WHEN GOOD FAITH IS NOT ENOUGH: ENSURING EDUCATION EQUITY DURING AND AFTER LEGAL INTERVENTION

BY

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DISSEYATION

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Abstract

This paper seeks to address ever-increasing challenges facing schools in the midst of desegregation or racial balancing plans and procedures. It discusses the need for school districts across the country under consent decrees to return to the drawing board in finding an alternative plan for desegregation and education equity measures that will keep them in line with constitutional mandates. The most recent Supreme Court rulings in Seattle and Louisville have altered the landscape of remedial grounds for which cases can be brought before the courts. Moreover, they indicate a pronounced shift in legal discourses surrounding programs and initiatives that utilize race as a factor in developing educational policy.
To Mommy, Doddy and the rest of the Enyia Family. Forward ever
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Introduction

In no other realm of the United States are indicators of the present challenges more evident than the legal milieu. Indeed, the phenomenon of the manifestation of societal norms and cultural practices are keenly observed in the decisions handed down by the highest court. In short, judicial decisions are a sign of the times. In the educational arena, this observation is even more apt as legal analysts trace the path of some of the most significant education-based court decisions in history.

Tracing the complex route of education litigation – and specifically education equity litigation (desegregation, academic achievement gap, etc.) is an exercise in tracing the history and impact of America’s past as it relates to de facto (in fact) and de jure (by law) segregation and discrimination. The educational arena evidences some of the most protracted after-effects of these practices in the United States. Against a backdrop where segregation was deemed legal (Plessy v. Ferguson, 1896) one witnesses the emergence of societal practices that gave credence to the notion that a society could develop – not as a united body – but as two parts of a whole where one part was not afforded the same rights and privileges as the other. Within this context, it is not surprising that different values were accorded the separate but ‘equal’ parts of society.

The truth of the matter was that separate meant anything but equal. One simply needed to observe the physical manifestation of such a policy at the physical, psychological, and social level. The results of a “separate but equal” doctrine were nothing short of disastrous for those forced to live under its mandates. Welner (2010) declared that while many of the sources of
inequality were not directly attributable to schools, school policies can either amplify or minimize the inequalities that arise outside of school (Welner, 2010, p. 85).

In addition to the negative psychological effects of segregation as outlined by Deutscher and Chein (1948),¹ In the 1950s, less than fifty percent of young African American adults had a high school diploma or GED (Deutscher and Chein, 1948, p. 26). Bankston and Caldas (1996) examined the influence of the racial/ethnic composition of a school on individual student achievement. They found that minority concentration in a school has a powerful negative effect on the academic achievement of Black and White students (Bankston and Caldas, 1996).²

Attestations to the disaster that embodied this court-sanctioned practice were the poor physical structure of “black” schools, inadequate learning materials such as books, labs, and other learning aids, the psychological terror tactics which sought to restrict Blacks’ access to learning (through intimidation), and the outright fact that Blacks were simply prohibited from entering mainstream educational institutions, particularly at the higher education level.

The 1966 Coleman Report, headed by University of Chicago Sociologist James S. Coleman, was the first codified analysis of the actual impact of segregation on Black children. The report documented the differences in the quality of white and black schools and in black and white achievement.³ The study involved six hundred thousand students and sixty thousand


³ Coleman, James. S. Equality of Educational Opportunity (COLEMAN) Study (EEOS), 1966 [Computer file]. ICPSR06389-v3. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2007-
teachers who took verbal and mathematics tests and answered questionnaires about their family and economic backgrounds. It was used by school districts around the country to argue that integrating black children into white schools would have little or no effect on student achievement. Instead the report explained differences in academic achievement between whites and blacks as a byproduct of a culture of poverty and asserted that poverty had a greater influence on blacks because of a higher concentration of poverty among blacks (Coleman, 1966).

However, the Coleman report also demonstrated statistically that black students learn more in integrated classrooms. The report found that academic achievement was less related to the quality of a student’s school, and more related to the social composition of the school, the student’s sense of control of his environment and future, the verbal skills of teachers, and the student’s family background (Coleman, 1966).

More recently, researchers have found that even before the onset of formal education, low-income students of color suffer from unequal distributions of resources such as health care, nutrition, safe environment, preschool, and within-home learning resources (Barton and Coley, 2009; Berliner, 2009; Rothstein, 2004). These findings become pertinent later on as the Champaign Unit 4 school district case study is explored.

Given the knowledge of segregation’s negative impact particularly in the school setting, it is not hard in the present day, to assess and understand the reason why Brown v. Board of Education of Topeka, (1954) was such a groundbreaking and utterly necessary statement by the
United States Supreme Court to determine the path of the country if it were ever to truly adhere to the notion of a country where rights existed for all citizens and where the “American Dream” remained more than just a “dream” for the country’s non-white citizens. However, the analysis cannot stop at the impact of *Brown* precisely because the story did not stop there – far from it. The analysis continues into the present in terms of how the ruling in *Brown* played out when looking at the goals of the plaintiffs (via a strategically brilliant legal argument put forth by then-attorney Thurgood Marshall which connected segregation to self-esteem and the psychological impact it had on non-white children) and the way in which the decision has been interpreted in the decades since.

Where do we find ourselves in the twenty-first century? There are a couple of key developments that drive the research in this document. First, interestingly, we find ourselves in a situation where the role of the judiciary in education equity litigation is changing rapidly and plaintiffs seeking redress for current manifestations of past racial discrimination and bias must modify their strategies to accommodate this shift. Indeed, the very arguments used to promulgate the dismantling of the ‘separate but equal’ ideology are now used to argue for a “color-blind” constitution as evidenced in *Gratz v. Bollinger (2003)*, *Grutter v. Bollinger (2003)* and *Parents Involved in Community Schools v. Seattle School District No.1 (2007)*. To the chagrin of the proponents of such a concept, it has worked to the detriment of some groups and individuals who feel they have not been adequately compensated for the historical sanction of discrimination for generations of the country’s history (typically, non-whites). More specifically, any analysis of

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5 Parents Involved v. Seattle School District and Meredith v. Jefferson County Bd. Of Educ. These two cases – better known as Seattle and Louisville – decided the question of whether racial balancing is a compelling interest for which racial classification is an acceptable remedy.
the current ruling outside of the context of the current manifestations of historical segregation and discrimination would be inaccurate.

Second, at the local school district level, communities are dealing with the very real aftereffects of decades of failure to address inequities that stemmed from historic segregation and community tension. In short, the racial issues that festered inevitably spilled over into the school context. The research illuminates the disparity in school climate perception including notions of fairness (and lack thereof) and feelings of marginalization in terms of teaching methods and relationships with students and families stemming from racial bias. The question then is how to bridge this gap. How can school districts restore trust and ensure families and the community in general that they are operating in good faith to address inequities? The truth is that a consent decree both confirms that good faith was lacking on the part of the school district, but also provides an opportunity to restore it and reassure the community that they will do whatever necessary both during and after the consent decree, to address the issues that have affected these families in the context of school, for decades.

Supreme Court decisions do not end at the point that the decision is handed down. On the contrary, the decision is only the starting point of the path of the ideology being promoted. Specifically, the results of such a ruling can only be assessed in retrospect when one analyzes the types of cases that have been promulgated subsequent to the watershed decision. The nature of the U.S. legal system is that once watershed cases have been heard and decisions handed down, the way to test the actual impact of the decision is to try more cases.
This reality has a couple of consequences. This work charts the path of a ruling like Brown in terms of how such a ruling manifests over decades since its inception and how it manifests in the remedies both sought and implemented in school districts that deal with equity issues. Also, it will highlight the fact that in cases involving equal educational opportunity, the courts never act alone. Superfine (2010) states that a variety of institutions and individuals, including legislatures, agencies, school districts, schools, and teachers are generally implicated by the court’s decision and called to action (Superfine, 2010, p.108). Perhaps even more important is the trend of courts taking a more hands-off approach in terms of judicial mandates and to rely more so on these outlying institutions to craft policies that reflect judicial mandates via consent decree.

Upon the conclusion of a thirteen-year consent decree process in Champaign, Illinois’ Unit 4 school district, the case’s presiding Judge, Judge Billy Joe McDade essentially told the district and community, ‘you’re on your own from here.’ This proclamation was a welcome farewell to some, but a death knell for others. For some it was a positive prognosis; but for others it only brought ominous foreboding within the community. Judge McDade’s statement signified the final chapter of a saga whose beginnings reach decades into the past. It also serves as ground zero for work that must begin anew to maintain any advances that were made since the consent decree’s inception.

This document will dissect the circumstances surrounding the Unit 4 consent decree process from both a macro and micro level in order to better understand the circumstances for

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which school districts must be prepared as they attempt to make constitutionally sound policy decisions to address education equity issues. This is a story of many twists and turns, starts and stops took place against the backdrop of a nation struggling to navigate the rocky path toward the present and all that this entails with regard to civil rights, education equity, and repairing broken relationships, and even forging relationships where none existed before.

The underlying theme of the circumstances in Champaign, Illinois mirrors the struggles of a nation. It deals with discrimination and the current manifestation of such historical practices. The Unit 4 story is a story of what happens when the school district and the very community for which these schools inhabit are at odds with each other. What happens when the rumblings of decades of dissatisfaction bubble to the surface and eventually erupt? Why should we, as citizens, care about the most recent and landmark Supreme Court’s decision in *Parents Involved*, which is arguably the most important desegregation equity case at the turn of the twenty first century? How is it relevant to the local level decision in Champaign, Illinois? We should care because the impact of those decisions are far-reaching and have educational, and certainly societal implications that span decades into the future.

Essentially, this analysis explores the anatomy of a consent decree in an age where such measures were deemed necessary to continue the work started generations ago with *Dredd Scott v. Sandford* (1857)\(^7\) and continued with *Brown, Grutter, Gratz*, and to the present. The first part

\(^7\) Dredd Scott was an African American slave in the United States who sued unsuccessfully for his freedom and that of his wife and their two daughters in the case *Dredd Scott v. Sandford*. His case was based on the fact that although he and his wife were slaves, he had lived with his master in free territories. The United States Supreme Court ruled seven to two against Scott, finding that neither he, nor any person of African ancestry, could claim citizenship in the United States, and therefore Scott could not bring suit in federal court under diversity of citizenship rules.
of this document will outline the specific process of a consent decree. How is it initiated? Implemented? How is it executed from start to finish? Who are the players involved? Part two of this document will discuss the consent decree process within the national legal context. As it stands, the national context is critical as it lends an understanding of the ways in which education equity cases have morphed over the years, including a marked shift in the legal theory under-which to analyze specific equity cases – in particular, how the court interprets the 14th amendment and how this impacts remedy construction.

The second part of this document deals heavily with micro level legal analysis. It is important to understand how the legal field has developed over the course of decades especially in terms of how cases have been shaped and how decisions have been made leading up to Parents Involved. This analysis is necessary to be able to make recommendations as to the best way schools and communities can proceed post-consent decree and also ensure that whatever measures are utilized by school districts to address equity issues are within the purview of the Constitution.

The methodology used in the research reflects a deep desire to accurately convey the full story behind what happened in Champaign both pre and post-consent decree. The Qualitative methodology is one that is effective at conveying context. Especially in a setting where social and legal context are so critical to understanding the consent decree process and further, situating such a process against a national backdrop, qualitative methodology is the best way to hear the stories of those most impacted by the Unit 4 consent decree and the impact of the Seattle-Louisville decision. Also, this document proposes the utilization of Culturally (and contextually)
Responsive Evaluation (CRE) as the best way to ensure that Unit 4 and other similarly situated school districts will be able to continue any progress made whilst under the consent decree.

With legal trends regarding desegregation litigation and education equity cases shifting in the opposite direction – that is against acceptability of the use of racial classifications – and with families and communities still struggling in the present day with the effects of past racial discrimination, it may seem that families and communities have fewer tools at their disposal to ensure equitable education, particularly in areas where historically, this has not been the case. However, CRE provides a set of built-in mechanisms by which to uncover and subsequently address equity issues that arise in the school district setting. Not only does it provide a set of proactive tools, it can serve as an empowering function for families living in school districts where equity issues exist. The empowerment of the family is an important component of promoting the sorts of values and expectations a school district must fulfill in a given communal setting. Moreover, the practical implications of CRE on issues of empowerment become more salient given that individuals and families may feel impotent to effect the outcomes of Supreme Court decisions such as Parents Involved which are discussed throughout this document.

In short, the legal history surrounding desegregation and education equity litigation demonstrates that all too often, good faith was not enough. In communities that have dealt with such issues in the past, current manifestations of discrimination still exist and are felt in the school context. When the circumstances demand a consent decree – essentially involving the courts to ensure that these issues are addressed – it is clear that good faith was not enough. This document hopes to construct and analysis and policy recommendations via CRE to ensure that good faith can be restored in the education equity context.
Why Champaign, Illinois?

Much of the discourse surrounding desegregation and equity cases focuses on schools in large urban areas but the literature is much more limited when discussing the challenges unique to districts in small urban communities, particularly as it relates to issues of race and class. The city of Champaign has not been immune to the landscape of desegregation mandates and judicial involvement and has experienced more than its share of racial conflicts that have spilled over into the educational arena. Moreover, Champaign’s Unit 4 school district provides a micro-level point at which to discuss the theoretical shifts taking place in the legal arena and the social issues concomitant with those shifts.

Champaign Illinois is a small urban community in central Illinois 135 miles south of Chicago. It’s a city with a long history of racial tension in the decades since the community was established. Champaign is unique in that it exhibits the problems of large urban education systems but in a setting that increases the impact of racial and discriminatory practices due to the community’s smaller size. Many of the people interviewed as part of this research have been in the community for decades and so have the type of institutional memory and long-term contextual understanding of the deep roots of many of the issues that manifest in the Unit 4 school district.

Moreover, the freshness of the issue in Champaign allows for a better grasp of the thoughts and sentiments surrounding the entire issue. Champaign’s consent decree expired in 2009, which means that it is still fresh on the minds of families, teachers, administrators and
others who had a stake in the process. This creates an ideal environment in which to accurately gauge the pulse of the community and the overall impact of the decree.

This contextual background is designed to illuminate the many issues that emerged throughout the consent decree process both before and after. Most importantly, it highlights the notions of trust and good faith as multifaceted issues involving several key players and yet critical for any measures implemented by the school district to be successful. Particularly with regard to access to quality education and a community’s perception of the school district’s genuine desire to educate children.

The issue of trust emerges in several circumstances – trust between parents and teachers, teachers and administrators, parent and administrators, etc. Indeed presiding Judge for Unit 4’s consent decree, Judge McDade, emphasized the necessity of trust if the district is to move forward and successfully tackle the mandates of the consent decree. Therefore, the question becomes, “What issues in the Champaign community have historically inhibited the development of trust between community members and schools and how did those issues factor into the onset of the consent decree? This and other questions will be explored, however it is critical to first present a solid foundation of the legal basis for education equity cases and how they set the framework for Parents Involved and Champaign’s ultimate consent decree process.
Chapter 1  
The Role of the Judicial System in Education Equity Cases

Insomuch as the judicial system has been utilized as a tool for social policy and social change, in no uncertain terms, it has served in a similar role in educational policy and educational policy-making. In order to understand the pros and cons of utilizing the courts in educational policy making, it is imperative to first understand the role the courts have played in educational policy development, particularly with regard to education equity litigation. In addition, the critical role of social science research in the law particularly with regard to education is invaluable to understanding the role of courts for future agenda setting in the educational arena. First, this document will give context to the educational policy/legal discourse by briefly highlighting court involvement in the desegregation arena from a historical perspective and the development of the consent decree in the educational context.

Second, it will provide the basic framework for education litigation as it relates to court involvement in schools within the school desegregation context. It will highlight the challenges of legal intervention in desegregation and education equity cases, with particular attention to the unique challenges of constructing remedies that are amenable to the many key players in educational equity litigation. Finally, it will analyze the role of social science research and the law for the purposes of agenda setting in educational policy through the courts and make recommendations on the most effective ways to evaluate and monitor progress in school districts that are no longer under consent decree.
Historical Background of Desegregation Litigation

The courts have played a substantial role in the development of precedents that guided first segregation, and then desegregation of the nation’s schools in addition to the myriad issues that stemmed from societal changes taking place. For this reason, it is perhaps most accurate to characterize desegregation litigation as taking place in three distinct waves. The first wave of desegregation litigation is highlighted by *Plessy v. Ferguson*; the second case is highlighted by the watershed desegregation case, *Brown v. Board of Education of Topeka Kansas* (1954).

The third wave is characterized by such cases as *Gratz v. Bollinger* (2003), *Grutter v. Bollinger* (2003), and the most recent Supreme Court cases in Seattle and Louisville (*Parents Involved in Community Schools v. Seattle School District* (Seattle, Washington) and *Meredith v. Jefferson County Board of Education* (Louisville, Kentucky). This paper will explain the significant cases of all three waves in detail to provide context as to the future of desegregation and education equity litigation.

Specifically, analysis of the three waves will show the trend from the early desegregation cases to the more nuanced principles that were litigated in later cases as evidenced by the narrowing of remedies available for school districts to utilize in attempting to remedy education equity issues. This trend is concomitant with a shift in ideology in terms of the rationale behind remedies to address equity issues. This shifting
ideology is evident from *Brown* to *Seattle*. In particular, the relief sought is no longer a redress for past acts of discrimination or segregation. The major debates on rationale for education equity measures relies on an interpretation of the constitution as “colorblind” and for race conscious measures to be used narrowly to address specific equity issues. A clear understanding of the waves of education litigation will also provide a stark picture of the trend of Court rulings.

This will help readers to understand why the development of the consent decree as the primary tool for plaintiffs has been so critical to ensuring that equity measures are implemented and also will shed light on how school districts – in the absence of pronounced and pro-longed court involvement, can remain under the purview of the Constitution in terms of the types of policies that are implemented to address equity issues.

**Separate But Equal – The First Wave**

The first wave embodies the earliest precedent set forth by the Supreme Court and also established the way in which future desegregation cases would be decided. Cases arising in the first wave of desegregation litigation dealt mainly with the Constitution’s 14th Amendment, which contains the equal protection clause. The equal protection clause states, “no state shall...deny to any person within its jurisdiction the equal protection of the

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8 See *Parents Involved*
laws.” Indeed, Plessy’s most famous legacy was the notion of “separate but equal” as an acceptable standard by which the nation could legitimate segregation in all aspects of social life. Plessy served as the seminal 14th amendment case and also the most influential desegregation case of that era.

Essentially, the Court upheld the practice of Jim Crow segregation in the South, which mandated separate social arrangements for blacks and whites, and further, argued that the equal protection clause had been intended to defend equality in civil rights, not equality in social arrangements. Essentially, Justice Henry Billings Brown’s assertion (writing for the majority) echoed social attitudes of the time. He maintained that separation did not imply inferiority of either race (He was heavily opposed by Justice Harlan’s dissent in the case). Specifically, Justice Brown stated that, “…the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been the longest and the most earnestly enforced. (Plessy, 1896, p. 544).

Justice Brown defended his rationale by pointing out that even in those states where the rights of “colored” people were strongly enforced, the idea of separating the races was acceptable, and more so because such acceptability was sanctioned by the courts of those states. What his assertion implies is key to understanding the role of courts within a societal context. Indeed, it must be noted that courts are often products of the societies for

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9 U.S. Constitution, Amendment 14
which they inhabit. Thus, during the time of Plessy Jim Crow was held as an acceptable practice and fully supported both *de facto* and *de jure*.

Thus the interpretation of the laws at that time supported segregation. While *Plessy* established the viability of separate but equal doctrine, several other desegregation cases arose affirming the precedent. This factor of the courts as a product of the society at the time shatters shows the law as dynamic, changing and full of contention over the ways in which laws should be interpreted. In fact, Justice Harlan’s dissent foreshadowed what was to come in the ever-morphing desegregation debates – namely the very real harms (as evidence by social science) that placed *de jure* segregation at odds with the ideals embedded in the Constitution.

Justice Harlan asserted that the statute in question in the *Plessy* case was not intended necessarily to exclude white people from railroad cars occupied by blacks, so much as it was designed to exclude “colored” people from coaches occupied or assigned to whites. Thus segregation, Harlan asserted, is designed to establish a superior class or a caste system, which would, by his interpretation, be in direct contravention of the ideals of the Constitution. Harlan states, “...[I]n view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens (*Plessy*, 1896, p. 545).” Despite Harlan’s dissent, a number of further Court cases helped to shape

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the direction to which future desegregation cases would eventually shift. Also, it should be noted that Harlan’s assertion of a “color-blind” Constitution would reemerge in statements both for and against desegregation advocates. In fact, this notion resonated loudly with Chief Justice John Roberts’ opinion in the Parents Involved.

_Berea College v. Commonwealth_ (1908) (holding that the prohibition against teaching white and negro pupils in the same institution, which is made by Acts Ky.1904, p.181, c.85 does not, when applied to a corporation as to which the state has reserved the power to alter, amend, or repeal its charter, deny due process of law or otherwise violate the federal Constitution); and _Lum v. Rice_ (1927) (holding that segregation of white children and minority children was lawful) were cases that touched on important principles during this early part of the desegregation discourse and essentially supported _de jure_ segregation.

Moving further into the 20th century, the case of _Missouri ex rel. Gaines v. Canada_ (1938) reaffirmed the validity of _Plessy_. In _Missouri_, Loyd Gaines, a black student at Missouri’s Lincoln University, a historically black institution without a law school, applied for admission to the law school at the all-white University of Missouri. He was denied solely on the basis of race. The Supreme Court, applying the separate-but-equal principle of _Plessy_, held that a State offering a legal education to whites but not to blacks violated the Equal protection clause. Thus the issue was not whether the University of Missouri law school could deny a legal education to Gaines solely on the basis of his race.
The true “injustice” as determined by the courts, was that there lacked the existence of a law school which black students exclusively could attend, since they were not to be allowed enter into white law schools. This is reaffirmed by the Court’s conclusion that the state was “obligated to provide Gaines within its borders, facilities for legal education substantially equal to those which the State there offered for persons of the white race, whether or not other negroes sought the same opportunity” (Gaines, 1938, p. 351).

Despite the reaffirmation of separate-but-equal, subsequent cases relating to segregation began to signal subtle chinks in the segregationist doctrine. For example, Smith v. Allwright (1944) (holding that a democratic primary in Texas in which voting was restricted to whites alone, was unconstitutional, partly on equal protection grounds) and Shelley v. Kraemer (1948) (holding that although a discriminatory private contract could not violate the Equal Protection Clause, the courts’ enforcement of such a contract could because courts are part of the state).

These cases call to the fore a shift against enforcement of discriminatory practices. In the same year as Shelley v. Kraemer (1948), the Court ruled in Sipuel v. Board of Regents (1948) that African-American, Ada Sipuel, was entitled to the same legal education as a white applicant at the University of Oklahoma Law School. Further, they stated that the state must provide it for her in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group. (Sipuel, 1948). The advent of cases like Sipuel and Kraemer, the Courts ushered in the second wave of desegregation litigation.
The Second Wave – Dismantling Plessy and the Watershed Brown Cases

This paper argues that the second wave began with the 1950 cases Sweatt v. Painter (1950) and McLaurin v. Oklahoma State Regents (1950). These cases are critical to understanding the lead-up to the first Brown v. Board of Education case. Not only did they address segregation generally, these cases illustrate the beginning of the narrowing down process of legal questions. At this point, questions surrounding the legality of segregation became more nuanced. Thus the question in Sweatt was “to what extent does the Equal Protection Clause of the Fourteenth Amendment limit the power of a state to distinguish between students of different races in professional and graduate education in a state university?” (Sweatt, 1950, p. 631). The McLaurin case determined “whether a state may, after admitting a student to graduate instruction in its state university, afford him different treatment from other students solely because of his race” (McLaurin, 1950, p. 638).

Interestingly, the University of Oklahoma had accepted McLaurin into its law school.

However, he was required to sit in a designated area apart from his classmates in both the classrooms and library and had a separate designated table in the cafeteria. The Court ruled unanimously that he had been denied equal protection under the Fourteenth amendment. Justice Fred Vinson stated, “There is a vast difference – a Constitutional difference – between restrictions imposed by the state which prohibit the intellectual commingling of students, and the refusal of individuals to commingle where the state presents no such bar.” (McLaurin, 1950, p. 635).
Justice Vinson and the remainder of the Court asserted that \textit{McLaurin} was a case in which the state had served as a bar to intellectual commingling and thus was in violation of the Equal Protection Clause. In \textit{Sweatt}, despite the Court’s invalidation of the law school system in Texas, it had not done so because of the segregated facilities, but only because such segregated facilities were not \textit{equal}. Thus there was still a ways to go leading up to \textit{Brown}. But \textit{Brown} was to attack the heart of the separate-but-equal doctrine at full force.

Justice Earl Warren’s ruling in \textit{Brown} served as a watershed moment in the second wave of desegregation litigation. Indeed, his statement echoed Justice Harlan’s dissent in \textit{Plessy}, hearkening to the notion that affirmation of separate-but-equal doctrine necessarily implies inferiority of “colored” children. Justice Warren stated that, “To separate [children in grade and high schools] from others because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone...We conclude that in the field of public education the doctrine of “separate-but-equal” has no place. Separate educational facilities are inherently unequal.”\textsuperscript{11}

This holding was the lasting blow to segregation and fully overturned \textit{Plessy} as a matter of legal precedent. However, it also ushered in an era in which cases were brought before the courts under increasingly nuanced principles and also gave rise to newer issues of enforcement of the new legal precedent set by \textit{Brown}. Thus more focus necessarily shifted to remedy in post-\textit{Brown} cases, especially as schools sought to dismantle practices
that had previously been held as legal for decades. The second Brown case (*Brown II*) illustrates this narrowing of focus after the initial ruling. *Brown II* dealt specifically with how the mandate of the dismantling of separate-but-equal doctrine was to be carried out.

*Brown II* involved the allocation of the responsibility of constructing mechanisms by which to desegregate schools to the school districts. It also characterized the resistance to desegregation methods as evidence by measures carried out by local school districts such as closing down some schools and using state money to finance all-white private schools. School boards and trial courts held authority to devise solutions to the segregation problem and the famous line mandating trial courts and localities to desegregate with “all deliberate speed”. However, this enigmatic phrase proved problematic in terms of determining how and on what timeline schools would be required to fall in line with the new *Brown* doctrine.

Indeed, school districts around the country, and particularly in the South, fumbled quite a bit in the immediate years following the *Brown* decisions. Conceivably, part of this is the result of the ambiguous nature of the phrase “all deliberate speed.” But undoubtedly, a large part of the stagnation of desegregation efforts was simply due to massive resistance by local and state entities to the desegregation process (i.e. Alabama’s Governor George Wallace who pledged permanent segregation for his state).\(^\text{12}\) Therefore, not only were Civil

Rights activists not entirely sure *how* to proceed, any attempts were hampered by resistant parties in school districts who refused to abide by the Court’s mandate.

Indeed, it was not until after passage of the Civil Rights Act of 1964, that segregation efforts began to make some headway. And even then, the desegregation faced some setbacks. It was in *Green v. County Sch. Bd. Of New Kent County* (1968) case in which the first references to “school choice” emerged. The “freedom of choice” mechanism employed by school districts to desegregate essentially amounted to making voluntary, the decision for parents to decide which schools their children would attend. Thus parents could choose to send their children either to previously all-white or all-black schools. This method, however, proved most ineffective as white parents still sought to send their children to white schools, and even black parents still sent their children to predominantly black schools.

Hence Justice William Brennan’s opinion for a unanimous Court rejected a “freedom-of-choice” school plan as inadequate (*Green, 1968, p. 439*)\(^\text{13}\) The shift to geographically determined school plans also proved problematic primarily because of the interconnectedness of housing discrimination with schools. Previous housing discrimination had, among other things, led to the emergence of racially identifiable communities. Thus there were pockets of all-white and all-black neighborhoods, which meant that neighborhood schools would follow those same patterns.

\(^\text{13}\) *Green v. County School Board*, 391 U.S. 430 (1968) at pp. 439
Thus Swann v. Charlotte-Mecklenburg Board of Education (1971) approved the use of busing as a remedy to segregation. This case was followed by Milliken v. Bradley (1974), which set aside a lower court order that had required the busing of students between districts, instead of merely within a district. Simultaneously with desegregation issues as the K-12 level, the Supreme Court also addressed issues of segregation at the higher education level.

Bazemore v. Friday (1976) applied the same concept of choice as was applied in Swann in terms of dismantling segregation at the higher education level although Bazemore focused more on individual choices that led to segregated circumstances in an unintentional way. U.S. v. Fordice (1992) dealt with dismantling de jure segregation in Mississippi that had established dual higher education systems with five primarily white institutions and three almost exclusively black institutions (Fordice, 1992, p. 2729). The Court made clear that the state had an affirmative duty to dismantle the dual educational system in its institutions of higher learning. Moreover, merely adopting race-neutral policies was held as insufficient to establish that the state had fulfilled its affirmative duty.

Essentially, the second wave encompasses the increasing utilization by plaintiffs of the legal system to challenge what were believed to be an inability or unwillingness on the part of school districts to carry out the mandates as set forth in Brown I. The main questions addressed in this wave center on exactly how school districts could and should implement this notion of equality and desegregation. The decisions from the second wave had overall made it challenging to address the manifold issues that arose in the school
desegregation context. The third wave evidenced the metamorphosis of typical education litigation cases to the more pronounced use of consent decrees to address latent school district equity issues that developed post-litigation.

The Third Wave – *Gratz, Grutter, Parents Involved*

The third wave of desegregation litigation occurred primarily throughout the 80s and 90s and into the 21st century. It signified a shift in desegregation litigation while highlighting the emerging affirmative action debates. The third wave also ushered in the present circumstances leading up to the *Parents Involved* and their impact on future education equity cases.

*Regents of the University of California v. Bakke* (1978) signifies the hallmark case of this era. It explored the way in which different factors were weighted in the admissions process. Specifically, the case focused on the use of race in admissions and questioned how much weight one’s racial background should play in determining whether they would be admitted to an institution of higher education. The plaintiff, Allan Bakke, contended that he had been rejected from the University of California-Davis because their special admissions program excluded him on the basis of his race (white). The Court ruled in a 5-4 decision that race could only be one of many factors used in the admissions process.

*Bakke* paved the way for *Gratz v. Bollinger* (2003) and *Grutter v. Bollinger* (2003), which serve as the hallmark cases that highlighted the issue of narrow tailoring in
constructing programs designed to achieve diversity. While *Gratz*, *Grutter* and *Bakke* are arguably the most famous cases of the third wave, more importantly is the overall analysis of the decisions coming from what is known in the legal field as the “Rehnquist Court”, particularly as it relates to cases that impacted schools at the K-12 level.

The opinions handed down by the Rehnquist Court essentially limited severely the circumstances, means, and duration of desegregation remedies. Particularly in the cases of *Board of Education of Oklahoma City Public Schools v. Dowell* (1991), *Freeman v. Pitts* (1992), and *Missouri v. Jenkins* (1995). In *Dowell*, the Court held that once a “unitary” system could be established, a federal court’s desegregation order should end, even if this meant a re-segregation of schools. The Court held that a school board need only show it had complied in “good faith” and that “the vestiges of past discrimination had been eliminated to the extent practicable (*Dowell*, 1991, p. 10).

As such, the Court declared the Oklahoma school district in the case to be unitary despite the fact that it remained segregated for almost two decades after *Brown*. In so doing, the Court disavowed any accountability for persistent racial injustice. This same notion is to be echoed in the Unit 4 school district, particularly toward the expiration of the consent decree. One year later, in *Pitts*, the Court ruled that once a portion of a desegregation order is met, a federal court should cease efforts as to that portion and remain involved only as to those aspects of the plan that have yet to be achieved (*Pitts* at 249).
This allowed for the piecemeal dismantling of desegregation orders across the South. The final "coup de grâce" was the case of Missouri in which the Court established the requirement that lower courts must specify exactly what educational deficits are traceable to segregation and discrimination, and what results will be required as proof that the deficits are remedied.\footnote{\textit{Missouri v. Jenkins}, 515 U.S. 70 (1995)} If such specification is absent, Missouri gives courts license to return school districts to local control, which allowed inequities to exist.

The rationale for local control is similar to the Court’s embrace of “color blindness” in many other contexts - the latest being in \textit{Parents Involved}. The color-blindness standard treats whites and minorities as though they were similarly situated and ignores the history of segregation and its vestiges, which are intertwined in America’s history. Moreover, the Court’s ruling went beyond curtailing desegregation remedies, as it had in \textit{Milliken}. Indeed, while \textit{Milliken} hindered mandatory metropolitan desegregation efforts, Missouri struck down a voluntary metropolitan school desegregation plan. Thus the majority in the Rehnquist Court chose to consider the constitutional harms suffered by minority students to be less significant than restoring the authority of local agencies to run schools free of federal oversight. The Court reiterated its desire to end federal court supervision and restated the mantra of restoring local control to school systems. This was the same local control that allowed segregation to flourish both before and after the era of \textit{Brown} and up until \textit{Parents Involved}. 

\footnote{\textit{Missouri v. Jenkins}, 515 U.S. 70 (1995)}
Indeed, Justice O’Conner in her *Grutter* opinion noted that sometime in the future “perhaps twenty-five years hence, racial affirmative action would no longer be necessary in order to promote diversity (*Grutter* at 21). Her statement implied that affirmative action should not be allowed permanent status and that eventually a colorblind policy should be implemented. However, Chief Justice Roberts in *Parents Involved*, would invoke this colorblind notion in his opinion, which was deemed by many to twist the original intent of Justice O’Conner’s statement and utilize it in unintended ways to effect of having a negative impact on those who sought to remedy the current impact of past color conscious policies which had consistently worked to the disadvantage of people of color.

In short, the advent of these cases led to the active legislation on the part of states to enact a number of referendums questioning the use of race in admissions policies in higher education but they also called into question the relevance of many of the arguments used in support of race conscious policies at the higher education level and whether they were applicable at the K-12 level. Chief Justice Roberts said that it did not. Indeed, analyzing the dictum of the decision will shed light on where things stand as it pertains to education equity litigation – and particularly equity litigation that involves the use of race-conscious policies.

The analysis of these cases underscores the fact that minorities continue to suffer the damaging effects of past and present racial discrimination in education. The National Research Council in its survey of the status of black Americans concluded that despite school desegregation and increased federal financial assistance, “there remain persistent
and large gaps in the schooling quality and achievement outcomes of education for blacks and whites.\textsuperscript{15} The council found that “separation and treatment of blacks continue to be widespread in elementary and secondary schools, and, in different forms, in institutions of higher learning.\textsuperscript{16}

Given the research supporting corroborating reports of the continued effects of school segregation, it became clear that more would be necessary on the part of the courts to ensure that the equity issues in school districts were addressed. For this reason, consent decrees emerged as a viable mechanism by which to address the lasting equity issues that stem from previous segregation and discrimination.

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\textsuperscript{16} Id. At 378
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Chapter 2

Court Intervention and the Growing Importance of Consent Decrees

Examining a consent decree in detail illuminates how the Court’s decision plays out in real life circumstances. A consent decree is a decree by a judge that expresses a voluntary agreement by the participants in a suit. It is often issued after one side of the case voluntarily agrees to cease a particular action without admitting to damages or illegality of the action.

In the case of Champaign’s Unit 4 K-12 district, a consent decree was the defining step in a saga that began decades ago and resulted in parents, community members and school district members coming to the table to hammer out a plan that would ideally address the many (real and perceived) equity issues in the district, and particularly those equity issues between Black students and their white counterparts.

Unit 4’s consent decree process embodies legal history from desegregation litigation to the present and the decisions that have shaped the ruling in Parents Involved (as outlined in the discussion of the three waves of education litigation). Moreover, how the series of decisions applied to the Unit 4 context in terms of the mechanisms employed to address the district’s equity issues. More than just discussing the procedural implementations that resulted from the consent decree, this research will examine the “on-the-ground” implications of the decree – namely the impact of Court decisions on people’s perception of equity and why districts – from the top-most administrators to parents – should care. The
consent decree is a form of court involvement that is arguably much more hands-on in terms of giving voice to the stakeholders in the school district and allowing for more collaboration and ownership of the policies that are developed to address equity issues. Given this fact, this research will explore whether a consent decree can change the perception of students and families in a school district and if so, in what ways? In addition to putting equity remedies on paper via consent decree, can they be tangibly actualized?

Understanding the historical backdrop of Champaign as a city and how this history defined the dynamics of its school district is critical to understanding how the district and community arrived at a consent decree. This history will provide insight into the racial dynamics that gave way to equity issues within the school district as well as shed light on the critical issues of trust and perception that played such a substantial role in determining the course of the consent decree.

Recommendations on the most effective ways to move forward given the legal and social context will help shed light on the path of future education equity cases. Specifically, the use of culturally relevant evaluation as a tool for school districts post-consent decree will lend layers of contextual understanding that will afford deeper insights into the lasting impact and effectiveness of policies implemented during the consent decree in the schools and the community.

CRE will serve as a tool for school districts as they design equity-related policies. It is one of the few tools that can ensure that the needs of the parents, families and communities are met while attempting to address district equity issues in an era in which
acceptable remedies to address equity issues - particularly those of discrimination - are curtailed and court involvement in the form of a consent decree becomes essential to address those equity issues.

**Pros and Cons of Court Involvement in Desegregation/Equity Cases**

Court intervention is almost categorically an indication of the notion that a higher authority or third party is necessary for certain measures either to be implemented or changed. For example, if a community as a whole feels that their school district has engaged in practices detrimental to the district’s children and if they feel other efforts to bring these grievances to the school district have been met with resistance, they are likely to seek remedy from the courts in order to ensure that some measure of change actually takes place. There are several pros and cons to court involvement in desegregation or other education equity cases. For the purposes of this paper, the term “education equity” will be used to refer to desegregation cases as well as other equity issues such as school finance, funding, and resource inequity.

Some drawbacks of using courts in educational policy include: length of litigation and lack of finality, expense of going through the litigation process and/or expense of consent decree implementations, and feelings of interference on the part of those in school districts who resent judicial involvement. As previously discussed, lack of finality and length of litigation is a negative outcome for some parties to desegregation litigation. This factor is coupled with the expense of such litigation. Parties must pay for legal representation in cases that involve intense and thorough gathering of evidence and data to
support either the extent of unconstitutional practices, or to illustrate the aftereffects of past segregation.

This process involves participation by expert witness who must be hired out, as well as testimony from witnesses who will have to give an accounting of legal practices that are in question. The data-gathering phase can be costly, as well as implementing the measures that have been mandated. Even in the case where parties enter into consent decrees, this supposedly cost-saving measure can become costly, especially when extended over a number of years. Often times, the parties agree to the initiation of certain educational programs that involve hiring of staff resources.

In other cases, the litigation or consent decree process involves cost of time and resources. Schools may be restructured. Programs may be removed and new programs put in place. Budgets are refashioned and adjusted to take into account any new initiatives. All of these factors amount to high costs over time and support reasons why school districts often push for consent decrees to expire or for unitary status to be established.

On one hand, the parties must ensure that they are working toward those absolute goals, but on the other, the process must be done in a way that is cost-efficient and also maintains a set endpoint. Indeed, although desegregation litigation and consent decree cases can extend for a number of years, the goal is to not to maintain court involvement indefinitely. Instead, the aim should be for the court to serve as a catalyst and monitoring body to ensure that steady progress is made toward unitary status and/or remedying education inequity in a school district.
This leads to another perceived negative of court involvement in education equity cases: the perceived intrusion of an outside player. Local control continues to be one of the most contentions in education. As described earlier in the rulings of the Rehnquist Court, which encouraged local control, the idea that local school boards maintain autonomy over district dealings is a touchstone of many issues in education remains paramount.

Thus an outside judicial body making judgments on the procedures established in a school district will not always sit well with some stakeholders. On the one hand, some may feel that an outside entity is the best means of ensuring that fair and objective practices are implemented. They see the judicial body as a way of ensuring that good faith plays into any negotiations with regard to mechanisms to desegregate or attend to education equity issues.

However, for others, such judicial involvement is an intrusion on internal district issues and any recommendations or mandates thereafter may face some resistance. Particularly for defendants in any educational litigation, the willingness to defer to an outside body may be more difficult. However, the good faith factor is critical to building up the sense of trust that is invaluable to the negotiating process and an external judicial body is oftentimes the buffer that is needed between plaintiffs and defendants to ensure that both sides are able to come to the table fully and openly to address education equity issues.
Pros of Court Involvement

Court involvement involves many pros which plaintiffs may find attractive. They include: 1) Force of law behind mandates that arise as a result of litigation ensures guaranteed compliance as a matter of law; 2) Involvement of the Courts guarantees accountability on behalf of both plaintiffs and defendants; 3) Courts can provide guidance on how to proceed, i.e. in remedy construction and execution for parties involved; 4) Court involvement can open doors of communication between parties as they are forced to the table to bring all of the underlying issues to the fore throughout the litigation process; and 5) Court involvement allows the possibility of establishing new legal precedent that will influence future similar cases.

Probably the most attractive feature of court involvement is simply the knowledge of the power of the judicial branch. Plaintiffs may view the courts as a last ditch effort to address the equity issues facing their school or district. Thus the understanding that any decision made by the court will be binding may be incentive for potential plaintiffs to carry through any steps to involve the courts in educational disputes. For example, in the earliest school desegregation cases, famous civil rights attorney Charles Hamilton Houston, and his protégé Thurgood Marshall were very strategic in terms of selecting the cases they would bring before the courts because they knew that such cases would establish new legal precedent and would essentially replace the old system of separate-but-equal.

Thus the cases they chose to litigate up until the first Brown were all designed to chip away at the legal doctrine of separate but equal. Each decision reached by the courts
was designed to weaken the precedent by establishing new legal guidelines by which to establish what was and was not constitutionally acceptable. Arguably, the reason for this carefully thought out and executed strategy is because of the nature of the law as a solid establishment and the knowledge that a victory in each of these cases meant that they had the force of law on their side which is substantial, even if only at a symbolic level for a time.

Certainly, there did exist some lag time between the establishment of legal precedents and the actual execution of such changes at the local level. In Brown it took years for school districts to begin to dismantle institutions of segregation that had been in place for decades. But yet the symbolic influence of knowledge of having the force of law behind a mandate is undeniable.

A second pro to court involvement in education equity cases is accountability. Often, education equity cases are brought before the courts on the grounds that a party has been wronged, ignored, or otherwise, has not had their interests considered. These sentiments can lead to long-held feelings of mistrust toward one party. Usually, these sentiments are directed toward the school district arguably because of the dynamic of perceptions of power. School board members, administrators and teachers may be perceived to hold more power and influence within the school districts. Thus aggrieved members of the community may feel that these entities are not held accountable because there is no higher authority to which they must answer. Court involvement is one way of ensuring accountability.

When the courts become involved, school districts are compelled to report to the court. Especially in cases where consent decrees have been established, the school district
is required to report on a regular basis to the court appointed monitor in order to track progress toward the goals stipulated in the decree. Added benefit of the court involvement is that it facilitates that type of communication necessary for parties to be able to freely address the issues at hand. The presence of the Court can serve to embolden parties who may have previously felt too intimidated to open lines of communication. Additionally, knowing that there is an external body in place will ensure the types of accountability that can foster trust between parties.

Guidance in remedy construction is a third benefit of court involvement. While school districts have struggled with developing mechanisms to address education equity issues, the primary concern is to ensure that any mechanisms in place are, above all, constitutional. This means that school districts must work closely with the court to monitor what measures are put in place. In some cases, having that court involvement is beneficial because it ensures that remedies are kept within the bounds of the constitution. Plaintiffs have the opportunity to bring issues before the court in hearings and other venues and have the benefit of feedback from the court appointed monitor on whether they can continue with whatever policy implementations they have made.

The last benefit of court involvement in educational policy is the potential for establishing new legal precedent. Much like the watershed Brown I case, decisions may form the basis for later policy implementations. The likelihood of establishing new watershed precedent in education equity cases is not as pronounced as it was pre-Brown I. Indeed, rulings in subsequent education equity cases of the 1970s until the current decade
have become more and more nuanced with courts now focusing more on specific remedies that have been challenged on constitutional grounds.

For example, the use of busing as a tool by which to desegregate schools has come under increasing scrutiny over recent decades, culminating in the Supreme Court decision in *Parents Involved*. These cases started on much broader terms, but as plaintiffs continued to bring subsequent cases before the courts, the scope of the focus of the cases narrowed.

The advantages of court involvement in desegregation are supplemented by the use of social science research to further the debates centering on the benefits of learning in a diverse environment, and the detriments of attending segregated schools. Indeed, the two have almost a synergistic relationship in that the use of social science research can often serve as the impetus necessary to sway the opinions of the justices as they rule on desegregation issues.

**Understanding Remedy Construction**

Today, according to the 2000 census, only 14 percent of white students attend multiracial schools, while nearly 40% of both black and Latino students attend segregated schools in which 90% to 100% are from minority groups (United States Census Bureau, 2000). Further, almost half of all black and Latino students attend schools where three-quarters or more students are poor, compared with only 5% of white students; in extremely poor schools, 80% of the students are black and Latino (United States Census
Bureau, 2000). Thus the issue of creating suitable remedies to attain education equity is arguably more pressing than ever.

It is important to note that education equity litigation serves as the bedrock of educational policy in this arena. It is the foundation from which further policies arise. Without the foundational tenets of the principles that led to the first wave of desegregation measures, further refining of school-based policies would be impossible. However, equally important is the notion that education policy does not arise from the articulation of new law alone. Most certainly, perhaps the most contentious and lively debates have centered not on what the law states, but perhaps, on the implications of practical application of the law – in other words, remedy construction.

Remedy construction is the touchstone to school desegregation law because it is the law in practice. Moreover, remedy construction brings to the fore challenges unique to the legal process. These challenges deal specifically with the fit of the problem and the solution, issues of participation and representation in the remedy construction process, and tension between finality and flexibility. Indeed, these three areas are crucial to understanding the deep complexity of practical application of legal mandates and evidence the ever-changing dynamics that play into court decisions in education equity cases.

The process of constructing the desegregation and education equity policies in a way that actually addresses the issues that warranted judicial involvement is fraught with myriad complexities that make it one of the most tedious challenges facing school boards, communities, and the courts. With regard to remedy, a finding of unitary status for a school
district requires a district court to determine 1) whether the District has demonstrated compliance with the Constitution and with existing Court orders; 2) whether the District has shown that it has eliminated to the extent practicable, all vestiges of past discrimination; and 3) whether the District has demonstrated its good-faith commitment to the whole of the decree and to those provisions of the law and the Constitution that predicated the initial judicial intervention (Missouri, 1995, p.89).17

School districts, communities, and other stakeholders in consent decrees must operate within the framework of the standards that determine a district’s unitary status. Remedies devised in these cases must above all, contain measures that are in line with constitutional mandates – particularly the 14th amendment’s due process and equal protection clauses. In addition to the constitutionality of measures implemented by desegregation initiatives, the district in question must have demonstrated that it has eliminated to the extent practicable, all vestiges of past discrimination. This requirement can become murky when parties involved are required to interpret what exactly constitutes a “practicable” extent and also calls into question the role and scope of the District’s ability to eliminate all vestiges of past discrimination.

For example, drafters of desegregation initiatives must be careful to avoid drafting remedial measures in such a way that they actually violate the constitutional rights of other students currently in the district. This is especially critical post Parents Involved, and given

the current composition of the Supreme Court. Any measures that are not clearly linked to specific educationally based outcomes may fall under the same category as those from *Parents Involved* in Seattle and Louisville. In both cities, district plans were found to be insufficiently tailored to the ends desired. The third requirement, a finding of good faith commitment to the whole of the decree, speaks to the issues of trust that must be worked out particularly in communities with strong histories of segregation and discrimination. This notion must undergird any desegregation efforts if any progress is to be made toward remedying some of the current issues faced by the school district.

In *Bradley v. Pinellas County School Board* (1970), in order to rectify the racial imbalance of the County’s school’s, the court itself imposed race ratios. According to the directive, school populations could not contain more than 30 percent black students or less than 3.1 percent black students in senior highs, 5.6 percent black students in junior highs and 9.1 percent black students in elementary schools. Later the ratios were amended to reflect the greater density of black population in the southern part of the county, and to limit the distances students would be bused.

The court-ordered plan of busing students within the county and shifts in school attendance zones to meet race ratios formed the basic system of student assignment that has been the status quo for three decades. The greater burden of busing fell to black families, whose children were more often bused out to more predominantly white schools. In recent years, those ratios have been altered to accommodate for changes in the demographics of the communities affected by the desegregation plan.
The Reagan Administration’s first desegregation suit took place in Bakersfield, California. At the time in 1964, school districts were segregated de jure and minority children were actually bused across town to attend segregated schools (in contrast to students being bused to desegregate schools which was the remedy that became popular with the advent of desegregation litigation).

The Bakersfield consent decree was admittedly weak, particularly because it merely required Bakersfield to establish a series of magnet schools intended to induce voluntary transfers and thus desegregation (Moss, 1986). This remedy was problematic primarily because the court’s ruling in the case was simply to assert that mandatory busing was “unacceptable”. This assertion in 1978 was contrary to Supreme Court decisions that stated the opposite, i.e. *Swann v. Charlotte-Mecklenburg Bd. of Education*, (1971) which stated that desegregation plans “cannot be limited to the walk-in school;” thus busing may be ordered unless “time or distance of travel is so great as to either risk the health of the children or significantly impinge on educational process” (*Swann*, 1971, p. 30).

Moreover, this case highlights the difficulties with prescribing remedies for desegregation cases, primarily within the purview of consent decrees. In Bakersfield, the remedies were not far-reaching enough. The Bakersfield school district had an enrollment of over 19,000 students. However, the district employed a voluntary desegregation plan as opposed to a mandate, and this proved to be highly ineffective. Of the 19,000 students enrolled in the district, the plan accounted for only 248 transfers to the magnet school during the first year of the plan’s implementation.
At the end of the second year of the plan’s three-year lifespan, one out of every four schools in the district was still not within plus-or-minus 20% of being racially representative of the Bakersfield public school population – that is, 25% of the schools had student bodies with either less than 23% white students or greater than 63% white students, given a white population of 43%.

Thus the Bakersfield voluntary plan was highly ineffective and in direct contravention with the Supreme Court’s decision in *Green v. County School Bd.*, (1968). The court held in *Green* that “if there are reasonably available other ways, such for illustration as zoning, promising speedier and more effective conversion to a unitary, nonracial school system, “freedom of choice” must be held unacceptable.” (*Green*, 1968, p. 441). Thus we have a shift in the scope of remedies available to school districts facing desegregation. The notion that school districts implement voluntary policies was struck down by the *Green* decision, thus ushering in an era of mandates of which districts had to abide in order to stay within what was judicially allowed in desegregation cases.

Moreover, remedies can go in the opposite direction as well – going too far in efforts to reach desired ends. In Rockford, Illinois’ case *People Who Care v. Rockford Bd. Of Educ. Dist.*, (N.D. Ill., 1994) as a result of findings of intentional discrimination, a complex consent decree was devised. However, the decree included such provisions as racial quotas for cheerleaders, super seniority for minority teachers, and what were deemed unrealistic goals for closing the white-minority gap in test scores and limits on the number of minority students who could enroll in remedial classes (*People Who Care*, 1994, p. 534). Indeed, the
magistrate judge referred to the ambitious consent decree plan as a “utopian” project, and stated that he had warned against “ambitious schemes of social engineering” (Id. at 534). Clearly, this case puts forth an example of a consent decree that was considered by many to have overstepped its bounds from the remediation of past wrongs to blatant efforts to completely reconstruct the very fabric of the Rockford school district.

Given the ruling in Parents Involved, districts must understand that racial balance alone is insufficient to warrant the use of race conscious policies. Indeed, Justice Thomas makes clear in his concurring opinion that remediation for racial imbalance and remediation for segregation should not be conflated (Parents Involved, 2007, p. 2773). Remedial measures for racial imbalance are constitutional only to the extent that they seek to rectify past de jure segregation. In such cases, race conscious policies serve a compelling state interest. However, racial imbalance is not necessarily a result of past de jure segregation. (Parents Involved, 2007, p. 2773). Also, racial imbalance, Justice Thomas argues, contains no remedy because racial balance will change due to many factors such as changes in demographics and changes in housing patterns. Thus racial balancing takes place on an indefinite basis with no concrete culpable party and no definable end point. (Parents Involved, 2007, p. 2773).

To avoid the pitfall of basing measures primarily on racial balance, petitioners can argue for mechanisms that seek to rectify inequities in academic access and the quality of educational experiences. The critical component that is necessary in order for this method to be successful lies in the faithful use of solid social science research to support the basis
of any remedies implemented. For example, the climate study administered by Psychologist Mark Aber in Unit 4 illuminated several issues that had been expressed by parents, but never officially codified in the form of a study that would explain what was going on in the district.

The study sought to capture the perceptions of the Champaign community concerning school climate and explored several themes including the importance of fairness in discipline and academic matters (especially concerning race), the need to address racial inequities, beliefs about why some students perform poorly, and the importance of community and parent participation in schools’ decision-making processes (Aber, p.8). The study served as a useful point at which the linkages between racial inequities and educational outcomes could be addressed thus lending possible solutions. It also included the voices critical to the successful implementation of a consent decree: parents, teachers, community members and administrators.

In this way, social science research plays a dual role; it can be used as a way to more clearly identify issues within the school district as well as closely link proposed remedies to the goals sought. The role of social science research in desegregation and education equity cases will be expounded upon after an analysis of the effects of remedy implementation.
Finality vs. Flexibility in Remedy

The issue of the finality vs. flexibility is perhaps one of the hallmarks of desegregation litigation. Indeed, the last Brown case is still being litigated 40 years after the initial ruling outlawing segregation. The ongoing nature of desegregation mandates has proven to be a double-edged sword in that it allows for new and perhaps unforeseen issues to be brought before judicial bodies, but also lends itself to frustration of seemingly never-ending litigation. This frustration is conceivably most sharply felt by those in the “indefinable class” of persons who do not consider themselves active players in the litigation process and may not feel as invested in the legal proceedings, or, are opposed to remedies implemented.

The complex nature of desegregation cases and the construction of remedies to address educational equity issues do not lend itself to finality. To the chagrin of those seeking a sweeping and permanent change in one fell swoop, any policy implementations under judicial mandates are likely to change and morph over time, whether because of changing demographics within the school district, or because of the emergence of unforeseen issues. Take for example, the case in San Francisco, California.

U.S. District Judge William Alsup presided over a consent decree instituted in San Francisco’s public school system since 1983. The case initially entered the courts in 1978 by African American parents who filed suit claiming the school segregated African American children and white children. Therefore, in 1983, U.S. District Judge William Orrick approved a consent decree prohibiting enrollment at any school of more than 45
percent of a single racial or ethnic group, requiring each school's staff to reflect district wide student racial and ethnic composition, and taking additional steps to desegregate 19 historically segregated schools in the city.

More specifically, schools were required to have at least four of nine major ethnic groups identified within the district (Lynch 1997). No ethnic group could constitute more than 40 percent of an open-enrollment school, such as highly selective Lowell High, or 45 percent of a neighborhood school. This measure was problematic for the district’s Chinese-American community. Parents of Chinese-American students filed suit in 1994 contending that racial “quotas” kept Chinese-American students out of good schools and particularly out of the district’s most selective schools. At the time, Chinese-American students accounted for 27 percent of the district’s students and 30 percent of the district’s high school students. Parents contended that their children were forced to attend schools far from home or schools that were less academically rigorous (Lynch 1997). Thus the consent decree that was signed in 1983 with the NAACP at the forefront representing African American students was modified to eliminate any consideration of race in school assignments due to the 1994 lawsuit.

While Judge Alsup concluded that the previous school assignment policy was a large success – in 1997-98 only one school in the city was segregated, with a single racial or ethnic group making up over half of the school’s population – in 2005, nearly 35 percent of the schools were segregated. Observers determine that the tide turned when the consent decree was renegotiated in 2001 to address the claims of Chinese American parents. The
new consent decree utilized a “diversity index” which focused on such factors as language and family background, and poverty to address continued desegregation, as opposed to the previous structure that primarily relied on race.

However, Alsup argued that the consent decree – instead of fostering racial integration and diversity – fostered re-segregation. Thus he rejected appeals to extend the decree by another 18 months. The circumstances in San Francisco highlight some pertinent issues related to consent decrees. Primarily what historian Jim Anderson, Ph.D. (2007) argues is the most pressing challenge facing districts with equity issues: sitting down with the right mix of people to come up with a plan.

Undoubtedly, differing groups harbor different sets of ideas on the best way to achieve the aims of diversity and academic excellence within the San Francisco Unitary District. Demographic fluidity played a large role in the 1994 San Francisco lawsuit. In 1983, Chinese –Americans made up less than 20 percent of the district, but by 1994, they constituted 32 percent. Changing demographics necessitated change in the voices coming to the table at the input and planning stage of the consent decree process. Thus, while in 1983, the voice of Chinese Americans was perhaps not as audible when the details of the consent decree were being devised, by 1994, with the substantial increase in the population of Chinese American families in the district, it became imperative to include their voices in the ongoing discussion, and as a result, the decree was refashioned to accommodate this new input.
Only in a system allowing for flexibility would these changes have been possible. In other words, the district could not have instituted a final, permanent policy without doing injustice to the increasing number of Chinese Americans living within district boundaries. Thus the participatory nature of the remedy construction process, at times, may itself become a hindrance to structuring permanent and inflexible desegregation plans. The unwillingness of the courts to fulfill any sort of legislative role also necessitates a flexible and longsighted approach to desegregation measures.

The original *Braxton v. Bd of Pub. Inst. Of Duval County* (1960) was still being litigated 40 years after the initial case. Since its inception, five district court judges had presided over the case and on four occasions, two different circuit courts of appeals had been asked to review one of their decisions. The fifth appeal centered on the declaration of whether the school system had achieved unitary status. The common thread underlying the many stages of this case is the aversion of judges to become legislators. Specifically, judges do not see themselves as creating policy for implementation.

This is the genius of the appeals process. Instead, judges allow for parties to enter into agreements in which they devise particular desegregation plans. Upon implementation, such plans are tested for constitutionality and challenged by parties involved. When such challenges take place, the judge determines whether a policy is indeed constitutional. If the finding is affirmative, then both parties can resume their efforts to implement successful desegregation plans. If the finding is negative, then parties must go back to the negotiating table to devise measures that adhere to constitutional mandates.
The back and forth of this process is characteristic of the remedy construction process and helps shed light on why such cases are rarely litigated in one sitting, and moreover, why flexibility is absolutely critical to being able to return to the negotiating table time and again. After Swann’s declaration that mandatory busing was an acceptable tool for desegregation, and sometimes even a mandatory one, the Duval County school districts implemented mandatory busing with substantial success. However, by 1990, both plaintiffs and the school board realized that mandatory busing was especially problematic for those students residing in Duval County.

They agreed to enter settlement negotiations to determine the next steps for the school district. Those settlement negotiations resulted in a decision to request a hearing as to whether the district had achieved unitary status. The Corrected Stipulation Agreement (CSA) entered into by the Board and plaintiffs served as the roadmap for how the district could achieve unitary status and included specific goals for desegregation at the elementary, middle and high school level. It also addressed issues of racial equality in faculty, hiring, and extra today, according to the 2000 census, only 14 percent of white students attend multiracial schools, while nearly 40% of both black and Latino students attend segregated schools in which 90% to 100% are from minority groups. Further, almost half of all black and Latino students attend schools where three-quarters or more students are poor, compared with only 5% of which students; in extremely poor schools, 80% of the students are black and Latino. Thus the issue of creating suitable remedies to attain education equity is arguably more pressing than ever.
It is important to note that education equity litigation serves as the bedrock of educational policy in this arena. It is the foundation from which further policies arise. Without the foundational tenets of the principles that led to the first wave of desegregation measures, further refining of school-based policies would be impossible. However, equally important is the notion that education policy does not arise from the articulation of new law alone. Most certainly, perhaps the most contentious and lively debates have centered not on what the law states, but perhaps, on the implications of practical application of the law – in other words, remedy construction.

Remedy construction is the touchstone to school desegregation law because it is the law in practice. Moreover, remedy construction brings to the fore challenges unique to the legal process. These challenges deal specifically with the fit of the problem and the solution, issues of participation and representation in the remedy construction process, and tension between finality and flexibility. Indeed, these three areas are crucial to understanding the deep complexity of practical application of legal mandates and evidence the ever-changing dynamics that play into court decisions in education equity cases.

The process of constructing the desegregation and education equity policies in a way that actually addresses the issues that warranted judicial involvement is fraught with myriad complexities that make it one of the most tedious challenges facing school boards, communities, and the courts. With regard to remedy, a finding of unitary status for a school district requires a district court to determine 1) whether the District has demonstrated compliance with the Constitution and with existing Court orders; 2) whether the District
has shown that it has eliminated to the extent practicable, all vestiges of past
discrimination; and 3) whether the District has demonstrated its good-faith commitment to
the whole of the decree and to those provisions of the law and the Constitution that
predicated the initial judicial intervention (Missouri, 1995, p. 89). 18

School districts, communities, and other stakeholders in consent decrees must
operate within the framework of the standards that determine a district’s unitary status.
Remedies devised in these cases must above all, contain measures that are in line with
constitutional mandates – particularly the 14th amendment’s due process and equal
protection clauses. In addition to the constitutionality of measures implemented by
desegregation initiatives, the district in question must have demonstrated that it has
eliminated to the extent practicable, all vestiges of past discrimination. This requirement
can become murky when parties involved are required to interpret what exactly
constitutes a “practicable” extent and also calls into question the role and scope of the
District’s ability to eliminate all vestiges of past discrimination.

For example, drafters of desegregation initiatives must be careful to avoid drafting
remedial measures in such a way that they actually violate the constitutional rights of other
students currently in the district. This is especially critical post Seattle-Louisville and given
the current composition of the Supreme Court. Any measures that are not clearly linked to
specific educationally based outcomes may fall under the same category as those from the

18 See also, Missouri v. Jenkins, 515 U.S. 70, 89 (1995); Freeman v. Pitts, 503 U.S. 467, 491 (1992); Lee v.
Seattle-Louisville case in which they were found to be insufficiently tailored to the ends desired. The third requirement, a finding of good faith commitment to the whole of the decree, speaks to the issues of trust that must be worked out particularly in communities with strong histories of segregation and discrimination. This notion must undergird any desegregation efforts if any progress is to be made toward remedying some of the current issues faced by the school district.

In Florida’s Pinellas County case, in order to rectify the racial imbalance of the County’s school’s, the court itself imposed race ratios. According to the directive, school populations could not contain more than 30 percent black students or less than 3.1 percent black students in senior highs, 5.6 percent black students in junior highs and 9.1 percent black students in elementary schools. Later the ratios were amended to reflect the greater density of black population in the southern part of the county, and to limit the distances students would be bused.

The court-ordered plan of busing students within the county and shifts in school attendance zones to meet race ratios formed the basic system of student assignment that has been the status quo for three decades. The greater burden of busing fell to black families, whose children were more often bused out to more predominantly white schools. In recent years, those ratios have been altered to accommodate for changes in the demographics of the communities affected by the desegregation plan.

The Reagan Administration’s first desegregation suit took place in Bakersfield, California. At the time in 1964, school districts were segregated de jure and minority
children were actually bused across town to attend segregated schools (in contrast to students being bused to desegregate schools which was the remedy that became popular with the advent of desegregation litigation).

The Bakersfield consent decree was admittedly weak, particularly because it merely required Bakersfield to establish a series of magnet schools intended to induce voluntary transfers and thus desegregation (Moss, 1986). This remedy was problematic primarily because the court’s ruling in the case was simply to assert that mandatory busing was “unacceptable”. This assertion in 1978 was contrary to Supreme Court decisions that stated the opposite, i.e. Swann (1971) which stated that desegregation plans “cannot be limited to the walk-in school” thus busing may be ordered unless “time or distance of travel is so great as to either risk the health of the children or significantly impinge on educational process” (Swann, 1971, p. 30-31).

Moreover, this case highlights the difficulties with prescribing remedies for desegregation cases, primarily within the purview of consent decrees. In Bakersfield, the remedies were not far-reaching enough. The Bakersfield school district had an enrollment of over 19,000 students. However, the district employed a voluntary desegregation plan as opposed to a mandate, and this proved to be highly ineffective. Of the 19,000 students enrolled in the district, the plan accounted for only 248 transfers to the magnet school during the first year of the plan’s implementation.

At the end of the second year of the plan’s three-year lifespan, one out of every four schools in the district was still not within plus-or-minus 20% of being racially
representative of the Bakersfield public school population – that is, 25% of the schools had student bodies with either less than 23% white students or greater than 63% white students, given a white population of 43%.

Thus the Bakersfield voluntary plan was highly ineffective and in direct contravention with the Supreme Court’s decision in *Green v. County School Bd.* (1968). The court held in *Green* that “if there are reasonably available other ways, such for illustration as zoning, promising speedier and more effective conversion to a unitary, nonracial school system, “freedom of choice” must be held unacceptable” (*Green*, 1968, p. 441). Thus we have a shift in the scope of remedies available to school districts facing desegregation. The notion that school districts implement voluntary policies was struck down by the Green decision, thus ushering in an era of mandates of which districts had to abide in order to stay within what was judicially allowed in desegregation cases.

Moreover, remedies can go in the opposite direction as well – going too far in efforts to reach desired ends. In Rockford, Illinois in the case *People Who Care v. Rockford Bd. Of Educ.* (7th Cir. 1997), as a result of findings of intentional discrimination, a complex consent decree was devised. However, the decree included such provisions as racial quotas for cheerleaders, super seniority for minority teachers, and what were deemed unrealistic goals for closing the white-minority gap in test scores and limits on the number of minority students who could enroll in remedial classes (*People Who Care*, 1997, p. 528). Indeed, the magistrate judge referred to the ambitious consent decree plan as a “utopian” project, and stated that he had warned against “ambitious schemes of social engineering” (*People Who
Care, 1997, p. 534). Clearly, this case puts forth an example of a consent decree that was considered by many to have overstepped its bounds from the remediation of past wrongs to blatant efforts to completely reconstruct the very fabric of the Rockford school district.

Given the rulings for Seattle and Louisville, districts must understand that racial balance alone is insufficient to warrant the use of race conscious policies. Indeed, Justice Thomas makes clear in his concurring opinion that remediation for racial imbalance and remediation for segregation should not be conflated. (Parents Involved, 2007, p. 2773). Remedial measures for racial imbalance are constitutional only to the extent that they seek to rectify past de jure segregation. In such cases, race conscious policies serve a compelling state interest. However, racial imbalance is not necessarily a result of past de jure segregation. (Parents Involved, 2007, p. 2773). Also, racial imbalance, Justice Thomas argues, contains no remedy because racial balance will change due to many factors such as changes in demographics and changes in housing patterns. Thus racial balancing takes place on an indefinite basis with no concrete culpable party and no definable end point. (Parents Involved, 2007, p. 2773).

To avoid the pitfall of basing measures primarily on racial balance, petitioners can argue for mechanisms that seek to rectify inequities in academic access and the quality of educational experiences. The critical component that is necessary in order for this method to be successful lies in the faithful use of solid social science research to support the basis of any remedies implemented. For example, the climate study administered by Psychologist Mark Aber in Unit 4 illuminated several issues that had been expressed by parents, but
never officially codified in the form of a study that would explain what was going on in the
district (See Appendix A).

The study sought to capture the perceptions of the Champaign community
concerning school climate and explored several themes including the importance of
fairness in discipline and academic matters (especially concerning race), the need to
address racial inequities, beliefs about why some students perform poorly, and the
importance of community and parent participation in schools’ decision-making processes
(Aber, p. 8). The study served as a useful point at which the linkages between racial
inequities and educational outcomes could be addressed thus lending possible solutions. It
also included the voices critical to the successful implementation of a consent decree:
parents, teachers, community members and administrators.

In this way, social science research plays a dual role; it can be used as a way to more
clearly identify issues within the school district as well as closely link proposed remedies to
the goals sought. The role of social science research in desegregation and education equity
cases will be expounded upon after an analysis of the effects of remedy implementation.

**Challenges to Policy Implementation for Lasting Institutional Reform**

Generally, there exists some literature that speaks to the difficulties of implementing
institutional changes based on court mandates. The Harvard Law Review 1977 article,
*Implementation Problems in Institutional Reform Litigation* highlights a few major issues
with the implementation of institutional reform measures. In particular the authors discuss
the marked differences between public and private litigation. While private litigation often
involves the award of monetary damages or an injunction against one party, public
litigation is much more far-reaching and involves a substantial long term commitment by
the court involved to ensure that the remedies mandated by the Court are thoroughly

The caveat, however, is that judges are essentially thrust into a role of policy-maker
of sorts, despite lacking in-depth knowledge or experience in the particular field in which
they have issued a ruling. Thus judges become educational policy makers even if they lack a
background in educational policy, for example. This also goes against the understanding in
the legal field that judges are not legislators and, in fact, shy away from such roles under
normal circumstances. However, the breadth of complexity, number of participants and the
nature of the ever-evolving characteristic of desegregation and education equity cases
thrust judges into the role of quasi-policymaking.

Taking into consideration the role of the courts and judges, there are three factors
which are deemed necessities for success in institutional reform: 1) identification of the
various organizational departments, government agencies, private groups, etc. whose
cooperation or compliance is necessary, 2) ascertainment of the needs or interests of those
entities to determine whether and to what degree the proposed policy will threaten those
needs and interests, and 3) evaluation of the capacities and standard operating procedures
of the various relevant entities for their adaptability to the recommended change
(Implementation Problems in Institutional Reform Litigation, 1977, p. 433). In the context of schools, these factors are particularly relevant and speak to the issue of fit, participation and representation, and the tension between finality and flexibility.

When discussing remedy, it is imperative also to discuss the types of judicial intervention, beyond the basic court ruling that establishes, affirms or reverses the rule of law. Judicial intervention may take various forms, but often involve such measures as the assignment of court monitors to school districts to ensure that mandates are carried out, and the entrance into a consent decree.

Much literature speaks to the effects of consent decrees on school districts at both the school level and the community level. Essentially, school districts and the communities they serve are inextricably linked, meaning that the actions of one almost indubitably affect the other. Adding to the already complex relationship between school districts and their communities is the added dimension when courts are brought into the equation, especially in cases where a consent decree has been mandated or in desegregation cases.

Horowitz (1983) outlines some key characteristics embodied in judicial decrees: 1) [the decrees] are extensive as well as affirmative in their commands, 2) they are administrative in character, 3) they are legislative in the double sense of entailing fundamental alterations of policy direction and of frequently requiring augmentation of financial resources, 4) because the decrees call for an alteration of ongoing conduct, for a new realm of organizational behavior the necessitate continuing judicial involvement in the
implementation and modification of the decree, and 5) decrees are resistant to appellate review (Horowitz, 1983).

The actions required as part of the decree are more often than not, long term – meaning that there are no “short-cuts” to decree execution and implementation. Moreover, Horowitz asserts that structural injunctions set up a “new source of authority and accountability” for the managers of public institutions (Horowitz, 1983, p.1267).

Moreover, Horowitz describes the role of the courts in the supervision of public institutions as largely the product of “recent remedial innovation” (Horowitz, 1983 p. 1268). In the context of education, however, this “recent innovation” is critical to ensuring that the actual issues within the district are resolved. This is particularly due to the various interests at stake in educational settings: those of students, parents and other community members, and school staff and administration.

For any judicial intervention to be effective, the voices of all of these players must be heard loudly and clearly so as to ensure that all of the issues are brought to the fore and addressed to the extent practicable under the law. Once the issues have been brought forth, the district can, under the supervision of the court, begin to craft policies that will address those issues. Thus participation and representation is an invaluable part of any judicial intervention. But even considering the necessity of participation and representation of the key players within a school district, there are still potential obstacles to successful judicial intervention when being inclusive.
Escher and Gudel (1976) assert that courts face two major obstacles to enforcement of desegregation decrees: 1) the changing form of resistance by state and local governments, and 2) widespread, sometimes violent resistance to court-ordered desegregation (Escher, 1976, p. 112). Additionally, they assert that school desegregation decrees are particularly difficult because they impose mandates on entire communities, even on those who are not parties to the litigation.

Thus inevitably, there exist individuals and interest groups who have no interest in adhering to the court ordered mandates and do not feel they should be obligated to comply. Escher and Gudel label these people the “indefinable class” of persons who may vehemently resist the implementation of desegregation decrees but are not actual parties to the litigation (Escher, 1976, p. 113). They further explicate some forms of community resistance such as “white flight”, parents’ refusal to send a child to their assigned school while keeping the child in the public school system, or engaging in acts that would arouse others to resist the desegregation plan (Escher, 1976, p. 113).

Given the nature of court involvement by virtue of consent decrees, and also considering the implications of Supreme Court ruling trends, it is apparent that an alternative is necessary to ensure that the equity issues in a district are addressed notwithstanding court involvement (or lack there of). For this reason, this document argues that Culturally and Contextually Relevant Evaluation (CRE) is the best alternative as a both as a lens and as a set of strategies and tools through which to view equity issues and to address them in an effective manner. CRE helps to circumvent the pitfalls of court
intervention and also helps to alleviate the issues of trust and relationship-building between communities and schools. Indeed, the following data analysis will provide an inner perspective into the hearts and minds of the individuals involved in the consent decree process.

Some respondents were born in Champaign and spent decades with the school district. Others were young teachers new to the district and to the social dynamics of Champaign. However, the interviews taken together highlight the unique challenges of trying to address social issues through the court system and sheds light on what’s necessary to ensure equity issues stemming from past discrimination are addressed moving forward.
Chapter 3

What Happened in Parents Involved and why it Matters

It is critical to analyze why the ideology, as manifest in the decisions handed down by the Supreme Court with regard to acceptable equity remedies, are necessary to understanding how to tackle school district equity issues. In particular, how do Court decisions translate into policy at the local level? What are the tangible impacts of a trend in Supreme Court decisions and how do they factor into the development of equity policies?

Apart from the previous discussion of remedy construction, analysis of Parents Involved will shed more light on the more contemporary issues with education equity policies and their evolving legality. There exists an important sociological question when analyzing the significance and impact of the Parents Involved decision. Namely, why should the general public care? At the point of determining how high-level policy decisions handed down by the upper echelons of the nation’s government impact the average Seattle, Washington, Louisville, Kentucky, or Champaign, Illinois resident for that matter, the question of relevance is critical.

To this end, I speculate on the real and/or perceived impact of the consent decree particularly on Champaign residents. Moreover, I will analyze why this decision matters, specifically taking into consideration the backdrop of the composition of the Supreme Court, the pattern of its most recent decisions in terms of the legal theory surrounding the Court’s rationale, and a prediction of what can be expected in future education equity cases.
The Court’s decision in *Parents Involved* addresses the underlying question of whether a public school that had not operated legally segregated schools or has been found to be unitary may choose to classify students by race and rely upon that classification in making school assignments. A unitary school system is one in which the school district has eliminated the old racially segregated dual school system. To obtain unitary status, the school district must prove that it has: a) complied in good faith with its desegregation orders for a reasonable period of time, and b) eliminated the vestiges of prior discrimination to the extent practicable. A declaration of unitary status signals the beginning of the end of federal judicial supervision over the District’s operations. In *Green* the U.S. Supreme Court held that a school district has achieved unitary status when it is devoid of racial discrimination with regard to faculty, staff, transportation, extracurricular activities, facilities, and pupil assignment. (*Green*, 1968, p. 432).

The decision in *Parents Involved* represents the continuation of a dialogue that stems from the inception of *Brown*. More specifically, not only did the Court’s 2007 ruling affirm the constant struggle for principles of remedy for past discrimination and what is allowable as the United States attempts to live up to the ideal of institutions free of the negative impacts of discrimination, the ruling sets the national tone for the future of education equity cases. While the individuals in a community may not be fully aware of or fully understand the implications of the Seattle decision its reverberations have tangible effects at the local district level.
Parents Involved in Community Schools v. Seattle School District No.1 et al

Seattle School District No. 1 had adopted a plan that allowed incoming ninth graders to choose from among any of the district’s high schools, ranking however many schools they wished in order of preference. District employers utilized “tie breakers” to determine who would fill open slots at oversubscribed schools. The first tiebreaker selected for students who had a sibling currently enrolled in the chosen school. The next tiebreaker depended on racial composition of the particular school and the race of the individual student. In the district’s public schools approximately 41 percent of enrolled students are white; the remaining 59 percent comprised all other racial groups and were classified by Seattle as nonwhite. (Parents Involved, 2007, p. 38a).

Three of the oversubscribed schools were “integration positive” because the school’s white enrollment the previous school year was greater than 51 percent. Thus more nonwhite students who selected one of those three schools as a top choice received placement at the school than would have been the case had race not been considered and proximity been the next tiebreaker. (Id. at 39a-40a). One of the schools – Franklin – was “integration positive” because its nonwhite enrollment the previous school year was greater than 69 percent; 89 more white students were assigned to Franklin by operation of the racial tiebreaker in the 2000-2001 school year than would have been.
The Petitioner in the case, Parents Involved in Community Schools, filed suit on behalf of parent Jill Kurfirst, who sought to enroll her ninth-grade son, Andy Meeks, into Ballard High Schools special Biotechnology Career Academy. Meeks suffered from attention deficit hyperactivity disorder and dyslexia but had done well with hands-on instruction. However, despite being accepted to the biotechnology program, he was denied assignment to Ballard High School. Parents Involved alleged that Seattle’s use of race in assignments violated the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and the Washington Civil Rights Act. (Id. at 28a-35a).

While the District Court granted summary judgment to the school district – finding that state law did not bar the district’s use of the racial tiebreaker and that the plan survived strict scrutiny on the federal constitutional claim because it was narrowly tailored to serve a compelling government interest – The Supreme Court eventually granted certiorari in the case.

Jefferson County Public Schools operate a public school system in Louisville, Kentucky. In 1973, a federal court specifically found that Jefferson County had maintained a segregated school system (Seattle was never found to have intentionally maintained a segregated school system) (Newburg Area Council, Inc. v. Board of Ed. Of Jefferson Cty.,1973). In 1975, the district entered a desegregation decree. See Hampton v. Jefferson Cty. Bd. Of Ed. (WD Ky. 1999). Jefferson County operated under this decree until 2000, when the District Court dissolved the decree after finding that the district had achieved

In 2001, after the decree had been dissolved, Jefferson County adopted the voluntary student assignment plan at issue in the Supreme Court case. App. In No. 05-915 p. 77. Approximately 34 percent of the district’s 97,000 students are black; most of the remaining 66 percent are white. (*McFarland v. Jefferson City. Public Schools*, 2004, p. 834) The plan implemented required all non-magnet schools to maintain a minimum black enrollment of 15 percent, and a maximum black enrollment of 50 percent (*McFarland*, 2004, p. 842). At the elementary school level, each student is designated a “resides” school to which students within a specific geographic area are assigned; elementary resides schools are “grouped into clusters in order to facilitate integration.” App. In No. 05-915, at 82. The district then assigns students to non-magnet schools in one of two ways: Parents of kindergartners, first graders, and students new to the district may submit an application indicating a first and second choice among the schools within their cluster; students who do not submit such an application are assigned within the cluster by the district.

Decisions to assign students to schools within each cluster are based on available space within the schools and the racial guidelines in the District’s current student assignment plan. If a school has reached the “extremes of the racial guidelines,” a student whose race would contribute to the school’s racial imbalance will not be assigned there. Id., at 38-39, 82. After assignment, students at all grade levels are permitted to apply to transfer between non-magnet schools in the district. Transfers may be requested for any
number of reasons, and may be denied because of lack of available space or on the basis of the racial guidelines.

Petitioner Crystal Meredith sought to enroll her son, Joshua McDonald, in kindergarten for the 2002-2003 academic year. His “resides” school was only a mile from his new home, but it had no available space – assignments had been made in May, and the class was full. Jefferson County assigned Joshua to another elementary school in his cluster, Young Elementary. This school was 10 miles from home, and Meredith sought to transfer Joshua to a school in a different cluster, Bloom Elementary, which was only a mile from home.

Space was available at Bloom, and intercluster transfers are allowed, but Joshua’s transfer was nonetheless denied because the transfer “would have an adverse effect on desegregation compliance of Young. (App. In No. 05-915, p. 97). Meredith brought suit in the Western District of Kentucky, alleging violations of the Equal Protection Clause of the Fourteenth Amendment.

The District Court found that Jefferson County had asserted a compelling interest in maintaining racially diverse schools and that the assignment plan was narrowly tailored to serve that compelling interest. (McFarland , 2004, p. 837). The Sixth Circuit affirmed in a per curiam opinion relying upon the reasoning of the District Court, concluding that a written opinion would “serve no useful purpose.” (McFarland v. Jefferson Cty. Public Schools (2005) (McFarland II). The Supreme Court granted certiorari in the case.
The Supreme Court, in its analysis of both cases together, essentially dismantled many of the arguments put forth by defendants. Overall, the Court stated that in each case, “the extreme measures of relying on race in assignments were unnecessary to achieve the stated goals, even as defined by the districts.” They noted that at Seattle’s Franklin High School, the racial tiebreaker that had been applied resulted in an incoming ninth-grade class in 2000-2001 that was 30.3 percent Asian-American, 21.9 percent African-American, 6.8 percent Latino, 0.5 percent Native-American, and 40.5 percent Caucasian. Without the racial tiebreaker, the class would have been 39.6 Asian American, 30.2 percent African-American, 8.3 percent Latino, 1.1 percent Native-American, and 20.8 percent Caucasian. (See Appendix B, App. In No. 05-908, p. 308a).

Thus when the actual racial breakdown was considered, enrolling students without regard to their race yielded a diverse student body as well. Thus the Court identified the fact that both school districts appeared to be “working backward” when determining the level of diversity in their schools rather than working forward from some demonstration of the level of diversity that provides the purported benefits. Indeed, the Court found this to be the “fatal flaw”.

The Court cited Bakke,(opinion of Powell, J.) (“If petitioner’s purpose is to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin, such a preferential purpose must be rejected...as facially invalid”) (Bakke, 1978, p. 307). Grutter also reiterated this stance on “outright racial balancing” as “patently unconstitutional.” (Grutter, 2003, p. 330).
The Court further asserted that accepting racial balancing as a compelling state interest would justify the imposition of racial proportionality throughout American society, contrary to the Court’s repeated recognition that “at the heart of the Constitution’s guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not as simply components of racial, religious, sexual, or national class.” *Miller v. Johnson*, (1995). Further, the Court previously iterated in *Fulilove v. Klutznick* (1980), that an interest “linked to nothing other than proportional representation of various races...would support the indefinite use of racial classifications, employed first to obtain the appropriate mixture of racial views and then to ensure that the [program] continues to reflect that mixture.” (*Fulilove*, 1980, p. 547).

In short, the Court was concerned that racial balancing would have no logical stopping point,” (*City of Richmond v. J.A. Croson Co.*, 1989, p. 498). As the districts’ demographics shift, the court determined that so too will the districts’ definition of racial diversity.

**Emerging Issues Resulting from Parents Involved**

Again, the issue of relevance emerges at this point in the legal analysis. How is the Supreme Court’s ruling and rationale relevant to local school districts and in what way would this impact a consent decree process in a district such as Unit 4 in Champaign? Most obviously were the procedural limitations that the *Parents Involved* ruling imposed.
Champaign immediately changed its policy on using race-based classification in school assignments and instead moved to using socioeconomic factors (among other points such as proximity to school, siblings at a school, etc.) to determine school assignment as a result of the Supreme Court’s ruling.

On more philosophical grounds, the Court’s ruling evidences a trend that presents some unique issues for potential plaintiffs in education equity cases. Specifically, the lead up of cases from the three waves of educational equity litigation up to Parents Involved have demonstrated a move from rulings that seek to redress the current effects of past discrimination to the notion of a color-blind constitution. This philosophical shift demands a different premise for devising remedies that are within constitutional grounds.

In juxtaposing the elements of the Seattle case with the Unit 4 consent decree, several key elements emerge: 1) the historical, remedial element – namely an interest in setting right the consequences of prior conditions of segregation or discrimination; 2) the educational element – an interest in overcoming the adverse educational effects produced by and associated with highly segregated schools; and 3) the democratic element for which Justice Breyer alludes in his opinion. This element encompasses the interest in producing an educational environment that reflects the “pluralistic society” in which we live. (Swann, 1971, p. 16).

The first point concerning remedy has been discussed in detail in other aspects of this paper in the Seattle Louisville cases. The second and third points will be discussed in the description of the Unit 4 consent decree process. At this juncture focusing on the third
point, as stipulated by Justice Breyer, will help shed some light on the societal implications of the Supreme Court’s decision (and the general trend toward narrowing of acceptable remedies to address equity issues particularly as it relates to use of race in developing policy) and how this translates to policy-making at the local level. Also, it will provide context for the prognosis for Unit 4 as they continue to move forward in hopes of entrenching equity in the school district.

The original *Brown* decision addressed precisely Justice Breyer’s point with regard to the “pluralistic society”. It recognized the importance of education to a democratic society and specifically noted that public education is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. (*Brown*, 1954, p. 493). This notion was also echoed in a latter case, which found,

“School authorities. . . might well conclude, for example, that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of . . . students reflecting the [racial] proportion for the district as a whole.” (*Swann*, 1971, p. 16)

Justice Breyer’s dissent recognizes the deleterious effects of allowing schools to re-segregate. Indeed, he noted that democratic values are at stake in the case. “[T]here is a democratic element: an interest in producing an educational environment that reflects the pluralistic society in which our children will live. It is an interest in helping our children learn to work and play together with children of different racial backgrounds. It is an interest in teaching children to engage in the kind of cooperation among Americans of all
races that is necessary to make a land of three hundred million people one Nation." (Swann, 1971, p. 16).

The majority opinion, however, contends that the Brown decision was essentially a decision advocating a color-blind constitution and that the use of racial classification in any context contravenes the Constitution. Justice Thomas noted that Justice Breyer mis-characterized the nature of the subject plans as being implemented to remedy segregation or prevent re-segregation even though neither district was currently being compelled to remedy segregation nor threatened with re-segregation.

Justice Thomas stressed that “racial imbalance is not segregation,” and racial imbalance is not itself unconstitutional. He further stated: “The Constitution abhors classifications based on race, not only because those classifications can harm favored races or are based on illegitimate motives, but also because every time the government places citizens on racial registers and makes race relevant to the provision of burdens or benefits, it demeans us all.”

Such strong sentiments from Justice Thomas push back against the rationale by the dissent that race should matter. In his concurrence, Justice Thomas criticized Justice Breyer’s dissent as sounding alarmingly familiar: “Disfavoring a color-blind interpretation of the Constitution, [Justice Breyer’s] dissent would give school boards a free hand to make decisions on the basis of race “an approach reminiscent of that advocated by the segregationists in [Brown].”
However, more recent scholarship has resisted this analysis arguing that the 14th amendment, which deals with racial classifications, left the issue of the constitutionality of such classifications unresolved. Indeed, scholar James Anderson (2007) argues that while we may argue for or against the use of racial classifications to pursue issues of school desegregation and affirmative action, “we should not pretend that we are constrained by a color-blind constitution created by the Reconstruction Congress” (Anderson, 2007, p. 249). Anderson argues that the social justice issues and our understanding of how racial discrimination and subordination have shaped society are the primary constraints that should determine when and how racial classifications should be used. This factor is so critical because it speaks to the types of remedies that are deemed acceptable in the consent decree process. Because the trend of the Court has been to interpret the 14th amendment as advocating for a colorblind Constitution, Unit 4 and other similarly situated school districts must find ways to address racial imbalance and education inequity in ways that do not run afoul of the Court’s decision in Seattle Louisville. Indeed, Unit 4 made substantial changes to its school assignment policy after the Supreme Court’s decision.

Overall, apart from the racial classification/balancing question, what both the Roberts plurality and Kennedy’s concurrence failed to properly grapple with was the democratic role played by public schools in educating the majority of American citizens. The majority discussed public schools as if they existed in a void divorced from the rest of the nation. Only the dissent led by Justice Breyer recognized the deleterious effect that allowing public schools to re-segregate would have on the body politic. Justice Breyer, writing for the dissent, noted the democratic values at stake in the case.
With Justice Thomas’ concurring opinion, which concludes that no democratic element can support the integration interest, Seattle and Louisville is likely to be read as abandonment of both Brown’s inclusive ideals as well as Swann’s acknowledgement that the conditions under which Americans learn as children will effect the future interaction of adults in America’s democracy.

After this decision, any de facto segregated public schools are left with few tools to address this problem head on. Rather, they must attempt to remedy the problem indirectly. Meanwhile, millions of school children in integrated schools may find their school assignments shuffled in a disruptive manner in the coming years as states adapt their programs to use race-neutral means to maintain diverse schools.

In addition, the long-term implications of the Parents Involved coupled with the trend in Supreme Court rulings on issues dealing with race, cannot be over-stated. The fact of the matter is that the composition of the Supreme Court by virtue of presidential appointments, and thus the ideological leanings of the Court have been tilting conservatively for decades since Brown I. As evidenced in the discussion of the rationale behind Parents Involved and the implication for further education equity litigation, such a trend does not bode well for plaintiffs in education equity cases seeking redress for the current effects of past discrimination and segregation and/ societal circumstances that lead to inequities that manifest in school systems.

This trend of court rulings that assume a color-blind Constitution thus impacts schools such as Champaign’s Unit 4 at the local level, particularly because the school
district is dealing with some of the very same issues that existed in some of the previously discussed court cases. Indeed, the district has struggled and continues to struggle to develop policies that address these equity issues in a way that is both constitutional and also alleviates some of the social issues in the Champaign community such as segregated schools and a distrust of the district based upon community racial issues which have spilled over into the educational experience of Champaign residents.
Chapter 4
Research Method

In researching the impact of the consent decree on the city of Champaign, the study utilizes several qualitative methods as the best way to gather the data necessary to better understand the circumstances in Unit 4 and how the events pre and post consent decree occurred. The research had several objectives with regard to the framework, analytical objectives, question format and flexibility in design.

Those objectives were to describe the consent decree process in great detail, to describe and explain relationships as it relates to the key players in the consent decree process (parents, students, teachers, administrators, community activists) in order to illuminate the deep-seated issues in the community, i.e. lack of trust and history of racial tension; to describe individual experiences within the school district, and finally, to describe any group norms that may have existed amongst and between key district stakeholders.

Specifically, the study seeks to explore the phenomena of the consent decree process particularly in Champaign in hopes of linking this process to the larger national context of education equity cases in order to determine the implications both of the national context and the local context on the future of education equity litigation. In order to do so, the instruments for data collection must be flexible; the iterative style of eliciting and categorizing responses to questions designed to gain a deeper insight into the consent
decree process in Champaign. Therefore, the methods used were semi-structured and the data gathered mainly textual – specifically notes from audio taped in-depth interviews and focus groups supplemented with secondary data on school district statistics.

The method of data gathering was three-tiered: 1) Legal analysis, 2) qualitative methodology via interviews, and in discussing the proposed mechanisms for ensuring future education equity, the paper discusses Culturally Responsive Evaluation as the appropriate methodology to utilize in the policy-making process.

**Legal Analysis**

This research seeks to draw the connection between macro-level legal decisions taking place at the national level and their subsequent impact for local school districts. One way of charting the impact is to gain better insight into the reasoning behind court decisions. In order to do this, I took a two-pronged approach to analyzing the case law surrounding education equity issues.

First, I examined case law chronologically to piece together a history of education equity litigation. I began with an analysis of *Plessy* to open up the discussion of segregation/desegregation and the national legal landscape of these issues. The chronology extended from *Plessy* to *Parents Involved*. Over the span of the 111 years between *Plessy* and *Parents Involved*, I analyzed court cases categorized in three distinct waves of equity and desegregation litigation. Each wave was characterized by an overall theme ranging
from segregation as acceptable, to challenges to race-based policies such as bussing and affirmative action, and the more nuanced aspects of these cases that dealt primarily with finding acceptable remedies to combat the current effects of past racial bias and discrimination.

The legal analysis involved close textual readings of the dicta contained in the cases as well as explanations of notable contributions by specific Supreme Court justices. This strategy helped to provide some context to the rationale behind a Justice’s ruling. It also helped to shed light on the trends of Supreme Court rulings and what can be anticipated given the composition of the Court.

**Interviews**

The overall study was iterative in that data collection and research questions were adjusted according to what was learned. This was to ensure that the overall context of the Unit 4 consent decree process as well as the way in which stakeholders experienced it are conveyed as accurately as possible. Interviews served as the primary method of gaining insight into the response to the consent decree, how the process evolved, and how it impacted community members at each phase. It was critical to be able to identify a broad swath of interview subjects so as to get as rich an understanding of the consent decree process as possible. This meant that interview subjects would have to be selected strategically and that they had to cut across the various stakeholder groups in Unit 4.
The study comprised forty interviews. The number of interviews was decided primarily by the information generated from each interview and what was deemed to be most useful. It was discovered that many of the broad themes coming from stakeholders and interview subjects converged. At the point at which we began to see substantial similarity in responses, the decision was made to limit the number of interviews to a number that gave us a broad cross-section of interviewees (community members, school district administrators, parents, and teachers). In addition, the length of the interviews played a factor in determining how many total interviews would be conducted.

In order to identify interview subjects, I utilized a purposive/snowball sampling while initially utilizing the quota sampling method to determine potential interviewees. Initially, I needed to ensure that a sufficient number of voices were represented in the study. I purposely excluded the voice of students, as their input was not absolutely critical to getting an understanding of how the consent decree process played out. Therefore, the main focus centered on parents, teachers, administrators, and community activists involved in the case. I particularly sought out potential interviewees who had been involved in the district since the inception of the consent decree or before the consent decree was devised. I also focused on those who were aware of the process and its impact on their role within the school district.

With regard to the snowball sampling method, I used this technique to find and recruit groups not easily accessible to the study, particularly community members and some high-level district administrators. In order to generate the sample population, I
worked in close consultation with community leaders and gatekeepers (community members in positions of official or unofficial authority), to develop a plan to identify and recruit potential participants for the study.

The plan was necessarily revised based on new topics, research questions and issues that emerged throughout the process. At the end of the planning process, forty individuals had been identified to serve as interviewees. The interviewees ranged broadly in terms of their background within Unit 4. Several respondents were teachers in the school district. There were also a number of Unit 4 administrators ranging from principals to school board members. A few of the respondents interviewed had formerly served as teachers or administrators and had left the school district in their capacity after the inception of the consent decree.

From the community standpoint, several of the respondents identified themselves as community activists, having spent substantial amounts of time advocating for the needs and demands of parents and families in Champaign. They had attended school board meetings and organized into advocacy groups. Some of the interviewees from the community were parents who had had negative experiences within Unit 4 when they were children.

These respondents provided some personal insight that led to a deeper contextual understanding of why lack of trust persisted within Unit 4. Other respondents from the community were selected because of the length of time they had resided in Champaign. For example, one respondent had lived in Champaign for nearly seventy years and thus
provided the necessary historical accounts that allowed better understanding of the history of segregation and racial discrimination in Champaign that inevitably spilled over into the education context.

For each interviewee identified, informed consent was obtained prior to the interview. Each interview lasted approximately 1.5 hours. The interviewees were assured that their identities would be kept confidential. This was, in part, to ensure the candor of their responses, and also understanding the precarious position many teachers and administrators in particular may experience as they are still employed by the school district. The questions devised for the interviews were categorized according to the background of the interviewee. For parents, the interview questions were designed to be reflective of the parents’ experiences in the school district and to gauge what things they wanted to see happen within Unit 4. The questions centered on their perceptions of the consent decree and its effectiveness.

For teachers and administrators (past and current), the questions built up from an initial understanding of the personal and professional dynamics of Unit 4, and their personal analysis of how the vision of the consent decree was translated to administrative and teaching staff. Did teachers have an understanding of why certain measures were mandated by the school board? Were they on board with the plan? Was there resistance? These sorts of questions helped to shed some light on how the vision of the consent decree was translated as well as the ways in which new policy efforts were effective or ineffective in their implementation. Follow-up interviews were conducted on an as-needed basis.
There were several advantages to utilizing the qualitative method primarily. The use of open-ended questions and probing gave the participants an opportunity to respond in their own words, rather than forcing them to choose from fixed responses. Thus these open-ended questions had the ability to evoke responses that were meaningful and culturally salient to the participant, unanticipated by the researcher, and rich and explanatory in nature. Additionally, it allowed the researcher the flexibility to probe initial participant responses – delving deeper into the “why” and “how” questions. It allowed the ability to engage the interview subjects according to their individual personalities and styles and to use probes to encourage them to elaborate on their answers.

At the outset, focus groups were pegged as one method of data collection. However, his method was soon abandoned for several reasons. Because of the sensitive position of several respondents still affiliated with Unit 4, confidentiality and candor were two hallmarks that took precedence in the interview process. As well, the goal was to get an understanding of each respondent’s genuine thoughts and feelings about several aspects of the consent decree process including opinions about district administrators, community leaders, etc. Therefore, it was quickly discovered that the focus groups harbored two substantial drawbacks: 1) Candor was limited as groups had to be carefully chosen so as not to inadvertently include individuals with differing alliances within the community. This was discovered as I began to delve deeper into the community issues which revealed complexities in the web of relationships amongst community members (and particularly amongst African American community members).
The initial focus group attempts also revealed a pattern of “following-up” or “piggy-backing” on another respondent’s comments. While this may not prove problematic in some settings, for this particular study, I wanted to get the most personal, individual responses to the consent decree and the circumstances surrounding its implementation and development. The individual interview setting was more conducive to this than the focus group setting in which responses often fell into a pattern of “groupthink” and reaffirming another respondent’s statements. Therefore, I eliminated focus groups as a method of data gathering and focused instead on the use of interviews and corroboration of interviews via secondary data analysis.

The secondary data analysis included newspaper articles both past and present. Articles were found in the archives of the Champaign-Urbana News-Gazette and through Lexis Nexis. The local articles contained in the News-Gazette archives dated back to the 1960s and into the present day. They offered perspectives of several key groups in the district as well as provided some contextual fodder in which to understand what was happening in the Champaign community over the past fifty years.

In addition to newspaper articles, the research included radio archives from projects that had been initiated by community groups in Champaign to get community perspectives on the most pressing issues facing Champaign residents. The transcripts from the radio interviews were acquired and used to triangulate some of the interview data gathered as to the historical events that helped to create an atmosphere of mistrust between parents/community members and the Unit 4 school district.
Culturally Responsive Evaluation (CRE)

This document proposes Culturally Responsive Evaluation (CRE) as a tool for equitable policy-making. Because of its role as a tool for those seeking to create equitable educational experiences, it is helpful to explain some of the tenets of CRE as a methodology and its application to the context of this research.

CRE is a methodology to be embedded in evaluating not only the concrete policies implemented by Unit 4 administration as part of the consent decree, but also must serve as part of the policy-making process when determining which policies to implement. Utilizing CRE in the Unit 4 context means taking fully into account the culture of the program/policies that are being evaluated. It is based on an examination of impacts through the lenses in which culture of Unit 4 residents is considered an important factor (See Appendix C).

It is important to note that one of the primary points of contention amongst respondents (particularly those that pegged themselves community activists) was the sense that the school district was more concerned about appeasing the court than in actually engaging meaningfully with residents to get a sense of what their primary concerns are and have been over the past few decades as well as how parents and Unit 4 could move forward together.
CRE is a tool for engaging these concerns as the district moves forward in policy-making. In this regard, it is embedded at all key stages of policy-making: preparing for the evaluation, engaging stakeholders, identifying the purposes and intent of the evaluation, framing the right questions, designing the evaluation, selection and adapting instrumentation, analyzing the data, and disseminating and utilizing the results.

**Preparing for the Evaluation**

Preparing for the actual evaluation and assembling an evaluation team, is, of course, a critical stage in the evaluation process. At the outset, the sociocultural context in which the projects are based must be taken into account. Given the important role of the evaluation team, care should be taken in selecting its members. Those members, whenever possible, should be individuals who understand or who at least are clearly committed to being responsive to the cultural context in which the project is based.

Project directors should not, however, assume that racial/ethnic congruence among the evaluation team, participants, and stakeholders equates to cultural congruence or competence that is essential for carrying out culturally responsive evaluations. Cultural competence rests in a set of experiences and knowledge that transcends racial/ethnic group membership.

Stakeholders play a critical role in all evaluations, especially culturally responsive ones, providing sound advice from the beginning (framing questions) to the end
(disseminating the evaluation results). It is important to develop a stakeholder group representative of the populations the project serves, assuring that individuals from all sectors have the chance for input. Indeed, those in the least powerful positions can be the most affected by the results of an educational evaluation. Students, for example, may qualify for consideration, as might their parents or care givers. It is important that all key voices are accurately heard and listened to. If they are not, the entire evaluation process may be limited in its accuracy and opportunities for meaningful program improvement drastically reduced.

Progress evaluations seek to determine whether the participants are progressing toward achieving the stated goals and objectives. Culturally responsive progress evaluations help determine whether the original goals and objectives are appropriate for the target population. In seeking to ascertain whether the participants are moving toward the expected outcomes, a culturally responsive progress evaluation can reveal the likelihood that the goals will be met, exceeded, or not exceeded given the program timeline and the results of the process evaluation.

An important key to successful evaluation is to ensure that the proper and appropriate evaluation questions have been framed. For an evaluation to be culturally responsive, it is critical that the questions of significant stakeholders are heard and, where appropriate, addressed. Framing evaluative questions is not easily accomplished. In a culturally responsive evaluation, the questions will have been carefully considered not only by the evaluator and project staff, but by other stakeholders as well. It takes time and
diligence to reach agreement on the questions to be pursued. One stakeholder group may care little about questions that are seen as vital by another group. However, it is crucial that all significant voices are heard.

Once an agreed-upon list of questions has been articulated to the satisfaction of the evaluation team and stakeholders, an epistemological task of great import comes to the fore, but again, it is not an easy task. They must ask, “What will we accept as evidence when we seek answers to our evaluative questions?” This, too, should be decided before embarking on a culturally responsive evaluation. It avoids subsequent rejection of evidence by a stakeholder who might feel that the data are interesting but not sufficiently rigorous.

After the evaluation questions have been properly framed, sources of data have been identified, and the type of evidence to be collected has been decided, it is then time to identify the appropriate evaluation design. There are a number of different evaluation designs that can be used to organize the processes of data collection and analysis and subsequently answer the evaluation questions. Most comprehensive evaluation designs have both a qualitative and a quantitative component. Each component provides data in a format that is different from the other, but that can also be complementary to the other.

Designs that incorporate data collection at multiple times provide an opportunity to examine the degree to which some aspect of the participants’ behavior changed as a result of the project intervention(s). Furthermore, when comparison or control groups are incorporated into the pre-test/post-test design, evaluators are able to determine to what
extent some aspect of participants’ behavior changed relative to where it would have been had they not been subject to the project intervention(s).

Selecting and Adapting Instrumentation

Instrumentation provides the means for collecting much of the data for project evaluation. Therefore, it is very important that instruments be identified, developed, or adapted to reliably capture the kind and type of information needed to answer the evaluation questions. Also at issue is the validity of the inferences about the target population that are drawn from data collected using evaluation instruments. While it is preferable to use instruments that have some history, that have been tried out and have established validity and reliability, previous use does not guarantee cultural responsiveness.

Oftentimes, measures that have been normed on a cultural group different from the target population are used in the evaluation process. In such instances, additional pilot testing of the instruments should be done with the cultural group or groups involved in the study to examine their appropriateness. If problems are identified, refinements and adaptations of the instruments should be made so that they are culturally sensitive and thus provide reliable and valid information about the target population.
Analyzing the Data

Determining an accurate meaning of what has been observed is central in culturally responsive evaluation. Having adequate understanding of cultural context when conducting an evaluation is important, but the involvement of evaluators who share a lived experience may be even more essential. The charge for minority evaluators is to go beyond the obvious.

Knowing the language of a group’s culture guides one’s attention to the nuances in how language is expressed and the meaning it may hold beyond the mere words. The analyst of data gathered in a culturally diverse context may serve as an interpreter for evaluators who do not share a lived experience with the group being evaluated.

To this end, a good strategy is the creation of review panels principally comprising representatives from stakeholder groups to examine evaluative findings gathered by the principal evaluator and/or an evaluation team. When stakeholder groups composed of separate panels of parents, students, and community representatives, for example, review evaluative findings, the meaning of evaluative data is frequently fresh, and is not always aligned with confirming interpretations. Again, the results of the deliberations of review panels will not lend themselves necessarily to simple, easy answers. The contention, however, is that they will more accurately reflect the complexity of the cultural context in which the data were gathered.
Disaggregation of collected data is a procedure that warrants increased attention. Disaggregation of data sets is highly recommended because evaluative findings that dwell exclusively on whole-group statistics can blur rather than reveal important information. Worse, they may even be misleading. In sum, the data rarely speak for themselves, but rather are given voice by those who interpret them. The voices that are heard are not only those who are participating in the project, but also those of the analysts who are interpreting and presenting the data. Deriving meaning from data in program evaluations that are culturally responsive requires people who understand the context in which the data were gathered.

**Disseminating and Utilizing Results**

The dissemination and use of evaluation outcomes should be thought through early when preparing an evaluation, that is, during the evaluation-planning phase. Moreover, the use of the evaluation should be firmly consistent with the actual purposes of the evaluation. The purpose of the evaluation should be well defined and clear to those involved in the project itself.

Information from good and useful evaluations should be widely disseminated. Evaluators should assure that the information from it is received by the “right people.” The “right people” are not restricted to the funding agency and project or program
administration and staff, but should include a wide range of individuals who have an interest or stake in the program or project.

Further, communication pertaining to the evaluation process and results should be presented clearly so that it can be understood by all of the intended audiences. In analyzing the components of CRE, it is apparent that CRE can be utilized at two levels – overall at the level of policy-making, and at the practical level of evaluating the merits of the programs and initiatives implemented at the behest of the consent decree process. At the policy-making level, the tenets of CRE are still very much applicable to the ways in which policy-makers decide which programs to implement to address equity issues and the method of implementation. Following implementation, CRE is again useful to determine the effectiveness of those programs and to guide the adaptations and adjustments necessary to garner positive change and equitable educational outcomes and experiences.

Overall, the methods outlined – close legal analysis, interviews, and CRE – provide a well-rounded assessment of the legal trends that impact local school district decisions and the best way to ensure that school districts move forward in a way that is responsive to the Champaign community and garners long-lasting, sustainable education equity.
Chapter 5

Background of the Unit 4 Consent Decree

“...The histories also indicate the complexity of the tasks and the practical difficulties that local school boards face when they seek to achieve greater racial integration. The boards work in communities where demographic patterns change, where they must meet traditional learning goals, where they must attract and retain effective teachers, where they should (and will) take account of parents’ views and maintain their commitment to public school education, where they must adapt to court intervention, where they must encourage voluntary student and parent action, where they will find that their own good faith, their knowledge, and their understanding of local circumstances are always necessary but often insufficient to solve the problems at hand.”

- Justice Breyer, Parents Involved, 2007, p. 21

Justice Breyer’s statement in Parents Involved encapsulates fully the nature of Unit 4’s entrance into a consent decree and the unique challenges faced by stakeholders attempting to overcome decades of lack of good faith and understanding between parents, children, school administrators, teachers and community activist groups. At this juncture, a deep understanding of what is meant by the phrase “good faith” is critical.
**Understanding “Good Faith”**

Good faith, as a concept, was specifically referenced by presiding judge Joe Billy McDade in the Unit 4 case. The notion of good faith extends from before the actual consent decree and its importance does not diminish now that the decree has expired. Good faith is a phrase derived from the Latin phrase bona fide. As a legal term, it refers to motive. Specifically, it encompasses a belief or motive without any malice of the desire to defraud others. The phrase most frequently occurs in the field of commercial law with regard to transactions and is designed to protect persons from fraudulent sellers. Strong public policy is behind the good faith defense, as good faith doctrines enhance the flow of goods in commerce. In the educational context and specifically in this case, good faith is the honest intent to act without taking an unfair advantage of another person or to fulfill a promise to act, even when some legal technicality is not fulfilled. A certain amount of trust is essential for good faith to be effective. Usually, the trust flows from the subject desiring something to the provider of what is desired. Without that initial trust, good faith is almost impossible to be established.

This definition encompasses the circumstances of the Champaign Community broadly, and Unit 4 specifically, over the course of decades during which time good faith between the school district and the community either did not exist outright, or was perceived not to exist by some parents and community members. Later on, the research explores the ways in which good faith could have been restored, the cases when it was not,
and what must take place to ensure that it is the center of any and all policies coming from the Unit 4 administration. The bottom line is that good faith is often a matter of perceptions, and not a matter of straight-line facts. This means that though, for example, a school district may implement certain policies that are intended to address specific district issues, i.e. segregation, achievement gap, etc., their intent may be perceived unfavorably by the general public, either by virtue of a misunderstanding of the motive behind the policy, or simply not having enough information about why policies were put into place. Additionally, historical contexts, and past experiences can serve as substantial obstacles to creating the type of environment conducive to good faith.

**Barriers to Good Faith**

Desegregation and equity issues are often borne of larger societal circumstances, which can contextualize the necessity for plaintiffs to file suit against institutions they feel have violated their rights under the Constitution. In this case, the ultimate lawsuit filed against Champaign’s Board of Education is the manifestation and culmination of years of what plaintiffs (students, parents, community groups) viewed as outright desegregation, discrimination, and marginalization of the community’s black population.

The examination of the racial breakdown demographically and geographically illuminates Champaign’s racially identifiable communities and the fact that the north side of the city is predominantly black while south Champaign is predominantly white. More
specifically, 77.1% of Champaign’s black children reside north of University Avenue. Predictably, the demographics of the schools in each respective area followed suit with the north side schools consisting mainly of black students while Champaign’s south side schools were predominantly white, or at the very least, not as racially identifiable.

But more so than the simple demographic characteristics of Champaign, analysis must take into account the social effects of the demographic breakdown. What were and are the realities of predominantly black neighborhoods on Champaign’s north side and in what ways do those realities differ from the south side of the city?

Historical analysis shows that tensions have run high between the community’s Black residents and white residents for decades. Indeed an analysis at the historical records left by some of the community’s most prominent community activists demonstrate that efforts to address some of the discrimination issues put forth by Black residents had seemed to be a constant, uphill battle. Indeed, the record describes the efforts to provide equal access to high quality schools, fights against injustices in zoning practices, and perhaps most prominently, a consistently negative relationship with law enforcement.

Central Illinois is no stranger to accusations of racial profiling and other issues brought up by Black residents. Experiences within the school district evidence a tense relationship between parents and school administrators. Many of the parents had themselves negative experiences with Champaign’s public school system. The district had its share of racially charged conflicts in the decades preceding 1996 when the lawsuit against the school district commenced.
For example, a 1961 article stated that housing segregation in Champaign was the worst in the entire state of Illinois. Ten years later in 1971, Illinois’ then chief education officer, Michael Bakalis gave an impassioned speech supporting desegregation plans in response to the then Federal Department of Health, Education and Welfare charged that Illinois schools were more segregated than schools in Mississippi.

Bakalis rightfully admonished that desegregation should be more than just a “mixing of bodies.” Earlier that year, Champaign Centennial High School had dealt with an outbreak of race-related violence in which a large number of white students had waited, armed, on the lawn of the school as buses of black students arrived. The violence forced the school to close and left two students injured, including one with a fractured skull. Similar incidences occurred in other parts of Central Illinois.

Thus it comes as no surprise when some of those same sentiments of racial tension experienced by residents who are know the parents of current Unit 4 students, are echoed in the experiences of their children. Overall, the historical circumstances of Unit 4 led to a situation where trust was almost non-existent in the way in which Unit 4 was perceived by the community and vice versa. Indeed, this sentiment was that the school district, if not intentionally, then negligently failing to do right by the community’s children.

In short, it was simply a continuation of the policy of do-nothingness and status quo that had existed in the district for years exacerbated by a community atmosphere that resisted integration and non-discrimination policies. Moving into the 1990s, the community finally made headway in demanding the changes they wished to see in their
school system. Trust was non-existent. Good faith was a concept far from the minds of angry community members who were simply fed up with the status quo.

The Development of the Consent Decree

In 1996-1997 Unit 4 had ten elementary schools – four on the north side of the district, and six on the south side of the district. North side schools consist of Columbia, Booker T. Washington, Dr. Howard, and Garden Hills, while south side schools consist of Bottenfield, Carrie Busey, Kenwood, Robeson, South side, and Westview (Alves 2nd Report 5, Bates No. 343).

In 1996, north Champaign residents determined that the issues affecting their elementary and high schools had reached the breaking point. They cited unsettling statistics outlining disparities in discipline in schools between black and non-black students, the stark achievement gap, low retention rates for black students, and a host of other indicators that conditions in Champaign’s Unit 4 schools were not conducive to the success of black students. These are the circumstances under which the Consent Decree emerged.

Presiding judge Joe Billy McDade, in his opening statements at a hearing on October 19, 2006 clarified the specifics of the consent decree and what it entailed. He stated that the consent decree charges the District with "the denial of the state and federal constitutional and statutory rights of black students to equal educational opportunity and the elimination
of racial discrimination in school assignments and educational equity issues” (McDade, 2006). Moreover, McDade drew a clear distinction between the legal and societal issues at stake in this case.

More specifically, the litigation is intended to redress past practices by the District, which the District acknowledges may have had a disparate impact on the community’s African American students. Therefore, the goal of the Consent Decree is to make African American students “whole” for those circumstances in the past, which may have operated to the detriment of the District’s African American students.

McDade also acknowledged that the School Board’s policies may not have intentionally operated to the detriment of the District’s African American students, however, it may have been indifference on the Board’s part, or even exacerbated by other factors he cited such as housing patterns, poverty, parents’ education and employment, family size, parental attitudes and behavior, and peer-group pressure, among others (McDade, 2006). Therefore, McDade surmises that the Consent Decree is actually a litigation settlement agreement, and as such, requires a certain level of compromise in order to ensure that the goals set in the agreement are met.

Moreover, McDade’s introductory remarks highlight the key notion behind the entire litigation process and its projected outcome: trust. Indeed, he acknowledges that trust is a major factor to the successful implementation of Consent Decree goals. McDade states that “Unfortunately, many excellent educators labor under the burden of mistrust (emphasis added) prevalent among black parents – many of whom are products of this
District – who still perceive the District and its teachers as not really caring whether their children learn or not” (McDade, 2006, p.25). The notion of trust, or lack thereof, is a critical component of the entire litigation process. The very fact that the plaintiffs sought to involve the court evidences a lack of trust, and the fear that without such legal intervention, the goals stipulated in the Consent Decree could not or would not be achieved, and at the very least, not in a timely manner.

Indeed, Judge McDade himself declares that it was not the desire, nor the intention, of the court to involve itself in the District’s affairs, but that the presence of the Court was specifically requested as a means of ensuring that policies embodied in the Consent Decree were actually carried out. The Court’s involvement necessitates legal compliance to the stipulations of the decree.

And so the notion of trust under girds the very basis of the consent decree. A decree that emerged after years of what plaintiffs and Judge McDade determine amounted to “indifference” and neglect on the part of the school district to take an active role in ensuring that African American students had access to the same high quality educational experience afforded white students. Indeed without some measure of trust, many of the policies designed for implementation may be hindered in their fruition.

Therefore, it is important to note the process of the codification of the Consent Decree and the actual implementation of its proposed policies. In addition to this analysis, one must also take into account the reaction of parents, teachers, and other community members to the policies proposed and the implementation mechanisms utilized. That
information will be provided later in the data analysis and will provide insight into the most effective way to move forward given the national and local legal landscape. An understanding of these aspects of the process help frame the results as well as shed light on what works, what doesn't and how the Consent Decree as a whole has affected perceptions of the district and notions of trust with the District’s stakeholders.
Chapter 6

The Consent Decree Process

Circumstances in Unit 4 came to a head in the spring of 1996 when several African American families filed complaints with the United States Department of Education’s Office for Civil Rights (OCR) alleging race discrimination by Unit 4 schools. This initial complaint addressed issues of student assignment and services provide to the approximately 550 African American students who were bused across town for school (Bates No.1). With the legal assistance of Futterman & Howard, Ltd. plaintiffs amended their complaint to add four other pertinent issues: system wide discrimination in student assignment, within-school segregation practices and tracking, discipline, and staff hiring and assignment (Bates No. 12).

More specifically, plaintiffs alleged that minority students were overrepresented in special education classes and underrepresented in upper level courses. These were just a few of the complaints parents brought to bear. As a result of the complaints filed, and with input from community members, the school board, in 1996, initiated a redistricting plan, which was designed to address the pertinent issues raised by the complaint. However, community members felt that the redistricting plan did not go far enough to rectify the issues brought forth in the complaint.

Therefore, in 1997, after notifying Unit 4 that they were contemplating the commencement of class action litigation against the District, plaintiffs entered into an
agreement (memorandum of understanding) with Unit 4 that outlined the “Controlled Choice Plan.” This plan was implemented as a mechanism to address complaints concerning the assignment of African American students among Unit 4 schools. The Controlled Choice Plan outlined several directives (See Appendix D):

1. Guarantees racial diversity, provides individual choice regarding school enrollment within racial fairness guidelines, and promotes school reform

2. Ensures equitable access and burdens by allocating the District’s total basic school capacity to each part of the city in proportion to the number of students that reside there.

3. Provides educational opportunities for individual students by permitting each student to choose, from a number of schools in the system, two or more schools that the student desires to attend, and to rank the schools by personal preference.

4. Contains a flexibility range of a maximum of plus or minus 15% of those system-wide racial compositions to accommodate schools which are over-chosen by one group and under-chosen by another. The over-choosing group may exceed its fair share proportion within this range. System-wide racial composition and the applicable flexibility range shall be determined independently for elementary, middle, and high schools.

5. May contain a sibling preference, which provides a first preference, within racial fairness guidelines, to all students who have a brother or sister already attending the
student's school of choice.

6. Contains a neighborhood preference that provides a preference within racial fairness guidelines to students who can walk to their chosen school.

7. Creates one or more Parent Information Centers (“PIC”) with sufficient resources to perform the day-to-day operations of the Plan and provide outreach, information, and advocacy to parents. The PIC(s) shall be located and conducted in a manner that maximizes minority parent participation in the Controlled Choice Process.

8. Requires all eligible students to fill out an application indicating a minimum of two schools of choice. Every effort will be made to insure that minority students are aware of and participate in the application process.

9. Addresses over-chosen schools by conducting a lottery after all students with preferences who meet the racial fairness guidelines have been assigned.

10. Identifies, publicly lists, and provides technical assistance, and if necessary, changes in personnel in under-chosen schools. The purpose of these actions is to upgrade and improve the quality of education received in under-chosen schools.

11. Established a community-based Controlled Choice Community Task Force to assist in developing and implementing the Controlled Choice Plan. The Task Force represents the District’s racial, economic, civic, governmental, business, and other major constituencies.
The parties formed a Planning and Implementation Committee ("PIC") comprised of an equal number of representatives of each party, including counsel. Throughout the Plan's duration, PIC will continue to monitor, evaluate, refine, and improve the Controlled Choice Plan.

In addition to student assignment issues, education equity was a major factor in the plaintiff's decision to file suite against Unit 4. Parents and community members discussed the achievement gap between African American students and their white counterparts, the overrepresentation of African American students in special education classes and their under representation in upper level courses, and disciplinary disparities in the frequency of discipline of African American students in comparison to their white counterparts. Moreover, the retention rate for African American students was starkly low. Therefore, the district sought the expertise of consultants Robert Peterkin, PhD. and James Lucey, PhD to conduct a comprehensive Education Equity Audit (EEA) that would evaluate the performance of Unit 4 schools (See Appendix D).

In 1998, the District entered into a Resolution Agreement with the Office of Civil Rights (OCR) resolving both the OCR proactive investigation and Complaints filed by the African American families. In July of 1998, Unit 4 and Plaintiffs entered into an agreement memorialized as the Memorandum of Understanding of Civil Rights Issues Relating to Education. This plan was designed to address certain additional complaints of Plaintiffs regarding alleged inequitable treatment of African American students in Unit 4 schools. To further the District’s commitments to ensure that minority students are provided equal
access to high standards and a high quality education in accordance with Title VI of the Civil Rights Act of 1964. (Johnson, 2001, p. 949).

To demonstrate its compliance with the OCR requirements, the District agreed to submit annual status reports regarding its implementation of the resolution to OCR. The OCR resolution includes the following principles and goals:

1. Students, regardless of race or national origin, must be provided access to high quality curriculum that enables students to achieve high standards;

2. A school climate which promotes learning and success and encourages students to support each other; and

3. Development of a diverse staff that will assist in a positive and supportive learning environment for all students.

The OCR resolution also includes specific goals and implementation timetables for gifted and upper level courses, discipline, special education, alternative programs, staff hiring, and within-school segregation. These specific elements of the OCR Resolution were incorporated into the Implementation Plan for the Equity Agreement.

The Education Equity Memorandum was intended to address elimination of unwarranted disparities with respect to both the availability of educational services to African-American students, and also the participation and performance of African-American students in such services (See Appendix D). The Audit highlighted some disturbing facts regarding African American students and their white counterparts. For
example, in 1996-97, discipline rates were overall higher for African-Americans than whites and other students.

Of 303 students suspended out of school, African Americans were overrepresented to a statistically significant degree. Moreover, at the elementary school level, for the 1996-97 school year, African American students represented almost 81% of the students given an out-of-school suspension. At the middle school level that year, African Americans represented almost 68% of students who were given an out-of-school suspension and more than 12% of middle school African American students were given an out-of-school suspension while less than 3% of white middle school students received the same.

At the high school level, African Americans comprised 13% of out-of-school suspensions given that year (1996-97) while less than 3% of white students received the same and in the following year (1997-98), 63% of suspensions were given to African American students although they comprise 32% of the student population. It became apparent that an equity audit was in order. The Education Equity Memorandum included the following standards:

1. A standard for participation of African-American students in each of the regular programs, courses, classes and extracurricular activities.

2. Standards for reasonably and practicably comparable educational outcomes for African-American and non-African-American students with respect to attendance, grades,
standardized achievement scores, alternative assessment scores, discipline rates, and dropout/graduation rates.

3. Standards for comprehensive, supplemental educational and social support to African-American students as needed to achieve and maintain the performance standards identified in the Equity Memorandum.

4. Standards to eliminate to the greatest extent practicable any over-representation of minority students in subjective special education categories. The District bears the burden of demonstrating that any such overrepresentation is clearly justified by the application and outcome of valid, nondiscriminatory special education *950 assessment and placement practices.

5. Noting the special relationship between discipline and school climate, standards in each area, including system-wide comprehensive multi-cultural initiatives and staff development programs regarding equitable discipline.

6. Standards to achieve a substantial level of racial diversity among the District’s certified and non-certified staff members system-wide and within individual schools, focusing on recruitment, hiring, assignment and transfer standards.

The Planning and Implementation Committee (“PIC”) was designated to monitor, evaluate, refine and improve the Education Equity Memorandum. In addition to analysis of equity within the school district, psychologist and school climate expert, Mark Aber’s Unit 4 climate study illuminated many of the issues the district sought to address as well as the
perceptions of students, parents, and staff regarding their experiences within the district. The climate study evidenced the fact that African American’s perceptions of the educational and overall experiences within the district whether at the student level, teacher level, or parent level, were decidedly more negative than their white counterparts.

Indeed, this fact was evidenced most starkly amongst school staff. The study notes that on 18 of the 19 climate dimensions measured (95%), African American staff tended to see the climate the most negatively of all groups and white staff tended to see it most positively. This was true for each sub-sample, including teachers, administrators and other staff (Aber, 2001, p.3). Similarly, amongst middle-schoolers of the 12 climate dimensions measured, on 8 dimensions (75%), African American middle school students perceived the climate more negatively than their white peers.

Ultimately, Aber's study highlighted three particular areas of concern within the district: 1) perceived lack of fairness and cultural understanding that are institutionalized in the educational practices and policies of the schools, 2) evidence that large proportions of those with the most power in the district, White staff and parents, did not perceive a need for change, and 3) evidence of considerable resistance to change (Aber 2001, p.27). The study notes that fear appears to play a significant role in the resistance to change. Specifically, a fear of discussing race and how race might matter in schooling. Aber describes some parents who stated that talking about racism “just tends to enlarge the problems evolving around it.” (Aber, 2001, p.29).
Moreover, the lack of perception that changes are necessary on the part of some staff and parents, is especially problematic because it more often than not hinders openness and receptivity to change. Arguably, it is not enough for teachers or other administrators to be “well-intentioned” in the sense that they do not see themselves as “racist”, or believe that they treat all students equally (These statements are derived from school board meetings in which many teachers asserted that they themselves were not the vehicles through which students experienced racism or discrimination).

In fact, many asserted a level of color-blindness in the classroom, which belied some students’ negative experiences in dealing with some teachers and administrators. However, such perceptions of oneself as color-blind and well intentioned do not eliminate the very real experiences of students and parents in particular, who felt marginalized within their classrooms and within their school districts.

Instead, such notions serve to undermine the urgency for which tasks to structure appropriate education policy that addresses the myriad issues highlighted in a consent decree or other grievance statement, must be implemented, often in the form of resistance to new school or district-wide policies. Some scholars posit that for desegregation measures to actually garner successful results, it was absolutely critical that parents, teachers and administrators both recognize the issues facing the schools, and also actively work toward the successful implementation of measures designed to address those issues. Without the efforts of parents, teachers and administrators, new policies are more difficult
to successfully implement and positive results of such measures are more difficult to actualize.
Chapter 7

Policy Development, Implementation, and Aftermath

To be sure, one of the oft-stated benefits of the consent decree was the power of the court mandate. After decades of dissatisfaction with the school district’s negligence or inability to effectively deal with longstanding equity issues, after the erosion of trust, it seemed that finally changes would be mandated to address the myriad detrimental manifestations of said negligence or willful wrongdoing. Throughout the course of the consent decree process, numerous policy implementations were made and/or modified by the District.

The purpose of this section is not to describe in detail each policy that was made. Instead, it will provide an overview of the policy areas that were focused upon and discuss in some detail the process of engaging with relevant parties within the district and community to address equity issues. The subsequent section will discuss the reactions of interview respondents to said policies. Finally, this paper will describe in detail why policies must be generated from a CRE approach in order to ensure effectiveness even absent court mandates and court involvement.

Undoubtedly, the Unit 4 consent decree was much broader than the district’s desegregation programs of the past. Indeed, this decree sought to address myriad equity issues. Specifically equity areas were designated and data was disaggregated by race and
ethnicity on several variables, namely: progress of regular education, gifted programming enrollment, AP/Honors courses, Academic Academy and alternative students, attendance rates; discipline rates and graduation.

Champaign's Unit 4 school district while having voluntarily entered into its Consent Decree, has certainly not escaped difficulties that accompany the development and implementation of remedies to address the district’s many problems. For example, the District has implemented a “Controlled Choice” plan as one of the primary vehicles for eliminating the racial imbalance amongst its elementary schools.

Controlled Choice provides parents in the district, within certain parameters, the opportunity to choose the schools their children will attend (Departments, 2005). The Controlled Choice plan came under some criticism particularly from parents who did not get their first or perhaps, second preference for their children’s school, and conceivably, due to it’s implementation largely as a measure to racially balance schools, and also because there was no finding of intentional discrimination on the part of the school district, this measure would come under heightened suspicion post Seattle-Louisville. Despite this fact, the plan has been largely hailed as successful in establishing racial balance in most of the district’s elementary schools. It is unclear however, how long these measures will remain in place unchallenged.

Concomitant with discussions of remedies are the issues that arise in determining the standards of successful implementation of measures to address district issues. The desire of parents and community members for their children within the school is not solely
for them to attend a racially balanced school. Their desire is for their children to attend high quality schools.

This point directly nullifies the notion of placing more emphasis on the racial balancing aspect and instead targets those key, underlying issues that have plagued segregated schools. This nuanced distinction carries significant weight in how parties will approach a consent decree, and when these factors or considered, they may find that they are able to devise helpful and effective measures while still remaining within the bounds of the Constitution.

For example, in an October 2006 Plaintiff response to the Champaign Unit 4 Board’s report on consent decree target and steps, Plaintiffs discussed what they deemed the District’s failure to address key issues in several specific educationally related areas such as academic achievement, enrollment and attendance, gifted and talented programs, special education, student discipline, staffing and hiring, information technology, alternative programs, and controlled choice, among others.

For example, within the achievement category, Plaintiff’s allege that the district relies on an inappropriate standard to articulate its progress in student achievement at the elementary school level – Annual Yearly Progress (AYP) (Departments 2005, p. 4). Plaintiffs argue that AYP is a minimal standard under No Child Left Behind and stretches to 2014. Therefore, it should not be the measure of what they determine to be the District’s greater obligations under the Consent Decree.
Plaintiffs argue that because of the usage of AYP as opposed to another standard more appropriate to the District’s unique achievement gap issues, the District’s report on academic progress did not address the fact that 54% of African American students in the District are “Academic Warning or Below for third grade reading; 58% were at that lowest category in eight grade reading and that there has been a downward trend in course grades since 2003 (Third Monitoring Team Report, 402).

It stands to reason that if the district misidentifies or mischaracterizes the progress being made in certain sectors, actual disparities and issues that still exist within the District are overlooked, thus the remedies in place are not actually rectifying concrete problem areas within the District that just so happen to involve a disproportionate amount of a certain racial or ethnic group.

Thus plaintiffs have identified a two-stage problem: 1) the initial disadvantages of having racially imbalanced schools because those racially identifiable schools had substantially less access to quality resources, teachers, funding, etc., and 2) once schools have been desegregated, what is the experience of certain groups within those schools and are students now exposed to a high quality and meaningful educational experience? It would appear that they still face challenges that could be attributable to previous historical disadvantages and those challenges manifest in disciplinary inequities, academic achievement gap, and other factors identified particularly in the Champaign case.

One question that repeatedly surfaced throughout the duration of the consent decree was whether Unit 4 truly and genuinely wanted to make all of the proposed
changes, or whether the District’s hand had simply been forced by the court through the consent decree. Conversations with the District’s administration reveal a genuine feeling that they had done what they believed should be done to address long-standing equity issues. However, divergent views manifested as one posed the question to teachers and parents. What seemed to undercut all discussions as to the motives and effectiveness of the consent decree was a certain level of dissonance in terms of how the vision of what was to be achieved was conveyed to all necessary stakeholders. For certain Unit 4 in 2001 at the start of the litigation did not have an overt policy of discrimination as it had decades ago before the waves of desegregation litigation. Indeed, the factors of inequity appear to be more so the result of years of neglect or an inability to adequately cope with the community issues that spilled over into the school district including housing segregation, discrimination, etc.

At present, it would be inaccurate to characterize the district as one that willingly discriminated against students, thus it follows to assume good faith in the policies implemented via the consent decree. Certainly, good faith does not guarantee positive results. Indeed, the policies developed throughout the consent decree process were largely based on best practice research and utilized the expertise of nationally renowned scholars and practitioners in education policy. There is little doubt as to the rigor of the process and the care taken by the district to ensure that it had the best information available to construct the most effective policies available.
Given this fact, the motive behind policy development is not at issue or in question. What is more important is the way in which the policy process was carried out and the perception of its effectiveness based on response by community members outside of the Unit 4 administration (parents, students, community activists, etc.).
Chapter 8

The Voices of Consent Decree Participants

The interview process sought to gain insight into the overall impact of the Consent Decree process in Unit 4 and to determine to the extent possible, what community members - parents, and community activists in particular - took away from the experience. What was their perspective on the process as compared to that of school administrators? How was the process executed? Did it help or hinder school community relations and even race relations in Champaign? And ultimately, respondents were asked whether now, looking back at the past 13 years of the entire consent decree, they would have done it over again. In other words, was it worth it? The overall responses to the Consent Decree from start to finish were strikingly divergent.

The interview utilized several questions designed to get at the core of the consent decree experience (See Appendix B for breakdown of interview questions in detail). In particular, each interview started off with a general inquiry as to the individual’s experiences within the school district. How long had they lived in the Champaign community? What was their take on the relationship residents currently and traditionally had with the city’s main institutions (i.e. law enforcement, churches, schools, etc.).

I also asked about personal experiences in Champaign and feelings about the type of community they perceived it to be. These questions helped to contextualize the more
nuanced questions about school perception and provided a deeper understanding into why some of the reactions to the consent decree process were seemingly less enthusiastic – especially after the process ended.

In addition to background questions, I utilized data gathered from the school district, court documents, and numerous articles and publications that charted the many measures implemented in several of Unit 4’s schools at both the district and individual school level. I utilized notes from school board meetings, observations, and publicized reports to ask directed questions about school district policies to get the reaction of the interview subject.

These interviews provide very telling perspective on the implications of the consent decree now and into the future. My interview subjects included teachers, administrators, community activists, and parents. The difficulty of categorizing responses based on the status of the interview subject must be noted. The lack of pattern in terms of reactions to the consent decree and overall feelings about the process are important as it highlights the fact of just how divergent the views were as to the successes and failings of the consent decree process.

It is critical to expound upon the sentiments of some of the interview subjects about the social climate of Champaign prior to, during, and after the consent decree.
School and Community Climate and the Consent Decree’s Impact

“13 years ago, people were optimistic to a degree. “I think we were laboring under a misconception that just because we had where we could go to school where traditionally blacks were not able to go and could sit beside a white child, that did not change the way we were being taught or were treated at a school. “

As mentioned previously in this document, the City of Champaign has grappled with difficult social circumstances in which its African American residents state they have experienced past and present instances of discrimination in many forms and from many different institutions such as law enforcement, schools, and public places. Indeed, this negative climate may have served as the largest single factor feeding into the circumstances manifested in Unit 4 schools that resulted in the lawsuit being filed against the school district.

Statistics on racial profiling collected by the Illinois Department of Transportation released last year showed that for the past four years, the rate of racial profiling in Champaign County has grown significantly. Figures for the Champaign police have gone down, but remain higher than the state average. This is despite the fact that numbers collected have indicated that although blacks are more frequently subject to having their vehicles searched, whites are more likely to be found with drugs or weapons. Within schools, some interview respondents indicated that parents themselves had had such
negative experiences when they were students that the guarded and distrusting sentiment has passed from one generation to the next.

Another indicator of the troubled social context is the introduction of student resource officers (SROs) into schools. This move was perceived by many interview respondents as a negative reinforcement of the status of particularly black children as “criminalized” by bringing in “street police officers” and renaming them “resource officers” in the schools. One woman, an African American who had lived in the district for eight years, stated that some of the officers were recognizable as police officers students had had problems or run-ins with outside of school. This dynamic created an atmosphere of mistrust amongst parents. As another community activist stated:

"Why would the school district (they know their (modus operandi).) bring those police officers from the streets? “It just makes me sick to see kids taken advantage of and that's what happens. If you know the police are after black folks, then why would you go and put those police in the school? And then you look at the numbers right now of kids that have police contacts?“

- Community Activist, Champaign Resident

The woman to which the aforementioned quote is attributed, has lived in Champaign her entire life. She grew up in the community and spent decades working as a child advocate and guidance counselor at several different schools in the district. She stated
that SRO’s are perceived more as a threat by students, not as a resource. Indeed, the climate study conducted by Aber and discussed earlier in this document highlighted the very real disparity between the perceived and actual experiences of students, teachers and families within the school district. Black parents and students much more frequently reported negatively on the school climate than their white counterparts. The disciplinary data collected from the school district corroborated these sentiments, especially with evidence that showed African American students disciplined at much higher frequencies than their white counterparts.

In general, all respondents agreed that the back-story of Unit 4 created the atmosphere of mistrust and that historically, relations between families and the school district – particularly for black families – had always been tense. Therefore there was little disagreement about the latent issues that had existed in the district, particularly for respondents who have been members of the Champaign community for decades (Many respondents were born and or raised in Champaign). In other words, they knew that conditions and practices of the past helped to create the current circumstances. It was in the method and impact of measures implemented that opinions became starkly divergent.

The bulk of the questions focused on the “after” of the consent decree process. It is here that we truly see the dynamic responses of key stakeholders. For example, one respondent who had worked as both a parent advocate and an administrator in the district for years stated:
“The consent decree is over, but it didn’t change people’s attitudes and perceptions as to what black people were about. Even our own black people – African Americans professing to be black but in essence you’re doing everything to appease the white families”

She had described her involvement in the school district as an advocate for parent interests. She also highlighted the shifting role of some in the community who had traditionally been seen as advocates for the interests of African American children and families, but whose roles had shifted over the years. Her quote as a resident of Champaign for more than 40 years encapsulates the conflicting sentiments of those that were part of the consent decree process. It also showed the complexity of the responses to different policy implementations and evidenced that these responses diverged widely even amongst African Americans. Her quote was referring to those African Americans not perceived as being in favor of implementing the sorts of changes necessary to truly have a positive impact as defined by her.

Specifically, another respondent who had worked in a parent organization in Champaign referenced Unit 4 Superintendent Arthur Culver as one of those “professing to be black but doing everything to appease white families”. He described the fact although Culver himself is African American, he was not a part of the African American community in any meaningful way - meaning that traditional settings through which he could interact with other African American parents and families from the school district such as churches, picnics and even grocery stores in the neighborhood was highly infrequent.
However, another respondent – a teacher in the district for 15 years – pointed out that perhaps Superintendent Culver was also held to a higher standard of performance vis-à-vis interaction with the African American community by virtue of the fact that he was black and that it may not be fair to hold him to such a standard especially if a white superintendent would not be held to that standard. Her perspective, she said, was based upon her knowledge of the reactions to the former superintendent and how the expectations of him were starkly different. The former district superintendent is white, and the respondent mentioned that because of his skin color, he was not expected to make any extra effort to reach out to, or interact with, the city’s black population.

This brings to bear the issue of trust not only between the school district and families impacted by the consent decree, but trust even amongst African Americans as a group largely identified in the plaintiff class. Though the bulk of interview questions centered on the education equity aspects of the consent decree process, when the discussion turned to some of the challenges, several respondents began to reference those trust issues unique to the African American community.

Namely, the fact that some African Americans within Champaign “proclaiming to be for the people, were, in actuality, not.” as one respondent stated. They began to discuss some of the community issues that had arisen in the years since the consent decree was implemented. For example, the shutting down of the Champaign Urban League and the circumstances surrounding the case which implicated legally questionable behavior on the part of its director and also one of the “leaders” in Champaign’s black community.
Frankly put, the issues of trust were not only between African Americans and their white counterparts in the district. Mistrust surfaced right within the African American community as the process unfolded and deep-seated community issues began to emerge. This led to rifts within the community as different interests were served while others were not. Some respondents talked about discussions some in the African American community were having with district administrators that did not reflect - as they saw it - the best interests of the community. They saw these incidences as betrayals of the values that were put forth throughout the consent decree process and as somewhat unforeseen given the way things had played out. As another respondent a former teacher in the school district, stated:

“When you turn the lights on the roaches come out.”

The consent decree shone light on motives that had been obscure before; specifically, motives not only of the school district that had already been determined as questionable (hence entrance into the consent decree), but motives of so-called community activists who purported to work in the best interests of the families within the district. One respondent was a long-time community activist in Champaign:

“Sometimes, your black administrators can be Oreos, you get up here and forget where you came from until it hits home to you. I don’t know if they really got the commitment with kids like they used to.”
This respondent was referencing experiences with parents where they felt that administrators lacked empathy for black students. In one instance, a district employee described a situation where she alleged that teachers had been talking about a student within earshot of the student. The student overheard the conversation and subsequently, was cited for disciplinary problems in the classroom. It wasn’t until much prodding by the administrator that she opened up about what she’d overheard. The teacher who’d been talking about the student was black. The administrator felt this experience was even more devastating for the student because black students trust black teachers more than white teachers. Therefore, this experience generated mistrust even amongst black teachers.

Another example was at Stratton elementary where a black principal was hired. Some respondents complained that despite having a black principal, several black teachers had been fired because they were “not good”. Therefore, even having black administrators did not guarantee black staff. Thus the changes that took place in the district from the consent decree shone light on issues both within and outside of the black community. This proved difficult for some district residents to deal with.

From a community perspective, overall, the consent decree received mixed feedback in terms of the level of success it achieved particularly in terms of repairing the broken relationship between parents/families and school administration from decades of mistrust. What resounded throughout most of the community interviews was the perception of what the consent decree was designed to do and what it actually achieved. One responded stated:
“I think many people in the community really don’t know and still don’t know exactly what the consent decree was all about. I think they should have done a better job in describing it instead of using it as a negative all the time. You look at all the money that was spent on lawyers, I think that was a travesty. If you were doing it right, that wouldn’t have been necessary. Why is it necessary to have a judge making you do all of this?”

This last sentiment was echoed by some teachers and administrators in terms of having an understanding of what the goals were in the consent decree and whether that vision was adequately relayed to school staff so as to generate buy-in to the endeavor.

The Administrative Viewpoint of the Consent Decree

From an administrative perspective, perceptions of the effectiveness of the consent decree were also mixed. What stood out was the notion that teachers were not as clued in to some of the rationale behind some policy implementations. For example, one middle school teacher in the school district, stated that the method for achieving the goals of the consent decree was questionable.

“[The consent decree] was never dealt with in a way like “Hey, let’s take a look at our practices and what we define as “normal” and examine our practices.” And could we change? Could we look at this in a different way so that there is a broader sense of normalcy and could we up our rigor and get rid of this mentality that because kids are
poor they can’t learn and because kid’s parents aren’t involved, their parents don’t care? All of these layers and layers of assumptions that could have been peeled away in a way that would have been really healthy for everybody. That wasn’t done.”

She argued that the goals of the consent decree were honorable, but the way in which the district set out to achieve its goals left much to be desired. Instead of working to peel away the many assumptions that led to feelings of mistrust between school and community members, the district opted to take a much more shallow approach to addressing problems.

For example, one issue that emerged was the number of African American children enrolled in special education classes. The respondent claimed that instead of working to address the underlying assumptions about black students in particular and their learning capabilities, the district focused simply on reducing the number of students that were directed to special education (in that only in the most extreme circumstances were students referred to special education courses even if there were students who really needed to be enrolled). Additionally, instead of truly assessing the way that students were enrolled in gifted classes, the district opted to simply enroll as many students in gifted class and “call it a day”.

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Indeed, another elementary school teacher in the district stated that teachers received very little explanation about what was going on throughout the consent decree process.

“I don’t remember hearing about it. I don’t remember being trained. I don’t remember ever having specific training on diversity. I might have, but I don’t remember it. No sensitivity training, no diversity training.”

The notion was that the upper levels of the administrative did not adequately explain to the teachers – whose primary responsibility was to execute the goals of the consent decree – what they were expected to do. Similar to the discrepancies in perception of race relations within the district discovered through the climate survey, there were sizable discrepancies in perception as to the goals of the consent decree and how those goals would be achieved. One respondent described feelings of resentment that resonated through some teachers about the process.

“The only response I ever heard about the consent decree is that it was a pain in the ass because of the paperwork it required. We had to do school improvement plans. Teachers were outraged that they had to do a separate one for African American students. They were asking why they had to do it...teachers were bitching about it. Their hearts weren’t in the right place.”
It is left to be determined what more could have been done to adequately represent what the consent decree meant to the teachers of the school district. However, several respondents stated that the method of teaching must be adjusted if the issues in the district are to be successfully addressed.

The notion of culturally relevant teaching emerged several times in that teachers must use a culturally relevant pedagogical approach to teaching particularly African American students in the district. One of the oft-stated problems in the district is a deficit-based mindset when it comes to the learning abilities and behavioral tendencies of black students. Namely, black students are automatically assumed as being incapable of learning and prone to misbehavior. One teacher asserted that programs such as sensitivity training and policies that lead more so to understanding as opposed to blaming, would go a long way to addressing the equity problems in the district.

Not all of the feedback from teachers and administrators was negative. Indeed, some positive results were noted both at the administrative and the community level. One upper level administrator in the district characterized the consent decree process as “very successful”. When asked about the disparity in perception by some parents, the administrator attributed it to an inability to communicate effectively with community members. However, this was not due to lack of effort on the part of the school district. Indeed, several outreach initiatives were noted as having some positive impact on the community.
The respondent noted regular efforts to reach out to local churches, host outreach events, and encourage teachers to become more active in the lives of their students by making house visits and generally maintaining more flexible schedules to allow for increased availability for families who expressed some difficulty in being able to fit in regular visits to the school to meet with their child’s teacher. Other evidence of successes include:

- Improvement of the high school graduation rate from 89.6 percent to 93.6 percent from 2003-2009 (the rate for the state of Illinois moved from 86 percent to 87.1 percent)

- ACT scores consistently above the state and national averages

- Math and reading scores for African American elementary students increased 30 percent and 23 percent respectively over a five-year period,

- Enrollment of African American students in Honors and AP courses increased by 300 percent

- The addition of an Academic Academy for students needing a learning environment that is different from a comprehensive high school

The progress noted by the school district certainly speaks to the fact that some advances have been made with regard to academic equity and adequately preparing
children for life beyond high school. Indeed, Superintendent Culver, in an open letter to visitors to the Unit 4 web site stated that the district has worked with the African American community and court monitors to improve academic outcomes for African American students.

On its own, this statement is not problematic. However, when considering the very complex nature of the issues that have led to lower academic outcomes for African American students, it is telling of the lack of acknowledgement of that any efforts to address academic issues must be part and parcel of efforts to address social issues. Despite the noted academic successes, skepticism still remains as to the likelihood of ever fully addressing the social issues that spilled over into the academic setting. A certain amount of skepticism is to be expected given the competing interests and goals of various stakeholders in the process.

However, the level of dissatisfaction with the consent decree process in general at all levels, from parents to teachers, to administrators, is indeed troubling. The general consensus is a sense of resignation at the way the process unfolded and in expected outcomes of future school district policies. Perhaps most disheartening was the sentiment by many within Unit 4 that the good faith component has not been restored. While some efforts on the part of the district have been recognized by community members and district administrators alike, the overarching sentiment seems to be that many of the gains would never have taken place on the initiative of the district alone and the fact that back-and-
forth of the consent decree (as mandated by the court) was absolutely necessary to get even the most basic policy changes to occur.

This partially explains the fear by many respondents that once the consent decree ended, the district would be back to “business as usual”. This was evidenced by resistance to the decree’s expiration and the mixed response of community members when Judge McDade finally rejected any further appeals to extend the consent decree beyond 2009. They believe that the third-party intervention by the court was the last chance to ever address the discrimination and equity issues that developed in the social context of the community, but spilled over into the schools. Moreover, they believed that even during the consent decree process, Unit 4 administrators were more interested in “getting the court off their backs” than in actually engaging meaningfully with the community to get to the root of the lack of trust and equity issues that had existed for so long. This conclusion is troubling, but perhaps can be ameliorated by using culturally responsive evaluation as a means of continued education equity progress and rebuilding damaged relationships between the school district and community stakeholders.
Policy Recommendation: Using Culturally Responsive Evaluation (CRE) as a Means of Continuing Progress in Unit 4 Post-Consent Decree

Given what took place in Unit 4 over the course of the nine-year consent decree, and 13 years of the overall process from the initiation of the original lawsuit to the decree’s expiration in 2009, one of the most important steps that can be taken in the district is the explicit and deliberate use of culturally responsive evaluation to evaluate school district policies that are implemented as well as provide a framework for the development of new programs and initiatives intended to address equity issues.

In the absence of a court-mandated consent decree through which the entire school district is under monitoring, CRE is critical to ensure that policies implemented within the school district work toward the desired ends as explicated by key stakeholders. Indeed, the district must switch its orientation from a top-down approach to policy development to a more bottom-up or lateral approach as characterized by the CRE framework.

More explicitly, the point of the consent decree was to bring in a third party which would sit at the top of the policy hierarchy to ensure that necessary changes were made in the school district to address equity issues that had festered for decades. The judiciary, being the highest legal authority, was best situated to mandate the changes that needed to occur. Indeed, the entire structure of the consent decree process as manifest in Unit 4 was top down. This fact was evidenced through the interviews with individuals involved in the
process. The nature of the top-down perception had some drawbacks especially in terms of garnering buy-in by the community and projecting the good faith on the part of the school district administration to do right by the individuals and families with children in the system.

Even the structure of this document in terms of outlining the legal background of desegregation and equity litigation and the development of consent decrees maintains a decidedly top-down tone. The fact is that this has been standard in terms of litigation and highlights why it is necessary to explore these issues from the local level, thus tying in the discussions at the top level to the manifestations of those policy discussions at the micro level.

This analysis is in line with Superfine’s (2010) assertion that the role of the judiciary in education equity litigation is changing to a more decentralized model which relies more so on the other sources for policy creation (i.e. legislatures, school district stakeholders, etc.), meaning that social science research (i.e. in the form of culturally relevant evaluation) is even more important now than ever. It mandates that CRE evaluators become more well versed in the machinations of equity litigation to determine the most effective way to utilize the CRE framework in a legal context as it pertains to policy-making. Moreover, Welner proposes that given the current legal context, plaintiffs in education equity litigation now need more general and specific classroom-based systemic litigation that could show the general patterns but detail the effects of the challenged policy on the particular plaintiffs (Welner, 2010).
He also argues that the focus of any future litigation should be on the effects of supposedly facially neutral policies that actually create disparate impact on minority students (Welner, 2010). Welner asserts that, “…performance standards tied to [high academic standards] need a functional mechanism for improving educational outcomes. They provide rhetorical and punitive accountability but, in most states, little pedagogical assistance…” (Welner, 2010, p. 105). That functional mechanism must be culturally relevant evaluation.

This paper argues that in moving forward, Unit 4 must take a more lateral approach to policy development by incorporating the CRE framework into the very heart of the policy-making process. In short, CRE must become the lens through which policies are made and the tools it offers must be utilized in order to ensure maximum benefit to the district and most importantly, to children’s educational experiences. SenGupta, Hopson and Thompson-Robinson (2004) assert that cultural competence in evaluation rests on active awareness, understanding, and appreciation for the context at hand, and it uses responsive and inclusive means to conduct evaluation.

Culturally competent and culturally responsive evaluation is absolutely critical in the Unit 4 context when so many perspectives were at play in the development of school district policies. Understanding the underlying dimensions of culture leads to recognizing value differences, and sometimes value conflicts, that go beyond simple demographic differences and move into such dimensions as intergenerational, socioeconomic, and other group identity characteristics.
Culturally competent evaluation is the design of "appropriate programs, standards, interventions, and measures so that they are specific, relevant, and valid for each unique group. (Thompson-Robinson, Hopson, and SenGupta, 2004, p.1). More specifically, cultural competence is a systematic responsive inquiry that is actively cognizant, understanding and appreciative of the cultural context in which evaluation takes place: that frames and articulates the epistemology of the methodology; and that uses stakeholder-generated, interpretive means to arrive at the results. (Thompson-Robinson, Hopson and SenGupta, 2004, p. 13). The importance of culturally responsive evaluation is the collaborative model it encapsulates in which the evaluation takes place in collaboration with primary stakeholders.

Hopson (2005) states that an inherent part of the problem with the way that minority issues in evaluation are conceptualized and constructed has to do with the inevitable contestation of issues surrounding race, power, and hegemony in the social organization and structure of American institutions. In no place was this fact more clear than in Unit 4 in the lead-up to the consent decree and even as the process unfolded.

CRE requires a paradigmatic shift of thinking and action both on the part of evaluators and on the types of evaluations conducted. Within the context of the Unit 4 Consent Decree, CRE is critical to deeper and more accurate understandings of the conversations, debates and discussions that took place amongst and between the stakeholders involved in addressing the district’s equity issues.
This chapter seeks to juxtapose the merits of CRE with the ways in which programs mandated by the consent decree were implemented in Champaign. Essentially, the goal is not necessarily to use CRE in a functional context as far as conducting actual evaluations of the various educational and other programs that were put in place to remedy the district's equity issues. Instead, the goal is to explain why CRE is a necessary framework containing the best policy-making tools for policy implementations. Moreover, it will demonstrate how it the CRE framework could have been applied in the Unit 4 context at the former end of the consent decree and how summative data analysis conducted within this framework can help shed light on the true impact of the consent decree including what the district got right, what it got wrong, and what must be done moving forward to guarantee continued progress on education equity.

The hope also, is that other districts can take into account some of the principles explained in CRE and incorporate such principles as they begin to evaluate the merits of the policies and programs they implement in response to equity issues generally and consent decree mandates specifically. First this document will explain the development of CRE and second, why it is appropriate for the Unit 4 context.

The Need for CRE in Unit 4

Hopson and Hood (2005) write that the evaluation community’s recent attention to understanding culture, diversity, and social justice in education and the social sciences
suggests that either cultural context has been insufficiently addressed by most evaluation approaches or beneficial culturally appropriate approaches and explanations have been under-developed as they pertain to communities of color who remain on society’s periphery (p.87). They further assert that omitting the centrality and relevance of culture in the context of evaluation leaves open the distinct possibility that too many variables are not understood and in many cases misunderstood (p.87).

Indeed, many scholars within the field have called for a need to reexamine conventional evaluation epistemologies, theories, methods, and history concerning communities and persons of color (Gordon, Miller, and Rollock, 1990; Hopson and Hood, 2005). They argue that the perspectives of minorities and indigenous populations have been kept at the margins of discussions in education and social science research to the detriment of the quality of data generated in these fields. Not only have such contexts been underrepresented, but also in cases where they have been included in the discourse, it has been from a perspective of deficiencies. In other words, the research has not made use of the rich cultural and contextual nuances of the evaluand, but has instead focused on the bankruptcies or deficiencies of those groups, if those groups are addressed at all.

Nelson-Barber, LaFrance, Trumbull and Aburto (2005) argue that good practice among evaluators working in culturally diverse communities is a high priority for the evaluation field in the 21st century, especially given the nation’s expanding societal diversity. Failure to understand how cultural context interacts with program
implementation and impact jeopardizes the validity of the valuation. In the worst case, they argue, spurious conclusions may be drawn that unfairly affect access to resources (p.61).

Without a clear understanding of the important aspects of culture and context in an evaluation, the evaluator is likely to harbor limited and incomplete knowledge as to the “why” questions of the evaluation – such as why a program garnered a specific set of outcomes or impact. In Unit 4, many programs were implemented to address issues around discipline equity, the achievement gap, and enhanced family/school relations. However, in some instances, results were mixed with some proclaiming program success while others indicated either no change or no positive change as a result of the program’s implementation. Based on interview data, the latter sentiment was most often expressed by community members. Why was this so? It is to this “why” question on which the research hopes to focus.

Equally important is the question of how evaluations are taking place within Unit 4 and how frequently? What sorts of evaluations are being conducted? How is data generated? Administrators interviewed stipulated that evaluations do indeed take place but not necessarily CRE evaluation. Therefore there were large gaps in the results of evaluation and the perception by parents and community members about district policy implementation. Evaluations of policy that engaged more meaningfully with the groups being directly affected (children and parents) could have provided the data necessary to be able to make modifications to policies that were not generating beneficial results for the district. At the very least, it could have opened up the lines of communication between the
school and community more fully so as to avoid information gaps and the perception that the school district was creating policy with the sole objective of appeasing the Court, as opposed to truly engaging deeply with the community to ensure that its needs were addressed.

This document argues that evaluation is a critical component of moving beyond court intervention by virtue of the consent decree and must become an embedded part of district practice. Further, given the socio-cultural context of Unit 4 as situated in Champaign, CRE serves as the best fit in terms of principles and tools to most effective positive outcomes.

**Merits of Evaluation**

Evaluation practice in a setting like Unit 4 requires a set of skills, competencies, and values that are more likely to make use of these communities’ rich cultures, cultural contexts, and nuances (as opposed to documenting their bankruptcy and deficiencies (Millet, 2002; Stanfield, 2001). From an analysis of the data collected throughout the consent decree process an understanding of ways to frame the issues being faced in the school district is of critical import.

For this task, there are a dearth of new methodological and theoretical explanations and understandings that may yield from evaluation, and more specifically, Culturally/Contextually Responsive Evaluation (CRE). These explanations and
understandings are more fully appreciated against the backdrop of the landscape in which CRE emerged within academia and in practice. Proponents of CRE declare that for far too long, the broad, established evaluation community has ignored or been reluctant to engage in a meaningful scholarly dialogue about the roles of culture and context in evaluation (Hood, 2005).

This reluctance stands only to the detriment of the public and public good especially considering the changing demographics of the United States and a need to more fully understand the forces at work in so many evaluation contexts, from education to health.

Utilizing Deeper Understandings of Culture and Context

Understanding what is meant by “culture” and “contextually relevant” work is paramount if one is to understand the role of culture in the evaluation setting. Greene (2005) defines context as referring to the setting within which the program being evaluated, and thus the evaluation, are situated. She states that context is the site, location, environment, or milieu for a given program (Greene, 2005, p. 12). Moreover, context is not limited to one specific site, environment, milieu, etc. Many programs are implemented in multiple contexts, or multiple sites, which always differ in some important ways.

Greene also discusses the varying dimensions of context that are intertwined with the character and quality of a program. They are: 1) the descriptive and demographic character of a setting, in terms of numbers, characteristics, and diversity of people who
inhabit it; 2) the material and economic features of a setting in terms of the quantity and quality of its physical features (buildings, gathering spaces, resources like books and technology), along with other indicators of material wealth or scarcity; 3) the institutional and organizational climate in a setting, in terms of the character of the organization (agency, public institution, private business) that is administering or implementing the program – its norms, decision-making structures, climate features, and so forth; 4) the interpersonal dimensions in terms of the nature of interactions that take place and the norms that frame and guide relationships; 5) the political dynamics of a setting, particularly in terms of contested issues and interests, and in terms of power, influence, and privilege; and 6) the physical, geographic location of a setting, its place (Greene, 2005, p. 13).

Barnouw (1985) defines culture as the “way of life of a group of people, the complex of shared concepts and patterns of learned behavior that are handed down from one generation to the next through the means of language and imitation. Nieto (1999) describes culture as the ever-changing values, traditions, social and political relationships, and worldview created, shared, and transformed by a group of people bound together by a combination of factors that include a common history, geographic location, language, social class, and religion.

He further lists some characteristics of culture as: dynamic, multifaceted, embedded in context, influenced by social, economic, and political factors, created and socially constructed, learned, and dialectical (Nieto, 1999). Culture encompasses both majority and
minority perspectives and may be considered within the characteristics of the person, persons in interaction, program, organization or affiliate group, community, locality or tribe, society, or global position. Terms to use used to mark cultural identifications include race, ethnicity, language, gender, age disability, religion, sexual orientation, social class, geographic location, economy, living situation, and education.

Cultural competence is a set of academic and interpersonal skills that allow individuals to increase their understanding and appreciation of cultural differences and similarities within, among, and between groups. This requires a willingness and ability to draw on community-based values, traditions, and customs, and to work with knowledgeable persons of and from the community in developing focused interventions, communications and other supports (Orlandi, 1992).

All evaluation standards, guidelines or frameworks are imbued with both implicit and explicit cultural assumptions. Cultural competence involves identifying culturally imbedded assumptions, understanding one’s own cultural position, and doing evaluation that is culturally valid. Culturally competent evaluation can be broadly defined as a systematic, responsive inquiry that is actively cognizant, understanding, and appreciative of cultural context in which the evaluation takes place; that frames and articulates the epistemology of the evaluative endeavor; that employs culturally and contextually appropriate methodology; and that uses stakeholder-generated, interpretive means to arrive at the results and use of the findings (SenGupta, Hopson, & Thompson-Robinson, 2004).
Further, cultural competence is the ability to learn from, and relate respectfully to, people of one's own culture as well as from other cultures. Developing cultural competence is a complex process, often described as a journey, rather than a destination. At a basic level, cultural competence is an appreciation and recognition of other cultural groups and acceptance of the inherent differences that exist among them. At its highest level, cultural competence involves designing appropriate programs, standards, interventions, and measures so they are specific, relevant and useful.

Although culture can be broadly defined inclusive of race, ethnicity, gender, age, sexual orientation, social class, disability, language, and educational level or background, there are certain ways in which to explore cultural values by virtue of thinking in terms of cultural assumptions. Such assumptions are based on core values that are commonly held by members of the same culture and valid for each unique group. To work effectively with any ethnic group, educators and evaluators need to be aware of the values in their own culture, as well as sensitive to differences in other cultures (Stewart and Bennett, 1991).

The characteristics of CRE are critical to understanding the Unit 4 context for several reasons. The most paramount being that an incorporation of the principles of CRE could potentially have addressed many of the deep-seated relational issues that exist amongst the stakeholders in the district – school administrators, teachers, parents, community leaders, and children. Many interview respondents (particularly teachers within the district and community activists) indicated that a general lack of understanding inhibited more fruitful dialogues as to how best to address district equity issues.
Specifically, conversations on policy needs usually took a deficiency format in terms of viewing (African American) students and the black community in general in negative terms as far as how their needs could best be addressed instead of working to get to the root of why perceptions from the black community toward the school district were what they were. This inability to fully understand the culture, indubitably led to a disconnect in how policy implementations were received both with regard to academic adjustments and general district decisions.

For example, several community interview respondents discussed the outcry that occurred when a school in the district – Booker T. Washington elementary – was to be torn down to build a newer building. The stance from the district (according to administrators and documents acquired that discussed the new building) the move was to ensure higher quality facilities for students that resided in that North Champaign neighborhood. However, several community activists interviewed expressed dismay at the decision and felt it was a “slap in the face” to the community. Their rationale was that instead of tearing the building down, why not use it as an administrative center or a community center in the community? They noted that other elementary school buildings that were no longer used were eventually put to some other use, but not torn down.

How could the district have made a different decision on the building’s use given the sentiments of those in the community who wanted the historic building to remain intact? Conceivably, a culturally responsive approach to evaluating district policy could have gleaned that the Booker T. Washington school was not just a bricks and mortar structure.
Indeed, it held substantial sentimental value within the black community therefore policy decisions could have taken this into consideration. The question remains whether it would have changed the decision to tear down the school. If so, then the district would need to be prepared to face the backlash and could not be as surprised by the continued ambivalence of community members toward the school administration.

The interviews of parents, teachers, administrators and community activists demonstrated one strong fact – there must be a specific and deliberate approach with which to evaluate the merits of the policy implementations put in place in Unit 4 subsequent to the entrance into consent decree. Indeed, the lens through which interviews are framed became a critical part of the process of developing a culturally and contextually relevant evaluation of school district policies. The diversion of responses as to the impact of the consent decree, the aims and the outcomes shows that a comprehensive mechanism is necessary to measure those outcomes, but also to engage the stakeholders involved. For this reason, Culturally Responsive Evaluation must be the way forward for the district.

Culturally responsive evaluation as applied to the Unit 4 consent decree process does several things:

- takes into account the culture of the community and school district
- describes and explains the context of the programs implemented upon entering the consent decree
- considers the culture of participants as an important factor
rejects the notion that assessments as far as the impact of consent decree-mandated implementations must be “culture-free” to be unbiased (Frierson, Hood and Hughes, 2002).

It is important, for cultural context to be integrated into the evaluation process in a meaningful way for it to serve its purpose. There exists the danger for cultural understandings both to over generalize and/or to be superficial. Nelson-Barber, La France, Trumbull and Aburto (2005) use the example of overgeneralization in the context of educational evaluations. For instance, evaluators may unconsciously accept a pattern of poorer performance by nonwhite students as natural, rather than looking for reasons in the implementation of a program to explain such a pattern. This is an example of a phenomenon that arises when group membership alone is accepted as an explanation for a pattern of performance, which deeply distorts the truth.

This was strongly evidenced in the Unit 4 case. Several respondents indicated that the way in which African American students had been treated historically and into the present took for-granted an ability to learn and instead treated them from a deficiency standpoint. It treated academic achievement as naturally unattainable. The sentiments expressed in the Aber climate study also evidenced this perception on the part of black students.

In other circumstances, cultural understandings can be superficial meaning that one’s understanding of the cultural implications can be limited and those understandings do not take into account the vast differences that can manifest within groups of the same
ethnicity or race (i.e. the differences amongst African Americans’ perspectives and motives even within the Champaign community or the assumption that Hispanics are a homogenous group in terms of needs). A shallow understanding of cultural context can lead to minimization of the unique characteristics, experiences and backgrounds of different groups.

Therefore an understanding of the best ways to integrate mechanisms by which to better understand, appreciate and engage with cultural and contextually relevant data is critical to ensuring that evaluations of Unit 4 policies and programs are executed in a manner most beneficial to what Greene deems the evaluators role as “stewards of the public good”. Certainly, Greene asserts, evaluators are aware of the important service to society that evaluators fulfill. However, she determines that the point of contention arises when devising just how best to enact the shared commitment to societal improvement or social betterment, to social action or social change (Greene, 2005, p. 8).

Greene calls for the need to engage with difference. This point is most critical to Unit 4 circumstances. Not only did the district grapple with demographics that posed challenges to district cohesion, but present also were differences of experience, perception and notions of what was and still is necessary to move the district in the right direction. This engagement with difference manifests in where we position ourselves in our work, the kinds of relationships we force with others, and what we attend to (what matters) in those relationships. Indeed, a serious engagement with difference requires the rejection of old myths, stereotyped images, and racialized code words (Lee, 2003). Orellana and Bowman
(2003) state that engaging with difference also requires a rejection of race, ethnicity, culture, social class, and other markers of historical disadvantage as fixed or essentialized categories rather than as multifaceted, situated, dynamic, and socially constructed dimensions of experience and identity.

This point highlights a special role for teachers who engage with students and families directly. The results of the Aber’s climate study described in chapter 2 show that notions of race, ethnicity, culture, social class, and other markers of historical disadvantage can be destructive to the outcomes of educational experience, specifically because an internalization of such notions does little to encourage treating students as individuals with learning and developmental potential. These notions almost indubitably interfere with effective teaching and effective relationship building with students and their families – two characteristics critical for Unit 4 if they seek to repair and build upon a relationship with the community that is conducive to generating enhanced parent and community involvement in the schools and better learning outcomes for students. As Greene so eloquently articulated, “engagement with difference in evaluation is both a substantive and a moral commitment” (Greene, 2005, p. 9).

Implementing CRE Design Effectively in Unit 4

There is an implicit – and sometimes explicit – assumption that grounding theory in the understandings of local stakeholders is necessarily more genuine, more culturally valid
and less biased. But there is a danger here that often goes unaddressed. What happens to program theory when “common knowledge” is based on ignorance, misunderstanding, or lack of historical context of cultural standpoints? As evidenced by some of the interviews conducted throughout this study, there did exist some level of common knowledge that was not based on fact, but on misunderstanding or perceptions based on previous experience, which may or may not have been relevant to the present circumstances within the school district. Indeed, this was true for both plaintiffs and defendants in the case. How this is addressed leads to a second way in which culture shapes local theory, and that is through the development process itself.

Examining how culture affects the process of developing local theory shifts attention to the broader arenas of participation and group dynamics. There are two important considerations at this juncture: who in Unit 4 is invited or included in the conversations surrounding program theory, and how the interaction is orchestrated or managed. With regard to who is included in these interactions, one must consider personal characteristics, issues of stakeholder role and privilege and a need to include a diverse cross-section of providers (e.g. program designers, administrators, middle managers, and gatekeepers, and direct service providers).

To the second point with regard to the quality of interactions, the extents to which the interactions are structured, and by whom, are key parameters of the formal process. Mattie and Greene (1997) mark an important distinction between creating opportunities for meaningful engagement and treating diversity as “token representation”. Thus issues of
power and privilege become critical in the engagement process of an evaluation. In particular, more harm than good can occur if diversity in terms of who is included in those critical discussions is more a function of appearances than actual engagement. Such notions do little to mitigate the lack of trust that exists between a group that feels it has been marginalized and the perceived culprit.

Program theory provides a window for viewing the logic and assumptions that undergird programs designed to address education equity issues. What it reveals must be scrutinized to identify and challenge cultural bias. This demands an attitude of vigilance that is equally critical of social-science-based theory and local theory. Cultural bias may be present in either program theory content or the process of theory development. These are complex, difficult issues that merit the evaluation profession’s most thoughtful attention, as inattention leaves program theory vulnerable to bias and distortion, undermining cultural validity.

With regard to validity and culture, there is a need for an inclusive definition of validity to create a construct of sufficient breadth to scrutinize the many ramifications of culture and cultural bias. Also, there is a need to be critically reflective about the validity of validity itself and the ways in which it dispenses legitimacy and influence within the academy in general and the evaluation profession in particular.

Overall, cultural validity of evaluation can be strengthened by theory that approaches culture in a knowledgeable, thoughtful, and respectful way, yet no theory
ensures perfect understanding across cultural differences and none can be above scrutiny. Evaluators must continue to remain vigilant.

**CRE as Critical to Evaluation Design**

Hall and Hood (2005) discuss the role of CRE in effective evaluation design and assert that design has significant influence on evaluator vantage point in observing and interacting with the evaluand. They have determine that evaluation that fails to meet the test of multicultural validity as outlined by Kirkhart (2000) cannot offer utility in settings where culture is a salient feature (Hall & Hood, 2005, p. 52).

Design issues are central to validity, thus in circumstances where culture is more prominently factored into the evaluation process, the design must facilitate those features, especially if it is to be considered valid. Particularly in Unit 4, culture is certainly a salient feature. This fact is compounded by the notion that culture involves both internal and external factors that play into a child’s or family’s overall experience within the school district. Thus school culture is one aspect, but so is community culture. These factors can be difficult to grapple with especially in situations where evaluators are dealing with decades of embedded notions of the relationship between the family and school district.

Hall and Hood (2005) also discuss design for persuasiveness and particularly the way this can be done from the CRE standpoint. This is particularly true given the role of design in methodology and the ways in which methodology can enhance or diminish
certain factors of the evaluation, such as the cultural salience that could and should be embedded in the design process. Cultural persuasiveness demands that evaluators avoid structurally biased methodology and select options that enhance cultural validity (Hall & Hood, 2005, p. 53). This framework allows for effective identification of the various groups involved in the evaluation, development of an enlightened strategy for addressing the needs/expectations of each group based on knowledge of the group, and selection of evaluation design and methodology that supports these goals.

An important factor to effective design is the chronology of the evaluation in terms of the stage at which the design is selected. It may, in fact, be more effective, particularly when considering CRE, to select the design after fully defining the audience to be engaged. This allows flexibility for the evaluation to be conducted in a more organic manner. In other words, the evaluation would take place within a context that is more relevant to the evaluand, thus more effective in terms of results and recommendations for audiences involved.

It must be clarified that the aforementioned recommendations with regard to constructing evaluation design apply in all contexts where differing values are present. For example, evaluations can take place in circumstances where race is homogenous but there exist other factors besides race that cause divisions or differences within the audience (such as in Champaign). Even in these contexts, utilizing a design that, by its very nature, privileges one set of values over another, or excludes voices critical to the discourse, can be, at best, ineffective, and at worst, damaging to the evaluand. Indeed, Hall and Hood (2005)
assert that when stakeholder understanding of the evaluand is not aligned with the values privileged by methodology, evaluation will be a frustrating and perhaps futile exercise (p. 53). For Unit 4, the ramifications of this would be far-reaching as the tenuous relationship between family, community and school district would be at stake.

Thus in design, flexibility becomes perhaps the most significant feature of the evaluation. If multiple stakeholders are involved in the evaluation process, this means that these same groups must be persuaded by the evaluation results. Thus there must be a mechanism by which data definitions, data collection strategies, and participation can be adjusted so as to balance the needs present in different groups. Hall and Hood (2005) state that evaluation approaches that provide options for customization and midcourse correction carry the potential for fully meeting the needs of a multicultural evaluand (p. 54).

In a school district where the demographics are shifting – i.e. the population of Latino students has increased exponentially in recent years and has shown no signs of decline and the socioeconomic background of the district’s African American population continues to shift – the ability to adjust midcourse is the only way to ensure that the needs of the student/family population are being met despite the racial make-up of the school district.

Framing the evaluand is also a critical part of constructing an evaluation design that is culturally and contextually responsive. It is effective to identify the audiences and stakeholders early in the process and then confirm the boundaries of the evaluand as
including a compilation of their collective sense of what it is. In this way the evaluation evolves somewhat slowly and in stages, with an opportunity to identify and respond to the information needs of various constituents in accordance with evaluation purposes. With the expiration of the consent decree, any evaluations of policy implementations must be regarded with an eye toward the long-term. In other words, the goal should be viewing CRE as a natural part of the function of the school district as they continuously address equity issues.

**Conclusion: CRE as a tool for the Courts**

CRE plays a critical role particularly at the end of the evaluation process. Once key groups have been identified and the design constructed to the highest relevancy of the evaluand (stakeholders and audiences involved) the persuasiveness of the results can be further guaranteed. Persuasive communication relates directly to considerations of cultural competency and the relevance of culture to the evaluation enterprise.

Culturally responsive evaluators in Unit 4 would attempt to provide a vicarious experience for report consumers and would be engaged in an act designed to influence the understanding and valuing of the policy implementations enacted post-consent decree. This is critical as they will serve as key resources for any judicial proceedings that may take place in the future. Because of the court’s increasing reliance on social science research to determine acceptable education equity policies, it is even more critical for researchers to
embed CRE throughout the process of policy creation. For responsive evaluators, the goal is to establish this important connection to the audiences and stakeholders by which their work is viewed as credible, powerful, and a contribution to subsequent valuing and decision-making.

Overall, CRE in the Unit 4 context would require an engagement with the very roots of evaluation as a tool for the “public good” (Greene, 2005). CRE would be ideal because it will allow evaluators to more carefully tailor any program implementations to the areas that have been identified by stakeholders as in need of being addressed. The way “problems” and issues are framed, the questions asked and who is involved at the table are all aspects of evaluation that must be adjusted when embedding the CRE framework in evaluations of school district policies.

Moreover, CRE allows for deeper, more nuanced understandings of the issues uncovered in an evaluation. It means that the picture is not only more complete, but also more accurate and ensures that the voices of those who have systematically and historically been included are now engaged on a substantial and meaningful level. For these reasons, the CRE methodology is utilized in evaluating the Champaign Unit 4 consent decree process and its impact within the district and the community.

Persuasiveness of the results is critical if such data is to be utilized in any future litigation within the school district. Superfine (2010) argues that the courts are playing an increasingly decentralized role in the manner of education equity litigation and are, in fact, serving more so facilitators in terms of bringing the necessary parties together to craft
equity-related policy. This shift is due in part to what he calls the frustration courts have had in mandating policy and the trend of more narrow and nuanced points of both remedy creation and challenges.

In a decentralized milieu, the Courts will need to interface more closely with social science researchers to obtain the sorts of data necessary to really identify the challenges facing schools. This means that evaluators can and should play a key role in educating not only school district stakeholders, but also the courts on the CRE framework and its applicability to the school context in terms of being able to create the sorts of equity policies that can restore faith in the school district and generate higher educational outcomes and experiences for students.
Chapter 10

Where Do We Go From Here? Education Equity Litigation Legal Analysis for a Post-Parents Involved Context

The Supreme Court’s decision in Parents Involved characterizes the problems in both school districts as problems of separation of children based solely upon race and iterates that this legal separation based on race was the crux of the Brown decision. The holding further relies on the remedial opinion that Brown was intended to prevent states from “according differential treatment to American children on the basis of their color or race,” and that therefore, school districts were required to achieve a system of determining admission to public schools on a non-racial basis (Brown, 1954, p. 2761). However, the ruling complicates the intent and goals of consent decrees that seek to remediate past racial discrimination.

In the case of Champaign, the district uses a race conscious “Controlled Choice” plan to racially balance schools. While race is not the only factor (the District’s Family Information Center which oversees school assignment, looks at other factors such as sibling school assignment and distance), it is still used to ensure that no single school exceeds the racial fairness guidelines. However, Champaign also grappled with serious deep underlying social issues stemming from past segregation and discrimination. These issues manifest in inequities that are eventually addressed through the formation of the consent decree.
The Court’s decision in Seattle and Louisville has deep implications for school districts across the United States currently operating under consent decrees – particularly consent decrees that deal with education equity, and racial balance. The enrollment plans under challenge in Louisville and Seattle are similar in that they are both attempts to address de facto segregation tied in part to housing patterns. The voluntary desegregation programs are aimed at preventing the school districts from sliding into a starkly segregated environment with minority students isolated in inner-city schools and white students isolated in suburban schools.

Undoubtedly, there exists a tension between the Supreme Court’s notion of diversity and declaration that diversity serves a compelling interest, and the remedial goals of school districts seeking both to redress past harms as a result of either indifference or outright collusion with segregation practices, and eliminate any current vestiges of past discrimination as evidenced in the Seattle and Louisville case. If the goal is diversity, then arguably, the implementation of “race-neutral” practices can garner some results that move toward that end. But it is exceedingly difficult to discuss diversity without taking into account the historical context that prevented diversity to begin with. However, if the goal is to remediate past wrongs as a result of de facto and/or de jure segregation and discrimination, it is difficult to construct remedies without the consideration of race, particularly because race played a central role in the construction and carrying-out of the original wrongs committed in school districts grappling with segregation issues. This tension will surely become even more pronounced as school districts such as Unit 4,
following the Seattle and Louisville decisions, grapple with mechanisms to decrease segregation, promote equity and remain within the purview of the Constitution.

In addition to the technical implications of the Court’s ruling, *Parents Involved* represents a clear shift in the role courts will play in future education equity litigation. Instead of mandating huge shifts in policy or giving specific directives for school districts to implement, the courts are serving more as facilitators in a more decentralized structure. As such, they are and will continue to rely more heavily on social science research and the strategic integration of key stakeholders to create the sorts of policies that can truly address school district inequities and also provide better educational experiences and outcomes particularly for marginalized students.

For education equity measures to actually garner successful results, it is absolutely critical that parents, teachers and administrators both recognize the issues facing the schools, and also actively work toward the successful implementation of measures designed to address those issues. Certainly, these objectives can be achieved utilizing CRE. It must be understood that despite the sometimes-vast differences in experiences and perceptions across the district, the judicial intervention requires that all parties make a good faith effort to work toward some comprehensive solutions that will help alleviate some of the vestiges of past discrimination and/or address the inadequacies of current district policies. Without the efforts of parents, teachers and administrators, new policies are more difficult to implement.
This is why CRE utilization is critical and why school districts must not hedge their bets on court intervention as the panacea to equity issues. In addition to the fact that court decision trends may not always favor plaintiffs filing suit against the school district, resistance to court-ordered mandates or simply a culture of resistance to change may inhibit progress toward equity goals. Unit 4 is on track with the formation of the Education Equity Excellence Committee. Under the consent decree mandate, the Unit 4 formed an Education Equity Excellence committee. Specifically, the language of the requirement states that:

The Board shall adopt and implement an equity policy establishing an Education Equity Excellence Committee (“EEE”). The EEE shall be comprised of District staff and a diverse cross section of the community and facilitated by a third party familiar with community and District issues for at least one year. The purpose of EEE is to review and discuss the following equity areas, including data disaggregated by race/ethnicity and SES: academic progress of regular education, special education, gifted, AP/Honors, Academic Academy and alternative students; attendance rates; discipline rates and graduation rates. The EEE shall establish task forces on the equity areas as deemed necessary. The Superintendent shall provide a public report each semester on these equity areas to the EEE.

The committee was comprised of District representatives, Union representatives and a cross-section of the community that reflects the District’s student enrollment. The committee mandated that it include: one member of the Board of Education and an
alternate, the Superintendent and two other central office administrators, one principal and an alternate, a CFT representative with an alternate named by CFT, and at least 5 (no more than 10) members of the community. Community members could include parents of current District students, representatives of community organizations that address equity or education issues, or individuals who would assist the district in achieving the committee’s purposes. The major requirement was that members of the committee have their primary residence within the School District.

A committee such as the EEE and other measures that seek to meaningfully engage key stakeholders through dialogue and understanding can help to ensure that the values of CRE are embedded deeply in the process of devising district policy moving forward. Indeed, this can help to alleviate the trepidation of looking beyond the consent decree to a school district that must be trusted to make good faith efforts to address equity issues even without the mandate of the courts.
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Appendix A
Aber Unit 4 Climate Study Report

CHAMPAIGN COMMUNITY UNIT SCHOOL DISTRICT 4 - SCHOOL CLIMATE STUDY

A Report of Primary Findings of the School Climate Study for
Champaign Community Unit School District 4

Prepared by Mark S. Aber, Ph.D. and the
University of Illinois School Climate Research Team.
http://www.psych.uiuc.edu/climate
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Executive Summary

Overall, with a few notable exceptions, school staff and parents perceive the climate of Champaign schools in very similar and positive terms. Middle and high school student perceptions are generally slightly less positive than those of parents and staff. Their perceptions are typically neutral to negative. Elementary students tend to see the climate more positively than middle and high school students.

Because there are more Whites than African Americans in each sample, the average results for each sample (when race is ignored) tend to look like those of the Whites. However, there are significant differences across race on most perceptions. This is true for staff, parents, middle and high school students. When results are examined separately for Whites and African Americans, significant differences emerge. African Americans see many aspects of the social climate in dramatically more negative terms than do Whites.

The largest and most pervasive racial differences occurred among school staff. This reflects the fact that African American staff tended to see the climate the most negatively of all groups and White staff tended to see it most positively. On 18 of the 19 the climate dimensions measured (95%), African American staff perceived the climate more negatively than their White peers. This was true for each subsample of staff, including teachers, administrators and other staff. Middle school students had the next largest proportion of climate dimensions with differences across race. On 8 of 12 of the climate dimensions measured (75%), African American middle schoolers perceived the climate more negatively than their White peers. Fewer, yet numerous, differences were found for parents (on 10 of 19, 53%, of dimensions) and high school students (on 6 of 12, or 50% of dimensions).

Across all samples, the largest and most consistent differences in perceptions appeared on six climate dimensions: General Fairness, Disciplinary Fairness, Academic Fairness, Cultural Understanding, Qualities of Desegregated Champaign Schools, and Need for Change. Racial differences were found on each of these dimensions in every sample. African American respondents were, depending on sample, between 2 and 23 times more likely than their White counterparts to believe the schools are unfair, between 2 and 4 times more likely to disagree that teaching styles are personally and culturally relevant, between 3 and 9 times more likely to perceive a need for change in their school to address racial inequities, and between 7 and 11 times more likely to rate as very important various issues found in previous research to foster positive school climate for African American students in desegregated schools, such as hiring African American teachers and administrators in similar proportions to those of African American students in Unit 4 schools.

Parallel differences exist across socio-economic class, with parents and students from lower income families consistently tending to perceive the climate more negatively than those from middle and upper income families. However, statistical analyses demonstrate that racial
CHAMPAIGN COMMUNITY UNIT SCHOOL DISTRICT 4 - SCHOOL CLIMATE STUDY

differences in perceptions cannot be explained by social class (nor by students’ academic or
disciplinary status). Racial differences persist even when analyses controlled for income level
and students’ academic and disciplinary status.

The findings from this study reveal both positive and negative aspects of the perceived social
climate of Unit 4 schools.

On the positive side

• The majority of all parents, staff, and students in the district see the school climate in
largely positive terms.

• Neither adults nor students perceive widespread overt or malicious interpersonal racism.

• There is a widespread desire to be fair and to “do right” by all children and families in the
district; nearly 1000 staff, parents and students indicated an interest in working to end
inequities in Unit 4 schools.

On the other hand, numerous findings indicate reason for serious concern.

• African American staff, parents, and students perceive the climate in markedly more
negative terms than do Whites — often in very negative terms. These findings indicate
perceived lack of fairness and cultural understanding that are not, typically, the result of
malicious or intentional racism on the part of individual people, but rather are
institutionalized in the educational practices and policies of the schools.

• There is evidence that large proportions of those with the most power in the district,
White staff and parents, do not perceive a need for change.

• There is evidence of considerable resistance to change.

Building on the sources of support for change and recognizing the nature of the resistance
to change, the following recommendations are designed to address the climate concerns
identified in this study. Certainly, this is not an exhaustive list of actions that could be taken to
improve the perceived social climate of Champaign schools. But progress toward these goals is
both feasible and likely to have significant impact on the perceived social climate of Unit 4
schools.
CHAMPAIGN COMMUNITY UNIT SCHOOL DISTRICT 4 - SCHOOL CLIMATE STUDY

Recommendations

• Increase cultural competence of teaching staff. Efforts to do so must go beyond the teaching of cultural sensitivity to educating about issues of White privilege. These efforts must also go beyond a focus on interpersonal understanding of racism to educating about issues of institutional racism, history and power.

• Create forums both in the schools and in the community to discuss the climate study results and make recommendations to address issues raised by them. Although this study focused on African Americans, this discussion should take into account the full range of racial and ethnic diversity in the district, especially because the proportion of people of color in the district is growing rapidly.

• Hire more African American regular classroom teachers.

• Develop incentives to reward teachers who teach students of diverse backgrounds well.

• Develop incentives for teachers to learn from colleagues who demonstrate success teaching students of diverse backgrounds well.

• Reduce and eventually eliminate all “ability based” tracking.

• Establish goals and strategies to reduce the overall number of disciplinary and special education referrals.

• Implement in-school programs to educate students about issues of race, culture and ethnicity.
Appendix B

Parents Involved v. Community Schools Brief

(Slip Opinion)

OCTOBER TERM, 2006  1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is
being done in connection with this case, at the time the opinion is issued.
The syllabus constitutes no part of the opinion of the Court but has been
prepared by the Reporter of Decisions for the convenience of the reader.

SUPREME COURT OF THE UNITED STATES

Syllabus

PARENTS INVOLVED IN COMMUNITY SCHOOLS V.
SEATTLE SCHOOL DISTRICT NO. 1 ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 05–908. Argued December 4, 2006—Decided June 28, 2007*

Respondent school districts voluntarily adopted student assignment
plans that rely on race to determine which schools certain children
may attend. The Seattle district, which has never operated legally
segregated schools or been subject to court-ordered desegregation,
classified children as white or nonwhite, and used the racial classifi-
cations as a “tiebreaker” to allocate slots in particular high schools.
The Jefferson County, Ky., district was subject to a desegregation de-
gree until 2000, when the District Court dissolved the decree after
finding that the district had eliminated the vestiges of prior segrega-
tion to the greatest extent practicable. In 2001, the district adopted
its plan classifying students as black or “other” in order to make cer-
tain elementary school assignments and to rule on transfer requests.

Petitioners, an organization of Seattle parents (Parents Involved) and
the mother of a Jefferson County student (Joshua), whose chil-
dren were or could be assigned under the foregoing plans, filed these
suits contending, inter alia, that allocating children to different pub-
lic schools based solely on their race violates the Fourteenth Amend-
ment’s equal protection guarantee. In the Seattle case, the District
Court granted the school district summary judgment, finding, inter
alia, that its plan survived strict scrutiny on the federal constitu-
tional claim because it was narrowly tailored to serve a compelling
government interest. The Ninth Circuit affirmed. In the Jefferson
County case, the District Court found that the school district had as-

*Together with No. 05–915, Meredith, Custodial Parent and Next
Friend of McDonald v. Jefferson County Bd. of Ed et al., on certiorari to
the United States Court of Appeals for the Sixth Circuit.

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asserted a compelling interest in maintaining racially diverse schools, and that its plan was, in all relevant respects, narrowly tailored to serve that interest. The Sixth Circuit affirmed.

Held: The judgments are reversed, and the cases are remanded.

No. 05–908. 426 F. 3d 1162; No. 05–915, 416 F. 3d 513, reversed and remanded.

THE CHIEF JUSTICE delivered the opinion of the Court with respect to Parts I, II, III–A, and III–C, concluding:

1. The Court has jurisdiction in these cases. Seattle argues that Parents Involved lacks standing because its current members' claimed injuries are not imminent and are too speculative in that, even if the district maintains its current plan and reinstates the racial tiebreaker, those members will only be affected if their children seek to enroll in a high school that is oversubscribed and integration positive. This argument is unavailing; the group's members have children in all levels of the district's schools, and the complaint sought declaratory and injunctive relief on behalf of members whose elementary and middle school children may be denied admission to the high schools of their choice in the future. The fact that those children may not be denied such admission based on their race because of undersubscription or oversubscription that benefits them does not eliminate the injury claimed. The group also asserted an interest in not being forced to compete in a race-based system that might prejudice its members' children, an actionable form of injury under the Equal Protection Clause, see, e.g., Adarand Constructors, Inc. v. Peña, 515 U. S. 200, 211. The fact that Seattle has ceased using the racial tiebreaker pending the outcome here is not dispositive, since the district vigorously defends its program's constitutionality, and nowhere suggests that it will not resume using race to assign students if it prevails. See Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U. S. 167, 189. Similarly, the fact that Joshua has been granted a transfer does not eliminate the Court's jurisdiction; Jefferson County's racial guidelines apply at all grade levels and he may again be subject to race-based assignment in middle school. Pp. 9–11.

2. The school districts have not carried their heavy burden of showing that the interest they seek to achieve justifies the extreme means they have chosen—discriminating among individual students based on race by relying upon racial classifications in making school assignments. Pp. 11–17, 25–28.

(a) Because "racial classifications are simply too pernicious to permit any but the most exact connection between justification and classification," Fullilove v. Klutznick, 448 U. S. 448, 537 (STEVENS, J., dissenting), governmental distributions of burdens or benefits based
on individual racial classifications are reviewed under strict scrutiny, e.g., *Johnson v. California*, 543 U.S. 499, 505–506. Thus, the school districts must demonstrate that their use of such classifications is “narrowly tailored” to achieve a “compelling” government interest. *Adarand*, supra, at 227.

Although remedying the effects of past intentional discrimination is a compelling interest under the strict scrutiny test, see *Freeman v. Pitts*, 503 U.S. 467, 494, that interest is not involved here because the Seattle schools were never segregated by law nor subject to court-ordered desegregation, and the desegregation decree to which the Jefferson County schools were previously subject has been dissolved. Moreover, these cases are not governed by *Grutter v. Bollinger*, 539 U.S. 306, 328, in which the Court held that, for strict scrutiny purposes, a government interest in student body diversity “in the context of higher education” is compelling. That interest was not focused on race alone but encompassed “all factors that may contribute to student body diversity;” id., at 337, including, e.g., having “overcome personal adversity and family hardship;” id., at 338. Quoting Justice Powell’s articulation of diversity in *Regents of the University of California v. Bakke*, 438 U.S. 265, 314–315, the *Grutter* Court noted that “it is not an interest in simple ethnic diversity, in which a specified percentage of the student body is in effect guaranteed to be members of selected ethnic groups,” that can justify the use of race, 539 U.S., at 324–325, but “a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element.” *id.*, at 325. In the present cases, by contrast, race is not considered as part of a broader effort to achieve “exposure to widely diverse people, cultures, ideas, and viewpoints;” id., at 330; race, for some students, is determinative standing alone. The districts argue that other factors, such as student preferences, affect assignment decisions under their plans, but under each plan when race comes into play, it is decisive by itself. It is not simply one factor weighed with others in reaching a decision, as in *Grutter*; it is the factor. See *Gratz v. Bollinger*, 539 U.S. 244, 275. Even as to race, the plans here employ only a limited notion of diversity, viewing race exclusively in white/nonwhite terms in Seattle and black/“other” terms in Jefferson County. The *Grutter* Court expressly limited its holding—defining a specific type of broad-based diversity and noting the unique context of higher education—but these limitations were largely disregarded by the lower courts in extending *Grutter* to the sort of classifications at issue here. Pp. 11–17.

(b) Despite the districts’ assertion that they employed individual racial classifications in a way necessary to achieve their stated ends, the minimal effect these classifications have on student assignments
suggests that other means would be effective. Seattle's racial tiebreaker results, in the end, only in shifting a small number of students between schools. Similarly, Jefferson County admits that its use of racial classifications has had a minimal effect, and claims only that its guidelines provide a firm definition of the goal of racially integrated schools, thereby providing administrators with authority to collaborate with principals and staff to maintain schools within the desired range. Classifying and assigning schoolchildren according to a binary conception of race is an extreme approach in light of this Court's precedents and the Nation's history of using race in public schools, and requires more than such an amorphous end to justify it. In Grutter, in contrast, the consideration of race was viewed as indispensable in more than tripling minority representation at the law school there at issue. See 539 U. S., at 320. While the Court does not suggest that greater use of race would be preferable, the minimal impact of the districts' racial classifications on school enrollment casts doubt on the necessity of using such classifications. The districts have also failed to show they considered methods other than explicit racial classifications to achieve their stated goals. Narrow tailoring requires "serious, good faith consideration of workable race-neutral alternatives," id., at 339, and yet in Seattle several alternative assignment plans—many of which would not have used explicit racial classifications—were rejected with little or no consideration. Jefferson County has failed to present any evidence that it considered alternatives, even though the district already claims that its goals are achieved primarily through means other than the racial classifications. Pp. 25–28.

The Chief Justice, joined by Justice Scalia, Justice Thomas, and Justice Alito, concluded for additional reasons in Parts III–II and IV that the plans at issue are unconstitutional under this Court's precedents. Pp. 17–25, 28–41.

1. The Court need not resolve the parties' dispute over whether racial diversity in schools has a marked impact on test scores and other objective yardsticks or achieves intangible socialization benefits because it is clear that the racial classifications at issue are not narrowly tailored to the asserted goal. In design and operation, the plans are directed only to racial balance, an objective this Court has repeatedly condemned as illegitimate. They are tied to each district's specific racial demographics, rather than to any pedagogic concept of the level of diversity needed to obtain the asserted educational benefits. Whatever those demographics happen to be drives the required "diversity" number in each district. The districts offer no evidence that the level of racial diversity necessary to achieve the asserted educational benefits happens to coincide with the racial demograph—
ics of the respective districts, or rather the districts’ white/nonwhite or black/“other” balance, since that is the only diversity addressed by the plans. In Grutter, the number of minority students the school sought to admit was an undefined “meaningful number” necessary to achieve a genuinely diverse student body, 539 U. S., at 316, 335–336, and the Court concluded that the law school did not count back from its applicant pool to arrive at that number, id., at 333–336. Here, in contrast, the schools worked backward to achieve a particular type of racial balance, rather than working forward from some demonstration of the level of diversity that provides the purported benefits. This is a fatal flaw under the Court’s existing precedent. See, e.g., Freeman, supra, at 494. Accepting racial balancing as a compelling state interest would justify imposing racial proportionality throughout American society, contrary to the Court’s repeated admonitions that this is unconstitutional. While the school districts use various verbal formulations to describe the interest they seek to promote—racial diversity, avoidance of racial isolation, racial integration—they offer no definition suggesting that their interest differs from racial balancing. Pp. 17–25.

2. If the need for the racial classifications embraced by the school districts is unclear, even on the districts’ own terms, the costs are undeniable. Government action dividing people by race is inherently suspect because such classifications promote “notions of racial inferiority and lead to a politics of racial hostility,” Croson, supra, at 495, “reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin,” Shaw v. Reno, 509 U. S. 630, 657, and “endorse race-based reasoning and the conception of a Nation divided into racial blocs, thus contributing to an escalation of racial hostility and conflict,” Metro Broadcasting, Inc. v. FCC, 497 U. S. 547, 603 (O’Connor, J., dissenting). When it comes to using race to assign children to schools, history will be heard. In Brown v. Board of Education, 347 U. S. 483, the Court held that segregation deprived black children of equal educational opportunities regardless of whether school facilities and other tangible factors were equal, because the classification and separation themselves denoted inferiority. Id., at 493–494. It was not the inequality of the facilities but the fact of legally separating children based on race on which the Court relied to find a constitutional violation in that case. Id., at 494. The districts here invoke the ultimate goal of those who filed Brown and subsequent cases to support their argument, but the argument of the plaintiff in Brown was that the Equal Protection Clause “prevents states from according differential treatment to American children on the basis of their color or race,” and that view prevailed—this Court ruled in its remedial opinion that Brown required school dis-

Justice Kennedy agreed that the Court has jurisdiction to decide these cases and that respondents’ student assignment plans are not narrowly tailored to achieve the compelling goal of diversity properly defined, but concluded that some parts of the plurality opinion imply an unyielding insistence that race cannot be a factor in instances when it may be taken into account. Pp. 1–9.

(a) As part of its burden of proving that racial classifications are narrowly tailored to further compelling interests, the government must establish, in detail, how decisions based on an individual student’s race are made in a challenged program. The Jefferson County Board of Education fails to meet this threshold mandate when it concedes it denied Joshua’s requested kindergarten transfer on the basis of his race under its guidelines, yet also maintains that the guidelines do not apply to kindergartners. This discrepancy is not some simple and straightforward error that touches only upon the peripheries of the district’s use of individual racial classifications. As becomes clearer when the district’s plan is further considered, Jefferson County has explained how and when it employs these classifications only in terms so broad and imprecise that they cannot withstand strict scrutiny. In its briefing it fails to make clear—even in the limited respects implicated by Joshua’s initial assignment and transfer denial—whether in fact it relies on racial classifications in a manner narrowly tailored to the interest in question, rather than in the far-reaching, inconsistent, and ad hoc manner that a less forgiving reading of the record would suggest. When a court subjects governmental action to strict scrutiny, it cannot construe ambiguities in favor of the government. In the Seattle case, the school district has gone further in describing the methods and criteria used to determine assignment decisions based on individual racial classifications, but it has nevertheless failed to explain why, in a district composed of a diversity of races, with only a minority of the students classified as “white,” it has employed the crude racial categories of “white” and “non-white” as the basis for its assignment decisions. Far from being narrowly tailored, this system threatens to defeat its own ends, and the district has provided no convincing explanation for its design. Pp. 2–6.

(b) The plurality opinion is too dismissive of government’s legitimate interest in ensuring that all people have equal opportunity regardless of their race. In administering public schools, it is permissible to consider the schools’ racial makeup and adopt general policies to encourage a diverse student body, one aspect of which is its racial composition. Cf. Grutter v. Bollinger, 539 U. S. 306. School authori-

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Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued.

The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

PARENTS INVOLVED IN COMMUNITY SCHOOLS v. SEATTLE SCHOOL DISTRICT NO. 1 ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 05–908. Argued December 4, 2006—Decided June 28, 2007*

Respondent school districts voluntarily adopted student assignment plans that rely on race to determine which schools certain children may attend. The Seattle district, which has never operated legally segregated schools or been subject to court-ordered desegregation, classified children as white or nonwhite, and used the racial classifications as a “tiebreaker” to allocate slots in particular high schools. The Jefferson County, Ky., district was subject to a desegregation decree until 2000, when the District Court dissolved the decree after finding that the district had eliminated the vestiges of prior segregation to the greatest extent practicable. In 2001, the district adopted its plan classifying students as black or “other” in order to make certain elementary school assignments and to rule on transfer requests.

Petitioners, an organization of Seattle parents (Parents Involved) and the mother of a Jefferson County student (Joshua), whose children were or could be assigned under the foregoing plans, filed these suits contending, inter alia, that allocating children to different public schools based solely on their race violates the Fourteenth Amendment’s equal protection guarantee. In the Seattle case, the District Court granted the school district summary judgment, finding, inter alia, that its plan survived strict scrutiny on the federal constitutional claim because it was narrowly tailored to serve a compelling government interest. The Ninth Circuit affirmed. In the Jefferson County case, the District Court found that the school district had as—

*Together with No. 05–915, Meredith, Custodial Parent and Next Friend of McDonald v. Jefferson County Bd. of Ed et al., on certiorari to the United States Court of Appeals for the Sixth Circuit.
Cite as: 551 U. S. ____ (2007)

Opinion of Roberts, C. J.

NOTICE. This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washing-
ton, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 05–908 and 05–915

PARENTS INVOLVED IN COMMUNITY SCHOOLS, PETITIONER
05–908
v.
SEATTLE SCHOOL DISTRICT NO. 1 ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CRYSTAL D. MEREDITH, CUSTODIAL PARENT AND NEXT FRIEND OF JOSHUA RYAN MCDONALD, PETITIONER 05–915
v.
JEFFERSON COUNTY BOARD OF EDUCATION ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[June 28, 2007]

Chief Justice Roberts announced the judgment of the Court, and delivered the opinion of the Court with respect to Parts I, II, III–A, and III–C, and an opinion with respect to Parts III–B and IV, in which Justices Scalia, Thomas, and Alito join.

The school districts in these cases voluntarily adopted student assignment plans that rely upon race to determine which public schools certain children may attend. The Seattle school district classifies children as white or nonwhite; the Jefferson County school district as black or “other.” In Seattle, this racial classification is used to
graders to choose from among any of the district’s high schools, ranking however many schools they wish in order of preference.

Some schools are more popular than others. If too many students list the same school as their first choice, the district employs a series of “tiebreakers” to determine who will fill the open slots at the oversubscribed school. The first tiebreaker selects for admission students who have a sibling currently enrolled in the chosen school. The next tiebreaker depends upon the racial composition of the particular school and the race of the individual student. In the district’s public schools approximately 41 percent of enrolled students are white; the remaining 59 percent, comprising all other racial groups, are classified by Seattle for assignment purposes as nonwhite. Id., at 38a, 103a.2 If an oversubscribed school is not within 10 percentage points of the district’s overall white/nonwhite racial balance, it is what the district calls “integration positive,” and the district employs a tiebreaker that selects for assignment students whose race “will serve to bring the school into balance.” Id., at 38a. See Parents Involved VII, 426 F. 3d 1162, 1169–1170 (CA9 2005) (en banc).3 If it is still necessary to select students for the school after using the racial tiebreaker, the next tiebreaker is the geographic proximity of the school to the student’s residence. App. in No. 05–908, at 38a.

Seattle has never operated segregated schools—legally year in evaluating the plan. See 426 F. 3d 1162, 1169–1171 (CA9 2005) (en banc) (Parents Involved VII).

2The racial breakdown of this nonwhite group is approximately 23.8 percent Asian-American, 23.1 percent African-American, 10.3 percent Latino, and 2.8 percent Native-American. See 377 F. 3d 949, 1005–1006 (CA9 2004) (Parents Involved VI) (Graber, J., dissenting).

3For the 2001–2002 school year, the deviation permitted from the desired racial composition was increased from 10 to 15 percent. App. in No. 05–908, p. 38a. The bulk of the data in the record was collected using the 10 percent band, see n. 1, supra.
separate schools for students of different races—nor has it ever been subject to court-ordered desegregation. It none-
theless employs the racial tiebreaker in an attempt to address the effects of racially identifiable housing patterns on school assignments. Most white students live in the northern part of Seattle, most students of other racial backgrounds in the southern part. *Parents Involved* VII, *supra*, at 1166. Four of Seattle’s high schools are located in the north—Ballard, Nathan Hale, Ingraham, and Roos-
evelt—and five in the south—Rainier Beach, Cleveland, West Seattle, Chief Sealth, and Franklin. One school—Garfield—is more or less in the center of Seattle. App. in No. 05–908, at 38a–39a, 45a.

For the 2000–2001 school year, five of these schools were oversubscribed—Ballard, Nathan Hale, Roosevelt, Garfield, and Franklin—so much so that 82 percent of incoming ninth graders ranked one of these schools as their first choice. *Id.*, at 38a. Three of the oversubscribed schools were “integration positive” because the school’s white enrollment the previous school year was greater than 51 percent—Ballard, Nathan Hale, and Roosevelt. Thus, more nonwhite students (107, 27, and 82, respectively) who selected one of these three schools as a top choice received placement at the school than would have been the case had race not been considered, and proximity been the next tiebreaker. *Id.*, at 39a–40a. Franklin was “integration positive” because its nonwhite enrollment the previous school year was greater than 69 percent; 89 more white students were assigned to Franklin by operation of the racial tiebreaker in the 2000–2001 school year than otherwise would have been. *Ibid.* Garfield was the only oversubscribed school whose composition during the 1999–2000 school year was within the racial guidelines, although in previous years Garfield’s enrollment had been predominantly nonwhite, and the racial tiebreaker had been used to give preference to white students. *Id.*, at 39a.
Petitioner Parents Involved in Community Schools (Parents Involved) is a nonprofit corporation comprising the parents of children who have been or may be denied assignment to their chosen high school in the district because of their race. The concerns of Parents Involved are illustrated by Jill Kurfirst, who sought to enroll her ninth-grade son, Andy Meeks, in Ballard High School’s special Biotechnology Career Academy. Andy suffered from attention deficit hyperactivity disorder and dyslexia, but had made good progress with hands-on instruction, and his mother and middle school teachers thought that the smaller biotechnology program held the most promise for his continued success. Andy was accepted into this selective program but, because of the racial tiebreaker, was denied assignment to Ballard High School. Id., at 143a–146a, 152a–160a. Parents Involved commenced this suit in the Western District of Washington, alleging that Seattle’s use of race in assignments violated the Equal Protection Clause of the Fourteenth Amendment.4 Title VI of the Civil Rights Act of 1964,5 and the Washington Civil Rights Act.6 Id., at 28a–35a.

The District Court granted summary judgment to the school district, finding that state law did not bar the district’s use of the racial tiebreaker and that the plan survived strict scrutiny on the federal constitutional claim because it was narrowly tailored to serve a compelling

5 “No person in the United States shall, on the ground of race . . . be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 78 Stat. 252, 42 U. S. C. §2000d.
6 “The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.” Wash. Rev. Code §49.60.400(1) (2006).
Appendix C
Culturally Responsive Evaluation Framework
Appendix D

Unit 4 Education Equity Memorandum of Understanding

CHAMPAIGN CONTROLLED CHOICE PLAN
MEMORANDUM OF UNDERSTANDING

1. This Memorandum of Understanding summarizes an interim settlement of civil rights issues relating to student assignment and affecting the African American students of Champaign Community Unit School District. The parties to this Agreement are:
   a. The Champaign Community Unit School District No. 4, Champaign County ("District"); and
   b. The named Plaintiffs, as representatives of the settlement class of present and future African American students ("Plaintiff Class" or "Plaintiffs"), by Futterman and Howard, Chld., their legal counsel.

In consideration of the Agreements and promises summarized herein, the sufficiency of which is hereby acknowledged, the District and Plaintiff Class agree as follows.

Background

2. In May and July 1996, the Plaintiffs initiated complaints with the United States Department of Education, Office of Civil Rights ("OCR"). The initial complaints addressed the mandatory one way busing of African American students and the educational services provided to those students.

3. In August 1996, OCR initiated a pro-active compliance review of minority over-representation in Special Education and under-representation in upper level courses. In October 1996, Plaintiffs amended their complaint to allege systemwide discrimination in student assignment and other issues.

4. As a result of the complaints and compliance review, the District and attorneys for the Plaintiff Class met on several occasions to discuss the issues raised in the complaints. Through the complaints and during the discussions, Plaintiffs notified the District that they believed that civil rights of African American students were violated by discriminatory

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1Other civil rights issues including educational equity and staff hiring and assignment practices remain and may be addressed in future Agreements or through litigation.

2For a complete listing of named Plaintiffs, see page 11 of this Memorandum.

3In this Agreement minority means African American.
practices including but not limited to the following characteristics of the current (1995-97) and past (1968-1995) student assignment system:

   a. racial identifiability of Columbia Elementary School;
   b. the disproportionate transportation burdens placed on African American students to achieve desegregation in other District schools; and
   c. the asserted "structural displacement" of students who reside in the predominately African American area in north Champaign, caused by insufficient building capacity that area.

5. In November 1996, after several months of study and community input, the District adopted a Redistricting Plan which provided for five schools of choice. The Plan encouraged but did not require racial diversity in school enrollments. The District projected that five schools under the plan would be racially identifiable white schools. The Plan also created a racially identifiable black school. The District stated that it intended to develop additional measures to address racial and economic diversity at a future time.

6. Plaintiffs contend that the Redistricting Plan addressed in part but did not fully resolve Plaintiffs' student assignment complaints. As a result, Plaintiffs notified the District that they were contemplating the commencement of class action litigation against the District, among other issues, challenging the current (1995-97) and past (1968-1995) student assignment system and the Redistricting Plan under the following legal theories:

   a. the Equal Protection Clause of the United States Constitution;
   c. Title VI of the Civil Rights Act of 1964; and
   d. The Regulations promulgated under Title VI, 34 C.F.R. §100.3.

7. The District and Plaintiffs concur that the past and current (1968-1997) student assignment system disparately affects African American students and that remedial action is necessary. Furthermore, the Parties agree with respect to the current student assignment system that there are alternative student assignment practices which are of at least comparable soundness and which would not have the disparate impact caused by the present practices.
Controlled Choice

8. Plaintiffs suggested that the District adopt a controlled choice plan containing both elements of choice and administrative procedures to insure diversity, address educational equity, and promote school reform.

9. The District and Plaintiffs agree to adopt a controlled choice open enrollment system ("Controlled Choice Plan" or "Plan") which contains the following elements. The parties agree that the joint consultant team of Robert Peterkin and Michael Alves will be retained to develop the Plan based on these elements and based on extensive community consultation and input.

   a. guarantees racial diversity, provides individual choice regarding school enrollment within racial fairness guidelines, and promotes school reform;

   b. promotes school improvement by identifying, through parent choices, schools needing reform;

   c. includes specific criteria and mechanisms to identify and improve underchosen schools;

   d. encourages stability and continuity by permitting each student currently enrolled to remain in the student's current school until completing the highest grade of the school;

   e. applies each year to all students who need or request a new school assignment;

   f. insures equitable access and burdens by allocating the District's total basic school capacity to each part of the city in proportion to the number of students who reside there;  

   g. provides educational opportunities for individual students by permitting each student to choose, from a number of schools in the system, two or more schools that the student desires to attend, and to rank the schools by personal preference. The Parties agree that the decision to either allow students to choose from all schools in the system or to divide the District into two racially comparable geographic zones from which

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4The Parties agree that further discussion is needed to address this element of the Plan. This Agreement in itself neither requires the District to add school capacity north of University Avenue nor relieves the District from doing so.
CHAMPAIGN CONTROLLED CHOICE PLAN
MEMORANDUM OF UNDERSTANDING

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4. As a result of the complaints and compliance review, the District and attorneys for the Plaintiff Class met on several occasions to discuss the issues raised in the complaints. Through the complaints and during the discussions, Plaintiffs notified the District that they believed that civil rights of African American students were violated by discriminatory

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1 Other civil rights issues including educational equity and staff hiring and assignment practices remain and may be addressed in future Agreements or through litigation.

2 For a complete listing of named Plaintiffs, see page 11 of this Memorandum.

3 In this Agreement minority means African American.
information, and advocacy to parents. The Parent Information center(s) shall be located and conducted in a manner which maximizes minority parent participation in the Controlled Choice process;

Application and Assignment

p. requires all eligible students to fill out an application indicating a minimum of two schools of choice. Every effort will be made to insure that minority students are aware of and participate in the application process;

q. addresses over-chosen schools by conducting a lottery after all students with preferences who meet the racial fairness guidelines have been assigned;

r. places unsuccessful students on a waiting list for their first choice and assigns them to their next available choice;

s. administratively assigns students who do not file application forms or cannot be assigned to a school of choice to a school in which instructional space is available. A goal of the Plan is to minimize the number of students who are administratively assigned, within racial fairness guidelines;

t. assures that students who are assigned to a school may remain at that school until the course of study offered has been completed;

u. provides that students who do not receive their first choice may apply to transfer the following year in accordance with the controlled choice assignment process;

Magnet Schools

v. initially establishes Washington, Columbia, and Kenwood as full-site magnet schools. The Controlled Choice Plan does not require that all schools have magnet themes before implementation. However, magnet themes and other choice inducing school improvements strongly promote the success of the Plan and increase the number of students receiving their first choice;

w. requires that all magnet and other educational choice programs are school-wide and appropriate for heterogeneous student populations to assure within-school integration. Admission to magnet programs will be based primarily on student interest, rather than academic or aptitude
entrance requirements. The District will provide educational and social support programs to minority students to assure within-school integration and promote successful academic performance;

x. addresses the issue of staff selection in light of school themes;

Transportation

y. provides transportation to (1) all students who reside beyond the walk zone of their assigned school, as defined by state law, (2) students who desire to participate in extra-curricular activities, and (3) parents who need transportation to participate in such activities as teacher conferences and PTO meetings;

School Reform

z. identifies, publicly acknowledges, and seeks to replicate schools over-chosen by all racial groups;

aa. identifies, publicly lists, and provides technical assistance, and if necessary, changes personnel in under-chosen schools. The purpose of these actions are to upgrade and improve the quality of education received in under-chosen schools;

School Programs

ab. insures that students identified as eligible or requiring Special Education or Bilingual services are assigned to a school providing such services. The Plan places equitable transportation burdens on students participating in Special Education or Bilingual programs; and

ac. provides Chapter 1 funds to schools according to Chapter 1 guidelines. Chapter 1 funds should (unless prohibited by federal law) "follow the child" for low income students who change schools under this plan, and if a waiver is necessary for this purpose the District will seek one.

10. The Controlled Choice Plan will be implemented according to one of the following three timelines, subject to the recommendation of the consultant team:

a. Implementation to the extent feasible and appropriate beginning with assignments for the 1998-99 school year; or

b. Partial implementation with assignments for the 1998-99 school year with full implementation for the 1999-2000 school year; or

The consultant team will make a recommendation concerning the implementation schedule, and that recommendation shall also address how best to incorporate into the Controlled Choice Plan the elements of the District’s November 1996 Redistricting Plan scheduled for Fall 1998. The consultant team and parties will give particular attention to the extent to which the one-way mandatory assignment system is eliminated at the elementary level, and what replaces it in the former receiving schools, including what measures (such as voluntary transfers) will be used to seek and promote racial diversity in those schools in grades not covered by Controlled Choice.

11. The Parties agree that community consultation will increase the likelihood of success of the Controlled Choice Plan. However, the process of community consultation shall only address the manner of implementation within the principles of equity and diversity contained in Paragraph 9.

12. As one element of this community consultation, a community based Controlled Choice Community Task Force shall be formed to assist in the development and implementation of the Controlled Choice Plan. The parties will insure that this Task Force is comprised to be representative of the District’s racial, economic, civic, governmental, business and other major constituencies. Examples of issues which the Task Force may address are, magnet school themes; other school choice themes or structural approaches; processes for remediation of under-chosen schools, if any; and creating socio-economic equity guidelines. The Parties agree to negotiate the manner of selecting representatives to the Community Task Force.

13. The Parties agree that the use of consultants with expertise in developing and implementing Controlled Choice will benefit the District and the Plaintiff Class by improving the quality of the Plan and developing community involvement. The consultant team of Robert Peterkin and Michael Alves will participate equally in the development and implementation of the Controlled Choice Plan. The consultants’ fees and expenses will be paid by the District, pursuant to negotiated agreements. If a replacement is needed for either consultant, the parties shall agree on the replacement.

14. The Controlled Choice Plan is intended as a long-term replacement for the current student assignment system. The Controlled Choice Plan will continue for a minimum of five years after the Plan is fully implemented in all grades, absent compelling circumstances. The Parties will periodically review the Controlled Choice Plan and other aspects of the District’s student assignment system to insure that the system remains effective and equitable for African American students, to determine whether the Plan should be improved or tailored, and to coordinate the duration of the Plan.

15. To accomplish the objectives of this Agreement, the Parties agree to form a Planning and Implementation Committee comprised of an equal number of representatives of
each party, including counsel. The Committee will develop a clear process for the formulation and implementation of the Controlled Choice Plan based on trust, consensus, collaboration, and commitment. As the consultant team develops initial and final drafts of the Plan (or major components thereof), they will present those drafts to the Planning and Implementation Committee, maintain ongoing discussion with the Committee concerning development of the Plan (or that component), and obtain the consensus concurrence of the Committee before presenting to the Board a final recommended version of the Plan (or that component). Throughout the Plan's duration, the Planning and Implementation Committee will continue to monitor, evaluate, refine, and improve the Controlled Choice Plan.

16. Nothing in this Agreement shall supplant, diminish or abrogate the authority and powers of the Board of Education under Illinois law with respect to the matters addressed in this Agreement. Rather this Agreement constitutes an exercise of such powers.

17. The District will provide sufficient resources for the effective implementation of this Plan, from existing funding sources, new sources such as a Magnet Schools Assistance Grant, and/or from the Tort Immunity Fund.

18. The parties agree that:

a. if student assignment remedial measures in the form of the Controlled Choice Plan can be formulated and executed without the need for litigation, there are substantial advantages for all parties in terms of the speed and potential effectiveness of the remedies and there is a significant and valuable possibility that there will be greater community support for the Plan, which will in turn contribute to the effectiveness of the Plan;

b. the formulation and execution of the Plan will be much more effective if there is active and meaningful participation of the Plaintiff Class, the African American parents, students, and community of Champaign, and if the Plaintiff Class has the continuing assistance of the Futterman & Howard law firm, which has educational discrimination and desegregation experience, as well as experience in the implementation of controlled choice student assignment as a remedy for student assignment discrimination.

19. In the event that another individual, group or entity later claims that it and its counsel should be the class representative and the class counsel with respect to the issues encompassed in this Agreement for the class of African American students, and such claimant and its counsel are determined by a court of competent jurisdiction to be the class representative and class counsel in place of the named Plaintiffs and the Futterman & Howard firm, this Agreement shall terminate prospectively and all terms and conditions shall have no further force or effect.
Notwithstanding the foregoing provision, because Hispanic minority students comprise only about 2% of the District’s enrollment, the parties have not initially included Hispanic minority students in the class of student beneficiaries under this Agreement. The parties have studied and will continue to study equity-related data and conditions for such students, and the parties anticipate that if such students become sufficiently numerous and other circumstances otherwise warrant, they will be added to the class of minority students represented by the Futterman & Howard firm, with an appropriate person or entity serving as the class representative. Neither the circumstances described in the preceding sentence, nor any other development with respect to the participation and representation of non-African American minority students in this Agreement or in the Champaign equity plan, shall constitute a termination event under the first sentence of Section 19.

20. In the event that objections or challenges are raised by any third party: (a) to the lawfulness or appropriateness of this settlement Agreement, or any provision within it, or (b) to any aspect of the implementation of this settlement Agreement, the District and Plaintiff Class shall jointly defend the lawfulness and appropriateness of the matter challenged. The District’s counsel will take the lead role in doing so.

21. This Agreement shall be enforceable as between the District and Plaintiff Class by mediation and (if unsuccessful) by binding arbitration before a permanent arbitrator. The mediator and the permanent arbitrator will be mutually agreed upon by the Plaintiffs and the District. An arbitration award rendered under this Agreement shall be judicially enforceable. It is the intention of this Agreement that since the objectives and guidelines for the Controlled Choice Plan have been established by this Agreement and because this Agreement represents a collaborative consensus process, that there should be few occasions, if any, for disputes to reach the arbitration stage.

22. The duration of this Agreement shall be until five years after the Controlled Choice Plan is fully implemented in all grades, unless this Agreement is mutually extended.

23. The parties agree that if the Plaintiff Class initiated the litigation described in Paragraph 6 hereof concerning the student assignment issues summarized in Paragraphs 2-5, one of the principal remedies which Plaintiffs would seek would be the adoption and successful implementation of a controlled choice plan in the general form described in Paragraphs 8-14 and 17 of this Agreement. The parties also note that a liability finding on such student assignment claims could form part of the basis for educational equity remedies, in accordance with Milliken II, 433 U.S. 267 (1976).

In consideration of the District’s entry into and successful good-faith compliance with this Agreement, Plaintiffs agree not to commence the litigation described in Paragraph 6 for the purpose of obtaining student assignment remedies on the matters which are governed by the Controlled Choice Plan, and agree instead to devote their good-faith efforts to the success of the agreed remedial process delineated herein. This forbearance is without prejudice to the
Plaintiffs' right to resort to such litigation if the District fails to carry out this Agreement successfully and in good faith.

Furthermore, this Agreement does not limit the right of the Plaintiff Class to assert in litigation the student assignment liability claims summarized in Paragraphs 2-5 hereof for the purpose of seeking to establish a basis for the claims described in Paragraph 24 of this Agreement, or for the purpose of seeking to obtain educational equity remedies in the nature of those authorized by Milliken II. In the event Plaintiffs commence such litigation, the District shall not be bound in such litigation by Paragraph 7 of this Agreement.

24. Plaintiffs assert that other student assignment and related issues remain, including but not limited to: the provision of sufficient school capacity in North Champaign, equity of facilities quality, equity of equipment and materials, equity of student transportation services, and equity of other existing voluntary or mandatory student assignment practices not addressed by this Agreement. The parties agree that those issues are not addressed by this Agreement, that the parties will further discuss these issues and seek agreed solutions through counsel, through the Planning and Implementation Committee, and through discussions with the consultant team; however, nothing in this Agreement shall prohibit Plaintiffs from addressing these issues through litigation.
AGREED:
Champaign Community Unit
School District, No. 4, by
Don Nolen, Board President
Mike Cain, Superintendent
Patricia Whitten, Counsel
Charles Rose, Counsel

AGREED:
Jaray Davenport, a minor, by his parent
and next friend, Mary Jane Moore;
Katherine Gordon and Kalib Gordon,
minors, by their parent and next friend,
Martha Pettigrew;
Baron Halbert and Eric Halbert, minors,
by their parents and next friends,
Lee and Sherrie Halbert;
Alando Holt, a minor, by his parent
and next friend, Patricia Holt;
Khailil Terry, Damion Johnson,
Darrayl Kirk, Tyjuan Johnson,
Sa'Da Johnson, minors, by their
parent and next friend, Felicia Johnson;
Antonio Newbern, a minor, by his
parent and next friend, Annie Newbern;
Allen Redding, a minor, by his parent
and next friend, Siutanya Greer;
Dextermetious Wardlow, a minor,
by his parent and next friend, Sharon Wardlow;
Dontrail Wright, a minor, by his parent
and next friend, Mary Wright,
as representatives of the
settlement class of African American
students, by their attorneys

Robert Howard, Counsel
Carol Ashley, Counsel

AGREED: This 16th day of September, 1997.