

## Voluntary School Integration: 2007 U.S. Supreme Court Decision

*The U.S. Supreme Court ruled that two districts with voluntary integration plans could not use race in assigning students to public schools*

The most recent voluntary school integration case decided by the U.S. Supreme Court, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), and a companion case, *Meredith v. Jefferson County Board of Education*, challenged school districts' race-conscious attendance policies under the Equal Protection Clause of the Fourteenth Amendment. In a decision where five different justices filed opinions and Justice Kennedy's fifth vote, in effect, decided the case, a Court majority struck down the voluntary integration plans of these two districts under a strict-scrutiny analysis, ruling that the district plans were not narrowly tailored to the districts' interest in maintaining racially diverse schools. Although the Court ruled the districts' plans impermissible because they involved racial classifications that violated the Equal Protection Clause of the Fourteenth Amendment, it did not foreclose school districts' ability to use nuanced, racial-conscious alternatives to constitutionally pursue racial diversity in schools.

The Fourteenth Amendment serves to prevent and remedy segregation and eliminate the inequitable separation of races. It also gives equal opportunity to every person regardless of race and protects against denying a person an opportunity because of race.

The Court uses strict scrutiny to review cases where government action "distributes burdens or benefits on the basis of individual racial classifications." To survive strict scrutiny, the government must show that it had a compelling interest in using racial classifications and that its classifications were narrowly tailored to meet that interest.

*The two districts used racial balancing to decide school admissions and reflect the racial composition of the district*

In Seattle, the school district's open choice policy allowed incoming ninth graders to choose which high school they wanted to attend. The district used two tiebreakers to decide which students to admit to an oversubscribed high school: whether a sibling already attended the high school; and whether a student would disrupt the school's racial balance. In Louisville, after a court removed a decree ordering the Jefferson County schools to desegregate, the county adopted a voluntary student assignment plan, assigning kindergarteners, first graders, and transfer students based on available space and racial guidelines and denying admission to middle school and high school students who disrupted those racial guidelines.

*The Court rejected the two school admission plans based on a strict-scrutiny analysis*

The Court rejected the two school desegregation plans based on a strict-scrutiny analysis that requires government actions to be narrowly tailored to achieve a compelling government interest. In these cases, the Court considered whether the student assignment plans were narrowly tailored and whether the goal of racial diversity among students was a compelling government interest.

***The Court allows public schools to use race-based assignments to remedy past discrimination***

According to the Court, school officials may use race to assign students to public schools to: remedy past intentional segregation; or create educational diversity in higher education, consistent with *Grutter v. Bollinger*, a case about whether a law school may use race-conscious admissions criteria. The Seattle school district had no history of forced segregation and Jefferson County was not required to desegregate schools after its desegregation decree was removed. In *Grutter*, however, the Court allowed the University of Michigan to consider an applicant's race among other factors when deciding who would benefit its law school by contributing to a more diverse experience. The university could include race as a basis for admission to its law school because it evaluated student applicants as individuals and not as members of a racial group.

***A Court majority said that racial diversity is a compelling educational goal***

A Court majority said that racial diversity, depending on its meaning and definition, is a compelling educational goal. However, the Court was not persuaded by the Seattle district's argument that its admissions plan served a compelling government interest both in undoing the school segregation caused by the city's housing patterns and in providing a superior, racially diverse learning environment. The Court rejected the district argument, finding that the schools' admissions plans were tied to "specific racial demographics, rather than to any pedagogical concept of the level of diversity needed to obtain the asserted educational benefits."

***The two districts' race-based admissions plans were not narrowly tailored and therefore impermissible***

The court found that the two districts' race-based admissions plans were not narrowly tailored and that the districts had failed to consider race-neutral alternatives as a way to achieve racial diversity in schools. Unlike *Grutter*, where race had been one of a number of factors for determining admission, these districts had used race as a primary or the sole factor in assigning students. Justice Kennedy, whose concurrence serves as the controlling opinion, wrote that race-conscious policies that are not discriminatory are permissible and do not demand strict scrutiny.

***Justice Kennedy stated that schools may use race-conscious alternatives to achieve racial diversity without discrimination***

Justice Kennedy also stated in his concurrence that diversity for the purpose of offering all students equal educational opportunity is a compelling interest. To that end, schools with voluntary plans may use race-conscious measures to make school assignments if the measures address the problem of limited diversity and do not treat students differently solely based on race. For example, schools may achieve diversity through alternatives such as strategically placed new schools, demographically sensitive attendance zones, targeted recruitment of students and faculty, tracking student enrollment, performance, and other race data, and the allocation of resources for special programs. According to Justice Kennedy, these race-conscious alternatives, which can achieve racial diversity in schools without racial discrimination, would be constitutionally permissible.

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