

Federal Education Policy Should Promote Diversity

American schools will soon be half nonwhite. They are increasingly segregated and unequal. With massive racial change in suburban rings underway, many schools in metropolitan areas are resegregating.¹ More than nine in ten segregated minority schools are also schools of high poverty.² Educational opportunities in these racially and socio-economically isolated schools are disparate for many reasons. One is that qualified and experienced teachers tend to leave schools when poverty and race become highly concentrated. Aside from some exceptions, segregated nonwhite schools rarely offer equal education in terms of test scores, graduation rates or other achievement outcomes. While substantial desegregation is not possible in all cities, many metropolitan areas have been desegregated for decades, and many want to avoid resegregation and its consequences for neighborhoods, schools, and educational success.³

There are great benefits from more diverse educational settings that should not be ignored if we are serious about closing the achievement gap and competing in a global economy. At a time of dramatic growth of the under-18 non-white population, all students, including whites, need to learn to understand and work effectively across racial/ethnic lines for the future health of our multiracial communities. By fostering greater diversity, federal policy would generate important positive outcomes for all children.⁴

By fostering diversity, our schools could better meet the goals of closing the achievement gap, promoting career readiness, and building stronger communities. Fifty-seven years after *Brown v. Board of Education*, we are at a crossroads. Research has established that diverse educational environments benefit students academically, as well as in the development of social understanding and skills. These latter advantages are well-established as important employment qualifications. Furthermore, when students from racially isolated schools have an opportunity to attend more diverse schools, they tend to have higher graduation rates and are more likely to go on to college.⁵ In fact, research and industry spokespersons suggest that a diverse education is essential for "career readiness." More broadly, federal support for successful, stably integrated schools would pay large dividends in terms of social and economic success of communities.⁶ Offering support for school districts that want to voluntarily address racial diversity goals would be a good investment in educational achievement.⁷ This is why the Supreme Court has repeatedly stated that governments have a compelling interest in fostering diversity within educational settings.⁸ In December 2010, the Department of Education included promoting diversity as a competitive funding preference in future competitive grants, which is a promising step and should be expanded to all federal education funding.⁹

Measures are needed to prevent the harms from further racial and socio-economic isolation. Just as diversity is beneficial, increased isolation is harmful.¹⁰ Unfortunately our nation's schools are becoming increasingly isolated, both racially and socio-economically segregated to levels witnessed in the late 1960's.¹¹ For example, approximately 40 percent of Black and Latino students attended schools that were 90-100 percent minority during 2006-07, while whites remained the most isolated from students of any racial group.¹² Given the harm that accompanies segregation in our schools, ESEA should contain explicit safeguards to help prevent racial and socio-economic isolation from intensifying,¹³ particularly when African-Americans are almost as residentially segregated now from whites as they were in the 1940s.¹⁴

The goal of a highly qualified and experienced teacher in every classroom is systematically undermined by the continuous loss of such teachers from racially isolated minority schools. Schools containing the highest degree of racial and socio-economic isolation have the highest teacher mobility and the lowest percentage of experienced teachers in their field. Conversely, experienced teachers tend to stay in stably diverse schools,¹⁵ which tend to have higher performance and graduation levels and less overwhelming concentrations of the multiple problems that face poor children attending schools of concentrated poverty.

ESEA's teacher equity requirements could be met by state access plans that encourage inter-district transfers. The current law requires states to ensure that "poor and minority students are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers"¹⁶ Research suggests that this provision has been poorly implemented and inadequately enforced.¹⁷ Given the importance of access to these aspects of teacher quality to improved achievement, the ESEA should re-double their efforts to attract and retain qualified and experienced teachers to teach in isolated high poverty schools. ESEA should also encourage more states to develop teacher equity plans that enable students to transfer across district lines in order to attend high performing diverse schools that will provide the necessary access to experienced, in-field and highly qualified teachers at the same rate as other children.

ESEA school choice policy should also foster integration. Some forms of school choice support lasting integration while others speed the spread of segregation and inequality.¹⁸ Using the multiple and powerful levers of school choice, we can use ESEA to combine concrete outcome objectives and better educational options with advantageous diversity goals. For example, some funds under Title V of the ESEA designated for improvement recently supported the New Haven Voluntary Public Schools Choice Program. The project expands efforts to provide students attending low-performing Title I schools with high-quality school choice options like inter and intra-district magnet schools, charter schools, and a transfer program called Project Choice that has an explicit goal of creating diverse and high-achieving schools.¹⁹ This funding should be expanded and allow for the use of funds to effectively incorporate transfer students, to promote family engagement, and to provide staff development for receiving schools.

Existing transfer rights triggered by school failure have been ineffective.²⁰ The NCLB choice provisions that give students in persistently underperforming schools the right to transfer to better performing schools have failed, in part because often the option entails the right to transfer from a failing school to one that is only marginally better.²¹ While the current law's school improvement requirement calls for the establishment of "cooperative agreements with other local educational agencies in the area," the agreements are only triggered "if all public schools served by the local agency to which a child may transfer are identified for school improvement."²² For the reauthorized ESEA, we suggest that students attending failing schools subject to "turnaround" provisions be provided inter-district transfer choices with transportation.

Expanding ESEA incentives to encourage greater inter-district opportunities could yield greater diversity and improve academic outcomes. The vast majority of school segregation is that which exists across district boundary lines.²³ Currently, cooperative agreements triggered by accountability have been underutilized. The reauthorized ESEA, with a new focus on incentives and promoting greater choices, could go far in promoting more cooperative inter-district

agreements, both through voluntary choice funding incentives and through inter-district transfer choices whenever students are given transfer rights to leave persistently failing schools. Specifically, the ESEA should fund more choice programs like the ones in New Haven (and other Connecticut metropolitan areas) which sought to increase opportunities for students attending low performing schools to enroll in schools that were very high performing and more diverse. Research shows improved academic and social benefits for students participating in Connecticut's inter-district choice programs.²⁴ A recent study in Montgomery County, Maryland which found that public housing residents who moved to affluent neighborhoods, where their children attended more economically advantaged schools than peers moving to more economically distressed neighborhoods, speaks to the benefits of attending diverse schools and, indirectly, the benefits that many students in urban areas might attain if inter-district transfers permitted them to attend schools in wealthier districts.²⁵ Just as Race to the Top has demonstrated the power of large incentives to change state policies, with substantial incentives built into the ESEA, more districts would likely consider voluntarily entering into inter-district relationships, including multi-district charters and magnets. Further, because not all inter-district transfers foster diversity, Congress could give larger incentives to those transfer agreements that do. Ideally, the current use of federal funds for intra-district transportation would be maintained for inter-district transfers as well. Finally, ESEA accountability provisions should prohibit the reconstitution of failing schools in any manner that will intensify racial or socio-economic isolation in the reconstituted school.

Transportation and outreach to underserved communities could improve the diversity benefits of choice programs. With improved outreach and access to federally funded transportation for inter-district transfers (available now for intra-district transfers), there could be far more opportunities for students in chronically low performing schools to attend high performing schools, especially if all districts receiving Title I funds were required to participate and had adequate federal support to do so.

ESEA's magnet school provisions should be strengthened and expanded to allow magnet schools as a conversion option for low-performing schools. The current law gives priority to districts that specify how magnet schools will reduce racial isolation, and to magnet schools that have been effective.²⁶ Unfortunately, while funds for charter schools have increased, magnet schools have only seen a small increase in funding in the President's proposed budget.²⁷ Many magnet schools have very explicit requirements that ensure they promote diversity.²⁸ Our recent research shows that some of these schools continue to implement the kinds of policies required by the legislation for decades, and that they are more diverse. By increasing its support of magnet schools in the ESEA, Congress would foster additional choice opportunities and promote greater diversity. Magnet schools were initially funded by Congress as part of desegregation efforts. Those racial diversity goals should be strengthened within the magnet school program, and funding levels, which had proposed modest increases in the FY 2011 budget that were not enacted, should rise.²⁹

Charter school expansion provides an excellent opportunity to increase diversity. Our recent findings suggest that certain changes to charter school policies could reverse the likelihood that expansion would intensify racial and socio-economic isolation. The FY2011 Charter School Program for state educational agencies included as a competitive preference priority "projects

that are designed to promote student diversity, including racial and ethnic diversity, or avoid racial isolation.”³⁰ If charters can be located to offer opportunities across traditional district boundaries, with federal support for transportation, and outreach to a diverse student body, charter schools could foster school integration.³¹ Further, Congress could provide extra incentives for charter schools that voluntarily adopted many of the magnet school diversity goals. And charter schools that serve more than one district should be promoted, so long as their demographic policies ensure that their enrollment does not intensify racial or socio-economic isolation in any of the sending districts.³² In this way, Congress can encourage the creation of charter schools that explicitly encourage diversity and prevent increased isolation.

Safeguards are needed to prevent increased isolation from charter school expansion.

Charter schools currently exacerbate racial and socioeconomic isolation, yet several policy changes could stop these trends.³³ For example, charter schools that are created through ESEA accountability or innovation incentives could also embed demographic plans to ensure that they are, at a minimum, not more racially or socio-economically isolated than the district they serve. Funding priorities should include stronger state accountability for charter school authorization and include a wider set of evaluative measures including the enrollment, attrition, discipline, and achievement of student subgroups. Charter schools should also be encouraged to be open to all students, and not prioritize district residence. Even within district lines, we can promote outreach to populations that charters have historically underserved.

For school choice to help close the achievement gap, charter school efficacy must be transparent. There is much debate about the efficacy of charter schools, especially once performance is adjusted by race, class, disability status and EL status.³⁴ Data on charter enrollment disaggregated by free and reduced lunch and EL status is often difficult to acquire. Similarly, recent studies suggestive of some benefits associated with charter schools were unable to account for the potential impact of school attrition.³⁵ Where effective charter replication is the goal, we need more information to distinguish truly effective charters from those that add no benefits when poverty and other factors are accounted for. ESEA must add monitoring provisions to ensure that charters are held to the same data reporting requirement as all other schools.³⁶

¹ G. Orfield & E. Frankenberg, *The Last Have Become First: Rural and Small Town America Lead the Way on Desegregation* (Los Angeles: Civil Rights Project/Proyecto Derechos Civiles, January 2008).

² E. Frankenberg, G. Siegel-Hawley, & J. Wang, *Choice Without Equity: Charter School Segregation and the Need for Civil Rights Standards* (Civil Rights Project/Proyecto Derechos Civiles, UCLA January 2010).

³ G. Orfield, “Public Opinion and School Desegregation,” *Teachers College Record* 96, no. 4 (1995): 654-670; T. Wilkerson, “Student Assignment Survey: Summary of Findings,” (Louisville: Wilkerson & Associates, July 1996).

⁴ Evaluations of the federal desegregation assistance program of the 1970s, which supported teacher training, creating magnet schools, and developing positive relationships within schools, were highly positive in producing both academic gains and positive relationships. See G. Orfield, *Must We Bus? Segregated Schools and National Policy* (Washington D.C.: The Brookings Institution, 1978: chapter 9).

⁵ Jonathan Guryan, “Desegregation and Black Dropout Rates,” *American Economic Review* 94(4) (September 2004): 919-943; L. S. Rubinowitz & J. Rosenbaum, *Crossing the Class and Color Lines: From Public Housing to White Suburbia* (Chicago, IL: University of Chicago Press, 2000); J. Rosenbaum, S. DeLuca, & T. Tuck, “New Capabilities in New Places: Low Income Black Families in Suburbia,” in X. Briggs (ed.) *The Geography of Opportunity: Race and Housing Choice in Metropolitan America* (Washington D.C.: Brookings Institution, 2005).

⁶ A. Orley, W. Collins, & A. Yoon, “Evaluating the Role of *Brown vs. Board of Education* in School Equalization, Desegregation, and the Income of African Americans.” Working paper, National Bureau of Economic Research, Cambridge, Mass., 2005; J. Kaufman & J. Rosenbaum, “The Education and Employment of Low-Income Black Youth in White Suburbs,” *Education Evaluation and Policy Analysis* 14 (1992): 229-40; A.S. Wells & R.L. Crain, “Perpetuation Theory and the Long-

Term Effects of School Desegregation,” *Review of Educational Research* 64, no. 4 (1994): 531-55; D. Pearce, *Breaking Down Barriers: New Evidence on the Impact of Metropolitan School Desegregation on Housing Patterns, Final Report* (Washington, D.C.: Catholic Univ. of America, 1980); M. Orfield & T. Luce, *Minority Suburbanization and Racial Change: Stable Integration, Neighborhood Transition, and the Need for Regional Approaches* (Minneapolis: Institute on Race & Poverty, 2006).

⁷ See generally R. L. Linn & K. G. Welner, (eds.) *Race-Conscious Policies for Assigning Students to Schools: Social Science Research and the Supreme Court Cases* (Washington, DC: National Academy of Education, 2007); G. Orfield, E. Frankenberg, & L.M. Garces, “Statement of American Social Scientists of Research on School Desegregation to the U.S. Supreme Court” in *Parents Involved v. Seattle School District and Meredith v. Jefferson County, Urban Review* 40 (2008): 96-136; Patricia Gurin, et al., “Diversity and Higher Education: Theory and Impact on Educational Outcomes,” *Harvard Educational Review* 72, no. 3 (2002): 330-66.

⁸ Opinion of J. Kennedy in *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007): p. 101.

⁹ Federal Register on December 15, 2010 (75 FR 78486).

¹⁰ R. Balfanz & N. Legters, “Locating the Dropout Crisis: Which High Schools Produce the Nation’s Dropouts?” in *Dropouts in America: Confronting the Graduation Rate Crisis*, ed. Gary Orfield (Cambridge, Mass.: Harvard Education Press, 2004): 85-106; K. Borman, et al., “Accountability in a Postdesegregation Era: The Continuing Significance of Racial Segregation in Florida’s Schools,” *American Educational Research Journal*, 41, no. 3 (2004): 605-31.

¹¹ See Table 7 in G. Orfield, *Reviving the Goal of an Integrated Society: A 21st Century Challenge* (Los Angeles: Civil Rights Project/Proyecto Derechos Civiles, UCLA, January 2009).

¹² Less than one in four students in the typical white students’ school is of another race. See G. Orfield, *Reviving the Goal of an Integrated Society: A 21st Century Challenge* (Los Angeles: Civil Rights Project/Proyecto Derechos Civiles, UCLA, January 2009). See also G. Orfield & E. Frankenberg, *The Last Have Become First: Rural and Small Town America Lead the Way on Desegregation* (Los Angeles: Civil Rights Project/Proyecto Derechos Civiles, January, 2008); Charles T. Clotfelter, *After Brown: The Rise and Retreat of School Desegregation* (Princeton, N. J.: Princeton Univ. Press, 2004).

¹³ The provision of these safeguards was sanctioned by the controlling opinion in *PICS*, which found diversity to be a compelling educational interest. Opinion of J. Kennedy, in *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (U.S. 2007): p. 101.

¹⁴ John R. Logan and Brian Stults. 2011. “The Persistence of Segregation in the Metropolis: New Findings from the 2010 Census” Census Brief prepared for Project US2010. <http://www.s4.brown.edu/us2010>.

¹⁵ E. Frankenberg, “The Segregation of American Teachers,” *Education Policy Analysis Archives* vol. 17, no. 1 (2009). Similar patterns of teacher inexperience disproportionately among schools with few white students found in CRP’s forthcoming analysis of 2007-08 Schools and Staffing Data. See also H.G. Peske & K. Haycock, *Teaching Inequality: How Poor and Minority Students Are Shortchanged on Teacher Quality* (Washington D.C.: The Education Trust, 2006); L. Darling Hammond & G. Sykes, “Wanted: A National Teacher Supply Policy for Education: The Right Way to Meet the ‘Highly Qualified Teacher’ Challenge,” *EPAA*. Vol. 11 (2003). Retrieved 2.1.10 at <http://epaa.asu.edu/ojs/article/view/261>

¹⁶ Sec 1111(b)(8)(C).

¹⁷ William Taylor, Diane Piche, Crystal Rosario, The Continuing Challenge, Report of the Citizens’ Commission on Civil Rights pp 7-9 (February 2008) Describes a near complete lack of compliance with the equity provisions of the ESEA specific to “poor and minority students” in state plans citing a 2006 review by the Education Trust finding only 10 states could even track whether students were getting a fare share of qualified teachers. This was followed by the Department of Education calling for revision and resubmission. All but two plans (Hawaii and Puerto Rico) were approved. CCCR’s report on five newly approved state plans (CA, IL, MD, OH, TX) showed that as a group they “struggled in particular to meet” the requirement that focused on equity. No state met all of the peer review criteria, and Texas and California met none.

<http://www.ccr.org/doc/TheContinuingChallengeReport.pdf>

¹⁸ See J. Scott, (ed.) *School choice and diversity* (New York: Teachers College Press, 2005); E. Frankenberg & G. Siegel-Hawley, *Equity Overlooked: Charter Schools and Civil Rights Policy* (Los Angeles: Civil Rights Project/ Proyecto Derechos Civiles, 2009). See also *Green v. Bd. of Educ. of New Kent County*, 391 U.S. 430 (1968).

¹⁹ See U.S. Department of Education, Innovation and Improvement, Fiscal Year 2010 Budget Request at f-91 available at: <http://www2.ed.gov/about/overview/budget/budget10/justifications/f-iandi.pdf>

²⁰ J.J. Holme & A.S. Wells, “School Choice Beyond District Borders: Lessons for the Reauthorization of NCLB from Interdistrict Desegregation and Open Enrollment Plans,” in *Improving on No Child Left Behind*, R. Kahlenberg (ed.), (New York: The Century Foundation, 2008); Center for Education Policy, *From the Capital to the Classroom: Year 4 of the No Child Left Behind Act* (Washington, D.C.: Center for Education Policy, 2006).

²¹ G.L. Sunderman, J.S. Kim, & G. Orfield, *NCLB Meets School Realities: Lessons From the Field* (Thousand Oaks, CA: Corwin Press, 2005).

²² Sec 1116(b)(11). Similarly states may authorize inter-district transfers pursuant to 1116(c)(10)(C)(vii).

²³ Charles T. Clotfelter, *After Brown: The Rise and Retreat of School Desegregation* (Princeton, N. J.: Princeton Univ. Press, 2004); Reardon, S.F., & Yun, J.T. “Suburban racial change and suburban school segregation, 1987-1995.” *Sociology of Education* 74 no. 2: pp. 79-101, (2001).

²⁴ R., Bifulco, C., Cobb, & C. Bell, “Can Interdistrict Choice Improve Student Achievement? The Case of Connecticut’s Interdistrict Magnet School Program,” *EPAA* vol. 31, no. 4 (2009).

²⁵ Poor students in low-poverty schools closed half of the math achievement gap. Heather Schwartz, “Housing Policy is School Policy” (Washington D.C.: Century Foundation, 2010).

²⁶ Over the years, however, MSAP funding priorities have become so varied that the emphasis on eliminating racial isolation has gradually lessened. E. Frankenberg & G. Siegel-Hawley, *The Forgotten Choice: Rethinking Magnet Schools in a Changing Landscape* (Los Angeles: Civil Rights Project/ Proyecto Derechos Civiles, 2008); E. Frankenberg & C.Q. Le, “The Post-Seattle/Louisville Challenge: Extra-Legal Obstacles to Integration,” *Ohio State Law Journal*, vol. 69 no. 5 (2008): 1015-1072.

²⁷ E. Frankenberg & G. Siegel-Hawley, *Equity Overlooked: Charter Schools and Civil Rights Policy* (Los Angeles: Civil Rights Project/ Proyecto Derechos Civiles, 2009).

²⁸ Supra note 26.

²⁹ The National Coalition on School Diversity has made similar recommendations for the inclusion of magnet schools. See <http://prrac.org/pdf/DiversityIssueBriefNo3.pdf>

³⁰ U.S. Department of Education. Charter Schools Program (CSP); Office of Innovation and Improvement; Overview Information. State Educational Agencies Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011 (*Federal Register* Vol. 76, No. 16. Tuesday, January 25, 2011): p. 4324. Available at: <http://www.prrac.org/pdf/charterschoolnofa.pdf>

³¹ E. Frankenberg & G. Siegel-Hawley, *Equity Overlooked: Charter Schools and Civil Rights Policy* (Los Angeles: Civil Rights Project/ Proyecto Derechos Civiles, 2009); S. Eaton & G. Chirichigo, “Charters Must Commit to Diversity,” *Boston Globe*, 19 July 2009. Retrieved 9.14.09 at

http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2009/07/19/charters_must_commit_to_diversity/. A study in Arizona found, for example, that a charter school enrolled students from more than 20 different public school districts. M. Gifford, M. Ogle, & L. Solomon, *Who is Choosing Charter Schools? A Snapshot of Geography and Ethnicity of Charter School Students* (Center for Market-based Education, 2009).

³² *Wright, et al. v. Council of the City of Emporia, et al.*, 407 U.S. 451 (1972). See also *Berry v. School District of Benton Harbor*, 56 F. Supp. 2d 866 (W. D. Mich. 1999); *Davis v. East Baton Rouge Parish School Board, et al.*, C.A. No. 56-1662 (M.D. La. 1999).

³³ E. Frankenberg, G. Siegel-Hawley, & J. Wang, *Choice Without Equity: Charter School Segregation and the Need for Civil Rights Standards* (Los Angeles: Civil Rights Project/ Proyecto Derechos Civiles, January, 2010).

³⁴ M. Carnoy, R. Jacobsen, L. Mishel, & R. Rothstein, *The Charter School Dust-up: Examining the Evidence on Enrollment and Achievement* (New York: Teachers College Press, 2005); Center for Research on Educational Outcomes. “Multiple Choice: Charter School Performance in Sixteen States” (Stanford: CREDO); R. Zimmer, et al., *Charter Schools in Eight States: Effects on Achievement, Attainment, Integration, and Competition*. (Santa Monica, CA: Rand Corporation, 2009).

³⁵ Multicultural Education, Training and Advocacy (META). Charter Schools and English Language Learners in Massachusetts: Policy Push without the Data (2009). Retrieved 11.2.09 at <http://www.edweek.org/media/metacharterschoolbrief.pdf>

³⁶ In January 2011, the Civil Rights Project submitted comments regarding the National Charter School Resource Center Authorizer Survey, 75 Fed. Reg. 69985 (November 16, 2010) asking the Department of Education to “conduct a comprehensive review of the impact of each authorizer on the opportunity for the students served to be educated in diverse educational environments” before declaring a charter school authorizer to be high-quality. In addition to modifying the proposed survey, the reauthorizing of ESEA should require these basic data reporting requirements for any school receiving federal funds.