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Advancing Diverse Learning for Asian Pacific Islanders

Khin Mai Aung† and Christina Mei-Yue Wong‡

I. INTRODUCTION

After a sharply divided United States Supreme Court decided two voluntary school integration cases originating from Seattle, Washington and Louisville, Kentucky on June 28, 2007,¹ the Asian American Legal Defense and Education Fund (“AALDEF”)² and Chinese for Affirmative Action (“CAA”)³—the nonprofit civil rights advocacy groups where the co-authors work—received numerous inquiries about the impact of these cases on Asian Pacific Islanders (“APIs”). While some expressed concern about the dismantling of longstanding integration programs, others were pleased at the prospect that so-called racial preferences thought to discriminate against APIs would be no more. Still others asked whether APIs—who were left out of some integration programs altogether—would be impacted at all.

The controversy over the impact of these cases, Parents Involved in Community Schools v. Seattle School District No. 1 (“Parents Involved”),...
and Meredith v. Jefferson County Board of Education ("Meredith"), on APIs was hardly surprising given the overall lack of reliable information on how APIs are impacted by public education policies. A lack of ethnically disaggregated data about the educational performance of diverse API students is exacerbated by rampant overgeneralization based on the experiences of a limited group of high-performing students. This has allowed opponents of race-conscious educational policies—like school integration plans and affirmative action programs in higher education—to tokenize API students as racial mascots who stand to uniformly benefit from colorblind policies. Unfortunately, such a simplistic analysis overlooks a substantial number of API students, and in particular, those from low-income immigrant and refugee backgrounds, whom the authors work with and advocate for.

Further complicating matters, general confusion has ensued over the holdings, scope, and impact of Parents Involved and Meredith, even outside the complicated question of how those decisions impact APIs. After both plans were struck down in lengthy decisions, initial doomsday cries (or victory cries, depending on one’s perspective) declared all consideration of race in school assignment policies to be prohibited. Only after enough time passed for a more detailed examination of the cases has a more nuanced analysis emerged.

Although a five-justice majority found Seattle’s and Louisville’s plans to be unconstitutional, Justice Anthony Kennedy declined to join crucial portions of Chief Justice Roberts’ plurality opinion, which was joined by Justices Alito, Thomas, and Scalia. Justice Kennedy penned a separate concurrence affirming the existence of a compelling interest in avoiding racial isolation and promoting diversity, joining only the portion of Justice Roberts’ decision which found that the particular plans at issue were not narrowly tailored to that interest. Taken together, Justice Kennedy and the

9. Id. at 2797. The compelling interest in educational diversity endorsed by Justice Kennedy clearly includes, but is not limited to, racial diversity. Id.
10. Id. at 2791. Government policies utilizing a “suspect classification” such as race must satisfy the “strict scrutiny” standard. Under strict scrutiny’s two prong analysis, courts must first ask if the policy’s goal constitutes a “compelling government interest.” If such an interest is found, courts then ask if the policy in question is “narrowly tailored” to that interest. Id. at 2752. However, in his Parents Involved/Meredith dissent, Justice Breyer suggests that government policies using race to include—rather than exclude—warrant a more lenient strict scrutiny review, or perhaps a lower standard altogether. See id. at 2819.
four dissenters—Justices Breyer, Ginsberg, Souter and Stevens—form a five-justice majority in agreement that avoidance of racial isolation and promotion of educational diversity constitute a compelling government interest that can justify the use of race in school assignment policies.\textsuperscript{11}

How a school district may narrowly tailor its plan to this compelling government interest, however, remains murky. It is clear that race alone cannot be the primary determinative factor in assigning an individual student to a particular school, except possibly as part of a "last resort" plan after all other efforts at achieving diversity and integration have failed.\textsuperscript{12}

Outside of a last resort plan, the Court also left open the possibility that policies considering race along with other factors in individual student assignments could satisfy the exacting test of strict scrutiny. Such plans would have to consider race as "one component" of student diversity in addition to "other demographic factors" in a "nuanced, individual evaluation of school needs and student characteristics."\textsuperscript{13} This sort of plan would mirror the higher education admission policy the Supreme Court upheld in \textit{Grutter v. Bollinger},\textsuperscript{14} which allowed the University of Michigan Law School to consider race in addition to a broad array of diversity criteria.\textsuperscript{15} However, the specific criteria used in kindergarten through twelfth grade student assignments "would differ [from those used in selective higher education admissions] based on the age of the students, the needs of the parents, and the role of the schools."\textsuperscript{16} While the Court did not provide further guidance on what constitutes allowable criteria, such criteria could include sibling enrollment, geographic considerations, income, parental education, and English Language Learner\textsuperscript{17} status.

The Court also indicated that school districts were free—without having to satisfy strict scrutiny—to use race-conscious measures that did not actually consider race when assigning specific pupils to particular schools.\textsuperscript{18} Such race-neutral strategies could include strategic site selection, targeted recruitment, and redrawing attendance zones.\textsuperscript{19}

The Court did, however, suggest some steps that school districts could take to avoid pitfalls: taking care to articulate specific and compelling

\begin{itemize}
  \item \textsuperscript{11} See id. at 2789, 2820-24.
  \item \textsuperscript{12} See id. at 2761, 2792.
  \item \textsuperscript{13} Id. at 2793, 2797.
  \item \textsuperscript{14} 539 U.S. 306 (2003).
  \item \textsuperscript{15} The Supreme Court’s decision in \textit{Grutter} suggests that public institutions of higher education may consider race as one of many factors in admissions, if done in a flexible, individualized, and non-mechanical manner. See id. at 334.
  \item \textsuperscript{16} 127 S. Ct. at 2793.
  \item \textsuperscript{17} The term, English Language Learner (ELL), is commonly used by school districts to designate students whose first language is not English and who are currently learning English.
  \item \textsuperscript{18} 127 S. Ct. at 2792.
  \item \textsuperscript{19} Id.
\end{itemize}
justifications for any racial considerations;\textsuperscript{20} compiling evidence to support the need for racial considerations, perhaps by showing how race-neutral plans have failed at achieving integration;\textsuperscript{21} avoiding mechanical or non-individualized uses of race;\textsuperscript{22} and refraining from using broad and oversimplified racial categories.\textsuperscript{23} Regrettably, this new guide makes it considerably harder to use race in school assignments. Undoubtedly, many law review articles will probe exactly how school districts can fashion a plan to pass muster under this new Supreme Court standard.

In this article, we prescribe a holistic approach to school integration that goes beyond the student assignment process and into the classroom. We believe that this approach will directly benefit all students, including APIs. We also look more closely at one aspect of student assignment formulas—the need to avoid oversimplified racial categories of “black” and “white,” as used in Seattle’s and Louisville’s plans.\textsuperscript{24} Lastly, we explore what districts can still do in light of the Supreme Court decision by examining the San Francisco Unified School District’s (“SFUSD”) student assignment policy and recommending a multiracial curriculum to support school integration in the classroom.

In Part II, we examine the impact of racial integration on API public school students and explain how race-conscious school assignment policies benefit them. Many APIs believe that race-conscious school assignment policies do not work to their benefit, but this is untrue. We delve into many of the arguments set forth in the amicus brief filed by AALDEF, CAA, and fourteen other API youth-serving organizations in Parents Involved and Meredith.\textsuperscript{25} We also discuss what it means to have a holistic approach to integration, and how such an approach benefits API students in particular.

In Part III, we discuss the need for integration plans that currently use broad, conglomerated racial categories like “black” and “non-black” to move toward a multiracial approach. We show that API students across the country are clustered in large metropolitan areas with diverse, multiracial populations. For metropolitan areas that have voluntary school integration plans, it is imperative to move from bi-racial to multiracial classifications in order to reflect the actual makeup of those communities. We introduce

\begin{itemize}
\item \textsuperscript{20} Id. at 2766 (“We put the burden on state actors to demonstrate that their race-based policies are justified.”).
\item \textsuperscript{21} Id. at 2745.
\item \textsuperscript{22} Id. at 2753-54.
\item \textsuperscript{23} Id. at 2754, 2756, 2760.
\item \textsuperscript{24} For the purpose of student assignment formulas, the Seattle School District classified students as either “white” or “non-white.” Id. at 2746. In Louisville, the School District classified students as either “black” or “other.” Id.
\item \textsuperscript{25} Brief for the Asian American Legal Defense and Education Fund and Chinese For Affirmative Action, et al. as Amici Curiae Supporting Respondents, Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 127 S. Ct. 2738 (2007) (Nos. 05-908, 05-915) [hereinafter AALDEF & CAA Amicus Brief].
\end{itemize}
several ways that multiracial categories can be implemented in accordance with the new Supreme Court standard before delving into an in-depth discussion about San Francisco’s experiences and opportunities regarding multiracial school integration.

Finally, in Part IV, we look specifically at San Francisco’s long history with school integration policy and its opportunity to launch a holistic approach to school integration that incorporates a practical application of multiracial categories, the new Supreme Court Standard set forth in Parents Involved and Meredith, and cross-cultural curriculum strategies. For the last two decades, SFUSD has tried a number of race-conscious and race-neutral methods to promote school integration.\textsuperscript{26} Unfortunately, San Francisco’s schools rapidly resegregated after SFUSD shifted from a race-conscious to a race-neutral approach in 1999.\textsuperscript{27} Today, a near majority of schools in the District are segregated. Since the District is no longer under a federal consent decree,\textsuperscript{28} the District must write its own history. It must promote school integration comprehensively by implementing a race-conscious student assignment process and by providing teachers with the skills necessary to engage all students through culturally responsive strategies—and all within the confines of the Supreme Court’s decisions.

Using San Francisco’s case as an example, Part IV also explores why multiracial school districts need to balance school integration policies with measures to avoid racial isolation. We argue that multiracial school districts must implement a holistic approach to school integration—one that strives for integration in both classroom makeup and educational content. This can be achieved by pairing race-conscious student assignment policies with initiatives that promote racial diversity in the classroom; these include developing a multiracial curriculum, training staff, and hiring a racially representative teaching force.

II. INTEGRATION AND APIS

Wide educational disparities in the academic performance of API students are masked by a lack of disaggregated data examining the different experiences of various API groups.\textsuperscript{29} The need for disaggregation of data and the harms of the so-called “model minority myth” of uniformly high

\textsuperscript{27} SFUSD was enjoined from using race in the student assignment process in 1999. See S.F. NAACP v. S.F. Unified Sch. Dist., 59 F. Supp. 2d 1021, 1027 (N.D. Cal. 1999).
\textsuperscript{29} KaYing Yang, Southeast Asian American Children: Not the “Model Minority,” 14 THE FUTURE OF CHILDREN 127, 127 (2004).
API academic performance have been studied and will not be examined in great length here. The data that is available, however, shows that some API groups—most notably Taiwanese and Indian—disproportionately hail from middle-class backgrounds in their countries, which often translates into a higher occupational status and better educational outcomes for their offspring. By contrast, many Southeast Asian refugees come from working class backgrounds, are less likely to hold college degrees, and are prone to hold lower occupational statuses.

For example, the 2000 Census indicates that 45% of Hmong Americans and 26.2% of Cambodian Americans age 25 or older have no formal schooling. In contrast, only 5.3% of Chinese Americans and 2.2% of Indian Americans age 25 or older have no formal schooling. We delved further into this data in AALDEF and CAA's brief in Parents Involved and Meredith. Looking specifically at California's rich and diverse API population, we showed that API family income across all ethnicities is inflated due to the relatively large sizes of API households. In terms of per capita income, 53% of Hmong in California fall below the federal poverty line, as do 40% of Cambodians and 32% of Laotians. Across all ethnic groups, 13% of California APIs have a per capita income below the federal poverty line. The same is true for only 8% of whites.

We also described several benefits of integrated schools in our amicus brief. Some of these arguments apply equally to all API students—and indeed to all students—while others apply with particular force to API students from more educationally disadvantaged backgrounds like recent immigrants or those from under-resourced refugee communities. More broadly, we showed that integrated schools prepare all school children—including the diverse range of API students—to succeed in our increasingly diverse society.
integration, related curriculum development, and representative faculty hiring—can decrease the incidents of bias-motivated harassment in the long run. This is of particular concern for API students—especially recent immigrants—due to the epidemic of anti-Asian and anti-immigrant harassment in many inner city schools. Finally, studies have shown that there is a strong relationship between racially-integrated schools and better academic performance and educational access for students of color; especially for those from educationally disadvantaged backgrounds. Within the API community, this is of particular importance for Southeast Asians, English Language Learners ("ELLS"), and other students who tend to hail from under-resourced communities.

A. Integrated Schools Benefit All Students by Exposing Them to Diverse Viewpoints and Backgrounds

Integrated schooling socializes youngsters for adult life in a diverse society by exposing them to different cultures and experiences and making them more tolerant of differences. Research has shown that individuals schooled in diverse learning environments are more likely to actively seek out racially integrated institutions of higher education, workplaces, and residential neighborhoods. While some API parents—especially recent immigrants who have not previously been exposed to diversity—may initially fear integration (claiming it will actually increase racial tensions), many recognize and desire its benefits. Low-income immigrants often settle in under-resourced communities where they live and work side by side with other working class people of color. Many immigrant API parents


43. AALDEF & CAA Amicus Brief, supra note 25, at 15-17.
from such communities recognize that integrated schooling will help their children as they grow up in these communities. 44

In the AALDEF and CAA brief, we highlighted the experiences of API parents and students who agree with these educational benefits. For example, Cindy Choy, a parent leader of the Visitacion Valley Parents Association in San Francisco and a member of the San Francisco Unified School District’s Parent Advisory Council, observed:

It would have [been] easy to have my only daughter go to a school with a majority of Chinese students like herself, but that would not allow her to learn and benefit from other groups of people. The diversity has positively challenged her to be a strong and open minded youth who appreciates and values the differences of other ethnic groups. 45

San Francisco’s Visitacion Valley, where Cindy and her daughter reside, is a low-income neighborhood, previously populated predominantly by African Americans, that has recently seen a large influx of Chinese and other API immigrants. Likewise, Vinh Nguyen, a student in Malden High School in the greater Boston area, stated, “I hang out with people from different races all around the school . . . I think diversity has helped my outlook in life and [to] view [sic] perspectives from everyone.” 46

B. Integrated Schools Reduce Bias-Based Harassment in the Long Run

In the long run, integrated school environments also decrease racial tensions and lower incidences of bias-based harassment. 47 This is particularly true where racial integration is coupled with diversity initiatives and concerted community building efforts. 48 In Brooklyn, New York, racial tensions at Lafayette High School were so high that the United States Department of Justice entered into a three-year consent decree with the New York City Department of Education to oversee incidents of harassment and to mandate a directed response at prevention. 49 In the AALDEF and CAA brief, immigrant API students from Lafayette pointed out that while they felt isolated and fearful upon arrival from China, over time they gradually developed cross-racial friendships. We highlighted interviews from five students and recent graduates who collectively pointed out that “language barriers can lead to misunderstanding for immigrant Asians and others alike, but that, with prolonged exposure, all students—newcomers and others alike—are more aware of the potential for

44. Id. at 19.
45. Id. at 18.
46. Interview with Vinh Nguyen, Malden High School student (Sept. 26, 2006). Id. at 20.
47. See Massachusetts Amicus Brief, supra note 37, at 15; Comfort v. Lynn Sch. Comm., 418 F.3d 1, 19 (1st Cir. 2005).
48. See Costello, supra note 37.
misunderstanding and likely to become more tolerant.\textsuperscript{50}

\textit{C. Integration Fosters Greater Educational Access and Academic Improvement}

Bodies of research on both the benefits of integration and the harms of segregation have found that integration not only reduces racial prejudice, as discussed above, but may also buttress the development of critical thinking and cognitive skills, and increase levels of academic achievement, career ambitions, and opportunities in under-resourced minority communities.\textsuperscript{51} By contrast, minorities in racially segregated schools frequently have less qualified teachers, greater turnover of students and faculty, weaker academic curricula, and greater incidences of violence.\textsuperscript{52} For example, schools with larger minority populations tend to have fewer curricular resources such as honors and Advanced Placement courses, and are more likely to be plagued with “curricular tracking, impersonal counseling, and inadequate community outreach.”\textsuperscript{53} Further, these mostly minority schools tend to be isolated in poverty-stricken neighborhoods that persistently face high levels of neglected housing, unemployment, drug trafficking and transience, and lack critical community resources such as libraries, hospitals, and institutions of higher education.\textsuperscript{54}

In the case of English language learners (“ELLs”), research demonstrates that schools with large numbers of ELL students lack the necessary skills and resources to address the needs of their ELL populations.\textsuperscript{55} In California, ELLs are more likely than other children to be taught by teachers who are not fully credentialed, and many newly certified teachers report that they do not have adequate training to work with ELLs and their families.\textsuperscript{56}

Research also indicates that in segregated schools where most students are minorities, high teacher turnover rates are more closely correlated with race than with other factors such as poverty, test scores, and wages.\textsuperscript{57} While

\textsuperscript{50} AALDEF & CAA Amicus Brief, supra note 25, at 15-16; Interview with Rita Zeng, Lafayette High School graduate (Sept. 29, 2006); Interviews with Jian Rong Peng, Kelvin Liang, Kwan Wa Shum & Qi Ping Li, Lafayette High School students (Oct. 7, 2006).


\textsuperscript{52} See ORFIELD & LEE, supra note 51, at 29-30.

\textsuperscript{53} Orfield et al., supra note 51, at 125.


\textsuperscript{55} See Russell W. Rumberger & Patricia Gandara, Seeking Equity in the Education of California’s English Learners, 106 TEACHER’S COLL. REC. 2032, 2037-38 (2004).

\textsuperscript{56} Id.

\textsuperscript{57} Benjamin Scafadi et al., Race, Poverty, and Teacher Mobility, 26 ECON. OF EDUC. REV. 145,
variations in poverty levels, student test scores, and teacher wages led to smaller differences in teacher attrition, similar variations in the proportion of minority students led to larger differences in teacher attrition.\textsuperscript{58} Also, while teachers generally are likely to leave high-poverty schools, teachers are most likely to leave high-poverty schools where there is a high proportion of minority students.\textsuperscript{59}

In the AALDEF and CAA brief, we illustrated the experiences of API students in under-resourced immigrant and refugee communities in Philadelphia and the greater Boston area, where greater integration would likely lead to better-trained and more attentive staff, as well as parents with the time, language ability, and legal knowledge to demand redress when students' rights are violated.\textsuperscript{60} We highlighted the experiences of Cambodian and Vietnamese students in segregated communities in Massachusetts who face "profiling and discriminatory treatment by school officials, such as differential disciplinary treatment and lack of interpretation for limited English proficient youth and families."\textsuperscript{61} For example, one social service provider complained that schools often fail to provide legally mandated interpretation—even when explicitly requested—and rarely translate important documents like disciplinary notices. Similarly, our brief documented the experiences of API students in Philadelphia who missed sixty to one hundred school days before any school intervention.\textsuperscript{62} These concerns are supported by social science research, which shows that staff in segregated schools are often unresponsive to community needs, hold students to lower expectations, and are not culturally or linguistically competent to serve the communities in which they work.\textsuperscript{63}

\textit{D. Holistic Integration Strategies Are Necessary}

Simply integrating students from different racial/ethnic backgrounds in a school and hoping that they will independently and naturally appreciate both the differences and commonalities among different racial/ethnic groups is unrealistic. Although a district can mix the kids on paper and a school can have a balanced ratio of racial groups, in reality, when one visits a "racially diverse" school and looks into its classrooms, cafeteria, and hallways, one will still find racial segregation.\textsuperscript{64} Racially isolated schools

\textsuperscript{145} (2007).
\textsuperscript{58} \textit{Id.}
\textsuperscript{59} \textit{Id.}
\textsuperscript{60} See AALDEF & CAA Amicus Brief, \textit{supra} note 25, at 22-25.
\textsuperscript{61} \textit{Id.} at 24.
\textsuperscript{62} \textit{Id.} at 24-25.
\textsuperscript{63} Orfield et al., \textit{supra} note 51, at 126.
\textsuperscript{64} Jeff Grabmeir, \textit{Students in Racially Diverse Schools More Likely to Form Segregated Friendships, Study Finds, OHIO STATE RESEARCH NEWS, May 29, 2002, available at http://researchnews.osu.edu/archive/findseg.htm}; Kamau Bobb, \textit{Diverse, Not Equal Segregation...
have an even greater need to help their students learn about other cultures in order to adequately prepare them to succeed in society. It is imperative that school districts promoting school integration implement strategies in the classroom to encourage cross-cultural learning and understanding. Not only should these strategies be integrated into existing curricula and structures, but there should be defined opportunities for youth to share their experiences beyond the annual multicultural festival or ethnic holiday.

III. DESEGREGATION PLANS MUST HAVE MULTIRACIAL CATEGORIES

One of the Court’s most prominent criticisms of Seattle’s and Louisville’s plans was that they both lumped all students into two broad racial categories. In Seattle, students were classified as “white” and “non-white,” and in Louisville, they were classified as “black” and “non-black.” These terms were used because many school integration plans were fashioned in an earlier era when race meant “black” or “white.” This bi-polar conception of race has become outdated in our increasingly multicultural society. In this respect, the Seattle and Louisville decisions present a unique opportunity to bring racial categories in school integration plans up to date, while also bringing them into compliance with the new constitutional standard. This is of particular consequence for APIs, who are overlooked in some integration plans.

API students are clustered in metropolitan areas with diverse, multiracial communities. For example, about half of San Francisco’s public school children are API, another 23.3% are Latino, 12.9% are African American, and 10.3% are white. In New York City, 36.7% of public school pupils are Latino, 34.7% are African American, 14.3% are API and 14.2% are white. In Seattle, home to the Meredith case, 42.1% of public school students are white, 22.3% are API, 22% are African American, and 11.3% are Latino. School districts with racially diverse student populations are increasingly common even in more unexpected places. For example, in Saint Paul, Minnesota, 29.8% of public school children are African American, with APIs close behind at 29.3%. Whites comprise

66. Id. at 2746.
67. Id.
26.1% while Latinos are 12.9%. And in Lowell, Massachusetts, whites comprise 40.6% of public school students, APIs make up 28.7%, Latinos are 23.3%, and African Americans make up 6.4%.

School districts with voluntary school integration plans currently using only two racial categories—be they “black and non-black” or “white” and “non-white”—would be well advised to adjust their plans to include more specific racial categories. Further, school districts with large numbers of APIs should look specifically at the makeup of their API population to consider whether to further disaggregate their API category into ethnic subcategories. Due to vast differences in the educational experiences and achievement of API populations described above in Part II, a meaningful diversity index must consider these differences. In order to avoid implementing a multitude of new subcategories in districts with small API student populations, we recommend that such school districts examine the ethnic breakdown of their API enrollment and implement subcategories for the most populous ethnicities. For example, a district could create subcategories for the three largest API ethnicities or those that surpass a population threshold. Alternatively, a district like San Francisco, which has a broad and diverse API population, could feasibly use many racial/ethnic categories as described below. Of course, all of this must be done under a plan that considers race as only one factor in a broad array of diversity criteria as recommended by Justice Kennedy in his Parents Involved/Meredith concurrence.

IV. SAN FRANCISCO—A PRACTICAL APPLICATION OF THE NEW SUPREME COURT STANDARD SET FORTH IN PARENTS INVOLVED AND MEREDITH

A. History of Integration in SFUSD

Since 1983, SFUSD has tried but failed to meet the core goals of school integration. Under a consent decree originally entered into between SFUSD and the San Francisco NAACP (“Consent Decree”), the District was required to eliminate segregation in SFUSD schools and to improve education for all of its students. The Consent Decree required that no single racial group represent more than 45% of the student body and that at

73. See 127 S. Ct. 2738, 2792 (2007).
75. Id. at 37.
least four different groups be represented in every school. For “alternative” schools, no racial group could represent more than 40% of the student body.

Over a decade after the Consent Decree was established, SFUSD was sued again and banned from using “race” in its student assignment process. In 1994, Ho v. San Francisco Unified School District was brought against the district, challenging its use of race/ethnicity as a factor in school assignments. Several school children of Chinese descent filed the Ho action, alleging that the District’s student assignment plan racially discriminated against them and violated the Equal Protection Clause of the Fourteenth Amendment.

Rather than going to trial, the parties in Ho agreed to a settlement which required the School District to begin implementing a new student assignment process in 2001 that included recruitment efforts and a diversity index incorporating six race-neutral factors: socioeconomic status, home language, English proficiency, mother’s educational background, academic performance rank of sending school, and student’s academic achievement status. The diversity index was to be used only when there were more applicants than seats available at a school.

It was inevitable for SFUSD’s race-neutral student assignment system to result in deep segregation among the District’s schools. Two years after the Ho settlement, the State’s independent consent decree monitor, Stuart Biegel, projected “severe resegregation” of incoming class levels at approximately thirty-five schools. “Severe segregation” is defined as a situation in which one race/ethnicity comprises at least 60% of the population at one or more of a school’s grade levels. Biegel’s final review of the Consent Decree’s impact on the District’s enrollment numbers found that the actual percentages of students of one race/ethnicity at severely

76. Id.
78. 576 F. Supp. at 41.
79. See 147 F.3d. 854 (9th Cir. 1998).
80. Id. at 856. In the course of the litigation, the general public perceived that all Chinese American students shared the same frustrations as the plaintiffs. However, there are striking differences in opinion among many Chinese American families in San Francisco. While the plaintiffs were intent on eliminating racial quotas for student assignment, CAA has worked closely with other Chinese American families who value broader perspectives on school integration, and who believe that racial diversity will better prepare students to live and work in our global society. Many of those families identify insufficient access to quality education as the crux of the problem.
82. Id.
Resegregated schools were “higher overall than they have been at any time since resegregation began after the Ho Settlement of February 1999,” and that the number of severely resegregated schools had grown from thirty in the 2001-2002 school year to fifty-two in 2005.84

In addition to the increasing numbers of segregated schools in the District, SFUSD was also unable to address the other main Consent Decree goal—the ongoing achievement gap between Latino/African American students and other students in the district. Biegel’s last report to the court found that while SFUSD’s test scores had increased in each of the past nine years, San Francisco's African American students continued to score the lowest overall when compared to other African American students in California’s largest urban school districts.85

The Consent Decree expired on December 31, 2005, and SFUSD was released from court supervision. The federal court rejected the parties’ final proposal to extend the consent decree and found that SFUSD was in a better position to determine the future assignment process than a federal court.86 The court also stated that the district’s current system “has not achieved diversity in any meaningful sense,” but instead “has allowed, if not fostered, re-segregation.”87 Possible revisions to the District’s assignment process have now been left to the sole discretion of the San Francisco School Board.88

B. School Integration in SFUSD Today

While members of the San Francisco School Board have publicly expressed their concerns about resegregation, they have done very little in the past two years to address the ongoing segregation in schools and classrooms. Instead, the Board cautiously waited for the Supreme Court to make its decisions in Parents Involved and Meredith before even considering adding race back into the process. It has, however, made a few minor adjustments to the student assignment process, such as taking “English proficiency” and “mother’s educational background” out of the diversity index and adding an “extreme poverty” criterion.89 For the 2008-2009 enrollment process, the index will contain only five factors: extreme poverty, socioeconomic status, home language, academic performance rank of sending school, and student’s academic achievement status.90 This year,

85. Id. at 6.
86. See S.F. NAACP v. S.F. Unified Sch. Dist., 413 F. Supp. 2d 1051, 1072 (N.D. Cal. 2005).
87. See id. at 1052.
88. Id. at 1069.
90. See id.
it will also change the name of the Diversity Index Lottery to the “Student Assignment System” to more accurately reflect the placement process and to avoid confusion over the word *diversity* since many associate it with *race*.

In light of the Supreme Court’s decision in *Parents Involved* and *Meredith*, San Francisco should use this opportunity to explore ways to reverse the current trend of segregation in its schools using the new Supreme Court standard. Since 2001, SFUSD has been experimenting with a race-neutral student placement policy that considers a broad array of diversity criteria. If race were added as an additional diversity criterion to this current plan, San Francisco could make a strong case that it is using race as one of many diversity criteria in a multifaceted plan that follows the guidance of *Grutter* and *Gratz*. According to Justice Kennedy’s pivotal concurring opinion in *Parents Involved* and *Meredith*, such a plan—if developed, written, and implemented precisely and correctly—may survive the exacting test of strict scrutiny.

The next step towards implementing the new Supreme Court standard requires an evaluation of the multiracial categories that are currently tracked by SFUSD. During the Consent Decree, nine racial categories were established based on student demographics in the 1980s: Latino, Other White, African American, Chinese, Japanese, Korean, Filipino, American Indian, and Other Non-white. Each school was required to include at least four racial/ethnic groups.

Although the Consent Decree has expired, SFUSD continues to collect the racial/ethnic data of students through an optional question in its enrollment application. The original racial/ethnic categories have been disaggregated to a total of nineteen racial categories in order to align with state and federal data collection requirements. These categories include American Indian or Alaska Native, Asian Indian, Black or African American, Cambodian, Chinese, Filipino, Guamanian, Hawaiian, Hispanic or Latino, Japanese, Korean, Laotian, Middle Eastern/Arabic, Other Asian, Other Pacific Islanders, Samoan, Tahitian, Vietnamese, and White. Since

91. *See id.*
93. *Id.* at 2789-91 (concluding that the racial classifications used by Seattle and Louisville were not narrowly tailored because their plans were not precisely written and implemented; by implication, a student assignment plan considering race as one of many factors that is precisely written and implemented could pass constitutional muster).
95. The Asian Pacific Islander Education Coalition, chaired by CAA, advocated for disaggregated data collection so that the district could better serve the diverse API community.
97. *See id.*
98. *See id.*
it is important to continue to look at disaggregated data, particularly within the diverse API community, we recommend that the district continue to track the nineteen racial/ethnic categories. One would not expect any particular school to have representation from all nineteen ethnic groups, but the district should add race to the current “Student Assignment System” and monitor the racial diversity within each school to prevent “severe segregation” of any particular group of students.

Another reason why San Francisco is uniquely well positioned to bring back race as one diversity factor among many is—somewhat ironically—the unfortunate resegregation of SFUSD’s schools that occurred after the District moved to a race-neutral plan. One reason the Court struck down the plans in Parents Involved and Meredith was its conclusion that neither Seattle nor Louisville provided sufficient evidence that race-neutral plans have failed at achieving integration.99 Because SFUSD implemented a race-neutral student assignment plan in good faith, which almost immediately resulted in rampant resegregation, SFUSD is well-situated to show that race-neutral school assignment methods have failed. Unlike other school districts that may have conducted data runs or studied other districts’ experiences without ever actually implementing a race-neutral plan,100 SFUSD can show that its race-neutral plan not only failed to create integration but actually caused resegregation.

As suggested in Justice Kennedy’s opinion,101 the District can also use other race-conscious strategies to promote school integration, such as revising attendance areas for school sites with an eye towards neighborhood demographics. This idea is especially timely for San Francisco since its current attendance areas were last drawn in the 1980s and are extremely outdated.102 For example, only five of the eighteen high schools in the District have attendance areas.103 The SFUSD’s transportation routes should also be adjusted to reflect the new attendance areas and to support new school integration plans. However, it should be noted that experience has repeatedly shown105 that such strategies need to

100. Parents Involved and Meredith do not explicitly mandate that a district must actually attempt to implement a race-neutral plan before using race. Rather, districts are required to engage in “serious, good-faith consideration of workable race-neutral alternatives.” Id. at 2760. While actual implementation may not be required under this standard, the implementation and subsequent failure of a race-neutral plan is strong evidence of serious, good-faith consideration.
101. 127 S. Ct. at 2792.
102. Attendance areas are zones that surround a school. Students who live within a school’s attendance area usually receive some priority for that school during the student assignment process.
be paired with actual race-conscious student assignment policies to produce meaningful racial integration.

In addition to revising the attendance areas for each school, SFUSD should also carefully review the details of Berkeley Unified School District’s (“BUSD”) student assignment plan. While BUSD is distinguishable in size, racial/ethnic composition, and in a number of other attributes, BUSD’s plan may provide SFUSD with proven practices that have worked to increase diversity. BUSD created a composite diversity map that takes into consideration three diversity factors: (1) parent education level, (2) parent income level, and (3) race and ethnicity. Berkeley’s student assignment lottery does not rely upon the actual personal attributes of students. Rather, each student will receive priority based upon a composite of attributed diversity characteristics derived from the planning area in which the student lives. A brief review of the enrollment data of the sixteen schools in BUSD indicates that a majority of the schools are racially diverse. SFUSD should examine whether each school’s overall diversity is also reflected in individual classrooms.

C. The Need for Holistic Integration in SFUSD

Despite over two decades of promoting school integration, it is uncertain whether students in SFUSD have ever really had the opportunity to truly benefit from a diverse learning environment. The District’s attention has primarily been focused on the mechanics of the student assignment policy and on ensuring that schools had the “right” ratio of students from different ethnic groups. However, even in schools with racial diversity, there were still segregated classrooms, and, as a result, students did not have the opportunity to benefit from racial diversity.

While the District continues to move forward on the mechanics of the student assignment process, it is also critical for SFUSD to advance a holistic approach to school integration by ensuring that every student is in a diverse learning environment. After the District’s educational placement center assigns students to the school, it is the role of the school site staff to design and integrate programs to avoid racial and ethnic segregation by programs and classrooms. In recent discussions with high school students at Community Educational Services (CES), it is apparent that more

109. Founded in 1969, CES is a non-profit agency dedicated solely to youth development in San
teacher training is needed to support a diverse learning environment. Ashley Tan, a senior at Phillip and Sala Burton Academic High School, observed:

Racial diversity is very important. The school and teachers should make an effort to mix kids around in the classroom and create projects where kids are working together. Communication is very important. Teachers really need to learn how to encourage all students. It should not matter whether they have the ability or not. In one of my classes, the teacher only gives assignments/work to students she knows can do the work and ignores other students she thinks has no ability. She lets them play cards during the whole class and does not know how to work with them.

Unfortunately, we have found that many teachers, like Ashley’s, lack the formal training to support a diverse learning environment. While SFUSD’s school site administrators were trained this past year in culturally responsive pedagogy, an instructional and organizational approach for educating diverse learners, classroom teachers have yet to receive the training. Teachers, especially, need the opportunity to acquire the necessary skills and tools that can be integrated into existing structures and curricula in order to create a classroom atmosphere which values and fosters cross-cultural appreciation. In addition to providing a diverse learning environment for students, this type of training may lead to a number of other benefits, such as an increase in student achievement, a decrease in truancy, enhancement of peer relationships, and a decrease in violence and harassment. All of these benefits may support the academic success of all students, particularly those who are still caught in the middle of the achievement gap.

In Biegel’s last report to the court, he states, “The complete history of this unique Consent Decree has yet to be written, and we urge continued study of its development and implementation.” There is indeed much that needs to be continued to ensure that every student in the District has the opportunity to learn in a diverse environment that will prepare him/her to succeed in our global economy and society.
V. Conclusion

*Parents Involved* and *Meredith* present both a challenge and an opportunity to school districts working toward meaningful school integration. While it is undoubtedly more difficult to fashion a voluntary integration plan under the new Supreme Court standard, the ruling gives school districts a valuable opportunity to update existing plans to reflect the increasingly multiracial nature of their communities. Further, to be effective, holistic integration strategies—including curricular inclusion, staff training, and recruitment of representative faculty—must supplement traditional student assignment-focused voluntary integration strategies. This is particularly necessary for APIs and other growing populations who are often overlooked in school integration plans, underrepresented among school faculty, and whose histories and needs are rarely reflected in school curricula and programs. We hope school districts will rise to the challenge and adjust their policies to reflect the needs of their changing student populations. This would not only benefit API students, but *all* public school students and their communities, regardless of race.