

Regional Strategies for Racial Integration of Schools and Housing Post-Parents Involved

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Introduction

Convinced that Minnesota can and must do more to address racial isolation in its schools, the Institute on Race & Poverty (IRP) has been working with scholars, legislators, local officials, and school administrators to develop a regional strategy to replace Minnesota's current desegregation/integration rule and aid formula.¹ While Minnesota is not alone in experiencing school composition trends of increasing segregation,² it is uniquely situated to address both school *and* neighborhood integration on a regional scale. Minnesota's Integration Revenue Program provides a pool of funds to support local efforts;³ existing city suburban integration districts provide a necessary framework and experience for larger, improved systems;⁴ and existing federal and state housing programs, if focused on placement of units in low poverty school attendance areas, are large enough to make a serious dent in the problem.⁵ The twin cities of Minneapolis and St. Paul (the Twin Cities) also have a metropolitan government (the Metropolitan Council) with power over local zoning, a regional fair share housing law, and a very successful track record in the 1970s and 1980s of using suburban housing programs to further integration goals.⁶ "Finally, the last piece of the puzzle—the

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1. The strategy is described in INST. ON RACE & POVERTY, UNIV. OF MINN., A COMPREHENSIVE STRATEGY TO INTEGRATE TWIN CITIES SCHOOLS AND NEIGHBORHOODS (2009), available at http://www.irpumn.org/uls/resources/projects/3_Regional_Integration_-_Schools_and_Housing.pdf [hereinafter IRP COMPREHENSIVE STRATEGY].

2. See *infra* notes 15–22 and accompanying text.

3. MINN. STAT. § 124D.86, subdiv. 3 (2008).

4. See *infra* Part II.C.

5. See *infra* Part II.B.

6. See Myron Orfield, *Land Use and Housing Policies to Reduce Concentrated Poverty and Racial Segregation*, 23 FORDHAM URB. L.J. 877, 919–24 (2006)

political will to act—may also be in place. Legislators on both sides of the aisle in the Minnesota House and Senate have expressed support for reform to refocus the Integration Revenue Program.”⁷

As explained in more detail in a 2009 article I co-authored entitled *A Missed Opportunity: Minnesota’s Failed Experiment with Choice-Based Integration*, Minnesota’s current desegregation rules are not working.⁸ *Missed Opportunity* highlighted the pro-integrative rules Minnesota entertained ten years ago and lamented that Minnesota instead chose to enact a desegregation rule that, in effect, provides little support for school districts seeking to create integrated learning environments.⁹ The rules also permit school districts to make attendance boundary or school closing decisions that exacerbate racial isolation.¹⁰ Cindy Lavorato, who in her capacity as Special Assistant Attorney General wrote the legal analysis in support of the adopted rules, strongly disagrees with our critique and has co-authored a response with Frank Spencer entitled *Back to the Future with Race-Based Mandates: A Response to Missed Opportunity*, which critiques IRP’s call for a metropolitan-wide response.¹¹ While the authors of *Missed Opportunity* disagree with many of Lavorato and Spencer’s assertions, it is most important to set the record straight on *Back to the Future*’s mischaracterization of IRP’s work and of our *Missed Opportunity* article in particular.

This Article outlines IRP’s strategy for racially integrating the Twin Cities area’s neighborhoods and schools and responds to Lavorato and Spencer’s mischaracterization of the strategy as

[hereinafter *Housing Policies*]. The Metropolitan Council governs the Twin Cities’ seven-county metropolitan region—Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties. METRO. COUNCIL, METROPOLITAN COUNCIL: WHAT IT IS AND WHAT IT DOES (2010), available at <http://metro council.org/about/facts/WhatIsMetCouncil.pdf>.

7. IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 41; see Kris Berggren, *Minnesota K-12 Education Bill Moves Forward*, TWIN CITIES DAILY PLANET (May 3, 2010), <http://www.tcdailyplanet.net/news/2010/05/02/minnesota-k-12-education-bill-moves-forward>.

8. Margaret C. Hobday, Geneva Finn & Myron Orfield, *A Missed Opportunity: Minnesota’s Failed Experiment with Choice-Based Integration*, 35 WM. MITCHELL L. REV. 936 (2009) [hereinafter *Missed Opportunity*].

9. *Id.* at 951–73.

10. *Id.* at 964–73.

11. Cindy Lavorato & Frank Spencer, *Back to the Future with Race-Based Mandates: A Response to Missed Opportunity*, 36 WM. MITCHELL L. REV. 1747 (2010) [hereinafter *Back to the Future*]. Lavorato served as Special Assistant Attorney General in the Minnesota Attorney General’s Office from 1984–1999. Cindy Lavorato, LINKEDIN, <http://www.linkedin.com/pub/cindy-lavorato/7/847/582> (last visited Nov. 19, 2010).

relying on “race-based mandates,” “forced busing,” and racial balancing.¹² Instead, IRP’s strategy is predicated on effective metropolitan-wide choice, an incentives-based approach proven effective in many parts of the country.¹³ This Article next explains how this race-conscious, regional strategy represents national best practices in supporting and maintaining long-term, stable racial integration in housing and schools and is consistent with the Supreme Court’s most recent school integration decision, *Parents Involved in Community Schools v. Seattle School District No. 1*.¹⁴

I. School Segregation is Growing Rapidly in the Twin Cities

Racial isolation in Twin Cities metropolitan area schools, once rendered nonexistent under clear, enforceable law, is exploding under Minnesota’s current desegregation rule.¹⁵ A variety of statistics show this unmistakable pattern. In 1992, only two percent of the Twin Cities area’s predominantly non-White schools were racially segregated by IRP measures.¹⁶ By 2002, the percentage had increased to twenty percent and was rapidly accelerating.¹⁷ In raw numbers, this represented an increase from nine to 109 schools.¹⁸ The rate of increase was not only much faster than the national average, but is particularly alarming in reference to other very White metropolitan areas.¹⁹ During the

12. *Id.* at 1749–50, 1769.

13. MYRON ORFIELD & THOMAS LUCE, INST. ON RACE & POVERTY, UNIV. OF MINN., MINORITY SUBURBANIZATION AND RACIAL CHANGE 8–10 (2005), available at http://www.irpumn.org/uls/resources/projects/MinoritySubn_050605wMAPS.pdf.

14. 551 U.S. 701 (2007).

15. MINN. R. 3535.0110–.0180 (2009); MYRON ORFIELD & THOMAS F. LUCE, JR., REGION: PLANNING THE FUTURE OF THE TWIN CITIES 105–06 (2010) [hereinafter REGION].

16. REGION, *supra* note 15, at 105 tbl.3.2.

17. *Id.*

18. *Id.* at 105.

19. These statistics are from IRP calculations based on National Center for Education Statistics (NCES) data. See INST. ON RACE & POVERTY, UNIV. OF MINN., TABLE 6: PERCENTAGE DISTRIBUTION OF SCHOOLS BY RACIAL MIX IN THE 25 LARGEST METROPOLITAN AREAS: 1992, 2002, available at http://www.irpumn.org/uls/resources/projects/Dist_of_schools_in_25_largest_metros.pdf [hereinafter PERCENTAGE DISTRIBUTION OF SCHOOLS TABLE]. To place this in context, the Twin Cities area is the second-Whitest large metropolitan area in the United States. See *Share of Population by Race/Ethnicity*, DIVERSITYDATA.ORG, <http://diversitydata.sph.harvard.edu/Data/Rankings/Show.aspx?ind=178&ch=5&tf=33&sortby=Value&sortChs=5&sort=HighToLow&rgn=ShowLargest¬es=True&rt=MetroArea> (last visited Nov. 7, 2010). For purposes of this ranking, large metropolitan areas are those above two million in population. See *Population*, DIVERSITYDATA.ORG, <http://diversitydata.sph.harvard.edu/Data/Rankings/Show.aspx?ind=176&tf=33&sortby=Value&sort=HighToLow&rgn=ShowLargest¬es=>

same time span, the percentage of racially segregated schools increased from two to nine percent in Portland, Oregon; from three to seven percent in Seattle, Washington; and from nine to fourteen percent in Pittsburgh, Pennsylvania.²⁰ Using a slightly different, simpler measure, the number of Twin Cities area elementary schools with more than seventy-five percent non-White students increased from fourteen in 1995 to ninety-one in 2010.²¹ These segregated schools are overwhelmingly poor: more than nine out of ten non-White segregated elementary schools in 2010 have poverty rates above forty percent and more than seven out of ten show rates above seventy-five percent.²²

A. *Recapping the Debate*

Missed Opportunity recounts the history of Minnesota's present desegregation rule.²³ It outlines the State Board of Education's decision to urge the promulgation of an effective, binding metropolitan rule that would coordinate schools and housing.²⁴ It discusses the legislative support for this rule and then recounts the process of the rule being rendered ineffective in its promulgation.²⁵

First, *Missed Opportunity* makes clear that the present rule is based on the erroneous state official legal judgment that there is no compelling governmental interest in racially diverse schools.²⁶ Incredibly, Laborato and Spencer continue to make this argument, despite the fact that "five Members of th[e Supreme] Court agree

True&rt=MetroArea (last visited Nov. 7, 2010). IRP defines non-White segregated schools as schools where the share of Black, Hispanic, or other racial-ethnic group students exceeds fifty percent or schools with varying combinations of Black, Hispanic, and other racial-ethnic group students, where the relative share of White students in the schools does not exceed thirty percent of enrollment. REGION, *supra* note 15, at 293–94 app.

20. See PERCENTAGE DISTRIBUTION OF SCHOOLS TABLE, *supra* note 19 (showing the increase in school segregation for each of the twenty-five largest metropolitan areas in the United States).

21. See INST. ON RACE & POVERTY, UNIV. OF MINN., ELEMENTARY SCHOOL RACE DATA 1995 AND 2010, available at <http://www.irpumn.org/uls/resources/projects/TCElemSchooldata9510.pdf>.

22. See INST. ON RACE & POVERTY, UNIV. OF MINN., SCHOOL TYPES AND POVERTY IN TWIN CITIES SCHOOLS, available at http://www.irpumn.org/uls/resources/projects/TC_School_Types_and_Poverty_2008.pdf.

23. *Missed Opportunity*, *supra* note 8, at 951–58.

24. *Id.* at 952–53.

25. *Id.* at 955–58.

26. *Id.* at 943–44, 958–60.

that 'avoiding racial isolation' and 'achiev[ing] a diverse student population' remain today compelling interests."²⁷

Next, *Missed Opportunity* points out that the desegregation rule raises the standard to prove intentional discrimination much higher than that required by the Supreme Court in *Keyes v. School District No. 1, Denver, Colorado*,²⁸ the controlling standard, and makes it virtually impossible to establish intentional discrimination under state law.²⁹

In *Keyes*, the Supreme Court held that "a finding of intentionally segregative school board actions in a meaningful portion of a school system . . . creates a [rebuttable] presumption that other segregated schooling within the system is not adventitious."³⁰ Factors the Court considered in finding intentional segregation included (1) the segregative drawing or alteration of attendance zones, the location of new schools or expansion of existing schools, or the failure to relieve overcrowding at segregated sites;³¹ (2) hiring or promotion decisions made on the basis of race;³² (3) perpetuation or exacerbation of district segregation by strict adherence to a neighborhood school policy;³³ or (4) transfer policies that systematically increase racial segregation in a district's schools.³⁴

In *Keyes*, *Dayton Board of Education v. Brinkman*,³⁵ and *Columbus Board of Education v. Penick*,³⁶ the Supreme Court held that the more a district takes actions that have segregative effects for which there are no acceptable alternative explanations, the more justified a court will be in finding intentional segregation.³⁷ Courts are not required to wait until school board members admit their intent; they are justified—in fact, required—to draw

27. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 865 (2007) (Breyer, J., dissenting) (quoting *id.* at 797–98 (Kennedy, J., concurring)); *Back to the Future*, *supra* note 11, at 1751–52, 1777–81.

28. 413 U.S. 189 (1973).

29. *Missed Opportunity*, *supra* note 8, at 969 & n.189.

30. *Keyes*, 413 U.S. at 208; see also GARY ORFIELD, *MUST WE BUS?* 20–21 tbl.1-1 (1978) [hereinafter *MUST WE BUS*] (listing the *Keyes* factors).

31. See *Keyes*, 413 U.S. at 201–02; *id.* at 234–35 (Powell, J., concurring).

32. See *id.* at 209 (majority opinion); *id.* at 235 (Powell, J., concurring).

33. See *id.* at 212 (majority opinion); *id.* at 235 (Powell, J., concurring).

34. See *id.* at 235 (Powell, J., concurring). The failure to adhere to a district's approved integration plan is also a factor that may result in a finding of intentional segregation. See *MUST WE BUS*, *supra* note 30, at 20 tbl.1-1.

35. 433 U.S. 406 (1977).

36. 443 U.S. 449 (1979).

37. The *Keyes* analysis, 413 U.S. at 201–02, was reaffirmed by *Dayton*, 433 U.S. at 413 and *Columbus*, 443 U.S. at 464–65, after the watershed discrimination decision in *Washington v. Davis*, 426 U.S. 229 (1976).

inferences about intent from circumstantial evidence.³⁸ Under *Keyes*, *Dayton*, and *Columbus*, school boards risk liability if they take a number of actions that have obvious segregative effects without an acceptable race-neutral explanation for the actions.³⁹ The presence of several such actions creates a presumption of discrimination that is hard to rebut.⁴⁰

The Minnesota rule requires districts to produce information that roughly parallels the *Keyes* factors in order to determine whether intentional discrimination has occurred.⁴¹ However, in contrast to *Keyes*, when these factors are present and proven, there is no mechanism to create a presumption of intentional discrimination and shift the burden to the local school district.⁴² In fact, the rule creates a higher legal requirement by defining “[s]egregation” as 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.”⁴³ The rule further states that “[i]t is not segregation for a concentration of protected students or white students to exist within schools or school districts . . . if the concentration of protected students has occurred as the result of choices by parents, students, or both.”⁴⁴ It is hard to know what purpose this last sentence serves other than to muddy the controlling legal standard of *Keyes*. If all of this were not enough, the rule explicitly exempts charter schools⁴⁵ and open enrollment⁴⁶—easy paths to White avoidance of integrated school

38. See *Dayton*, 433 U.S. at 420.

39. *Columbus*, 443 U.S. at 458; *Dayton*, 433 U.S. at 420; *Keyes*, 413 U.S. at 208–10.

40. See *Keyes*, 413 U.S. at 210.

41. MINN. R. 3535.0130, subp. 2A (2009).

42. See *id.* 3535.0130.

43. *Id.* 3535.0110, subp. 9 (emphasis added).

44. *Id.* 3535.0110, subp. 9A(3).

45. *Id.* 3535.0110, subp. 8A. A recent report by IRP found that charter schools in the Twin Cities area were much more segregated than public schools, which intensified segregation of the public system. INST. ON RACE & POVERTY, UNIV. OF MINN., FAILED PROMISES: ASSESSING CHARTER SCHOOLS IN THE TWIN CITIES 49 (2008), available at http://www.irpumn.org/uls/resources/projects/2_Charter_Report_Final.pdf. Some states, including South Carolina, have state legislation that “[i]ncludes some type of affirmative actions to create diverse [charter] schools.” ERICA FRANKENBERG & GENEVIEVE SIEGEL-HAWLEY, THE CIVIL RIGHTS PROJECT, UCLA, EQUITY OVERLOOKED: CHARTER SCHOOLS AND CIVIL RIGHTS POLICY 13–14, 24 (2009), available at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/equity-overlooked-charter-schools-and-civil-rights-policy/frankenberg-equity-overlooked-report-2009.pdf>.

46. MINN. R. 3535.0110, subp. 9A(3).

settings—from state civil rights protection.⁴⁷ Open enrollment allows children to “opt in” and take their state aid payments to any district that has room for them if they can provide their own transportation.⁴⁸

B. Rosemount-Apple Valley-Eagan Public Schools

To demonstrate the problem with the rule, *Missed Opportunity* discusses a case study in which a wealthy suburban school district, Rosemount-Apple Valley-Eagan Public Schools (Independent School District 196 (ISD #196)), drew a non-contiguous boundary around a poor, largely minority manufactured home park and bused children of color across adjacent affluent White neighborhoods to attend school with other minority children at Cedar Park Elementary, located on the other side of the district, instead of a closer school.⁴⁹ Under the nearly impossible standards of the rule, the Minnesota Department of Education (the Department) was unable to make a finding of intentional discrimination.⁵⁰ It seems likely, however, that such a boundary would have created a presumption of intentional segregation under *Keyes*.⁵¹

Lavorato and Spencer claim that the district effectively corrected this segregated boundary under Minnesota’s desegregation rule.⁵² This is not accurate. Cedar Park Elementary was and remains a “racially identifiable school within a district” under the terms of the Minnesota rule.⁵³ Under the rule, the Department found that there was not intentional segregation in ISD #196 and that it could take no formal action.⁵⁴ Sadly, at roughly the same time the boundary was disestablished, the Department sponsored an almost all-White charter school,

47. See REGION, *supra* note 15, at 138.

48. See *id.*

49. *Missed Opportunity*, *supra* note 8, at 969–73.

50. *Id.* at 970–72.

51. See *Keyes v. Sch. Dist. No. 1, Denver, Colo.*, 413 U.S. 189, 208 (1973).

52. *Back to the Future*, *supra* note 11, at 1801–05.

53. See MINN. R. 3535.0110, subp. 6 (2009) (“‘Racially identifiable school within a district’ means a school where the enrollment of protected students at the school within a district is more than 20 percentage points above the enrollment of protected students in the entire district for the grade levels served by that school.”); MINN. DEPT OF EDUC., ENROLLMENTS—SCHOOL—GRADE/ ETHNICITY/GENDER 2009–2010, available at http://education.state.mn.us/MDE/Data/Data_Downloads/Student/Enrollment/School/index.html (follow “Enrollments—School—Special Populations 2009–2010” hyperlink) (last visited Nov. 9, 2010).

54. *Missed Opportunity*, *supra* note 8, at 970–72.

Paideia Academy, in the vicinity of Cedar Park Elementary.⁵⁵ This charter school was exempted from any civil rights obligations by Minnesota's desegregation rule,⁵⁶ and in part undermined much of the potential effect of the boundary change.⁵⁷ This history can hardly be cited as a triumph of the existing rule.

C. Hopkins Public Schools

A second case study presented in *Missed Opportunity* recounted how the open enrollment exception undermined the efforts of the Hopkins school district's board to draw an integrated boundary.⁵⁸ When that district attempted to integrate its Whitest school, parents threatened to file open enrollment petitions for the adjacent Whiter district.⁵⁹ The rule not only exempted the parents and the adjacent Whiter competing school district from state civil rights law; it allowed the parents to take their state aid from a financially struggling, declining enrollment, racially diverse suburban district to a Whiter adjacent district with strong local fiscal capacity.⁶⁰ While the Whiter, richer district—the only suburban district in that part of the metropolitan area that refused to be a part of an integration cooperation effort—enriched itself with White students and funds from the poorer district, it had no obligation—and made no effort—to find places or transportation for the poorer or minority students.⁶¹ This part of the rule made the school district's initial good faith, pro-integrative plan politically and financially impossible.⁶² As announced at the school district meeting in which the boundary change was formally adopted, 164 parents from the Hopkins

55. Interview with John Currie, Former Superintendent, Indep. Sch. Dist. 196, in Minneapolis, Minn. (Oct. 23, 2008).

56. MINN. R. 3535.0110, subp. 8A.

57. See REGION, *supra* note 15, at 135. Lavorato and Spencer state that "to date, administrators from ISD #196 have tried repeatedly to contact the authors of *Missed Opportunity* . . . in an effort to address the bias and mischaracterizations that appear." *Back to the Future*, *supra* note 11, at 1805. In response, since the publication of *Missed Opportunity*, none of the authors have any record of being contacted by ISD #196 administrators about any factual inaccuracies.

58. See *Missed Opportunity*, *supra* note 8, at 965–69.

59. *Id.* at 968.

60. See REGION, *supra* note 15, at 140–41.

61. *Id.* at 137–38. See also *Milliken v. Bradley*, 418 U.S. 717, 744–45 (1974) (stating that a federal court has jurisdiction to impose an interdistrict remedy when one school district takes a segregative action that causes segregation in an adjacent district). A subsequent article will explore what this concept means in the open enrollment context.

62. See REGION, *supra* note 15, at 138; *Missed Opportunity*, *supra* note 8, at 965–69.

school district filed open enrollment petitions in 2007 prior to the boundary change decision—a sixty percent increase from the previous year.⁶³ Losing all of those students would have resulted in a loss of over one million dollars for the district.⁶⁴

Lavorato and Spencer also attack the factual basis for *Missed Opportunity's* descriptions of the boundary decisions in the Hopkins district and the authors' lack of engagement with key decision-makers and parents in each district.⁶⁵ Specifically, Lavorato and Spencer note that “the authors of *Missed Opportunity* did not cite to interviews with . . . any of the administrators involved in the closing [or the boundary decision].”⁶⁶ However, IRP researchers have interviewed district administrators and parents, and IRP has been otherwise actively engaged in ongoing work with both the Hopkins school district and ISD #196 on these boundary issues.⁶⁷

Lavorato and Spencer also assert that *Missed Opportunity* “gross[ly] mischaracteriz[ed]”⁶⁸ the atmosphere among parents in the Hopkins district concerning the racial implications of the

63. See Brett Stursa, *Hopkins Parents Express Greater Interest in Minnetonka, LAKESHORE WKLY. NEWS*, <http://www.weeklynews.com/main.asp?Search=1&ArticleID=3076&SectionID=10&SubSectionID=10&S=1> (Feb. 13, 2007, 9:55 AM).

64. *Id.*

65. *Back to the Future*, *supra* note 11, at 1794–96.

66. *See id.* at 1796 (emphasis added).

67. Interview by Sarah Odegaard with Susan Atwood, Member, Hopkins School District Boundary Task Force, in St. Louis Park, Minn. (Mar. 7, 2007); Telephone Interview by Geneva Finn and Kari Rudd with Nick Lightfoot, Assistant Superintendent, Hopkins School District (Sept. 25, 2007); Telephone Interview by Nick Wallace with Betsy Scheurer, Member, Hopkins School Board (Nov. 8, 2006); Interview with John Schultz, Superintendent, Hopkins School District, in Minneapolis, Minn. (Apr. 7, 2010) (Mr. Schultz told Orfield that IRP's work was important and that IRP's characterization of the boundary decision was correct.). As further evidence of Mr. Schultz's support, an article in the University of Minnesota Alumni Association's magazine quotes Superintendent Schultz as stating: “One of the reasons I value [Orfield's] work is that he makes it so clear that we cannot, as individual systems, address these issues [of school segregation] on our own. We do need regional solutions, and we all need to roll up our sleeves and be part of them.” Kate Tyler, *Segregated . . . Again*, MINNESOTA, Mar. 5, 2010, at 24, available at <http://www.minnesotaalumni.org/s/1118/content.aspx?sid=1118&gid=1&pgid=1238&sparam=orfield&scontid=0>. IRP also participated in several meetings with the Hopkins community on this issue. Myron Orfield, Keynote Address at the School Community Leaders Event (Mar. 5, 2005); Myron Orfield, Remarks at Immanuel Lutheran Church Meeting (Apr. 27, 2006); Myron Orfield, Remarks at ISD #196 Back-to-School Administrative Workshop (Aug. 15, 2006); Myron Orfield, Remarks at Normandale Lutheran Church Meeting (Dec. 4, 2005); Myron Orfield, Remarks at Shepherd of the Valley Lutheran Church Meeting (Jan. 28, 2005 & Feb. 28, 2006); Myron Orfield, Remarks at St. Alphonsus Catholic Church Meeting (Oct. 13, 2005); Myron Orfield, Remarks at Woodlake Lutheran Church Meeting (Nov. 17, 2005).

68. *See Back to the Future*, *supra* note 11, at 1797.

boundary decision, and that the threat of parents to open enroll out of the school as a part of the boundary process was falsely represented.⁶⁹ In addition to the documentation provided in the article, the *Minneapolis Star Tribune* published three articles at the time of the boundary decision quoting the concerns of many parents regarding racial implications of the boundary decisions.⁷⁰ At the school meeting in which the boundary change was formally adopted, Sandra Forster, a representative of the Hopkins school district, urged care in making the boundary decision because of the possibility of parents opting out of the school district if they did not have the option to choose.⁷¹

D. Racial Integration Is an Essential Component of Any Sound Educational Policy

There is compelling evidence that racial segregation in schools hurts students of all races while exacerbating neighborhood housing segregation.⁷² There is further evidence that school desegregation opens up more opportunities and understanding for both non-White and White children.⁷³ The Supreme Court has recently recognized this in *Parents Involved*, explicitly authorizing race-conscious strategies, which do not involve assignment of individual students, to integrate schools.⁷⁴ The alternative to planned integration is not stable neighborhoods, but rather resegregation and ultimately ghettoization.⁷⁵

Contrary to the assertions of Lavorato and Spencer, racial segregation in schools is not fundamentally about the informed choices of parents rejecting integrated schools.⁷⁶ It is instead about discrimination, both private and public, in housing and

69. *Id.* at 1796–98.

70. See Patrice Relerford, *Boundary Shifts May Displace Students*, STAR TRIB. WEST, Feb. 7, 2007, at W15; Patrice Relerford, *Hopkins Board Will Soon Decide Boundary Changes*, STAR TRIB. WEST, Feb. 14, 2007, at W7; Patrice Relerford, *Hopkins' New District Map Will Relocate Fewest Students*, STAR TRIB. WEST, Feb. 21, 2007, at W3.

71. Audio tape: Hopkins School Board Meeting, held by the Hopkins School Board (Feb. 15, 2007) (on file with author).

72. IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 1.

73. *Id.* at 9–10.

74. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 710–11, 722 (2007).

75. Gary Orfield, *Ghettoization and Its Alternatives*, in THE NEW URBAN REALITY 189 (Paul E. Peterson ed., 1985).

76. REGION, *supra* note 15, at 114–38.

school contexts.⁷⁷ It is about discrimination by real estate agents, by banks, by individuals, and by the government.⁷⁸ When the government builds virtually all subsidized low-income housing in poor, segregated neighborhoods, it violates the law, as it does when local school districts, as agents of the state, gerrymander lines that segregate Whites from non-Whites.⁷⁹

Long-term, stable integration benefits students of all races, provides necessary stability or renewal of central city and stressed suburban neighborhoods, and supports regional competitiveness and economic growth.⁸⁰ Eliminating racial segregation is an essential part of any strategy to enhance social cohesion, representative democracy, and the American ideal of equal opportunity.⁸¹ The most recent and comprehensive social science research, cited by Justice Breyer in *Parents Involved*, shows that racially diverse classrooms positively impact student “achievement, intergroup relations, and life course trajectories.”⁸²

Effective integration requires more than simply putting students of different races in the same schools or classrooms.⁸³ As IRP’s proposed strategy notes, significant resources are needed to reduce the achievement gap, foster better interracial relations, and provide cultural training for teachers, among other things.⁸⁴ However, a racially diverse student body is a necessary first step for “true integration.”⁸⁵ Neither John A. Powell, nor likely any of the scholars quoted in *Back to the Future*, support the Orwellian notion that “true integration” can only occur under a legal regime that encourages a rapidly segregating system of schools in which

77. *Id.*

78. *Id.*

79. *Id.* at 121.

80. IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 1–2.

81. See REGION, *supra* note 15, at 85–88.

82. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 792, 845 (2007) (Breyer, J., dissenting); Roslyn Arlin Mickelson, *Twenty-First Century Social Science on School Racial Diversity and Educational Outcomes*, 69 OHIO ST. L.J. 1173, 1222 (2008).

83. Lavorato and Spencer mischaracterize IRP’s work and *Missed Opportunity* as “assert[ing] that mandatory measures resulting in ‘racial balance’ will cure the ills of racial isolation.” *Back to the Future*, *supra* note 11, at 1793. Rather, *Missed Opportunity* states very clearly “the elimination of racially isolated schools—having schools with racial compositions that better reflect our racially diverse society—is a first and necessary step for metropolitan districts concerned with integrating their schools.” *Missed Opportunity*, *supra* note 8, at 938 n.6.

84. IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 3, 9–10, 26.

85. John A. Powell, *A New Theory of Integrated Education: True Integration, in SCHOOL RESEGREGATION: MUST THE SOUTH TURN BACK?* 297–98 (John Charles Boger & Gary Orfield eds., 2005).

White and non-White children are increasingly racially separated.⁸⁶ As Professor Jenkins Robinson recently wrote: “[s]imply put, equal educational opportunity cannot coexist with the substantial racial isolation that exists in many schools because equal resources cannot negate the detrimental effect of racial isolation.”⁸⁷

II. IRP’s Metropolitan Integration Strategy

IRP’s strategy for integrating the Twin Cities metropolitan schools builds upon existing mechanisms in Minnesota.⁸⁸ The proposed regional approach relies on three mechanisms in particular: (1) a reinvigorated approach to metropolitan fair housing programs based on previous successes; (2) improving existing multi-district school integration districts; and (3) a more effective targeting of funding under the existing Integration Revenue Program.⁸⁹ Underlying this policy tripod is the recognition that coordinating action on housing and schools on a regional basis is critically important.⁹⁰

A. *Regional Strategies Are Necessary for Effective Integration*

One especially frustrating tactic of those who oppose regional approaches to racial integration is to attack such approaches by highlighting studies that show the flaws of single-district desegregation.⁹¹ Lavorato and Spencer do this at great length.⁹² But arguments based on single-district desegregation are red herrings.⁹³ IRP does not dispute that single-district integration can increase White flight.⁹⁴ Rather, IRP argues that *metropolitan integration* is one of the most effective strategies known to reduce White flight and to make schools and neighborhoods more racially stable.⁹⁵ Metropolitan integration is a far more effective strategy

86. *See id.*

87. Kimberly Jenkins Robinson, *Resurrecting the Promise of Brown: Understanding and Remediating How the Supreme Court Reconstitutionalized Segregated Schools*, 88 N.C. L. REV. 787, 845 (2010).

88. IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 7.

89. *Id.*

90. *Id.* at 1.

91. *See Back to the Future*, *supra* note 11, at 1752–58.

92. *Id.*

93. *See* ORFIELD & LUCE, *supra* note 13, at 7–10.

94. *Id.* at 8–10.

95. *Id.*

for stabilizing White flight than returning to neighborhood-based schools.⁹⁶

Minnesota's State Board of Education, which took over the task of mandatory racial integration of Minneapolis schools from the federal courts in 1983,⁹⁷ attempted to adopt a metropolitan integration rule that provided for racially integrated schools, effectively counteracted White flight, and stabilized fragile neighborhood racial integration.⁹⁸ The State Board of Education noted year after year, in study after study, with increasing apprehension, the decreasing effectiveness of single-district integration programs in the face of the White flight problem.⁹⁹ While the schools in the region were pursuing racial integration one district at a time, it became harder and harder for diverse districts to compete for White students with the newer, Whiter districts in suburbs—districts that often lacked affordable housing—resulting in schools with virtually no poor or minority children.¹⁰⁰

National data demonstrated that the Twin Cities region was not alone in experiencing racial transition.¹⁰¹ White flight was occurring from virtually all racially diverse school districts that

96. *Id.*

97. MINN. STATE DEPT' OF EDUC., A HISTORY OF THE STATE DEPARTMENT OF EDUCATION IN MINNESOTA 11–14, available at <http://www.mnddc.org/past/pdf/60s/67/67-AHO-MDE.pdf>. The state legislature abolished the State Board of Education in the late 1990s. *Missed Opportunity*, *supra* note 8, at 958 (citing Karen Evans Stout & Byron Stevens, *The Case of the Failed Diversity Rule: A Multiple Stream Analysis*, 22 EDUC. EVALUATION & POLY ANALYSIS 357, 341, 347 (1993)). A decade after Minneapolis, as an administrative agency of the State, was found guilty of intentionally segregating its schools, the federal court dissolved its jurisdiction over the busing plan in reliance on the Commissioner of Education's commitment to maintain mandatory desegregation by state administrative rule. See *Booker v. Special Sch. Dist. No. 1*, No. 4-71 Civ. 382, slip op. at 6 (D. Minn. June 8, 1983) (cited in Cheryl W. Heilman, *Booker v. Special School District No. 1: A History of School Desegregation in Minneapolis, Minnesota*, 12 LAW & INEQ. 127, 172 n.314 (1993)); MYRON ORFIELD, *METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY* 42 (1997) [hereinafter *METROPOLITICS*]; Heilman, *supra*, at 127–28, 171–73.

98. See *METROPOLITICS*, *supra* note 97, at 41–43; *Missed Opportunity*, *supra* note 8, at 952–58. Although not the subject of this Article, and not important as the legal basis for IRP's plan, the school district was never returned to local control for desegregation purposes and never formally declared “unitary” under the rubric of *Freeman v. Pitts*, 503 U.S. 467 (1991).

99. See *Missed Opportunity*, *supra* note 8, at 952–55.

100. See *METROPOLITICS*, *supra* note 97, maps 3-8 to 5-1; *Missed Opportunity*, *supra* note 8, at 952–55.

101. See GARY ORFIELD & FRANKLIN MONFORT, COUNCIL OF URBAN BDS. OF EDUC. & NAT'L SCH. DESEGREGATION PROJECT OF THE UNIV. OF CHI., *RACIAL CHANGE AND DESEGREGATION IN LARGE SCHOOL DISTRICTS: TRENDS THROUGH THE 1986–1987 SCHOOL YEAR* 10 tbl.3 (1988).

were adjacent to Whiter school districts.¹⁰² This was true whether the “losing” districts had desegregation plans or operated completely neighborhood-based schools.¹⁰³ Many school districts abandoned integration in an attempt to stop White flight.¹⁰⁴ There is no evidence that this strategy was ever effective.¹⁰⁵ It certainly was not effective in the Twin Cities—after adopting the present rule, White flight increased.¹⁰⁶ Some of the most rapid White flight from racially diverse districts occurred in large cities that had never adopted any type of school desegregation plans.¹⁰⁷ By the early 1990s, when Minnesota’s metropolitan rule was being considered, the most rapid rate of White flight in the country was occurring in the older suburbs of the United States that had never attempted school desegregation.¹⁰⁸ At this time in the Twin Cities region, there was White flight not only from Minneapolis and St. Paul, cities with desegregation plans, but also from Bloomington, Osseo, and all of the racially diverse suburbs that had no integration plans.¹⁰⁹

Discrimination in the housing market contributed strongly to this pattern.¹¹⁰ There was clear national and local evidence that minority parents, even those with middle-class incomes, experienced housing discrimination in terms of steering, mortgage lending discrimination, and disparate treatment by White sellers and rental agents, which prevented them from having the same housing choices as Whites of similar income and education during this period.¹¹¹ Moreover, low-income, government-supported housing was disproportionately sited in the most racially segregated neighborhoods.¹¹²

102. *See id.*

103. *See id.* at 1.

104. *See* GARY ORFIELD & SUSAN EATON, *DISMANTLING DESEGREGATION* 93–95 (1998).

105. *See id.*

106. *See Missed Opportunity*, *supra* note 8, at 949–51.

107. *See* ORFIELD & MONFORT, *supra* note 101, at 22. Rapid White flight occurred in Chicago and Philadelphia. *See* METROPOLITICS, *supra* note 97, at 160–67. Atlanta never had any school busing and experienced some of the most rapid White flight anywhere in the United States. *See* ORFIELD & MONFORT, *supra* note 101, at 9.

108. METROPOLITICS, *supra* note 97, at 47–52.

109. *Id.*

110. *See* REGION, *supra* note 15, at 112–33.

111. *Id.* at 114–21.

112. *Id.* at 121–33.

Recent research by IRP further demonstrates that large-scale school desegregation enhances racial stability in neighborhoods.¹¹³ The findings show that, in a typical metropolitan area, integrated neighborhoods are more likely to resegregate than to remain integrated once their share of non-White residents reaches a relatively modest level—roughly thirty percent non-White in most cases.¹¹⁴ In striking contrast to this pattern, integrated neighborhoods in metropolitan areas with large-scale school desegregation plans were much more stable.¹¹⁵ In fact, they were more likely to stay integrated than to resegregate *regardless of their initial racial composition*.¹¹⁶ In other words, racially diverse neighborhoods in these metropolitan areas did not experience racial transition as a result of White flight in the same way as neighborhoods in typical metropolitan areas without region-wide school desegregation programs.¹¹⁷

[M]etro-wide plans prevent two problems that can make small-area plans counter-productive. First, metro-wide plans reach beyond areas of residential segregation to include enough schools and students to ensure that all schools can be effective middle-class schools. Second, they prevent the destructive consequence of concentrating desegregation efforts in only a few less-affluent white neighborhoods that often already are struggling to maintain racial balance and stable integration. By asking every school to educate a small share of low-income children, a region prevents further concentration of poor children and eliminates the need for families to flee untenable poverty enrollments.

In contrast, desegregation plans affecting only a small portion of a metro region, usually a central city, trigger greater residential segregation and worsen school segregation. This is the case because a single-district desegregation effort typically isolates schools where the majority of students are low-income and non-white and encourages flight to near-by districts. Desegregation plans covering small geographic areas enable racially identifiable schools to persist. When school desegregation plans do not cover a sufficiently large scale, real estate practices and preferences remain school-identified and race-based.¹¹⁸

Lavorato and Spencer ignore this evidence regarding region-wide plans and conclude that IRP's plan would cause substantial White flight by citing inappropriate single-district studies of

113. See ORFIELD & LUCE, *supra* note 13, at 3–10.

114. *Id.*

115. *Id.* at 4–10.

116. *Id.*

117. IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 10–13.

118. *Id.* at 13–14 (internal citations omitted).

mandatory Black-White busing programs from the early 1970s.¹¹⁹ These forty-year-old studies of single-district plans are not only outdated, but are misleading when evaluating the implications of a multi-racial, choice-driven, regional plan like IRP's.¹²⁰ Nor are these studies likely to be relevant elsewhere. A court has not ordered a forced busing remedy since the early 1980s; virtually all integration plans today are choice- and incentive-based.¹²¹

Lavorato and Spencer briefly argue that even metropolitan-level integration causes the flight of White children to private schools.¹²² However, there is no current evidence to support this contention. Again, the cited data are forty years old, based on different types of plans than the IRP proposal, and are from a study with a very small sample.¹²³ More recent data from the National Center for Education Statistics show that areas with metropolitan-level integration programs exhibit private school attendance rates similar to, or in some cases less than, the national average. For instance, private school attendance rates in metropolitan areas with active, large-scale integration programs averaged 11.7% in 2008.¹²⁴ This is barely different from the national average of eleven percent reported by the Council for American Private Education,¹²⁵ or from the 10.6% of students that attend private schools in the Twin Cities.¹²⁶

119. See *Back to the Future*, *supra* note 11, at 1765–66.

120. Black-White integration presents different issues than the integration of Whites, Blacks, Asians, and Latinos. See IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 15–19; Genevieve Siegel-Hawley, *The Integration Report, Issue 18*, THE INTEGRATION REP. (Apr. 8, 2009), <http://theintegrationreport.wordpress.com/2009/04/>.

121. See ORFIELD & EATON, *supra* note 104, at 17–18; William C. Symonds, *Brown v. Board of Ed.: A Bittersweet Birthday*, BUSINESSWEEK, May 17, 2004, at 61, available at http://www.businessweek.com/magazine/content/04_20/b3883084_mz021.htm; Richard D. Kahlenberg, *The Trouble with Distance*, THE NEW REPUBLIC (Jun. 3, 2010, 12:00 AM) (book review), <http://www.tnr.com/book/review/the-trouble-distance>.

122. *Back to the Future*, *supra* note 11, at 1792.

123. See *id.*

124. The included metropolitan areas are Durham, NC (9.4%), Greensboro, NC (7.3%), Indianapolis, IN (10.3%), Lakeland, FL (8.0%), Louisville, KY (16.2%), Raleigh, NC (7.8%), and Tampa, FL (10.7%). These statistics are from IRP calculations based on NCES data. See INST. ON RACE & POVERTY, UNIV. OF MINN., SUMMARY OF PUBLIC AND PRIVATE SCHOOL ENROLLMENTS BY METRO, available at http://www.irpumn.org/uls/resources/projects/Summary_Public_and_Private_Enrollment_by_metro.pdf [hereinafter PUBLIC AND PRIVATE SCHOOL ENROLLMENTS]. Two other Florida metropolitan areas with county-wide programs, Miami and Orlando, were not included in NCES's data and could not be included in this comparison.

125. *Facts and Studies*, COUNCIL FOR AM. PRIVATE EDUC., <http://www.capenet.org/facts.html> (last visited Nov. 3, 2010).

126. See PUBLIC AND PRIVATE SCHOOL ENROLLMENTS, *supra* note 124.

B. Return to a Proactive Regional Fair Share Housing Program

The most significant part of IRP's strategy to integrate schools involves the Metropolitan Council returning to a proactive use of fair housing policy to promote integration by race and income in the regional housing market.¹²⁷ The primary mechanism would be allocating the dominant federal low-income housing programs—the low-income housing tax credit (LIHTC) and U.S. Department of Housing and Urban Development (HUD) Section 8 programs—according to the provisions of the Federal Fair Housing Act (FHA).¹²⁸ A simulation by IRP shows that the proactive placement of existing LIHTC units in attendance areas for low poverty schools could have significantly increased school integration.¹²⁹ For instance, if LIHTC and project-based Section 8 units were assigned *randomly* by race and located across the region in the same proportions as the overall population, then the region would be nearly a third of the way to the goal of integrated schools.¹³⁰ Pro-integrative placement of new units in low poverty school attendance areas could conceivably accomplish most of the work necessary for a racially integrated regional school system.¹³¹ In the long run, if this part of the plan succeeds, it may be possible to have integrated schools with less pro-integrative busing than exists today.¹³²

127. See IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 32–40.

128. See Myron Orfield, *Racial Integration and Community Revitalization: Applying the Fair Housing Act to the Low Income Housing Tax Credit*, 58 VAND. L. REV. 1747, 1796–1803 (2005); Florence Wagman Roisman, *Mandates Unsatisfied: The Low Income Housing Tax Credit Program and the Civil Rights Laws*, 52 U. MIAMI L. REV. 1011, 1022–29 (1998); *Civil Rights Mandates in the Low Income Housing Tax Credit Program*, POVERTY & RACE RES. ACTION COUNCIL, http://www.prrac.org/full_text.php?text_id=1035&item_id=9104&newsletter_id=0&header=Current%20Projects (last visited Nov. 3, 2010). Because the LIHTC is administered by the Treasury Department instead of HUD, and because there has not been clear civil rights guidance in the form of rules regarding the placement of this housing, in the last two decades most of this housing has been built in racially segregated or resegregating neighborhoods. See Orfield, *supra*, at 1749–50.

129. IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 38–40.

130. *Id.* at 39.

131. If a random placement of units does a third of the work, then a pro-integrative placement of all of the units by logical deduction could do all of the work.

132. If school districts were fully residentially integrated, then there would be no need for pro-integrative busing. See John A. Powell, *Living and Learning: Linking Housing and Education*, 80 MINN. L. REV. 749, 754 (1996) (arguing in favor of integrated housing instead of busing as a means of accomplishing integrated schools).

Lavorato and Spencer do not acknowledge that a significant part of IRP's plan involves pro-integrative housing.¹³³ The legislature's attempt in 1994 to coordinate housing and school integration was thwarted in the drafting of the 1999 rule.¹³⁴ Lavorato and Spencer argued then (and argue now) that the delegation of authority to the State Board of Education was insufficient to link housing and school policy *in any respect*.¹³⁵ However, this claim ignores both federal and Minnesota law requiring (or, at the very least, authorizing) housing and education agencies to coordinate their integration efforts. The FHA requires that HUD and its public housing authority's (PHA) grantees—such as Minnesota Housing, the Metropolitan Council, Minneapolis and Saint Paul, and their PHAs—consider *the racial composition of neighborhoods and their schools* when siting low-income family housing.¹³⁶ The FHA also requires that these entities, together with HUD, use their “immense leverage” to further “integrated and balanced living patterns.”¹³⁷ As part of this obligation, federal law presumptively prohibits the building of new low-income family housing in racially segregated or unstably integrated neighborhoods.¹³⁸ Minnesota law gives the Metropolitan Council power to approve or reject local school district siting decisions.¹³⁹ In its authorization for the desegregation rule, state law simultaneously requires the Department to “consult with the Metropolitan Council to coordinate metropolitan school desegregation/integration efforts with the housing, social, economic, and infrastructure needs of the metropolitan area.”¹⁴⁰ The Minnesota Legislature has also

133. *Back to the Future*, *supra* note 11, at 1786–91 (describing IRP's proposal as a school-only policy).

134. STATE OF MINN. DEP'T OF CHILDREN, FAMILIES, & LEARNING, STATEMENT OF NEED AND REASONABLENESS IN THE MATTER OF THE PROPOSED RULES RELATING TO DESEGREGATION: MINNESOTA RULES, CHAPTER 3535, at 3–4 (1998); *Back to the Future*, *supra* note 11, at 1768–72.

135. *Back to the Future*, *supra* note 11, at 1770.

136. See Fair Housing Act, 42 U.S.C. § 3608(d) (2006); *Shannon v. U.S. Dep't of Hous. & Urban Dev.*, 436 F.2d 809 (3d Cir. 1970); 24 C.F.R. § 941.202 (2009).

137. *NAACP v. Sec'y of Hous. & Urban Dev.*, 817 F.2d 149, 155–56 (1st Cir. 1987) (internal quotations and citation omitted) (stating that the FHA imposes a duty on HUD beyond simply refraining from discrimination).

138. *Shannon*, 436 F.2d at 809–10. See also 24 C.F.R. § 941.202 (site and neighborhood standards for public housing).

139. The Metropolitan Council has the power to review the location of public schools and school district capital plans, and can reject school district plans that are inconsistent with regional goals and objectives. See MINN. STAT. §§ 473.145, .175, .385 (2008).

140. *Id.* § 124D.892, subdiv. 1(c). “The commissioner [of education] may request information or assistance from, or contract with, any state or local agency or officer,

facilitated the creation of three large city-suburban integration school districts to facilitate and coordinate—in consultation with the Metropolitan Council—more integrated schools on a metropolitan basis.¹⁴¹

In direct response to the passage of the FHA and the promulgation of its siting rules, the first school desegregation lawsuit against Minnesota,¹⁴² and the New Jersey Supreme Court's decision in *South Burlington County NAACP v. Township of Mount Laurel*,¹⁴³ the Metropolitan Council, together with the State Housing Finance Agency, created and operated a suburban affordable housing plan known as Policy 13/39.¹⁴⁴ In the 1970s, Policy 13/39 was one of the most effective suburban affordable housing plans—with the greatest pro-integrative civil rights effect—in the nation's history.¹⁴⁵ This program operated under federal A-95 authority with clear guidance from HUD.¹⁴⁶ Under Policy 13/39, the suburban share of affordable housing in the Twin Cities area jumped from ten percent to thirty percent and the number of low-income family housing units in the suburbs rose from 1878 to 14,712.¹⁴⁷ The community's response to the FHA and the civil rights movement was remarkably rapid and effective.¹⁴⁸ Policy 13/39 was abandoned in the early 1980s and ten years later Minneapolis, HUD, and the Metropolitan Council were sued for violating fair housing siting principles in *Hollman v. Cisneros*;¹⁴⁹ they agreed to settle with the plaintiffs.¹⁵⁰ In 1995, the legislature

local unit of government, or recognized expert to assist the commissioner in performing these activities" *Id.* § 124D.892, subd. 2.

141. Information on the three integration school districts is provided online. EMID: E. METRO INTEGRATION DISTRICT 6067, <http://www.emid6067.net/> (last visited Nov. 3, 2010); NORTHWEST SUBURBAN INTEGRATION SCH. DISTRICT, http://www.nws.k12.mn.us/About_NWSISD.html (last visited Nov. 3, 2010); WMEP: W. METRO EDUC. PROGRAM, <http://sites.google.com/a/wmep.k12.mn.us/wmep-k12-mn-us/> (last visited Nov. 3, 2010).

142. *Booker v. Minneapolis Sch. Dist. No. 1*, 351 F. Supp. 799 (D. Minn. 1972) (federal equal protection boundary violation).

143. 336 A.2d 713 (N.J. 1975).

144. See *Housing Policies*, *supra* note 6, at 919–24.

145. *Id.*

146. *Id.* at 920 & n.333 ("The term 'A-95 authority' comes from the authority granted by the Office of Management and Budget in its Circular A-95." (citing METRO. COUNCIL, AN OVERVIEW OF REGIONAL HOUSING POLICY AND IMPLEMENTATION: 1967–2002, at 1 (2003) (on file with author))); see 24 C.F.R. § 941.202 (2009).

147. *Housing Policies*, *supra* note 6, at 919.

148. METROPOLITICS, *supra* note 97, at 49–52; *Housing Policies*, *supra* note 6, at 919.

149. Civ. No. 4-92-712 (D. Minn. filed Apr. 21, 1995).

150. See *id.*; Timothy L. Thompson, *Promoting Mobility and Equal Opportunity*:

re-affirmed the Metropolitan Council's authority over suburban affordable housing and, in doing so, encouraged the Metropolitan Council to negotiate fair share housing goals with the region's municipalities again.¹⁵¹

Although the Metropolitan Council increased its support of suburban affordable housing under the Livable Communities Act, it never again coordinated its activities with the state housing agency or with federal civil rights objectives, even though it has the legal power to do so.¹⁵² Shortly after the *Hollman* litigation was settled, the state of Minnesota and the Metropolitan Council were sued for segregation in the state's schools and the state again settled the case.¹⁵³

C. Strengthen Existing Inter-District Approaches

The Twin Cities already has three large-scale multi-district collaborations: the West Metro Education Program (WMEP), the East Metro Integration District (EMID), and the Northwest Suburban Integration School District (NWSISD).¹⁵⁴ These collaborations were created by a joint powers agreement—authorized by state law—of the districts, and grew rapidly in response to the National Association for the Advancement of Colored People (NAACP) lawsuit against Minnesota and the subsequent settlement.¹⁵⁵

By many measures, these districts have impressive programs. WMEP and EMID both run several integrated, high-performing schools that are available to students across their member districts. NWSISD provides students transportation to

Hollman v. Cisneros, 5 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 237, 237 (1996).

151. See *Hollman*, Civ. No. 4-92-712; Thompson, *supra* note 150, at 257.

152. See Livable Communities Act, MINN. STAT. §§ 473.25–.255 (2008).

153. See Myron Orfield, *Choice, Equal Protection, and Metropolitan Integration: The Hope of the Minneapolis Desegregation Settlement*, 24 LAW & INEQ. 269, 274, 310–13 (2006). The Metropolitan Council was able to dismiss the case because the federal courts ruled the claims precluded by the *Hollman* settlement. See *NAACP v. Metro. Council*, 125 F.3d 1171, 1175 (8th Cir. 1997). See also *Xiong v. Minnesota*, 195 F.3d 424, 427 (8th Cir. 1999) (suing the state of Minnesota for school segregation).

154. IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 26; see *supra* note 141 and accompanying text for online accessibility information.

155. WMEP: W. METRO EDUC. PROGRAM, *supra* note 141. WMEP was formed as a Joint Powers Board in 1994. OFFICE OF THE LEGIS. AUDITOR, STATE OF MINN., EVALUATION REPORT: SCHOOL DISTRICT INTEGRATION REVENUE 5 tbl.1.1, 13 (2005), available at <http://www.auditor.leg.state.mn.us/ped/pedrep/integrevf.pdf>; see also IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 26–28 (discussing multi-district collaborations including WMEP).

magnet programs across its district. All three districts run programs geared to promote integration in classrooms and educate teachers.¹⁵⁶

IRP's proposal combines the three districts, with their support, into one and gives them more power to supervise boundary drawing within their member districts and to operate, either by themselves or in conjunction with existing districts, more magnet schools located at job centers across the metropolitan area.¹⁵⁷ Job centers or clusters of employment, where a high number of workers find employment, are historically effective places for metropolitan-wide integration projects.¹⁵⁸ The proposal also expands the Choice Is Yours program, a pilot program based on a city-suburban integration settlement,¹⁵⁹ in order to provide more pro-integrative choices for low-income students in failing schools to attend low-poverty, high-achieving schools.¹⁶⁰ The Choice Is Yours program provides a financial incentive to these low-poverty schools and state support for high-poverty students' transportation costs.¹⁶¹ The program's financial incentives have been sufficient to incentivize nine suburban Minneapolis districts to *voluntarily* make room for nearly 2000 Minneapolis children in the program.¹⁶² Similar incentives also encouraged a much larger city-suburban integration plan in the St. Louis, Missouri metropolitan area for over a decade after court supervision was lifted.¹⁶³

D. Reform Existing Integration Revenue

The third component of IRP's strategy restructures Minnesota's integration funding formula to reward districts for successfully increasing the racial integration of their schools.¹⁶⁴ The Minnesota Legislature established the Integration Revenue Program¹⁶⁵ in 1997 to provide funding to "school districts for

156. IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 26.

157. *Id.* at 28–32.

158. *Id.* at 31.

159. *See* Orfield, *supra* note 153, at 313–18.

160. *Id.*

161. *Id.* at 314–15.

162. ASPEN ASSOCS., INC., MINNESOTA VOLUNTARY PUBLIC SCHOOL CHOICE: MULTI-YEAR EVALUATION SUMMARY, at i, iii–iv (2009), *available at* <http://education.state.mn.us/mdeprod/groups/Choice/documents/Report/014851.pdf>.

163. GERALD W. HEANEY & SUSAN UCHITELLE, UNENDING STRUGGLE: THE LONG ROAD TO AN EQUAL EDUCATION IN ST. LOUIS 199–202 (2004).

164. IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 25–26.

165. MINN. STAT. § 124D.86 (2008 & Supp. 2009); MINN. R. 3535.0100–.0180 (2009).

integration-related activities.”¹⁶⁶ The program distributed around eighty million dollars in integration revenue to eighty school districts in fiscal year 2005.¹⁶⁷ The most important limitation of the program is the ambiguity of its main goal: to promote “interracial contact[s].”¹⁶⁸ School districts have taken this term to mean a wide range of integration-related activities, ranging from one-day multicultural activities to inter-district magnet schools and cross-district transportation.¹⁶⁹ The Office of the Legislative Auditor found that “the Integration Revenue funding formula has unintended and potentially negative consequences.”¹⁷⁰ Among other problems, there is a financial disincentive to completely eradicate segregation in schools, because school districts would stop receiving integration revenue once schools are fully integrated.¹⁷¹

The IRP proposal restructures the funding formula to specifically reward affirmative efforts to integrate schools, rather than simply distributing additional resources to segregated districts.¹⁷² Under IRP’s proposal, if school districts are segregated and fail to take affirmative steps to integrate their schools, then they receive less integration revenue funding.¹⁷³ IRP simply suggests that the integration revenue should be awarded to districts that actually are, or are attempting to become, integrated.¹⁷⁴ It uses the Choice Is Yours desegregation settlement as a guideline for rewarding aid.¹⁷⁵ Theoretically, allocating the existing aid in this way could, by itself, greatly reduce the region’s school segregation.¹⁷⁶ However, IRP acknowledges that the physical—if not the financial—logistics of a schools-only approach to integration are very difficult.¹⁷⁷ This is why housing is such an important part of IRP’s solution.¹⁷⁸

Specifically, IRP’s proposal would reallocate existing aid to provide school districts with \$2250 in additional compensatory

166. OFFICE OF THE LEGIS. AUDITOR, *supra* note 155, at 3.

167. *Id.*

168. MINN. R. 3535.0160, subp. 2; OFFICE OF THE LEGIS. AUDITOR, *supra* note 155, at 16–17.

169. OFFICE OF THE LEGIS. AUDITOR, *supra* note 155, at 18–21.

170. *Id.* at 27.

171. *Id.* at 18–32.

172. IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 25–26.

173. *Id.* at 25.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *See id.*

revenue for every pro-integrative move sponsored by the district.¹⁷⁹ Pro-integrative moves are defined as cases in which a White student from a predominantly White-assigned school moves to an integrated or predominantly non-White school in the same or another district, or when a student of color from a predominantly non-White-assigned school moves to an integrated or predominantly White school in the same or another district.¹⁸⁰ The plan would also provide \$2250 in aid to the sending district when a student moves from one district to another to offset the higher per-pupil costs associated with declining enrollments.¹⁸¹ Finally, the plan would reward districts for pro-integrative school boundary decisions by awarding \$250 for each student attending an integrated school.¹⁸² Once awarded to districts that are actually integrated or trying to become integrated, the IRP plan suggests that these funds be used for programs (1) proven to help reduce the achievement gap, (2) that improve relations between non-White and White students (and their parents), and (3) designed to hire minority teachers and administrators.¹⁸³ This simple idea—to reward districts for actually being integrated and not for being segregated—set Lavorato and Spencer off on a torrent of inaccurate racially inflammatory attacks, including “forced busing,” “racial quotas,” “body counting,” and “mandatory, race-based student assignments.”¹⁸⁴

III. *Parents Involved* Permits Race-Conscious Strategies and IRP’s Plan

In contrast to the position taken by Lavorato and Spencer, in 2007 a majority of Supreme Court Justices agreed that states have a compelling interest in alleviating racial isolation and promoting diversity in their schools.¹⁸⁵ Justice Kennedy’s concurrence draws a sharp line between individualized racial classifications and more

179. INST. ON RACE & POVERTY, UNIV. OF MINN., SEGREGATION IN THE TWIN CITIES: REFORMING THE INTEGRATION REVENUE PROGRAM, *available at* http://www.irpumn.org/uls/resources/projects/Integration_Revenue_Handout.pdf.

180. *Id.*

181. *Id.*

182. *Id.*

183. For a full description, see IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 2–6.

184. See e.g., *Back to the Future*, *supra* note 11, at 1752–54 (“forced busing”), 1754–55 (“racial quotas”), 1756–58 (“body counting”), 1751–52, 1781, 1792 (“mandatory, race-based student assignments”).

185. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720–25 (2007); *id.* at 797–98 (Kennedy, J., concurring); *id.* at 838–45 (Breyer, J., dissenting).

general considerations of race.¹⁸⁶ It states that race-conscious measures that do not employ individualized racial classifications are presumptively valid and beyond strict scrutiny.¹⁸⁷ These non-individualized, race-conscious methods include: "[1] strategic site selection of new schools; [2] drawing attendance zones with general recognition of the demographics of neighborhoods; [3] allocating resources for special programs; [4] recruiting students and faculty in a targeted fashion; and [5] tracking enrollments, performance, and other statistics by race."¹⁸⁸ Justice Kennedy expressly listed these five examples as "race[-]conscious" mechanisms that would not likely trigger strict scrutiny because they "do not lead to different treatment based on a classification that tells each student he or she is to be defined by race."¹⁸⁹

IRP's plan involves using integration aid only as an incentive for districts to make pro-integrative choices, like drawing school boundaries in pro-integrative ways "with recognition of neighborhood demographics,"¹⁹⁰ just as Justice Kennedy suggests in *Parents Involved*.¹⁹¹ Similarly, IRP's plan seeks to encourage school districts and the Metropolitan Council to jointly select or approve new school sites—either new neighborhood schools or magnet schools—to encourage integration.¹⁹² Proposed new school locations might be rejected if they facilitate increased racial segregation or if there is available capacity in the existing local school district or new integration district.¹⁹³ In this light, urging that new magnets be located in existing job centers does not run afoul of the Supreme Court's guidance, nor does using integration aid to incentivize recruiting of students in a race-conscious manner.¹⁹⁴ No measures in IRP's plan are based on the type of individualized racial classifications that Justice Kennedy suggested would be invalid in *Parents Involved*.¹⁹⁵

186. *Id.* at 797–98 (Kennedy, J., concurring).

187. *Id.* at 789.

188. *Id.*

189. *Id.* (citing *Bush v. Vera*, 517 U.S. 952, 958 (1996) (plurality opinion)).

190. IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 25.

191. *Parents Involved in Cmty. Sch.*, 551 U.S. at 789 (Kennedy, J., concurring).

192. IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 26–32.

193. See *supra* note 139 and accompanying text.

194. See *Parents Involved in Cmty. Sch.*, 551 U.S. at 788–89 (Kennedy, J., concurring).

195. *Id.* at 797–98.

Conclusion

Educational segregation is worsening in the Twin Cities region and the nation.¹⁹⁶ It is destroying the lives of individuals and the strength of neighborhoods.¹⁹⁷ The present integration system is based on a profound misunderstanding of both the law and the facts, and too often rewards segregated school districts instead of those attempting to be integrated.¹⁹⁸ IRP proposes a legal, viable plan that can counter this trend through coordinating integration in schools and neighborhoods.¹⁹⁹ IRP's opponents inaccurately characterize the problem of segregated schools and neighborhoods as hopeless and unrelated to one another.²⁰⁰ They misrepresent proposals like the IRP plan, which are in fact based on incentives and choice, as being based on "forced race[-]based busing" and "racial quotas"—language designed to evoke emotional, rather than reasoned, responses.²⁰¹ Housing and school segregation are deeply related.²⁰² Places that have done a good job integrating their schools have more integrated housing markets and places that integrate their housing markets have more integrated schools.²⁰³ There could be great synergies if these problems were addressed together.²⁰⁴ Minnesota once was a powerful leader on civil rights and had major accomplishments to brag about, particularly in the housing field.²⁰⁵ Because of confusion caused by inaccurate understanding of the law and the facts, it has lost its leadership role.²⁰⁶ It needs to get back on track.

196. GARY ORFIELD, THE CIVIL RIGHTS PROJECT, REVIVING THE GOAL OF AN INTEGRATED SOCIETY: A 21ST CENTURY CHALLENGE 9–13 (2009), available at <http://www.racialequitytools.org/resourcefiles/orfield.pdf>; REGION, *supra* note 15, at 104–07.

197. REGION, *supra* note 15, at 88–93.

198. OFFICE OF THE LEGIS. AUDITOR, *supra* note 155, at 35–36.

199. IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 7.

200. See *Back to the Future*, *supra* note 11, at 1819.

201. See *supra* note 184 and accompanying text.

202. REGION, *supra* note 15, at 112.

203. See IRP COMPREHENSIVE STRATEGY, *supra* note 1, at 1–2.

204. *Id.* at 39.

205. See Myron Orfield, *Minnesota's Tradition of Racial Justice*, 1000 FRIENDS OF MINNESOTA, <http://www.1000fom.org/video/minnesotas-tradition-racial-justice> (last visited Nov. 11, 2010).

206. *Id.*

