

The U.S. Supreme Court ruled on June 28th that school districts may no longer use a student's race as a deciding factor for school assignment, as a way of attempting to maintain or achieve integration. This decision came in response to a court case in which it was found that two school districts, Seattle and Jefferson County, KY, violated the 14th Amendment, due to the fact that they were using race as a deciding factor to achieve diversity in individual schools. Schools in Jefferson County, which include the city of Louisville, were operating under a plan that was adopted in 2001, in which each school sought to have a black enrollment of at least 15% of their student population, but no more than 50%. This plan was challenged by a parent of a white student after he was denied transfer to another school because his current school needed to keep its white students to stay within the parameters of the district's policy. Schools in the Seattle school district, while never under a court-ordered desegregation plan, in 2000 adopted an assignment plan that used race as a way to "foster educational and social benefits in the classroom."

Critics of the Court's decision state that this ruling will challenge what was established in the 1954 Court case, *Brown v. Board of Education of Topeka*, which sought to establish a diverse student population in individual schools by outlawing segregated schools. Justice Stephen G. Breyer, who authored the principal dissenting opinion, argued that this decision would strip local communities of their tools to prevent desegregation. He later stated that he felt "this was a decision that the court and the nation will come to regret." The primary proponent of this decision, Chief Justice John G. Roberts Jr., noted that "the way to stop discrimination on the basis of race is to stop discriminating on the basis of race," which he believed was occurring in Seattle and Jefferson County.

How does the Seattle decision affect Arkansas school policy? The Arkansas Constitution does not explicitly address the racial composition of schools. However, there is an equal protection clause in Article 2. Moreover, the statutory code explicitly recognizes the importance of having integrated schools. For example, Ark. Stat. Ann. § 6-18-203, which concerns residents whose property crosses district boundary lines, states that: "The General Assembly recognizes and embraces the responsibility of the state to promote desegregation of its schools..." More directly, the state prohibits school districts from granting student transfers "[w]here either the resident or the receiving district is under a desegregation-related court order or has ever been under such a court order; and ...the transfer in question would negatively affect the racial balance of that district which is or has been under such a court order."

In terms of charter schools, the regulations set forth by the Arkansas Department of Education for the implementation of new charter schools require that charter applicants submit "a written evaluation describing the potential impact on the efforts of a public school district or districts to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools."

In the most recent legislative session the Arkansas General Assembly passed Act 552, an amendment to the Public School Choice Act of 1989. Act 552 allows for inter-district student transfers as long as such transfers "would not adversely affect the desegregation of either district."

The Department's administrative regulation has established a quota for assigning by race, stating that ADE will compute the minority percentage of each county's public school population and then compute the acceptable range of variation from those percentages for school districts within each county from which a charter school will receive students.

Does this decision spell the end of *Brown*? Does it mark the end of court-mandated diversity in public schools? The answers to these questions largely depends on how lower courts, and local districts, interpret Justice Anthony Kennedy's lengthy concurrence. While this decision will certainly halt the racial-classification policy that courts have insisted upon over the past six decades, schools may still seek diversity in a variety of ways. Indeed, in his concurrence Justice Kennedy stated, "School boards may pursue the goal of bringing together students of diverse backgrounds and races" through means other than "systematic, individual typing by race." Reading aloud from the bench, Kennedy added, "A district may consider it a compelling interest to achieve a diverse student population. Race may be one component of that diversity,

but other demographic factors, plus special talents and needs, should also be considered.” One of the more obvious ways in which schools might aim for achieving a diverse student population is by allowing socio-economic status to determine its transfer policy.

While the net effect of this court decision – and its effect on Arkansas students – is unclear, choice advocates, and students who wish to transfer from one public school to another, should not fear this decision. In fact, it quite possibly will ease the ability of students to move into a school more to their liking.