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Making School Integration Work in New York City: A Long-Term Solution to the Enduring Problem of Segregation and Inequality

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MAKING SCHOOL INTEGRATION WORK IN NEW YORK CITY SCHOOLS: A LONG-TERM SOLUTION TO THE ENDURING PROBLEM OF SEGREGATION AND INEQUALITY

*Allison Roda, Ryan Coughlan, Paul Tractenberg
& Deirdre Dougherty**

New York City has one of the most segregated public school systems in the country. This is a pressing problem because school segregation creates a divide in access to well-trained teachers, advanced classes, and resources. Yet, in some gentrifying New York City neighborhoods, there are promising signs of more racially and socioeconomically diverse schools. In this Essay, we draw on the findings from our new book, Making School Integration Work: Lessons from Morris,¹ to show how the legal remedy and unique student assignment policy the Morris School District in New Jersey adopted can be applied to the New York City context to achieve greater equity and integration.

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1. PAUL TRACTENBERG, ALLISON RODA, RYAN COUGHLAN & DEIRDRE DOUGHERTY, MAKING SCHOOL INTEGRATION WORK: LESSONS FROM MORRIS (2020).

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INTRODUCTION

According to the UCLA Civil Rights Project, New York State has one of the most racially segregated school systems in the country, with New York City as a major contributor to that problem.² Segregation deprives students of equal educational opportunities because it creates divides in access to well-trained teachers, advanced classes, and resources, affecting educational inputs, outcomes, and learning opportunities.³ Those “mechanisms . . . link segregation to disparate [educational] outcomes.”⁴ When students are unable to access equitable opportunities to learn due to a lack of access to racially diverse classrooms and teachers, their achievement and educational trajectories are negatively affected.⁵ For example, on average, Black students are two grade levels below white students, and students from low-income districts are four grade levels below students from high-income districts.⁶ In a recent analysis, researchers found a statistically significant relationship between segregated schools with predominantly low-income students of color and lower mean literacy scores.⁷

Although some consider integration to be a failed experiment of the past, many scholars still believe it is a worthy goal to pursue because, when done right, all children benefit academically and socially from

2. See generally JOHN KUCSERA & GARY ORFIELD, C.R. PROJECT/PROYECTO DERECHOS CIVILES, NEW YORK STATE’S EXTREME SCHOOL SEGREGATION: INEQUALITY, INACTION AND A DAMAGED FUTURE (2014), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/ny-norfler-report-placeholder/Kucsera-New-York-Extreme-Segregation-2014.pdf> [<https://perma.cc/YC7D-UELX>].

3. See Don Boyd et al., *The Effect of School Neighborhoods on Teachers’ Career Decisions*, in WHITHER OPPORTUNITY?: RISING INEQUALITY, SCHOOLS, AND CHILDREN’S LIFE CHANCES 377, 378–79 (Greg J. Duncan & Richard J. Murnane eds., 2011). See generally Sean F. Reardon & Ann Owens, *60 Years After Brown: Trends and Consequences of School Segregation*, 40 ANN. REV. SOCIOLOGY 199 (2014).

4. Reardon & Owens, *supra* note 3, at 200.

5. See RUCKER C. JOHNSON & ALEXANDER NAZARYAN, CHILDREN OF THE DREAM: WHY SCHOOL INTEGRATION WORKS 191 (2019).

6. See *id.* at 3.

7. See generally Roslyn Arlin Mickelson, Martha Cecilia Bottia & Savannah Larimore, *A Metaregression Analysis of the Effects of School Racial and Ethnic Composition on K–12 Reading, Language Arts, and English Outcomes*, SOCIO. RACE & ETHNICITY 1 (2020).

racially and socioeconomically (SES) diverse classrooms.⁸ The short-term and long-term advantages of integration include higher educational achievement, attainment, and earnings, as well as improved race relations and social stability.⁹

Policy makers and researchers most often blame the high levels of school segregation in New York City on two factors: (1) neighborhood segregation and (2) school choice policies that allow advantaged parents¹⁰ to enroll their children in highly coveted schools and programs.¹¹ Research has consistently shown that school choice benefits the mostly white, advantaged parents in the City who choose to leave their neighborhood schools for choice schools and Gifted & Talented (G&T) programs.¹² Given that neighborhood segregation and school choice are the two greatest contributing factors to school segregation, the best option moving forward would be to change the way in which New York City assigns students to public schools.

In this Essay, we argue that legal and policy reforms should be used strategically with other integration techniques to make New York City schools more racially diverse and equitable. We draw on the findings

8. See JOHNSON & NAZARYAN, *supra* note 5, at 2; Mickelson et al., *supra* note 7, at 4.

9. See JOHNSON & NAZARYAN, *supra* note 5, at 3.

10. Advantaged parents possess social, cultural, and economic capital in the education system. For example, generally mostly white, advantaged parents have knowledge of the school choice admissions process from their social networks, are college educated, and have professional careers. See Allison Roda, *Parenting in the Age of High Stakes Testing: Gifted and Talented Admissions and the Meaning of Parenthood*, 119 TCHRS. COLL. REC. 1, 8 (2017).

11. See, e.g., Allison Roda & Amy Stuart Wells, *School Choice Policies and Racial Segregation: Where White Parents' Good Intentions, Anxiety, and Privilege Collide*, 119 AM. J. EDUCATION 261, 261 (2013); Elizabeth A. Harris & Josh Katz, *Why Are New York's Schools Segregated? It's Not as Simple as Housing*, N.Y. TIMES (May 2, 2018), <https://www.nytimes.com/interactive/2018/05/02/nyregion/new-study-school-choice-increases-school-segregation.html> [<https://perma.cc/ER26-CEFT>]; Clara Hemphill & Nicole Mader, *Segregated Schools in Integrated Neighborhoods: The City's Schools Are Even More Divided Than Our Housing*, CTR. FOR N.Y.C. AFFS., <http://www.centernyc.org/segregatedschools> [<https://perma.cc/J8YS-SFBF>] (last visited Oct. 27, 2020). See generally CHOOSING HOMES, CHOOSING SCHOOLS (Annette Lareau & Kimberly Goyette eds., 2014).

12. See generally ALLISON RODA, *INEQUALITY IN GIFTED AND TALENTED PROGRAMS: PARENTAL CHOICES ABOUT STATUS, SCHOOL OPPORTUNITY, AND SECOND-GENERATION SEGREGATION* (Alan R. Sadovnik & Susan F. Semel eds., 2015) [hereinafter RODA, *INEQUALITY IN GIFTED AND TALENTED PROGRAMS*]; NICOLE MADER ET AL., CTR. FOR N.Y.C. AFFS., *THE PARADOX OF CHOICE: HOW SCHOOL CHOICE DIVIDES NEW YORK CITY ELEMENTARY SCHOOLS* (2018), <https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5c86d672b208fcc7511f78c1/1552340602900/Paradox+of+Choice.pdf> [<https://perma.cc/363N-7XJF>].

from *Making School Integration Work: Lessons from Morris*¹³ to show how the top-down legal remedy and student-assignment policy adopted by the Morris School District (MSD) in Morris County, New Jersey, can be applied to the New York City context.

Part I provides the legal and political context that informs school integration efforts. Part II describes New York City's current school integration strategies, including a school leader's unique admissions policy, to preserve school diversity. Part III explains how the 1971 *Jenkins* lawsuit and subsequent merger created MSD. Part III then describes how district leadership in MSD has worked to advance true integration, from the merger to today. In Part IV, this Essay applies the lessons learned from the Morris case to the New York City context and concludes by offering other relevant strategies that should be used in combination with the proposed top-down policy approach.

I. THE LEGAL AND POLITICAL LANDSCAPE OF SCHOOL INTEGRATION EFFORTS

This Part describes potential legal tools for dismantling school segregation in New York City and discusses the constitutional limits the Supreme Court imposes on policy strategies for increasing racial diversity in schools.

Historically, litigation has been an essential tool for integration, “provid[ing] either an important incentive for voluntary local action or an effective ultimate sanction if government authorities refuse to act.”¹⁴ Today, in order to succeed on a Fourteenth Amendment Equal Protection challenge, a plaintiff must satisfy a high evidentiary bar — proving that the government's actions, whether related to housing or schools, amounted to intentional or de jure segregation.¹⁵ Given that

13. See TRACTENBERG ET AL., *supra* note 1.

14. GARY ORFIELD, TOWARD A STRATEGY FOR URBAN INTEGRATION: LESSONS IN SCHOOL AND HOUSING POLICY FROM TWELVE CITIES 76 (1981).

15. In *Milliken v. Bradley*, the Supreme Court specified that it would only find an Equal Protection violation if it determined there was de jure segregation. See *Milliken v. Bradley*, 418 U.S. 717, 755–56 (1974). In *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, the Court clarified that finding intentional discrimination if a law is neutral on its face would be “rare.” See *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977); see also Derrick Darby & Richard E. Levy, *Postracial Remedies*, 50 U. MICH. J.L. REFORM 387, 437 (2017); Andrea Alajbegovic, Note, *Still Separate, Still Unequal: Litigation as a Tool to Address New York City's Segregated Public Schools*, 22 CUNY L. REV. 304, 314 (2019).

demonstrating de jure segregation remains unattainable in New York City,¹⁶ lawyers must explore other legal pathways.¹⁷

While New York State does not have the same anti-segregation or education laws as New Jersey, and the State's highest court has construed the State constitution's education clause relatively narrowly,¹⁸ New York City does have a progressive civil rights law that lawyers could perhaps leverage for school integration purposes.¹⁹ Andrea Alajbegovic's 2019 Note argued there is a plausible legal claim that the level of school segregation in New York City violates the NYC Human Rights Law (NYCHRL), and that it is a preferable legal theory, especially given that lawyers have not been successful using the federal Equal Protection Clause or the New York State Constitution.²⁰ If state or city officials fail to take action necessary to integrate the schools, the NYCHRL or other legal avenues may have to be pursued. There have been successful suits under NYCHRL related to job, housing, and police discrimination cases based on race and sexual harassment — paving the way for New York City school segregation lawsuits.²¹

Such a lawsuit, initiated on behalf of students and parents by a civil rights, civic, or community organization, would put pressure on the Mayor, Chancellor, and Department of Education (DOE), if not the Governor and state legislature, to act on their unfulfilled promise to address school segregation. Even if such a suit did not succeed in

16. With the exception of a District 21 desegregation order that ended in 2008 and the Hecht-Calandra Law, which arguably was passed with a racist intent, other laws and policies pertaining to New York City schools appear race neutral, as they assign children to schools based on geography, interest, or admissions criteria. *See Guide: Enrolling Your Child*, WNYC, <https://www.wnyc.org/schoolbook/guides/enrollment/> [<https://perma.cc/W3MS-5XUP>] (last visited Jan. 9, 2020). However, because of the pandemic, the Mayor announced that middle schools will no longer use academic criteria for admissions decisions this year.

17. *See* Alajbegovic, *supra* note 15, at 309 (contending that “[c]ombined with ongoing grassroots and legislative advocacy, the [NYC Human Rights Law] can be utilized to effectively address school inequality and integrate NYC public schools”). For an illustrative case, see *Green v. County School Board*, 391 U.S. 430, 435 (1968).

18. In *Paynter v. State*, the New York Court of Appeals held that the State did not have a responsibility to change the demographic composition of its student bodies under the New York State Constitution's Education Article. *See* *Paynter v. State*, 797 N.E.2d 1225, 1228 (N.Y. 2003); *see also* *Campaign for Fiscal Equity, Inc. v. State*, 655 N.E.2d 661, 664–65 (N.Y. 1995); *Bd. of Educ. v. Nyquist*, 439 N.E.2d 359, 368–70 (N.Y. 1982); *Campaign for Fiscal Equity, Inc. v. State*, 722 N.Y.S.2d 130, 135 (N.Y. App. Div. 2002).

19. *See* Alajbegovic, *supra* note 15, at 309.

20. *See id.* at 304–33.

21. *See id.*

producing a definitive legal mandate, it could alter the political dynamic.²²

As part of a larger integration strategy in New York, we believe there should be an amendment to the New York State Constitution, like New Jersey's 1947 anti-segregation state constitutional provision, or a strong piece of legislation, such as New Jersey's 1881 statute.²³ Both explicitly barred segregation in schools on the basis of race, creed, color, national origin, or ancestry.²⁴ The Governor of a progressive state like New York could use his bully pulpit to sponsor and support these state constitutional amendments or statutes.

While the U.S. Supreme Court's *Parents Involved in Community Schools (PICS)* decision limited school districts' use of race as the sole criterion for student enrollment decisions, it did not limit the use of race as one factor among others, or as a general consideration.²⁵ In 2011, under the Obama Administration, the U.S. Department of Justice and the DOE published a "Dear Colleague" letter entitled "Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools."²⁶ The Guidance advised policy makers on legally permissible strategies to

22. For example, the NAACP Legal Defense and Educational Fund, Inc. filed a complaint in 2012 regarding the specialized high schools' use of a single standardized test for admissions, which had resulted in the enrollment of a mostly white and Asian student population. *See* Letter from NAACP Legal Def. & Educ. Fund, Inc., to N.Y. Off., Off. for C.R. (Sept. 27, 2012), <https://www.naacpldf.org/wp-content/uploads/Specialized-High-Schools-Complaint.pdf> [<https://perma.cc/T9YR-3N73>].

23. *See* N.J. CONST. art. I, § 5 (1947); N.J. REV. STAT. § 18:142 (1881).

24. *See* N.J. CONST. art. I, § 5; N.J. STAT. ANN. § 18A:38-5.1 (West 2020).

25. *See* *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. (PICS)*, 551 U.S. 701, 798 (2007) (Kennedy, J., concurring).

26. The 2011 Guidance replaced erroneous messaging from the Bush Administration advising districts that any consideration of race in school integration efforts was unlawful. *See* RUSSELYN ALI & THOMAS PEREZ, U.S. DEP'T OF JUST. & U.S. DEP'T OF EDUC., DEAR COLLEAGUE LETTER (Dec. 2, 2011), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201111.html> [<https://perma.cc/U9ZK-MC57>]; U.S. DEP'T OF JUST. & U.S. DEP'T OF EDUC., GUIDANCE ON THE VOLUNTARY USE OF RACE TO ACHIEVE DIVERSITY AND AVOID RACIAL ISOLATION IN ELEMENTARY AND SECONDARY SCHOOLS (Dec. 2, 2011) [hereinafter GUIDANCE ON USE OF RACE], <https://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.html> [<https://perma.cc/7JH2-BBHH>]. Under the Trump Administration, Betsy DeVos rescinded the 2011 Guidance. *See* Nick Anderson & Moriah Balingit, *Trump Administration Moves to Rescind Obama-Era Guidance on Race in Admissions*, WASH. POST (July 3, 2018, 4:00 PM), https://www.washingtonpost.com/local/education/trump-administration-moves-to-rescind-obama-era-guidance-on-race-in-admissions/2018/07/03/78210e9e-7ed8-11e8-bb6b-c1cb691f1402_story.html [<https://perma.cc/5NAK-USD8>].

achieve racial diversity based on Justice Kennedy’s *PICS* concurrence. For instance, it advised that “[a] school district could give special consideration to students from neighborhoods selected specifically because of their racial composition and other factors. In the selection process, a district would treat all the students who live in the selected neighborhood the same regardless of their race.”²⁷ Although the federal government no longer supports school integration efforts — the Trump Administration rescinded the 2011 Guidance in 2017 — Justice Kennedy’s *PICS* concurrence still outlines legally permissible strategies for pursuing school integration.²⁸ Those include socioeconomic-based integration plans, rezoning school district boundaries, and magnet schools or districtwide school choice policies that have student diversity targets.²⁹

II. SCHOOL INTEGRATION EFFORTS IN NEW YORK CITY

The opportunity to attend racially diverse schools and classrooms has been shown to provide students with a host of academic and social-emotional benefits,³⁰ including increased achievement, college-going rates, and academic self-confidence, as well as decreased chances of dropping out and rates of racial biases.³¹ During the school desegregation era’s peak in the 1980s, researchers found that it was the most effective strategy in closing opportunity gaps between Black and white students.³² Today, urban school districts, like New York City,

27. GUIDANCE ON USE OF RACE, *supra* note 26, at 12. The Guidance mirrored Justice Kennedy’s concurrence. *Compare id.*, with *PICS*, 551 U.S. at 798 (Kennedy, J., concurring).

28. *See PICS*, 551 U.S. at 788. The Biden Administration, as compared to the Trump Administration, is likely to support school integration efforts.

29. *See id.* at 789.

30. *See generally* JOHNSON & NAZARYAN, *supra* note 5; Jomills Henry Braddock II & Amaryllis Del Carmen Gonzalez, *Social Isolation and Social Cohesion: The Effects of K–12 Neighborhood and School Segregation on Inter-Group Orientations*, 112 TCHRS. COLL. REC. 1631 (2010); Jennifer K. Clayton, *Changing Diversity in Schools: The Impact on Elementary Student Performance and Achievement*, 43 EDUC. & URB. SOC’Y 671 (2011).

31. *See* RICHARD D. KAHLBERG, HALLEY POTTER & KIMBERLY QUICK, CENTURY FOUND., A BOLD AGENDA FOR SCHOOL INTEGRATION (2019), https://production-tcf.imgix.net/app/uploads/2019/04/05130945/School_Integrationfinalpdf.pdf [<https://perma.cc/F3SN-9AQB>].

32. *See generally* GARY ORFIELD, C.R. PROJECT AT HARV. UNIV., SCHOOLS MORE SEPARATE: CONSEQUENCES OF A DECADE OF RESEGREGATION (2001), <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/schools-more-separate-consequences-of-a-decade-of-resegregation/orfield-schools-more-separate-2001.pdf> [<https://perma.cc/5B8V-84B8>]; Jamel K. Donnor, *Whose*

are often segregated by both race and SES, which negatively affects students of color because they are often segregated in high-poverty, low-achieving schools.³³ Although often not mentioned in court cases or in the scholarly literature, racial segregation does have negative consequences for white students concentrated in disproportionately white schools with better resources.³⁴ White students in predominantly white schools can develop ideas about white superiority and negative racial stereotypes about the “other” because they have limited opportunities to interact with students of color and fewer chances of creating cross-racial relationships.³⁵ Achieving school desegregation — the movement of bodies through busing or school district merger — is a “necessary, though, inadequate, step” towards integration,³⁶ a cultural transformation of curriculum, pedagogy, culture, and climate that leads to student body social cohesion.³⁷ Yet, most urban school districts have moved away from desegregation and integration as a legal or policy tool to achieve more equitable, high-quality schools. Beginning in the 1990s, policy officials put their hopes in school choice and the power of the market to resolve problems of access, which has led to increased school segregation and inequality.³⁸

School segregation in urban districts persists despite the fact that gentrification has reduced housing segregation in some

Compelling Interest? The Ending of Desegregation and the Affirming of Racial Inequality in Education, 44 EDUC. & URB. SOC'Y 535 (2011).

33. See Sean F. Reardon et al., *Is Separate Still Unequal? New Evidence on School Segregation and Racial Academic Achievement Gaps* 33–34 (Stan. Ctr. for Educ. Pol'y Analysis, Working Paper No.19-06, 2019).

34. See Erica K. Wilson, *Monopolizing Whiteness*, HARV. L. REV. at 38 (forthcoming).

35. See *id* at 39.

36. See JOHNSON & NAZARYAN, *supra* note 5, at 249.

37. See Roslyn Arlin Mickelson & Mokubung Nkomo, *Integrated Schooling, Life Course Outcomes, and Social Cohesion in Multiethnic Democratic Societies*, 36 REV. RSCH. EDUCATION 197, 228 (2012).

38. See, e.g., Robert Bifulco & Helen F. Ladd, *School Choice, Racial Segregation, and Test-Score Gaps: Evidence from North Carolina's Charter School Program*, 26 J. POL'Y ANALYSIS & MGMT. 31, 31 (2007); Katherine K. Chen & Megan Moskop, *School Choice's Idealized Premises and Unfulfilled Promises: How School Markets Simulate Options, Encourage Decoupling and Deception, and Deepen Disadvantages*, 14 SOCIO. COMPASS 1, 11 (2019); Erica Frankenberg, Genevieve Siegel-Hawley & Jia Wang, *Choice Without Equity: Charter School Segregation*, 19 EDUC. POL'Y ANALYSIS ARCHIVES 1, 1–2 (2011); Roslyn Arlin Mickelson, Martha Bottia & Stephanie Southworth, *School Choice and Segregation by Race, Class, and Achievement*, EDUC. POL'Y RSCH. UNIT 1 (Mar. 2008), <https://nepc.colorado.edu/sites/default/files/CHOICE-08-Mickelson-FINAL-EG043008.pdf> [https://perma.cc/3S63-VLN8].

neighborhoods.³⁹ Gentrification — “the process by which central urban neighborhoods that have undergone disinvestment and economic decline experience a reversal, reinvestment, and the in-migration of a relatively well-off, middle- and upper-middle-class population”⁴⁰ — often involves white, advantaged residents changing neighborhoods that were previously mostly Black or Latinx.⁴¹

Although New York City schools overall remain very segregated, there are promising signs of more diverse schools across the City — in terms of race and SES — in some gentrifying or gentrified neighborhoods. Indeed, one analysis found a decline in the overall number of segregated schools in the last two decades, particularly in gentrifying areas with influxes of white, high-income residents.⁴² Recent trends have shown an increasing number of white and Asian families opting for local schools in areas of Manhattan, Brooklyn, and Queens that historically enrolled mostly low-income Black and Latinx students.⁴³ This Essay focuses on these demographically shifting communities and schools because they hold the most potential for achieving racial integration in the relative short-term.

A. A Promising School Case in New York City

One promising example of this gentrification-school phenomenon can be found in a public middle school located in the heart of a gentrified Brooklyn neighborhood.⁴⁴ Faced with an influx of white students, most school leaders would have allowed the school to resegregate from a low-income Black and Latinx school to a disproportionately white school.⁴⁵ However, this particular middle

39. See Francis A. Pearman & Walker A. Swain, *School Choice, Gentrification and the Variable Significance of Racial Stratification in Urban Neighborhoods*, 90 SOCIO. EDUCATION 213, 214 (2017).

40. Neil Smith, *Gentrification*, in THE ENCYCLOPEDIA OF HOUSING 198 (Willem van Vliet ed., 1998).

41. See Pearman & Swain, *supra* note 39, at 214.

42. See Kfir Mordechay & Jennifer B. Ayscue, C.R. PROJECT/PROYECTO DERECHOS CIVILES, SCHOOL INTEGRATION IN GENTRIFYING NEIGHBORHOODS: EVIDENCE FROM NEW YORK CITY 12 (2019), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/school-integration-in-gentrifying-neighborhoods-evidence-from-new-york-city/NYC-031019.pdf> [<https://perma.cc/R7XH-493Y>].

43. See *id.* at 14.

44. See Allison Roda, “ *Holding the Line* ”: *Investigating How Urban School Leaders’ Respond to Gentrification in New York City Schools* , 55 URB. EDUC. 1, 13 (2020) [hereinafter Roda, *Holding the Line*].

45. See Patrick Wall, *Exclusive: After Year Delay, City Will Allow Diversity Plans at Several Schools* , CHALKBEAT N.Y. (Nov. 19, 2015, 8:05 PM),

school principal developed a creative way to ensure that racial diversity would persist. In 2013, the school population shifted when ten white families from the neighborhood decided to ask the principal to enroll their incoming sixth graders as a group.⁴⁶ This group of advantaged parents was motivated to pursue this school option because, as Chana Joffe-Walt's *Nice White Parents* podcast also reported, the top three middle school choices in the district were nearly impossible to get into.⁴⁷ The principal agreed, and within five years, the school's population exploded as increasingly more white families from the neighborhood applied.

As Author Allison Roda explained in her 2020 article, "Holding the Line: Investigating How Urban School Leaders' Respond to Gentrification in New York City Schools,"⁴⁸ the principal did two things to avoid resegregation. First, she refrained from marketing her school to the predominantly white elementary schools in the immediate neighborhood.⁴⁹ Second, after the principal received the list of students applying to her school from the New York City DOE, she gave first priority to students coming from elementary schools with fewer than 15% white students, the district average.⁵⁰

When the [DOE] found out what the principal was doing, they reportedly called her and questioned whether the screening process was based on race, and whether she was worried that the admissions process would alienate white families. The principal had to explain that the process is based on the geography of the district, that most neighborhood elementary schools are segregated by race and [SES], and that [neighborhood elementary] schools are not a "protected

<https://ny.chalkbeat.org/2015/11/19/21100493/exclusive-after-year-delay-city-will-allow-diversity-plans-at-several-schools> [<https://perma.cc/9P3P-9QQL>].

46. See Jeff Coplon, *New York State Has the Most-Segregated Schools in the Nation*, N.Y. MAG. (Apr. 18, 2014), <https://nymag.com/news/features/park-slope-collegiate-integration-2014-4> [<https://perma.cc/L5FU-K868>].

47. The DOE does not publish acceptance rates of screened middle schools. See Chana Joffe-Walt, *Nice White Parents, Episode Five: 'We Know It When We See It,'* N.Y. TIMES (Aug. 21, 2020), <https://www.nytimes.com/2020/08/20/podcasts/nice-white-parents-school.html> [<https://perma.cc/GGP2-FRCJ>] (stating that the rubrics used for screened middle schools may not be used in future admissions seasons); see also *Student Assignment to Public Middle Schools in New York City*, N.Y. APPLESEED (Jan. 2019), https://www.nyappleseed.org/wp-content/uploads/FINAL-Middle-School-Advocacy-Briefing_01_19-PDF.pdf [<https://perma.cc/ELS4-CETA>].

48. Roda, *Holding the Line*, *supra* note 44.

49. See *id.* at 20–21.

50. See *id.*

class” under the *PICS* decision [or the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution].⁵¹

The principal chose to rank and admit students based on a similar geographic approach, using their neighborhood elementary schools’ racial composition.⁵²

The principal admitted that her process probably did alienate some white families who send their children to the disproportionately white neighborhood elementary schools, but she maintained that ensuring student diversity in her school was more important.⁵³ She was happy to report that her strategy for ranking and admitting students was working to achieve that goal.⁵⁴

This vignette underscores the power that New York City principals have to control admissions decisions for the purpose of creating and preserving racial diversity.⁵⁵ It also illuminates how the DOE has responded to integration attempts, particularly in demographically shifting schools and gentrifying neighborhoods where racially diverse schools are possible. Instead of issuing citywide policy mandates, the DOE’s approach has been to allow individual schools and community school districts (CSDs) to adopt voluntary integration policies.⁵⁶

Because of the wide range of admissions programs across New York City schools,⁵⁷ attempts to diversify enrollment have been piecemeal

51. *Id.* at 16; *see also* *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. (PICS)*, 551 U.S. 701, 743 (2007) (stating that the Equal Protection Clause protects persons, not groups); Laura Petty, Note, *The Way Forward: Permissible and Effective Race-Conscious Strategies for Avoiding Racial Segregation in Diverse School Districts*, 47 *FORDHAM URB. L.J.* 659, 677 (2020) (summarizing Chief Justice Roberts’s reasoning that strict scrutiny is applied to review discrimination based on “individual racial classifications”).

52. *See* Roda, *Holding the Line*, *supra* note 44, at 16–17.

53. *See id.* at 17.

54. *See id.*

55. *See id.* at 13, 16 (providing examples of principals influencing admissions decisions for the purposes of racial diversity).

56. *See* N.Y.C. DEP’T OF EDUC., OFF. OF THE MAYOR, CITY OF N.Y., EQUITY AND EXCELLENCE FOR ALL: DIVERSITY IN NEW YORK CITY PUBLIC SCHOOLS 5 (2017), <https://www.schools.nyc.gov/docs/default-source/default-document-library/diversity-in-new-york-city-public-schools-english> [<https://perma.cc/RA8B-LLT9>]; Amy Stuart Wells, *Diverse Housing, Diverse Schooling: How Policy Can Stabilize Racial Demographic Change in Cities and Suburbs*, NAT’L EDUC. POL’Y CTR. 8 (Dec. 2015), https://nepc.colorado.edu/sites/default/files/pb-wells_housing_nexus.pdf [<https://perma.cc/9XRF-6N4B>].

57. *See NYC High School and Specialized High Schools Admissions Guide*, N.Y.C. DEP’T EDUCATION, <https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade/high-school/nyc-high-school-admissions-guide> [<https://perma.cc/A6FK-KJ2A>] (last visited Oct. 25, 2020); *NYC Middle School Admissions Guide*, N.Y.C. DEP’T EDUCATION,

and varying. For example, the DOE allows individual schools to voluntarily set aside a certain percentage of their incoming seats for students from low-income households, students with incarcerated parents, students experiencing homelessness, or students who are English Language Learners (ELLs).⁵⁸ Currently, out of more than 1,700 schools in New York City, only 100 have participated in this kind of program.⁵⁹ Those participating have had varying levels of success at diversifying enrollments.⁶⁰

Critics have said that these incremental integration strategies, while a necessary component, do not go far enough to be sustainable or achieve structural change.⁶¹ For example, in schools affected by gentrification, the interests of low-income families of color are often marginalized in favor of white or higher-income families because school leaders often cater to the interests and needs of advantaged parents, raising equity issues.⁶² Therefore, the following questions remain: how can DOE officials harness gentrification to achieve stable integration and prevent schools from resegregating? What role can law and policy play in creating and maintaining desegregated and integrated school environments? We believe the merger remedy in Morris County, New Jersey, provides important answers to these questions that should be applied to the New York City case.

III. THE MERGER REMEDY IN MORRIS COUNTY, NEW JERSEY

Making School Integration Work: Lessons from Morris chronicles the creation and evolution of MSD, one of the most racially diverse

<https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade/middle-school/nyc-middle-school-admissions-guide> [<https://perma.cc/22QR-BGX5>] (last visited Oct. 25, 2020).

58. See *Diversity in Admissions*, N.Y.C. DEP'T EDUCATION, <https://www.schools.nyc.gov/enrollment/enrollment-help/meeting-student-needs/diversity-in-admissions> [<https://perma.cc/86TN-MGWY>] (last visited Dec. 31, 2020).

59. See Halley Potter, *What Other Districts Can Learn from New York City's School Diversity Plan*, CENTURY FOUND. (June 8, 2017), <https://tcf.org/content/commentary/districts-can-learn-new-york-citys-school-diversity-plan/> [<https://perma.cc/Z8EE-LF2J>].

60. See *id.*

61. See Christina Veiga, *The Country's Largest School System — and One of the Most Segregated — Just Released Its 'School Diversity' Plan. Here Are the Highlights*, CHALKBEAT N.Y. (June 6, 2017, 1:27 PM), <https://ny.chalkbeat.org/2017/6/6/21102759/the-country-s-largest-school-system-and-one-of-the-most-segregated-just-released-its-school-diversity> [<https://perma.cc/LP85-USFQ>].

62. See SARAH DIEM & ANJALÉ D. WELTON, ANTI-RACIST EDUCATIONAL LEADERSHIP AND POLICY: ADDRESSING RACISM IN PUBLIC EDUCATION 44–46 (2020); Joffe-Walt, *supra* note 47.

school systems in the country.⁶³ MSD is located just 25 miles northwest of New York City and was formed in the early 1970s when the predominantly white, wealthy suburban Morris Township District and the more diverse and urban Morristown District consolidated for racial balancing purposes.⁶⁴ The New Jersey Commissioner of Education ordered the K–12 regionalization in response to the decision in *Jenkins v. Township of Morris School District*.⁶⁵

Jenkins was litigated within New Jersey’s complex system of policies and court decisions.⁶⁶ As noted earlier in this Essay, New Jersey passed an anti-school segregation statute in 1881 and adopted a constitutional mandate barring school segregation in 1947.⁶⁷ However, these actions did not produce an integrated school system.⁶⁸ Following the 1954 *Brown* decision,⁶⁹ New Jersey’s state courts became more open to enforcing school integration litigation than federal courts.⁷⁰ Despite judicial intervention, however, de jure and de facto school segregation remained widespread in New Jersey.⁷¹

To this day, school segregation has been the norm in many New Jersey school districts,⁷² but court intervention changed the course of that outcome in Morristown and Morris Township.⁷³ Eight individual plaintiffs filed the *Jenkins* lawsuit, supported by local fair housing and civil rights organizations and by the NAACP Legal Defense and Educational Fund, Inc. The *Jenkins* plaintiffs — one of whom was Beatrice Jenkins, a Black Morristown fair housing and public school advocate — brought the case because Morris Township was advancing plans to build a separate high school and change its status from a K–8 district, whose high school students had long attended Morristown

63. See generally TRACTENBERG ET AL., *supra* note 1.

64. See *id.* at 62.

65. See *Jenkins v. Twp. of Morris Sch. Dist.*, 279 A.2d 619, 633 (N.J. 1971).

66. See TRACTENBERG ET AL., *supra* note 1, at 29–31.

67. See *id.* at 31; *supra* notes 23–24 and accompanying text.

68. See TRACTENBERG ET AL., MAKING SCHOOL INTEGRATION WORK, *supra* note 1, at 32–33.

69. See generally *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (unanimously holding that it is unconstitutional to racially segregate children in public schools).

70. See TRACTENBERG ET AL., *supra* note 1, at 29–31.

71. See *id.*

72. See GARY ORFIELD, JONGYEON EE & RYAN COUGHLAN, C.R. PROJECT/PROYECTO DERECHOS CIVILES, NEW JERSEY’S SEGREGATED SCHOOLS: TRENDS AND PATHS FORWARD 17 (2017), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/new-jerseys-segregated-schools-trends-and-paths-forward/New-Jersey-report-final-110917.pdf> [https://perma.cc/8EGA-QPDB].

73. See TRACTENBERG ET AL., *supra* note 1, at 20.

High School, to a K–12 district.⁷⁴ The *Jenkins* plaintiffs, five of whom were residents of the township, were concerned that the education at Morristown High would be diminished if the township students left, and that the high school would eventually become mostly Black.⁷⁵ The hearing examiner concurred with their request for a school district merger.⁷⁶ He reported that most of the testimony about merging the Black student population in Morristown with the white students in Morris Township, “persuasively supported the high educational desirability and economic feasibility of such a merger.”⁷⁷

New Jersey’s Commissioner of Education also agreed with a merger, yet he claimed he lacked the power to stop the township’s withdrawal from Morristown.⁷⁸ The Supreme Court of New Jersey assured the Commissioner that he did have the power to order the merger and guarantee district compliance with the state’s constitutional mandate against segregation in the public schools.⁷⁹ On July 31, 1971, the Commissioner used the *Jenkins* decision to support his order merging the Morris Township and Morristown school systems into a single K–12 public school district, called the Morris School District.⁸⁰

Changing student assignment was MSD’s first policy decision during the post-merger period in the early 1970s.⁸¹ Board of Education members from the town and township devised a K–5 admissions policy that used the district’s geography and was modeled from another plan

74. *See id.* at 26, 40–42.

75. *See id.* at 41.

76. *See id.* at 42.

77. *Jenkins v. Twp. of Morris Sch. Dist.*, 279 A.2d 619, 623 (N.J. 1971); *see also* TRACTENBERG ET AL., *supra* note 1, at 42.

78. *See* TRACTENBERG ET AL., *supra* note 1, at 42–43.

79. *See Jenkins*, 279 A.2d at 632–33. Writing for the unanimous court, Justice Nathan Jacobs held that

[t]he Commissioner is adequately empowered to entertain such further proceedings pursuant to the petition and cross-petition as he finds appropriate and to grant such prayers therein as he considers warranted including (1) direction for continuance of the sending-receiving relationship after the expiration of the present contract and (2) direction that the Boards of the Township and Town proceed with suitable steps towards regionalization, reserving, however, supervisory jurisdiction to the Commissioner with full power to direct a merger on his own if he finds such course ultimately necessary for fulfillment of the State’s educational and desegregation policies in the public schools.

Id. at 633.

80. *See* TRACTENBERG ET AL., *supra* note 1, at 58.

81. *See id.* at 63.

in Princeton, New Jersey, (the Princeton Plan)⁸² to achieve an even distribution of students across schools, in terms of race and SES — often referred to as “racial balance.”⁸³ In 1948, Princeton developed a student assignment plan that grouped students by grade level instead of geography, to foster diversity in its segregated elementary schools. To this day, the plan works in MSD by designating the center of town, which is also the low-income housing area, as an open enrollment zone.⁸⁴ This neighborhood has long been a Black, low-income community but has slowly shifted to include mostly Latinx families.⁸⁵ The students living in this area are identified by the district each year for kindergarten and then are bused to three different K–2 schools to achieve racial balance.⁸⁶ Students living in the other areas of the town and township are also bused to schools based on where they live, with each of the three school zones radiating out from the open enrollment area like slices of a pie.⁸⁷

The other unique aspect of the admissions policy was its replication of another part of the Princeton Plan. At the time of the merger, Morristown and Morris Township each had three separate elementary schools.⁸⁸ The new MSD admissions policy’s creators decided that it was important for families to not identify with the town and township neighborhood schools of the past.⁸⁹ They re-branded the schools to serve grades K–2 and 3–5, respectively, and then paired them together with one school located in the town and one in the township.⁹⁰ They also switched around teachers so they would have a fresh start in a new building with a new population of students from the town and township.⁹¹ As stated in *Making School Integration Work: Lessons from Morris*, “[t]hese historical decisions made by district leadership also tie back to the overarching argument . . . that to produce and

82. See Vicky Hyman, *When Princeton Attacked Jim Crow*, NJ.COM (Apr. 2, 2019), https://www.nj.com/ledgerarchives/2008/02/when_princeton_attacked_jim_cr.html [<https://perma.cc/Y7AF-Y9UP>]; Kimberly Reeves, *Figuring and Reconfiguring Grade Spans*, AM. ASS’N SCH. ADM’RS, <https://www.aasa.org/schooladministratorarticle.aspx?id=8716> [<https://perma.cc/LZ7C-96QV>] (last visited Dec. 31, 2020).

83. See TRACTENBERG ET AL., *supra* note 1, at 65.

84. See *id.* at 64.

85. See *id.* at 63.

86. See *id.* at 12–13.

87. See *id.*

88. See *id.* at 62–67.

89. See *id.*

90. See *id.*

91. See *id.*

maintain stable and balanced integration across schools there must be student assignment policies that do not re-segregate students.”⁹²

In the 1970s, MSD was a mostly white and Black school system.⁹³ Today, however, the district comprises 47% white, 9% Black, 39% Latinx, and 4% Asian students, with 34% of the 3,100 student population eligible for free or reduced-price lunch and 13% are English learners.⁹⁴ The merger allowed for the structures to be in place to maintain an integrated school system and withstand years of demographic, leadership, and budgetary changes that might have otherwise led to resegregation.⁹⁵

Since the merger, MSD leaders have not only maintained district-level diversity but also sought to bring integration to the school level. Like New Jersey’s South Orange-Maplewood School District that recently settled a school segregation lawsuit,⁹⁶ some districts have diverse student populations at the district level that are resegregated into schools reflective of their racially isolated neighborhoods.⁹⁷ In other districts, advantaged parents use school transfer options that allow them to leave their assigned schools for what are perceived to be better options, leading to more segregation.⁹⁸ Because of its student assignment policy, MSD’s schools are nearly perfectly representative of the overall district’s racial and SES demographics.⁹⁹ Figure 1 shows exposure and isolation rates for the average student of each racial background at MSD.

92. *Id.* at 63.

93. *See id.* at 13–14; PAUL TRACTENBERG, ALLISON RODA & RYAN COUGHLAN, CENTURY FOUND., REMEDYING SCHOOL SEGREGATION: HOW NEW JERSEY’S MORRIS SCHOOL DISTRICT CHOSE TO MAKE DIVERSITY WORK (2016), <https://tcf.org/content/report/remedying-school-segregation/?agreed=1> [<https://perma.cc/EM85-3LW6>].

94. *See* TRACTENBERG ET AL., *supra* note 1, at 13.

95. *See id.* at 21.

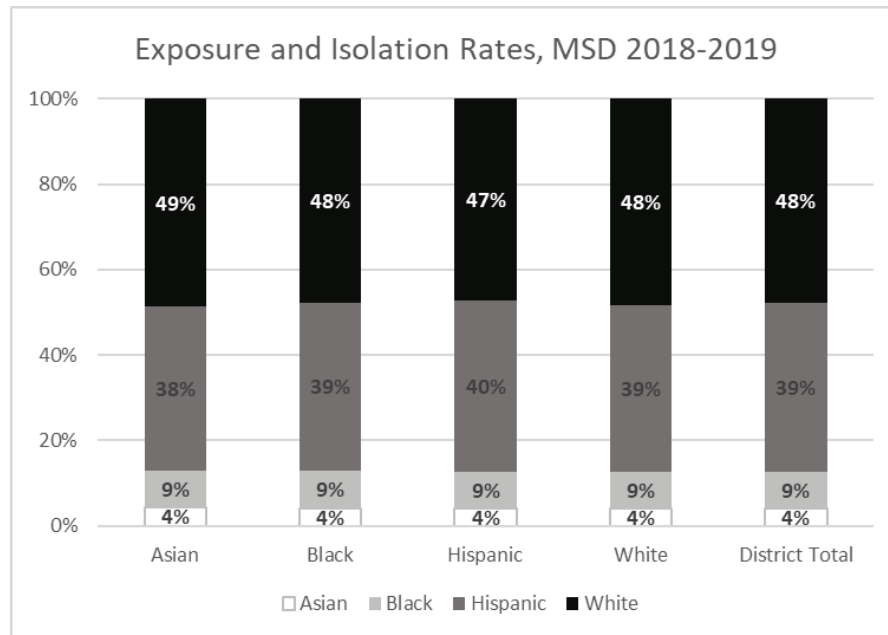
96. *See* Order of Dismissal with Prejudice *re* Stipulation, Black Parents Workshop v. South Orange-Maplewood Sch. Dist., No. 18-CV-02726 (D.N.J. July 29, 2020).

97. *See* RYAN W. COUGHLAN, SOUTH ORANGE-MAPLEWOOD: SCHOOL (IN)EQUITY REPORT 2 (2020), https://img1.wsimg.com/blobby/go/0eecd25-95dd-4c0d-b7be-497d46996bd1/downloads/South%20Orange%20Maplewood%20School%20Inequity%20Report_.pdf?ver=1599844099099 [<https://perma.cc/XEL3-SEVR>]. *See generally* Ann Owens, *Racial Residential Segregation of School-Age Children and Adults: The Role of Schooling as a Segregating Force*, 3 RUSSELL SAGE FOUND. J. SOC. SCIS. 63 (2017).

98. *See* Ashley L. Fox, *The More Things Change, the More They Stay the Same: The Maintenance of White Privilege and Power Amid Demographic Change in a Suburban School District* (June 4, 2019) (Ph.D. dissertation, Teacher’s College at Columbia University) (on file with Columbia University Libraries).

99. *See* TRACTENBERG ET AL., *supra* note 1, at 64.

Figure 1: Exposure and Isolation Rates, Morris School District, 2018-2019 (NJ DOE Enrollment File)¹⁰⁰



Making School Integration Work: Lessons from Morris explains in great detail how the merger remedy plays out today in schools and illuminates MSD’s ongoing struggle to address school-level integration, in particular as it relates to emergent, bilingual youth and historically marginalized Black and Latinx students who are often tracked into separate, segregated classes.¹⁰¹ Integrating *and* educating ELLs, students with limited and interrupted formal education,¹⁰² and unaccompanied immigrant youth, raise unique questions: what is the best way to balance academic content and language acquisition? How can students feel sheltered enough to learn a new language without feeling socially isolated? What do bilingual parent outreach, community involvement, and school culture look like? These challenges in educating ELLs demonstrate that even within a school system that guarantees relative desegregation at the district level, achieving school integration requires all teachers and staff to view education as a “shared project.”

100. *Id.* at 65.

101. *See id.* at 80–85, 154–55.

102. *See generally* MEETING THE NEEDS OF STUDENTS WITH DIVERSE BACKGROUNDS (Rosemary Sage ed., 2010).

When segregation remedies lack clear structures and support at the district and school levels, they can falter or be completely abandoned.¹⁰³ These structures have enabled the dynamic process of integration to continue; the most recent example of Morris's adaptive nature was evidenced by several recent policy changes that the superintendent's 2017 "Equity and Inclusion Action Plan" brought about.¹⁰⁴ The Plan is reflective of MSD's mission "to build[] and sustain[] a healthy community based on a foundation of equity and inclusion."¹⁰⁵

With support and input from students, community members, faculty, and administrators, as well as a superintendent listening tour with the Black and Latinx communities, the district looked introspectively at their taken-for-granted policies and practices that negatively affected Black and Latinx students' opportunities to learn.¹⁰⁶ The three-year plan is based on developing an "intercultural mindset" by instituting restorative justice practices, teacher professional development on implicit bias and student trauma, training and support for culturally relevant curriculum and pedagogy, specific student subgroup targets for enrollment in advanced coursework and extracurricular activities, and hiring more social support staff and racially diverse faculty.¹⁰⁷ While still in the early stages, results from the Plan have been very positive, with in-class behavioral referrals and out-of-school suspensions decreasing substantially, more racial diversity in middle school honors classes, and a new history and humanities curriculum writing project that addresses the history of race in America.¹⁰⁸ However, MSD still has work to do regarding moving the district

103. See generally AMY STUART WELLS ET AL., CHARLES HAMILTON HOUSTON INST. FOR RACE & JUST., BOUNDARY CROSSING FOR DIVERSITY, EQUITY AND ACHIEVEMENT: INTER-DISTRICT SCHOOL DESEGREGATION AND EDUCATIONAL OPPORTUNITY (2009), school-diversity.org/pdf/Wells_BoundaryCrossing.pdf [<https://perma.cc/RU2S-S82R>].

104. See TRACTENBERG ET AL., *supra* note 1, at 124–27; see also *Equity and Inclusion Action Plan: Promoting Lifelong Success for Each Student*, MORRIS SCH. DIST. [hereinafter *Equity and Inclusion Action Plan*], https://resources.finalseite.net/images/v1562767240/morrischooldistrictorg/ar5negkds6fbqeugf8yh/MSDEquityInclusionActionPlan_LifelongSuccess.pdf [<https://perma.cc/NJU5-BRYQ>] (last visited Dec. 31, 2020).

105. *Mission, Vision, & Values*, MORRIS SCH. DIST., <https://www.morrischooldistrict.org/district/mission-vision-values> [<https://perma.cc/DG9V-MNLD>] (last visited Dec. 31, 2020).

106. See *Equity and Inclusion Action Plan*, *supra* note 104.

107. See TRACTENBERG ET AL., *supra* note 1, at 124–27.

108. See *id.* at 124–25.

towards true integration and fully including every child in the school system through de-tracking the curriculum.

A. Community School District 13 Case Study

Schools in MSD contrast sharply with those in New York City's Community School District 13 (CSD 13), which has a similarly-sized student population and is also demographically changing due to gentrification.¹⁰⁹ CSD 13 is one of the three New York City school districts (along with CSDs 3 and 5 in Manhattan) with the “sharpest discrepancies between the demographics of schools and their attendance zones,”¹¹⁰ meaning the neighborhoods are more diverse than the schools because parents are allowed to leave their zoned school for choice options.

Figure 2 shows that in CSD 13, 21% of students are Asian, 42% are Black, 17% are Latinx, and 17% are white. However, the average Black student in this district attends a school where 7% of her classmates are Asian, 61% are Black, 19% are Latinx, and 9% are white.¹¹¹ By comparison, the average white student in CSD 13 attends a school where 28% of her classmates are Asian, 23% are Black, 14% are Latinx, and 30% are white.¹¹² These data support the findings from a 2019 study that in gentrifying neighborhoods, white and Asian students are concentrated in certain neighborhood schools, while the other schools in gentrifying areas continue to enroll mostly Black and Latinx students.¹¹³ While MSD and CSD 13 differ in terms of geographic size, total student population, and demographic makeup, MSD demonstrates that school integration is possible, even in an area with heavy residential segregation.

109. See MORDECHAY & AYSCUE, *supra* note 42, at 21–33.

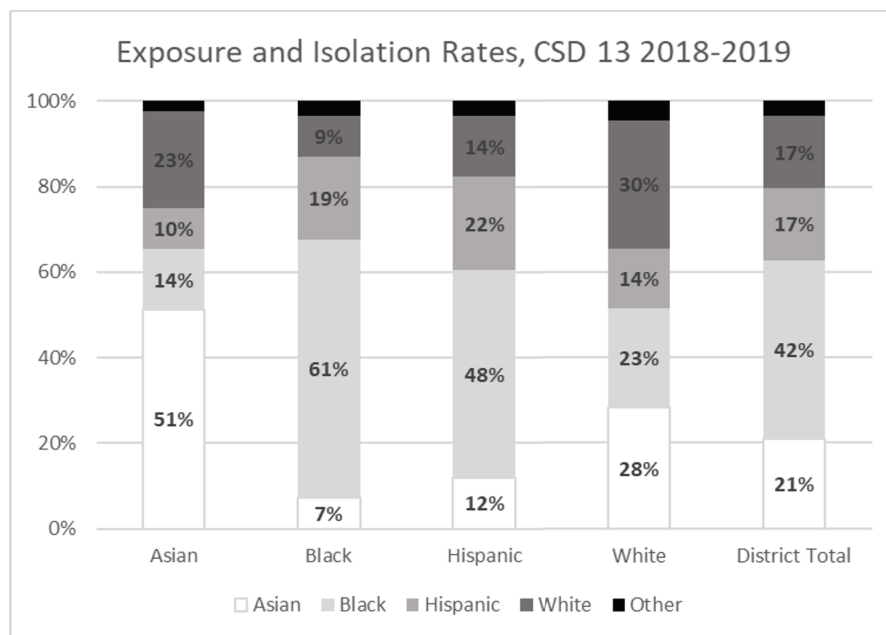
110. Hemphill & Mader, *supra* note 11. According to InsideSchools.org, a popular website to find information about schools, CSD 13 “encompasses the upscale . . . Brooklyn Heights, new high-rises along Flatbush Avenue Extension, sprawling public housing complexes and homeless shelters on the north side of [the district], and the rapidly gentrifying neighborhoods of Fort Greene, Clinton Hill and Bedford Stuyvesant.” *District 13*, INSIDESCHOOLS, <https://insideschools.org/districts/13> [<https://perma.cc/HP2Q-GDXL>] (last visited Dec. 31, 2020).

111. See *infra* Figure 2.

112. See *infra* Figure 2.

113. See MORDECHAY & AYSCUE, *supra* note 42, at 25–28.

Figure 2: Exposure and Isolation Rates, CSD 13 2018-2019 (NYSED Enrollment Database)¹¹⁴



IV. APPLYING THE LESSONS FROM MORRIS TO NEW YORK CITY

In this Part, we draw on the Morris case study to offer other policy solutions that DOE officials should adopt to help diversify and integrate schools. We believe that the choice to forego the neighborhood school policy in MSD was forward thinking because it broke the relationship between neighborhood segregation and school segregation. Such a choice essentially stopped white parents from gaming the system by either buying homes in certain neighborhoods to attend certain schools¹¹⁵ or allowing them to opt out of assigned neighborhood schools through deregulated school choice or transfer policies.¹¹⁶ Likewise, it is constitutionally permissible under *PICS* for

114. See *Enrollment Data Archive*, INFO. & REPORTING SERVS., N.Y. ST. EDUC. DEPT., <http://www.p12.nysed.gov/irs/statistics/enroll-n-staff/ArchiveEnrollmentData.html> [<https://perma.cc/QBT7-RSPA>] (last visited Feb. 4, 2021).

115. See Jennifer Jellison Holme, *Buying Homes, Buying Schools: School Choice and the Social Construction of School Quality*, 72 HARV. EDUC. REV. 177, 179 (2002); see also CHOOSING HOMES, CHOOSING SCHOOLS, *supra* note 11, at 11–12.

116. See generally MOLLY VOLLMAN MAKRIS, PUBLIC HOUSING AND SCHOOL CHOICE IN A GENTRIIFIED CITY: YOUTH EXPERIENCES OF UNEVEN OPPORTUNITY (2015); see also Roda & Wells, *supra* note 11, at 265.

New York City schools to achieve racial diversity with geography-based admissions plans that utilize race of the neighborhood or neighborhood school to admit students.¹¹⁷ Socioeconomic-based plans could also be successful in the New York City context because race and SES are highly intertwined.¹¹⁸ We concur with the recommendation in Sarah Diem and Anjalé Welton's book, *Anti-Racist Educational Leadership and Policy*, that school choice and student assignment plans must be "racially conscious, inclusive, and less competitive, if we truly seek to create racially diverse schools."¹¹⁹

For example, New York City's DOE should adopt a modified version of the Princeton Plan at the K–8 level, which allowed MSD to integrate schools across segregated neighborhoods.¹²⁰ This neighborhood school-level rezoning process could start from the ground up in each district with Community Education Councils (CECs)¹²¹ serving as key decision makers in student enrollment decisions.¹²² CECs vote on elementary and middle school rezoning decisions, with initial approval from the DOE, after superintendents submit a proposal for changing school zone boundaries.

117. See *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. (PICS)*, 551 U.S. 701, 788 (2007) (Kennedy J., concurring).

118. See KAHLBERG ET AL., *supra* note 31. However, some scholars suggest that plans based on SES alone are not as successful as race-based ones. See Jeremy Anderson & Erica Frankenberg, *Voluntary Integration in Uncertain Times*, PHI DELTA KAPPAN (Jan. 21, 2019), <https://kappanonline.org/voluntary-integration-in-uncertain-times-anderson-frankenb-er/> [<https://perma.cc/LF4Z-HWGC>].

119. DIEM & WELTON, *supra* note 62, at 48.

120. See TRACTENBERG ET AL., *supra* note 1, at 65. The Princeton Plan could only be adopted at the K–8 level because high school admissions in New York City are open choice and run centrally.

121. New York City is broken up into 32 CSDs. See Kevin E. Jason, *Dismantling the Pillars of White Supremacy: Obstacles in Eliminating Disparities and Achieving Racial Justice*, 23 CUNY L. REV. 139, 186 (2020). Each CSD has a community education council that works like a typical school board with elected parent members. See *Education Councils*, N.Y.C. DEP'T EDUCATION, <https://www.schools.nyc.gov/get-involved/families/education-councils> [<https://perma.cc/GG6Z-5G8B>] (last visited Dec. 31, 2020).

122. See *Education Councils*, *supra* note 121. First, to start the process, the district superintendent must get approval from the DOE's Office of Student Enrollment Planning and Operations and discuss the proposal with school communities that the proposed zoning changes would affect. See *Regulation of the Chancellor*, N.Y.C. DEP'T EDUCATION (Jan. 14, 2005), <https://www.schools.nyc.gov/docs/default-source/default-document-library/a-185-english> [<https://perma.cc/FDS2-MZ83>]. After the DOE approves the changes, the superintendent sends the proposal to the CEC for a final vote. See *Education Councils*, *supra* note 121.

Using school enrollment data, each CEC could strategically merge nearby K–5 schools that previously served segregated populations. In order to do this, education officials would need to identify geographically proximate schools with dissimilar student bodies. However, this process could only be accomplished in elementary and middle schools because high school admissions are open choice, meaning that all students must apply and rank their choices on a centrally administered application.¹²³

Modeling MSD, students from paired schools could attend K–2 in one of the buildings and grades 3–5 in the other building. As compared to only rezoning, this solution would be more politically feasible and acceptable to advantaged residents who believe they are entitled to the premium value they attach to certain school catchment areas. Ultimately, as we described above, larger systemic change at the state level that goes beyond this suggestion is needed to ensure educational justice, but this step would help promote a greater level of equity and inclusion.

School rezoning based on the Princeton Plan should happen in conjunction with the elimination of middle school screens and elementary school G&T programs that result in more segregation between and within schools.¹²⁴ The G&T admissions process is one of the only academically screened options available to families at the elementary school level in public schools in New York City. Indeed, researchers have found that the use of academic “screens” — selection criteria used for admissions, e.g., standardized tests, grades, and attendance — is a main contributing factor to school segregation in New York City.¹²⁵ We concur with the School Diversity Advisory Group’s recommendation that would require districts to “analyze controlled choice, screens, gifted and talented and other admissions policies and programs in terms of improving or perpetuating schools that are isolated based on race or other factors.”¹²⁶

123. See N.Y.C. INDEP. BUDGET OFF., PREFERENCES AND OUTCOMES: A LOOK AT NEW YORK CITY’S PUBLIC HIGH SCHOOL CHOICE PROCESS 41 (2016), <https://ibo.nyc.ny.us/iboreports/preferences-and-outcomes-a-look-at-new-york-citys-public-high-school-choice-process.pdf> [<https://perma.cc/M8HU-5JA3>].

124. See SCH. DIVERSITY ADVISORY GRP., MAKING THE GRADE: THE PATH TO REAL INTEGRATION AND EQUITY FOR NYC PUBLIC SCHOOL STUDENTS (2019) [hereinafter SDAG I], https://docs.wixstatic.com/ugd/1c478c_4de7a85cae884c53a8d48750e0858172.pdf [<https://perma.cc/2RTU-FNDM>]. See generally RODA, INEQUALITY IN GIFTED AND TALENTED PROGRAMS, *supra* note 12;

125. See SDAG I, *supra* note 124, at 43, 112.

126. *Id.* at 76.

Indeed, CSDs should consider replacing deregulated school choice, which permits academic screening, with choice plans that have specific subgroup targets for the racial and SES composition of the student body. These types of plans are commonly called “controlled choice” plans because they require parents to choose and rank schools, and then the district places students based on their top choices that will also ensure racial and SES diversity across schools.¹²⁷ In fact, only one CSD, Brooklyn’s CSD 15, has implemented a middle school admission plan with controlled choice.¹²⁸ Educational leaders and parents in this district responded to gentrification’s effects by developing the “D15 Integration Plan.”¹²⁹ The Plan eliminated academic screens from each of the middle schools, as well as other criteria schools used to rank and admit students that unfairly reflected family income, such as the school tour requirement or teacher recommendations.¹³⁰ After the first year of eliminating the screens, low-income students are more evenly distributed across the 11 middle schools than before.¹³¹ CSDs should learn from D15’s middle school integration plan and apply a similar approach to diversifying elementary schools.

CONCLUSION

New York City’s integration movement gained new attention after the 2014 UCLA Civil Rights Project report named New York City one of the most segregated school systems in the country.¹³² Like Morris

127. See ERICA FRANKENBERG, CHUNGMEI LEE & GARY ORFIELD, C.R. PROJECT AT HARV. UNIV., *A MULTIRACIAL SOCIETY WITH SEGREGATED SCHOOLS: ARE WE LOSING THE DREAM?* 18 (2003), <https://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/a-multiracial-society-with-segregated-schools-are-we-losing-the-dream/frankenber-mu-ltiracial-society-losing-the-dream.pdf> [<https://perma.cc/YD34-UB76>].

128. See Michael Elsen-Rooney, *New Admissions Plan Improves Diversity in Brooklyn School District, New NYC Data Shows*, N.Y. DAILY NEWS (Nov. 19, 2019, 2:50 PM), <https://www.nydailynews.com/new-york/education/ny-diversity-integration-brooklyn-district-15-20191114-pnykcguo5fcpnifex5bamstl6i-story.html> [<https://perma.cc/G67J-PZ8Z>]; see also Joffe-Walt, *supra* note 47.

129. See Joffe-Walt, *supra* note 47.

130. See *id.*; see also Elsen-Rooney, *supra* note 128.

131. See Elsen-Rooney, *supra* note 128; Joffe-Walt, *supra* note 47.

132. IntegrateNYC started in 2014, and media coverage on school desegregation and integration increased after the 2015 UCLA Civil Rights report publication. See, e.g., Elizabeth A. Harris, *School Segregation Persists in Gentrifying Neighborhoods, Maps Suggest*, N.Y. TIMES (Dec. 15, 2015), <https://www.nytimes.com/2015/12/16/nyregion/school-segregation-persists-in-gentrifying-neighborhoodsmaps-suggest.html> [<https://perma.cc/DEY4-N4AV>]; Patrick Wall, *De Blasio Official Touts School Choice as a Solution to Segregation, Echoing*

had in the 1970s, New York City currently has a diverse coalition of elected officials, educators, parents, students, and community organizations that are coalescing around a common vision of the “5Rs of Real Integration” — Race & Enrollment, Resources, Relationships, Restorative Justice, and Representation of School Faculty.¹³³ These school integration activists, community organizations, and individual school leaders are working hard to create integrated and equitable schools from the ground up.

Yet what is missing are state and local laws to *require* the first “R” — “Race & Enrollment,” or racially diverse student bodies. We believe what is needed to achieve that goal is state- and local-level leadership, including the state Governor and New York DOE Commissioner, to enact school integration laws or policies using the NYCHRL or other means. Through state legislation or state constitutional amendments, this top-down mechanism would mandate CSDs to create schools that are racially and socioeconomically representative of the communities they serve. It is also imperative for the DOE to address school inequities that negatively affect students of color, stemming from a wide range of factors such as segregated G&T programs, disparate Parent-Teacher Association fundraising among schools with advantaged parents, and punitive discipline policies that can lead to school-to-prison pipelines.¹³⁴

Morris County and New York City differ in size, location, demographics, and state laws on school segregation. Yet there is much to learn from the Morris merger remedy that accounts for its persistence and applicability to the New York City school system, particularly in the context of gentrifying areas of the city where racially diverse schools are feasible. Gentrification is a double-edged sword. Instead of allowing gentrification to go unchecked and exacerbate segregation, the City must ease gentrification’s effects through school integration policy. As the Morris case shows, law and litigation should be used strategically with other integration techniques to make school integration work in New York City schools. We found that a

Bloomberg, CHALKBEATNY (Nov. 3, 2015, 6:00 PM), <https://ny.chalkbeat.org/2015/11/3/21092453/de-blasio-official-touts-school-choice-as-a-solution-to-segregation-echoing-bloomberg> [<https://perma.cc/WLJ7-4HPG>].

133. See *Real Integration*, INTEGRATENYC, <https://www.integratenyc.org/realintegration> [<https://perma.cc/Q7TP-CTUA>] (last visited Dec. 31, 2020).

134. See SDAG I, *supra* note 124; SCH. DIVERSITY ADVISORY GRP., MAKING THE GRADE II: NEW PROGRAMS FOR BETTER SCHOOLS (2019), https://docs.wixstatic.com/ugd/1c478c_f14e1d13df45444c883bbf6590129bd7.pdf [<https://perma.cc/9A5H-T64U>].

Morris-type plan has the potential to (1) change existing district and school boundary lines that impede integration, (2) break the ties between neighborhood and school segregation, (3) limit the negative effects of uneven school choice participation by advantaged residents, and (4) create long-lasting diversity and inclusion within diverse school settings.