Last summer, the U.S. Supreme Court agreed to hear two cases dealing with separate race-conscious student assignment programs in Seattle and Kentucky public schools. The landmark question underlying both cases was whether a public school district could consider race in student assignment programs that were voluntarily designed to achieve a racially integrated school system without violating the equal protection mandates of the U.S. Constitution. The answer—courtesy of an already-historic 5-4 plurality opinion of the High Court, which was delivered on June 28, 2007—is more or less no.

The Cases

Parents Involved in Community Schools V. Seattle School District No. 1 (No. 05–908)

After decades of implementing and eliminating various forms of student assignment, busing, and related policies to achieve diversity and prevent segregation, Seattle School District No. 1 adopted a program that allowed students entering ninth grade to choose to attend any of the district’s 10 high schools. Whenever possible, students were assigned to their first-choice school, but if too many students selected a particular school, a series of tiebreakers were used to determine student assignment. The race tiebreaker, at specific issue in this case, involved a plus-and-minus percentage system that was applied to both White and non-White students and was designed to maintain a racially diverse student body.

A group called Parents Involved in Community Schools sued, arguing that the plan violated the Equal Protection clause of the Fourteenth Amendment. The district court upheld the school district’s use of the plan. On appeal, a three-judge panel reversed, but the state supreme court upheld the district’s use of the plan. The case was then appealed to the U.S. Supreme Court.

Meredith v. Jefferson County Board of Education (No. 05–915)

The second case heard by the Supreme Court involved a managed choice plan that was adopted by Jefferson County Public Schools in Kentucky, which for 25 years was under federal court decree to integrate its schools. Although the federal mandate was rescinded, the school district opted to maintain an integrated system. Their voluntary means of sustaining integration was a managed-choice plan that allowed parents to choose from various county schools. Those choices were limited, and the principal factor in determining student placement was the percentages of minorities already assigned to a particular school. Under the plan, a student could be denied a transfer or assignment to a school if that assignment would cause the percentage of Black students to be less than 15% or more than 50% at any school.

In 2002, a group of parents sued Jefferson County Public Schools, arguing that the managed-choice plan amounted to racial discrimination. A lower court and a federal appeals court panel largely upheld the use of the plan as a narrowly tailored approach for maintaining integrated schools and achieving diversity. But the court did not support the use of separate racial categories for student assignment.

The Questions and the Ruling

The Jefferson County and Seattle School District No. 1 plans for integrating their schools were struck down by the High Court. The primary question raised by the cases was whether the voluntary student-assignment plans violated the equal protection mandates of the U.S. Constitution. Applying the strict
scrutiny standard, Chief Justice Roberts, writing for a plurality of the Court, determined that the school districts involved had not met the burden of showing that the interest of achieving racial diversity justified the means they chose.

Strict scrutiny involves two primary elements: the government must have a compelling interest to justify such classifications and must use “narrowly tailored” means to achieve that compelling interest. Where racial classifications are concerned, the state must prove the existence of discrimination or another inequity that would justify the use of race in remedying such bias or inequality. The remedies chosen must eliminate the effects of discrimination or inequity but not go beyond the group affected by the bias. Narrowly tailored remedies must also be flexible, limited in time and scope, and considered in good faith among other, race-neutral remedies.

Another key question raised by these cases was whether diversity is a compelling interest sufficient to justify voluntary measures taken by school districts and boards to integrate schools or avoid segregated educational systems. The Supreme Court has repeatedly recognized diversity as a compelling interest. In Grutter v. Bollinger (539 U.S. 306 [2003]), the Supreme Court held that the University of Michigan’s not-entirely-race-neutral admissions policy did not violate the Constitution. But Justice Roberts reasoned that the holding in Grutter was unique to higher education and therefore not controlling in these cases. The Supreme Court has also recognized that remedying the effects of past discrimination is a compelling interest under the strict scrutiny standard, but Justice Roberts reasoned that such an interest was not implicated by the Seattle school assignment plan because acts of law never segregated those schools. That is, those schools were not affected by de jure segregation.

Justice Roberts characterized the plans in these cases as “directed only to racial balance” and pointed out that the Supreme Court has “repeatedly condemned [such an objective] as illegitimate.” Justice Roberts also suggested that the school districts were entertaining only “limited notions of diversity.” He based this on his finding that the race-based tiebreakers in the school systems did not have a significant impact on student assignments. That is, the minimal effect “suggests that other means would be effective” in creating a diverse student body.

Finally, Justice Roberts characterized the use of race in the student assignment program at issue as achieving racial balance for its own sake. Mentioning a belief that “the way to stop discrimination on the basis of race is to stop discriminating on the basis of race,” Justice Roberts reversed the rulings of the courts of appeals and remanded the cases back for further proceedings.

Another Viewpoint

In a significant concurring opinion, Justice Kennedy agreed that the student assignment plans in the current cases were not narrowly tailored to achieve the stated compelling interest of ensuring diversity in the school districts. He concluded, however, that some parts of the Chief Justice’s opinion suggested an unyielding belief that race can’t be a factor
Justice Kennedy noted that school districts should not read the Court’s decision as preventing them from working to bring together students of diverse racial, ethnic, and economic backgrounds.

in instances in which Justice Kennedy believed race could be taken into account. Noting that race matters (as a matter of reality), Justice Kennedy described the government’s interest in ensuring equal opportunity as legitimate. He then pointed to notions of equal opportunity espoused in Brown vs. Board of Education, finding that the “plurality postulate that the way to stop discrimination on the basis of race is to stop discriminating on the basis of race” was “insufficient” for deciding the present cases.

Justice Kennedy next cited Grutter, stating that schools could formulate race-conscious measures to address the need for diversity in a general way without defining students by race or subjecting students to disparate treatment that is based solely upon racial classifications. He suggested that school districts could draw attendance zones on the basis of neighborhood demographics; recruit students and faculty members in a targeted fashion; and track enrollment, performance, and other similar statistics by race. Justice Kennedy proposed that such measures would be race conscious but would not define students by race in a way that would implicate strict scrutiny.

Justice Kennedy also agreed with the Chief Justice that only a limited number of students in schools in the districts at issue were assigned to their schools on the basis of racial classifications. He also agreed that such limited impact implied that the districts could have used other, more race-neutral means to achieve their stated goal of achieving racial diversity.

In the end, Justice Kennedy noted that school districts should not read the Court’s decision as preventing them from working to bring together students of diverse racial, ethnic, and economic backgrounds. Instead, he encouraged school leaders to “find a way to achieve the compelling interests they face without resorting to widespread governmental allocation of benefits and burdens on the basis of racial classifications.”

What Are the Answers?

Although the ruling is in, questions remain about whether public school systems can legally achieve diversity using voluntary, race-conscious measures. Chief Justice Roberts’s opinion seems to suggest that race legally cannot and normatively should not be considered in such an effort, although Justice Kennedy’s opinion (which is considered part of the Court’s ruling in this case), seems to suggest that schools can and should find ways to achieve diversity using race-conscious, rather than purely race-based, measures.

Although the times of legally segregated schools have passed, challenges stemming from contemporary segregation in schools clearly remain. The intrinsic and practical values associated with diverse learning environments are also important. Moreover, the fundamental equal education principles of Brown v. Board of Education endure. No child should suffer disparate treatment at the hands of the government because of his or her race. As a result, the programs school leaders develop to maintain diverse school environments will hopefully depend on how much school districts value diversity in education and how creatively and carefully they work to achieve it. PL