

Perceptions of Segregation, Diversity, and Solutions

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Abstract:

Broad-based problems, particularly those of social equity that go unrecognized, are rarely addressed by political nor administrative organs. While many Americans believe systematic school segregation is a thing of the past, recent studies show the contrary: racial segregation in persists in many states, even in those thought to be Blue and liberal, putting some Northeast states at the top of the list of "most segregated states." We use original survey research to suggest how and why political and administrative processes have been unable to respond even in the teeth of overwhelming evidence of a problem and in a state which otherwise appears to have taken decisive and broad-based progressive steps towards desegregating the public-school systems.

How is it that 70 years after the landmark *Brown v. Board* decision (1954) that schools in a northern, prosperous, blue state can be segregated? That *de facto* segregation exists in New Jersey was the conclusion of a 2019 report from the Center of Education and Civil Rights at UCLA (Frankenberg et al., 2019). Half of Black students in New Jersey attend schools that are between 90 and 100 percent non-white, percentages only exceeded in New York, Illinois, Maryland, and California, also northern, prosperous, and blue. For Latinos too, New Jersey ranks high in segregation: 45 percent attend schools that are between 90 and 100 percent non-white, percentages only exceeded in California, New York, and Texas (Frankenberg et al., 2019, p. 30).

Table 1:

Top Five Segregated States measured by Percentage of Black Students in 90-100% Non-white Schools

New York	65
Illinois	58
Maryland	54
California	51
New Jersey	50

Source: *Harming Our Common Future: America's Segregated Schools 65 Years after Brown*, May 10, 2019. Retrieved from <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/harming-our-common-future-americas-segregated-schools-65-years-after-brown/Brown-65-050919v4-final.pdf>

Those familiar with the jurisprudence of New Jersey courts might be more puzzled than most because several long-standing landmark decisions by the state's Supreme Court have been driving anti-discrimination policies in towns and schools for many decades. Surely by now they would have had a telling effect. In fact, New Jersey's Constitution, since 1875, requires that the state provide a "thorough and efficient education" for every child. Exactly what that meant in terms of equity was litigated a century later in *Robinson v. Cahill* (1973). The case took aim at uneven school funding which came primarily from local property taxes regardless of whether the district was poor or prosperous, which allowed wide disparities in spending on local schools, disparities which frequently coincided with race. A prolonged confrontation over this case between the Court on the one hand and the executive and legislature on the other, led to the introduction of a state income tax to smooth out local school funding and address those inequities.

At the same time, New Jersey's landmark *Mt. Laurel* decision (1975) ruled that towns could no longer use zoning as a tool to prevent development of housing for low- and moderate-income families. The case was implicitly based on questions of racial exclusion, whether openly intentional or not. *Mt. Laurel* then sparked successive cases which not only reiterated the original decision but took it much further, eventually ruling that towns must take positive action to

accommodate low and moderate-income housing and spawning a new state agency to monitor and enforce such positive action.¹

A third landmark decision, *Abbott v. Burke* (1985), grew directly out of the educationally woeful and racially concentrated schools. *Abbott* took much more direct aim at discriminatory practices, ruling that poor schools and districts must be funded at the same levels as prosperous ones.

But 70 years after *Brown*, nearly 50 years after *Mt. Laurel*, and almost 40 years after *Abbott*, and New Jersey became a national leader in school funding and fair-housing practices, it is also a leader in segregation, sparking yet another court challenge to the status quo, and asking the courts to create change. The plaintiffs in *Latino Action Network v. New Jersey* charged that the state's schools are both separate and unequal. They claimed the state's lack of affordable housing forces minorities to concentrate in urban areas and that rules requiring attendance at local schools overly concentrate minority pupils. Thus, schools segregation is rooted in residential segregation. The suit seeks injunctive remedies from the Court including changing the way students are assigned to schools. As such, it is a potentially explosive case politically and remains so -- though we show that the public is little aware of the situation.

As background, this paper reviews the significant Constitutional, legislative and judicial remedies available to desegregate schools in New Jersey. Second, we offer a reality check: We use original survey research to suggest how and why political and administrative processes have been unable to respond even in the teeth of overwhelming evidence of a problem and in a state which otherwise appears to have taken decisive and broad-based progressive steps towards desegregating the public-school systems. Finally, we examine policy options commonly suggested to ameliorate the problem and offer an explanation of why these have not succeeded.

New Jersey Has Legal Remedies to Desegregate Public Schools

For background, the reader must know that New Jersey has consistently recognized the importance of desegregation in public schools. Seven years prior to the seminal holding in *Brown v. Board of Education* (1954) the state of New Jersey ratified its third state Constitution. Included within this Constitution was Article I, Section 5 which stated that “No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, *nor be segregated in the militia or in public schools, because of religious principles, race, color, ancestry or national origin.*”² This Constitutional provision was novel, not only because of its timing but also its placement in a state constitution and its direct mandate to eliminate segregation in the public schools. This provision, as well as the state's Constitutional mandate to provide a “thorough and efficient system of free public schools”, established the state's deliberate support for subsequent judicial decisions aimed at eliminating segregation in the public school systems.³ The legislature built on this Constitutional mandate in 1949 and amended the New Jersey Law Against Discrimination law to extend protections against

¹ See: <https://www.state.nj.us/dca/affiliates/coah/index.html>

² N.J. Const. Art. I, § 5.

³ N.J. Const., art. 8, § IV, ¶ 1.

discrimination based on a protected class such as race beyond employment to public accommodations including public schools.⁴

The New Jersey courts have been at the forefront of desegregation efforts in the public schools and notably decided the first anti-segregation lawsuit in the United States.⁵ In 1944, the New Jersey Supreme Court heard the case of *Hedgepeth and Williams v. Board of Education*⁶, a precursor to the *Brown* decision. In this case, the state Supreme Court examined the city of Trenton's Board of Education policy, which sent all African American students to one central junior high school. White students were sent to various schools near their place of residence. The Court cited a New Jersey statute that "it is unlawful to exclude children from any public school on the ground that they are of the negro race." The Hedgepeth case, which was the only anti-segregation decision at the time, was cited in *Brown v. Board of Education* and helped sculpt the Supreme Court's famous legal conclusions.

The New Jersey courts have also extended protections beyond those typically offered in federal courts. In 1965, the New Jersey Supreme Court heard the case of *Booker v. Plainfield*. In this case, the Court looked at the racial imbalance within the elementary schools in the Plainfield School District. The School Board appointed a committee to address this issue. This committee, through the findings of an expert, came up with two proposals to eliminate racial segregation and attack the racial imbalance within the schools. The school board prepared a third proposal with the explicit and more limited goal of eliminating any all-Black schools. The claimants filed a petition with the Commissioner of Education, asserting that the local board of education refused to implement a more comprehensive plan which would eliminate racial segregation. Although no oral testimony was heard, the Commissioner examined the record and found that under all three proposals there would be *no all-Black schools* and that "each plan is reasonable, practicable, and consistent with sound educational practice." The Commissioner gave the Board of Education the power to choose the plan.⁷ The State Board of Education affirmed the Commissioner's decision.

The case was eventually appealed to the NJ Supreme Court. The Court looked at the extensive powers of the Commissioner to end school segregation and reviewed the state's long commitment to ending racial segregation. The Court took a broader view than federal courts, identifying the need to rectify not only de jure segregation, but also de facto segregation, and emphatically stated that "Although such feeling and denial may appear in intensified form when segregation represents official policy, they also appear when segregation in fact, though not official policy, results from long standing housing and economic discrimination and the rigid application of neighborhood school districting." The Court further explained that whether the federal Constitution demands action to desegregate the schools, it does not preclude a state from

⁴ N.J.S.A. 10:5-1 et seq.; see also Roberts, K. F. (1998). *Federal regulations of chemicals in the environment* [PowerPoint slides]. Retrieved from <http://siri.uvm.edu/ppt/40henv/index.html> https://www.state.nj.us/lps/dcr/happy_bday_lad.html Vespa-Papaleo, Frank (April 18, New Jersey Against 2005) explaining that...

⁵ <https://www.trentonmakesmusic.org/snowball/the-hedgepeth-williams-case-an-exploration-of-an-impactful-legacy/>

⁶ 131 N.J.L. 153 -- Hedgepeth v. Bd. of Educ., 131 N.J.L. 153 (N.J. 1944).

⁷ *Booker v. Board of Education*

taking such action under state policy, reaffirming the State's commitment to desegregation: "In a society such as ours, it is not enough that the 3R's are being taught properly for there are other vital considerations. The children must learn to respect and live with one another in multi-racial and multicultural communities and the earlier they do so the better. It is during their formative school years that firm foundations may be laid for good citizenship and broad participation in the mainstream of affairs."⁸ The Court concluded that where local officials are not taking adequate steps towards desegregation in light of the state's goals, the Commissioner "may remand the matter to the local board for further action or may prescribe a plan."

Five years later the NJ Supreme Court once again addressed issues regarding school segregation in *Jenkins v. Township of Morris*.⁹ This time the Court examined an inter-district issue in which Morris Township voted by referendum to withdraw students from Morristown High School and establish its own K-12 schools. Various findings indicated that this would substantially alter the racial balance within the Morristown High School, eventually resulting in the Morristown High School becoming predominately Black.¹⁰ Specifically and in relevant part, the Court noted the expected change: "The percentage of Black students in the High School will be approximately as stated above: with Harding and Morris Plains, 27% in 1974 and 35% in 1980; without Harding and Morris Plains, 44% in 1974 and 56% in 1980." After the referendum, the Commissioner initially implemented a restraint against the Township's bond referendum to construct a separate Township High School. He later lifted this, claiming that he did not have the power to prevent the withdrawal of Township students from Morristown High School, or to take any steps towards the merger of the school systems. The Court reviewed the Commissioner's actions and concluded that contrary to his statements, the Commissioner has broad powers and could take this action if educationally appropriate and necessary to meet a Constitutional obligation.

The Court in *Jenkins* also established that the State can, in certain circumstances, provide Constitutional remedies that cross governmental subdivisions. While reaffirming the state's principle of home rule, the Court asserted that if the racial and educational policies found in the

⁸ <https://www.cga.ct.gov/PS98/rpt%5Colr%5Chtm/98-R-0907.htm>. Examining and concluding that "For two reasons, the court explicitly rejected the state's appeal to the federal precedents. First, the state, unlike the federal, constitution grants a fundamental right to education and imposes a state obligation to implement and maintain that right. Second, the principal of federalism, which is a prime limiting consideration in interpreting the federal constitution, does not similarly restrict state authority. The court also cited precedents to show that the U.S. Supreme Court sometimes holds that legislative failure to act to carry out a constitutional duty, such as to protect the right to vote, is sufficient to require constitutional remedies, and it held that there is no substantial difference between protecting the right to vote and protecting the right to a substantially equal educational opportunity.

⁹ *Jenkins v. Township of Morris School Dist.*, 58 N.J. 483, 279 A.2d 619 (1971). A complete presentation of this case is found in Maroon, Virginia (1971) "Schools and School Districts - School District Lines No Barrier to Commissioner When Seeking to Eliminate Racial Imbalance - *Jenkins v. Township of Morris School Dist.*, 58 N.J. 483, 279 A.2d 619 (1971).," *Seton Hall Law Review*: Vol. 3 : Iss. 1 , Article 17. Retrieved at <https://scholarship.shu.edu/shlr/vol3/iss1/17>

¹⁰ <https://s3-us-west-2.amazonaws.com/production.tcf.org/app/uploads/2016/12/12191925/Remedying-School-Segregation.pdf>

New Jersey's Constitution and implementing legislation are to have any meaning, the Commissioner must have the power to "cross district lines to avoid 'segregation in fact' at least where, as here, there are no impracticalities and the concern is not with multiple communities but with a single community without visible or factually significant internal boundary separations." The Court explained that in addition to the powers granted to the Commissioner, other legislation allows for crossing of district lines.¹¹

The *Jenkins* Court ultimately held that the Commissioner not only has the right but the duty to act. Specifically, the Commissioner has remedial options to enforce the state Constitutional mandates of providing a "thorough and efficient school system and preventing segregation in the schools and the "supervisory jurisdiction...with full power to direct a merger on his own if he finds such a course ultimately necessary for fulfilment of the State's educational and desegregation policies in the public schools."¹² This broad holding reaffirmed the State's demand to desegregate New Jersey schools in compliance with the state Constitution. Soon after, the Commissioner, armed with the New Jersey Supreme Court opinion and his legislative powers, ordered the merger of the two school districts.¹³

In the 2004 decision, the New Jersey Supreme Court considered the potential racial effects if the town of North Haledon withdrew from the regional high school, Manchester Regional. In the analysis, the Court looked at the potential loss of white students within the high school and the ensuing racial imbalance. The Court noted the Board of Education, in addition to the Commissioner of Education, has the power to prevent racial imbalance, concluding that "We find that the constitutional imperative to prevent segregation in our public schools applies as well to the Board within the ambit of exercise of its responsibilities under N.J.S.A. 18A:13-56(b)(4), which requires the Board to deny a withdrawal petition for '[a]ny other reason, which it may deem to be sufficient.'"¹⁴ The Board of Education failed to consider the benefits of denying the petition based on the possible and potential racial imbalance.

The NJ Supreme Court in this case once again emphasized the benefits of a racially diverse school¹⁵ and the harms that are associated with a homogenous school - for both Black and White students. As the Court explained, "When white students are withdrawn from a diverse school environment and placed with a "group of homogenous students," they lose "the educational

¹¹ See e.g., N.J.S.A. 18A:38-8; N.J.S.A. 18A:38-11.

¹² Jenkins, "Rather than suggesting an intolerable legislative default, [the Commissioner] could and should more reasonably and suitably have found, as we did in Booker, faithful legislative fulfillment of the constitutional mandate in the many broad implementing enactments delegating comprehensive powers to the Commissioner."

¹³ <https://www.issue4lab.org/resource/remedying-school-segregation-how-new-jersey-s-morris-school-district-chose-to-make-diversity-work.html>

¹⁴ *In Re: Petition For Authorization To Conduct A Referendum on the Withdrawal of North Haledon School District From The Passaic County Manchester Regional High School*, 181 N.J. 161, 854 A.2d 327 (2004).

¹⁵ The Court cites the *Grutter* decision and Justice O'Connor's detailed explanation of the benefits of a diverse classroom.

opportunity to learn to live with and respect people from a variety of racial and ethnic backgrounds by attending school with such individuals.”¹⁶

Thus, New Jersey courts have provided a strong legal mandate for the need for integration, confirmed that racial imbalance violates the Constitutional requirement to provide students a “thorough and efficient” education and armed the state with remedies to address de facto segregation, even beyond an individual school district’s boundary. The state court has provided protections beyond those recognized in federal court and acknowledged the inherent problems with a segregated school system, affecting both Black and White students.¹⁷

So Why Does School Segregation Persist?

New Jersey clearly has strong Constitutional, legislative and judicial support for the integration of the state public schools. So why does school segregation persist? This paper offers two reasons for the persistence of school segregation in the state. One is rooted in the law and policy. A second is rooted in public perception. New Jersey law bundles residential segregation with school segregation. In addition, and just as important, a lack of public recognition of segregation facilitates inaction. In other words, the inability of the public to recognize and identify the problem leads to a lack of response.

Law and Policy: Home Rule Law and Its Impact on Schools Segregation

First, segregation is an ingredient in New Jersey’s municipal governance. School segregation is a direct consequence of this residential segregation because students typically attend schools near where they reside.¹⁸ New Jersey has 565 municipalities and 616 school districts. State law mandates that “[e]ach municipality shall be a separate local school district...”¹⁹ and further requires that students must attend the school in the district in which they are domiciled.²⁰ Because students must attend schools in the town where they reside, the inevitable result is that segregated towns create segregated schools.²¹

It is important to note that New Jersey has a substantial minority population and significant non-Hispanic Black population. According to the 2017 5-Year American Community Survey,

¹⁶ Bd. of Educ. of Merchantville v. Bd. of Educ. of Pennsauken, State Board Docket No. 48-92, slip op. at 15 (State Bd. of Educ. Jan. 7, 1998), available at <http://www.nj.gov/njded/legal>.

¹⁷ It should be noted that Brown v. Board of Education was decided on the basis that a segregated school system caused inferiority to African American students.

¹⁸ See. <https://clime.newark.rutgers.edu/commentary/blog/fair-housing-under-mt-laurel-doctrine-resurrected-new-jersey>

¹⁹ N.J.S.A. 18A:8-1.

²⁰ N.J.S.A. 18A:38-1.

²¹ By contrast, in 1996 Connecticut’s Supreme Court found that their school district boundaries segregated students. *Sheff v. O’Neill*, 238 Conn. 1, 678 A.2d 1267 (1996).

1,136,347 Non-Hispanic Black reside in New Jersey, constituting 13% of the state population. Over 37% of the municipalities in New Jersey have only 0 – 2% Non-Hispanic Black residents and almost 64% of the towns have only 0 -5%. Because of the state law, the schools within these highly concentrated White towns will be reflective of the town's demographics. Similarly, the highly concentrated Black towns would lead to highly concentrated segregated Black schools. 75% of the Non-Hispanic Black population live in less than 10% of New Jersey towns and only 15.7% of New Jersey towns have at least the total state percentage of Black residents.

The racial divide is evident in New Jersey counties. Essex County has 39% Non-Hispanic Blacks, however ½ of the municipalities have less than 5% Non-Hispanic Black residents and 7 of these towns have 0 - 2%.²² Over 75% of Black residents in Essex County live in 3 towns and over 90% in 6 towns. East Orange, an Essex County town with the largest percent of Black residents, 85.6% is just down the road from the Essex County towns of Fairfield, Roseland and North Caldwell, all of which have 0% Black neighbors. East Orange has 8,996 students in the public school system, with 92% Black and 62.9% students in poverty. The East Orange public school system is 92% Black with 63% students in poverty: 10 miles away in the same county is Millburn, where there are 2% Black students and under 2% of the students are in poverty.

In neighboring Passaic County, 14 out of 16 municipalities have 0 - 8% Black residents and 10 have less than 4%. Over 70% of the Black population live in two municipalities, with over ½ living in Paterson. Over ⅓ of Paterson's schools are highly segregated and ⅓ of Paterson's students attend highly segregated schools.²³

Thus, residential segregation has translated into school segregation. According to the current litigation, there are 52,959 Black students in New Jersey who attend public schools that are over 99% non-White. This constitutes 24.9% of the 212,856 Black public-school students statewide. A further 51,900 Black students (24.4%), attend public schools in which the percentage of Black and Latino students exceeds 90%. In the aggregate, 131,418 Black students, or 61.7% attend schools that are 80% or more non-White, while the number of Black students attending schools that are more than 75% non-White is 140,679 or 66.1%.²⁴

It is also worth noting that New Jersey spends more per capita on its public-school students than do 48 other states. Only New York and the District of Columbia spend more. Nearly half that spending (46%) comes from local sources. Local support is matched in the aggregate by the state which heavily funds districts with inadequate property tax revenues and substantial minority populations. Only 8 percent comes from federal funds – less than any other state but New York.²⁵

²² U.S. Census Bureau; American Community Survey, 2017 American Community Survey 5-Year Estimates, Table B03002; <<https://data.census.gov/cedsci/>>; (April 2020).

²³ LAN complaint.

²⁴ LAN complaint.

²⁵ USA Facts: https://usafacts.org/answers/how-are-public-schools-in-the-us-funded/country/united-states/?utm_source=USAFacts_Klaviyo&utm_medium=email&utm_campaign=08_25_25_Flags

See no evil: Measuring the Public's Understanding of a Broad-Based Equity Problem

Public opinion and the salience of any given issue to the public influences how the government responds if at all.²⁶ Elected officials have an incentive to follow or at least address their constituents' interests, and where an issue has been perceived to be a problem, it is more likely that there will be a political response.²⁷ Yet, what about when the inverse occurs? What happens when the public does not recognize an existing issue and those who do wish to remain silent? This condition remains when most remedies are voluntary and must be implemented by the local government²⁸

Lack of public awareness is one answer to the question of how segregation can persist in New Jersey. People simply do not see it.

In a statewide poll in August of 2019, just 14% of residents reported that their local schools were segregated by race.²⁹ This was consistent across party ID, income, gender, education, region of the state and race and interview mode. In other words, there was little disagreement. At the same time, 83% reported that their local schools had “a good mix” of races and ethnicities. But half (50%) also reported that their own town was mostly white or mostly Black or mostly another race or ethnicity.

Put another way, three-quarters (75%) of those who said their town is mostly white also said their local schools had a “good mix” of races. Half of those who said their town is mostly Black also said their local schools had a “good mix” of races, while half said their schools were segregated. Asked whether they preferred more –or less– diversity in their local schools, nearly two-thirds (64%) said things are “fine the way they are.” There was no significant variation by gender, income, or education. Majorities of white and non-whites agreed things were “fine,” though it should be noted whites were significantly more likely than non-whites to say things are fine the way they are (72% v. 53%).

http://www.researchgate.net/publication/280230340_Trends_School_Integration_Polls

²⁶ Daniel Newark: The state has vast powers to set education priorities and enact policies that ensure integration, from fostering inter-school district student transfers to incentivizing school district mergers or altering school boundaries to achieve racial balance.

The Politics of Achievement Gaps: U.S. Public Opinion on Race-Based and Wealth-Based Differences in Test Scores. (“In education, like other areas of public policy, what the public believes about an issue can affect how that issue is addressed.”)

²⁷ Daniel Newark: “Elected officials tend to address issues to their constituents’ liking, particularly when those issues are salient to the public (Burstein, 2003).”

²⁸ Erica Frankenberg, *Trends School Integration Polls*. As the United States transitions to an era where virtually all integration efforts must be voluntarily adopted by school boards, public support for integration is more important than ever Available from:

https://www.researchgate.net/publication/280230340_Trends_School_Integration_Polls

²⁹ Unweighted N=1250. For the full press release see: “Joint Rutgers-Eagleton/FDU Poll: Most New Jerseyans Perceive No School Segregation” 26 Aug. 2019. At <https://view2.fdu.edu/publicmind/2019/190826/index.html>

Table 2

Q. Now let's talk about your local school district. In the area where you live, would you say the schools are segregated by race and ethnicity or is there a good mix of different races and ethnicities?

	Combined	Phone	Online
Segregated	14%	12%	16%
A good mix	83%	82%	84%
Don't know (vol)	3%	6%	0%
N= 1250	611	312	299

Table 3

Q. Thinking about the schools where you live would you prefer more racial and ethnic diversity, less racial and ethnic diversity, or are things fine the way they are now?

	Combined	Phone	Online
More	26%	27%	25%
Less	7%	3%	12%
Fine the way they are now	64%	65%	63%
Don't know (vol)	2%	5%	0%
N= 1250	610	309	301

For comparison, the same question series was put to a national probability sample.³⁰ That study found New Jersey residents *more likely* than the rest of the nation (83-73%) to report their local schools enroll a good mix of races and ethnicities. New Jersey residents were also more likely than the national respondents (50-44%) to report their schools were dominated by one race. And they were also more likely than the national sample (64-56%) to conclude that “things are fine the way they are.”

Table 4

<i>In the area where you live, would you say the public schools are segregated by race and ethnicity or is there a good mix of different races and ethnicities?</i>		
	NJ	Nat.
segregated	14	14
A good mix	83	73
DK/ref	3	13
<i>Would you say the public schools where you live have students who are mostly white, mostly black, mostly another race or ethnicity, or are the students from a variety of racial and ethnic backgrounds?</i>		
Mostly....	50	44
A variety	49	50
DK/ref	2	7
<i>Thinking about the public schools where you live would you prefer more racial and ethnic diversity, less racial and ethnic diversity, or are things fine the way they are now?</i>		
more	26	30
less	7	3
Things are fine	64	56
DK/ref	2	11

In a subsequent statewide study in New Jersey, residents were asked a broad question of equity: whether it is more important that people of different races live, work and go to school together or whether living, working and school together is not important *so long as everyone is treated fairly and has the same opportunities*. Three fifths agreed with the former and two-fifths with the latter. We suggest, then, that *most people do think integration is an important value in and of itself to achieve fairness*. In the that study, just one-fifth of residents thought there was no racial

³⁰ Unweighted N-1000. A random sample was drawn of adults nationwide and interviews were conducted on landlines and cellphones between by professional trained interviewers January 28 through February 13, 2019: 296 interviews were conducted on landlines and 704 were conducted on cellphones. Results for the total sample have a margin of sampling error of +/- 4 percentage points. Methodology retrieved from: <https://portal.fdu.edu/fdupoll-archive/190826/>

tension at all in their community while three-quarters of residents acknowledged there was at least some.³¹

Table 5

<i>Q. Which statement comes closer to the way you feel, even if neither is perfect?</i>	
It's <u>IMPORTANT</u> that people of different races and ethnic groups live, go to school, and work closely with each other	59%
It's <u>NOT IMPORTANT</u> that people of different races and ethnic groups live, go to school and work closely with each other <i>as long as everyone is treated fairly and has the same opportunities.</i>	40%
Don't know (vol)	1%
N=	1235

Table 6

Q. How much racial or ethnic tension do you think there is among people who live in your town or city—a lot, some, just a little or none at all?

A lot	8%
Some	29%
Just a little	40%
None at all	22%
Don't know (vol)	2%
N=	1243

The results of public opinion studies may be disappointing for activists because the extant tools for desegregation are voluntary, are at the local level, and thus require action from local policymakers.³² People are hesitant to describe their own locale as segregated. This local bias forestalls the necessary public push to promote active change and allows the situation to persist.

³¹ See: Joint Rutgers-Eagleton/FDU Poll: Racial, Socioeconomic, and Political Diversity in the Garden State, 2 Oct. 2019. Retrieved from: <https://portal.fdu.edu/fdupoll-archive/191002/>

³² “Whatever the litigation strategy chosen, it is clear that it must be paired with a long-term public engagement and community mobilization strategy to be successful.” For comparison, the estimates of public opinion on transgender inclusion in non-discrimination laws significantly

For example, the New Jersey Interdistrict Public Choice program is a state run program in which students can cross restrictive attendance zones.³³ According to the rules promulgated by the New Jersey Department of Education, “A choice district may accept non-resident students into an educational program in the choice district at the expense of the State.”³⁴ This is especially important in a state where school attendance corresponds directly to the municipality in which a student is domiciled.

The Choice program was never designed to be a tool of desegregation, but, according to a brief for the court, participating districts have seen greater diversity in their enrollments. An amicus brief asserted that “Interdistrict School Choice is a ready-made solution that can be implemented as remedy almost immediately. It is cost-effective, voluntary, and will produce no significant additional administrative burden for the State.”³⁵

Although the Interdistrict Public Choice program was not created to address the pattern of segregated schools, it has shown success in increasing diversity.³⁶ But any push to fund the Choice program, or raise its profile, or encourage more districts to participate, would depend on the public's recognition of segregation and the public's willingness to support, or even urge, the state to take steps to remediate the problem.³⁷

In sum, a serious limitation of the Interdistrict program is that the onus is on any given school district to apply to become a choice district and then on interested and attentive students and parents to apply for this opportunity.³⁸ For the 2020-21 school year only 124 out of 616 districts applied and have been designated as choice districts.³⁹ This means that roughly 80% of the school districts have either not applied or not been accepted to serve as a choice district. There are no Public Choice districts in the most segregated counties such as Essex and, although the

predict the probability that a policy is in place. On its own, support for the policy explains over half of the variation in the adoption of the policies, and 90% of the cases are correctly predicted. (See <https://journals.sagepub.com/doi/10.1177/2053168015612246>); Where climate change is perceived to be a problem and attention to environmental issues is high, more likely to adopt relevant policies.

³³ N.J.S.A. 18A:36B-14 et seq.

³⁴ N.J.A.C. 6A:12-1.2.

³⁵ InsiderNJ “NJ Policy Institute Files Amicus Brief n School Segregation Lawsuit” 29 May 2025. <https://www.insidernj.com/press-release/nj-policy-institute-files-amicus-brief-in-school-segregation-lawsuit/> Further, in a survey of districts, it reads, “18 of the responding choice schools that were mostly white were able to increase diversity by attracting minority populations through programs such as Upper Freehold’s Academies programs, Manchester Regional’s technical schools, Sterling High’s ROTC and technical programs, and Collingswood’s Media program.”

³⁶ <https://dlung6i9j8i9xc.cloudfront.net/wp-content/blogs.dir/123/files/2020/01/NJ-Interdistrict-Public-School-Choice-Amicus-Brief.pdf>

³⁷ Politics of achievement gaps - Daniel Newark

³⁸ IBID, “District boards of education may choose to apply to participate in the choice program as choice districts by receiving choice students.”

³⁹ <https://www.state.nj.us/education/choice/districts/districts.pdf>

program has grown since its inception in 1997, only 5,000 students out of the 1.37 million New Jersey public school students participate in this program.⁴⁰

The state has other legislative options that could promote school desegregation. However, most of these policies are also voluntary, requiring public acknowledgment and parental initiative.⁴¹

What is integration anyway?

No one has precisely defined the “good” being sought. Definitions for segregation, diversity and integration are numerous and varied. Is integration attained when there are a significant number of minorities within a school and/or school district, then what is significant? Is a town sufficiently diverse if the percent of Black residents matches the percent of Black residents in the state? Should measures be multi-racial or focus on Black-White integration?⁴² What is the minimum of diversity needed to accomplish a pedagogical goal? Is integration present when segregation is absent? There are just some of the multitude of unanswered questions and disputed answers.

Researchers, as well as public officials and advocacy groups, have been troubled with these questions for decades and use different tools to measure segregation and integration. Maria Krysan (2015) reviews changes in the definitions of residential racial integration from 1950 - 2013. According to Krysan, researchers have moved from a multidimensional approach, where integration is based on social interaction between groups, to a numeric approach, which focuses on numbers alone. Nearly 80% of researchers came to use a strictly numeric approach (1990 - 2013) in contrast to an earlier period (1950 - 1969) when just over 20% of researchers used this approach. Even though the numeric approach has become prevalent, there is still disagreement among researchers as to what numbers constitute integration and therefore some arbitrariness within this analysis.⁴³ For example, “from the start of 1990 onward, slightly more than half of published research measured White-Black integration as places with 10 to 60 percent Black and

⁴⁰ <https://www.njspotlight.com/2020/01/does-nj-have-model-in-place-to-fix-schools-segregation/>

⁴¹ Other potential remedies include: voluntary consolidation by individual districts, N.J.S.A. 18A:13-34; expanded school district authority to accept non-resident students, N.J.S.A. 18A:38-3 (a); authority of districts to send students to or receive students from other districts pursuant to agreements between the districts, N.J.S.A. 18A:38-8 et seq.; county vocational district schools, N.J.S.A. 18A:54 et seq.; and multi-district charter schools, N.J.S.A. 18A:36A-8, N.J.A.C. 6A:22-2.2

⁴² Meghan Ashlin Rich, "It Depends on How You Define Integrated": Neighborhood Boundaries and Racial Integration in a Baltimore Neighborhood". “This study and Ellen's study (2000) focus on Black and white integration rather than multiracial integration, including Asians and Hispanics. Ellen argues that because Hispanics and Asians (especially those in the middle class) tend to be much less residentially segregated from other races than African Americans, this focus is warranted.”

⁴³ See Krysan, noting that there is very little agreement about what number constitutes integration.

about 36 percent use 10 to 89 percent Black.” None of these methods were the dominant approach over the past 60 years.⁴⁴

The courts have been equally conflicted as to how to define the good. In the *Parents Involved in Community Schools v. Seattle School District* (2007), the Court grappled with the definition of integration in the context of voluntary school desegregation plans in Louisville, KY and Seattle, WA. Both programs intended to achieve racial diversity by requiring a certain percentage of Black and White students. The Seattle school plan allowed incoming ninth graders to choose from one of the 10 public high schools. Because some schools were oversubscribed, the Seattle school district used a series of “tiebreakers.” The first tiebreaker was whether the student had a sibling at the high school. The next tiebreaker looked to the racial demographic makeup of the school. The total Seattle school population was 41% white and 59% non-white. To maintain this demographic breakdown, the Seattle school plan would label a school “integration positive” if it was not within 10% of the racial demographics within the school district. Preference would be given to the student whose race would bring the racial demographics into balance.

The Court used strict scrutiny, deciding that the programs had a compelling governmental interest of ending racial isolation and promoting diversity but were not narrowly tailored. In the controlling part of Chief Justice Roberts’ opinion, he explained that racial balancing is not transformed into diversity by just relabeling the term. “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 of the interest that suggests it differs from racial balance.⁴⁵ From this, one can see that the Courts are willing to hear these issues, and address them sometimes, but as has been the case since *Brown*, it is the political apparatus, supported by some public opinion, that needs to implement change. *Brown v. Board of Education* was not implemented until 1964 Civil Rights Act/ESEA was there action, and since then most school desegregation cases have had to go through the judicial process (with desegregation orders for implementation). The obverse of this observation is that where the executive and legislative bodies are not willing to implement disruptive policy, and where there is no public opinion to fall back on, there is inaction. Where the public perceives there to be a substantive problem, action is more likely to be taken, though only “more” likely.⁴⁶

⁴⁴ Krysan - Various researchers use different standards to measure integration. Ellen Gould uses...

⁴⁵ See, e.g., App. in No. 05–908, at 257a (“Q. What’s your understanding of when a school suffers from racial isolation? A. I don’t have a definition for that”); *id.*, at 228a–229a (“I don’t think we’ve ever sat down and said, ‘Define racially concentrated school exactly on point in quantitative terms.’ I don’t think we’ve ever had that conversation”); Tr. in *McFarland I*, at 1–90 (Dec. 8, 2003) (“Q. How does the Jefferson County School Board define diversity...?” “A. Well, we want to have the schools that make up the percentage of students of the population”). Chief Justice Roberts also notes that the Kentucky plan states that they are attempting to address racial integration but notes that this does not require racial proportionality. (“[A desegregation] order contemplating the substantive constitutional right [to a] particular degree of racial balance or mixing is ... infirm as a matter of law”)

⁴⁶ It is so in other policy realms. For example, estimates of public opinion on transgender inclusion in non-discrimination laws significantly predict the probability that a policy is in place.

Conclusion, discussion of remedies, and further research

Both schools and residential segregation persist in New Jersey because the largest part of the public does not see it, and many who do see it, do not see it as a serious problem, or are not willing to endorse a policy that would be disruptive to the status quo. Advocacy groups that have pushed for a solution have found a favorable hearing in the courts but that is all. To date, the courts are not willing to force the legislature and governor to implement a remedy. Instead, the courts have been willing to let the parties negotiate a remedy which, to date, they have not been able to find, or not willing to find.

A 2024 statewide poll confirmed that two-thirds of voters (65%) heard nothing at all “about the ongoing lawsuit against the state of NJ claiming that schools are racially segregated.”⁴⁷ Thus, neither the governor, nor the legislature wish to set before the unsuspecting public a remedy for a problem the public doesn’t recognize as serious and fears the consequences of fixing. And thus, neither the governor nor the legislature wishes to come to a resolution. Yet, there is a prospect that the Court might force a remedy. Plaintiffs in the case have argued the executive was deliberately stalling.⁴⁸

A court-determined remedy would be a surprise to the public since the public doesn’t seem to be aware of a problem. The same 2024 poll that found the public had heard nothing of the problem also asked about potential remedies. The interviewers offered three options:

1. Building regional magnet schools: parents from across the area could choose to send their children to specialized schools.
2. Merging of school districts: adjacent school districts would be merged to create bigger, more racially diverse schools.
3. Transfer systems: Racially diverse students could transfer to less diverse schools in other towns, who would have to accept a certain number of them.

Magnet schools were the most attractive option. Some districts with high minority populations already use them. “Merging school districts” got the support of most minority respondents but not of white respondents. “Transfer systems” was the least acceptable to all groups.⁴⁹

On its own, support for the policy explains over half of the variation in the adoption of the policies, and 90% of the cases are correctly predicted. (See <https://journals.sagepub.com/doi/10.1177/2053168015612246>); Where climate change is perceived to be a problem and attention to environmental issues is high, more likely to adopt relevant policies.

⁴⁷ FDU Poll, “FDU Poll finds Voters OK with Magnet Schools to Reduce Segregation, Divided on District Mergers.” Nov. 13, 2024. Retrieved from <https://www.fdu.edu/news/fdu-poll-finds-voters-ok-with-magnet-schools-to-reduce-segregation-divided-on-district-mergers/>

⁴⁸ “Murphy team trying to 'stall' on NJ school segregation resolution, plaintiffs argue” Retrieved from: <https://www.northjersey.com/story/news/education/2025/06/25/nj-school-segregation-lawsuit/84323601007/?gnt-cfr=1&gca-cat=pp&gca-ds=override>

⁴⁹ FDU Poll, 13 Nov. 2024.

Table 7

Which policy outcomes would you find acceptable? [Multiple Answers Allowed]					
	All	White	Black	Asian	Hispanic
Regional Magnet Schools	60%	58%	65%	65%	66%
Merger of School Districts	52%	47%	65%	58%	64%
Transfer Systems	35%	31%	53%	42%	40%

A second reason both schools and residential segregation persist is that there remain disagreements and confusion over what constitutes diversity. To some, diversity is Hispanic students from two dozen countries attending the same school and sharing the same neighborhoods. To others, such diversity is just another over-concentration and segregation of students. In one analysis, New Jersey schools that are “Hispanic-segregated — meaning at least 80% of students in them are Hispanic — more than tripled between the 2001-02 school year and 2021-22.”⁵⁰ The charge that black and Hispanic students were being segregated from each other in New Jersey’s largest city spawned legal challenges.⁵¹

But even imagining that segregation could be reduced in New Jersey schools, leaves the core cause of that segregation untouched: residential segregation. In the most densely populated state in the nation, and one of the most diverse in aggregate, there is, and will remain for a long time, highly concentrated populations with an absence of Blacks and others with an absence of Whites.

⁵⁰ O’Dea, Colleen. 11 July 2023. “How segregated are NJ schools. It’s complicated.” <https://www.njspotlightnews.org/special-report/graphics-and-interactive-maps-explore-nj-school-segregation/>

⁵¹ *In re Renewal Application of TEAM Academy Charter School* was the lead case among seven consolidated appeals that, among other charges, claimed the expansion of charter schools in Newark exacerbated segregation because the neighborhood in which the charter schools are located influence the demographic make-up of the students it attracts.

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