EDUCATION WEEK

Districts Face Uncertainty in Maintaining Racially Diverse Schools

Raj Manhas, Seattle schools superintendent, right, answers a question during a news conference in Seattle following the Supreme Court's decision against the district Thursday, June 28.

—Joe Nicholson/AP

By Mark Walsh

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The **U.S. Supreme Court's decision limiting the use of race in school assignments** will likely result in a period of upheaval as school districts drop race-conscious policies and consider whether to try alternative means to keep schools integrated, experts say.

"The court left us with some, but very limited, practical options to use race to desegregate the schools," said Michael G. Casserly, the executive director of the

Council of the Great City Schools. “For all intents and purposes, the court said you can use race, but we dare you to come up with a solution that passes muster.”

“For that reason, I worry that a lot of school districts will simply give up in the face of repeated challenges,” said Mr. Casserly, whose Washington-based group represents the nation’s largest urban school district, many of which have programs that consider students’ race.

Harry J.F. Korrell, a lawyer who represented a group of Seattle parents who challenged that district’s racial tiebreaker for assigning high school students, said that more districts would likely use students’ socioeconomic status as a sorting mechanism to achieve diversity in their schools, something that is being tried in several places with mixed success in achieving diversity goals.

“The trick is not to pursue racial balancing or racial discrimination by proxy,” he said. “It will require good faith by school districts to jettison race.”

The court ruled 5-4 on June 28 that assignment plans in the Seattle and Jefferson County, Ky., districts that classified all students by race, and sometimes relied on race to achieve diversity in individual schools, violated the equal-protection clause of the 14th Amendment.

“For schools that never segregated on the basis of race, such as Seattle, or that have removed the vestiges of past discrimination, such as Jefferson County, the way to achieve a system of determining admission to the public schools on a nonracial basis is to stop assigning students on a racial basis,” Chief Justice John G. Roberts Jr. said in an opinion was joined in full by Justices Antonin Scalia, Clarence Thomas, and Samuel A. Alito Jr.

Justice Anthony M. Kennedy, who joined only parts of the majority opinion, made clear that he would not go as far as the chief justice in prohibiting schools from using race.

In a lengthy concurrence, parts of which he read from the bench, Justice Kennedy said it would be permissible for districts to take race into account when choosing sites for new schools, when drawing attendance zones based on neighborhood demographics, in allocating resources for special programs, in recruiting students

and faculty members “in a targeted fashion,” and in tracking enrollment and performance by race.

“A district may consider it a compelling interest to achieve a diverse student population,” Justice Kennedy said. “Race may be one component of that diversity, but other demographic factors, plus special talents and needs, should also be considered.”

Justice Stephen G. Breyer read at length from his passionate dissent, which was joined by Justices John Paul Stevens, David H. Souter, and Ruth Bader Ginsburg.

“The last half-century has witnessed great strides toward racial equality, but we have not yet realized the promise of Brown [v. Board of Education of Topeka],”, Justice Breyer said in a reference to the court’s 1954 ruling that struck down racial segregation in public schools. “To invalidate the plans under review is to threaten the promise of Brown. This is a decision that the court and the nation will come to regret.”

Two Districts’ Plans

The high court waited until the last day of its term to decide *Parents Involved in Community Schools* v. *Seattle School District* (Case No. 05-908) and *Meredith* v. *Jefferson County Board of Education* (No. 05-915).

The 97,000-student Jefferson County district, which includes the city of Louisville, formerly **was under a court-supervised desegregation plan**. The district adopted a voluntary plan in 2001, after a federal court declared it “unitary,” or free of the vestiges of past racial segregation.

Crystal Meredith hugs lawyer Teddy Gordon during a news conference in Louisville, Ky., June 28, after the Supreme Court ruled on the city's public school integration plan. Mr. Gordon had argued on Ms. Meredith's behalf that the Louisville system's plan was discriminatory. At right is Deborah Stallworth, whom Mr. Gordon represented in an earlier court case that ended court-ordered busing in the district.
—Ed Reinke/AP

Jefferson County's "managed choice" plan includes consideration of race for some student assignments to schools. The plan seeks to have a black enrollment of at least 15 percent, but no more than 50 percent, at each school.

The district's race-conscious plan was challenged by a white parent whose son was denied a transfer to his neighborhood school in 2000 on account of his race.

In July 2006, a three-judge panel of the U.S. Court of Appeals for the 6th Circuit, in Cincinnati, unanimously upheld most parts of the Jefferson County district's plan, ruling that it was narrowly tailored to achieve school diversity.

The 46,000-student Seattle district was never under court-ordered desegregation, but in 2000 **adopted an assignment plan that it says uses race as a way to foster educational and social benefits in its classrooms**. The plan calls for using race as one of several tiebreakers for the district's 10 high schools when certain schools are oversubscribed after 9th graders select their preferred schools.

The race-conscious policy was challenged in 2000 by several white families whose children were denied admission to a new neighborhood high school. The white families were later joined in the lawsuit by black families whose children were denied assignment to traditionally black-majority high schools. In October 2005, a 7-4 majority of the U.S. Court of Appeals for the 9th Circuit, in San Francisco, upheld the Seattle district's plan as narrowly tailored to achieve racial diversity.

Distinguished From *Grutter*

The two precollegiate cases were to some degree the natural follow-up for the Supreme Court to the two cases it decided in 2003 involving the consideration of race in admissions to higher education.

In those cases, ***Gratz* v. *Bollinger* and *Grutter* v. *Bollinger***, involving the University of Michigan, the court upheld affirmative action in college admissions in

principle and supported the idea that using race to promote classroom diversity was a permissible goal.

The court upheld the Michigan law school's race-conscious admissions policy because it involved a narrowly tailored individual review of each applicant in an effort to achieve a critical mass of underrepresented minority-group members. But the court struck down the main undergraduate-admissions policy at Michigan, which had automatically awarded bonus points to applicants from underrepresented minority groups.

The high court's embrace four years ago of promoting diversity as a rationale for the consideration of race was welcomed in K-12 education, where a student's race is considered in a variety of programs and circumstances. Some instances, such as acceptance to competitive magnet programs, are similar to college admissions. Others, such as in the Seattle and Jefferson County cases, represent broader efforts to maintain racial balance in schools.

Chief Justice Roberts—in a part of his opinion joined by Justice Kennedy, thus making it a majority—said the race-conscious programs at issue in Seattle and Jefferson County differed from the law school admissions program upheld in *Grutter*.

The racial classifications in the Michigan case were part of a broader assessment of diversity, and not simply an effort to achieve racial balance, the chief justice said.

"In the present cases, by contrast, race is not considered as part of a broader effort to achieve exposure to widely diverse people, cultures, ideas, and viewpoints," he said. "Race, for some students, is determinative standing alone."

Since that decision there has been a change in membership on the high court. Chief Justice William H. Rehnquist, who was in the minority in *Grutter*, died in 2005 and was replaced by Chief Justice Roberts. Justice Sandra Day O'Connor, who wrote the opinion upholding the Michigan law school plan, retired early last year and was succeeded by Justice Alito. The latter change was significant to today's decision.

'Relieved and Vindicated'

School administrators and legal experts across the country, from Lynn, Mass., to Los Angeles, were considering the impact of the court's decision.

In Lynn, the 15,000-student school system has had a voluntary desegregation plan for some 20 years. The plan survived a legal challenge in which a federal district court and the U.S. Court of Appeals for the 1st Circuit, in Boston, ruled that the district's desire to maintain racial balance in its schools was narrowly tailored to meet the compelling governmental interest of maintaining racial diversity.

In Los Angeles, meanwhile, a state trial court postponed a hearing in a lawsuit that challenges the consideration of race in the 708,000-student district's magnet schools program and a student transportation program. The suit challenges the program under the California constitutional amendment known as Proposition 209, which bars racial preferences in all state and local governmental programs.

Even though the programs are being challenged on state constitutional grounds, the trial judge appeared to postpone the hearing to weigh the Supreme Court's 178-page decision in the Seattle and Jefferson County, Ky., cases.

Kathleen Brose, left, becomes emotional as her lawyer, Harry Korrell, right, looks on as they talk to reporters on June 28 in Seattle about the Supreme Court decision. Ms. Brose, whose daughter failed to get into Seattle's Ballard High School because of efforts to balance the school's racial makeup, was one of the challengers of Seattle's plan.
—Ted S. Warren/AP

Mr. Casserly of the Council of the Great City Schools said his group was getting a lot of questions last week, with the top one being what is the effect of the ruling on school systems that are still under some form of court supervision to desegregate their schools.

“We’ve told them this opinion really applies to those districts using these strategies on a voluntary basis,” he said.

Several civil rights advocates who had backed the school districts’ diversity plans argued that Justice Kennedy’s concurrence went a long way toward tempering the majority opinion.

“This is more of a 4-4-1 decision than a 5-4 decision,” said Theodore M. Shaw, the president of the NAACP Legal Defense and Educational Fund.

Charles Jr. Ogletree Jr., a law professor at Harvard University, said that while Justice Kennedy had problems with the two specific programs at issue, “there are situations in which districts would be allowed to use race.”

“He’s saying this is not the last word,” said Mr. Ogletree, who is also the executive director of the Charles Hamilton Houston Institute for Race and Justice, which is named for a key legal figure in the battle against segregated schools that culminated in the *Brown* decision.

Roger Clegg, the president and general counsel of the Center for Equal Opportunity, a Washington-based group that filed a friend-of-the-court brief on the side of the challengers of the race-conscious policies, praised the decision.

“As America becomes increasingly a multiracial and multiethnic society, it also becomes more and more untenable to have laws that categorize our people because of race and national origin,” Mr. Clegg said in a statement.

In a conference call with reporters shortly after the decision, the challengers of Seattle’s race-conscious plan were exultant.

“We are relieved and vindicated by the ruling,” said Kathleen Brose, a parent and the president of Parents Involved in Community Schools, which brought the Seattle lawsuit.

“Let us now focus all our energy and resources on improving our community schools,” she said in a reference to schools with neighborhood-based enrollments.

Sharon L. Browne, a lawyer with the Sacramento, Calif.-based Pacific Legal Foundation, which assisted the challengers in both cases, said “the court made it clear that Grutter simply does not apply in K-12.”

She acknowledged that five justices—Justice Kennedy and the four dissenting justices—would probably allow race-conscious decisions on selecting a site for a new school.

Far from being downbeat, however, officials in the Seattle district found much to like in the decision, because they believe it clarified the law. The district had suspended its race-based plan because of the litigation.

“We are very pleased that the Supreme Court upheld the value of diversity in public schools,” Superintendent Raj Manhas said in an interview. “In addition to upholding the overall goal of diversity within our local schools, we are also gratified and very pleased that the Supreme Court went so far as to describe the types of actions that school districts may pursue within the limits of the constitution.”

Mr. Manhas said that Justice Kennedy’s opinion helps justify “some of the work we are already doing by investing more in some of the poorer areas of the city,” such as providing the International Baccalaureate and international language programs to schools in those areas.

In Louisville, Ky., Pat Todd, the director of student assignment for the Jefferson County district, said the decision averted “the most grave scenario” that the district had feared from among the possible rulings, in which the majority opinion might have said there was no compelling government interest in continuing to integrate public schools.

Pat Todd, the Jefferson County school district's director of student assignment, speaks June 28, during a press conference in Louisville, Ky., following the decision by the U.S. Supreme Court.
—Brian Bohannon/AP

Five members of the court—Justice Kennedy and the four dissenting justices—indicate "there is a continuing compelling government interest in desegregated schools," she said. "We felt that was a partial victory."

From their preliminary reading of Justice Kennedy's concurring opinion, Ms. Todd said, the district's lawyers believe it will be "absolutely critical in interpretation of what the [majority] opinion is going to mean" and will allow some race-conscious considerations in drawing school boundary lines, recruiting teachers, and crafting certain other policies.

The decision will not affect student assignments for the 2007-08 school year, for which "school assignments already have been made, budgets set, staffing done, and [for which] transportation is currently setting up the bus stops," Ms. Todd said. "We expect smooth and orderly opening of school."

She said the school system is confident that the U.S. District Court in the city, where the same judge who ruled in favor of the school district in the case will decide how to apply the high court's decision, will help ease the transition to an alternative student-assignment method.

Assistant Editor Andrew Trotter contributed to this report.