costs of increased bus transportation. When Minneapolis Mayor Sharon Sayles Belton called for a return to neighborhood schools in 1995, she cited some of these, including fragmented neighborhoods, thousands of wasted hours, and the breakdown of community institutions that could otherwise have provided stability in poor children's lives.

Parent plaintiffs in *Parents Involved* described similar harms. Seattle's race-based school assignment plan required some children to endure multi-bus, round-trip commutes of over four hours. According to a brief filed in the case:

[L]ong bus commutes do more than waste time and money. When children are bused far from home, they lose touch with their local communities. They are less likely to participate in after-school activities or to have parents actively involved in school affairs. Working parents cannot drive hours from home to attend PTA meetings or after-school programs.

For the same reasons, students can't socialize with their far-flung classmates outside of school. Those students also never firmly grow roots in their own neighborhood because they spend so much time across town. The end result is the opposite of that intended by the creators of the busing program: The bused students are marginalized and isolated both at school and at home.³⁸⁴

Recently, Minneapolis school officials have made similar arguments. A goal of the district's "Changing School Options" policy, adopted in 2009, was to cut transportation expenses and to allow students to attend school closer to home. Courtney Cushing-Kiernat, the district's enrollment project leader, asked, "Do you bus kids around the city so they can sit next to a kid that looks different than them? It's a balancing act."³⁸⁵

(3) The Problems with Turning Failed "Integration Districts" into "Super Integration Districts"

The Twin Cities currently has three integration districts, which Orfield describes as a model for the "super" integration districts he proposes. The current integration districts lack the extensive powers with which Orfield wishes the Minnesota Legislature to endow his districts, but the current districts' disappointing track record raises questions about the Institute on Race and Poverty plan's chances for success in achieving its objectives.

Originally, the Twin Cities' three integration districts, which have operated for more than a decade, had two goals. These were: 1) to increase city/suburb racial balance, and 2) to narrow the racial and SES achievement gap.³⁸⁶ The districts have largely failed to achieve these goals, leading some school districts to leave them or to express the intention to leave.

The West Metro Education Program (WMEP) is one such integration district. WMEP is a collaborative effort between the Minneapolis schools and ten suburban school districts. Established in 1989, it operates The Choice Is Yours, the city/suburb choice-based transfer program whose low-income students have scored below their peers in Minneapolis in

³⁸⁴ Brief of Drs. Murphy, Rossell and Walberg as Amici Curiae in Support of Petitioners, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), 16.

³⁸⁵ Corey Mitchell, "Enrollment reversal leaves Minneapolis schools scrambling," *Star Tribune*, Oct. 23, 2011.

³⁸⁶ Norman Draper, "Minneapolis wants out of desegregation school district," *Star Tribune*, Feb. 23, 2009.



recent years. WMEP also operates two magnet schools: the K-12 Interdistrict Downtown School and the 4-8 Fine Arts Interdisciplinary Resource School in Crystal.

Both the Interdistrict Downtown School and the Fine Arts Interdisciplinary Resource School have failed to narrow the learning gap significantly or to end city/suburb racial imbalance. As a result, in 2009, Minneapolis school superintendent Bill Green asked the Minneapolis school board to end the district's participation in the West Metro Education Program.³⁸⁷ (The move would also have saved the Minneapolis district \$3.9 million.) Under pressure from parents, the NAACP and the Institute on Race and Poverty, the board voted down his request.³⁸⁸

In December 2011, the Minneapolis School Board again decided to re-evaluate its commitment to WMEP. According to vice chair Alberto Monserrate, "There's some questions about whether [the WMEP effort] is still relevant." "From what we've seen," he told the *Star Tribune*, "the students aren't doing much better."³⁸⁹ In January 2012, the board gave formal notice of withdrawal from WMEP, reiterating its desire to conserve funds by backing only strategies for academic and social equity that are most likely to succeed.³⁹⁰ The board will decide later in 2012 whether to proceed with withdrawal. The East Metro Integration District (EMID)

has also fallen short of expectations. EMID is a collaboration between the St. Paul schools and nine suburban districts. When EMID was founded, its goal was to "provide a multicultural learning space for students and integration development for staff from participating districts," according to the *Star Tribune*.³⁹¹

EMID operates two magnet schools: Harambee Elementary in Maplewood and Crosswinds Arts and Science School in Woodbury. The two schools have an annual operating budget of \$9.5 million.³⁹²

In September 2011, some East Metro Integration District school board members sought to close the two schools, which "political leaders once envisioned would end segregation as well as close the achievement gap," according to the *Star Tribune*.³⁹³ Students at the schools have posted lower test scores than their peers at many participating districts' own neighborhood schools.³⁹⁴ (For example, in 2009-10, fewer students at Harambee scored proficient in reading and math than at Cowern Elementary, a North St. Paul neighborhood school with similar demographics.³⁹⁵) Disillusioned, both the North St. Paul-Maplewood-Oakdale and Mahtomedi districts pulled out of EMID.

In October 2011, the EMID school board gave in to parental pressure and decided to keep both Harambee and Crosswinds open under a plan that

³⁸⁷ *Ibid.* According to the article, Green said the West Metro Education Program (WMEP) was no longer an effective vehicle for school integration and had failed to live up to its mission. He noted that, though the purpose of both WMEP's magnets was to attract minority students to the suburbs and white students to the city, the schools had done little to change racial imbalance. He pointed out that Interdistrict Downtown School—the city magnet—had only 33 percent white students, while the Fine Arts Interdisciplinary Resource School, the suburban magnet, had almost 70 percent white students. He also noted that the schools don't enroll the non-English speaking students increasingly crowding Minneapolis schools. Green also said the two schools have had little impact on the racial achievement gap, and scores are disappointing.

³⁸⁸ Patrice Releford, "Minneapolis to table plan to leave integration district," *Star Tribune*, March 10, 2009.

³⁸⁹ Corey Mitchell, "Desegregation co-op in peril," *Star Tribune*, Dec. 6, 2011.

³⁹⁰ Steve Brandt, "Minneapolis has second thoughts on integration," *Star Tribune*, Jan. 25, 2012.

³⁹¹ Daarel Burnette, "Parents worry that east-metro schools face closure," *Star Tribune*, Sept. 20, 2011.

³⁹² *Ibid.*

³⁹³ *Ibid.*

³⁹⁴ *Ibid.*

³⁹⁵ Daarel Burnette, "Special integrated schools struggling to make the grade," *Star Tribune*, May 18, 2011.

reduced school districts' contributions by up to 43 percent.³⁹⁶ However, under a budget plan proposed in January 2012, EMID would remove all financial support from the schools, leaving them to survive on general state aid and reserves. As a result, the schools might have to close.³⁹⁷

(4) The Plans Repeat and Exacerbate the Shortcomings of Magnet Schools

Both the Institute on Race and Poverty and Integration Council plans assign magnet schools an important role in achieving intra- and inter-district racial balance. But magnets' track records in St. Paul and Minneapolis cast doubt on whether success is likely in this respect.

The St. Paul school district has relied on magnet schools to produce racial balance for decades. The district's magnets, which numbered 36 in 2011, were "envisioned in the mid-1970s as a means of slowing white flight to the suburbs and providing better opportunities for students of color," according to the *Star Tribune*.³⁹⁸ District officials hoped that "glossy magnet schools equipped with the latest technology in poor neighborhoods [would] draw a diverse selection of parents and students from across the district."

Both the Institute on Race and Poverty and Integration Council plans assign magnet schools an important role in achieving intra- and inter-district racial balance. But magnets' track records in St. Paul and Minneapolis cast doubt on whether success is likely in this respect.

St. Paul's costly magnets ranged from gifted and talented schools and Montessori programs to an aerospace school, where students rode in sophisticated flight simulators and designed spacesuits. But in March 2011, Superintendent Valeria Silva announced these days were over. Under the district's new plan, almost half its 36 magnets will convert to neighborhood schools,³⁹⁹ more than half of high schools will become community schools,⁴⁰⁰ and city-wide transportation will end.

District officials' decision to move away from magnets was based primarily on magnet schools' consistent failure to raise minority academic performance.⁴⁰¹ In 2011, a year-long study of bus routes, test scores, and racial composition at St. Paul

³⁹⁶ Daarel Burnette, "Board opts to keep integration schools open around the metro," *Star Tribune*, Oct. 19, 2011.

³⁹⁷ Tom Weber, "Parents worry budget plan could close schools," Minnesota Public Radio, Jan. 24, 2012.

³⁹⁸ Daarel Burnette, "Magnet schools lose pull," *Star Tribune*, April 12, 2011.

³⁹⁹ *Ibid.*

⁴⁰⁰ Daarel Burnette, "St. Paul plans shift in public schools," Jan. 11, 2011.

⁴⁰¹ Burnette, "Magnet schools lose pull." In 2009-10, for grades 3-6 in St. Paul, 83 percent of white students in neighborhood schools were proficient in reading, while 84 percent of whites in magnet schools were proficient. Forty-seven percent of black students in neighborhood schools were proficient, while 46 percent of black students in magnet schools were proficient. For Hispanic students, 57 percent of those in community schools were proficient, while the figure was 51 percent for magnet school students. In math, 45 percent of black students in community schools were proficient, but only 39 percent of magnet school students. For Hispanics, the figures were 57 percent for community school students and 51 percent for magnet school students. *Ibid.* (See graphic accompanying print version of article.)



schools revealed that magnet programs were largely still segregated and that test scores among minority students had barely budged, according to Silva.⁴⁰² The study allowed district officials to look “beyond perceptions and observ[e] some stark realities,”⁴⁰³ she told the *Star Tribune*. It revealed, for example, that children at neighborhood schools got similar, if not higher, test scores, compared to their peers at magnets.⁴⁰⁴ Silva added that at neighborhood schools, parents are more involved and teachers more attuned to students’ needs.

In the future, St. Paul will not use race, socioeconomic, or test scores in its student assignment plans. Silva summarized the new policy this way: “We’re bringing schools back to the heart of the community.”⁴⁰⁵

“St. Paul’s plan follows other urban districts across the nation that have ended decades-long busing that criss-crossed children across the city to provide ‘equal opportunity’ education,” the *Star Tribune* reported.⁴⁰⁶ Minneapolis is among these; in 2009,

the district decided to convert four of its 16 magnet programs to neighborhood schools.⁴⁰⁷

Presumably, the Institute on Race and Poverty’s metro-wide busing plan—and perhaps the Integration Council’s plan—would require transporting children much longer distances than St. Paul’s plan has. If so, this would make these two proposals relatively unattractive to parents and even more costly than St. Paul’s plan.

(5) The Institute on Race and Poverty Plan Would Radically Change Minnesota Education for the Worse

The Institute on Race and Poverty’s metro-wide “integration” plan would undermine long-standing, highly popular elements of Minnesota’s education landscape, according to Lavorato. These include school-choice opportunities such as open enrollment and charter schools. “If all educational

⁴⁰² Burnette, “St. Paul plans shift in public schools.” The article focuses on the example of Barack and Michelle Obama Service Learning School in St. Paul. Founded as Webster Elementary in 1976, it became one of the nation’s first magnet schools. But over the years, grant money dried up. In 1999, St. Paul stopped using race and family income to decide which students would be admitted to magnet schools. More than half of Obama’s students were white a decade ago; today white students comprise less than 5 percent of the school’s enrollment. The school was built for more than 1000 students. Today it has 569.

⁴⁰³ *Ibid.*

⁴⁰⁴ *Ibid.* “School data now show that students of color perform as well or even better at neighborhood schools than at the district’s magnet schools.”

⁴⁰⁵ *Ibid.*

⁴⁰⁶ *Ibid.* National evidence confirms the difficulty of achieving large-scale racial transfers on a voluntary basis alone. Cities with voluntary city-suburb busing plans have found recruiting white suburban students particularly challenging. In Milwaukee, fewer than 1,000 white students attended magnet schools in the city in 1995. In St. Louis, only 1,200 white students chose to attend school in the city in 1993-94. In Kansas City, the figure was 1,400, with 65 percent failing to return the following year. Despite the low numbers of white students attending these magnets, all the programs were extremely expensive. After the massive efforts and costs of 20 years, the State of Missouri recently stripped both the St. Louis and Kansas City school districts of academic accreditation, citing their largely black student populations’ poor academic performance.

Today, few minority families from Minneapolis and St. Paul (or inner ring suburbs) are likely to choose schools in Forest Lake or Lakeville for their children, as some busing advocates would have them do. Back in 1994, when the Twin Cities metro-wide desegregation plan was under consideration, one activist put it this way:

I think that you would find if you looked at both the open enrollment and history of choice that the number of people who are strongly motivated to move to get something special are [sic] relatively small.... The idea that often underlies [an] all magnet metro desegregation proposal is that everybody is just dying to send their kids to the suburbs. And it’s my perception that that’s not true.

⁴⁰⁷ Emily Johns, “Doors close on 4 Minneapolis schools,” *Star Tribune*, Sept. 23, 2009.

The Institute on Race and Poverty's metro-wide "integration" plan would undermine long-standing, highly popular elements of Minnesota's education landscape.

decisions regarding student assignments must be made 'so as to maximize racial balance,' as [Orfield] demands, then choices made by districts or parents that run counter to that policy goal would have to be severely curtailed, if not eliminated," writes Lavorato.⁴⁰⁸

For example, open enrollment could disappear to the degree that student choices fail to produce the desired racial balance.⁴⁰⁹ Charter schools could also be affected. Minnesota boasts a number of charter schools whose mission is to educate poor and minority students in a climate of high expectations, but racial balance plans such as the Institute on Race and Poverty's elevate skin color over the accomplishments of "beat the odds" charters like Harvest Preparatory School, Hiawatha Leadership Academy and Concordia Creative Learning Academy. Almost all the students at these schools are low-income members of minority groups. Yet their academic accomplishments in reading and math exceed statewide averages for all students and in some cases rival those of students in affluent suburban schools.⁴¹⁰

In a 2009 book, *Region: Planning the Future of the Twin Cities*, Orfield and his co-author Thomas Luce seem to dismiss these schools' accomplishments and

portray their existence as harmful:

To the extent that charter schools encourage ethnic-based competition, they deepen existing concentrations of poverty in traditional public schools and in the school system as a whole. This undermines the performance of students in both types of schools, especially students of color. The pattern harkens back to an earlier time when "separate but equal" was an accepted goal of the public education system....⁴¹¹

Lavorato draws the logical conclusion. Under an Institute on Race and Poverty-type plan, she notes,

the entire "choice movement," which actually had its origins in the State of Minnesota, would have to be revamped or even scrapped, because giving parents a choice often means that racial balance is disrupted or even thwarted. Is this a policy outcome we, in this state, agree with? Will this actually help the underserved students who are being bused?⁴¹²

(6) The Institute on Race and Poverty Plan Could Produce an Exodus from Affected Public Schools

Mandatory race-based busing policies have produced significant white- and middle-class flight virtually everywhere they have been tried.⁴¹³ An IRP-type

⁴⁰⁸ Lavorato and Spencer, "Back to the Future with Race-based Mandates," 1788-89.

⁴⁰⁹ *Ibid.*, 1789.

⁴¹⁰ See *ibid.* 1790, where Lavorato and Spencer expand on this idea.

⁴¹¹ Orfield and Luce, *Region*, 164.

⁴¹² Lavorato and Spencer, "Back to the Future with Race-based Mandates," 1790-91.

⁴¹³ *Ibid.*, 1749. Lavorato cites a study by Christine Rossell and David Armor, in which the two analyzed data commissioned by the U.S. Department of Education to examine the prevalence and characteristics of magnet schools and their impact on desegregation. At the time of their study in 1996, the data they used represented the largest national sample and the most complete data on desegregation ever assembled to study the effectiveness of a variety of other desegregation techniques. Rossell

“integration” plan would be no different, Lavorato writes. Flight of this kind, she observes, is a primary reason that school districts across the nation have abandoned a focus on racial balance.⁴¹⁴

Orfield asserts that a *metro-wide* race-based busing plan would not provoke white flight. He and his co-authors argue that if all metro schools are racially balanced, parents will not seek to leave, because they know that “[n]o matter where [they] find housing, students will attend integrated schools.”⁴¹⁵

Lavorato disagrees. She points out that metro-wide busing plans do not prevent white flight to private schools, since “families with resources will *always* have choices.”⁴¹⁶ Indeed, she notes that metro-wide plans entail longer busing distances than non-metro plans do and that busing distance is the single greatest predictor of white flight.⁴¹⁷

Metro-wide busing plans can produce another unintended consequence: They can exacerbate urban sprawl. In the Twin Cities, some families would seek to escape the constrictions of life in the seven-county metro area by moving just beyond it. Communities like Delano, which is located in Wright County, would probably see an influx of families who wished to be free of racial balance requirements and have their children attend neighborhood schools.

(7) The IRP Plan Could Reduce Overall Academic Achievement in Twin Cities Schools

A metro-wide busing plan could have one more unintended consequence. Instead of boosting minority achievement, it could *reduce* overall student achievement. According to Orfield, the purpose of a metro-wide plan is “to reach beyond areas of residential segregation to include enough schools and students to ensure that all schools can be effective middle-class schools.”⁴¹⁸ In the process, the SES composition of high-achieving schools in affluent districts such as Wayzata and Minnetonka could change markedly. As the Rumberger and Palardy study points out, this would likely decrease white achievement in those districts without significantly increasing black achievement. According to the study:

[i]f all low-SES and high-SES schools were integrated and consequently transformed into middle class schools, the present analysis suggests that gains in achievement to predominantly minority students moving from low-SES to middle-class schools would be less than the declines in achievement of White students moving from high-SES to middle-class schools.⁴¹⁹

In other words, an IRP-type social engineering plan that attempts to raise minority achievement by making all schools “middle-class schools” will likely end in lowering student achievement overall.

and Armor concluded that “[d]istricts that have ever had a mandatory plan exhibit a 33 percent reduction in White enrollment over the period from 1968 to 1991, at least in comparison to those districts that never had a plan.... [H]aving a voluntary-only plan is associated with a mere 2.9 percent White enrollment decline, and this effect is not statistically significant.” *Ibid.*, 53.

⁴¹⁴ *Ibid.*, 54-55. Lavorato observes that in 1972, when Minneapolis came under court order to desegregate, the district’s minority enrollment was around 15 percent. By 1997, after about 25 years of race-based busing, it was 68 percent.

⁴¹⁵ Hobday, Finn and Orfield, “A Missed Opportunity,” 951.

⁴¹⁶ Lavorato and Spencer, “Back to the Future with Race-based Mandates,” 1792. See Orfield’s response in “Regional Strategies for Racial Integration of Schools and Housing Post-Parents Involved.”

⁴¹⁷ Lavorato and Spencer, “Back to the Future with Race-based Mandates,” 92.

⁴¹⁸ Orfield et al., “A Comprehensive Strategy,” 13.

⁴¹⁹ Rumberger and Palardy, “Does Segregation Still Matter?,” 2019-2020.

CHAPTER VII

THE LEGAL CONSEQUENCES OF ADOPTING THE MINNESOTA PLANS

One of the most momentous and far-reaching aspects of the learning gap-related proposals currently being advanced in Minnesota is their legal implications. All four plans are structured in a way that is likely to have profound consequences in court actions that appear to be on the horizon.

Some of the plans include elements that are defensive in nature—that is, they represent an apparent attempt to insulate an otherwise-vulnerable race-based busing plan from court challenge. Others would enhance plaintiffs’ chances for success in a potentially catastrophic education adequacy lawsuit against the State of Minnesota.

A. “Compelling Interest:” A Term with Profound Implications for Race-Based Busing and Racial Classification of Students

The MDE, Minnesota School Integration Council, and Institute on Race and Poverty plans all urge the Minnesota Legislature to declare that the State of Minnesota has a “compelling interest” in “integrating” its schools. Why such a strong interest in incorporating this term into state law?

As already explained, the term “compelling interest” has profound legal implications. Under the U.S. Constitution, a racial classification—one that treats citizens differently on the basis of race—is permissible only if it advances a “compelling

government interest.” In *Parents Involved*, the Supreme Court ruled that the government has no compelling interest in racially balanced schools that justifies using a child’s race as a primary factor in school assignment. As a result, the Court barred the Seattle and Louisville school districts from using the race-based plans then in operation there.

The Institute on Race and Poverty’s “Comprehensive Strategy to Integrate Twin Cities Schools and Neighborhoods” proposes a metro-wide, race-based busing plan for the Twin Cities that would almost inevitably involve mandatory race-based school assignment in some form. The Integration Council’s integration plan also contemplates widespread inter-district race-based busing, though the mechanism it would use is not clear. The MDE’s proposal contains

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few details, but makes clear that school “integration” will be at the center of the department’s learning gap-related efforts in the future.

The current Minnesota Legislature has shown absolutely no inclination to authorize—either directly through statute or indirectly through department rule-making authority—any cross-district race-based busing plan. However, this could change if the DFL were to regain majorities in the House of Representatives and Senate in the 2012 elections. If such a plan were adopted and later challenged in federal court, it would likely be ruled unconstitutional under *Parents Involved* if it includes mandatory elements.

The campaign by the MDE, Integration Council, and Institute on Race and Poverty to convince the legislature to frame “integration” as a “compelling government interest” can thus be read as an attempt to insulate a future race-based busing plan from court challenge. The rationale appears to be that such a plan has a greater chance of surviving judicial scrutiny if the legislature has explicitly declared that the State has a “compelling interest” in racially balanced schools. “Compelling interest” language could be particularly important to a busing plan’s defense if the U.S. Supreme Court’s composition changes in coming years, and a new majority is more sympathetic to racial classification than the current majority is.

Although the MDE and Integration Council are silent about the reasons for their strong interest in the adoption of “compelling interest” language, Myron Orfield and his co-authors have been forthright. Orfield contends that a metro-wide, race-based busing plan like his—if framed correctly—would be constitutional, despite the Court’s ruling in *Parents Involved*. In discussing how to create the legal preconditions for such a plan, Orfield writes, “Minnesota’s experience suggests that if educational equity for all students is the goal, there must be a

compelling interest in proactively addressing racial isolation in schools and that states must *mandate*, rather than just encourage, integration (emphasis added).”⁴²⁰

The MDE’s and Integration Council’s focus on “compelling interest” language may have another important legal rationale. In its “Funding Education for the Future” report of January 2011, the MDE recommends that, in the future, “integration revenue” be distributed to school districts on the basis of the number of their “students of color.” In fact, a white child from a low-income family would likely have a good claim that a funding scheme of this kind is unconstitutional. Just as it is unlawful and inappropriate to earmark extra funds for white students, it is also likely inappropriate and of doubtful legality to earmark extra funding for non-white students. (For example, if there were no minority students in a district, the district would receive no integration revenue.) However, the MDE may reason that the State might be better able to defend the constitutionality of this funding arrangement if the Minnesota Legislature has declared school “integration” to be a compelling state interest.

B. The Plans Greatly Increase the State of Minnesota’s Exposure to an Education Adequacy Lawsuit in State Court

The MDE and Integration Council plans have legal implications of another, more far-reaching and troubling kind. They would embed in state law or rule the legal architecture that would facilitate a plaintiff victory in education adequacy litigation in state court. In 1995, the NAACP brought such a lawsuit against the State of Minnesota but failed to prevail. However, the MDE and Integration Council plans—taken together—propose a *new* framework for evaluating the adequacy and equity of education in Minnesota. The framework they

⁴²⁰ Hobday, Finn and Orfield, “A Missed Opportunity,” 940.

The MDE and Integration Council plans would embed in state law or rule the legal architecture that would facilitate a plaintiff victory in education adequacy litigation in state court.

advance would *set up* the State for massive new legal liabilities of a kind that has brought financial disaster in other states, without improving educational performance.

Education adequacy litigation can entangle courts and schools for decades, leading to massive K-12 funding increases and to court supervision of schools that lasts for years. Often, a state's ability to defend against such catastrophic lawsuits is hampered, or even crippled, by collaboration between plaintiffs (usually school districts or activist education groups) and defendants (state education officials), who share plaintiffs' goals.

In states where plaintiffs have prevailed, adequacy litigation has not produced tangible benefits, such as enhanced learning gains. On the contrary, the academic performance of poor and minority students has remained very low. The litigation has, however, resulted in costly, controversial policies that may fulfill education bureaucrats' desire for additional resources, but don't advance the real interests of children who are struggling academically.

This chapter will first address the nature of adequacy lawsuits and their consequences and then describe how the learning gap-related plans now

under consideration in Minnesota would facilitate such litigation. Then adequacy lawsuits in which plaintiffs seek a race-based busing remedy for the learning gap will be discussed.

(1) What Is an Education Adequacy Lawsuit?

The theory behind education adequacy litigation is that a state's constitution requires the state to provide all children in its schools with an "adequate" education. Plaintiffs claim the racial/SES learning gap is proof that the state is not fulfilling this obligation and is thus violating its own constitution. They argue that public schools cannot provide an adequate education without a massive new injection of taxpayer funds, which they claim is necessary to close the learning gap.

In a few adequacy lawsuits, plaintiffs have attributed the racial gap to lack of racial balance between city and suburban schools. As a result, they have sought a race-based busing remedy as well as new state K-12 funding as a means to eliminate the gap.

State constitutions are very vague about the state's education-related responsibilities. The Minnesota Constitution is typical: It simply requires the state to "establish a general and uniform system of public schools" and to "secure a thorough and efficient system of public schools throughout the state."⁴²¹

As a result, a court's first task in an adequacy case is to determine what constitutes an "adequate education" in the state in question. To do this, courts review the state's laws and rules, the education-related obligations it has assumed, and the academic standards and performance and evaluation benchmarks it has adopted.⁴²² Courts

⁴²¹ The Minnesota Constitution provides as follows: "The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state." Minn. Const. Art. XIII, Sec. 1.

⁴²² The No Child Left Behind law and its requirements that the racial gap be closed by 2014 is another potential factor here.

may also consider broad, philosophical policy statements by the legislature or state department of education.

(2) The Nature of the Adequacy Lawsuit Threats

An examination of adequacy cases in two states reveals the nature of the threat such a lawsuit poses to Minnesota. The first of these is the recent case of *Lobato v. State of Colorado*,⁴²³ in which a Denver District Court judge ruled for plaintiffs on December 9, 2011. The second is *Abbott v. Burke*⁴²⁴ in New Jersey, the longest-running adequacy case in the country.

A review of these cases makes clear that Minnesota is already vulnerable to an adequacy lawsuit. However, if the Minnesota Legislature adopts the new “adequacy” framework that the MDE and Integration Council now propose, the likelihood of a plaintiff victory will increase significantly.

This may be true even if the legislature does not adopt the framework, but the MDE—on its own—incorporates elements of the framework into its own

policies and metrics.⁴²⁵ Even seemingly innocuous rule language or platitudinous policy statements may be of momentous importance in tipping the balance in favor of judicial overreach in future litigation.⁴²⁶ Indeed, state agencies’ policy statements may be the most difficult evidence for state defendants to rebut in such lawsuits.

(2.1) *Lobato v. State of Colorado*

(a) Plaintiffs’ Argument

Lobato v. State of Colorado was filed in 2005 and went to trial in August 2011, six years later. Plaintiffs in the case, who include individuals and school districts from across the state, alleged that Colorado is seriously underfunding its public schools and thereby violating the state constitution’s requirement of a “thorough and uniform system” of public education. Plaintiffs alleged that “[t]here is not one school district” in Colorado “that is sufficiently funded.”⁴²⁷ They asserted that Colorado must increase K-12 funding by up to \$4 billion a year to meet its constitutional obligation, and they also sought up to \$17 billion in new capital funding.

⁴²³ *Lobato et al. v. State of Colorado et al.*, District Court, City and County of Denver, Case No. 2005 CV 4794, Order dated Dec. 9, 2011.

⁴²⁴ For the history of New Jersey school finance litigation from 1970 through 1998, see *Abbott v. Burke*, 149 N.J. 145 (1997), 455-60 (*Abbott IV*).

⁴²⁵ For a recent case in which a state department of education’s learning frameworks for “performance-based education” were found to be an essential measure of adequacy, see the January 2012 case of *McCleary et al. v. State of Washington*, No. 84362-7 (Washington Supreme Court, Jan. 5, 2012), available at <http://www.courts.wa.gov/opinions/pdf/843627.opn.pdf>.

⁴²⁶ See, e.g., the 1993 federal court decision in *United States v. Yonkers Board of Education*, 833 F. Supp. 213 (S.D.N.Y. 1993). In the initial Yonkers litigation, begun in 1985, the court had explicitly rejected plaintiffs’ claim that the racial gap was evidence of discrimination. However, in 1991, the New York Education Department published a policy document on which the court relied in changing its position on the source of the gap. In “A New Compact for Learning: Improving Public Elementary, Middle and Secondary Education Results in the 1990s,” the Department had declared that *equal outcomes or results*, rather than equal inputs or opportunities, were of paramount importance. (The compact stated, “Our mission is not to keep school—it is to see that children learn. The energies of all participants should be focused on achieving the desired outcomes. Accountability does not end with following established rules and procedures: its essence is found in results.... The requirement is not equality of input, but equity of outcome.”) 833 F. Supp. at 221.

In finding Yonkers responsible for the gap, the court stated, “Our point is not that some State criterion is allegedly being violated by the [Yonkers Public Schools]. Rather the point is that it is accepted doctrine among educators that one looks to results to measure equity of educational opportunity.” *Ibid.*, 221.

⁴²⁷ *Labato v. State*, Plaintiffs’ Trial Brief, 35.

In its defense, the State of Colorado declared, “After years of court-ordered funding decisions and little, if any, discernible increase in student outcomes, it is not how *much* money is spent that matters but *how* the money is spent.”

In *Lobato*, the state district court sought to define what constitutes an adequate, or “thorough and uniform,” system of education in Colorado. Plaintiffs argued that the state’s content standards and proficiency targets for student achievement provide the context here.⁴²⁸ They also maintained that various broad, “aspirational” legislative education policy statements create obligations that require increased funding. These include the prologue of Colorado’s Education Reform Provisions of 1993, which declares that “children can learn at higher levels than are currently required of them” and also obligates the state to “provide schools that reflect high expectations and create conditions where these expectations can be met.”⁴²⁹

The *Labato* plaintiffs particularly emphasized a 2008 statute in which the legislature articulated the goal that all students shall graduate with the skills and knowledge necessary for “postsecondary and workforce readiness.”⁴³⁰ Plaintiffs portrayed college and workplace readiness of this kind as an “expansive new concept” that created new state funding obligations.⁴³¹ In recent years, Colorado’s “detailed statutes” have expanded the focus of education from mere *access* to achievement, according to plaintiffs.⁴³² Their argument implies that academic achievement by students was never expected in Colorado schools before these statutes were adopted.⁴³³

Plaintiffs also maintained that the Colorado Legislature’s call to improve the state’s achievement gap, dropout rates, and disappointingly low college attendance and high remediation rates creates a state *obligation* to increase K-12 funding to ensure this occurs.⁴³⁴ Finally, they argued that demographic changes and an increase in the number of poor, “at risk” children make additional K-12 funding a constitutional requirement.⁴³⁵

(b) The State of Colorado’s Argument

In its defense, the State of Colorado rejected plaintiffs’ premise “that student performance will

⁴²⁸ *Ibid.*, 3 and 6, quoting the Colorado Supreme Court: “The trial court may rely on the legislature’s own pronouncements to develop the meaning of ‘thorough and uniform.’”

⁴²⁹ *Ibid.*, 21.

⁴³⁰ *Ibid.*, 26-7. The 2008 statute, plaintiffs say, “is so pervasive and ambitious, that it almost defies summarization.” According to plaintiffs, the statute “mandate[ed] that *all students* shall graduate with the skills and knowledge necessary for ‘postsecondary and workforce readiness (emphasis in original).’” *Ibid.*

⁴³¹ *Ibid.*, 28.

⁴³² *Ibid.*, 20-21, 27.

⁴³³ *Ibid.*, 26-27.

⁴³⁴ *Ibid.*, 27, 32-35. Plaintiffs suggest that the Colorado Department of Education’s responsibility to determine certain kinds of information—e.g., “the level of attainment” of each public school and district on three performance measures, including progress made in closing achievement gaps—also creates an obligation for additional funding. The department is also required to gather information concerning “the level of attainment on postsecondary and workforce readiness indicators, including graduation, dropout rates and student performance on the Colorado ACT.” *Ibid.*, 32.

⁴³⁵ *Ibid.*, 35.

improve with additional funds, thereby curing the system's purported unconstitutionality...."⁴³⁶ "As both courts and education experts recognize," the State declared,

[a]fter years of court-ordered funding decisions and little, if any, discernible increase in student outcomes, it is not how *much* money is spent that matters but *how* the money is spent. Indeed, this lawsuit is one in a long line of state educational "adequacy" cases, and the result of this national experiment is tragic (emphasis added).⁴³⁷

The State asserted that the Colorado Constitution's education and local control clauses "do not turn every goal, aspiration, or education reform effort into a financial entitlement." In response to plaintiffs' argument that the legislature's broad philosophical statements create funding mandates, the State maintained that it ought not to be punished for having lofty goals.⁴³⁸

Regarding plaintiffs' demand for massive new K-12 funding, the State argued that what plaintiffs view as "full" education funding would bankrupt the state. The State's attorneys pointed out that K-12 education already receives 46 percent of Colorado's general fund (\$3.2 billion of a \$6.87 billion general fund.) According to Colorado's Attorney General:

If Plaintiffs were to win, to meet this obligation, the state would either have to

raise taxes by at least 50 percent or have to devote 89 percent of the general fund budget to K-12 funding, crowding out things such as Medicaid, unemployment assistance, transportation, public safety (including the State Patrol, the Colorado Bureau of Investigation and our prison system), and higher education, to name just a few.⁴³⁹

On December 9, 2011, a Denver District Court judge ruled for the *Lobato* plaintiffs. Judge Sheila Rappaport found that Colorado's school funding system "is not rationally related to the mandate to establish and maintain a thorough and uniform system of free public schools."⁴⁴⁰ She agreed with plaintiffs that "[t]here is not one school district [in the state] that is sufficiently funded."⁴⁴¹

The judge did not order the Colorado Legislature to increase K-12 funding by a particular sum. Instead, she directed the legislature to "create and implement a system of public school finance" that is constitutional.⁴⁴² However, plaintiffs in the case have generated studies claiming that the state is "underfunding" education by as much as \$4 billion annually. In the future, a court may insist that this become the standard of "constitutional" education funding in the state.

Colorado citizens are unlikely to welcome Judge Rappaport's decision. In November 2011, just days before her ruling, the state's voters rejected a \$3 billion tax increase measure for schools by an overwhelming two-to-one margin.⁴⁴³ Both Gov.

⁴³⁶ *Lobato v. State*, Defendants' Trial Brief, 2.

⁴³⁷ *Ibid.*

⁴³⁸ *Ibid.*, 8.

⁴³⁹ Colorado Attorney General web site, at http://www.coloradoattorneygeneral.gov/departments/state_services/education/lobato.

⁴⁴⁰ Tim Hoover and Lynn Bartels, "Denver court decision in education lawsuit says Colorado underfunding schools by billions," *Denver Post*, Dec. 9, 2011.

⁴⁴¹ *Ibid.*

⁴⁴² *Ibid.*

⁴⁴³ *Ibid.* See also Beth Hawkins, "Success of Colorado lawsuit over education funding has implications for Minnesota," *MinnPost*, Dec. 15, 2011. After the ruling, the *Denver Post* editorialized:

The prospect of an ultimate court filing in the plaintiff's favor has long been speculated upon. Would it require the state to put as much as \$4 billion more on [sic] education? Would it force lawmakers to gut other parts of the state's \$7 billion

John Hickenlooper and the Colorado State Board of Education have announced they will appeal the *Lobato* case to the Colorado Supreme Court.⁴⁴⁴

(2.2) New Jersey's Abbott Cases

New Jersey's school finance litigation, first filed in 1970, has been underway in one form or another for more than 40 years.⁴⁴⁵ Like Minnesota's constitution, New Jersey's constitution requires the state to provide a "thorough and efficient" system of public schools. To date, the *Abbott* litigation has produced at least 21 New Jersey Supreme Court decisions.

Abbott involves 31 low-performing school districts, including Camden and Newark, whose residents are heavily low income. The level of resources the litigation has produced in these districts is "staggering," according to economist Eric Hanushek and attorney Alfred Lindseth, authors of a 2009 book entitled *Schoolhouses, Courthouses, Statehouses: Solving the Funding-Achievement Puzzle in America's Schools*.⁴⁴⁶

The gargantuan tax hikes and borrowing that finance this effort began in 1990, when Gov. James Florio approved \$2.8 billion in sales- and income-tax increases—the largest such hike in state history—to

bring school funding into compliance with a court order.⁴⁴⁷ Since 1998, New Jersey has spent more than \$40 billion on the Abbott districts, which receive far more per pupil than the state's other similarly low-income districts. (About half of New Jersey's minority students live in Abbott districts.)

Today, Asbury Park spends a jaw-dropping \$29,797 per student. Camden spends \$23,346, while Newark spends \$21,895 and Jersey City spends \$20,366.⁴⁴⁸ At the time Hanushek and Lindseth wrote their book, Newark—the largest of the Abbott districts—had a twelve to one pupil-teacher ratio and spent almost \$5,000 more per child per year than other similarly low-income school districts in New Jersey.

In 2005-06, the *Abbott* districts received approximately 57 percent of all state aid for K-12 education in New Jersey, even though they enroll only about 20 percent of the state's pupils.⁴⁴⁹

Court-ordered funding has paid for comprehensive reforms, including increased K-12 support, universal preschool for all three- and four-year-old children, full-day kindergarten, supplemental or at-risk programs and funding, intensive early literacy, technology, school to work and college transition programs, school-by-school reform of curriculum and instruction, extensive building and renovation of facilities, and social and health services.

general fund? Would it require lawmakers to go to voters to approve a tax hike? What if lawmakers refused? What if wary voters balked?

"Editorial: Ruling requires ed funding reset," *Denver Post*, Dec. 10, 2011. The *Post* was referring to the fact that Colorado law requires that voters approve all tax increases. To comply with the judge's order, then, the state legislature must either somehow obtain voter approval or extract money from other parts of the budget.

⁴⁴⁴ Yesenia Robles, "State ed board says it will appeal Lobato decision forcing retool of school finance," *Denver Post*, Dec. 27, 2011.

⁴⁴⁵ Eric Hanushek and Alfred Lindseth, *Schoolhouses, Courthouses, and Statehouses: Solving the Achievement-Funding Puzzle in America's Public Schools* (Princeton University Press: 2007), 109, 157.

⁴⁴⁶ *Ibid.* For an explanation of the litigation and its funding, see 91, 109-11.

⁴⁴⁷ Steven Malanga, "The Court That Broke New Jersey," *City Journal*, Winter 2012.

⁴⁴⁸ Steven Malanga, "New Jersey's Judicial Road to Fiscal Perdition," *Wall Street Journal*, Feb. 4, 2012.

⁴⁴⁹ *Ibid.*, 110, 165.



In 2008, in an effort to end the courts' decades-long supervision of the state's schools, the New Jersey legislature adopted a new statewide school funding formula that included extra funds for low-income students, English language learners, and students with disabilities, regardless of where in the state they live. The New Jersey Supreme Court declared this formula constitutional and then released the state from its duty to comply with its prior funding orders.

However, in June 2010, the legislature cut \$1.1 billion—almost 15 percent—from the 2008 state aid package, in response to a yawning, multi-billion state budget deficit that followed the nation's debilitating economic downturn. Plaintiffs returned to court, and in May 2011 the New Jersey Supreme Court ordered the legislature to boost spending for the Abbott districts by \$500 million the following school year. This is the court decision to which Michael Ciresi referred in his June 2011 *Star Tribune* opinion piece raising the possibility of an adequacy lawsuit in Minnesota.

Ironically, the Abbott litigation has led to what Hanushek and Lindseth describe as “extreme inequities among New Jersey taxpayers,” including those in low-income school districts not named as Abbott districts.⁴⁵⁰ According to the authors,

[s]ince the state funds the lion's share of their budgets, the Abbott districts have little incentive to tax their local community to financially support education, and they have dramatically lowered their property taxes.... [O]ver the past twenty years they have cut their local property tax rates in half, while

other school districts ... [including low-wealth districts] have had to maintain or even raise their rates....⁴⁵¹

This, Hanushek and Lindseth observe, has “led to a near revolt over property taxes among New Jersey's citizens.”⁴⁵²

A recent article in the *Wall Street Journal* describes the “massive redistribution of wealth” the Abbott litigation has produced:

Of New Jersey's nearly 600 municipalities, 166 get back 10 cents or less in education spending for every dollar their residents send to Trenton in income taxes.... Thus taxpayers in much of the state effectively support many school districts at once—their own, through property taxes, and the Abbott districts through income taxes.... East Rutherford, where the average household income is \$64,500 (about \$4,000 below the state average), gets only five cents of education aid for every income-tax dollar that it sends to the state.⁴⁵³

Significantly, Michael Rebell—a “godfather” of educational adequacy litigation and executive director of the Campaign for Educational Equity at Teachers College, Columbia University—has praised the Abbott litigation as a “success.”⁴⁵⁴ Most Minnesotans would be unlikely to agree. As will be seen below, the gargantuan costs incurred in New Jersey have failed to boost significantly the academic achievement of the children who were its intended beneficiaries.

⁴⁵⁰ *Ibid.*, 165.

⁴⁵¹ *Ibid.*

⁴⁵² *Ibid.*

⁴⁵³ Malanga, “New Jersey's Road to Fiscal Perdition.”

⁴⁵⁴ Michael Rebell, Alfred Lindseth, and Eric Hanushek, “Many Schools Are Still Inadequate, Now What?,” *Education Next*, Fall 2009.

Unfortunately, the vast increase in K-12 funding generated by education adequacy lawsuits has not produced significant improvement in the academic performance of poor and minority children in states where plaintiffs have prevailed.

(2.3) Adequacy Cases in Other States

Education adequacy cases in other states illustrate the massive, long-term financial burdens that litigation of this kind can place on state budgets. In New York, for example, the lower court's decision in *Campaign for Fiscal Equity, Inc. v. State of New York* would have cost every state household an average of over \$1,000 a year, had it been upheld.⁴⁵⁵

In Wyoming, the state Supreme Court decreed in 1995 that education there should be “the best,” and “of a quality that is both visionary and unsurpassed.”⁴⁵⁶ From 1996 to 2007, Wyoming climbed from spending just over the national average

on K-12 education to becoming one of the highest spending states in the country, if not the highest, according to Hanushek and Lindseth. In 2008-09, Wyoming spent \$14,268 per pupil. Colorado, in contrast, now spends \$8,782 per pupil, and students there outperform their Wyoming counterparts on many measures.⁴⁵⁷

In Ohio, in 1997, the state supreme court ordered a massive infusion of state funds to improve student learning and gave central emphasis to building new school buildings and refurbishing older ones.⁴⁵⁸ (Construction and physical improvement of schools is often a focus of plaintiffs in adequacy cases.) Commentators there have noted the financial trade-offs required. It is estimated that the State of Ohio's higher education spending has dropped by ten to 15 percent as a result of K-12 “adequacy” spending, while spending on job training has also declined.⁴⁵⁹

(2.4) Education Adequacy Litigation May Violate the Separation of Powers Doctrine

In essence, education adequacy litigation gives courts, rather than legislatures, the power to evaluate the quality of education in a state and to decide how much money legislatures must appropriate to the K-12 education system.⁴⁶⁰ For this reason, critics contend that adequacy litigation violates the

⁴⁵⁵ Hanushek and Lindseth, *Schoolhouses, Courthouses, and Statehouses*, 99, 111.

⁴⁵⁶ *Ibid.*, 125.

⁴⁵⁷ Tim Hoover, “Denver judge’s ruling on school funding levels blisters state’s witnesses,” *Denver Post*, Dec. 11, 2011.

⁴⁵⁸ Larry J. Obhof, “*DeRolph v. State* and Ohio’s Long Road to an Adequate Education,” *Brigham Young University Education and Law Journal*, vol. 2005, 83 (2005). For a brief summary of the Ohio adequacy litigation’s checkered history, see Aaron Tang, “Reading the State School Finance Litigation Tea Leaves: What Lies Ahead for Plaintiff School Children?,” *Harvard Law & Policy Review*, Jan. 28, 2011, available at <http://hlpronline.com/2011/01/reading-the-state-school-finance-litigation-tea-leaves-what-lies-ahead-for-plaintiff-school-children/>.

⁴⁵⁹ Obhof, “*DeRolph v. State* and Ohio’s Long Road to an Adequate Education:” “Lawmakers and administrators alike suggest that higher education has suffered because of the *DeRolph* cases. Universities’ budgets have seen limited growth, and some have estimated that Ohio’s higher education budget is as much as 10-15 percent lower than what it would have otherwise been without *DeRolph*. Job training programs have also suffered, which may have indirectly lowered the State’s income. The legislature seems determined to make these areas priorities in the next decade, at least partly to compensate for the relative neglect they have experienced because of *DeRolph*” (citations omitted).

⁴⁶⁰ Hanushek and Lindseth, *Schoolhouses, Courthouses, and Statehouses*, 99.



separation of powers doctrine at the heart of our constitutional system of government.

Unlike legislatures, courts need not balance the costs of a so-called “adequate” education with a state’s other spending priorities (e.g., health care, transportation, justice system, and environmental spending). In fact, the Wyoming Supreme Court actually admonished the state’s legislature that a “lack of financial resources will not be an acceptable reason for failure to provide the best education.”⁴⁶¹ Courts in New Jersey, Colorado, and elsewhere have made similar irresponsible statements. This cavalier attitude dramatically illustrates the judiciary’s complete lack of accountability to voters and taxpayers.

Moreover, courts rarely consider that schools’ failure to attain educational standards may result, in part, from inefficient and ineffective use of the funds they already receive. As judges seek to determine how much new funding an “adequate” education requires, they often rely on self-serving “costing out” studies prepared by plaintiffs—a practice Hanushek and Lindseth characterize as voodoo social science. Not surprisingly, courts that have ruled for plaintiffs have rarely, if ever, investigated the causes of the learning gap or its roots in family risk factors beyond schools’ control.

(3) The Disappointing Academic Outcomes of Adequacy Lawsuits

Unfortunately, the vast increase in K-12 funding generated by education adequacy lawsuits has not

produced significant improvement in the academic performance of poor and minority children in states where plaintiffs have prevailed. The record is stark: “Virtually no peer-reviewed or other credible articles or studies claim to have found significant, positive effects on student achievement in states that have implemented adequacy remedies,” according to Hanushek and Lindseth.⁴⁶² Not surprisingly, the two add, plaintiffs in such lawsuits “rarely, if ever” introduce evidence that funding increases in other states have actually boosted minority/low-income student achievement or reduced the learning gap.⁴⁶³

In *Schoolhouses, Courthouses, Statehouses*, Hanushek and Lindseth analyze trends in National Assessment of Educational Progress scores in the four states with the longest-standing adequacy remedies: New Jersey, Kentucky, Wyoming, and Massachusetts. In the first three, academic achievement is essentially unchanged since the remedies began.⁴⁶⁴ For example, New Jersey’s black students (the principal beneficiaries of *Abbott* funds) still score at about the same relative levels on the NAEP as they did in 1992.⁴⁶⁵ The gap between white and Hispanic reading and math scores is roughly the same in new Jersey as it is nationally, and the state’s black/white eighth grade reading gap is larger than the national gap. On NAEP reading, New Jersey’s black eighth graders lag 31 points behind their white counterparts, compared with a 25-point gap nationally.⁴⁶⁶

Hanushek and Lindseth note that Kentucky, where an adequacy remedy began in 1990, has long

⁴⁶¹ *Ibid.*, 124-25.

⁴⁶² *Ibid.*, 146.

⁴⁶³ *Ibid.*, 145.

⁴⁶⁴ *Ibid.*, 147-170.

⁴⁶⁵ *Ibid.*, 162-165. According to Hanushek and Lindseth, “Nor has New Jersey’s adequacy remedy done much to improve achievement of *Abbott* district high school students.” In 2003, for example, only 43 percent of the *Abbott* district seniors who took the 11th grade test required for graduation passed both the language and math sections. “In all other New Jersey districts, the passing rate was 80 percent. Moreover, in 2006, one in three high school seniors in the *Abbott* districts who graduated failed the mandatory examinations in reading, writing and math skills, but were allowed to graduate after completing a ‘Special Review Assessment’ (SRA) evaluating basic skills. This compares to just 3 percent of graduates in affluent districts, 8 percent in middle-income districts, and 15 percent in poor districts who took advantage of the SRA alternative.” *Ibid.*, 164.

⁴⁶⁶ Malanga, “New Jersey’s Road to Fiscal Perdition.”

been considered “a model of what an adequacy lawsuit can accomplish.”⁴⁶⁷ Yet black students there regressed compared to their peers nationally during the time the court remedy was carried out.⁴⁶⁸ In 2010, after 20 years of increased education funding, only 38 percent of Kentucky high school graduates were academically prepared for college or careers, according to the state’s Department of Education.⁴⁶⁹

Only in Massachusetts, which adopted rigorous academic standards and a high-stakes graduation exam in conjunction with an adequacy remedy, has meaningful improvement in student achievement occurred.⁴⁷⁰ Hanushek and Lindseth point out that the strict accountability measures put in place there have run into resistance in other states, particularly from teachers’ unions.⁴⁷¹

In short, decades of experience have failed to demonstrate a clear causal relationship between the amount of money that schools spend and student achievement, according to Hanushek and Lindseth.⁴⁷²

Even Myron Orfield has agreed that increased funding is not the primary variable in increasing

One reason for plaintiff victories is that the plaintiff/defendant dynamics in these lawsuits can seriously compromise a state’s ability to defend itself in court. Lawyers who represent states frequently discover that education officials, including those in the state’s department of education, are essentially acting in concert with plaintiffs before and during the litigation to achieve plaintiffs’ goals.

minority academic performance. Regarding education finance lawsuits, he has written that “[i]ncreased resources to inner city schools have generally not translated into improved educational outcomes.”⁴⁷³

⁴⁶⁷ *Ibid.*, 147.

⁴⁶⁸ *Ibid.*, 150.

⁴⁶⁹ Chris Kenning, “Kentucky high schools only slightly better at getting graduates ready for college, workforce,” *Louisville Courier-Journal*, September 27, 2011.

⁴⁷⁰ Hanushek and Lindseth, *Schoolhouses, Courthouses, and Statehouses*, 166-170. The authors note that white and Hispanic students made particularly strong gains. *Ibid.*, 167. They state that black students’ gains were not as large. However, they point out that the scores of Massachusetts black students remain above the national average for black students, as they did before the commencement of the adequacy remedy. *Ibid.*, 168-69. A press release from the office of Massachusetts governor Deval Patrick had this to say about the state’s black students’ 2011 NAEP scores: “African American students increased their scale score in math by 40 points at grade 4 between 1992 and 2011, and by 34 points at grade 8. Over that time, the gap between African American and white students narrowed in mathematics from 36 points in 1992 to 24 points in 2011 at grade 4; and from 34 points to 29 points at grade 8.” <http://www.mass.gov/governor/pressoffice/pressreleases/2011/11111-naeps-results-released.html>.

⁴⁷¹ Hanushek and Lindseth, *Schoolhouses, Courthouses, and Statehouses*, 169.

⁴⁷² *Ibid.*, 175.

⁴⁷³ Myron Orfield, “Choice, Equal Protection, and Metropolitan Integration: The Hope of the Minneapolis Desegregation Settlement,” *Law & Inequality*, Vol. 24, 269 (Summer 2006), 331. Orfield writes, “In 2005, the average student in Minnesota generated \$8,516 for their school. The large, inner-city district of Minneapolis now receives about \$3,000 more per pupil than the state average, or about \$11,393 per student. These figures include costs for non-General Education revenue, such as special education and building expenditures.... It is clear that increasing funding cannot by itself address the problems that schools of concentrated poverty are creating in Minneapolis.” *Ibid.*, 331-32 (citations omitted).

(4) The Problem of Collusion between Plaintiffs and Defendants in Education Adequacy Lawsuits

(4.1) State Education Officials Often Share the Goals of Plaintiffs Who Are Suing the State for More Funds

Despite education adequacy lawsuits' dismal track record, state courts continue to award massive sums to school districts in the name of closing the learning gap. One reason for plaintiff victories is that the plaintiff/defendant dynamics in these lawsuits can seriously compromise a state's ability to defend itself in court. Lawyers who represent states frequently discover that education officials, including those in the state's department of education, are essentially acting in concert with plaintiffs before and during the litigation to achieve plaintiffs' goals.⁴⁷⁴

Hanushek and Lindseth note that plaintiffs in adequacy cases generally include public school districts seeking higher funding, teachers unions, and advocacy groups intent on funneling more resources into education. State education authorities, though nominally defendants, often share this objective and view litigation as a way to accomplish it while sidestepping the need to win legislative approval.⁴⁷⁵

The collusion that can result is easy to understand, say Hanushek and Lindseth:

State education authorities belong to the public school establishment, and part of their job is to lobby for higher appropriations

for education. Adequacy suits hold out the promise of more money for education; with more money comes greater state control, which most state departments of education would like to have.

Increased appropriations for education, top priority in funding over other state programs and sectors, more state education personnel, greater control over local districts—what is not to like for state education officials? Moreover, it is not their responsibility to worry about where the money is going to come from; that is the job of the governor and the legislature.⁴⁷⁶

“In normal litigation,” Hanushek and Lindseth conclude,

collusion among litigants might be grounds for sanctions and dismissal of the lawsuit, but not in many adequacy cases. The judicial process is not designed for lawsuits in which half or more of the defendants are in league with plaintiffs.⁴⁷⁷

(4.2) A Case Study: New York

New York's 1993 education adequacy case illustrates the sort of collusion that can occur.⁴⁷⁸ The plaintiff in the case was the Campaign for Fiscal Equity, an umbrella organization made up of both school districts and activist groups. Initially, the Campaign for Fiscal Equity named as defendants the New York Board of Regents, the New York Department of Education, and State Commissioner of Education Thomas Sobol. However, all these nominal defendants were strongly behind the plaintiff at trial.⁴⁷⁹

⁴⁷⁴ Hanushek and Lindseth, *Schoolhouses, Courthouses, and Statehouses*, 141.

⁴⁷⁵ *Ibid.*, 140.

⁴⁷⁶ *Ibid.*, 141.

⁴⁷⁷ *Ibid.*, 140.

⁴⁷⁸ *Campaign for Fiscal Equity v. State of New York, et al.*, 86 N.Y.2d 307, 655 N.E.2d 661 (1995). This case is known as *CFE I*; *CFE II* and *CFE III* were filed in 2003 and 2006. See Hanushek and Lindseth, *Schoolhouses, Courthouses, and Statehouses*, 357. All in all, 11 cases on this topic have been brought in New York, according to Hanushek and Lindseth.

⁴⁷⁹ *Ibid.*, 141.

The New York Department of Education helped to build the plaintiff's case against the State of New York. Prior to the lawsuit, the department operated a long-standing "Equity Study Group" that worked to gather evidence that a plaintiff could use in adequacy litigation against the state. The study group's announced purpose was to promote adoption of Commissioner Sobol's "New Compact for Learning," whose goals included closing the learning gap between low-income students and their better-off peers.⁴⁸⁰

At the "equity" study group's first meeting, Sobol announced that one of the group's primary objectives was to prepare the ground for litigation against the State.⁴⁸¹ (A "purpose of this task force is to establish a body of work that others who may be so inclined can use to challenge in court the equity of the current system," Sobol declared.) Later, at trial, five members of the study group appeared as expert witnesses on behalf of the plaintiff. Sobol himself asked to switch sides in the case and ultimately served as a witness for the plaintiff.⁴⁸²

Another example of plaintiff/defendant collusion took place in North Dakota's adequacy litigation in 2003. In that case, according to Hanushek and Lindseth,

the commissioner of education demanded that the Department of Public Instruction

[DPI], one of the defendants, be assigned its own lawyer so it could join the lawsuit with plaintiffs. During the course of the litigation, a high-ranking DPI official attended meetings with plaintiffs' attorney sponsored by the National Access Network, a plaintiffs' organization that encourages adequacy litigation across the country.⁴⁸³

(5) The Threat of an Education Adequacy Lawsuit in Minnesota is Real

In 1993, the Minnesota Supreme Court held in *Skeen v. State of Minnesota* that Minnesota children have a fundamental right to an adequate education under the state's constitution.⁴⁸⁴ However, the Court found that students were in fact receiving a constitutionally adequate education at that time. Today, some advocates of adequacy litigation claim that Minnesota's school funding system has changed since *Skeen*.⁴⁸⁵ They cite property tax alterations and the legislature's decision to balance the state's budget in 2011 through school funding shifts, among other factors.⁴⁸⁶ As a result, these advocates maintain that the time may be ripe for another education adequacy lawsuit.

Trial attorney Michael Ciresi, who obtained a \$6 billion settlement for the State of Minnesota from

⁴⁸⁰ *Ibid.*

⁴⁸¹ *Ibid.*

⁴⁸² See News Release, "Thomas Sobol, Shirley Ann Jackson and Lee Shulman to Speak at Convocation," Columbia Teachers College, May 8, 2007, available at <http://www.tc.columbia.edu/news.htm?articleId=6197>. "In the 1990s, as New York State's Commissioner of Education, Sobol led the creation of 'A New Compact for Learning: Improving Public Elementary, Middle, and Secondary Education Results,' which was among the first documents to codify a state's achievement standards, including key concepts and competencies the students are required to know at different grade levels. He consciously shaped that document to offer a rationale for a legal argument that children should be given the necessary resources to succeed in school and subsequently played a leading role in advancing just such a legal argument. Named, by virtue of his position, as a defendant in the landmark Campaign for Fiscal Equity educational adequacy lawsuit against New York State, he asked to switch sides in the case and ultimately served as an amicus witness to the plaintiff."

⁴⁸³ Hanushek and Lindseth, *Schoolhouses, Courthouses, and Statehouses*, 141-42.

⁴⁸⁴ *Skeen v. State of Minnesota*, 505 N.W.2d 299 (Minn. 1993).

⁴⁸⁵ Beth Hawkins, "Colorado trial on school adequacy, equity has implications for Minnesota," *MinnPost*, August 5, 2011.

⁴⁸⁶ Beth Hawkins, "Success of Colorado lawsuit over education funding has implications for Minnesota," *MinnPost*, Dec. 15, 2011.



Big Tobacco in 1998, recently raised this possibility. In June 2011, he and his law partner, Roberta Walburn, wrote in the *Star Tribune*:

Last month, the New Jersey Supreme Court ruled that—despite a multibillion state budget shortfall—it was unconstitutional for the legislature to cut funding for disadvantaged schools. The court ordered the state to increase spending for these schools by \$500 million next year.

Legislators in Minnesota should listen and not just hear. The New Jersey decision is based in part on a provision in that state’s constitution that is very similar—in fact, uses some identical language—to the Minnesota constitution....

[T]oday, ... there are many students in our state who are not receiving an adequate education by any objective standard. In fact, Minnesota has one of the widest achievement gaps of any state in the country between students who are poor and who are wealthy and between students who are white and who are of color....

It is time for our Legislature to fulfill its duty to provide a basic, adequate education for not just some—but all—of Minnesota’s children.⁴⁸⁷

In fact, Minnesota performs very well in state-to-state comparisons of funding equity between high- and low-poverty schools. The state received an “A” in a 2010 study entitled “Is School Funding Fair? A National Report Card,” by the Education Law Center.⁴⁸⁸ Minnesota has a “high/low ratio” of 138 percent, which means that the state funds its highest poverty school districts at 138 percent of its low poverty districts. Likewise, a 2006 analysis by the Education Trust, entitled “Funding Gaps,” found that Minnesota’s per-pupil funding in high poverty districts is an average of \$1,349 higher than per-pupil funding in low-poverty districts.⁴⁸⁹

Nevertheless, the threat of the prospect of an adequacy lawsuit, coming from Ciresi and Walburn, must be taken seriously.

(5.1) The Outcome of an Adequacy Lawsuit in Minnesota May Depend on Actions by the Legislature and the MDE

Despite the *Lobato* plaintiffs’ recent victory in Colorado, plaintiffs in education adequacy lawsuits have experienced major setbacks in recent years.⁴⁹⁰ (As noted earlier, *Lobato* has been appealed, and its final disposition is unknown.) In recent years, courts have tended to show increasing deference to legislatures’ K-12 spending decisions.⁴⁹¹ In January 2011, an analysis in the *Harvard Law & Policy*

⁴⁸⁷ Michael Ciresi and Roberta Walburn, “Education for all: It’s in the Constitution,” *Star Tribune*, June 12, 2011.

⁴⁸⁸ Bruce D. Baker, David G. Sciarra and Danielle Farrie, “Is School Funding Fair? A National Report Card,” Education Law Center, September 2010, 16.

⁴⁸⁹ “Funding Gaps 2006,” *The Education Trust*, Jan. 1, 2006, 6.

⁴⁹⁰ Adequacy litigation is, however, currently on-going in a number of states, including Texas, California, Florida and Kansas. See Nathan Koppel, “Schools Sue States for More Money,” *Wall Street Journal*, Jan. 7, 2012. In January 2012, the Supreme Court of the State of Washington ruled that the state is failing to meet its constitutional obligation to provide a basic public education to all children in Washington. According to the *Seattle Times*, however, the decision “is unlikely to protect that area from further cuts—at least not in the short term.... The 7-2 decision told lawmakers the court would track progress on the issue but left it to them to figure out where to get the money.” Brian Rosenthal and Lark Turner, “Court ruling won’t protect schools from new cuts,” *Seattle Times*, Jan. 5, 2012.

⁴⁹¹ Hanushek and Lindseth, *Schoolhouses, Courthouses, and Statehouses*, 105-106. “Beginning in the early 1970s, advocacy groups, frustrated with legislative efforts, began turning to the courts, initially to seek more equity in the allocation of education funds and later to seek vastly increased appropriations from state legislatures through ‘educational adequacy’ lawsuits based on vaguely worded state constitutional provisions. A significant number of state courts responded positively to plaintiffs’ pleas and ordered

Review summarized adequacy litigation's current standing:

Recent trends suggest ... that the adequacy era of education finance litigation may be falling on hard times. Since 2009, six of the eleven state courts to issue decisions in adequacy cases have ruled against plaintiffs. Only hindsight, of course, will reveal conclusively whether these recent results are indicative of a permanent shift disfavoring adequacy claims....⁴⁹²

The lesson of this and similar analyses is that states can win education adequacy lawsuits. In August 2011, for example, the state of South

Dakota prevailed in such a case.⁴⁹³ In *Davis v. South Dakota*, the South Dakota Supreme Court found that plaintiffs who sought increased K-12 funding had not met their "high burden of proof," because they had failed to establish a sufficient causal link between the educational deficiencies they alleged and action or inaction by the State.

The State of Minnesota could also win an education adequacy lawsuit, but its ability to prevail may hinge on future actions of the Minnesota Legislature and the MDE. If either adopts learning gap-related plans or policies that enhance the likelihood of plaintiffs' success, a loss by the State may become a foregone conclusion.

unprecedented increases in K-12 funding in their states. Unfortunately, basic problems in the underlying systems of delivering education services were often ignored. In this sense, the courts mirrored what had been going on in the state legislatures, and the results were, not surprisingly, much the same: large amounts of money expended, but little or no improvement in student outcomes."

⁴⁹² Aaron Tang, "Reading the State School Finance Litigation Tea Leaves." Tang explains as follows: "Despite the relative advantages enjoyed by adequacy litigants over the equity litigants, recent state supreme court decisions indicate that the adequacy theory may be losing momentum. Plaintiffs have experienced adverse outcomes in six of the eleven adequacy decisions handed down since the start of 2009. The Indiana Supreme Court held that the education clause of the state constitution 'does not impose upon government an affirmative duty to achieve any particular standard of resulting educational quality.... And in the absence of such a constitutional duty, there is no basis for the judiciary to evaluate whether it has been breached.' Courts in three other states—Oregon, Missouri, and South Dakota—ruled that their respective constitutions did in fact impose some minimum school funding requirement, but that the requisite funding level was so minimal that the states had already fulfilled their obligations. The Kansas Supreme Court rejected a motion by plaintiffs to reopen the court's jurisdiction over the state legislature in light of recent statewide school funding cuts, despite the fact that those cuts may have violated the court's prior funding orders issued in 2006.

"The question now is whether these outcomes represent idiosyncratic decisions issued by state courts that are distinguishable from pro-plaintiff rulings on the facts (or perhaps are grounded in economic realities as opposed to legal doctrine), or whether they signal a common move among judges away from the adequacy theory. There are reasons why both stories may be accurate. It may not be a coincidence, for instance, that the recent decline in success rates experienced by adequacy advocates has occurred in the aftermath of a severe economic downturn that has left state budgets across the nation in flux. Judges, of course, are not oblivious to budget deficits. Moreover, eleven decisions over two years may be too small a sample size to draw any definitive conclusions about the adequacy theory's future—particularly in light of strong pro-plaintiff rulings in Connecticut and Washington over the same time period. It should also be noted that courts in Florida, Colorado, and South Dakota have recently denied state motions to dismiss on justiciability grounds, sending those cases to adjudication on the merits.

"But there is strong support for the view that plaintiffs' five-out-of-eleven record in recent years—a notable departure from the overall sixty-seven percent success rate for adequacy claims—is due to a change in attitude by the courts with respect to the adequacy theory itself. Each of the six adverse decisions shares a common characteristic: a concern by judges that it may simply be improper for the judiciary, as opposed to the legislature, to define a state's educational objectives and concordant funding levels." *Ibid.* (citations omitted).

⁴⁹³ *Davis v. South Dakota*, 211 S.D. 51 (2011). The South Dakota Supreme Court ruled that—though the state constitution guarantees children a "free, adequate, and quality public education"—plaintiffs had failed to meet their high burden of proving that the education funding system "fails to correlate to actual costs or with adequate student achievement." In addition, some courts—nine at the time that Hanushek and Lindseth wrote *Schoolhouses, Courthouses, and Statehouses*—have found that



(5.2) The Historical Context: Previous Adequacy Litigation in Minnesota

(a) The 1995 Adequacy Lawsuit and Its Settlement

The history of education adequacy litigation in Minnesota sheds light on the context in which any future litigation of this kind would play out here. As described below, after the Minnesota Supreme Court found education to be a fundamental right in *Skeen*, an education adequacy lawsuit was filed against the State in 1995.⁴⁹⁴ The suit alleged that Minneapolis schools were unable to offer an adequate education because they served a concentration of poor, minority students. Plaintiffs sought a metro-wide, race-based busing and low-income housing remedy, among other things, and asked the court to order the State to provide Minneapolis students with “an adequate and desegregated education.”⁴⁹⁵

If the Minnesota Legislature had empowered the State Board of Education to adopt its proposed “desegregation” rule in 1994, plaintiffs in this litigation might well have achieved their objective of court-ordered, metro-wide, race-based busing. As it was, they made little headway in court. The litigation was settled on terms advantageous to the State of Minnesota, and plaintiffs got only a limited, voluntary busing plan—The Choice Is Yours (which the settlement specified would expire after four years)—instead of the sweeping busing and low-income housing remedy they had sought.⁴⁹⁶

Interestingly, in reference to the NAACP litigation, the *Star Tribune* reported in December 2011 that attorney Dan Shulman had in fact “won a landmark school integration lawsuit against the state in the late 1990s on behalf of Minneapolis schoolchildren.”⁴⁹⁷ (A landmark case is one of such importance that it creates a ground-breaking precedent for future cases of its kind.) When informed that plaintiffs had not “won” the NAACP case—which was actually settled after making little headway in the courts—reporter Corey Mitchell responded as follows in an email:

“decisions regarding the content, quality, level and appropriate funding of K-12 education—are ones of educational policy and appropriations, which properly belong to the legislative and executive branches.... [T]hese courts have ruled that adequacy lawsuits present ‘political questions’ inappropriate for them to consider under the separation of powers doctrine. Accordingly, they have dismissed the lawsuits at the outset, without deciding whether the education being offered was ‘adequate.’” *Schoolhouses, Courthouses, and Statehouses*, 96 (citation omitted).

⁴⁹⁴ The case was *Minneapolis Branch of the NAACP v. State*, No. 95-14800 (Minn. Dist. Ct. Sept. 19, 1995). In 1998, a second adequacy case was filed. See *Xiong v. State*, No. 98-2816 (Minn. Dist. Ct. Feb. 23, 1998). According to Myron Orfield, “the new case contained an additional due process claim and could possibly help move the state toward a settlement, though settlement was not the reason [it] was filed. The Hennepin County District Court later consolidated both cases for purposes of trial.” “Choice, Equal Protection and Metropolitan Integration,” 313 (citations omitted).

⁴⁹⁵ Maureen Smith, “Court asked to weigh in on 3 issues in NAACP school lawsuit,” *Star Tribune*, Nov. 14, 1996. See also Orfield, “Choice, Equal Protection, and Metropolitan Integration,” 310-14.

⁴⁹⁶ The Choice Is Yours program was set to expire at the end of the 2004-05 school year, but was extended. Allie Shah, “School-choice plan extended,” *Star Tribune*, Jan. 8, 2004. See Allie Shah, “Minneapolis Program to expand school choices off to slow start,” *Star Tribune*, Dec. 26, 2000. As part of the settlement, the Minneapolis district also agreed to reserve 10 to 20 percent of its kindergarten spots in elementary magnet programs for low-income students. *Ibid.* Compare this to what the NAACP plaintiffs sought: “[T]he Minneapolis NAACP has suggested several potential solutions [to what it called a constitutionally inadequate education], including a desegregation plan involving *all communities and schools in the Twin Cities area*, a busing philosophy that fits within state guidelines and policies, a focus on improving student achievement and equalizing and improving educational opportunity, a remedy to stabilize and enhance racially integrated areas as well as broaden metropolitan housing opportunities (emphasis added).” Paul Duschene Drew and Rob Hotakainen, “Activists hail desegregation ruling: Connecticut case called ‘road map’ for suit against Minnesota,” *Star Tribune*, July 11, 1996. For a description of the settlement, see Orfield, “Choice, Equal Protection, and Metropolitan Integration,” 313-14.

⁴⁹⁷ Corey Mitchell, “Cost vs. benefit steers debate over future of integration aid,” *Star Tribune*, Dec. 20, 2011.

“We understood the case was settled. Through negotiations, families won the right to have their children attend schools outside Minneapolis via the ‘Choice is Yours’ program.”⁴⁹⁸

The *Star Tribune*’s willingness to mischaracterize the litigation’s outcome for the benefit of plaintiffs in litigation of this kind suggests that the media is not performing its usual skeptical role here, and helps explain why the media has missed the unfolding story of educational tragedy wrought by adequacy lawsuits.

The evolution of events in 1994-95 holds important lessons for Minnesota legislators and policymakers today, as they consider the learning gap-related proposals now being put forward.

(b) The State Board of Education’s Proposed 1994 Rule Would Have Increased the Chances of a Plaintiff’s Victory in the 1995 Adequacy Litigation

As noted earlier, the State Board of Education’s proposed 1994 rule would have required suburban Twin Cities schools to “desegregate” Minneapolis and St. Paul schools, and would also have required all state school districts with more than 30 minority students to reduce or close the racial learning gap on multiple measures or face severe penalties.

The SBE advanced a two-part rationale for this revolutionary rule. First, the SBE claimed that inter-district racial balance, along with well-funded programs to close the learning gap, would improve the academic performance of the state’s minority students and enhance race relations. Proponents of race-based busing make the same claim for their racial balance plans today. Second, the SBE claimed that Minnesota had a legal obligation to ensure racial balance, or “desegregation,” in all metro area school districts.

After unanimously endorsing its proposed rule, the SBE conducted a campaign to win public and legislative approval.⁴⁹⁹ Its message was that, if the legislature did not authorize the rule, a federal court would impose an even more costly and coercive race-based solution. The *Star Tribune* was one of the many Twin Cities institutions that bought the SBE’s argument. In February 1994, the paper endorsed the draft rule, arguing that if the legislature failed to adopt and fund the rule, a court “will certainly intervene, and Minnesotans will rue the day legislators didn’t pony up to close the education gap that so affects the future of the state.”⁵⁰⁰

The State Board of Education’s claim in this regard was disingenuous. In fact, no grounds existed for a federal lawsuit against the State of Minnesota or school districts here. As noted earlier, to succeed, such a suit would have required a showing of intentional discrimination against black students by suburban school districts. Evidence of such discrimination did not exist.

⁴⁹⁸ Email from Corey Mitchell to the author, Dec. 21, 2011. Mitchell sent his email in response to this email from the author: “Hi Corey. I just read your piece on the Integration Rev Replacement Advisory Task Force today. I see that you say that Dan Shulman ‘won a landmark school integration lawsuit against the state in the late 1990’s on behalf of Minneapolis schoolchildren.’ Can you tell me what case you’re referring to? The NAACP/Xiong suit was settled, and the terms of settlement fell far short of what plaintiffs were seeking in the litigation. Did I understand the statement correctly?”

⁴⁹⁹ The State Board of Education unanimously and enthusiastically endorsed the Desegregation Roundtable’s February 1994 proposed rule and its report justifying the rule. In his transmittal letter to legislative leaders, SBE president John Plocker stated that “The State Board of Education strongly endorses the approach reflected in the Desegregation/Educational Diversity Roundtable’s recommendations. These proposals present state policymakers ... an opportunity to provide strong and creative leadership in addressing one of the critical issues of this decade.” Memo to Senator Pogemiller and Representatives Carlson and Vellenga, Feb. 17, 1994.

⁵⁰⁰ “Editorial: Desegregation: New Rule Needs Force, and Dollars, of Law,” *Star Tribune*, February 5, 1994.



In fact, the SBE's proposed rule, far from averting a *federal* lawsuit, as the SBE promised, would actually have laid the groundwork for an education adequacy suit against the State in *state* court, and would have greatly enhanced plaintiffs' likelihood of success. No matter what State Board of Education members intended, this was the logical consequence of the rule they drafted and endorsed.

In short, the SBE's proposed rule put the State of Minnesota in legal peril. Yet the SBE not only failed to bring this to public attention, but portrayed the rule's adoption as vital to protect the state's legal interests.

(c) The Element of Collaboration in Minnesota in 1994

It is not surprising that the State Board of Education's draft rule was adverse to the State of Minnesota's interests. The SBE's 50-member Desegregation Roundtable, which designed the rule, was dominated by ardent advocates of metro-wide, race-based busing.⁵⁰¹ As a result, in some

respects, the Roundtable played a role like that of Commissioner Sobol's Equity Study Group at the New York Department of Education. Its actions created legal conditions that would have paved the way for a plaintiffs' victory in adequacy litigation against the State of Minnesota, had its proposed rule been adopted.⁵⁰²

The Roundtable's choice of advisors to aid in drafting the rule is revealing in this respect.⁵⁰³ In its final report to the Legislature in February 1994, the Roundtable named the "consultants" it had used to "fully address the legislative mandated issues." Its only well-known social science advisor was Gary Orfield, a nationally known advocate of race-based busing who had often served as an expert witness for plaintiffs in desegregation cases.⁵⁰⁴ (Early in its deliberations, the Roundtable rejected a suggestion that it seek advice from Dr. Christine Rossell, a prominent social scientist who had helped to design voluntary integration plans.)⁵⁰⁵ On legal issues, it listed as a consultant David Tatel, then of the Washington, D.C., law firm of Hogan & Hartson.⁵⁰⁶

⁵⁰¹ According to the House Republican Task Force on Student Achievement and Integration, SBE members themselves were highly one-sided in their perspective on race-based busing as the solution to the metro area's learning gap: "In appearances before the House Education Committee and in other forums this year, State Board of Education members were generally unable to give substantive answers to questions about how to close the learning gap, the estimated costs of implementing the rule, the possible legal liabilities, proven links between racial balance and student achievement, and other aspects of this complex proposal. Promises by SBE members to send the requested information to legislators at a later date were rarely kept." "Bridging Gaps & Breaking Barriers," 2.

⁵⁰² According to "Bridging Gaps & Breaking Barriers," the SBE's response to legislators' questions was a report entitled "The Correlation Between Desegregation and Closing the Learning Gap." "Nine of the specific benefits cited in the report were checked against footnoted sources by task force staff. Of the nine, four were false, four were highly dubious, and one was questionable." *Ibid.*, 2.

⁵⁰³ Roundtable Discussion Group on Desegregation/Integration and Inclusive Education, "Final Report to State Board of Education and State Legislature," February 1994, 3-5. Orfield provided a "nationwide perspective on desegregation issues."

⁵⁰⁴ Unfortunately, the Roundtable did not retain the services of an expert charged with protecting the state's interests on desegregation and education adequacy issues. For a fuller explanation, see Kersten, "Good Intentions Are Not Enough," ii, 12-13.

⁵⁰⁵ "Bridging Gaps & Breaking Barriers," 1.

⁵⁰⁶ Roundtable, "Final Report to State Board of Education and State Legislature," 5. Edward Cook of the Minnesota Senate Republican Staff sent a letter to Assistant Education Commissioner Robert Wedl, dated Dec. 22, 1994, asking for the names of individuals who "actually drafted, or reviewed, the rules proposed by the desegregation/integration roundtable in its February 1994 report.... More specifically, were attorneys outside of state government used—if so, which firms or individuals participated?" Wedl's response, dated Jan. 3, 1995, gave the names of Tatel, Larry Leventhal (who had submitted an *amicus curiae* brief in the *Booker* case, in which a judge ordered race-based busing in Minneapolis), Henry Buffalo and Charles Vergon of the University of Michigan's Law and Policy Institute as attorneys "used for advice" on the Roundtable proposal. When Tatel spoke to the Roundtable, he addressed "court ordered desegregation issues." "Final Report to State Board of Education and State Legislature," 5.

The SBE's proposed rule put the State of Minnesota in legal peril. Yet the SBE not only failed to bring this to public attention, but portrayed the rule's adoption as vital to protect the state's legal interests.

Most Minnesotans would likely have regarded Hogan & Hartson as a strange choice for this role. The firm was nationally known for *suing states* in education adequacy cases and for representing plaintiffs in federal desegregation cases.⁵⁰⁷ For example, Hogan & Hartson represented the Kansas City School District in its lawsuit against the State of Missouri,⁵⁰⁸ the Milwaukee School District in its suit against the State of Wisconsin and suburban school districts,⁵⁰⁹ and the Yonkers, New York, Board of Education in its suit against the State of New York.⁵¹⁰ Within a year of Tatel's work with the State Board of Education's Desegregation Roundtable, the Minneapolis School District retained Hogan & Hartson to explore an adequacy suit against the State of Minnesota.⁵¹¹

In the mid-1990s, Hogan & Hartson was on the cutting edge of education adequacy and desegregation law. Each year, the firm sponsored seminars in Washington, D.C., at which its attorneys advised school district officials and activist education groups how to prepare successful education adequacy litigation against states. At these seminars, potential plaintiffs learned how to use the language of state laws, rules, and education policies most effectively to prevail in adequacy litigation. They also learned how to influence the content of state education rules and standards and how to use these to best advantage in such litigation.

At a March 1994 workshop, for example, Hogan & Hartson advised school districts that they might not be providing equal educational opportunities to their students if racial disparities existed on any of four measures: test scores, dropout rates, discipline rates, and rates of participation in remedial and honors classes.⁵¹² Minneapolis School Board member Judith Farmer attended this meeting.⁵¹³ Not surprisingly, the State Board of Education's 1994 draft rule made closing racial gaps on precisely these measures a legal requirement for Minnesota districts with more than 30 minority students.

⁵⁰⁷ Kersten, "Good Intentions Are Not Enough," 12-13. See also "Bridging Gaps & Breaking Barriers," 1-2. "The task force is gravely concerned that the SBE has not spoken with experts who question the benefits of mandatory plans or with attorneys experienced in how similar rules made by boards in other states have been litigated."

⁵⁰⁸ Barbara Slavin, "A Judge of Character: Although he's blind, David Tatel skis, runs and climbs mountains," *Los Angeles Times*, July 28, 1994.

⁵⁰⁹ David Tatel described the litigation and its context in "Leading School Attorney Lauds Regional Approach to Student Desegregation Effort," *The School Administrator*, May 1993.

⁵¹⁰ Kersten, "Good Intentions Are Not Enough," 44.

⁵¹¹ *Ibid.*, ii. See Hobday, Finn and Orfield, "A Missed Opportunity," 957, n. 126. See also "Bridging Gaps & Breaking Barriers," 2.

⁵¹² *Ibid.*, 43. This workshop on desegregation and funding was held March 11-12, 1994, in Washington, D.C. Seminar materials suggested that administrators from segregated districts ask, "Are equal educational opportunities provided to members of all racial/ethnic groups?" and consider four factors by way of answering: test scores, dropout rates, rates of placement in gifted and special education programs, and student discipline (suspensions and expulsions). The undated document in which this subject was discussed was entitled "Possible Approaches to Desegregation Issues After *Dowel and Freeman*."

⁵¹³ *Ibid.*, 43, n. 115.



(d) How the State Board of Education's Proposed 1994 Rule Would Have Enhanced Plaintiffs' Advantage in Litigation against the State of Minnesota

(i) Adequacy Litigation

Not surprisingly, the draft rule that emerged from the State Board of Education's deliberative process was an adequacy plaintiff's dream. If adopted, the rule *would have made elimination of the racial learning gap the new standard* for assessing the adequacy of education under the state's constitution.⁵¹⁴ Under the legal framework it would have created, a court would likely have concluded that a finding for plaintiffs was compelled in adequacy litigation.

The SBE's rule laid the groundwork for an adequacy case in three ways:

- First, it redefined the notion of "equal educational opportunity" by shifting the focus from providing equal academic *opportunities* to engineering equal *results*. The proposed new definition ran as follows:

Equal educational opportunity is fair and equitable access to programs and resources that support equal educational outcomes.... Equal educational outcomes are those educational results that demonstrate equal/equitable progress being achieved across racially and

economically diverse groups of learners (emphasis added).⁵¹⁵

In a report to the State Board of Education, the Roundtable attempted to justify this ground-shifting change. "This is a new definition of 'equal education opportunity,'" it observed, continuing:

Opportunity is no longer the key variable. Results are more important.... Schools must provide opportunities for learning which will result in the attainment of equal education outcomes for all learners.⁵¹⁶

In fact, a court would likely have read the SBE's redefinition as imposing a constitutional obligation on Minnesota schools to close the racial learning gap.

- Second, the Roundtable bolstered this definitional change with an explicit legal requirement that all school districts with 30 or more minority students close the gap on academic performance as well as dropout rates and other measures, or suffer serious penalties. This meant that districts that failed to close the gap would have not only fallen short on a constitutional obligation but also violated a state rule.
- Finally, the rule completed adequacy plaintiffs' wish list by effectively foreclosing the State of Minnesota from defending itself effectively in an adequacy lawsuit. As noted earlier, one of a state's best defenses in such

⁵¹⁴ See "Bridging Gaps & Breaking Barriers," Summary of document on unnumbered page after title page.

⁵¹⁵ Roundtable, "Final Report to State Board of Education and State Legislature," Appendix D, 3. See also Kersten, "Good Intentions Are Not Enough," 49. The SBE's draft rule stated that "equal educational outcomes will be achieved when the gap between learners of color and white learners is not greater than .5 standard deviation in each of the areas identified in this subpart." In 1994, when the State Board of Education proposed the draft rule, the state's operative definition of "equal educational opportunity" was "equal access [for each student] to ... [the] educational programs ... essential to his needs and abilities regardless of racial or socioeconomic background."

⁵¹⁶ Roundtable, "Final Report to State Board of Education and State Legislature," iii. See Kersten, "Good Intentions Are Not Enough," 49.

suits is generally that the state has no legal obligation to end the learning gap, because the gap is caused by socioeconomic factors beyond the schools' control.

However, the State Board of Education's draft rule contained provisions that explicitly required Minnesota schools to close the gap *even if* the gap were caused by poverty-related factors beyond the schools' control. For example, the rule defined "equal educational results" as those demonstrating "equal/equitable progress being achieved across racially and *economically diverse* groups of learners (emphasis added)."⁵¹⁷ Student poverty, so to speak, was no excuse.

The State of South Dakota used the socioeconomic defense effectively in the *Davis* case, arguing that socioeconomic and family characteristics of students play a greater role in academic outcomes than the state's financial investments in education.⁵¹⁸ The State of Connecticut also used this defense in *Sheff v. O'Neill*, as will be discussed below. Yet the State of Minnesota would have been hard-pressed to employ this argument if the State and individual school districts had already voluntarily assumed a duty to achieve equal outcomes among "economically diverse groups of learners."⁵¹⁹

In Fall 1995, attorney Al Lindseth, a nationally prominent defense attorney in desegregation-related cases, confirmed the legal peril in which the State Board of Education's proposed rule would have placed Minnesota. Lindseth told the House Republican Task Force on Student Achievement

and Integration that a new integration rule would likely be treated as a basis for expanded liability against the State of Minnesota. According to the Task Force's November 1995 report,

In the ongoing litigation Lindseth has been involved with in Connecticut (*Sheff v. O'Neill*), that state board of education's rules have been interpreted by the court as both an extension and concrete manifestation of the general commitment to education contained in the state constitution.

For example, if the rule promulgated here requires all schools to close the learning gap, and even a single school fails to accomplish this, a Minnesota court could conceivably find that the state has failed to meet a legal commitment and might perhaps order the Legislature to substantially increase school funding.⁵²⁰

(ii) Redefining "Segregation"

The State Board of Education's proposed rule did not confine its revolutionary changes to shifting the measure of equal educational opportunity from opportunities to results and explicitly requiring school districts to close the gap or face serious penalties. It also radically redefined the notion of racial "segregation."

As explained earlier, federal law does not prohibit racial imbalance; it prohibits racial separation caused by intentional government discrimination.

⁵¹⁷ Roundtable, "Final Report to State Board of Education and State Legislature," Appendix D, 3. See Kersten, "Good Intentions Are Not Enough," 39.

⁵¹⁸ The State also argued that South Dakota students perform quite well, and that there is no relationship nationally between in-state education spending differences and academic achievement.

⁵¹⁹ The State Board of Education's 1994 draft rules stated that "it is the policy of the State Board to prevent the concentration of racial and *socioeconomic segregation* in the schools and to ensure that school districts shall participate in a fair measure to help prevent racial and *socioeconomic segregation* (emphasis added)." Likewise, the Roundtable's proposed learning gap rule required districts to ensure that all racial groups achieve "equal educational results," defined as educational results that demonstrate equal/equitable progress being achieved across racially and economically diverse groups of learners." Roundtable, "Final Report to State Board of Education," Appendix D, 3.

⁵²⁰ "Bridging Gaps & Breaking Barriers," 5.



But the SBE's rule redefined "segregation" as the "intentional or *unintentional* separation" of students of different races "within a school district" or even "a school building."⁵²¹ Thus, the rule would have rendered most Twin Cities metro school districts "segregated," and in violation of the law, by the stroke of a pen.

By defining segregation this way and by imposing mandatory racial ceilings and floors in metro school districts (while describing student involvement as voluntary), the SBE's rule would have created the conditions for court-ordered busing. The 1995 House Task Force report explored this topic, as well:

A mandatory/voluntary plan would make school districts legally liable for meeting certain student enrollment quotas and racial balance requirements. However, the number of students who might volunteer is unknown, which means many schools could conceivably be labeled as non-compliant and subject to penalties because of something that is out of their control....

Given that a poor outcome is virtually guaranteed by this approach, the logical next step after this "failure" would be a lawsuit demanding compulsory involvement by metro students. In fact, Al Lindseth told task force staff he believes legal action might be taken by a plaintiff within the first year of implementation.⁵²²

Lindseth's warning was one reason that the Minnesota Legislature declined to give the SBE

authority to proceed with a rule that included such provisions.

(e) An Apparent Conflict of Interest: The Minneapolis School Board Retains Hogan & Hartson to Investigate a Lawsuit against the State of Minnesota

In December 1994, not long after the State Board of Education Roundtable's final report to the legislature, the Minneapolis School District retained a law firm to investigate the possibility of an education adequacy suit against the State of Minnesota. As noted above, the firm it chose to do this was Hogan & Hartson—the very firm that had advised the Desegregation Roundtable on how to design its proposed "integration" rule.⁵²³

When adequacy litigation was actually filed in 1995, it was brought by the Minneapolis NAACP, not the Minneapolis School District. Had the legislature authorized the SBE's 1994 rule, plaintiffs would have brought suit under rules that advocates of their own position had recently helped to shape.

(f) Today, State-Funded Institutions are Again Proposing Plans that Put the State of Minnesota in Legal Jeopardy

The events of 1994-95 in Minnesota shed light on what is taking place in our state today. Now, as then, state-funded entities—in this case, the MDE, the

⁵²¹ Kersten, "Good Intentions Are Not Enough," iv. The State Board of Education's rule fortified this new definition by declaring that "it is the policy of the State Board to prevent the concentration of racial and socioeconomic segregation in the schools and to ensure that school districts shall participate in a fair measure to help prevent racial and socioeconomic segregation." This is an open-ended standard, impossible to achieve.

⁵²² "Bridging Gaps & Breaking Barriers," 6.

⁵²³ The firm had declared that Minnesota was vulnerable to adequacy litigation in the Winter 1994 issue of an education journal. Paul Minorini, "Recent Developments in School Finance Equity and Educational Adequacy Theory," ERS Spectrum, Winter 1994.

The events of 1994-95 in Minnesota shed light on what is taking place in our state today. Now, as then, state-funded entities are advancing learning gap-related plans that create legal risk.

Integration Council and the Institute on Race and Poverty—are advancing learning gap-related plans that create legal risk. Taken together as a package, these plans would transform the legal landscape in ways that are highly adverse to the State of Minnesota’s interests.

Like the State Board of Education’s 1994 rule, today’s proposals would do this by creating a new standard for measuring whether students are receiving an “adequate” and “equitable” education in Minnesota. Like that rule, they would do so by redefining equal educational opportunity in a way that would make closing the learning gap the central measure of an adequate education. At the same time, like the 1994 rule, they would create obstacles to the State’s use of one of its most potent defenses: the argument that the gap is caused by socioeconomic factors beyond schools’ control.

The MDE’s proposal, as outlined in “Funding Education for the Future,” suggests strongly that the MDE is approaching issues of race, poverty, and education—that is, learning gap-related issues—through the lens of a potential lawsuit.⁵²⁴ In her

introduction to the report, Commissioner Cassellius uses buzzwords with potent legal implications to frame the department’s priorities.

The first MDE priority Cassellius lists is to “improve[e] the adequacy, equity, and stability of pre-K-12 education funding.”⁵²⁵ The report goes on to urge the legislature to adopt “compelling interest” language in connection with both “integration” and “the educational success of children whose families live in poverty.”⁵²⁶

Significantly, if the legislature follows the MDE’s advice, it will effectively answer three questions at the heart of the NAACP’s 1995 education adequacy case against the State of Minnesota—and do so just as plaintiffs in such a case would wish. In fact, in 1996, the district court judge in the NAACP’s case submitted these questions to the Minnesota Supreme Court in anticipation of a trial,⁵²⁷ but the Supreme Court refused to consider them.⁵²⁸

The questions are as follows:

- Does racial or socioeconomic imbalance between school districts’ enrollments violate the Minnesota Constitution?;
- If students in a school district that lacks balance of this kind are not acquiring a minimal level of educational adequacy compared with surrounding districts, does the State have a “duty ... to ensure that such students acquire such an education?;” and
- Where the education of students in a school district “is adversely affected by a disproportionately higher enrollment of low-

⁵²⁴ “Funding Education for the Future,” 11, 17.

⁵²⁵ *Ibid.*

⁵²⁶ *Ibid.*, 17.

⁵²⁷ Maureen Smith, “Court asked to weigh in on 3 issues in NAACP school suit,” *Star Tribune*, Nov. 14, 1996.

⁵²⁸ Orfield, “Choice, Equal Protection, and Metropolitan Integration,” 312-13.

income or minority students, does the State have a “duty ... to take further measures to compensate” for this?⁵²⁹

If the Minnesota Legislature declares that “integration” of state schools and “ensuring the educational success” of low-income children are “compelling interests” under our state’s constitution, it will essentially answer all these questions in the affirmative. This could significantly increase the chance of a plaintiff victory in a future education adequacy case.

(i) How the Integration Council Plan Creates Adequacy Lawsuit Risks

The Integration Council’s proposal—set forth in its January 2011 report “Every Child, Every Day”—is the most detailed learning gap plan in terms of its legal implications. In its report, the council calls for repealing Minnesota’s current voluntary integration rule and replacing it with provisions sketched out in “Every Child, Every Day.”

The Integration Council does not suggest that Minnesota adopt a rule or law requiring school districts to close the learning gap or risk serious penalties. However, it accomplishes this objective indirectly, as the State Board of Education’s rule did, by redefining educational “equity” in a way that requires schools to produce equal educational outcomes by students of all demographic groups.⁵³⁰

If the Integration Council’s proposal is adopted, equal academic performance by all racial and ethnic groups will become the new standard of an adequate education in Minnesota, greatly enhancing the chances of a plaintiff victory in an adequacy lawsuit.

This redefinition shifts the measure of educational equity from equal *opportunities* to equal *results*, as the proposed 1994 rule did. If the Integration Council’s proposal is adopted, equal academic performance by all racial and ethnic groups will become the new standard of an adequate education in Minnesota, greatly enhancing the chances of a plaintiff victory in an adequacy lawsuit.

The Integration Council plan resembles the SBE’s proposed 1994 rule in another respect: It would expand the scope of educational “equity” in Minnesota beyond parity by racial and ethnic groups in academic performance, or test results. The plan would also set a state goal or expectation of equal graduation and dropout rates, as well as “proportional enrollment in college prep classes.” (All Minnesota school districts would be required to submit a plan to the MDE describing how they

⁵²⁹ Smith, “Court asked to weigh in on 3 issues in NAACP school suit.” The questions, as phrased by the district court, were: 1) “Does a disproportionately higher enrollment of low-income or minority students in a school district as compared with surrounding school districts, whether or not intentional, violate the education clause or the equal protection clause of the Minnesota Constitution?;” 2) “Where students in [such a school district] are not acquiring a minimum level of educational adequacy as measured by objective factors (i.e., test scores, graduation rates, higher education enrollment and full-time employment rates), as compared with surrounding school districts, does the state have a duty ... to ensure that such students acquire such an education?;” and 3) “Where the education of students in a school district is adversely affected by a disproportionately higher enrollment of low-income or minority students, does the state have a duty ... to take further measures to compensate for the effects on these children’s education?”

⁵³⁰ “Every Child, Every Day,” 12. The plan defines “equity” as academic “outcomes [that] are not predictable or disproportionate by protected class status”—that is, by race or ethnicity.

intended to achieve “equity” on academic outcomes and at least one other “equity” measure.)⁵³¹ If the plan proposed in “Every Child, Every Day” is adopted, plaintiffs in an adequacy suit could portray districts that fall short on these measures—i.e., all districts—as requiring billions in taxpayer funds to achieve this goal.

The Integration Council’s plan would add to the state’s educational responsibilities in yet another way. It would redefine educational “excellence.” The plan proposes redefining excellence to require the state to “ensure that all students grow to reach their highest levels year after year.”⁵³² This is precisely the kind of vague, open-ended standard—impossible to fulfill—that the Wyoming Supreme Court used to issue a blank check to Wyoming schools in 1995. Though Minnesota law and rule may already include similar open-ended standards, a new one could add substantially to plaintiffs’ legal toolbox in an adequacy lawsuit.

At the same time, the Integration Council’s plan would require the State of Minnesota to “ensure” that “all students” are “college or career-ready as high school graduates.” Plaintiffs in *Lobato v. State of Colorado* portrayed language of this kind as creating an “expansive new concept” that significantly increases the State’s funding obligations. In an adequacy suit in Minnesota, plaintiffs could claim that by adopting such performance measures, the State has assumed responsibility to *ensure* that students achieve these outcomes without providing the necessary additional funding.⁵³³

Beyond all this, the Integration Council plan would provide plaintiffs with additional ammunition, in the form of extensive metrics, benchmarks, and

timetables that the MDE would use to determine whether school districts are achieving “equity” in conformance with state “integration” standards. There is evidence that the Education Equity Organizing Collaborative and other “stakeholder” groups will be involved in designing these measures, in partnership with the MDE. As a result, we can expect the new metrics to include a major emphasis on parity in suspension and detention rates, advanced placement and high rigor classes, and special education. In an educational adequacy lawsuit, plaintiffs would likely argue that school districts’ failure to meet these metrics and timetables warrant major new, court-ordered funding.

(ii) The Integration Council Plan—in Conjunction with the MDE Plan—Would Foreclose a Strong State Defense in an Adequacy Lawsuit

Like the SBE’s 1994 rule, the Integration Council’s plan would make it more difficult for the State to defend an adequacy suit by arguing that the gap springs from poverty-related factors beyond schools’ control.

The key here is the plan’s definition of educational “excellence.” Under the definition of excellence set forth in “Every Child, Every Day,” the State would be obligated to “ensure that *all* students grow to reach their highest levels, year after year”—in other words, regardless of their socioeconomic background.

The MDE’s January 2011 plan would confirm, so far as the state is concerned, that SES must be viewed as

⁵³¹ *Ibid.*, 14. “Proportional enrollment in college prep classes” would be one of four possibilities in addition to the required “equitable academic outcomes.” Other measures include “access to opportunity, intercultural learning, racial balance and strong communities.” *Ibid.*

⁵³² *Ibid.*, 12.

⁵³³ The U.S. Department of Education required the MDE to adopt college- and career-based academic standards to file an NCLB waiver application. However, the Integration Council’s plan goes well beyond this, defining educational “excellence” as requiring the state to “ensure that all students ... are college or career-ready as high school graduates.” “Every Child, Every Day,” 12.

The Integration Council, MDE, and Institute on Race and Poverty learning gap-related plans all provide legal ammunition for a *Sheff*-type lawsuit against the State of Minnesota.

playing no role in students' academic achievement. The MDE plan urges the Minnesota Legislature to declare that "ensuring the educational success" of low-income students is a "compelling" state interest—that is, an interest of the highest order, with constitutional implications. A court might well interpret this provision as requiring the State to close the learning gap, even if the gap is caused by poverty-related factors.

(iii) The Plans Greatly Enhance the State of Minnesota's Exposure to an Adequacy Lawsuit Seeking a Race-Based Busing Remedy

As explained earlier, an education adequacy lawsuit seeking billions of dollars in additional K-12 funding is not the only kind of court action available to plaintiffs intent on bringing learning gap-related litigation against the State of Minnesota. Plaintiffs could also pursue a "desegregation" remedy on grounds that the learning gap is a result of lack of racial balance in public schools.

Plaintiffs have sought and won a race-based busing remedy of this kind in only one major case: *Sheff v. O'Neill* in Connecticut.⁵³⁴ *Sheff* is now one of the longest-running lawsuits in Connecticut's history. In Minnesota, plaintiffs could combine a suit of this kind with an adequacy suit seeking greater taxpayer funding for schools. This is the path the Minneapolis NAACP chose in 1995.

While attorney Michael Ciresi has raised the prospect of a funding-oriented education adequacy lawsuit in Minnesota, Myron Orfield has praised the *Sheff* plaintiffs' metro-wide "desegregation" strategy. In 2009, in *Region: Planning the Future of the Twin Cities*, Orfield and his co-authors held up *Sheff* as a model for our state, declaring that "*Sheff's* success may be replicable in Minnesota."⁵³⁵ In 2006, Orfield opined that the Connecticut Supreme Court's "sweeping opinion declaring segregated schooling to be an inherently inadequate education provides the best example of what desegregation litigation can achieve if vigorously pursued."⁵³⁶

In December 2011, attorney Dan Shulman, who represented the Minneapolis NAACP in its 1995 education adequacy suit against the State of Minnesota, told the Integration Revenue Replacement Advisory Task Force that he planned to seek a metro-wide busing remedy in adequacy litigation as soon as he found plaintiffs. Shulman described attorney John Brittain, one of the original counsel for the *Sheff* plaintiffs, as a "hero" and the model for his work in this respect.⁵³⁷

The Integration Council, MDE, and Institute on Race and Poverty learning gap-related plans all provide legal ammunition for a *Sheff*-type lawsuit

⁵³⁴ *Sheff v. O'Neill*, 678 A.2d 1267 (Conn. 1996).

⁵³⁵ Orfield and Luce, *Region*, 143.

⁵³⁶ Orfield, "Choice, Equal Protection, and Metropolitan Integration," 327. Orfield goes on to say that "*Sheff* obliterates the distinction between intentional state action to segregate schools and the de facto segregation that already exists in housing and schooling." *Ibid.*, 330 (citation omitted). "Any lawsuit brought to desegregate a school district should be tailored in such a way as to take advantage of the theories in *Sheff* in the hope that it will convince more courts to take a hard look at de facto segregation." *Ibid.*

⁵³⁷ Audio recording of proceedings of the Integration Revenue Replacement Advisory Task Force, Dec. 20, 2011.

against the State of Minnesota. The *Sheff* litigation and its outcome will be described below. Then the way these plans would lay the groundwork for such litigation will be further analyzed.

The Only Successful Case of Its Kind: Connecticut's *Sheff v. O'Neill*

In *Sheff*, filed in 1989, plaintiffs argued that the racial learning gap in Hartford schools was caused by racial imbalance between Hartford and surrounding suburban districts. As a remedy, they asked the court to impose metro-wide racial quotas or to order a merger of city and suburban school districts. In response, the State of Connecticut argued that the gap was caused by poverty- and family-related circumstances and denied responsibility for the learning gap.

Seven years later, in 1996, the Connecticut Supreme Court agreed with plaintiffs that city/suburban racial separation caused the learning gap. Rather than crafting a remedy itself, the Court ordered the Connecticut legislature to create a racial balance plan.

Sheff Has Created Serious Problems in Connecticut

The outcome of *Sheff* is worth exploring in detail, because it provides a preview of what Minnesota could face if plaintiffs are successful in winning an adequacy lawsuit with a “desegregation” remedy in

our state. It also sheds light on how cross-district busing plans like those proposed by the Integration Council and the Institute on Race and Poverty would play out in reality, if the Minnesota Legislature chooses to authorize such an arrangement.

In Connecticut, *Sheff's* “desegregation” remedy has proven extremely costly and has created friction and animosity across the Hartford metro area. Ironically, the Hartford school district is now actively working against the racial balance remedy that was originally intended to benefit its students.

A December 8, 2010, Connecticut news headline captures the problem: More than 20 years after *Sheff* was filed, “The state is still falling far short of compliance with a court order to reduce the racial isolation of Hartford’s largely black and Hispanic school population, and advocates say drastic changes will be needed to avoid further legal action.”⁵³⁸

Worse yet, *Sheff's* race-based busing plan has failed to produce any meaningful improvement in the academic performance of Hartford’s poor, minority students.⁵³⁹ In 2010, despite a massive, decade-long additional investment of state funds, only 43 percent of Hartford’s K-8 students were proficient in reading, and only 57 percent were proficient in math.⁵⁴⁰ Meanwhile, all-minority charter schools like Hartford’s Jumoke Academy (pre-K-8) are among the region’s highest-performing schools in terms of achievement gains by poor, minority children.⁵⁴¹

⁵³⁸ Jacqueline Rabe, “Officials: Efforts to reduce racial isolation need overhaul,” *Connecticut Mirror*, December 8, 2010.

⁵³⁹ The magnet schools run by the Capitol Region Education Council claim that the academic performance of their black and Hispanic students has improved. However, this may be due in large part to self-selection by the minority students who choose these schools. (This appears to be the view of Hartford school officials.) In addition, some improvement could be the result of higher expectations and more rigorous coursework in the magnet schools in question. Meanwhile, all-minority charter schools are among the most successful schools in the Hartford area. See Fionnula Darby Hudgens and Mary Morr, “Success within Segregation: Jumoke Academy Exposes the Limits of Integration as an Educational Benchmark,” The Cities, Suburbs & Schools Project, Trinity College in Hartford, Connecticut, Nov. 30, 2011, available at <http://commons.trincoll.edu/cssp/2011/11/30/success-within-segregation/>.

⁵⁴⁰ Robert Frahm, “Despite protests, Hartford won’t abandon ad campaign for schools,” *Connecticut Mirror*, May 2, 2011.

⁵⁴¹ Hudgens and Morr, “Success within Segregation: Jumoke Academy Exposes the Limits of Integration as an Educational Benchmark.”



Sheff's Race-Based Busing Remedy: How It Works (or Doesn't)

The Connecticut Legislature responded to the *Sheff* court's 1996 order by crafting a two-part "desegregation" remedy for the greater Hartford area.⁵⁴² The remedy included two major components: a new system of magnet schools and an "Open Choice" program that provides Hartford students with busing transportation to suburban schools. The plan's major focus was regional magnet schools; since 1996, the state has spent about \$2 billion on approximately 24 specialty magnets, which were designed to attract a racially diverse student population.⁵⁴³ A magnet school must have at least 25 percent white students to retain its funding.⁵⁴⁴

As part of its plan, the legislature set escalating racial balance targets for schools over a period of years. For 2010, the goal was that 35 percent of Hartford minority students would attend "integrated" magnet, charter, suburban, or other schools. By 2012, 41 percent of minority students are to be attending integrated schools, or else the state must

provide 80 percent of students who want to leave their neighborhood schools with the chance to do so.⁵⁴⁵

Yet today, racial balance targets are far from being met. In November 2011, only about 32 percent of Hartford's minority students were attending integrated magnets, charter, or suburban schools.⁵⁴⁶ Only 67 percent of students who wish to leave their home schools have the opportunity to do so.⁵⁴⁷ Hartford's regular public schools remain as racially isolated as they were 20 years ago.⁵⁴⁸

The Connecticut Legislature has recently refused to build more magnet schools to address the racial balance shortfall, citing multi-billion-dollar deficits. "We have received as much benefit as we are going to get from building magnet schools," said Senator Thomas Gaffey, the Democratic chairman of the legislature's Education Committee, in 2010. "We are not going to build our way into compliance."⁵⁴⁹

"It's a very complicated problem to untangle," Education Commissioner Mark McQuillan told the Hartford School Board in December 2010. "This

⁵⁴² *Sheff* has a tangled history. After the Connecticut Supreme Court's ruling, the state legislature passed a 1997 act that promoted voluntary racial balancing. This included the creation of magnet and charter schools, along with a requirement that the state Department of Education devise a five-year plan to reduce inequalities between school districts. In 1998, the *Sheff* plaintiffs sought a court order to require the state to comply with the Supreme Court order. In 2003, a settlement was approved. Its goals included having 30 percent of Hartford's minority students in racially balanced schools as of 2007. In 2007, the settlement expired without the achievement of this racial balance goal. At that time, an independent report determined that just nine percent of Hartford's minority students were attending less racially isolated schools. Plaintiffs returned to court, and in 2008 a second settlement was reached. This agreement provided for the construction of new magnet schools in Hartford suburbs, as well as increasing the number of Hartford students in suburban schools. See http://en.wikipedia.org/wiki/Sheff_v._O'Neill. However, the U.S. Supreme Court's 2007 *Parents Involved* decision calls into question whether such a plan would pass constitutional muster today, even if ordered by a state court.

⁵⁴³ Robert Frahm, "School desegregation," *Connecticut Mirror*, Jan. 22, 2010. According to the *Mirror*, "One result of the *Sheff* ruling was the proliferation of magnet schools across the state. With the help of state construction funds, cities such as Hartford and New Haven built or renovated many schools by creating new magnets. The state has approved nearly \$2 billion for construction of magnet schools since the *Sheff* case was filed. Fifteen years ago, Connecticut spent \$5.7 million to run eight magnet schools enrolling about 1,500 students. Last year, more than 20,000 children attended 60 magnet schools in Connecticut at a cost of nearly \$126 million in state funds."

⁵⁴⁴ Robert Frahm, "New federal rule complicates desegregation efforts," *Connecticut Mirror*, Sept. 7, 2010.

⁵⁴⁵ Rabe, "Officials: Efforts to reduce racial isolation need overhaul."

⁵⁴⁶ Frahm, "Ads urging parents to keep children in Hartford schools anger *Sheff* lawyer," *Connecticut Mirror*, April 29, 2011.

⁵⁴⁷ Jacqueline Rabe Thomas, "With deadline looming, state still far from finish line on integrating Hartford schools," *Connecticut Mirror*, Nov. 21, 2011. See also Rabe, "Officials: Efforts to reduce racial isolation need overhaul."

⁵⁴⁸ Frahm, "School desegregation."

⁵⁴⁹ Rabe, "Officials: Efforts to reduce racial isolation need overhaul."

In Hartford, “funding for magnets is based on a dizzying hodgepodge of financial arrangements that perplex educators, pit towns against one another, and stir a chorus of protest.”

could rest with the Supreme Court deciding what we have to do.... A court-ordered solution might not render the best set of solutions.”⁵⁵⁰

Shortcomings of Magnets

The magnet schools at the heart of the *Sheff* remedy have proven to be both extremely expensive and highly controversial. According to news reports, their cost “has pushed state and local education budgets to the brink.”⁵⁵¹

In January 2010, the *Connecticut Mirror* summarized the problem this way:

Funding for magnets is based on a dizzying hodgepodge of financial arrangements that perplex educators, pit towns against one

another, and stir a chorus of protest. Some magnets charge tuition to the hometowns of non-resident students while others do not. In some cases, the state pays two different school districts for the same students. Under pressure to comply with the *Sheff* order, the state pays larger subsidies to Hartford-area magnets than to magnets outside the region.⁵⁵²

“The whole system is broken,” says state Education Commissioner Mark McQuillan.⁵⁵³

Magnet school funding formulas are so numerous and complex that even many educators don’t understand them.⁵⁵⁴ Because Hartford area suburban school districts cannot control tuition or limit the number of their students who opt for magnets, the schools are “potential financial money pits,” according to David Title, superintendent of schools in suburban Bloomfield.⁵⁵⁵ For example, a student from suburban New Britain who attends Hartford’s Classical Magnet costs the state \$12,000 in magnet subsidies and \$1,400 in busing costs, and also counts for \$6,733 in New Britain’s state aid formula for a total of more than \$20,000.⁵⁵⁶ Hartford’s former school superintendent, Steven Adamowski, has called double payment to two districts for the same student “terribly bad public policy.”⁵⁵⁷

⁵⁵⁰ *Ibid.* The State of Connecticut is now considering the creation of new racially balanced charter schools to help achieve compliance with *Sheff*’s racial targets. Jacqueline Rabe Thomas, “Backers say charter schools could help state reach integration goals,” *Connecticut Mirror*, Oct. 28, 2011. Currently, charters are not required to conform to racial quotas. There are now three charters in the *Sheff* region with no obligation to be racially balanced: 99 percent of their students are minorities. They have “admirable achievement records,” according to the *Connecticut Mirror*.

⁵⁵¹ Robert Frahm, “Magnet school costs strain state, local budgets,” *Connecticut Mirror*, Jan. 26, 2010.

⁵⁵² According to the *Connecticut Mirror*, “Adding to the cost of magnets is a provision that requires the state to pay twice for many magnet students. In addition to paying a subsidy to the magnet schools, the state continues to count magnet students in the formula for state aid to local districts even though they no longer attend their hometown schools. State school aid can range from a few hundred dollars per student in wealthier suburbs to thousands of dollars per student in the state’s poorest cities.”

⁵⁵³ *Ibid.*

⁵⁵⁴ *Ibid.* For example, magnets run by Hartford’s school system operate under the city school district budget but get a \$12,000 stipend from the state for each suburban student they enroll. Another system of magnets gets \$9,695 per student from the state but can charge tuition to local districts to make up the remaining cost of running the schools. With state funds limited, tuition at many of those schools rose sharply in 2009, ranging from \$2,517 to \$4,950 per student.

⁵⁵⁵ *Ibid.*

⁵⁵⁶ *Ibid.*

⁵⁵⁷ *Ibid.*



Problems with Metro-wide Transportation

Given the shortage of magnet school spaces, if the state is to achieve the *Sheff* settlement's racial goals, "Hartford enrollment in the suburbs must explode," according to the *Connecticut Mirror*.⁵⁵⁸ However, suburban districts have resisted accepting more Hartford students, citing space problems or insufficient financial reimbursements from the state.⁵⁵⁹ In 2010, the Connecticut State Board of Education proposed incentivizing suburban schools to accept more Hartford students by raising reimbursement from \$2,500 per student to \$6,000 per student,⁵⁶⁰ and in 2011, the change was approved.⁵⁶¹

Yet Hartford students who transfer to suburban schools often face significant obstacles, including transportation barriers. "Some of our [Hartford] students aren't getting here until 10:00 a.m.," one suburban administrator in Newington told the *Connecticut Mirror* in November 2011. "That's a problem," he added, because many of these students—25 in number—are significantly behind their peers academically. "Missing school is not helping them catch up."⁵⁶²

The State is now paying for a bus for the Newington students but is unable to do so in districts like Windsor, which only has five Hartford students. Transportation for city students who want to participate in after-school activities is also a problem.⁵⁶³

The greatest irony of *Sheff* may be that the Hartford school district itself is now strenuously resisting the plan's suburban busing component.

The greatest irony of *Sheff* may be that the Hartford school district itself is now strenuously resisting the plan's suburban busing component. If Hartford is required to send more students to the suburbs, it will likely have to close six or seven schools and lay off hundreds of teachers and staff, Hartford's then-superintendent Steven Adamowski said in December 2010.⁵⁶⁴

Ada Miranda, chairwoman of Hartford's school board, explained the district's objections to sending more minority students to the suburbs:

It works against what we are trying to accomplish.... Why does Hartford have to lose kids?... Parents seem to like having more opportunities, but the dilemma is, we want to keep our kids.⁵⁶⁵

In April 2011, the Hartford Public Schools launched a television, radio, and print advertising campaign urging parents not to participate in a lottery for seats

⁵⁵⁸ *Ibid.* In 2010, 1,300 Hartford students were enrolled in suburban magnet schools, compared to the nearly 4,200 city minority students enrolled in magnet schools. "To comply with the court order, 3,500 additional students need to be enrolled in an integrated school, either in Hartford or a nearby district by October 2012. But increasing enrollment in magnet schools cannot be a solution without building new schools. There are 14,500 students on wait lists to enroll in Hartford's 12 magnet schools right now, Hartford Superintendent Steven Adamowski said." *Ibid.*

⁵⁵⁹ *Ibid.*

⁵⁶⁰ *Ibid.*

⁵⁶¹ Hudgens and Morr, "Success within Segregation: Jumoke Academy Exposes the Limits of Integration as an Educational Benchmark."

⁵⁶² Jacqueline Rabe Thomas, "Increased reimbursements pay off in getting state closer to desegregating Hartford schools," *Connecticut Mirror*, Nov. 24, 2011.

⁵⁶³ *Ibid.*

⁵⁶⁴ *Ibid.*

⁵⁶⁵ *Ibid.*

in suburban or regional magnet schools for their children.⁵⁶⁶ The ads encouraged parents to choose one of Hartford’s restructured elementary and middle schools or its career-oriented high schools. Lawyers for the *Sheff* plaintiffs objected loudly. “It’s really, from our perspective, just outrageous,” attorney Martha Stone told the *Connecticut Mirror*. “It’s really disturbing to see the Hartford school system try to discourage parents and kids from exercising their constitutional right to an equal educational opportunity.”

In the words of one Hartford district administrator, “What [Hartford parents] really want is what every parent in America wants, which is a good school in their own neighborhood.”⁵⁶⁷

(iv) How a New Federal Rule Adds to the Confusion

In 2010, a new federal rule created additional difficulties for education officials monitoring the *Sheff* remedy. The rule allows students to identify themselves using multiple racial and ethnic categories—for example, to check boxes on application forms and elsewhere that identify them as both “white” and “Hispanic” or both “white” and “black.”⁵⁶⁸

The rule threatens to up-end *Sheff*’s already byzantine race-based school choice system. Its provisions greatly increase the difficulty education officials face in determining whether magnet schools, which must be at least 25 percent white to keep their funding, meet racial balance requirements. Here’s the problem as it applies to one school, Classical

Magnet in Hartford. According to the *Connecticut Mirror*:

On the surface, Classical looks like it’s a diverse school,” [said one school administrator]. But depending on how strictly or loosely the state categorizes students, Classical’s white population could be as low as 21 percent or as high as 44 percent, he said....

If Classical—hailed as a model in the regional desegregation effort—were to fall below the required quota of white students, it could lose up to \$4 million in state magnet school grants and be forced to send suburban students ... back to schools in their hometowns.... The state could wind up back in court if it fails to meet the standards established in the settlement.⁵⁶⁹

The new rule “is going to produce all kinds of chaos,” Gary Orfield, co-director of the Civil Rights Project at UCLA, told the *Connecticut Mirror*. “This is just one of the examples,” he added. “It’s going to make data impossible to compare.... It’s a terrible mistake.”⁵⁷⁰

(v) After *Sheff*: Yet Another Adequacy Lawsuit

Astonishingly, despite the billions spent in the 16 years since the *Sheff* court order, plaintiffs in Connecticut continue to insist that the state’s children are not receiving an adequate education

⁵⁶⁶ Frahm, “Ads urging parents to keep children in Hartford schools anger *Sheff* lawyer.”

⁵⁶⁷ *Ibid.* In November 2011, the Hartford school system launched its latest pro-Hartford advertisements. They take a less aggressive approach, in response to the push-back the district received from its initial marketing campaign. According to the *Connecticut Mirror*, the campaign now has a more “upbeat message.” Vanessa de la Torre, “In Hartford Schools’ Marketing Campaign, a Softer, ‘Positive’ Approach,” *Hartford Courant*, Nov. 22, 2011.

⁵⁶⁸ Frahm, “New federal rule complicates desegregation efforts,” *Connecticut Mirror*, Sept. 7, 2010.

⁵⁶⁹ *Ibid.*

⁵⁷⁰ *Ibid.*

and that schools remain seriously underfunded. In March 2010, the state’s Supreme Court bought this argument.

The court ruled that Connecticut schoolchildren are guaranteed an “adequate” education and handed what was called a “crucial legal victory” to a coalition seeking to force “a dramatic increase in state spending on education.”⁵⁷¹ Plaintiffs in the lawsuit claim that the state has failed to sufficiently fund its lowest-performing schools. They allege that this limits students’ ability to take full advantage of college education or to find meaningful employment.

The costly and chaotic outcome of *Sheff* in Connecticut illustrates what Minnesotans could expect from a metro-wide, race-based busing plan.

The court based its decision, in part, on constitutional guarantees established in *Sheff v. O’Neill*.⁵⁷² The case will now revert to the trial court to determine whether the state’s educational resources and standards have, in fact, provided public school students with constitutionally suitable educational opportunities.⁵⁷³

How the Minnesota Plans Increase the Risk of a State Court-Ordered, Race-Based Busing Remedy

The costly and chaotic outcome of *Sheff* in Connecticut illustrates what Minnesotans could expect from a metro-wide, race-based busing plan.

Hartford’s race-based school choice model relies heavily on magnet schools and an open enrollment program that provides bus transportation for city students attending school in the suburbs, and vice versa. The Institute on Race and Poverty and Integration Council plans for “integrating” Twin Cities schools are structured along the same lines. Unfortunately, the *Sheff* plan has not led to substantial academic achievement gains for Hartford’s minority students, nor has it produced racial balance as expected.

The MDE, Integration Council, and Institute on Race and Poverty plans could all enhance the chances of a plaintiff victory in a *Sheff*-type adequacy suit that sought court-ordered racial balance in the Twin Cities metro area. All three plans urge the Minnesota Legislature to declare “integration”—the physical movement of students for purposes of racial balance—to be a “compelling” state interest. Moreover, the Institute on Race and Poverty plan would apparently institute a racial ceiling and floor for every metro-area school district, as the State Board of Education’s proposed 1994 rule would have done.

⁵⁷¹ Robert Frahm, “Supreme Court clears the way for lawsuit to require state funding to ensure ‘adequate’ public school education,” *Connecticut Mirror*, March 22, 2010.

⁵⁷² *Ibid.* For example, plaintiffs allege “serious inequities among public schools in areas such as preschool classes, libraries, technology, hours of instruction, class size, textbooks, special education programs and curriculum.” They cite examples such as Lincoln Elementary School in New Britain, where 50 percent of kindergarten students attended preschool programs, compared with 76 percent statewide.

⁵⁷³ http://www.schoolfunding.info/states/ct/lit_ct.php3.

It's not clear, however, how a state court would approach the issues raised by such a case after the U.S. Supreme Court's decision in *Parents Involved*, which largely foreclosed quota- or "ceiling and floor"-based school assignment plans. If Minnesota plaintiffs bring a *Sheff*-type lawsuit, they will in essence be asking a state court to create rights under the Minnesota Constitution that exceed those guaranteed by the U.S. Constitution. That is, they

would be arguing that even if Minnesota schools pass federal constitutional muster in terms of racial balance, they don't pass state constitutional muster. The good news is it is difficult to imagine a federal court deferring to a race-based remedy growing out of such a lawsuit, if plaintiffs were to win a state court-ordered busing plan and it was subsequently challenged in federal court.



CHAPTER VIII

HOW THE “WHITE PRIVILEGE” MOVEMENT IN MINNESOTA WORKS AGAINST SUCCESSFULLY ADDRESSING THE LEARNING GAP

In order to improve minority achievement and reduce the learning gap, we must correctly understand the gap’s sources. Armed with this knowledge, we can design responses to the problem that are likely to be most effective.

The primary causes of the learning gap are socioeconomic and family risk factors that leave many poor/minority students deficient in the skills and knowledge required for academic success. These factors include one- (or no-) parent families, low parental education and job status, and poor parental nurturance behavior. As noted earlier, the learning gap is present long before children enter school, and problems associated with it are evident by the time they reach three years old.

In the face of powerful social science evidence about the family-related sources of the gap, why do so many education policymakers continue to focus on racial balance in the schools as the key to improving minority academic achievement?

The answer may be this: Many education officials view institutional white racism, not family risk factors, as the gap’s primary cause. As a result, they seem predisposed to believe the gap will shrink only if *white* people change their behavior.

The view that “white privilege” and teacher bias are a primary cause of the gap is widespread in Minnesota. Its influence is not confined to the state-level education institutions and learning gap-related plans discussed in this report, but increasingly pervades school districts and individual schools. In the Twin Cities metro area, district administrators are spending thousands of dollars each year to convince teachers that their own racist practices and beliefs are to blame for the racial and ethnic learning gap. In some districts, teachers are required to participate in school-sponsored activities that inculcate this ideological position.

The Pacific Educational Group (PEG)—a California-based “diversity” organization—has played a central role in promoting the notion that schools and teachers cause the gap in Minnesota. PEG’s mission is to address “systemic issues of educational inequity by providing guidance to districts as to how to meet the needs of underserved student of color populations.”⁵⁷⁴ In recent years, at least 16 Minnesota districts have retained PEG as a learning gap consultant.⁵⁷⁵ Minnesota school districts have spent at least \$1.85 million dollars on PEG’s services, according to information compiled by Sheila Kihne, an Eden Prairie educational commentator who has studied the organization and its operations in Minnesota.⁵⁷⁶

⁵⁷⁴ Pacific Educational Group, “Who We Are,” available on-line at <http://www.pacificeducationalgroup.com/pages/about>.

⁵⁷⁵ Sarah Lemagie, “Tackling achievement gap getting more focus in south metro,” *Star Tribune*, March 1, 2009.

⁵⁷⁶ <http://www.theactivistnextdoor.com/component/content/article/2-uncategorised/355-185-million-spent-on-pacific-educational-group-why-minnesotas-integration-funding-needs-reform-now.html>. According to Kihne, this figure includes contracts with PEG that districts were under as of April 2011.



Many education officials view institutional white racism, not family risk factors, as the gap's primary cause. As a result, they seem predisposed to believe the gap will shrink only if *white* people change their behavior.

A. The Pacific Educational Group's Ideology

The Pacific Educational Group's founder and executive director is Glenn Singleton. Singleton's ideology is summed up in his 2006 book, *Courageous Conversations about Race*, which he co-authored with Curtis Linton.⁵⁷⁷ "It is our belief that the most devastating factor contributing to the lowered achievement of students of color is institutionalized racism," Singleton and Linton wrote in *Courageous Conversations*.

Singleton asserts that, in order for minority students' academic performance to improve, white educators must confront and overcome their own presumed racism. In other words, they must learn to recognize how they and their schools help to create and perpetuate the gap through their behavior to non-white students. School districts pay Singleton to help teachers do this by using PEG's "Framework for Systemic Equity/Anti-Racism Transformation." Singleton maintains that white teachers (and minority teachers under their sway) harm and

undermine black and Hispanic (or "brown") students because they fail to understand their cultures and are insensitive to the ways in which racial oppression poisons these students' lives. In addition, he says, teachers use curricula and teaching methods designed for white students and know little about the unique communication styles of "Black and Brown" children.

According to Singleton, white people and "people of color" have very different cultures. He claims that "White individualism" fosters "independence" and "individual achievement," and promotes "self-expression," "personal choice," "upward mobility" and "private property." In contrast, "color group collectivism" fosters interdependence, respect for authority, group consensus, "hierarchical roles," and a belief in "shared property" and "group ownership."⁵⁷⁸

These cultural differences give rise to "White Talk" and "Color Commentary," according to Singleton. "White Talk" is "characterized by loud, authoritative, and interrupted speech," where "value is placed on expressing oneself and controlling the conversation." "Black and Brown" people, on the other hand, communicate "nonverbally." Their speech is "characterized by silent respect," and "communication takes place through body motions and other nonverbal expression" such as "sighs" and "rolling of the eyes."⁵⁷⁹

Whites are "intellectual," according to Singleton. Their "dialogue is abstract," and they are capable of "quantitative analysis." Black and Brown people, in contrast, are "emotional." They are more interested than white people in "qualitative analysis and feelings." Whites are "task-oriented;" they have a "need 'to do' something and to find solutions,"

⁵⁷⁷ Glenn Singleton and Curtis Linton, *Courageous Conversations about Race: A Field Guide for Achieving Equity in Schools* (Corwin Press: Thousand Oaks, CA: 2006.)

⁵⁷⁸ *Ibid.*, 191.

⁵⁷⁹ *Ibid.*, 121, 123.

whereas Black and Brown people are “process oriented,” and “organized around the need ‘to be’ respected, validated, and affirmed.”⁵⁸⁰

Singleton believes that if minority children are to succeed in American schools, white educators must accommodate “Black and Brown” culture. Paradoxically, his simpleminded views on racial and ethnic differences recall the crude stereotypes that mainstream American society abandoned decades ago.

B. The Pacific Educational Group’s Model White Educator

Singleton provides educators with a model of a “White anti-racist leader” in his book’s closing chapter, which is entitled “Using Courageous Conversations to Achieve Equity in Schools.” This ideal white educator is Graig Meyer, a “district equity coach” in Chapel Hill, North Carolina. According to Singleton, Meyer has attained the sort of “racial consciousness” that the Pacific Educational Group seeks to inculcate in white teachers who study its methods. In fact, Meyer’s “self-examination” is “at the heart” of his effectiveness in his school district, according to Singleton.⁵⁸¹

Here is how Meyer describes his newly heightened racial awareness and its benefits following his exposure to PEG’s worldview:

The truly difficult work is looking deep within myself to recognize where my own reservoirs of Whiteness reside.... My White guilt tends to creep up most when I’m forced to reflect on the power I wield....

Although I often try to seek counsel of colleagues of color, it is inevitable that times arise where it’s only after the fact that one of

them points out the flaws in my reasoning. The flaws are often the result of my own ingrained Whiteness and my own blindness to its perpetual presence....

I can’t help feeling a strong desire ... to do enough to become the “good White guy.” Ultimately, it’s probably the deepest vestige of my own White supremacy that feeds this need to know it all, to be right, and to be in charge.... Perhaps I can’t fully suppress all the Whiteness within me, and maybe that’s for the better. The process is the task, the journey has no end, and I will always be White.⁵⁸²

Many Minnesotans would likely see these words not as those of an effective educator but as symptoms of self-loathing and the lack of a capacity for rational thought. The promotion of self-loathing and confusion of this kind in Minnesota schools may help explain why ideological presumptions often seem to trump hard data in complex decisions about how best to improve minority achievement.

C. How Does the Pacific Educational Group’s Ideology Play Out in Minnesota School Districts?

(1) In Eden Prairie

Eden Prairie is one Minnesota school district that relies heavily on the Pacific Educational Group’s counsel and materials in its “racial equity” work. Former Superintendent Melissa Krull, who brought income-based busing to Eden Prairie, is a strong proponent of PEG. On her watch, the district spent more than \$195,000 on PEG’s services and used state

⁵⁸⁰ *Ibid.*, 123.

⁵⁸¹ *Ibid.*, 240-242.

⁵⁸² *Ibid.*, 240-41.



integration funds to pay for programs and activities aligned with its goals and philosophy, according to information compiled by Sheila Kihne.⁵⁸³

The Pacific Educational Group’s agenda of “racial equity” and “cultural competency” has made its way into Eden Prairie classrooms in a variety of forms. For example, in 2009-10, the district spent \$31,000⁵⁸⁴ in taxpayer-provided integration funds on what was described as an “Underground Railroad simulation” for ninth graders and, subsequently, for fifth graders at Oak Point School. Here’s how the *Eden Prairie Sun* newspaper described the “simulation”:

Ninth graders were taken from their classroom last week, chained together and driven blindfolded across Valley View Road into Round Lake Park, where the blindfolds were removed and the students unchained. Once free, the students were chased back to the school by angry men who wanted to put their chains back on....

The blindfold and the chains were part of a simulation of the Underground Railroad, and the angry men were actors from Crossroads Panorama.... The simulation teaches “not just tolerance of other students ... but appreciation of their humanity,” said Ed Irwin, one of the actors working with the students....

“Some kids got really emotional right away and felt that cultural empathy. I think they were very open to it,” [Maia Caldwell, a history teacher] said....

As part of the simulation, each student was given an identity. They were asked to write down the things in their life that are most important to them, things like family, God, and love. When they had finished, the men playing the slave catchers took those things away.⁵⁸⁵

The *Eden Prairie Sun* described the Underground Railroad simulation as “a learning experience.” In response, Kihne wrote, “A learning experience? At universities all over the country, this would be considered an extreme hazing incident.”⁵⁸⁶ In checking with Eden Prairie school district officials about what she termed “this psychological abuse,” Kihne learned that the district did not send permission slips to parents to obtain approval for their children’s participation in this activity.⁵⁸⁷

Normally, “teachers are not allowed to touch students; they can be sued if they grab a student or intimidate them in any way,” wrote Kihne. She added:

Yet paid professional actors ... are allowed to do all of these things and more, and they

⁵⁸³ <http://www.theactivistnextdoor.com/component/content/article/2-uncategorised/355-185-million-spent-on-pacific-educational-group-why-minnesotas-integration-funding-needs-reform-now.html>. In April 2011, Kihne wrote, “Eden Prairie Schools has spent a total of \$141,932 and is under contract to spend an additional \$53,500 by this June bringing the total amount spent to \$195,432.” This figure includes \$8,686 spent to send Eden Prairie staff to a PEG conference in 2009. According to Kihne, the district has spent more than \$195,000 if the cost of sending staff to PEG conferences (including those in 2010 and 2011) is included.

⁵⁸⁴ <http://www.theactivistnextdoor.com/9-blog/blog/161-eden-prairie-schools-pays-acting-troupe-30000-for-qunderground-railroad-simulationq.html>.

⁵⁸⁵ Chris Olwell, “Experiential learning teaches students empathy,” *Eden Prairie Sun*, Nov. 26, 2009.

⁵⁸⁶ Sheila Kihne, “Eden Prairie 9th Graders Hazed to Teach History,” <http://www.looktruenorth.com/family/education/10426-eden-prairie-9th-graders-hazed-to-teach-history.html>.

⁵⁸⁷ <http://theactivistnextdoor.com/component/content/article/9-blog/blog/137-no-permission-slips-needed-to-tie-up-your-kid.html>. The district merely sent home a note telling parents that their child would be participating in a simulation of the Underground Railroad; that it would be “as true to history as possible;” and that it might evoke strong emotions. The note mentioned that parents might want to discuss the experience with their child, and that students should bring appropriate clothing. Parental permission to blindfold, chain and chase students was not requested.

don't even need a permission slip to do it. You see, as long as it's in the name of "diversity" the schools can do anything they want to do. So, who pays the bill, should a parent decide to sue the district? Oh, that's right ... the taxpayers.⁵⁸⁸

(2) In Other School Districts

The Pacific Educational Group wields great influence in Minnesota school districts. In fact, PEG appears to be the source of the idiosyncratic definition of "equity"—i.e., lack of racial "predictability" in educational outcomes—that the Integration Council uses in its learning gap-related proposal to change the state's integration rule.⁵⁸⁹

Hundreds of Minnesota teachers have attended PEG's workshops and training activities.⁵⁹⁰ As of January 2011, the West Metro Educational Program had spent more than \$600,000 on PEG's services, according to information compiled by Kihne.⁵⁹¹ Indeed, the West Metro Education Program's October 2011 Strategic Plan points out there is a perception among Minnesota educators that "Cultural Collaborative" staff development—a centerpiece of many districts' efforts to reduce the learning gap—is "largely dominated by PEG."⁵⁹²

School districts that have used the Pacific Educational Group's services include Hopkins,

Minneapolis, St. Louis Park, Richfield, Columbia Heights, Edina, Robbinsdale, Farmington, Rosemount/AppleValley/Eagan, St. Paul, and Rochester.⁵⁹³ Other educational entities also purvey ideas consistent with the organization's philosophy. For example, one of the top priorities of the East Metro Integration District is to "create and sustain rigorous curricula within EMID schools and programs that raise awareness about culture, race, racism, and white privilege...."⁵⁹⁴

Minnesota educators also appear to be regular presenters at PEG's national conferences. For example, in October 2009, educators from Eden Prairie, Hopkins, Edina, St. Louis Park and WMEP were listed as speaking or leading sessions at PEG's "Summit for Courageous Conversations" at the Hyatt Regency Hotel in Baltimore.⁵⁹⁵ There, Melissa Krull and Eden Prairie school board member Jill Scholtz presided over a session called "Stepping Out Front—Opening the Door for Results to Follow," in which they outlined how, inspired by Singleton's vision, they had used school board "governance and policy values to lead a district's efforts to eliminate institutional racism and remove systemic educational disparities."⁵⁹⁶

The keynote speakers at the event exemplified the outside-the-mainstream ideology of Singleton and his supporters. One such speaker was Antonia Darder, who describes herself as a "radical educator"

⁵⁸⁸ *Ibid.*

⁵⁸⁹ "Every Child, Every Day," 8.

⁵⁹⁰ See, e.g., "Sarah Lemagie, "Tackling achievement gap getting more focus in south metro," *Star Tribune*, March 1, 2009.

⁵⁹¹ <http://www.theactivistnextdoor.com/component/content/article/2-uncategorised/355-185-million-spent-on-pacific-educational-group-why-minnesotas-integration-funding-needs-reform-now.html>.

⁵⁹² West Metro Education Program Draft Strategic Plan and Background Information, October 2011.

⁵⁹³ Sheila Kihne, Breakdown of Pacific Educational Group Payments, Nov. 16, 2009, available at <http://theactivistnextdoor.com/component/content/article/9-blog/blog/91-breakdown-of-pacific-educational-group-payments.html>.

⁵⁹⁴ East Metro Integration District 6067, "2008-2012 Collaborative Integration Plan," 5, available at [http://www.emid6067.net/2008-2012 percent20EMID percent20Integration percent20Plan- percent20Final.pdf](http://www.emid6067.net/2008-2012%20EMID%20Integration%20Plan-%20Final.pdf).

⁵⁹⁵ Sheila Kihne, "EP Schools: \$53,000 (and counting) to Pacific Educational Group," September 8, 2009, available at <http://theactivistnextdoor.com/component/content/article/9-blog/blog/31-ep-schools-spends-53000-and-counting-for-message-of-qwhite-racism-and-white-privilegeq.html>.

⁵⁹⁶ Sheila Kihne, "Radical Educational Ideology in Eden Prairie," August 28, 2009, available at <http://theactivistnextdoor.com/component/content/article/9-blog/blog/14-draft.html>. http://www.docstoc.com/docs/84255459/SET-A-Monday_-October-12_-2009-_AM_

and a “working-class Puerto Rican woman of color.”⁵⁹⁷ On her website, Darder provides a video of a keynote address she gave at the National Association for Multicultural Education.⁵⁹⁸ In the speech, she repeatedly denounces capitalism and private property, which she rejects as “the root” of domination. She also uses language that would be considered out of place at most educational conferences, exclaiming “This is Fu-ked!” and urging teachers to “stand up and begin to say..., ‘I cannot accept that this bullsh-t is real!’”⁵⁹⁹

In light of the real and complex nature of the racial learning gap, it is tragic that Minnesota educators are devoting so much time and effort to promoting the notion that white teachers’ racism is the primary cause of the gap. Paradoxically, schools that embrace this view are harming the very students they seek to help. Students lose out when education officials expend their energy on combating presumed teacher racism, instead of working to provide the scientifically based academic instruction and intervention that many poor/minority children need to thrive.

⁵⁹⁷ <http://freireproject.org/content/Antonia-darder>.

⁵⁹⁸ <http://www.darder.org/video/antoniaweb.mov>. See Sheila Kihne, “Integration Funds and Radical Educational Ideology in Minnesota Schools,” Nov. 16, 2009, available at <http://theactivistnextdoor.com/component/content/article/9-blog/blog/89-integration-funds-and-radical-education-ideology-in-minnesota-schools.html>.

⁵⁹⁹ <http://www.darder.org/video/antoniaweb.mov>. See Sheila Kihne, “Integration Funds and Radical Educational Ideology in Minnesota Schools.”

CHAPTER IX

THE WAY FORWARD IN ADDRESSING THE LEARNING GAP

We have an obligation to work to improve the academic achievement of poor, minority children and to do so in the ways that are most likely to succeed. After 40 years of failure, frustration, and dashed hopes, we need a new way forward. We must start by acknowledging how difficult it is to narrow the gap substantially; if that weren't the case, the job would have been done by now. Going forward, our watchword must be to leave ideological commitments aside and to dedicate ourselves to doing *what works*, regardless of whether it passes “political correctness” muster. Our efforts should proceed at several levels at the same time.

A. “Beat the Odds” Schools that Expand Parents’ Choices

First, we can take steps to expand the range of top-notch educational options available to parents by replicating school models that have a track record of success with poor, minority children. Documentary films like *Waiting for Superman* and *The Lottery* illustrate in heart-wrenching ways that many parents will make great sacrifices to ensure their children can attend a school with high expectations and with instruction and remediation that address the pressing academic needs of youngsters who often start well behind their peers.

Here in Minnesota, such schools include Concordia Creative Learning Academy in St. Paul; Hiawatha Leadership Academy and Harvest Preparatory School in Minneapolis; and Eden Prairie’s Forest

Hills Elementary (prior to September 2011, when income-based busing began).

Forest Hill’s unique approach to instruction and family involvement has already been described.

Concordia Creative Learning Academy is a pre-K-8 school whose students are 70 percent minority and 90 percent low income. Ninety-five percent live in single-parent households, 79 percent have parents who dropped out of high school, and 54 percent have had three or more addresses in the last year, according to principal Mary Donaldson. Yet in 2011, the school’s students outperformed the average for all Minnesota students in grades three through eight in both reading proficiency (76.5 percent to 75 percent) and math proficiency (63 percent to 58 percent).

Donaldson attributes the school’s success to great teachers, assessment-driven instruction, a strong focus on teaching to standards, and the school’s relentless focus on getting every child to grade level or above by the end of the year. Reading is taught in a four-hour instructional block and math in a two-hour block, and attendance is mandatory. (The school sends staff members to students’ homes in vans to bring them to school if an unexcused absence occurs.)

Hiawatha Leadership Academy (K-4) has a similar demographic profile—more than 90 percent minority and low-income students—and has achieved equally impressive academic results.



In 2011, for example, 84 percent of the school's fourth graders scored proficient or advanced on state reading tests, and 68 percent did so on math tests. Hiawatha's longer school days and school year provide 40 percent more learning time than a traditional public school provides. In addition to standardized tests, Hiawatha uses six-week interim benchmark exams and portfolio project-based work.

Another such model school is Harvest Preparatory Academy, a K-6 North Minneapolis charter school with five programs, including Best Academy, a K-8 boys program. The school's demographics seem a sure predictor of educational failure: Its student population is 99 percent black and 91 percent low income, and about 70 percent come from single-parent families.⁶⁰⁰ Yet in 2010-11, Harvest Prep's students outperformed every metro-area school district, including the affluent suburbs of Edina and Wayzata, on Minnesota's state math tests in grades three through eight. They outperformed all state students in reading proficiency (77 percent to 75 percent) and state white students in math proficiency (82 percent to 65 percent).

Founder and director Eric Mahmoud, an electrical engineer by training, attributes the school's success to several factors:

Top-notch instruction: Every day, Harvest devotes 100-minute time blocks to reading and math. In early grades, the school teaches foundational skills, including phonics and math facts, using what many colleges of education would deplore as "drill and kill" methods. In math, for example, the school stresses "fact fluency." Three days a week, before regular instruction begins, students take math fact quizzes, working toward the goal of doing 100 problems in two minutes with 70 percent accuracy. They work progressively on addition, subtraction, multiplication and subtraction facts, moving up each level after they have demonstrated mastery for 30 days in a row.

A laser-like focus on data: Harvest Prep continually assesses students on a host of measures so it can implement targeted interventions before children fail. Before students arrive on the first day of school, teachers know, as a result of pre-assessment, exactly what interventions each will need. As the year progresses, the school's sophisticated data system informs Mahmoud and his staff at a glance how every student is performing on reading and math topics at any given moment. Teachers, too, are constantly assessed. They are observed in the classroom at least twice a week, and they work with master teachers to improve their skills. Teachers are evaluated based on their students' learning gains.

A calendar that gives students the time they need to master what they need to know: Harvest Prep is in session 200 days a year, from 8:00 a.m. to 4:45 p.m. The key to success, says Mahmoud, is "great teaching and more of it." Mahmoud decries the American idea that the most important factor in learning is innate ability; what's important, he says, is hard work and time on task. "We do best what we do most," he says.

A focus on order, civility, self-discipline, and high expectations: At the heart of Harvest Prep is a school culture that instills moral character. It starts with what Mahmoud calls "the power of the uniform." Middle-school boys, for example, wear red ties, khaki slacks, and blazers. Students are addressed as "scholars," say "please" and "thank you," and greet visitors politely. Weekly ceremonies recognize children who achieve academic success through hard work, who sacrifice to help struggling classmates, or who demonstrate moral courage and truthfulness.

Schools like Harvest Prep require extraordinary leadership, as well as teachers dedicated to the point of self-sacrifice. While it can be difficult to replicate all the factors that produce these schools' success, their classroom strategies and reliance on assessment to drive instruction can become integral

⁶⁰⁰ Katherine Kersten, "At this school, usual excuses don't apply," *Star Tribune*, Sept. 24, 2011.

parts of other schools' approach to learning. One of the most important ways that Minnesota can enhance poor, minority students' educational success is to support and encourage the creation of more "beat-the-odds" schools like Harvest Prep, Hiawatha Leadership Academy and Concordia Creative Learning Academy.

B. Statewide Reform: The Case of Florida

Success in raising minority academic performance and reducing the learning gap need not be confined to individual "beat the odds" schools or to public school districts whose curriculum developers understand the importance of scientifically based reading instruction. Statewide advances are also possible, as the State of Florida demonstrated under the leadership of former Governor Jeb Bush.⁶⁰¹

In the last 12 years or so, Florida has made remarkable educational strides. All demographic groups have posted significant gains in reading—white and middle-income, as well as black, Hispanic, low-income, English language learners, and disabled students. But black, Hispanic, and low-income student scores are rising fastest.

Florida's schools face far greater demographic challenges than Minnesota's schools do. Florida is a "majority minority" state, with 2.7 million students compared to Minnesota's 850,000 students. A large proportion of the Sunshine State's student

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population is learning English, and about half the state's students are eligible for a free or reduced-price lunch.

In 1992, when widespread NAEP testing was beginning, Florida's students—black, Hispanic and white—lagged far behind their peers in Minnesota in reading, on average.⁶⁰² Today, the situation is reversed. In 2011, on NAEP's fourth-grade reading test, Florida's black students scored more than a year-and-a-half *ahead* of their Minnesota peers. Its Hispanic fourth-graders are two years *ahead* of their Hispanic peers here, and its white fourth-graders outperform their white peers in Minnesota by half a year.⁶⁰³

⁶⁰¹ See Matthew Ladner and Lindsey Burke, "Closing the Racial Achievement Gap: Learning from Florida's Reforms," Sept. 17, 2011, Heritage Foundation Backgrounder, *available at* <http://www.heritage.org/research/reports/2010/09/closing-the-racial-achievement-gap-learning-from-floridas-reforms>.

⁶⁰² Presentation of Christy Hovanetz of the Foundation for Excellence in Education to the Integration Revenue Replacement Advisory Task Force, Jan. 10, 2012. For example, in 1992, Florida's fourth-grade black students lagged their peers here by more than two years in reading, and its Hispanic fourth-graders lagged their Hispanic peers in Minnesota by one-half year. Florida's white fourth-graders were almost half a year behind Minnesota's white fourth-graders in reading.

⁶⁰³ *Ibid.*

Florida is one of only three states to be recognized by the U.S. Department of Education for significantly narrowing the racial and ethnic achievement gap.⁶⁰⁴ In its January 2011 “Quality Counts” report, *Education Week* ranked the state’s schools fifth in the nation, based in part on dramatic improvements in reading scores.⁶⁰⁵ On recent NAEP assessments, the state’s fourth- and eighth-grade black and Hispanic students have posted the highest gains in the nation in reading. Between 2003 and 2009, Florida made the biggest jump in combined fourth- and eighth-grade NAEP reading scores of any state.⁶⁰⁶

How has Florida achieved its success? Twelve years ago, the Sunshine State’s students were at the bottom in reading nationally. Starting in 1999, Florida adopted far-reaching K-12 education reforms with the goal of improving academic performance for all students. It focused intently on elementary school literacy—the gateway to all future learning. In 1998, almost half of all Florida fourth-graders were functionally illiterate. Today, 72 percent can read.⁶⁰⁷

In Florida, an intense focus on reading begins in pre-school and kindergarten. Scientifically based reading instruction forms the core of the elementary school literacy curriculum. Children who struggle to read are identified, assessed for individual needs, and provided with strong support at the earliest possible stage.

Here’s how the process works: Every year, all K-3 students take the Florida Assessment for Instruction in Reading in the fall, winter, and spring. This broad

screening assessment requires only a few minutes to administer, and includes tasks relating to letter names and sounds, phonemic awareness and word reading. Students who perform at a low level take a further diagnostic assessment that identifies the nature of the child’s reading difficulties. The school then develops an individually tailored “reading improvement plan” and provides a broad array of intensive help and support. Teachers receive feedback on each student’s progress throughout the year.

If a student is still performing poorly at the end of third grade, he or she is retained for a year of intensive retention and enrichment, unless a “good cause” exception applies. Retained students don’t just repeat the previous year’s instruction. Each one receives a daily uninterrupted 90-minute block of reading instruction time and is taught by a high-performing teacher with a track record of success in reading instruction.⁶⁰⁸

Other supports and interventions may include small-group instruction; tutors or mentors with specialized reading instruction training; an extended school day, week, or year; and summer reading camp.

As a result of policies like these, since 2002-03, the number of Florida third graders who score low enough to require retention has dropped from 25 percent to 16 percent: a 42 percent decline. The fact that thousands of “at risk” children now learn to read without a need for retention may be the policy’s most important and lasting fruit.

⁶⁰⁴ “Achievement Gaps: How Black and White Students in Public Schools Perform in Mathematics and Reading on the National Assessment of Educational Progress,” National Center for Education Statistics, July 2009; available at <http://nces.ed.gov/nationsreportcard/pdf/studies/2009455.pdf>.

⁶⁰⁵ Leslie Postal, “Florida ranks fifth in new national report on education quality,” *Orlando Sentinel*, Jan. 11, 2011.

⁶⁰⁶ Author interview with Dr. Matthew Ladner of the Foundation for Excellence in Education, Jan. 24, 2012.

⁶⁰⁷ Jeb Bush, “Accountability is Working in Florida’s Schools,” *Wall Street Journal*, Jan. 3, 2011.

⁶⁰⁸ Kersten, “Preparing All Minnesota Children to Read by Third Grade,” 16.

Here in Minnesota, the time for this kind of education reform is ripe. All we need now is the political will.

In addition to implementing a state-of-the-art reading program, Florida has strengthened its schools by enacting far-reaching reforms like the following.⁶⁰⁹

- **Grading schools:** Each Florida school is rated between A and F, based on student achievement scores and learning gains. At first, many educators called this unfair, but the grading process has incentivized schools to improve in myriad ways. In 1999, Florida had more D and F schools than A or B schools. Today, it has ten times more A and B schools than D and F schools.
- **Incentives for success:** In Minnesota, schools get the same funding whether their students learn or not. But Florida schools get up to \$100 per pupil when students make

gains, and most schools use the money for teacher bonuses.

- **Choice:** In Florida, this undergirds all other reforms. Families can opt for public school choice, charter schools, vouchers for pre-K students, tax-credit scholarships for low-income students, and vouchers for students with disabilities to attend private schools. Florida also has the nation's largest virtual or online learning school.
- **Alternative teacher certification:** Today, half of all Florida teachers enter the profession through such routes. Fast-track programs for midcareer professionals minimize the time and financial burdens that can keep well-qualified people—for example, NASA scientists who want to teach math—out of the classroom.

The benefits of Florida's sweeping reforms become more evident every year. Not surprisingly, other states, including Arizona, Indiana, and Louisiana, are moving to replicate its success. Here in Minnesota, the time for this kind of education reform is ripe. All we need now is the political will.

⁶⁰⁹ Ladner and Burke, "Closing the Racial Achievement Gap: Learning from Florida's Reforms."

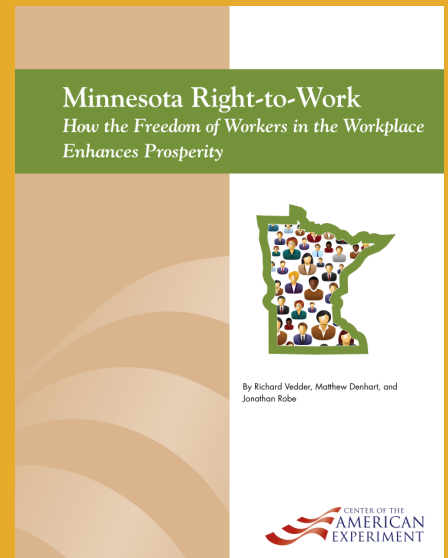
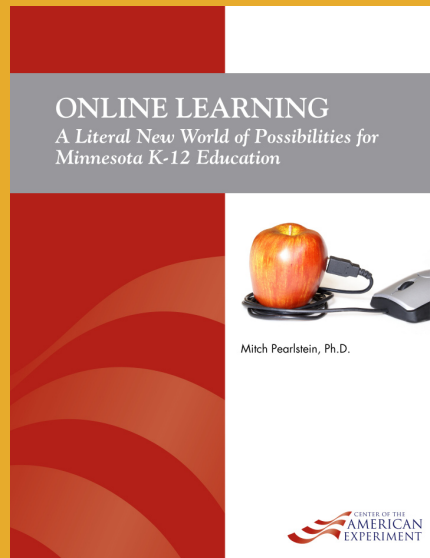
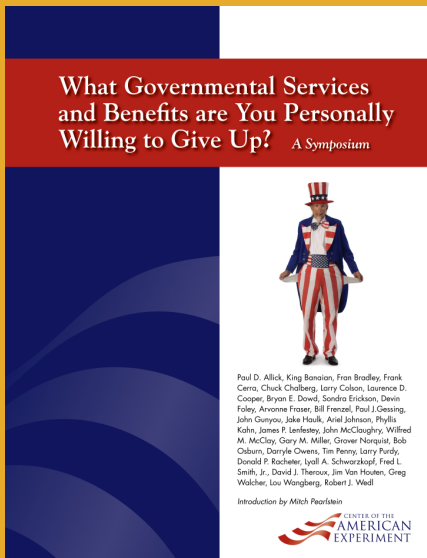


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