

MINNESOTA DEPARTMENT OF EDUCATION
INTEGRATION REVENUE REPLACEMENT TASK FORCE
HEARING ON SCHOOL DIVERSITY AND INTEGRATION

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STATE OFFICE BUILDING, ROOM 10

TESTIMONY

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I am John C. Brittain, a former law school dean, chief counsel of the Lawyers' Committee for Civil Rights Under Law, and current law professor and veteran civil rights attorney with over four decades of experience with a specialization in racial, ethnic and linguistic equity in education. I appear today at this hearing on behalf of the National Coalition on School Diversity, a network of national civil rights organizations, university-based research institutes, local educational advocacy groups, and academic researchers seeking a greater commitment to racial and economic diversity in federal K-12 education policy and funding. We seek to procure a more significant political and financial commitment to racial and economic integration. We also support the work of state and local school diversity practitioners.

The thesis of my testimony is as follows: "Elementary and secondary schools can voluntarily consider race to further compelling interests in achieving diversity and avoiding racial isolation." See GUIDANCE ON THE VOLUNTARILY USE RACE TO ACHIEVE DIVERSITY AND AVOID RACIAL ISOLATION IN ELEMENTARY AND SECONDARY SCHOOLS, U.S. Department of Justice, Civil Rights Division, and U.S. Department of Education, Office for Civil Rights, Introduction, (Dec. 1, 2011), here after referred to as the "OCR/DOJ School Guidance Policy," located on the Internet at

<http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.html>

The legal parameters laid out in the newly released guidance provides sufficient room for school districts to voluntarily adopt school assignment plans that promote the well-documented educational benefits of school diversity and integration. Other educational scholars, who have been invited to testify at this hearing, will explain the harms of racial isolation and the benefits of diversity in schools. My testimony will outline the necessary steps for educators to voluntarily adopt and implement a school integration plan consistent with the law established by the US Supreme Court, at least one federal appellate court, and the newly released School Guidance Policy by the U.S. Department of Education's Office for Civil Rights and the U.S. Justice Department.

First, school district officials must examine their overarching educational goals and determine how those goals fit within what the law refers to as a compelling state interest for diversity. The OCR/DOJ School Guidance Policy and a majority of justices of the Supreme Court have recognized, "..... the compelling interests that K-12 schools have in obtaining the benefits that flow from achieving *a diverse student body* and *avoiding racial isolation*." (Emphasis added) For example, if one of the district's goals is to develop citizens or critical thinkers, elected leaders and educators could develop arguments for why attending a diverse school helps to engender

qualities necessary for full citizenship and critical thinking in a pluralistic society. The law gives deference and flexibility to school authorities to determine how best to satisfy the goals of school diversity and education in a careful manner.

Second, at the onset, educators and officials must identify how the school district determines when the goals of a diverse student body and avoiding racial isolation have been “achieved.” OCR/DOE School Guidance Policy.

Third, educators and officials must consider whether or not any race neutral means could achieve those stated goals of diversity and avoiding racial isolation. The OCR/DOJ School Guidance Policy urges school districts to first explore a race neutral approach in which a school assignment plan does not target students based upon a racial classification and does not use race to award benefits and burdens. An example of race neutral means include geographic zoning, school choice or a combination of both. Other means may exist such as targeting feeder schools with particular demographics as the criterion for the school assignment plan.

These race neutral means allow school districts to be aware of or to consider the racial or ethnic outcomes in developing plans so long as no specific student is assigned to a school based upon his or her individual race.

Fourth, if the school district explores race-neutral means for meeting its goals and finds them inadequate or unworkable, administrators may use race as an “express criterion” according to the federal government’s school guidance policy in, “generalized race-based approaches,” that “do not rely on the race of individual students or treat individual students differently because of their race.” OCR/DOJ School Guidance Policy

However, under this option, the following is required:

- a) School district officials must evaluate each student in the selection process similar to the way college admissions use race as one factor among several others, as permitted under the law.
- b) School district officials must not make the student's race the, "defining characteristic;" for admission or non-selection and
- c) School district officials must periodically evaluate whether or not it is still necessary to use race to achieve diversity and avoid racial isolation. OCR/DOJ School Guidance Policy

Fifth, school districts should maintain a transparent process that allows parents and students to voice concerns about any plans that use race in a race neutral and generalized manner. The process should allow the public to see how the decisions are made about accepting and rejecting students for admission to particular schools. Officials should maintain such documents in case the plan is reviewed or challenged.

The law gives deference to local school authorities to determine how to best offer education. This means that school officials have a range of school assignment options and choices by which to create diverse schools and avoid racial isolation. The new OCR/DOJ School Guidance Policy offers several examples, which are by no means an exhaustive list. School districts may apply the guidance in choosing where to site schools, which kinds of choice programs to offer in particular settings or how to design grade realignments and feeder patterns. Even further, the districts may apply the guidance in creating open and choice enrollment systems, setting admission standards to competitive schools and programs, and designing inter- and intra-district selection.

As to the latter interdistrict method to achieve diversity with racial and ethnic integration, and avoid racial isolation, two or more districts may develop a metropolitan school assignment plan. One method would allow students to participate in a district-to-district transfer based upon a race neutral criteria of geographic zoning, social and economic status of student's household or other such criteria provided the option was available to all students within the zone or group status. Officials and educators could develop these goals by, for example, setting minimum floors for diversity or maximum ceilings for racial isolation that would take into account the particular demographics of a community or region.

If that system could not achieve the goals of diversity and avoid racial isolation, another method allows the school district to use race as a factor among others in selection. However, as previously described, the district would have to individually evaluate each student in a wholeistic manner within the criteria applicable to all and avoid making the final decision primarily on the student's race.

Throughout the development of the metropolitan or any other plan, school officials may review different options with a consciousness of the racial and ethnic population who will attend the schools.

CONCLUSION

In summary, the federal constitutional law clearly supports the conscious pursuit of the educational and social advantages associated with school diversity and integration. Armed with the backing of one Supreme Court case, *Parents Involved in Community Schools (PICS) v. Seattle District No. 1*, 551 U.S. 701 (2007), as interpreted by the U.S. Department of Education, Office for Civil Rights in the School Guidance Policy for K-12 grades and more recently clarified in, *Student Doe I v. Lower Merion School District*, Civ. Action No. 2:09-CV-02095 (3rd Cir. decided Dec. 14, 2011), the

first federal appeals decision since the PICS case, the school districts have the blueprint to achieve diversity. My work as a civil rights lawyer has taken me to many communities and states like yours where people are grappling with confusion over what the law allows and does not allow with regard to racial diversity. My goal today is to help turn confusion into clarity.

The law is quite clear: If our nation's educators determine that diversity and avoidance of segregation have educational benefits for the students they serve, then there are perfectly legal means for creating and sustaining those student assignment plans.