



The public radio show about law and American life

Justice Talking Radio Transcript

Race and Public School Assignments—Air Date: 1/8/07

Can race be a factor in deciding which public schools students will attend? That's the main issue in two cases from Seattle, Washington and Louisville, Kentucky being heard in the U.S. Supreme Court this term. Although the programs differ, each school board is accused of discrimination for setting numerical targets for minority enrollment in order to maintain racial diversity in their schools. Join us for this edition of Justice Talking as we take a detailed look at how school districts assign students to schools.

This transcript is being provided free of charge for educational purposes. The views expressed herein are those solely of the guests and do not reflect those of the Annenberg Public Policy Center or NPR. Although every effort is made to make a verbatim rendering of the program, this transcript may vary slightly from the audio version and may contain minor grammatical or spelling errors. For permission to reprint, please contact Judy Jarvis at the University of Pennsylvania's Annenberg Public Policy Center, (215) 573-8919.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. To undo a history of segregation school districts around the country have, either by choice or by court order, attempted to integrate their schools. But the question of whether race can still be a factor in deciding which public school students attend is the main issue in two cases recently heard by the Supreme Court, one from Seattle, Washington and the other from Louisville, Kentucky. Although the programs differ, each school board is accused of discrimination for setting numerical targets for minority enrollment in order to maintain racial diversity in their schools. On today's show we'll look at these cases and debate what this could mean for desegregation efforts in other parts of the country. Could the court's ruling mean the end of *Brown v. Board of Education*? To learn more about what happened in Seattle, I called Kathleen Brose, the president of Parents Involved in Community Schools, a group of parents and community members who sued the Seattle School District for its use of a racial tiebreaker in determining which high school students can attend. I asked her how the open choice system in Seattle worked.

KATHLEEN BROSE: Seattle has ten comprehensive high schools and several alternative high schools. And no matter where you live, as long as you live in the Seattle public school district, you can send your high school students (in Seattle it's nine through 12th grade) to any of those schools. And if there's room they can get in. And if the school is over-subscribed, before the

lawsuits began, they used three tiebreakers. The first was siblings, second was race, and third was distance.

MARGOT ADLER: And when your daughter was applying to high school there was this tiebreaker.

KATHLEEN BROSE: Yes.

MARGOT ADLER: And how did it work in her case? How did it effect where your daughter was admitted to high school?

KATHLEEN BROSE: Well, in my daughter's case she was affected by two of the tiebreakers. She did not have a sibling. She is the oldest of my two kids. And the school that she wanted to go to, Ballard High School, was oversubscribed. And because she is white, the race tiebreaker worked against her because they have too many white kids in the school as opposed to non-white kids. And also, we live farther away than the actual plaintiffs in the lawsuit so the distance tiebreaker was working against us, as well. So my daughter was denied access to three different schools because she had white skin. If she had non-white skin she could have gotten into any of those schools.

MARGOT ADLER: Now, your daughter in the end ended up attending the school that was across town from your home, right?

KATHLEEN BROSE: Yes. It wasn't even her choice so it actually ended up being her fifth choice.

MARGOT ADLER: Her fifth choice. Now, how important is racial diversity to you? Do you think it's a necessary part of education?

KATHLEEN BROSE: Well, it's important. And, um ... I like ... we're urban people. We like living in the city. Um, my daughter has friendships from all backgrounds. But I don't think that that is more important than her academic needs. And one of our arguments is that our schools are very diverse without the use of the tiebreaker. They haven't used the tiebreaker for the last five assignment periods. And our schools are still very diverse. Some are more diverse than others. Depends on the neighborhood. But there's no school that's all white and there's no school that's all non-white.

MARGOT ADLER: Thank you so much for talking with me.

KATHLEEN BROSE: Thank you.

MARGOT ADLER: Kathleen Brose is the president of Parents Involved in Community Schools. A group of parents and community members who sued the Seattle School District for its use of a racial tiebreaker in determining which high school students can attend.

MARGOT ADLER: We'll talk more about Seattle and Louisville and what these Supreme Court cases might mean for the rest of the nation later in the show, but first let's take a look back before looking forward. Lois Weiss joins me now to talk about the history of school desegregation in America. She is a professor in the Graduate School of Education at the University at Buffalo, State University of New York. She has written extensively on race, class, and gender in American schools. Welcome to Justice Talking.

LORI WEISS: Thank you, Margot.

MARGOT ADLER: Tell me first what schools looked like in 1954 before the *Brown v. Board of Education* decision.

LORI WEISS: You know, the system was highly, highly segregated at the time. And there actually was some research, which came out in the 1960s, suggesting that there were equivalent levels of segregation in the north as well as the south.

MARGOT ADLER: Tell me the difference between "de facto" segregation and "de jure" segregation.

LORI WEISS: "De facto" segregation is that segregation which exists by virtue of living patterns, where people live, where people own or don't own homes, where their apartments are, and so forth. Whereas "de jure" segregation refers to that segregation, which is mandated by law.

MARGOT ADLER: After the *Brown v. Board of Education* decision there was a long period where nothing really happened, correct?

LORI WEISS: Correct. There was, a year later in *Brown II*, there was a decision. And the court ruled that the school systems must admit blacks, and I'm just quoting here, "on a non-discriminatory basis with all deliberate speed." After that time there was very little done in the 1960s. So that's correct. The court really did not speak to this issue for quite some time.

MARGOT ADLER: And it wasn't until the 1970s, correct, that there was real change? What happened then?

LORI WEISS: In 1968, the Supreme Court declared that the time, and again I'm going to quote here, "for all deliberate speed was over." And it began to order more serious and immediate remedies culminating in a '71 decision that permitted mandatory busing. So that was a major set of changes. And it wasn't until the early and even mid-70s that you saw a lot of serious attention across the country to issues of desegregation.

MARGOT ADLER: And, in fact, did a lot of integration occur?

LORI WEISS: A fair amount occurred at the time but most of the early desegregation efforts were around what we might call voluntary, or choice, plans. And that's where you have the

magnet schools, which were a sort of a first wave reform, if you will. It wasn't until a bit later that there was many of the sort of more intentional busing patterns were really put into place throughout the districts.

MARGOT ADLER: Now, at what point did the court step in and say these voluntary efforts are not going far enough?

LORI WEISS: In 1971 there was another decision that permitted mandatory busing. And part of that decision was a declaration that desegregation plans cannot be limited to the walking school. And then there was some money associated with the 1972 Emergency School Aid Act, which provided funds for desegregation. In 1973, the court also began to require mandatory remedies in northern cities. And what was happening is that some of the judges were saying, well those all are very interesting experiments, and in fact, they were, they were racially balanced institutions. And again, at this time, we're largely talking about African-Americans and whites. I mean that's what drove the desegregation legislation. And that's what was being discussed at the time. And the judges then were turning around and saying well this is an interesting experiment. Now desegregate your system. So that's when the sort of the wholesale cross-busing in urban areas was taking place, and a lot of that was really getting going into the mid and the late 70s.

MARGOT ADLER: And it provoked a lot of reaction, too.

LORI WEISS: You know, in all honesty it provoked a lot of reaction in certain cities.

MARGOT ADLER: Like Boston.

LORI WEISS: Like Boston, exactly, Little Rock, Arkansas and what have you. If we look across the country I would honestly say that there were not as many problems as people would like to think. And to tell you the truth the problems, if there were problems, the problems tended to be with the parents and not with the children.

MARGOT ADLER: The Brown decision was based on the belief that segregation was deeply harmful for African-Americans. What evidence do we have 50 years later that segregation is harmful and that integration is good?

LORI WEISS: There has been work done by Gary Orfield and his colleagues at Harvard University and they have been tracking this for a long time now. We have a fair amount of evidence that African-American children statistically speaking do better in desegregated schools. And part of the reason for that, and again this is a very large study — they've been tracking this for a good number of years now — and part of the reason for this is that so many of these segregated institutions, particularly the re-segregated institutions, as a result of the pulling away from the desegregation court orders. Like, for example, in Boston and in New York, the major metropolitan centers, so many of these segregated institutions now are hyper-segregated institutions where you have 90 percent of the kids coming from high-poverty homes. So when you're desegregating the schools, you just have a different kind of mix of children in those schools. And there is a fair amount of evidence that African-American children do better in desegregated situations, and that white children do not suffer at all in desegregated situations.

MARGOT ADLER: And what led to what some would call the re-segregation of American schools?

LORI WEISS: The court basically withdrew its support for the desegregation court orders. And by 1991, the court announced that discrimination must only be eliminated to the extent practicable. And a year later it held that a district could be released from judicial oversight in incremental stages before full compliance had been achieved in every area of school operations. So in the early 90s we were in fact no longer, unless a district was to do it, we were no longer bound by the desegregation court orders of the 1950s. And what happened as a result of that is that many schools quickly re-segregated.

MARGOT ADLER: Lois Weiss is a professor in the Graduate School of Education at the University at Buffalo, State University of New York. She has written extensively on race, class, and gender in American schools. Thanks for talking with me.

LORI WEISS: Thanks, Margot.

MARGOT ADLER: Coming up on Justice Talking, the debate over efforts to integrate public schools in Seattle, Washington and Jefferson County, Kentucky.

UNIDENTIFIED MALE: We should get out of the business of micromanaging the racial balance of particular schools and get into the business of making sure that everyone has an adequate education regardless of race.

UNIDENTIFIED MALE: I'm really worried about where we're going, and I think no one is addressing beyond Seattle and Jefferson County what does American look like. And what do we do when our schools turn out to be essentially concentrated poverty and black, and essentially white and middle class in certain areas. Do we have a remedy? And I don't see that we do.

MARGOT ADLER: What is at stake for the rest of the country in two cases before the Supreme Court? Don't go away.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. Today's show is about school integration and a couple of cases before the Supreme Court that challenge the desegregation efforts of two school districts. Before we get into our debate over those cases, we wanted to hear from young people about whether they think racial diversity in school is important. And, if so, how it should be achieved. Here are some seniors from a public high school in Philadelphia, Pennsylvania.

UNIDENTIFIED MALE: I think racial diversity is important in a classroom because it brings more perspectives to issues and it makes things more interesting because people have different cultures. And you find out different things, especially in school.

UNIDENTIFIED FEMALE: Instead of having, you know, your regular history textbook view of what happened in history, or even what happened in current events, you have these diverse backgrounds. And that just improves your understanding the issues.

UNIDENTIFIED MALE: If you're just surrounded by one group of people you really don't get to experience and to know other groups. So that when you actually do move outside of the high school you're not as experienced in terms of diversity.

UNIDENTIFIED FEMALE: We want to be considerate of people and their comfort zones. Obviously, you don't want to, you know, just drag people out of the neighborhood school because it's predominantly white or predominantly black just to bring out racial diversity.

UNIDENTIFIED MALE: I don't think race should be used as, you know, like a quota system.

UNIDENTIFIED FEMALE: I don't think that there should be an actual number of students that a particular school accepts or wants to bring in or take.

UNIDENTIFIED MALE: To inconvenience someone just for the sake of diversity isn't really fair.

UNIDENTIFIED MALE: It's important to have diversity, but the first thing should be the choice of where you want to go to school.

UNIDENTIFIED FEMALE: You can try to, you know, maybe distribute the resources at schools evenly so that people would be more willing to go to their neighborhood school.

UNIDENTIFIED FEMALE: If there is a school with a history of segregation, I do think that there should be some kind of system in place to help it become more integrated. But I don't think that a quota would be a good idea.

MARGOT ADLER: That was Deena, Ethan, Marian, and Fred. They are all seniors at a public high school in Philadelphia, Pennsylvania.

MARGOT ADLER: It's been more than 50 years since the Supreme Court decided *Brown v. Board of Education*, outlawing segregation in public schools. But two current cases before the Supreme Court challenge whether race can be a deciding factor in where kids go to school. One case involves a Seattle school district policy, which allowed public high schools to use race as one of the tiebreakers if more kids wanted to attend a school than space allowed. The other case challenges the Jefferson County Board of Education's program, which places elementary school students based on a combination of neighborhood school assignment, parental choice, and racial

balancing. Louisville is the major city in Jefferson County, Kentucky. Although the court hasn't decided yet on these two cases, some people fear we could be headed toward further re-segregation of our schools. Could it mean the end for the Brown decision? Joining me to talk about this question and the two cases are Charles Ogletree and Terrence Pell. Charles Ogletree is a law professor at Harvard Law School. He is also the founder and executive director of the Charles Hamilton Houston Institute for Race and Justice. Terrence Pell is the president of the Center for Individual Rights, a non-profit public interest law firm based in Washington, D.C. Welcome to Justice Talking.

CHARLES OGLETREE: Glad to be with you.

TERRENCE PELL: Thanks for having us.

MARGOT ADLER: Talking about the current Supreme Court cases, New York Times reporter Adam Liptak said one side relied on the logic of *Brown v. Board of Education*, the other side on the music of *Brown*. The logic of *Brown* is the idea that racial categories are forbidden. The music of *Brown* is the goal of integrated schools. So which is it? Given that the Louisville schools required integration for 25 years, suddenly when it is no longer required, is it forbidden? I'd like to start with you, Charles.

CHARLES OGLETREE: Well, the Supreme Court's argument in December on both the Louisville and Seattle cases raise some disturbing questions about *Brown*. And my perspective is this, if you ask William Coleman, who was the Secretary of Transportation under President Gerald Ford, a black Republican, he is very disturbed about the court's current interpretation of *Brown*. If you ask Jack Greenberg, one of the lawyers who argued *Brown*, he is disturbed as well. So I think what this says it's the logic and the music. And the music is important because with it you understand that what the court is trying to do today, and what I should say what Louisville and Seattle are trying to do is not to re-segregate America. They're trying to prevent the re-segregation by making sure that public schools are open to everybody. And that quality education is available to everybody. And those were two of the central points in the *Brown* case in 1954.

MARGOT ADLER: Terry?

TERRENCE PELL: Well, I don't think we're really talking about keeping schools closed to students from any particular race. In both Seattle and Louisville, the schools are open to everyone. Both school systems have what's called an open choice system, where students can attend any school they want anywhere in the district. So right away we're light-years away from *Brown v. Board of Education* because in *Brown*, of course, the schools assigned students to particular schools by race. There was no choice in the matter whatsoever. And, second, as it turns out in both Seattle and Louisville, these schools are racially quite integrated. There's a very good racial mix of students in each and every school. And so these cases are not about trying to remedy what some call segregated schools or race-exclusive schools or even racially concentrated schools. So I think we're light-years away from *Brown* both in logic and in spirit.

CHARLES OGLETREE: Well, we certainly are light-years away from Brown in that we are in a sense reburying it after its 50th anniversary just a couple years ago. And it's even more disturbing in that if this logic holds true, as the Supreme Court seems to believe in the December argument, it means that the schools in Seattle or Louisville can be predominantly one race and there's no remedy. There's no legal remedy. You can't use any modest tools to change that. And that's what we see now. The one thing that we've seen since Brown that's particularly disturbing, after Brown was decided in 1954, we see the re-segregation of public education. We see the re-segregation of housing. We see an America that looks unfortunately much like the 20th century in the way education is provided in many areas. And we don't see the court is providing any meaningful remedies. So I'm worried that trying to be race-neutral, race-blind, means that we will allow schools to return to exactly what occurred during the pre-Brown era. And it won't be illegal because it won't be a de jure system. It will be a system that just happened to have occurred. That's the damage.

MARGOT ADLER: Terry, when the Supreme Court heard oral arguments in the Seattle and Louisville cases in December, Justice Kennedy repeatedly asked "when race can be used as a factor in school selection?" And he asked whether race can be used to determine where a school is built.

JUSTICE ANTHONY KENNEDY: You need to build a new school at three sites, one that would be all one race, site two would be all the other races. Site three would be a diversity of races. Can the school board with the intent to have diversity pick site number three?

MARGOT ADLER: How would you answer Justice Kennedy's question? Where do you draw the line? Can school districts ever consider the race of students when trying to voluntarily integrate the schools?

TERRENCE PELL: Sure, I think it's appropriate for schools to take into account attendance patterns including racial attendance patterns when they decide where to build schools. I think that's clearly one of the reasons that both Seattle and Louisville had in mind when they adopted the open choice plans. You know, I agree that race is still a reality in American life. And I agree that there are racially concentrated neighborhoods. But I don't agree that schools are powerless to do something about that as manifested by the two cases of the two school districts that are in fact before the Supreme Court. They did address this issue and they addressed it quite successfully. And the only question in this case is whether they can go beyond that and adopt this additional racial classification to in a sense micromanage what they've already achieved through the open choice system.

MARGOT ADLER: And what about income? Can schools attempt to fix the inequalities of education by redistributing children according to their family income?

TERRENCE PELL: Well, as far as the two cases before the court, you know, income classifications are not race classifications. So they don't trigger the constitutional review that is triggered by an explicit racial classification that in effect tells some students they can't avail themselves of opportunities available to other students solely because of their skin color. So I

don't think that an income-based school assignment system would trigger anything like the disagreement and, you know, legal action that racial classification inevitably triggers.

MARGOT ADLER: Charles?

CHARLES OGLETREE: Well, I hope I can quote Terry on this because that's great if he believes what he says. Because if these cases come back hypothetically and these schools have plans based on social economic status, that they want to integrate the poorer students with the wealthier students in their public education system. And it turns out that the poorer students are overwhelmingly students of color and the wealthy students are overwhelmingly white, I can imagine that the Center for Individual Rights will find this as a proxy for race. And if not, then it's telling schools there is some other way to deal with it. And here's the reality. It's not simply Louisville and Seattle that will be impacted, it's north and south, east and west, urban and suburban, public schools and probably private schools as well, that might run away from this. And so the magnitude of this is enormous in what it can do to public education.

MARGOT ADLER: Charles Ogletree is a law professor at Harvard Law School. Also with me is Terry Pell, president of the Center for Individual Rights. In Seattle, the school board puts all students in one of two categories: white and non-white. African-American, Asian, and Hispanic students are all treated as non-whites. As a result, even if a school has a large mix of minority students it will not be considered diverse since there are only a few whites. But a school with 84 percent black students, let's say, and 16 percent white students would be considered diverse. Charles, if a school board truly wants diversity shouldn't they be forced to look a little deeper?

CHARLES OGLETREE: Of course they should. And let's talk about what they actually did in Seattle and in Jefferson County. Because we keep talking about race but these school districts and these school committees looked at a number of factors. They looked at whether or not there were siblings enrolled in the same school as the applicant. That was a factor. They looked at the proximity to the neighborhood schools as another factor. They looked at the distance from non-neighborhood schools. So I mean there's a whole series of factors that go into the equation to make this work.

But the heart of the matter is this, what I don't hear Terry having an answer to is if what happens in Seattle if the schools become heavily racially concentrated as a result of the schools not being able to use even this small consideration of race. Is there any legal or constitutional remedy available to Seattle or Jefferson County in Louisville, Kentucky if they want to achieve some sort of integrated education for public schools on a voluntary basis? Is there a remedy? And I think the answer probably is no. And it means that we will look in not too distant a time at these school districts and others, hundreds around the country, and we will say there's no way to resolve this. Because the 14th Amendment talks about being blind to race and talking about a colorblind society. And we can't look at the context of what's happening. We can only look at whether or not there is a valid basis and a compelling reason to consider race as a factor. I'm really worried about where we're going. And I think no one is addressing beyond Seattle and Jefferson County what does America look like, and what do we do when our schools turn out to be essentially concentrated poverty and black, and essentially white and middle class in certain areas. Do we have a remedy? And I don't see that we do.

MARGOT ADLER: One of the underlying problems with trying to integrate neighborhood schools is that neighborhoods as we mentioned are often not racially integrated. Charles, you would agree, I assume, that the government can't force white and black families to move in order to achieve integrated neighborhoods?

CHARLES OGLETREE: No, they can't.

MARGOT ADLER: So why are schools different?

CHARLES OGLETREE: Well, this is why it's important. One of the things that every time I reread the Brown case and Chief Justice Earl Warren's unanimous opinion, it strikes me when he talks about what's at stake. He says education is the very foundation of citizenship. And if that means anything in this great nation it means that we should try to make sure that the equal access to education is available to all of our children. I think that reality is that the court, I shouldn't say the court but more the government, local and national, has responsibility to make sure that the poor children who were born in a hospital in south central Los Angeles, or in southeast Washington, D.C., or in certain parts of Detroit, shouldn't have their ability to succeed predetermined by the poverty that they're born into. But they should have the opportunity for a quality education wherever it might be available within their district. That is not what we have now. And I think we'll have even less of that this year of 2007 when these decisions are decided by the Supreme Court.

MARGOT ADLER: Terry, you want to weigh in here?

TERRENCE PELL: Look, I think the biggest racial inequality in Seattle is the fact that Seattle has largely failed to educate minority students, particularly African-American students. In Seattle, two-thirds of the 10th grade students read at grade level as compared with one-third of the African-American students. Well, these are staggering disparities. And these kinds of disparities occasion all sorts of racial inequalities, racial stereotypes, racial misunderstanding and tension. And one of the very troubling things about focusing on this racial balancing plan is that in my view it's largely a distraction. Instead of worrying about addressing what amounts to the complete breakdown of the Seattle school system, at least as to pertains to educating African-American students, school officials are spending time modulating the white representation as school x or school y by a few percentage points. I think that's a mistake. And I think, you know, we should get out of the business of micromanaging the racial balance of particular schools and get into the business of making sure that everyone has an adequate education regardless of race. And in Seattle that's not happening. And that's a bad thing.

MARGOT ADLER: I'm talking with Terry Pell who's president of the Center for Individual Rights and also Charles Ogletree, a law professor at Harvard Law School. Our subject is whether schools can consider race in placing students here on Justice Talking. Charles, some African-Americans that I've talked to have said they would have done much better if resources including good teachers and money had simply been poured into schools in black communities. Some African-Americans that I've talked to say Brown v. Board of Education never worked and was even a mistake. What do you say to them?

CHARLES OGLETREE: The reality is that no one is suggesting that black people are simply saying, let's sit next to a white person and that's going to be the end of the equation. What they're saying is that resources matter, quality education matter. And we're not seeing it in the area where most of these students, who are black and brown, and poor, are attending urban schools. So it's nice theoretically to talk about segregation but we pay taxes in Illinois and Michigan and Ohio and California and New York. And why should there be a white school and a black school? Why should there not be these public institutions supported and open equally to everyone? And why shouldn't we address the history of trying to keep folks from those opportunities? So I think it's an interesting idea to talk about, you know, let's just give us some money. But the reality is we need that, but we also need to solve the problem that we live in one nation not many nations, and that the idea of integration should be central to our legacy and our sense of what democracy really means.

MARGOT ADLER: Charles Ogletree is a law professor at Harvard Law School and executive director of the Charles Hamilton Houston Institute for Race and Justice. Terrence Pell is the president of the Center for Individual Rights, a non-profit public interest law firm based in Washington, D.C. Thank you both for joining me on Justice Talking.

CHARLES OGLETREE: Thank you.

TERRENCE PELL: Thank you.

MARGOT ADLER: Coming up on Justice Talking we'll hear about the Chicago Public School system, a system that's been under federal orders to desegregate for more than 25 years. And later in the show we'll talk about access to education for the largest minority group in the U.S.

UNIDENTIFIED MALE: We've actually seen a retrenchment from the ideal of integration such that Latino students are in more segregated in schools than they were 30 years ago.

MARGOT ADLER: Stay with us.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. In 1980, the Justice Department brought charges against the Chicago Public Schools for having a segregated school system that gave advantages to white students. Instead of going to trial, Chicago signed a legal agreement called a consent decree. Under the agreement, Chicago must take concrete steps to integrate as many schools as possible. In black and Latino schools it cannot integrate, it must prove it's providing an equal education. Twenty-six years after the original consent decree, Chicago is asking to be released from the agreement and from federal supervision. Shannon Heffernan has more.

SHANNON HEFFERNAN: With over 400,000 students, Chicago is one of the largest public school districts in the country. Like many other urban school districts, it struggles with segregation. For the last 25 years, the school district has been under federal supervision to find ways to integrate its public schools. One solution is through magnet schools. A magnet school attempts to draw a diverse group of students from across a city by offering academically rigorous programs in areas like art and foreign language. Northside College Prep High School is one of Chicago's newest magnet schools. [MUSIC] There are no school bells in Northside. Instead, the 900 students move through the halls to the sounds of pop music over the intercom. In an English class students rehearse Arthur Miller's play "The Crucible." Across the school in a science lab students lean over beakers conducting an experiment on viruses. Art teacher Nick Santiago says Northside is known for its high quality, hands-on education. But he says there's another side to its reputation.

NICK SANTIAGO: People usually mention, they mention you have a lot of money and then that you don't have any diversity.

SHANNON HEFFERNAN: Forty percent of Northside students are white, a noticeable difference considering Chicago Public Schools as a whole are only 10 percent white. Northside also enrolls a large number of Asian students. But there are very few black students who attend the school.

UNIDENTIFIED FEMALE: There's a 6 percent black population that's basically me and Elisa right here. There's not that many other black people here.

SHANNON HEFFERNAN: Juniors Elisa and April are eating lunch in the school cafeteria. They say the school's admission process is fair since anyone can apply to the school and students are admitted on the basis of grades and test scores. Elisa points out a table of college recruiters who talk with students during lunch.

ELISA: Most schools don't have colleges coming to their, you know, coming to their school for them, so going to Northside has like an advantage over the other schools. Because you're automatically qualified for, you know, you get recognition already.

SHANNON HEFFERNAN: The story is different across town. At Gage Park High School, located on Chicago's southwest side in a low-income neighborhood, only about 60 percent of Gage Park students will graduate high school. The school is about 40 percent black and 60 percent Latino. Last year the district closed several high schools throughout the city. As a result Gage Park was forced to absorb more students. Students complain about their over-crowded classrooms.

UNIDENTIFIED FEMALE: I used to be in a chemistry lab. There was not even seats to sit in anymore.

UNIDENTIFIED MALE: We ran out of books for my British Literature class. It's like, all the books are, like, gone. They're like, they ran out.

UNIDENTIFIED MALE: It's a living hell going to the Gage Park High School.

UNIDENTIFIED MALE: All the stuff going on – there's fights every day.

UNIDENTIFIED FEMALE: But if you go somewhere to another school that's like white school, the school is going to be way different than right here. It's not going to be the same.

SHANNON HEFFERNAN: Most the students at Gage Park didn't apply to magnet schools. Some say transportation was an issue. Others say they wouldn't fit in at those schools because it's a different kind of culture. But many, like 11th grader Richard, said they wouldn't be academically prepared to attend a magnet school.

RICHARD: Sometimes elementary schools don't teach the students what they need to know to get into better high school. So they just like put them to the side.

SHANNON HEFFERNAN: Wanda Hopkins is an advocate with Parents United for a Responsible Education, a group of Chicago parents who want to improve public schools. Hopkins sees major inequalities beginning as early as elementary school. Two of her children went to a neighborhood elementary school in their mostly low-income black neighborhood. Her youngest daughter is now in second grade at a magnet school across town.

WANDA HOPKINS: My daughter is in violin classes. I mean it's just unbelievable. I mean she has different performance coming to school I believe every other month. My daughter is speaking Japanese. I mean, unheard of in a poverty-stricken neighborhood school.

SHANNON HEFFERNAN: Lisa Moreno is the assistant principal at Northside Prep. She says the district is working to make neighborhood schools stronger and to create more magnet schools across the city. She says that diversity will follow.

LISA MORENO: It's an incredible benefit to be in a diverse situation and that's one of the things that does make, I think, a select enrollment school also a little special. Because in a neighborhood school, depending on the neighborhood, you may only have one particular ethnicity, or maybe two, it just kind of depends. Where as in a select enrollment school, you are getting students from across the city.

SHANNON HEFFERNAN: People at Gage Park say they also value diversity. But many teachers and advocates say they are more concerned with the achievement gap between white and minority students and that everyone agrees that integration is the way to solve it. Gage Park's Principal Elizabeth Ester:

ELIZABETH ESTER: So somebody's got to move to someplace to integrate a school, correct? Chances are the better resources are in a white or whiter areas. So that means you're asking blacks and Hispanics and all the other races to move. And what you're also saying is the white school is better. That bothers me. So I've got to go to the white school to get a better education. The question becomes why can't I stay in this school and get the exact same education.

SHANNON HEFFERNAN: It's a question echoed by others at Gage Park. Money, they say, could be the answer.

ELIZABETH ESTER: We need to spend a lot more money on security, ancillary services that the schools maybe on the north side don't have to spend their monies on. Like, giving an example, we're taking time now to get kids eyeglasses. The kids on the north side don't have to spend money or resources or anything to do that.

SHANNON HEFFERNAN: Whether magnet schools will ultimately solve the problem of segregated schools has yet to be seen. But in the coming months, Chicago Public Schools will find out if they have made enough progress to be released from federal supervision. For Justice Talking, I'm Shannon Heffernan.

MARGOT ADLER: While Chicago remains under federal supervision to desegregate its schools, other school districts have voluntarily taken measures to diversify their classrooms. Some take race into account when deciding where kids go to school. But if the Supreme Court decides that this is unconstitutional these schools will have to pursue race neutral alternatives to achieve integration. Wake County, North Carolina may have come up with a solution. Since 2000, the school district has used family income as a factor in assigning students to schools. To learn more about how the system works, I talked with Bob Saffold, president of Wake Education Partnership, a public education advocacy group in Raleigh, North Carolina. I asked him to describe how Wake County decides which schools students attend.

BOB SAFFOLD: The school board said that it will be guided in its student assignment decisions such that we try to have no more than 25 percent low performing students, as measured by student achievement, in any one school. No more than 40 percent of students based on percentage of free and reduced lunch. We look for stability in student assignments. Grade configurations are considered. Also proximity to a child's school is factored into the student assignment calculations.

MARGOT ADLER: So let's talk a little bit about how Wake County came to use socio-economic status as a way to diversify its schools. I gather that originally it was using race and that became impossible, that you couldn't continue doing that. Why don't you talk about that?

BOB SAFFOLD: Wake County certainly was using race as a factor in making student assignment decisions prior to the year 2000. But it was in the mid/late 90s that a number of school systems were pursuing relief from the courts, from court order desegregation. And it was in that context that our Wake County leaders looked at what was happening in those communities, along with a clear and growing body of research-based evidence that suggested that low-income students certainly benefited tremendously from being placed in middle class schools, that middle class students were not harmed; in fact benefited from some of the corollary effects of a healthy, diverse school settings.

MARGOT ADLER: And what's been the reaction from the community? From what I gather this has been a pretty controversial policy since its inception.

BOB SAFFOLD: I think the important thing to remember is that our community leaders have certainly maintained a strong commitment to supporting this policy. There is political consensus and support for maintaining the policy. At the grassroots level, based on our last poll back in 2004, is pretty evenly divided over the policy whether socio-economic should be considered one of the priorities in student assignment.

MARGOT ADLER: What do you say to critics who argue that socio-economic diversity essentially benefits low income students and that middle class kids are the losers in the process?

BOB SAFFOLD: The fact of the matter is that research consistently shows that middle class students in fact are not harmed by such a policy. And in fact middle class students who are assigned to schools with high concentrations of low income students test scores achievement tends to decline or erode. So it's quite a stunning array of research that certainly would support the gains that free and reduced lunch students can achieve. As well as, again, certainly no harm in the corollary benefits to middle class students of being in a healthy and diverse school environment.

MARGOT ADLER: Bob Saffold is president of Wake Education Partnership, a public education advocacy group located in Raleigh, North Carolina. Thank you for talking with me today.

BOB SAFFOLD: Margot, thank you so much, appreciate the opportunity.

MARGOT ADLER: Given our long history of discrimination against African-Americans, school desegregation is often thought of in terms of black and white students. But now the largest minority group in the United States is Latino and they, too, have suffered racial discrimination in education. To talk with me about Latinos and education, and his concerns about the current cases before the Supreme Court is Peter Zamora. He is the acting Washington, D.C. regional counsel for the Mexican American Legal Defense and Educational Fund. Welcome to Justice Talking.

PETER ZAMORA: Thank you very much.

MARGOT ADLER: What are the challenges for educational achievement for Latinos? I've heard for example that on average, Latino students are two years behind by age nine, that they have the lowest high school graduation rate, that very often they are in larger schools. Parse that out for me.

PETER ZAMORA: On almost every measure of academic achievement, Latino students underperform their peers. There's nearly a one out of every two Latino students does not graduate from high school. Only one in ten Latino students attends college. Part of that is because Latino students are more likely to be clustered in, as I said, not diverse public schools and also under-

funded and under-performing public schools. So Latino students are not getting a fair shake in today's public education system. And historically have not received equality in public education. We have actually seen a retrenchment from the ideal of integration such that Latino students are in more segregated in schools than they were 30 years ago.

MARGOT ADLER: Have there been any court ordered integration efforts in regard to Latino students?

PETER ZAMORA: There have been many court ordered efforts to improve achievements for Latino students. Specifically in Denver, Colorado MALDEF was involved in litigation where the school district was not providing really any sort of educational opportunities for English language learners, any sort of services designed to meet the needs of that community. So as a result of a court order, the schools are now forced to offer — or that schools agreed to offer I should say — educational programs that will provide opportunities for English language learner students. Also, Texas is under a current statewide consent decreed to provide educational opportunities for English language learner students. We're currently examining whether the state of Texas has met its legal obligation under a court order to provide appropriate educational services for English language learners in Texas.

MARGOT ADLER: Some would argue that desegregation efforts were a remedy for a history of slavery and legalized discrimination against African-Americans. Do you think that given that Latinos have a different history there should be a different way to integrate Latinos into the school systems?

PETER ZAMORA: One could say that there are distinctions between the particular elements of discrimination against Latinos versus African-Americans. But there is ... courts have recognized, including the Supreme Court, in a companion case to *Brown v. Board of Education* where it was held that keeping Latinos off of juries was a violation of the equal protection clause. And there are prior cases including a case called *Mendez* out of the Supreme Court where it was held that segregating Latino students from other students in a school is unconstitutional. So really there's a parallel. It's distinct but it's parallel. For example, in the state of Texas, there was legally mandated segregation. And that affected certainly African-American students, but Latino students were educated in "Mexican schools" that were really elementary schools without adequate services that ended at sixth grade. Most Latinos, mostly Mexican Americans, in Texas were denied the opportunity to progress past sixth grade. So really I think each community has benefited from the legal victories that each community has gained. So to see them as being fundamentally distinct I think is to ignore that there are long histories of discrimination on the basis of race and that the similarities are greater than are the distinctions.

MARGOT ADLER: What is really at stake in the cases before the Supreme Court for Latinos?

PETER ZAMORA: What's at stake is an opportunity at the American dream, an opportunity to work hard, to study, to use the structures that are generally available. Or that should be generally available, I think I should say, because for many they are not available in order to have a shot at a good job, at a family, at a safe and secure life. And if the Supreme Court were to rule these plans unconstitutional I think, first, they'd be making a serious error in judgment, in not

recognizing that using race to ensure diversity in a public school is fundamentally different from using race to ensure segregation. And the 14th Amendment in *Brown v. Board of Education* is about the power in the constitutional basis for integrating public schools. If the court were to rule that these communities are not able to meet the will of their local voters and create for diverse schools these school districts would be forced to pretend that race is not an issue.

MARGOT ADLER: Peter Zamora is the acting Washington, D.C. regional counsel for the Mexican American Legal Defense and Educational Fund. Thank you for talking with me today.

PETER ZAMORA: Thank you very much.

MARGOT ADLER: Do you think racial integration in schools is important? And if so, what's the best way to achieve it? You can share your opinions and experiences at our website, JusticeTalking.org.

While there you can also sign up for our newsletter or subscribe to our free podcasting service. Thanks for joining me. I hope you'll tune in next week. I'm Margot Adler.
