

**THE SOCIOECONOMIC COMPOSITION OF
THE PUBLIC SCHOOLS:
A CRUCIAL CONSIDERATION IN STUDENT ASSIGNMENT POLICY**

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Revised

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A community's schools are among its most valuable assets. Resources from every level of government are devoted to their development and maintenance, and within their walls a community's collective future is forged. Many factors contribute to the success of a school system, but among them, student assignment planning is central, since other students are (together with good teachers), the most significant educational inputs into any school. The many effects of student assignment policies are felt in areas as disparate as test scores, course offerings, teacher quality, and suspension rates.

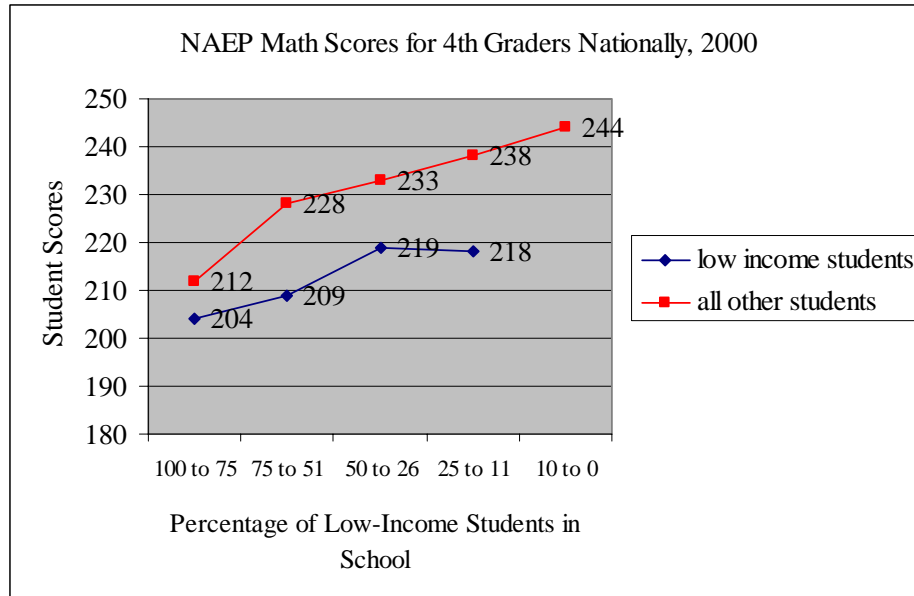
The North Carolina Supreme Court has recently declared that all students have a constitutional right to "a sound basic education," and that State officials have a duty to assure this right to students in every school.¹ School districts must now weigh not only their community's long-term interests but their specific constitutional duties to each North Carolina child as they craft student assignment policies that distribute educational opportunity throughout their districts. The following discussion provides a brief overview of some of the research relating to the socioeconomic composition of schools.

1. To what extent does a school's overall poverty rate affect student achievement?

Student achievement—on which the Charlotte-Mecklenburg Schools appropriately place a great deal of emphasis—has been clearly shown to fall as the poverty level of a school rises. A consistent, forty-year body of scientific studies confirms that children who attend high-poverty schools face considerably higher risks of lower academic performance, whatever their individual academic potential. In fact, middle-income students who attend high-poverty schools earn lower average test scores than do low-income students who attend middle class schools.²

¹ *Leandro v. State*, 346 N.C. 336, 345, 488 S.E. 2d 249, 254 (1997).

² U.S. Department of Education, National Center for Education Statistics. *The Condition of Education, 2003*.



Source: U.S. Department of Education, National Assessment of Educational Progress (NAEP), 2000 Mathematics Assessment, reported in National Center for Education Statistics, *The Condition of Education, 2004*.

Since the publication of the Coleman Report in 1966, social scientists have reported that the socioeconomic composition of a school makes a difference in the achievement levels of individual students. In 1982, Professor Karl White evaluated 101 previous studies and concluded that overall, the socioeconomic composition of schools seems more predictive of future academic achievement than does a student's individual socioeconomic status (as confirmed in the chart above, showing more recent data).³

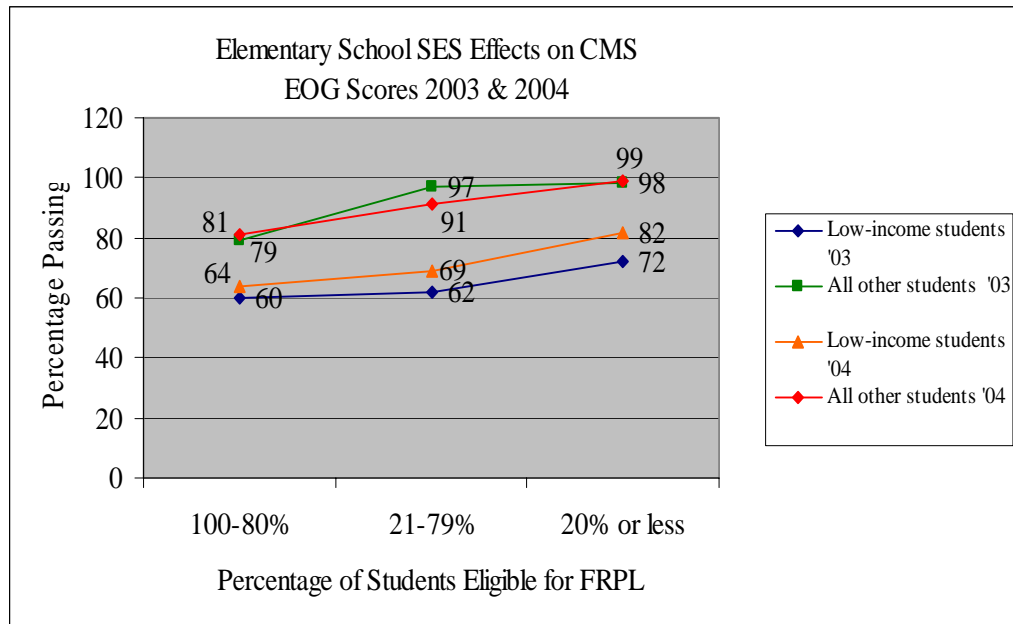
The benefits of avoiding high-poverty schools—for individual students and for society—are not limited to improvements in students' test scores. When Professor Susan Mayer analyzed data on 26,425 students who were in tenth grade in 1980 and who submitted to follow-up interviews two years later, she found that students who attend lower poverty schools have lower dropout rates and lower pregnancy rates than students of the same race and income level who attend high poverty schools.⁴ Importantly, Mayer also calculated that the positive effects of moving lower-income students from high-poverty to middle-income schools are significantly greater than the minimal effects of moving high-income students out of very low-poverty schools to average-poverty schools.

³ Karl R. White, *The Relation Between Socioeconomic Status and Academic Achievement*, 91 **Psychological Bulletin** 461, 463-64 (1982).

⁴ Susan E. Mayer, *How Much Does a High School's Racial and Socioeconomic Mix Affect Graduation and Teenage Fertility Rates?* in **The Urban Underclass** 321, 325-27 (Christopher Jencks & Paul E. Peterson eds., 1992).

These findings have subsequently been confirmed by a number of researchers.

The chart below shows that, although CMS's overall achievement scores on North Carolina's ABC tests increased slightly between 2003 and 2004, the increase was largest among those low-income students who attend low-poverty, i.e., middle-income schools. Among these elementary students, achievement was up an impressive 10 percentage points between 2003 and 2004—from 72 percent to 82 percent. By contrast, achievement gains among low-income students who attend CMS's high poverty schools were far less, up only 4 percentage points (from 60 to 64 percent). In short, while 82 percent of low-income children who attend low-poverty CMS schools are now performing at grade level, only 64 percent of low-income students consigned to CMS's high-poverty schools meet state standards—an 18 percentage point gap *among children, all of whom are from low-income families*. Indeed, low-income children permitted to attend middle-class schools now outperform all non-poor children who attend high-poverty schools (82 percent to 81 percent).



Source: Roslyn A. Mickelson, *Segregation, Desegregation, and Resegregation in the Charlotte-Mecklenburg Schools*. Unpublished manuscript, Department of Sociology, UNC-C, 2004. (All data from NC DPI.)

Charlotte-Mecklenburg's academic performance has recently come to the attention of the Superior Court judge who is overseeing the statewide implementation of the long-running *Leandro* case. In a November 10, 2004 letter to the parties, Judge Howard E. Manning, Jr. wrote with concern about CMS high school performance rates—comparing overall scores in Mecklenburg County, which provides \$2403 per pupil to the district, with those in Wake County, which provides \$1849. Judge Manning noted that only one high school in the Charlotte-Mecklenburg system could claim that 80

percent or more of its students were at grade level on state ABC tests, while four of the five Equity Plus II high schools had composite scores below 50 percent. (The fifth school reported 55 percent at grade level and the sixth was not included in the report.) Wake County, on the other hand, had *no* high school with fewer than 66 percent of its students below grade level and had eleven high schools above the 80 percent mark, with only five below. Judge Manning wrote:

My review of the [statewide] high school composite performance uncovered an area of concern in CMS's high schools. . . The level of academic performance (10 out of 15 with composites below 70%) in these high schools is below par to put it mildly. The below par performance is especially troubling in view of the amount of local spending per pupil in Mecklenburg County. . . Poor performance in multiple schools when an LEA has plenty of funds as compared to other LEAs that are performing well would, initially at least, tend to indicate a management problem in the LEA arising out of its allocation of the system's human resources (principals, teachers and staff development) in those schools that are failing to achieve.⁵

This statement by a judge who is presently charged to enforce *Leandro* rights statewide suggests that if the Charlotte-Mecklenburg Board of Education chooses *not* to act on its own initiative to redress these problems of low performance (which we have attributed largely to its student assignment decisions), the matter might soon be taken out of its hands by state courts.

2. How does school poverty affect teacher quality?

A recent study by Duke researchers Clotfelter, Ladd, and Vigdor points out that teacher quality has been found to be the “major determinant of student academic progress.”⁶ Variations in teacher qualifications in Texas have been shown to account for 43 percent of the difference in the math achievement gains among third through fifth graders. Teacher quality variations explained 31 percent of the differences in eighth and ninth grade scores in another study of five Alabama districts.⁷

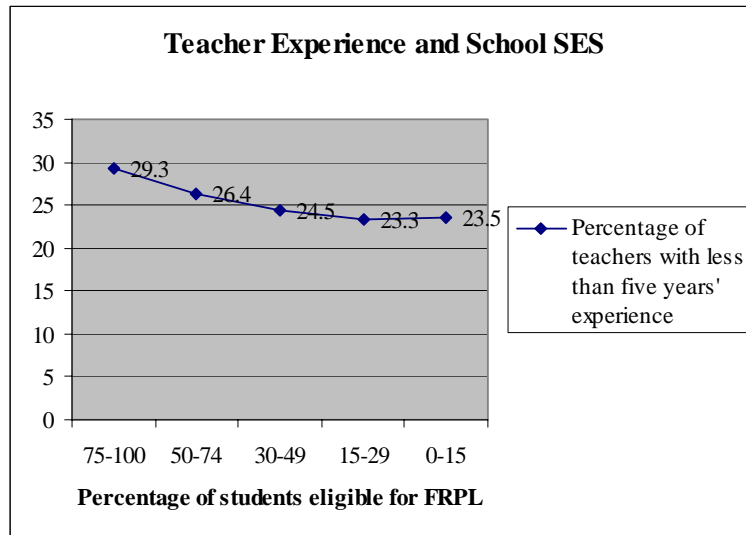
Yet maintaining teacher quality in high-poverty schools is especially challenging. In June 2004, the Department of Education released a report identifying teachers who lacked certification or who had not majored in the field in which they were teaching. In high-poverty schools where at least 75 percent of students were low-income, there were three times as many uncertified or out-of-field

⁵ Fax Only Memo from Hon. Howard E. Manning, Jr. to Tom Ziko (N.C. Attorney General's Office) *et al.*, dated November 10, 2004, at 3, 5, *Hoke County Board of Education v. State* (Super. Ct., Wake Co. No. 95 CVS 1158).

⁶ Charles T. Clotfelter, Helen F. Ladd, and Jacob L. Vigdor, *Who Teaches Whom? Race and the Distribution of Novice Teachers*, (2003), *citing* William Sanders & Sandra P. Horn, *Research Findings from the Tennessee Value-Added Assessment System Data Base: Implications for Educational Evaluation and Research*, in **Journal of Personnel Evaluation in Education** 12:3, 247-256, 247 (2002)

⁷ Clotfelter, Ladd, & Vigdor, *supra* citing Ronald F. Ferguson and Helen F. Ladd, *How and Why Money Matters; An Analysis of Alabama Schools*, in **Holding Schools Accountable: Performance-Based Reform in Education** (Helen F. Ladd ed., 1996).

teachers in both English and science as there were at schools with lower poverty rates.⁸ In spite of the enthusiasm that new teachers sometimes bring to their classrooms, teachers with experience typically provide the greatest educational benefits; those teachers with fewer than five years' experience are generally less effective than their more experienced colleagues.⁹ Yet nationally, while only 23.5 percent of teachers in middle-class schools have fewer than five years' experience, in high poverty schools, the rate is significantly higher, 29.3 percent. In high poverty schools with at least 75 percent students of color, the percentage rises to 31.5.¹⁰



Why are so many of the least-experienced and less-well-qualified teachers found in high-poverty schools? One clear explanation stems from the nation's current teacher shortage. Promising teachers today have many options. As they assess alternatives, good teachers know that schools perceived as high-poverty normally present far greater educational challenges: their student, faculty, and administrative turnover will be higher; parental support will often be far weaker; needed resources are often absent; and the potential for disruption and disciplinary problems will be more acute. Faced with these adverse "headwinds," many teachers with the greatest options choose to teach elsewhere.

⁸ U.S. Department of Education, National Center for Education Statistics. **The Condition of Education, 2004.**

⁹ Clotfelter, Ladd, & Vigdor, *supra*, at 7.

¹⁰ U.S. Department of Education, NCES, Schools and Staffing Survey (SASS), *Public Teacher Questionnaire and Charter Teacher Questionnaire* and *Public School Questionnaire and Charter School Questionnaire, 1999–2000*, in NCES, **The Condition of Education, 2004.**

Even when good teachers can be drawn to high-poverty schools, moreover, retaining them is often impossible. The Charlotte-Mecklenburg system's overall five-year teacher turnover rate, measured at 19.25 percent in 2000, was the highest in the State. Other large urban districts such as Forsyth, Guilford, and Wake reported turnover rates of less than 12 percent.¹¹ Among CMS's highest poverty high schools, moreover, turnover rates were as high as 31 percent—a level that brings enormous educational losses to both students and those teachers who remain. Eliminating high-poverty schools in Charlotte-Mecklenburg and their extremely challenging conditions would improve overall working conditions for teachers, which would in turn help lower the district's turnover rate and almost certainly make it easier to attract and retain high quality teachers teaching in their fields of expertise in all district schools.

3. Can compensatory measures overcome the effects of concentrated poverty?

Unfortunately, in most cases, compensatory measures do not appear readily able to counter these strong trends in high-poverty schools. The means adopted in Charlotte's Equity Plus II schools plainly have not yet succeeded, despite well-intended plans to provide safeguards to assist students in Charlotte's high-poverty schools. Indeed, many of the finest experts agree that although educators know a great deal about how to reach *individual students* from disadvantaged backgrounds, far too little is currently known about what is needed to make *high-poverty schools*, full of disadvantaged students, really effective.¹²

Moreover, the promises of equity made to low-income communities (where many of these schools are concentrated) have a poor history of being kept.¹³ Resource inequities are a chronic problem in high poverty schools, ranging from teachers with inadequate math backgrounds to less emphasis on reasoning skills and a harsher school disciplinary climate.¹⁴ Even when extra resources are made available to high-poverty schools, they tend to matter less than would more systematic

¹¹ Clotfelter, Ladd, & Vigdor, *Who Teaches Whom?* Table 1. 31. Superintendent Pughsley has shared more recent teacher turnover data, acknowledging that "[w]hile recent trends are encouraging, CMS has long struggled with high teacher turnover, which directly impacts its ability to have a qualified, well-prepared teacher in each classroom every day." *Educate!* Dec. 3, 2004, at 8 (citing 2003-04 statistics showing that CMS's teacher turnover rates in its elementary, middle, and high schools were 24%, 29% and 24% respectively, compared with average North Carolina rates of 20%, 23%, and 20%).

¹² National Research Council, **Making Money Matter** 268 (Helen F. Ladd & Janet S. Hansen eds., 1999) (acknowledging that "the educational challenges facing urban districts and schools serving concentrations of disadvantaged students are particularly severe. Social science research currently provides few definitive answers about how to improve educational outcomes for these children.").

¹³ Gary Orfield, *Unexpected Costs and Uncertain Gains of Dismantling Desegregation*, 81-84, in **Dismantling Desegregation: The Quiet Reversal of *Brown v. Board of Education*** (Gary Orfield, Susan E. Eaton & the Harvard Project on Desegregation eds., 1996).

¹⁴ Stephen Raudenbush, Randall Fotiu, and Yuk Fai Cheong, **Inequality of Access to Educational Resources: A National Report Card for Eighth-Grade Math** (1998).

efforts to reduce school poverty concentration. Indeed, researchers Russell Rumberger and Gregory Palardy have calculated that when students in the South attend schools with lower poverty rates, their achievement levels rise at rates similar to those of children who have experienced three years of class size reduction.¹⁵

Professors Rumberger and Palardy do identify a number of policies that can affect student achievement at higher poverty schools: increasing the average number of math courses taken by students; elevating the average hours of homework; increasing the percentage of students assigned to the academic track; and strengthening the quality of teachers.¹⁶ But none of these factors is *more* effective in improving average student achievement than is lowering school-wide poverty rates and/or individual student poverty rates, which provide additional benefits both to students and to communities.

Some researchers contend that special teaching methods and administrative techniques can empower willing and able educators to overcome the poverty levels of their schools. Yet reliable evidence to confirm these hopeful contentions remains far too slim.¹⁷ For example, Superior Court Judge Howard Manning, Jr., in overseeing North Carolina's *Leandro* litigation, was initially impressed with student achievement levels in certain of North Carolina's traditionally high-poverty rural schools. He directed the parties to examine five such schools to see what lessons might be learned from their success.¹⁸ Educators and attorneys found upon closer examination, however, that very few of these schools could keep up their temporary success, and no coherent group of educational methods emerged that would guarantee high performance in high-poverty schools.¹⁹ The Superior Court found that "the majority of successful schools whose principals testified at the hearings still have many Students below Grade Level and have not been able to maintain their levels of at-risk success in 2000-01"; in fact, "four of the five schools the Court identified as successful failed to meet even expected growth under North Carolina's accountability standards for 2000-01."

Indeed, new research from the Economic Policy Institute reveals that schools where poverty levels are below 50 percent are *twenty-four times* more likely to be high achieving than schools with

¹⁵ Russell Rumberger and Gregory Palardy, *Does Resegregation Matter? The Impact of Social Composition on Academic Achievement in Southern High Schools*, in *School Resegregation: Must the South Turn Back* (John Charles Boger & Gary Orfield, eds., UNC Press, forthcoming 2005).

¹⁶ *Id.*

¹⁷ See, e.g., Charles A. Dana Center, Univ. of Texas, **Hope for Urban Education: A Study of Nine High-Performing, High-Poverty Urban Elementary Schools** (U.S. Dept. of Education, Planning and Evaluation Service, 1999); see also Ronald R. Edmonds, *Making Public Schools Effective*, 12 **Social Policy** 56, 60 (1981).

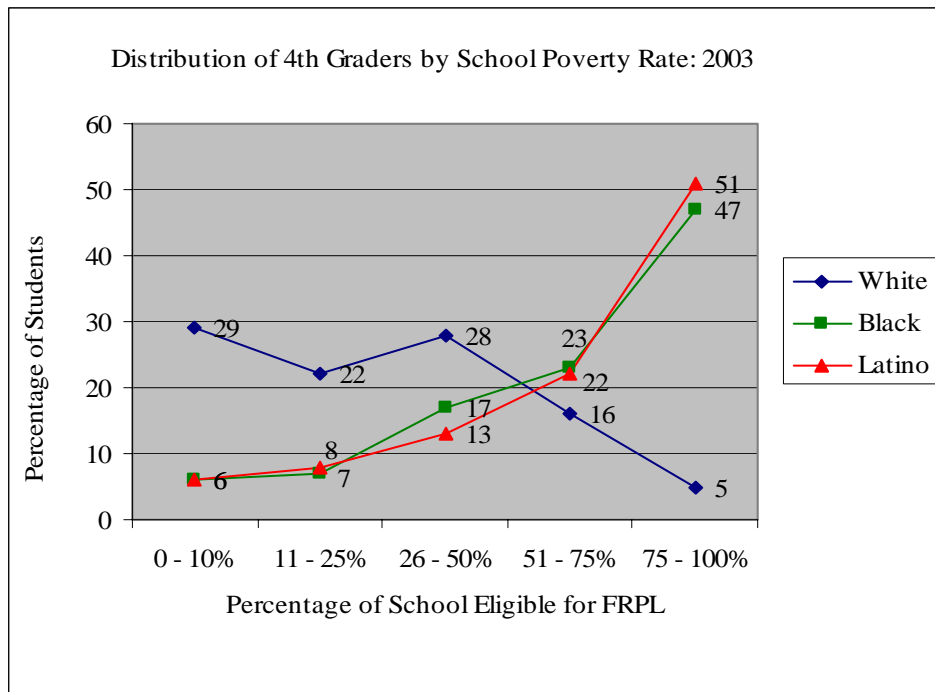
¹⁸ Memorandum, *Hoke County Board of Education v. North Carolina*, No. 95 CVS 1158, at 58-60 (Wake County Superior Court, filed Mar. 26, 2001); see also Memorandum, *Hoke County Board of Education v. North Carolina*, No. 95 CVS 1158, at 24 (Wake County Superior Court, filed April 4, 2002).

¹⁹ See Memorandum, *Hoke County Board of Education*, No. 95 CVS 1158, at 73-74 (Wake County Superior Court, filed March 26, 2001).

student bodies with more than 50 percent low-income students.²⁰

4. Who attends high poverty schools?

Income in our society is closely tied to race. Nationally, about 50 percent of all black and Latino students attend schools in which 75 percent or more of the students are low-income as measured by eligibility for free and reduced price lunch (FRPL). Only 5 percent of white students do. In fact, over half of all white students attend schools in which 25 percent or fewer of the students are eligible for FRPL.



Source: National Center for Education Statistics: *The Condition of Education 2004*.

The picture in Charlotte is no different, as a chart published in the March 6, 2003 edition of *Educate!* reveals.²¹ The poverty levels in the district’s elementary schools correlate all too neatly with race. As long as Charlotte chooses to embrace a student assignment plan based upon parental choice that leads to “have” and “have-not” schools, those schools in which poverty is concentrated will be disproportionately non-white, and they will have a much more difficult time attracting higher

²⁰ Douglas Harris, **Beating the Odds or Losing the War? A National Portrait of Student Achievement in High-Poverty Schools** (Washington, DC: Economic Policy Institute, forthcoming 2005); discussed in **Can Separate Be Equal: The Overlooked Flaw at the Center of No Child Left Behind** (The Century Foundation, 2004).

²¹ The Swann Fellowship, *Educate! A Community Journal on Education in Charlotte-Mecklenburg NC*, <http://www.educateclt.org/archive_pdf/2003/Educate!%20030306.pdf>.

achieving students, hiring and retaining experienced teachers, and acquiring the resources they need to succeed.

5. Aren't high poverty schools just the result of individual choices?

High poverty schools are partly the result of individual choices in CMS, but they are also—and most fundamentally—a choice made by the school board when it adopted the current student assignment policy. Charlotte's high poverty schools are islands of want in a prosperous community. In this way they are in a fiscal position very different from schools in low-wealth districts such as Hoke County (the district heretofore central to the *Leandro* litigation), where the problem is an overall lack of resources. Students in Charlotte's high-poverty schools, however, suffer many of the same educational problems as the students in poor rural counties. In fact, Charlotte-Mecklenburg currently has a number of schools with higher percentages of failing low-income students than the schools in Hoke County, even though Hoke has twice the poverty rate and half the per capita income of Mecklenburg County.²² The table below compares the success rates of low-income CMS students at middle schools in which over 60 percent of the students are eligible for free or reduced price lunch with low-income Hoke County middle schoolers.

**Percentage of 8th Grade Students Eligible for Free and Reduced Price Lunch
Scoring at or Above Level III in Reading and Math, 2003-2004²³**

Hoke County Schools	Percent passing	Charlotte/Mecklenburg Schools	Percent passing	Eligible for FRPL
East Hoke Middle School	70.3	Albemarle Road Middle School	59.6	69.7
West Hoke Middle School	62.3	Cochrane Middle School	55.3	79.24
		Eastway Middle School	51.1	82.64
		James Martin Middle School	57	61
		Marie G. Davis Middle School	48.3	90.77
		Northridge Middle School	57.6	62.41
		Sedgefield Middle School	45.2	71.14
		Spaugh Middle School	60.7	88.01
		Wilson Middle School	48.1	76

Given the strong evidence that students' academic achievement could be improved if concentrations of poverty were reduced significantly in CMS schools, and given that CMS—unlike

²² *Rural Data Bank*. North Carolina Rural Economic Development Center, Inc. <<http://www.ncruralcenter.org/databank/profile.asp?County=Hoke&County2=Mecklenburg>> 25 October 2004.

²³ Supplement to Plaintiff-Intervenor's Motion to Develop State-Wide Plan, *Hoke County Board of Education v. State* (Super. Ct., Wake Co. filed Oct. 22, 2004)(No. 95 CVS 1158). Level III proficiency is the standard adopted by the N.C. Supreme Court for demonstrating compliance with the *Leandro* decision.

Hoke County, where overall poverty levels are far higher—could accomplish this objective through student assignment changes alone, it is not only educationally sound, but may be legally obligatory, for Charlotte-Mecklenburg to impose a student assignment system to assure that every CMS school will offer a promising educational environment for all its students.

6. How do student assignment patterns affect housing values and choices?

The systematic depression of student academic performances that is associated with high-poverty schools has strong, adverse effects on the value of private housing in neighborhoods near these schools. Since home equity represents the largest portion of most Americans' net worth, school assignment policies that concentrate poverty also effectively reduce the wealth of residents of the surrounding neighborhoods—not only those with children, but also those without. Thus, student assignment policies that rely on neighborhood schools impose extra costs on high-poverty neighborhoods generally.

Researcher David Figlio, in comparing the prices of repeat sales of houses before and after the release of statewide letter grades assigned to schools under a Florida testing program, found “major housing price effects” related to the grades—about a 10 percent price drop for each different level in a school's grade.²⁴ A more recent study by Thomas Kane, Douglas Staiger, and Gavin Samms that examined the relationship between housing values and test scores in Charlotte-Mecklenburg between 1993 and 1999 found that housing prices were strongly associated with perceived school quality, which correlated most closely with white students' test scores.²⁵ (Charlotte-Mecklenburg housing values were more stable during the 1993-1999 period studied than those recorded in the Florida study. This greater housing market stability may well have stemmed from the student assignment policies in effect in CMS during those years. By ensuring that district schools' demographic composition would generally reflect the district's overall makeup, the assignment plan would have contributed to greater homebuyer confidence about the long-term educational stability of any given school.)

Because families looking for homes often seek schools populated with students similar to their own children, if a district bases its assignment policy solely on neighborhood choice, the aggregate residential decisions of homebuyers can readily frustrate any hope of building diverse public schools. Racial composition, poverty rates, and test scores are often used as signaling devices

²⁴ David N. Figlio and Maurice E. Lucas, **What's in a Grade? School Report Cards and House Prices** (November 2000). NBER Working Paper No. W8019.

²⁵ See Thomas J. Kane, Douglas O. Staiger, and Gavin Samms, *School Accountability Ratings and Housing Values*, in **Brookings-Wharton Papers on Urban Affairs: 2003** (William G. Gale and Janet Rothenberg Pack, eds., 2003).

to parents that can influence their housing choices. When schools are easily categorized as rich or poor, black or white, then residential choices often become part of a negative "feedback system" that reinforces racial and socioeconomic isolation. White and wealthy parents move to largely white school attendance zones because of unexamined beliefs that these schools will better serve their children.

By contrast, when school assignment policies are designed to assure that all schools are similar in terms of their socioeconomic composition, parents can make residential choices without worrying about the quality of their children's education, since they know that wherever they choose to live, schools will be strong. Stable, economically and racially integrated neighborhoods and schools provide the convenience and safety that all parents really want for their children. This in turn helps to build more support for public education.

7. How would considering the socioeconomic composition of schools affect the severe overcrowding that currently exists in low-poverty schools?

CMS has some overcrowded schools and some under-capacity schools. Essentially, the picture is one of largely middle-income, predominantly white, and crowded schools in the suburbs and largely high-poverty, nonwhite, and underutilized schools in the central city. Thus the current student assignment policy seems both educationally and fiscally inefficient. The school board and county commissioners could act in several ways to improve this situation.

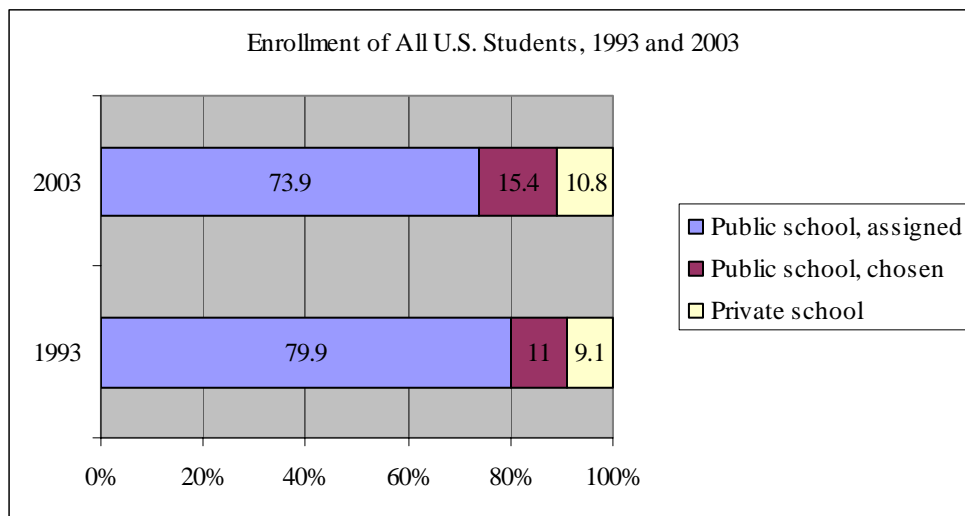
Redrawing attendance zones to reduce school SES disparities would be practical and effective. It would allow the district to use existing school space to capacity, by adding some higher-achieving students from overcrowded schools, and simultaneously improve achievement in those schools—formerly successful—that are now deemed failing. Magnet schools could also be used both to draw middle-class families into otherwise underutilized facilities downtown, which would also allow suburban parents who work downtown to be closer to their children during the school day.

Charlotte has recently decided to build more schools in emerging suburban areas. The economic segregation in the county's housing stock means that these proposed schools will tend to be distant from many low-income communities, reinforcing and deepening the socioeconomic divisions that have opened in the CMS schools. The relationship between Charlotte's public schooling and its current development patterns must be addressed. Developer-driven growth, spiraling outward toward less expensive land, should not be allowed to drain the central city of its vitality. The siting of new schools must be done not only with an eye toward lessening the overcrowding of suburban schools but also with the aim of fully utilizing existing schools in the central city. This kind of planning will

help not only the students but the city as well—drawing more families back from the fringes, reducing commuting times and air pollution, and increasing community cohesiveness.

8. Can SES balancing be used effectively in a “choice” plan?

Yes, it can. Student assignment policies must be overseen centrally if educational resources are to be used effectively. Student assignment is a principal responsibility of local school boards, and broad authority is granted to these elected officials to create effective local policy. This is why most students nationally attend public schools to which they are assigned (about 74 percent of all students, and 80 percent of all public school students).²⁶



Data from U.S. Dept. of Education, National Center for Education Statistics, **The Condition of Education, 2004.**

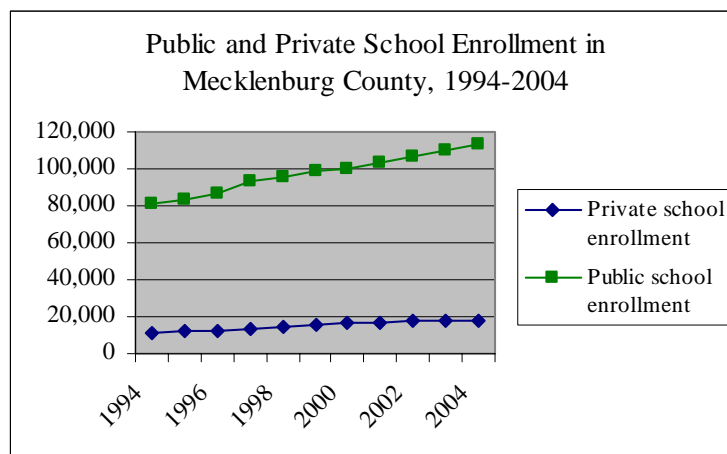
Yet school districts can effectively honor parental wishes for greater choice in their children’s school settings even when they are committed to policies that prevent the emergence of high-poverty schools. Some districts that actively pursue high achievement goals while maintaining a commitment to avoiding high-poverty schools rely on magnet schools. Others have adopted “controlled choice” assignment plans that ask parents to provide administrators with the names of several schools they would like their children to attend. Planners then assign students to one of the parents’ choices with an eye toward meeting other district-wide educational goals: monitoring capacity, limiting poverty concentration, controlling transportation costs, balancing achievement levels, etc.

²⁶ The percentage of students who “chose” their public schools rose from 11 percent in 1993 to 15.4 percent ten years later. Private school attendance rates in those same years were 9.1 and 10.8 percent; this means that the relative percentages of *public* school students choosing their schools increased from about 14 to about 21 over the past decade. U.S. Department of Education, **Condition of Education 2004.**

The current CMS plan on the other hand, while it does include some recognition of the need for district-level oversight in the creation of schools, essentially requires individuals to look out for their own interests, without reference to the best interests of the district as a whole. This creates not a “choice” but a “lifeboat” situation in which parents scramble individually for their children’s educational futures. This situation can and must be made more stable through school board action: a commitment to *all* Charlotte-Mecklenburg schools and students. Specifically, the district should not choose to allow its schools to become segregated into radically different levels of achievement, income, or color.

9. Would a “controlled choice” SES plan cause families with greater resources to leave CMS for private schools?

Many issues affect private school enrollment: the regional economy, the racial balance of the district, religious beliefs, and the strength of local public and private schools. In Charlotte-Mecklenburg, the public/private enrollment patterns have held fairly steady over the past ten years, as shown in the chart below. Indeed, the future assurance that all schools throughout the CMS system will be high-performing, and that parents are not entering a "winner/loser" lottery by enrolling their children in the public school system, should reduce the impulse of some families to abandon public education altogether.



Source: NC Department of Public Instruction, “Race and Gender by LEAs,” <<http://149.168.35.67/WDS/TableViewer/tableView.aspx>>; NC Department of Administration, State of North Carolina Private School Statistics <<http://www.doa.state.nc.us/dnpe/hhh500.htm>>.

10. How does socioeconomic balancing affect higher-income students?

Reducing poverty levels in high-poverty schools means increasing those levels somewhat in other schools, of course. But the overall impact on the broader group of middle-class schools tends to

be far less than the dramatic improvement in the fewer schools where poverty has been concentrated. Richard Kahlenberg, one of the leading proponents of creating “middle-class schools” for all children, points out that “the numerical majority in a school set the tone.”²⁷ This is why discipline problems, achievement problems, and teacher turnover go down in middle-class schools even as average student motivation and achievement, access to challenging curricula, community connections across income levels, parent involvement, and access to needed resources all go up. When high-poverty schools are eliminated, their adverse educational climate is not typically spread across a school district; instead, problems are actually reduced everywhere.

Because of higher poverty levels among students of color, socioeconomic integration in multiracial school districts often creates more racially and culturally diverse classrooms as well—benefiting all students as they prepare for futures in our increasingly multiracial society. Evidence is mounting that diverse classrooms push students to more complex levels of thinking, as students necessarily respond to the presence of those they perceive as “different.”²⁸ Educational psychologist Jean Piaget urged, beginning in the 1970s, that students be provided opportunities to interact with diverse peers in order to understand others—an important skill that he asserted *must* be learned outside the realm of family and outside the realm of homogeneity. “Perspective taking” as he called it, is a critical part of moral development and must be learned in debate and discussion on terms of equality with others deemed different.²⁹ Students in diverse classrooms also benefit from the experience of “incongruity or dissonance,” which Piaget called “disequilibrium”—a sense of unfamiliarity that causes them to seek new information and create new thought patterns in order to make sense of their surroundings. This experience leads to enhanced intellectual stimulation and increases cognitive growth.³⁰

More recent research has validated that these learning environments help students to avoid the kind of “automatic thinking” or “mindlessness” that researchers associate with lower levels of thought.³¹ This line of research grows out of studies of diverse small working groups, in which it has been shown that heterogeneous groups develop more creative solutions to problems, perhaps because their awareness of individual differences blocks the dead end road to unproductive “group think.”

²⁷ Richard Kahlenberg, *The Whys and Hows of Socioeconomic School Integration* in **The Term Paper: News and Analysis on School Reform from the Piton Foundation** (May 2002).

²⁸ Much of this research was reported in expert reports for the *Gratz v. Bollinger* and *Grutter v. Bollinger* trials and can be found at <<http://www.umich.edu/~urel/admissions/research/>>. See also Patricia Gurin, Eric Dey, Sylvia Hurtado, and Gerald Gurin, *Diversity and Higher Education: Theory and Impact on Educational Outcomes*, **Harvard Educational Review** (Fall 2002).

²⁹ Discussed in Expert report of Patricia Gurin, *Gratz v. Bollinger, Grutter v. Bollinger*. <http://www.umich.edu/~urel/admissions/legal/expert/theor.html>

³⁰ *Id.* at 6.

³¹ *Id.* at 3.

Additionally, when students find themselves in situations in which they must expand their current “scripts” and respond to differing ideas and expectations, they develop stronger identities and a better understanding of society.³² These are some of the reasons why (1) racially, economically, and ethnically diverse student bodies, (2) a correspondingly enriched curriculum, and (3) increased interaction, on terms of equality, with diverse peers have been shown to increase “conscious, effortful, deep thinking.”³³

11. Have other districts employed socioeconomic status in successful student assignment planning?

We know of at least three: La Crosse, Wisconsin; Cambridge, Massachusetts; and Wake County, North Carolina. La Crosse, Wisconsin developed the first assignment plan that balanced socioeconomic status in 1991. The plan, which was limited initially to La Crosse's high schools, was so successful that the district changed all of its assignment policies to keep student enrollments within 15 percentage points of the district's average poverty rate of 30 percent at every school. Although many parents initially resisted the change, the plan once implemented became well accepted. Only 45 percent of parents favored the plan at the outset, but 69 percent were satisfied with the new policy two years later.³⁴

The system deteriorated under a different superintendent into a proximity-based plan with assignment boundaries that caused poverty levels to range from 20 to 83 percent by 2003. A new superintendent has plans that would use the “repurposing” of schools to improve the socioeconomic balance of district schools. Plans being discussed include closing high-poverty, low-enrollment schools and converting them to other uses, such as a preschool serving a wider area or a low-poverty charter school that would hope to draw new students from the surrounding low-income neighborhood.³⁵

Another district, Cambridge, Massachusetts, where about 40 percent of the students are eligible for reduced price lunches, initiated socioeconomic balancing more recently. The district used a gradual phase-in of its plan that allowed a 15 percentage point variation on either side of the district average the first year, a 10 point difference the next year, and 5 points in the final phase. In Cambridge, the decision to move to socioeconomic planning was

³² *Id.* at 4.

³³ *Id.*

³⁴ Richard Kahlenberg, **All Together Now: Creating Middle-Class Schools Through Public School Choice** 228-51 & 240 (2001).

³⁵ Anastasia Mercer, “Sweeping Plan Would Address Many Issues,” *LaCrosse Tribune*, 6 May 2003; interview with Kathie Tyser, Associate Superintendent for Instruction, January 2005; School District of LaCrosse, “Visit Our Schools” <<http://www.lacrosseschools.com/schools.htm>>, 22 September 2004.

not considered controversial because of mounting evidence of its effectiveness, as well as the increasing testing pressures to which all schools are now subject under the federal No Child Left Behind Act.

12. How does the Wake County assignment plan work?

Wake County's assignment plan was designed and launched in support of an ambitious academic goal: helping 95 percent of district students pass North Carolina's annual end-of-grade tests. The plan balances the district's achievement goals with student needs in an effort to create schools where no more than 40 percent of students are from low-income families and where no more than 25 percent of students are performing below grade level. Unlike the Cambridge and La Crosse plans, however, Wake County does not assign students on the basis of individual family income. The school district is instead divided into small block-level nodes that are coded to reflect their overall socioeconomic status. This method allows students who live near one another to attend the same schools and avoids identifying any one student by socioeconomic status.

Wake makes necessary program assignments (special education, special language programs, and the like) a first priority but uses other factors to create an entire system of "healthy schools." Facility utilization targets are between 85 and 115 percent of capacity for established schools. Stability (the percentage of students who remain from year to year at the same school) and proximity are also factors. Students are assigned a base school, but these schools are balanced to the extent possible using the other factors that contribute to district achievement goals. A magnet program also contributes by drawing many students from higher-income suburban areas into downtown schools.

Wake's plan has been very successful. Its students now achieve at high levels across the economic spectrum, as Susan Leigh Flinspach and Karen E. Banks have recently reported.³⁶ Wake County has had two advantages in implementing the plan: a relatively low district wide poverty rate and a long history of compliance with a voluntary student assignment plan that furthered racial desegregation. Families in Wake are accustomed to

³⁶ Susan Leigh Flinspach & Karen E. Banks, *Moving Beyond Race: Socioeconomic Diversity as a Race-Neutral Approach to Desegregation in the Wake County Schools*, 467-68 in **School Resegregation: Must the South Turn Back?** (John Charles Boger & Gary Orfield, eds., 2005 forthcoming, UNC Press) (reporting on the narrowing of the SES achievement gap in Wake County); *see also* Public Schools of North Carolina, The Department of Public Instruction, *The ABCs Accountability Model: Wake County* at: <http://abcs.ncpublicschools.org/abcs/> (revealing that in only 6 of Wake County's 100 public schools did composite ABC scores fall below 70 percent in 2003-04, while 52 schools had achievement rates above 90 percent, and 26 schools had student achievement rates between 85 and 89 percent).

sending their children to schools with other students from “outside the neighborhood,” and on the whole, they approve.

13. What is the legal status of SES plans?

The practice of employing socioeconomic factors to make school assignments seems constitutionally uncontroversial: so long as school officials are acting to promote a public end that is "legitimate" (such as the improvement of student achievement or the promotion of diversity in education), and so long as the use of SES considerations will arguably further that legitimate end, a school board's consideration of SES in making student assignments should be constitutionally permissible under the Fourteenth Amendment's Equal Protection Clause. The Supreme Court has many times held that a state may validly make legally binding distinctions based upon socioeconomic status in carrying out various public purposes, and that such choices need survive only a minimum level of federal judicial scrutiny.³⁷

A much higher standard of federal review would await any decision by CMS to begin assigning students based on their race or ethnicity. Even that decision, however, now seems constitutionally permissible under carefully tailored circumstances. A fuller explanation of this "strict scrutiny" of *racial* classifications deserves some further explanation. The Supreme Court has traditionally held that *any* government uses of race must be carefully examined to avoid illegitimate ends. Beginning in the 1960s, of course, Charlotte-Mecklenburg schools experienced several decades of federal judicial supervision as it dismantled its deliberately racially dual public school system and ended *de jure* racial segregation—which *Brown v. Board of Education* had declared to be an illegitimate practice. Throughout that lengthy process, CMS student assignment policies were subject to strict judicial oversight. Ironically, during this period federal courts explicitly *required* CMS school officials to consider the racial composition of each school as they made student assignments—since the dismantling of its formerly segregated system necessarily required the integration of black and white students to assure that no racial discrimination would recur.

Eventually, in 1999, a federal district court decided that CMS's formerly "dual" system had become "unitary," and federal court supervision ceased. That same 1999 decision, however, appeared to bar CMS from using race in the future even to maintain racially diverse schools and avoid resegregation—in reliance upon a legal theory that the Equal Protection Clause forbids state officials to use racial criteria *except* to remedy their own prior racial misconduct. The Fourth Circuit, on appeal of the Charlotte-Mecklenburg case, appeared to agree with this newly minted, dubious

³⁷ See, e.g., *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973) (in the context of public school finance); *Kadrmas v. Dickinson Public Schools*, 487 US. 450 (1988) (same); *Dandridge v. Williams*, 527 U.S. 397 U.S. 471 (1970) (in the context of public welfare).

constitutional interpretation that would forbid schools to act to maintain desegregated schools or to broaden, rather than narrow, educational diversity.

In 2003, the Supreme Court of the United States decisively rejected this theory. Speaking for the Court in the University of Michigan affirmative action case, *Grutter v. Bollinger*, Justice Sandra Day O'Connor made it clear that university admissions officers *may* constitutionally consider the race of potential applicants in order to meet their goal of assuring racial and ethnic diversity. The Court stressed that it is permissible for public officials not only to use race remedially, in dismantling segregation, but also to seek the many positive educational and societal benefits of educational diversity.

In reaching its conclusion, the *Grutter* Court relied upon a vast body of social scientific evidence that documents the cognitive and social gains made by students who attend diverse schools. Moreover, the Court placed particular reliance on two powerful friend-of-the-Court briefs, one submitted by 65 of the nation's leading corporations and a second submitted by former military authorities (including several Chairs of the Joint Chiefs of Staff and former commandants of West Point and Annapolis). In these briefs, America's corporate and military leaders contended that it is essential, in our increasingly diverse world, to train all students to work comfortably across racial and ethnic lines. Race-conscious admissions policies, these leaders added, are an indispensable means toward these educational and societal objectives. The Court agreed, concluding: "[E]nsuring that public institutions are open and available to all segments of American society, including people of all races and ethnicities, presents a paramount government objective."³⁸

Why is this true? Because in our society "race unfortunately still matters,"³⁹ and diverse schools offer the best hope of changing that. Diverse schools offer students a real opportunity to unlearn racial stereotypes and develop greater understanding of people from different backgrounds. The narrow view that public education is simply an individual benefit, like a consumer good, omits the crucial insight that public education is also charged with serving broader social objectives that shape the future of our society. Indeed, the Court in *Grutter* expressly reaffirmed education's "fundamental role in maintaining the fabric of society,"⁴⁰ and therefore approved the Michigan Law School's determination to ensure diversity, even when it acted to distribute a scarce public resource—seats in a nationally competitive public law school.

The Supreme Court did not hold, however, that school officials may always use race without any consideration of its potentially adverse impacts. Instead, in a companion case decided the same

³⁸ *Grutter v. Bollinger*, 539 U.S. 306, 334 (2003).

³⁹ *Grutter*, 539 U.S. at 335.

⁴⁰ *Id.* at 334.

day, *Gratz v. Bollinger*,⁴¹ the Court struck down Michigan's undergraduate admissions practices, reasoning that their automatic award of 20 points to all racial minority applicants applied racial considerations too broadly and mechanically.

The employment of voluntary, race-conscious student assignment plans at the K-12 level is different from college admissions in a number of ways that should make their use *more* constitutionally acceptable. Perhaps most significantly, admission to elementary and secondary schools is universal: *every* child in North Carolina is constitutionally guaranteed a seat in a public school (and in North Carolina, every child is also guaranteed a sound basic education that will "serve the purpose of preparing students to participate and compete in the society in which they live and work.")⁴² Thus the constitutional need to weigh the injury to those college or law school applicants who are excluded by race-conscious admissions policies—a factor which plays an important role at the college level—has no clear equivalent at the K-12 level, since all students are served. This difference should make the use of race far less constitutionally problematic in elementary and secondary student assignment than in college admissions (where *Grutter* nonetheless held that it was a permissible consideration *despite* the inevitable injury to excluded students).

Moreover, the Court's findings about the need to prepare all students for participation in an increasingly diverse and global society have even greater force at the K-12 level. Obviously, many students will not go on to higher education, and consequently they must receive the lessons of diverse education in an elementary and secondary school setting, or not at all. Lower courts are presently considering whether *Grutter* does in fact allow willing K-12 school districts to assign students by race to achieve racial diversity. The lower courts decisions at present are mixed.⁴³ In the end, of course, this issue will almost certainly be resolved by the Supreme Court.

In the meanwhile, however, as noted above, the use of SES as a student assignment factor rests on a ground far less controversial than the use of race. Indeed, when some parents in Wake County sought in 2001 to challenge the Wake County School Board's use of SES in its assignment plan, their efforts proved legally unsuccessful. They filed a complaint with the United States Department of Education's Office for Civil Rights, contending that the ostensible use of SES was

⁴¹ 539 U.S. 244 (2003).

⁴² *Hoke County Bd. of Education v. State*, 358 N.C. 605, 399 S.E.2d 365 (2004).

⁴³ *Compare McFarland v. Jefferson County School District*, 330 F. Supp. 2d 834 (W.D. Ky. 2004) (upholding the use by the Louisville/Jefferson County school district of race-conscious student assignment policies); *Comfort v. Lynn School Committee*, 283 F. Supp. 2d 328 (D. Mass. 2003) (same) with *Comfort v. Lynn School Committee*, 2004 U.S. App. LEXIS 21791 (1st Cir. 2004) (rejecting the use of such policies); *Parents Involved in Community Schools v. Seattle School District No. 1*, 377 F.3d. 949 (9th Cir. 2004) (same). The First Circuit has recently decided that its full court should reconsider the decision of its three-judge panel of the use of these policies. *Comfort v. Lynn School Committee*, 2004 U.S. App. LEXIS 24662 (Nov. 24, 2004).

actually a proxy for race, which they alleged was unconstitutional (drawing on the pre-*Grutter* rationale of the Fourth Circuit and similar authorities). After an investigation, the Office of Civil Rights cleared Wake County of all charges, concluding that its use of SES was a legitimate, good-faith educational practice that did not offend constitutional or statutory requirements.⁴⁴

⁴⁴ Flinspach & Banks, *Moving Beyond Race*, *supra*, at 464.

Conclusion

This report has demonstrated that the Charlotte-Mecklenburg's current system for student assignments tends to create a system of "winner" and "loser" schools—a pattern that creates dangerous and growing socioeconomic isolation. When the current assignment system was adopted in 2002, school authorities made a well-intended promise that it would work to increase parental choice while simultaneously elevating academic performances district wide. That promise has not been kept. Charlotte's once enviable system of public education stands today in jeopardy of sliding into mediocrity.

We have concluded that a revised student assignment system must be fashioned to meet student and community needs. The Charlotte-Mecklenburg Board of Education should adopt a goal of meaningful equality in 2005: both floor and ceiling levels should be established that cap poverty levels in every single school throughout the district. Reaching and retaining those levels should become an immediate district-wide priority. Only by so doing can Charlotte assure meaningful and equitable choices to all students in a system with no disfavored schools. Parental choice can be an enriching component of such a student assignment plan, but it must not be allowed to drive the system toward long-term disintegration or socioeconomic division.

We are fortified in our conviction that this course makes good sense for Charlotte by ideas that have recently emerged from the Community Building Initiative in Charlotte, from Crossroads/Charlotte, and from the *State of the South: 2004* report recently issued by MDC, Inc. of Chapel Hill. All of these thoughtful observers have cautioned about the possible social injury that could result if the present educational course is pursued. The *Crossroads/Charlotte* document, widely distributed to Charlotte leaders and residents in the fall of 2004, warned of the possible emergence of a "fortress Charlotte" by 2015 unless the city's residents and leaders join to resist the social forces that are pulling them apart. Looking forward to the future in 2015, the report envisioned the likely consequences of allowing the present system to go forward unchanged:

The disparity that exists within our public education system has probably driven the greatest wedge between people and groups in Charlotte. The community has failed to support and demand that all children, no matter what race, ethnicity or economic background, have access to an equal, high quality education. As a result, we have a segregated and unequal urban school system and a widening achievement gap between the "haves" and "have-nots." Students of color from low income households populate underperforming schools, most of which are in the inner and middle ring areas of Charlotte. Experienced teachers have left these underperforming schools, and many middle and upper class white and minority parents now send their children to private schools.⁴⁵

⁴⁵ Foundation for the Carolinas, **Crossroads/Charlotte: It's the Year 2015. What Kind of Community Do You See?** 8 (2004).

Our own analysis suggests that, sadly, this vision of a future "fortress Charlotte" is already an all-too-accurate picture of CMS schools in 2004.

After undertaking a broad analysis of the future of the American South in 2004, researchers at MDC, Inc. in Chapel Hill prepared a comprehensive report on what the South must do to remain economically and socially vibrant in coming decades. Among five major recommendations, the fourth is to "[e]liminate high-poverty schools to bring an end to ethnic and social class isolation."⁴⁶ As MDC, Inc. explains:

The racial and income composition of schools matters—for individual students, for civic health, and for the South's economic advancement. And it matters because of the core American ideals of equity and justice.

When schools isolate children by income, disadvantaged students are at risk because high-poverty schools almost always provide less-than-adequate education. When it comes to income, separate invariably means inferior. The consequence of high-poverty schools is a large population of undereducated youth and adults and a society more rigidly divided into rich and poor, which in turn threatens the region's economic future and civic health. . . .The ability to live and work with people who are different from oneself is essential in our increasingly multi-ethnic society and global economy.⁴⁷

We strongly agree with these conclusions of the MDC, Inc. report. We likewise share *Crossroads/Charlotte's* apprehensions about the possible emergence of a "fortress Charlotte." Yet the potential remains unlimited if Charlotte's schools and its broader community are blessed with wise and sustained leadership. We therefore commend this report to Charlotte's residents and leaders, hoping that the present student assignment challenge will, as in the past, call forth the good will and the best thinking of the Queen City.

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⁴⁶ MDC, Inc. **The State of The South 2004: Fifty Years After Brown v. Board of Education** 61 (May 2004).
⁴⁷ *Id.* 45-46.