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Desegregating Our Schools: Litigation Proposal

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Desegregating Our Schools

Litigation Proposal

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1. EXECUTIVE SUMMARY

Springfield's students of color are experiencing something that the Constitution and laws of Massachusetts have long proclaimed intolerable: racially segregated schools. The schools are segregated because the Commonwealth requires students to attend school in the communities where they reside, and those communities are segregated. The state has a duty to remedy the ongoing denial of equal educational opportunity to Springfield's students of color, and this proposal aims to hold it accountable for that duty.

Devising policies that will produce integrated communities and schools is a task best suited for a diverse body of people with differing areas of expertise, rather than for a court. The remit of the policy-making body should be: (1) to investigate and research the causes of segregation in and around Springfield; and (2) to formulate policies to minimize/eliminate it while fostering economic integration. To give the resulting proposals a chance of success in the Legislature it is essential that the body that drafts them should be an official one with the driving force of the executive behind it. This proposal describes a way establish that special commission if the Governor does not simply do so in response to a request.

There is a state agency that has a legislative mandate to investigate discrimination, including its underlying historic causes, and to design high-leverage remedial policies. That agency is the Massachusetts Commission Against Discrimination (MCAD) and it has the resources, as well as the duty, to take effective action. Accordingly, I propose that a representative group of complainants file a class action with the MCAD and request that the agency recommend that the Governor set up a special commission to operate under the aegis of the MCAD. There is no guarantee that the Legislature will enact the special commission's proposals. Nevertheless, this method promises to put before the General Court a coherent package of interlocking bills that have the imprimatur of the executive and significantly advance the public debate about how, not whether, we resume the task of building an integrated, inclusive, and just society.

Several states have agencies similar to the MCAD, e.g. the New York Division of Human Rights, so this approach may be generalizable beyond Massachusetts. In addition, because the likely solutions to segregation (e.g. greater regionalization, economic revitalization, human-scale redevelopment, public transportation, and fair housing) are also key elements in building a more just, equitable, sustainable society, organizations such as the Union of Minority Neighborhoods and the NAACP can use the MCAD action to make common cause with groups that do not fall within the traditional category of civil rights.

2. INTRODUCTION

The Massachusetts Declaration of Rights promises equality. Article 1 declares that “equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.” A racially segregated society falls short of that promise, and an education system that perpetuates segregation makes a mockery of it. But for students of color who live in Springfield’s racially segregated neighborhoods the gap between their rights and their lived reality is enormous. It shocks the conscience to think that in the second decade of the Twenty-first Century most students of color in Springfield, Massachusetts, attend schools that are segregated by race. Forty years after the landmark case of *Morgan v. Hennigan*, our state remains home to a form of educational Jim Crow that reminds us that Massachusetts was the birthplace of the very phrase “separate but equal” (*Roberts v. City of Boston*; see also Meier, p. 163; Schneider, p. 144).

We owe this state of affairs, in large part, to the principle of local schools, a principle which is written into state law. By statute, Massachusetts assigns students to schools based on where they live. Although the law creates a few exceptions to this principle (e.g. the Racial Imbalance Act, METCO, and the school choice program) most students in Massachusetts attend the school nearest to home. Although racially neutral on its face, the statute is discriminatory in impact. By enforcing this law, the Commonwealth confines generations

of our young people to racially segregated schools despite the fact that this outcome – segregated education – is clearly unconstitutional.

One familiar path for those seeking greater equality in education is the school-funding route. In Massachusetts, however, the Supreme Judicial Court has made clear that in the wake of the education reforms of the mid-1990s and the legislatively-managed framework for remedying inter-district financial disparities, school-funding cases are less likely to succeed (*Hancock v. Commissioner for Education*). Accordingly, we need to identify another point of entry in order to force the state to address structural educational discrimination.

For reasons I describe below, I propose persuading the Governor to appoint a special commission under MCAD supervision, using a legal case in the MCAD to do the persuading.

In one important respect, the proposal resembles the *Sheff v. O'Neill* case, in which residents of Hartford, Connecticut, won a ruling that the state's school-district lines led to the racial isolation of students of color in Hartford, violating their right to equal educational access. As a result of the court ruling, Connecticut's legislature instructed the state's department of education to devise a remedial plan. This proposal differs from *Sheff*, however, in that it involves (1) bringing the case in a specialized administrative agency, the MCAD, rather than in court; and (2) specifically asking for the Governor, as opposed to the

Legislature, to appoint a special commission; and (3) tasking the commission with developing policy proposals to end residential, not just educational, segregation. I attach to the proposal two legal documents, namely a draft complaint and a memorandum of law in support of a request for a preliminary injunction. They contain the claims and arguments that we would present to the MCAD, which I outline below.

3. OBJECTIVES

This proposal's objective is the elimination of racial segregation – both residential and educational – in and around Springfield. The effects of residential segregation are most evident in the public schools, and one aspect of this proposal is to eliminate the racial and socio-economic disparities that combine to deny students of color their right to equality.

Although per-pupil spending and teacher's salaries in Springfield are relatively high, the graduation rate is only 53%, compared to a statewide rate of 82%. These low graduation rates and high drop-out rates are strong signals that Springfield's public schools are failing to teach students of color effectively (Greenleaf, et al). There are three charter schools in Springfield and 45 non-charter public schools, ten of which are Level 4 schools. A school qualifies for Level 4 status if it is "both low performing on the Massachusetts Comprehensive Assessment System (MCAS) over a four year period... and not showing signs of substantial improvement over that time" (Massachusetts Department of

Elementary & Secondary Education, 2011). Most of the students in Springfield's public schools are non-White. Of the approximately 25,000 students, about 22% are African-American/Black, 58% are Hispanic/Latino, and 15% are White. About 84% of students are eligible for free or reduced priced lunch, significantly higher than the surrounding school districts and the state level of 34.2% (Greenleaf et al, citing School District Profiles, 2011).

The degree of racial and socio-economic segregation in some schools is higher than in others, with predictable consequences for learning outcomes. For example, in Springfield's High School of Commerce – a Level 4 school – approximately 62% of the students are Hispanic and most students either have limited proficiency in English or do not speak English as their first language. The 2010 drop-out rate among Commerce's Hispanic students was 37.6% and among limited-English students it was 53.5% (Greenleaf, et al).

Integrating our schools means simultaneously integrating our communities, an ultimate objective that is undeniably ambitious but nonetheless realistic so long as we take a regional approach. Experience suggests that because “issues of environment, housing, education, taxes, transportation, and jobs are inextricably bound with space, land use, and race” (Ferris, *Breakthrough Communities*, p. 331) there is no single, simple measure that will undo generations of segregated housing. But the way these issues overlap creates multiple policy windows, points of entry, and opportunities for alliances. In *Breakthrough*

Communities Myron Orfield suggests “two broad-based strategies for change” for ending segregation through regionalism, namely organizing “a coalition with a multifaceted strength” and secondly litigation (p. 372). Traditional forms of litigation, however, along the lines of *Sheff* and *MacDuffy*, will not produce the results we need.

A. *Sheff* and *MacDuffy*

In the *Sheff* case the plaintiffs asked the court for a declaration that Connecticut’s practice of basing school districts on municipalities violated the state constitution’s guarantee of equal access to public education because it led to the racial isolation of students of color in Hartford. Students of color in Springfield have grounds to bring a similar action. So why not simply replicate the *Sheff* case and obtain a similar ruling? The answer to this question begins by asking another question: How would we use the ruling? After all, a declaratory judgment is not an end in itself, but rather a means to an end. The outcome of *Sheff* was a statute from the state legislature (Public Act 97-290) directing the state’s education department to come up with a five-year plan to remedy inequality within the school system, but it did not to address the interconnected issue of residential segregation in and around Hartford. After a return to court and settlement discussions between the parties, that process yielded a combination of regional charter and magnet schools in Hartford designed to attract students from the suburbs, and boosting the number of school-choice

seats in predominantly White suburban schools. Although the charter and magnet schools have attracted suburban students, a disproportionately high number of them have been students of color, a development that does not remedy the racial segregation issue (Greenleaf, et al, p. 18). In addition, Massachusetts already has some of the features that Connecticut acquired via *Sheff* such as a racial imbalance statute and school-choice. So if *Sheff* is not a perfect model, what about *MacDuffy v. Secretary of Education*?

The Massachusetts Legislature set about equalizing education funding in response to the Supreme Judicial Court's opinion that the Commonwealth was failing in its duty to provide an adequate education for all children, including those who lived in communities that were property-poor. There are two main reasons for not going the *MacDuffy* route. First, segregation is the main problem, not funding. While Massachusetts now has a fairer distribution formula for distributing funds among largely White suburban schools and largely non-White urban schools, *MacDuffy* and other cases like it nationwide have also "implicitly legitimized the segregation of such schools" (Ryan, p. 260). Quite simply, our goal should not be "separate but equal."

Secondly, the Supreme Judicial Court has made clear that, given the progress since *MacDuffy* both in terms of accountability and foundation budgets under the Education

Reform Act, it is inclined to defer to the legislative and executive branches in fleshing out the curricular details of an adequate education (within the parameters the Court laid out in *MacDuffy*) and to the Legislature's spending priorities of budget concerns. It is worth remembering that the *Hancock* decision pre-dates the 2008 recession. If the Court showed deference to the Legislature over money before the recession, there is no reason to believe it would be less deferential today; far from it. In view of *Hancock* and similar decisions elsewhere in the US, one attorney who specializes in educational equity cases has observed that plaintiffs would do well to "focus less on funding and more on structural conditions – a strategy that might provide a more stable right" (Adams, p. 1634-35). In *Sheff*, unlike *MacDuffy*, the litigants tackled the segregation issue head-on but ended up with a set of policy changes that have not, in fact, led to educational – still less residential – integration.

B. Beyond *Sheff* and *MacDuffy*

If we are to follow the advice of Attorney Adams and focus on the structural issues we need to be careful about the structures we are trying to use as well as those we are trying to change. In both *Sheff* and *MacDuffy*, the courts issued decisions that had the effect of compelling action on the part of legislators. The legislators then confined themselves to the issues of scholastic performance, school funding, and the inter-district movement of students, a set of issues that – while not narrow – did not address the underlying problems.

So we need to ask ourselves (1) whether we want to focus on the schools alone or also on the land-use, transportation, and other issues that intersect with education; and (2) if we choose the latter, whether the structure we want to entrust with that designing the raft of interconnected remedial policies is the Legislature. Only the Legislature can turn bills into laws, but it matters where those bills originate. In *Sheff*, the policy proposals for charter and magnet schools emerged from a policy-development process run by the education department. *MacDuffy* happened in the context of the education-reform debate, which focused on student evaluation and funding equity. In neither *Sheff* nor *MacDuffy* did the policy developers take a holistic approach, but kept the debate inside the education silo.

Fashioning the necessary policies to present to the Legislature will require the focused thought of a large group of people. There is no shortage of good ideas as to how we should remedy educational achievement disparities, de facto segregation, sprawl, affordable housing, food security, neighborhood revitalization, economic regeneration, environmental justice, and regional equity. What we lack – and desperately need – is a body with the remit to develop a holistic, cohesive package of interlocking policies specifically for the Springfield area, and the authority to push that package forward through the Legislature.

Just hoping for the right combination of policies to bubble up into state government from

think tanks, the academy, and concerned citizens would be naive. So would an attempt to simply graft onto Springfield a set of policies from other communities, even successful policies from places that share the city's key characteristics. We need to understand how segregation in and around Springfield arose before we can undo it. In other words, history matters. So, because the interconnected issues are so numerous and site-specific, I believe that we need a deliberative, broad-based body of academics and lay people to (a) investigate the precise historical causes of segregation in and around Springfield and (b) devise policies that will reduce segregation and promote racial and socio-economic integration across the region. To ensure that the subsequent proposals merit the serious attention of the Legislature, the body should have official status and reside within an agency that has a track record of remedying discrimination. Who could convene such a body?

Certainly the Legislature has the authority, but the legislative process is painfully slow. If, at the start of the next session, we file a bill to establish a commission, it is unlikely to become law for several years. There is another route, however. As chief magistrate of the Commonwealth, the Governor has the power to establish and appoint a special commission without asking permission from the Legislature. If the Governor does, in fact, appoint the special commission, its proposals would go to the Governor and from him to the

Legislature, either as a package of measures or as a single omnibus bill. Unlike the rest of us, the Governor has the constitutional authority to file a bill at any time and the Legislature must give his proposals due consideration. Nobody can guarantee that the Legislature will vote in favor, of course, but by that stage (if our coalition-building and mobilization efforts are successful) we will have the capacity to mount a powerful lobbying campaign.

If we ask the Governor to appoint the special commission and he does so forthwith, we would not need to take the steps I outline below. Working on the assumption that he declines, I propose that we should file a complaint requesting that the MCAD recommend to the Governor that he establish the special commission.

4. WHY THE MCAD?

Litigation and judicially-supervised processes do not necessarily produce outcomes that are practically effective (e.g. *Sheff*). But litigation that focuses from the outset on establishing an independent but accountable body that is *designed* to produce effective and resilient outcomes stands a better chance of success. Moving the Governor to the point where he appoints the special commission involves leverage, and the prerequisite for leverage – in addition to a lever of sufficient size – is a place to stand. For our purposes, the ideal place to stand so that we can exert our energies most efficiently is the MCAD.

There are three main reasons for choosing the MCAD as the locus for a desegregation case. First, since its inception in 1946 the MCAD has played a key role in expanding the reach of the anti-discrimination laws. The law that the MCAD routinely enforces, Chapter 151B, contains a provision that most Massachusetts statutes do not, namely a “liberal construction” clause. When the MCAD, or a court reviewing an MCAD decision, has to decide whether Chapter 151B applies to a given situation, it has to interpret the statute expansively so as to further the public policy goals underlying it. In practice, this means that whereas a narrow, textual reading of Chapter 151B might lead to a conclusion that the statute did not apply to a novel fact pattern for which there was no precedent, the liberal-construction clause pushes in the opposite direction. So long as the MCAD’s liberal interpretation of its authority under the statute is reasonable, a court should not second-guess its ruling. Judicial deference to the MCAD’s interpretation of its role – often a generous interpretation because of the liberal-construction clause – provides a solid reason for bringing our action in the MCAD. Second, under Chapters 151B and 151C, litigants with anti-discrimination claims have to start in the MCAD; this is a threshold matter, meaning that they cannot file a complaint in a regular court without having first submitted the case to the MCAD. Third, although it is primarily an adjudicatory body, unlike a court the MCAD has no equivalent of a 12 (b)(6) motion, i.e. a motion to dismiss for failure to state a case.

This does not mean that every complaint automatically goes to a hearing before a full panel of the three-member Commission, but it does mean that the chances of survival are greater than in a court.

A. History of the MCAD

The MCAD is the product of generations of activism in Massachusetts. In 1946, after almost a century of lobbying for, testing the limits of, and demanding improvements in the state's anti-discrimination laws, people of color working through civil rights and labor organizations persuaded the Governor and Legislature to create the Fair Employment Practices Commission, which became the MCAD four years later. In terms of process, the agency was the product of a four-member committee that Governor Tobin established in response to a legislative report. But the agency's roots lead back much further to the mid-1880s when African-American attorneys, responding to the Supreme Court's 1883 evisceration of the federal Civil Rights Act, brought test cases to demonstrate the need to expand the reach of the state's public-accommodations statute. In the Legislature, a handful of African-American state representatives won over enough of their colleagues to assure passage of a series of statutes that gradually expanded the definition of "public accommodation" and increased the number of venues where discrimination was explicitly prohibited. The process culminated in the enactment of Chapter 151B, which incorporates

the public accommodations law, and in the creation of a specialized agency to handle discrimination cases (Vickery). New York established a similar commission at around the same time, and by 1961 there were eighteen other states with analogous agencies some of them housed within existing departments of state government (Bamberger & Lewin, p. 527). Serving as a model for these commissions was federal Fair Employment Commission, which grew out of “a strategic conflict among civil rights groups about how to attack job discrimination as well as a troubled but necessary alliance with organized labor” (Engstrom, p. 1075). In the MCAD, the state’s largely unknown civil rights leaders of the past have bequeathed us an invaluable, if underused, vehicle.

B. MCAD Process and Procedures

Filing a complaint is the way litigants commence a lawsuit in the MCAD. There is no filing fee, but complainants must file within 300 days of the event, unless the unlawful conduct is of “a continuing nature” (804 CMR 1.10(2)). MCAD staff help the individual draft the complaint and a supervisor conducts an initial review to confirm that the facts as the complainants alleges them could, if true, amount to unlawful discrimination. If the reviewers err, they err on the side of generosity to the complainant. If the complainant does not have an attorney, the MCAD may provide counsel. After the MCAD serves the complaint, the respondent has 21 days to file a position statement. The complainant

reviews the position statement and files a rebuttal. Then an MCAD investigator conducts an investigation, which may include an investigative conference, to determine whether there are grounds to issue a finding of probable cause. All cases trigger an investigative process unless the MCAD lacks jurisdiction, or the complainant “provides information that contradicts an inference of discrimination” or if the complaint “is totally unbelievable on its face” (804 CMR 1.13 1(a)). This is, quite clearly, a low threshold.

Unlike a preliminary hearing in a court, an investigative conference is an administrative proceeding with no fixed rules of procedure or evidence, and does not provide an opportunity for a respondent to file a motion to dismiss. And, importantly, the respondent cannot transfer the case to Superior Court during this period. The regulations define probable cause as “sufficient evidence upon which a fact-finder could form a reasonable belief that it is more probable than not that the respondent committed an unlawful practice.” Further, “[i]n making this determination, disputes involving genuine issues of material fact are to be reserved for determination at hearing.” Again, this is a low threshold for complainants to meet. At the conclusion of the conference, i.e. even prior to a hearing, the responsible Commissioner “may immediately endeavor to eliminate the unlawful practice” (804 CMR 1.11 (5)(e)). In addition, the Commissioner may determine that the matter warrants emergency proceedings, thereby suspending the ordinary rules, and order

the matter “investigated, heard, and determined... as expeditiously as possible” (804 CMR 1.12). Under this rule, the MCAD can hold a public hearing within 21 days of the emergency determination and award “traditional equitable relief.” So whereas many MCAD cases take years to resolve, the emergency proceedings enable the Commission to put certain matters on a fast track. Significantly, class actions are now available through the MCAD. I suggest asking the MCAD to certify the complainants (organizational and individual) as a class. Under the MCAD’s regulations (804 CMR 1.09 (4)(a)) we need to demonstrate that it would be impractical for all the potential complainants – i.e. all the students of color in Springfield – to file suit, and that our complainants adequately represent the class as a whole. Whether the MCAD certifies the case as a class action or not, the complaint would ask it to do two things: (1) recommend to the Governor that he establish a special commission and (2) seek a court order enjoining the Department of Education from disbursing state or federal funds to any and all school districts unless and until the Governor does so.

C. Why Seek a Preliminary Injunction?

Asking for an injunction that could have the effect of suspending the operation of schools across the whole state may seem overly dramatic, but I believe that the seriousness of the constitutional violation warrants it. The amount of money at stake is enormous. In 2009,

total K-12 education spending was \$12.9 billion, with approximately 95% of school budgets coming from federal and state funds (Mass Budget & Policy). In other words, putting a hold on federal state funds would leave schools with just 5% of the money they need in order to operate. While this is a significant sanction, it is proportionate in comparison with the kind of preliminary injunction plaintiffs would ask for in a voting rights case. In voting rights litigation it is standard operating procedure to ask the court to suspend all elections unless and until the state remedies the alleged violation. It is fair to say that in view of the fact that equality of access to public education is no less of a constitutional right than equality of the franchise, withholding funds is on a par with suspending elections.

Essentially, the request for the preliminary injunction communicates a message to the Governor, to the court, and to the public at large: The education of Springfield's students of color is no less important than the education of students elsewhere in Massachusetts. It is unfortunate that we have to spell this out, but the fact that in 2012 de facto segregation is alive and well in and around Springfield suggests that we must. Although the MCAD itself cannot issue a preliminary injunction against the Education Department, I believe that the agency's record of pushing the anti-discrimination laws ever outward – “boldly carv[ing] new protections out of existing language where it faces claims from a population at risk” (Nolan, p. 132) – militates in favor of bringing the case in this particular forum.

Seeking a preliminary injunction, therefore, serves two purposes. It both increases the speed of the process and ups the ante. The injunction would be necessary only if the MCAD recommended the establishment of the special commission but the Governor declined to act. So, in the event that the Governor fails to comply with the recommendation, we would ask the MCAD to go to Superior Court for an injunction that would prevent the disbursement of federal and state funds to all the school districts in the state. As mentioned above, this somewhat draconian step merely reflects the profound nature of the harm suffered by Springfield's students of color. The scale of the injunction is, I believe, commensurate with the scale of the injury. If the MCAD refuses to take this step, the case would proceed under the regulations, hopefully under the accelerated emergency-proceedings rules set forth in 804 CMR 13. If the Complainants were to apply for injunctive relief themselves, rather than having the MCAD do so, my reading of Section 9 suggests that jurisdiction would vest exclusively in the Superior Court. For the reasons I describe above, I believe that we should stay within the Commission.

5. CHOICE OF RESPONDENTS

No single community or school district is responsible for the decision to enforce Chapter 76, Section 5, at the expense of the Racial Imbalance Law. As subdivisions of the Commonwealth they share, but are not individually capable of acting on, the duty to uphold

the Article 1 rights of Springfield's students of color. That said, all municipalities that receive federal community-development block grants have a duty to affirmatively further fair housing, and there is a precedent for using litigation to hold them accountable, namely the action the Anti-Discrimination Center of New York successfully brought an against Westchester County under the federal False Claims Act (*Westchester Case*). Conceivably, then, we could commence similar actions against the eight majority-White communities that abut Springfield. But unlike a county or similar unit of regional government, those communities would lack the coordinative cohesion necessary to either develop a raft of remedial regional policies or set up a well resourced special commission to fashion them. As sovereign, the Commonwealth is the entity that bears legal responsibility for upholding the constitutional rights of its residents. And as chief magistrate of the Commonwealth, it is the Governor who has the power to establish and appoint the special commission. Accordingly, I suggest naming the Commonwealth, rather than a combination of municipalities, as the Respondent. In addition, although it is an executive agency subordinate to the Governor, I suggest naming the Department of Education as the second Respondent. This arises out of my opinion that it makes sense to seek a preliminary injunction as insurance against the possibility that the Governor might choose to ignore the MCAD's recommendation.

6. CHOICE OF COMPLAINANTS

In addition to being inherently unequal, it is well established that segregation in education is harmful (Bireda; Chang; Hanushek). Because segregation contradicts the unequivocal public policy of the Commonwealth, I do not believe that it is necessary for our complainants to prove that segregated schools have caused them, or threaten to cause them, individual harm. The main difficulty we will encounter, I believe, comes in the form of a curious gap in the framework of anti-discrimination and civil rights laws. Chapter 151B expressly prohibits discrimination in employment and housing, while Chapter 272 relates to public accommodations. Chapter 151C covers schools, but not completely. Chapter 151C applies to people “seeking admission” to schools. Despite the rule of liberal construction, in the past the MCAD has declined to exercise jurisdiction over cases where a person was claiming discrimination after having been admitted to an educational institution. Accordingly, I believe that at least one (ideally several) of our complainants should be students who have tried to avail themselves of the Racial Imbalance Act procedure for transferring. We should choose some complainants who have applied for school-choice transfers unsuccessfully, others who are not yet at that stage, and also ensure that our complainants reflect the organizations in our coalition, a process some refer to as “stacking the plaintiffs” and ticket balancing” (Stone 348). At this stage, I believe that the

MCAD might certify ours as a class action pursuant to its regulations and that UMN would meet the requirements to serve as a representative party for the class. However, further investigation of UMN and the other potential coalition members will be necessary in order to make decisions about standing.

7. COALITION MEMBERS

Denial of equal protection is a constitutional issue, so it is tempting to perceive the situation solely as a question of rights and to pursue a rights-based solution. Certainly, this approach is an important part of the proposal partly because in Massachusetts we have a unique enforcement mechanism (Stone, p. 332) in the form of the MCAD. There is also a large body of legal scholarship on the role of schools as the “frontier of civil rights law” and “the main avenues to equality” (McCaughey, p. 273), scholarship we can draw on to build our case and mobilize like-minded lawyers, practitioners and academics. But we can also look at the situation through the lenses of regional equity and sustainability, lenses that allow us to see and present the dispute more expansively and attract stakeholders that we might not, in the first instance, categorize as potential allies. As Deeohn Ferris explains in

Breakthrough Communities:

“For African Americans, the central regional equity challenge is to create sustainable metropolitan communities through sound decisions that respect the linkages between community health and prosperity and economics, civil rights,

environmental factors, transportation, land use, and development” (p. 329). Land use issues, such as sprawl and fragmentation, are central to understanding the way segregation becomes self-reinforcing (Orfield, p. 878-89). Some of the challenges that Springfield faces, challenges that are entwined with the issue of segregation, provide opportunities for a broad coalition of community-based organizations. This is because the solutions to segregation will also serve as solutions to other problems. For example, Springfield is one of the poorest communities in Massachusetts. Compared with Massachusetts as a whole, the Springfield school district has three times as many families living below the poverty level. Although it is the source of most of the jobs in the Pioneer Valley, it also has the region’s highest unemployment rate (Greenleaf, et al). When it examines the causes of segregation and studies possible remedies, the special commission will, perforce, have to engage with the problem of prolonged, trans-generational poverty and systemic unemployment. In addition to poverty and unemployment, another issue phenomenon bedeviling Springfield is crime. In 2008, Springfield had the state’s second highest crime count (1,901) and the third highest violent crime rate (1,261.9 per 10,000 persons) (Massachusetts Executive Office of Public Safety and Security, Research & Policy Analysis Division, 2009). Citizen groups whose agendas focus on liberating their communities from crime will have, in the special commission, an opportunity to influence

the policy-making process. Potential core members of the coalition include the Union of Minority Neighborhoods (UMN), the Springfield NAACP, and the Urban League. Because combating educational segregation is at the heart of its mission, I suggest UMN as the convener. In that capacity UMN would meet with representatives of the NAACP and Urban League and draw up a list of invitees for an initial exploratory meeting. Building out from the core, the coalition could come to include labor, environmental, and faith-based organizations that recognize the necessity of addressing the challenges that bedevil Springfield on a regional basis. Similarly situated communities have taken a regional approach, such as the New Jersey Regional Coalition, which hosted the People's Summit on Regional Equity in 2003. Similarly in Cleveland, Ohio, the African American Forum on Race and Regionalism noted that "[h]istorically devastating exclusionary and discriminatory policies, combined with current regional dynamics of urban disinvestment and inefficient, fragmented suburban growth have created vast disparities for many of Cleveland's residents" (Blackwell et al, p. 2). Among the report's recommendations were a regional community development corporation plus a regional housing and development plan (p. 295). Pushed in that direction by the coalition, the special commission could develop policies for regional education and development plans.

8. INSIDE-OUTSIDE STRATEGY

It is helpful to think of the coalition's tasks as two-fold. One part involves building the case for the MCAD (identifying potential complainants, etc.). This is the "inside" element of the strategy in that it focuses on what goes on inside the MCAD as an institution. The "outside" element entails trying to obtain the special commission by applying pressure to other levers situated at other junctures of state and local government. After the Governor appoints the special commission the inside and outside elements both continue. The project will move into another phase, which will involve at least as much activity as the litigation phase, probably much more. The inside aspect will focus on the special commission as an institution. For example, coalition members should press the special commission to consider how best to achieve economic integration; they may choose to offer suggestions about land use measures such as inclusionary zoning and regional planning. As before, the outside element will consist of engaging in dialog with allied stakeholders, ensuring that they continue to own the project, and securing new commitments.

9. CONCLUSION

Just as segregation arose from the inter-relationship between housing and other policies (some intentionally discriminatory, others not) integration will depend upon, and affect,

developments in other policy areas. Because “spatial arrangement remains one of the most fundamental ways that opportunities are distributed in the United States” integrating education depends upon integrating the communities in our region (Ferris in *Breakthrough Communities*, p. 331). Accordingly, this endeavor creates an opportunity for several organizations to work together on a project that promises a variety of co-benefits. Building the MCAD case promises to draw together low-income communities of color, environmental and sustainability advocates, small businesses, and labor, in a coalition to demand changes in the social, economic, and built infrastructure of the region. Creating an official deliberative body that has the necessary political heft but is not controlled by local powerbrokers is a step along the way to enacting policies that will generate benefits across many fronts. Ensuring that this deliberative body produces proposals that are practical and effective will require significant, sustained involvement on the part of several community-based organizations and their allies.

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APPENDIX 1

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

Hampden, ss.

Docket No. ___ - _____

UNION OF MINORITY
NEIGHBORHOODS,
[Named Individual 1], and
[Named Individual 2],
Complainants,

v.
COMMONWEALTH OF
MASSACHUSETTS, and
MASSACHUSETTS DEPARTMENT OF
ELEMENTARY & SECONDARY
EDUCATION,
Respondents.

VERIFIED COMPLAINT

1. INTRODUCTION

The Commonwealth’s practice of assigning students to schools based on their place of residence has the effect of denying and abridging the Complainants’ right to equality under the law. The Complainants request that the Commission recommend that the Governor establish a special commission to draft proposals for ensuring the integration of the public schools in and around Springfield.

2. PARTIES

1. Complainant, the Union of Minority Neighborhoods (“UMN”), is a nonprofit corporation with tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, organized under the laws of the Commonwealth of Massachusetts, with a principal place of business at 42 Seaverns Avenue, Jamaica Plain, Boston, Massachusetts.

2. Complainant, [Named Individual 1], by and through [parent/guardian] is a minor residing in Springfield, Massachusetts.
3. Complainant, [Named Individual 2], by and through [parent/guardian] is a minor residing in Springfield, Massachusetts.
4. Respondent, the Commonwealth of Massachusetts, is a sovereign state within the United States of America.
5. Respondent, the Massachusetts Department of Elementary and Secondary Education, is an agency of the Commonwealth of Massachusetts, within the Executive Office of Education, pursuant to M.G.L. c. 69, §1A, having a principal office in Boston, Massachusetts.

3. JURISDICTION

6. The Commission has jurisdiction pursuant to M.G.L. c. 151B and 151C.

4. FACTS

7. [Named Individual 1] resides in ___ within Springfield. Pursuant to M.G. L. c. 76, §5, the Springfield School Committee assigned her to attend Central High School.
8. In 2011-12, only 18% of the students at Central High School were White, while 25.1% were African-American, and 46.1% were Hispanic. The school was in a condition of “racial imbalance,” as M.G.L. c. 71, §37D (the Racial Imbalance Act) defines the term.
9. On or about ___ 2012, [Named Individual 1] through her [parent/guardian] sought a transfer to ___ School in East Longmeadow. The school rejected her application on the basis that there were insufficient seats.
10. [Named Individual 2] resides in ___ within Springfield. Pursuant to M.G. L. c. 76, §5, the Springfield School Committee assigned her to attend _____.
11. On or about [Named Individual 2] through her [parent/guardian] sought a transfer to ___ School in _____. The school rejected her application on the basis that there were insufficient seats.
12. The following public schools in Springfield are in a condition of racial imbalance as defined by M.G.L. c. 71, §37D, the Racial Imbalance Act: [list]
13. The Commonwealth by and through its subdivisions enforces M.G.L. c. 76, §5, and thereby assigns students to public schools on the basis of their place of residence.
14. Springfield and the abutting communities are in a condition of de facto residential racial segregation. Consequently, by causing and permitting Springfield students to be assigned to public schools in Springfield the Commonwealth effectively assigns them to racially segregated schools.

15. The claims of the Complainants are typical of the claims of all students of color in the Springfield public schools, the class of potential complainants is so numerous that joinder of all members is impracticable, and there are questions of law and fact common to the class.

16. Complainant the Union of Minority Neighborhoods has as one of its purposes the elimination of discrimination and segregation in education. It is acting to vindicate an important public interest and to deter future violations. It is a representative party that will fairly and adequately protect the interests of Springfield's students of color.

17. Under the Constitution of the Commonwealth of Massachusetts, Part 2, c. 2, §1, Art, 1, the Governor has the authority to establish a special commission to study the historic causes of residential segregation in and around Springfield and (b) devise policies to (i) prevent further racial segregation and (ii) promote racial and economic integration in and around Springfield.

5. COUNTS

COUNT I: Massachusetts Declaration of Rights, Article 1

18. The Complainants repeat and reallege the allegations set forth in Paragraphs 1 through 17 herein as if more fully set forth below.

19. Article I of the Massachusetts Declaration of Rights provides that “[e]quality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.”

20. By promoting and preserving segregated schools the Commonwealth significantly encourages and involves itself in racial discrimination, which constitutes a denial of equality under the law contrary to Article I.

21. Unless the Commission obtains an order enjoining the Board of Education, the Complainants will suffer loss of money and irreparable harm.

22. The Complainants have no adequate remedy at law.

COUNT II: Massachusetts Constitution, Article of Amendment 111

23. The Complainants repeat and reallege the allegations set forth in Paragraphs 1 through 17 herein as if more fully set forth below.

24. Article of Amendment 111 to the Constitution of the Commonwealth of Massachusetts provides that “no student shall be assigned to or denied admittance to a public school on the basis of race, color, national origin or creed.”

25. By promoting and preserving segregated schools the Commonwealth assigns the Complainants to, and denies them admittance to, public schools on the basis of race in violation of Article of Amendment 111.

26. As a result of the Respondents' acts and omissions the Complainants have suffered harm.

27. Unless the Commission obtains an order enjoining the Board of Education, the Complainants will suffer loss of money and irreparable harm.

28. The Complainants have no adequate remedy at law.

COUNT III: M.G.L. c. 151B

29. The Complainants repeat and reallege the allegations set forth in Paragraphs 1 through 17 herein as if more fully set forth below.

30. The acts and omissions of the Respondents constitute unlawful practices within the meaning of M.G.L. c. 151B.

31. As a result of the Respondents' acts and omissions the Complainants have suffered harm.

32. Unless the Commission obtains an order enjoining the Board of Education, the Complainants will suffer loss of money and irreparable harm.

33. The Complainants have no adequate remedy at law.

COUNT IV: M.G.L. c. 151C

34. The Complainants repeat and reallege the allegations set forth in Paragraphs 1 through 17 herein as if more fully set forth below.

35. The acts and omissions of the Respondents constitute unfair practices within the meaning of M.G.L. c. 151C.

36. As a result of the Respondents' acts and omissions the Complainants have suffered harm.

37. Unless the Commission obtains an order enjoining the Board of Education, the Complainants will suffer loss of money and irreparable harm.

38. The Complainants have no adequate remedy at law.

COUNT V: M.G.L. c. 71, §§ 37C

39. The Complainants repeat and reallege the allegations set forth in Paragraphs 1 through 17 herein as if more fully set forth below.

40. The acts and omissions of the Respondents are contrary to policy of the commonwealth of encouraging all school committees to adopt as educational objectives the promotion of racial balance and the correction of existing racial imbalance in the public schools.

41. As a result of the Respondents' acts and omissions the Complainants have suffered harm.

42. Unless the Commission obtains an order enjoining the Board of Education, the Complainants will suffer loss of money and irreparable harm.
43. The Complainants have no adequate remedy at law.

REQUEST FOR RELIEF

WHEREFORE the Complainants respectfully request that the Commission:

1. Recommend to the Governor that he appoint and fund a commission to (a) study the historic causes of residential segregation in and around Springfield and (b) devise policies to (i) prevent further racial segregation and (ii) promote racial and economic integration in and around Springfield;
2. File a petition in equity seeking an order from the Superior Court directing the Board of Education to withhold state and federal funding from any and all school committees in Massachusetts pending the Governor's establishment of such a commission;
3. Award Complainants their costs and attorneys' fees; and
4. Order such further relief as the Commission deems just and appropriate.

Respectfully Submitted

The Complainants

By Their Attorney:

Peter Vickery, Esq.
BBO # 641574
P.O. Box 300
Amherst, MA 01004-0300
Tel. (413) 549 9933
Fax (413) 256 1207

Date:

VERIFICATION

I _____ have read the foregoing Verified Complaint and know the contents thereof and the same are true of my own knowledge except as to such matters therein stated to be on information and belief, and as to these matters, I believe them to be true.

Pursuant to the provisions of 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this ____ day of _____, 2012.

By: _____

NOTARY PUBLIC

CERTIFICATE OF SERVICE

I, Peter Vickery, Esq., attorney for the Plaintiffs, hereby certify that I served a copy of the foregoing document by fax, e-mail, and first-class mail this day upon Attorney General Martha Coakley, One Ashburton Place, Boston, MA 02108 and Paul Reville, Secretary of Education, One Ashburton Place, Room 1403, Boston, MA 02108.

Peter Vickery, Esq.

Date:

APPENDIX 2
COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

Hampden, ss.

Docket No. ___ - _____

UNION OF MINORITY
NEIGHBORHOODS,
[Named Individual], and
[Named Individual],
Complainants,

v.

COMMONWEALTH OF
MASSACHUSETTS, and
MASSACHUSETTS DEPARTMENT OF
EDUCATION,
Respondents.

MEMORANDUM IN SUPPORT OF PRELIMINARY INJUNCTION

I. INTRODUCTION

The Complainants challenge the Commonwealth's retention and support of racially homogeneous schools, a practice that perpetuates patterns of educational and residential segregation in violation of Article 1 of the Declaration of Rights as well as the state's civil rights laws and its anti-discrimination legislation. While fair on its face, the state's law conditioning place of schooling on place of residence has a disparate impact on students color. What the Complainants seek is the creation of a special commission that will devise policies to remedy the ongoing constitutional violation.

II. PRELIMINARY INJUNCTION STANDARD

The Complainants are asking the Commission to recommend that the Governor establish a panel or commission to develop a plan for desegregating the public schools in and around Springfield. Because the ongoing violation of their constitutional rights constitutes an irreparable harm, they are also asking the Commissioner to seek injunctive relief, namely an order from the Superior Court enjoining the Board of Education from disbursing state

and federal funds to any and all school committees unless and until the Governor establishes such a body. Under the statute that governs the procedures of the Massachusetts Commission Against Discrimination (MCAD) the Commissioner has the authority to seek injunctive relief.

Because the parties to the petition would be public officers, the traditional three-part test for injunctive relief would not apply. The Supreme Judicial Court has held that it is not necessary to demonstrate irreparable harm “[w]hen the government acts to enforce a statute or make effective a declared policy of the Legislature, the standard of public interest and not the requirements of private litigation measure the propriety and need for injunctive relief.” *Commonwealth v. Mass CRINC*, 392 Mass. 79, 88 (1984) (internal citations and quotations omitted). What the trial court must determine is whether the injunction would promote or harm the public interest.

The standard would be the same if the Complainants, rather than the Commissioner, were directly petitioning the Superior Court because where “a suit is brought by a citizen acting as a private attorney general to enforce a statute or a declared policy of the Legislature, irreparable harm is not required” for the issuance of a preliminary injunction. *LeClair v. Norwell*, 430 Mass. 328, 331-332, 719 N.E.2d 464 (1999).

III. LIKELIHOOD OF SUCCESS ON THE MERITS

Declaration of Rights Claims

Article 1

Article 1 of the Massachusetts Declaration of Rights provides that “[e]quality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.” The Supreme Judicial Court considered this provision in the context of efforts to desegregate the public schools in Boston and Springfield during the early 1970s. As a result of those decisions, there is no doubt that in Massachusetts it is unconstitutional to use “[s]tate power to promote and entrench racial separation in all those schools whose communities have segregated residential patterns” *Opinion of the Justices*, 363 Mass. 899, 906 (1973). By continuing to operate an education system that both reflects and perpetuates residential segregation, the Commonwealth is violating Article 1.

The state has a policy, embodied in M.G.L. c. 76, §5, of basing school assignment on residence.¹ Because Springfield and the surrounding communities are residentially segregated according to race, this policy has the effect of assigning students of color in Springfield to segregated schools. This amounts to the kind of disparate impact over which the MCAD has jurisdiction and discriminatory motive is not an essential element. *Smith College v. MCAD*, 376 Mass. 221 (1978).

In the United States as a whole, “residential segregation that exists in metropolitan areas does not typically occur within the same towns, but rather occurs between municipalities.”² The pattern of residential segregation between Springfield and the surrounding communities is consistent with this trend. Springfield is a racially segregated city within a racially segregated region. The city is 51.8% White and 22.3% African-American, with 38.8% of the total population identify as Hispanic/Latino. In 2000, the US Census Bureau’s Housing and Household Economics Statistics Division ascribed Springfield a Gini index value of 0.816 for African-American residents and 0.813 for Hispanic residents, with 1.0 indicating maximum segregation. In contrast to Springfield, the eight communities that abut Springfield are overwhelmingly White with only two of them having populations that are less than 90% White (see Attachment 1). For example, East Longmeadow is 94.5% White with African Americans making up 1.4% of the town’s population, and only 2.3% identifying as Hispanic/Latino.

As a result of residential segregation, the public schools in and around Springfield are also segregated. In the Springfield school district, 13.7% of the students are White, 20.7% are African-American, and 59.8% are Hispanic. In East Longmeadow, by way of contrast, 89.9% of the students are White, 3.1% are African-American, and 3.1% are Hispanic.

¹ The statute provides: “Every person shall have a right to attend the public schools of the town where he actually resides, subject to the following section. No school committee is required to enroll a person who does not actually reside in the town unless said enrollment is authorized by law or by the school committee. Any person who violates or assists in the violation of this provision may be required to remit full restitution to the town of the improperly-attended public schools. No person shall be excluded from or discriminated against in admission to a public school of any town, or in obtaining the advantages, privileges and courses of study of such public school on account of race, color, sex, religion, national origin or sexual orientation.”

² James E. Ryan, “Schools, Race, and Money,” 109 *Yale L.J.* 249, 277 (1999).

Similarly, in Longmeadow, 86.3% of the students are White, 2.8% are African-American, and 2.7% are Hispanic.³

Within Springfield, the number of White students at some schools is very low. In Springfield Central High School, for example, only 18% of the students are White, while 25.1% are African-American, and 46.1% are Hispanic.⁴ The Legislature has defined this condition, i.e. “a public school in which more than fifty percent of the pupils attending such school are non-white,” as “racial imbalance” (M.G.L. c. 71, §37D, the Racial Imbalance Act). The purpose of the statute is clear:

“It is hereby declared to be the policy of the commonwealth to encourage all school committees to adopt as educational objectives the promotion of racial balance and the correction of existing racial imbalance in the public schools. The prevention or elimination of racial imbalance shall be an objective in all decisions involving the drawing or altering of school attendance lines, establishing of grade levels, and the selection of new school sites.” M.G.L. c. 71, §§ 37C.

The statute gives non-white students in a racially imbalanced school the right “to be transferred to and to attend any other school... under the jurisdiction of the same school committee or regional district school committee if racial isolation [meaning at least 70% of the students are White] exists in such other school.” If there are no places available, the onus shifts to the school committee to come up with a plan. If the total number of students “exercising their right to be transferred” exceeds the number of places available at the predominantly White schools in the district, the school committee must come up with another plan.

Conceivably such a plan could entail redrawing the district lines, but this would require the “voluntary cooperation” of neighboring communities. The board of education may redraw district lines over the heads of the local school committees, but the new districts must “bear a clear geographical relationship to each other and [be] truly districts in that they divide the entire school system into a sufficient number of sectors” *School Committee of Boston v. Board of Education*, 364 Mass. 199, 207 (1973).

³ Massachusetts Department of Elementary and Secondary Education, School/District Profiles, 2011-12 Enrollment Data.

⁴ Massachusetts Department of Elementary and Secondary Education, School/District Profiles.

The other relevant statute (M.G.L. c. 76, §12B) sets a statewide limit on the number of students participating in the school choice program, capping it at two percent of the total number of public-school students (although students participating in school choice under the Racial Imbalance Act do not count toward this two percent cap). Further, it is local school committees that designate the number of school-choice seats available in their districts; they may even choose to accept no school-choice students at all.

Clearly, the school choice program is not an adequate remedy to the ongoing violation of Article 1. Certainly, under the Racial Imbalance Act and the school choice program a student living in the Central High catchment area could try to enroll instead in a school situated in another district, but there is no guarantee that she will succeed. This situation perpetuates segregation in a way that the Supreme Judicial Court held (almost 40 years ago) to violate Article 1 of the Declaration of Rights. In 1973, the Legislature enacted House Bill 6657, which would have required prior written consent from a parent or guardian for their child to attend a school other than the one “nearest his residence within his city or town.” The bill was an attempt to fend off attempts to desegregate the public schools via busing. In response to the Governor’s request, the Supreme Judicial Court rendered an advisory opinion. Finding that House Bill 6657 violated the federal guarantee of equal protection and Articles 1 and 10 of the Massachusetts Declaration of Rights, the Supreme Judicial Court held:

“[E]ven in situations where there is only de facto segregation, if the State adopts a policy which freezes these de facto conditions by imposing severe limitations on local school officials’ discretionary authority to take effective remedial action, then the State policy constitutes State action serving to continue segregation in the schools and thus significantly encourages and involves the state in private racial discrimination.” *Opinion of the Justices*, 363 Mass. 899, 902-3 (1973).

The following year, the Supreme Judicial Court reiterated that policies that have the effect of freezing segregation in place are tantamount to “authorization to discriminate” and are, therefore, unconstitutional. The Court was considering the efforts of Springfield’s school committee to undo the city’s previous desegregation efforts. The school committee was relying on a newly enacted emergency statute, Chapter 636, through which the Legislature had arguably empowered school committees to forestall racial-balance plans. The Court held:

“[A]ny action taken either by the Legislature or by the school committee of Springfield which would tend to reverse or impede the progress toward the

achievement of racial balance in Springfield's schools would constitute a violation of the Fourteenth Amendment to the United States Constitution and of arts. 1 and 10 of the Declaration of Rights of the Massachusetts Constitution." *School Committee for Springfield v. Board of Education*, 366 Mass. 315, 327 (1974).

If the school committee rescinded the task force's plan, the decision would prevent the board of education from eliminating racial imbalance in Springfield. For that reason, the decision would "constitute State action serving to continue segregation in the schools and thus significantly involve the State in racial discrimination" *School Committee for Springfield v. Board of Education*, 366 Mass. 315, 334 (1974) (internal quotations and citations omitted). The *Springfield* decision stands for the principle that state action that positively perpetuates segregation violates Article 1. That is the very principle at issue here.

As the Supreme Court of the United States has observed: "People gravitate toward school facilities, just as schools are located in response to the needs of people. The location of schools may thus influence the patterns of residential development of a metropolitan area and have important impact on composition of inner-city neighborhood," *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 20-21 (1971).

The Commonwealth's practice of confining students of color to schools in their racially segregated neighborhoods – unless those students successfully opt *en masse* into the school choice program – entrenches both educational and residential segregation. Accordingly, it violates Article 1 of the Declaration of Rights. The fact that Springfield Central High School remains racially imbalanced demonstrates that the Racial Imbalance Act and the school choice program are inadequate responses to that ongoing violation.

Article of Amendment 111

Article of Amendment 111 to the Constitution of the Commonwealth of Massachusetts provides that "no student shall be assigned to or denied admittance to a public school on the basis of race, color, national origin or creed." In practice, however, race is the basis on which the Commonwealth assigns students of color to school.

The connection between place of residence and place of schooling embodied in the school-attendance statute, M.G.L. c. 76, §5, not only ensures that the racial composition of schools reflects that of the communities they are situated in; it also reinforces and perpetuates that

racial composition. By promoting and preserving segregated schools the Commonwealth assigns the Complainants to some public schools – and denies them admittance to others – on the basis of race. This practice violates Article of Amendment 111. It also violates the Educational Fair Practices Act, one of the two statutes that give the Commission jurisdiction over this case.

M.G.L. c. 151C (Educational Fair Practices Act)

The current residence-based education system contradicts the Educational Fair Practices Act, Section 2 of which provides: “It shall be an unfair educational practice for an educational institution: (a) To exclude or limit or otherwise discriminate against any United States citizen or citizens seeking admission as students to such institution because of race, religion, creed, color or national origin.” But excluding, limiting, and otherwise discriminating against Springfield’s students of color is what the Commonwealth does on a day to day basis by enforcing Chapter 76, §5. Because the Commonwealth enforces Chapter 76, §5, students of color who live in racially segregated neighborhoods within Springfield are excluded from the schools in the predominantly White communities that surround Springfield.

Complainants are not arguing that any one particular school district is engaged in deliberate discrimination, but rather that by applying Chapter 76, Section 5 *all* districts in Massachusetts are discriminating against students of color. In other words, the system within which all public schools operate is inherently discriminatory. It is the across-the-board exclusion of Springfield’s students of color from admission to the schools in the region that are *not* racially imbalanced, and the practice of limiting them to schools that *are* racially imbalanced that is discriminatory. Reading Chapter 151C in a manner consistent with the Article 1 of the Declaration of Rights, Chapter 151B, and the Racial Imbalance Act leads to a finding that the comprehensive pattern of exclusion constitutes an unfair educational practice.

M.G.L. c. 151B (Anti-Discrimination Act)

Under Chapter 151B, §5, the Commission has the authority to enforce the public accommodations law, M.G.L. c. 272, § 98. This is the statute that served as the model for the first federal civil rights act, and it provides in pertinent part:

“All persons shall have the right to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation, resort or amusement

subject only to the conditions and limitations established by law and applicable to all persons. This right is recognized and declared to be a civil right.”

Section 92A defines the term “place of public accommodation” but does not expressly include or exclude schools. Rather it states that the term “shall be deemed to include any place, whether licensed or unlicensed, which is open to and accepts or solicits the patronage of the general public” and after the phrase “without limiting the generality of this definition” goes on to list ten categories of places.

After reviewing similar anti-discrimination statutes from other jurisdictions the Supreme Judicial Court agreed with the refusal to place “undue emphasis on either the principle of *ejusdem generis* or the rule that penal statutes must be interpreted strictly” *Local Finance Company of Rockland v. MCAD*, 355 Mass. 10, 14 (1968). Nevertheless, in the past the Commission has held that because of the narrow scope of Chapter 151C, which covers discrimination during the application process, it lacks jurisdiction over discrimination directed toward students already enrolled in public schools. *Beagan v. Town of Falmouth*, 9 MDLR 1209 (1987) and *Barrett v. City of Worcester School Department*, 23 MDLR 22 (2001). Complainants respectfully request that the Commission revisit and reverse this decision and deem public schools to fall within the meaning of the term “place of public accommodation.”

IV. PUBLIC POLICY

The purpose behind Chapter 151B is to eradicate discrimination, the same purpose embodied in Article 1, Chapter 151C, and the Racial Imbalance Act. By encouraging the Governor to establish the special commission, the preliminary injunction would further this public policy.

By recommending the establishment of a panel to draft remedial policies, the Commission will, in effect, be helping to uphold the Racial Imbalance Act. The statute contains a schema for encouraging school districts to meet their obligations, which entails the Board of Education withholding funds from districts that are not in compliance. Dicta from the Supreme Judicial Court suggest that it is quite permissible for the Commission to take steps that are outside the terms of the Racial Imbalance Act but have the effect of enforcing its provisions. With regard to the withholding of funds under Sections 1I-1J, the Court has held that there is “no reason to conclude that this mechanism was intended to be the exclusive means of encouraging the achievement of racial balance in the public schools, and

implementing the basic policy expressed in G. L. c. 71, § 37C.” *School Committee of Boston v. Board of Education*, 363 Mass. 20, 24-5 (1973).

V. BALANCE OF HARMS

Although the Complainants are asking the MCAD to seek an order from the Superior Court enjoining the Board of Education from disbursing funds pending the creation of such a panel, this is not a school-funding case in the tradition of *McDuffy v. Secretary of the Executive Office of Education*, 415 Mass. 545, 615 N.E.2d 516 (1993) and *Hancock v. Commissioner of Education*, 443 Mass. 428 (2005). The Complainants are not requesting the MCAD or the court to set up and oversee a new financing structure for the public schools. To the contrary, all they ask is that the Governor convene a panel of experts with the skills and resources to devise a raft of policies to remedy the unconscionable segregation that currently denies Springfield’s students their equal rights.

The Governor can establish a special commission by way of an executive order. He has the constitutional authority and needs no legislative approval. If the Governor declines to act on the recommendation of the MCAD, the preliminary injunction would forbid the disbursement of federal and state funds to all the schools in Massachusetts. Accordingly, if the injunction issues, there is a risk schools across Massachusetts could suffer some harm. Delaying the disbursement of federal and state funds to local school committees could create uncertainty and possibly cause some school committees to suspend operations. It is possible that the education of all students across the Commonwealth would suffer to varying degrees. Those injuries, however, would likely be of a temporary and remediable nature. In contrast, the injuries that the Complainants and other students of color in Springfield’s public schools sustain through the ongoing violation of their constitutional rights are enduring and ineradicable.

At issue is the right of Springfield’s students of color to the equal protection of the laws. In essence the question is: Does the Commonwealth’s interest in having schools elsewhere in Massachusetts run smoothly without risk of interruption outweigh the right of the Complainants to equality under the law consistent with the promise of Article 1? The Complainants respectfully suggest that it does not.

VI. CONCLUSION

The Complainants can show a likelihood of success on the merits and that public policy, ie. favoring equality and disfavoring racial segregation, weighs in their favor. If the injunction

issues, the Governor will have a choice. He can either establish a special commission or allow the schools in the Commonwealth to wait for federal and state funds. Given the serious nature of the constitutional violation to which the Commonwealth is subjecting the Complainants and students of color in Springfield, the threat of such a delay would be proportionate to the scale of the injury.

Respectfully Submitted
The Complainants
By Their Attorney:

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Date:

CERTIFICATE OF SERVICE

I, Peter Vickery, Esq., attorney for the Plaintiffs, hereby certify that I served a copy of the foregoing document by fax, e-mail, and first-class mail this day upon Attorney General Martha Coakley, One Ashburton Place, Boston, MA 02108 and Paul Reville, Secretary of Education, One Ashburton Place, Room 1403, Boston, MA 02108.

Peter Vickery, Esq.
Date:

ATTACHMENT 1

Community	% White	% African American	% Hispanic/Latino
Springfield	51.8	22.3	38.8
Agawam	94.5	1.5	3.3
Chicopee	86.8	3.7	14.8
East Longmeadow	94.5	1.4	2.3
Hampden	96.6	0.5	1.4
Longmeadow	92.4	1.0	2.3
Ludlow	93.9	2.4	5.6
West Springfield	86.3	3.3	8.7
Wilbraham	94.0	2.1	2.7

Source: U.S. Census 2010

APPENDIX 3

Greenleaf, Brian; Sliman, Elham; Vickery, Peter; Wang, Yan; and Yangchen, Penpa. 2011. "Springfield's Public Schools: Policy proposals for reducing racial and socio-economic segregation." Unpublished manuscript on file at the Center for Public Policy & Administration, University of Massachusetts, Amherst.

Springfield's Public Schools



Policy proposals for reducing
racial and socio-economic
segregation

Brian Greenleaf

Elham Sliman

Peter Vickery

Yan Wang

Penpa Yangchen

Executive Summary

The problem of education segregation in Springfield amounts to a denial of constitutional rights and government failure, and the responsibility for remedying the problem rests with the Commonwealth as a whole. Springfield's low-performing schools and low graduation rates have a disparate impact on students of color, which is one of several manifestations of the city's racial divide. In recent years, Springfield has remedied one of its long-standing symptoms of racial inequality, namely its form of city government. The way that remedy emerged provides us with an instructive example.

We consider three alternatives: (1) an inter-district magnet school; (2) an investigation by the Massachusetts Commission Against Discrimination (MCAD) and (3) expanding the Springfield METCO program. Measuring our proposals in terms of effectiveness, equity, efficiency, and political feasibility, we conclude that the MCAD proposal ranks highest. Accordingly, we recommend calling on the MCAD to (a) investigate the historic causes of residential and educational segregation in Springfield, and (b) formulate a raft of policy proposals that would remedy the two interconnected problems.

Problem

Children in Massachusetts have a constitutional right to an education, and the Commonwealth has the duty to provide *all* children, regardless of race and ethnicity, with an education in seven basic areas (*MacDuffy v. Secretary of the Executive Office of Education*, 1993). For many years, however, the Commonwealth has failed to provide Latinos and African-Americans in Springfield – who make up more than 80% of the school district’s students – with that basic right.

Most students in Springfield are from low-income families, live in neighborhoods that are (in effect) racially segregated, and go to their local schools. It comes as no surprise, therefore, that Springfield’s schools look like the neighborhoods they serve. If a neighborhood is overwhelmingly poor and non-white, the students will be overwhelming poor and non-white as well. There has long been agreement that students in high-poverty schools are more likely to drop out and Springfield’s experience supports this conclusion (Green).

Although per-pupil spending and teacher’s salaries in Springfield are relatively high, the graduation rate is only 53%, compared to a statewide rate of 82% (see Figures 1, 2, and 3).

These low graduation rates and high drop-out rates are strong signals that Springfield’s public schools are failing to teach students of color effectively. The negative effects of a sub-par education do not end when the students leave school. Dropping out has long-term consequences,

as does not attending college. Earnings for drop-outs have declined in real terms over the past three decades and the gap between college graduates and non-graduates has expanded (Murnane, 2007).

Expenditure Per Pupil 2009

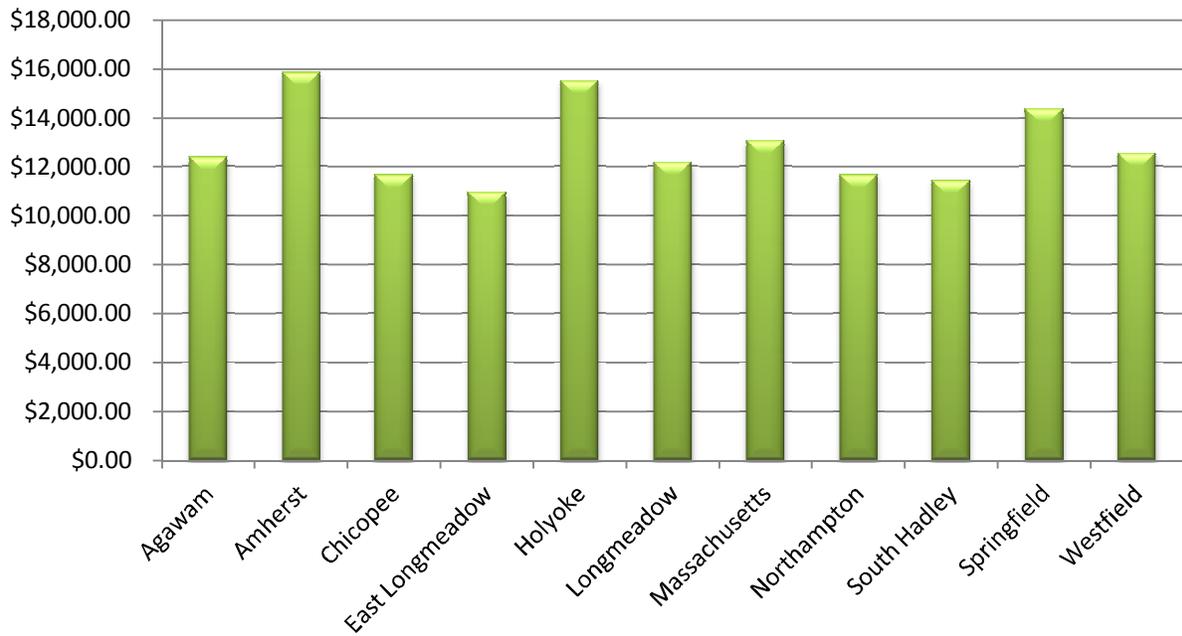


Figure 1: Per Pupil Expenditure

Source: Massachusetts Department of Elementary & Secondary Education, School/District Profiles, 2008-09

Average Teacher Salaries 2008-09

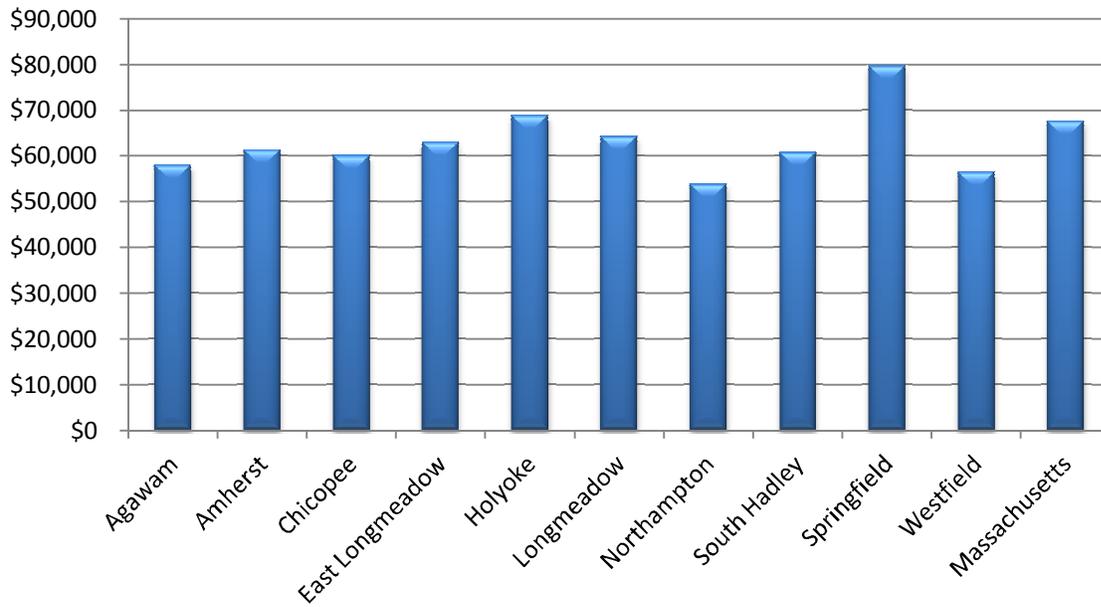


Figure 2: Teacher Salaries

Source: Massachusetts Department of Elementary & Secondary Education, School/District Profiles, 2008-09

Graduation Rate 2008-2009

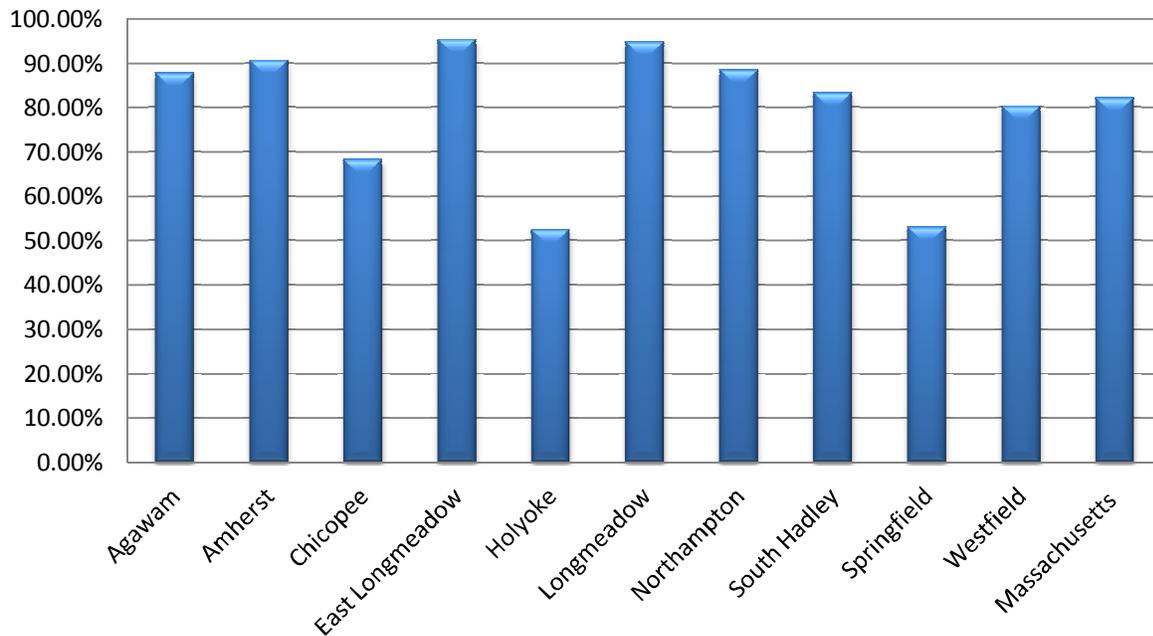


Figure 3: Graduation Rates Source: Massachusetts Department of Elementary & Secondary Education, School/District Profiles, 2008-09

The interplay of race, class, and housing patterns is complex, and there is no suggestion that the situation is the result of current and deliberate invidious discrimination. Springfield may be the site of what Chang (1983) calls “third order segregation,” where it is simply the policy of assigning students on the basis of their neighborhood that produces segregated schools, without present – or perhaps even past – discriminatory intent (p. 26). Nevertheless, Springfield’s public schools are almost as racially homogeneous as they would be under an overtly discriminatory system. This educational segregation is not only a problem in and of itself; it also contributes to the under-education of students of color.

Since the *Brown* decision, it has become well established that separate is inherently unequal in the realm of education, and that a state that permits segregated schooling is under-serving its students of color. Stigma and racial isolation serve to perpetuate a caste system, causing “poor students from caste minority groups to disengage from the schooling process early on” (Beirda, 2011, p. 70). Conversely, student performances tend to improve in racially balanced schools (Ipka, 2003, p. 303). The overlap between race and class, and the need to determine the underlying causes of residential segregation, do not alter this simple fact: The *de facto* segregation of Springfield’s public schools stands as a barrier that prevents students of color from enjoying their full constitutional right to an education.

Cumulatively, several public policies are having a negative effect on all students in Springfield's public schools. But those policies are having a disparate impact on Springfield's students of color. Students of color are members of a protected class and come within the scope of our state's anti-discrimination statute, M.G.L. c. 151B. They also have an equal protection claim under Amendment 106 of the Massachusetts Constitution. Together the Constitution and Chapter 151B put the burden of remedying the discrimination on the commonwealth as a whole, not simply on Springfield's city council and mayor. So the policy problem that we seek to address is an incontrovertibly public one, a classic example of government failure.

Background

The City of Springfield

In terms of race and ethnicity, Springfield is more diverse than the state as a whole. A little over half the population (51.8%) is White compared to the statewide figure of 76.1%, with 38.8% of the population Hispanic/Latino and 22.3% Black/African American (U.S. Bureau of the Census, 2010). Springfield is one of the poorest communities in Massachusetts. Compared with Massachusetts as a whole, the Springfield school district has three times as many families living below the poverty level. Although it is the source of most of the jobs in the Pioneer Valley, it also has the region's highest unemployment rate (see Figure 4). In addition to poverty and

unemployment, another issue Springfield suffers from is crime. In 2008, Springfield had the state's second highest crime count (1,901) and the third highest violent crime rate (1,261.9 per 10,000 persons) (Massachusetts Executive Office of Public Safety and Security, Research & Policy Analysis Division, 2009).

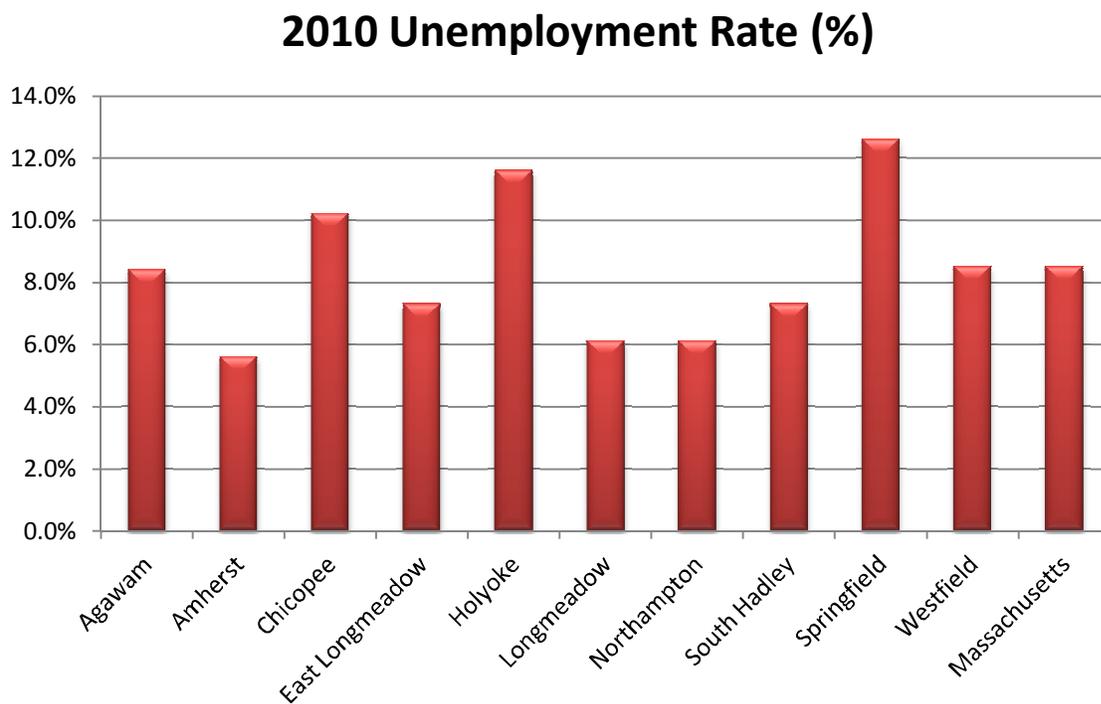


Figure 4: Unemployment

Source: Massachusetts Executive Office of Labor and Workforce Development, Labor Market Information

City Government

The city's form of government is a sign both of Springfield's record of racial disparity and of Black and Hispanic success in choosing and winning strategic battles. In 2009, after several years of voting-rights litigation, stalled legislation, and referenda, Springfield switched from an

exclusively at-large form of city government to a mixed system whereby the voters elect eight councilors by ward and five at large. This change came about while the control board was in charge, and only after the judge in the federal voting-rights case hinted at his likely ruling should the Legislature fail to pass the necessary legislation.⁵ The school committee has six members. Voters elect two members at large and the remainder via four districts (each district comprising two city-council wards). The mayor serves for a term of four years and chairs the school committee.

Six District Plan

In 1965 the Legislature passed the Racial Imbalance Act under which a school is “racially imbalanced” if “more than fifty percent of the pupils attending such school are non-white” (M.G.L. c. 71, §37D). To promote the statute’s objective, in 1973-4 the Massachusetts Board of Education commissioned both a short-term and a long-term plan to achieve racial balance in Springfield’s public schools. The result was the Six District Plan, which attempted to reduce segregation by intra-district transfers and creating an additional district (Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, 1976). Notably, it was in 1978, during the Six District Plan litigation and in the midst of the Boston busing controversy, that the voters ratified a constitutional amendment, Article 111, which provides: “No student shall be assigned

⁵ Peter Vickery’s recollection of events and of his conversations with the participants.

to or denied admittance to a public school on the basis of race, color, national origin or creed.”

This constitutional prohibition remains in full force and effect and, along with the decisions of the Supreme Court of the United States, it constrains the range of policy options that are available to remedy *de facto* educational segregation in Massachusetts. The courts are no longer involved in Springfield’s educational decisions and any desegregating effects the Six District Plan may have had in the past have now disappeared (Massachusetts Department of Elementary & Secondary Education, 2005).

Springfield’s Public Schools

Springfield’s total expenditure in 2008-09 was \$413,837,614, and its per-pupil spending was \$14,345 (Massachusetts Department of Elementary & Secondary Education, 2009). For FY’11 the district received combined federal and state funding of \$273,104,090, an amount equal to more than half the district’s FY’09 total expenditure (Massachusetts Department of Elementary and Secondary Education, 2011). Despite this indisputably large amount of money, the school system is not meeting the standards that parents and students have every right to expect. The federal No Child Left Behind Act (NCLB) established standards for annual yearly progress (AYP) in 2003. Seven years on, Springfield has not yet met the statute’s AYP criteria (Massachusetts Department of Elementary and Secondary Education, 2011).

There are three charter schools in Springfield and 45 non-charter public schools, ten of which are Level 4 schools. A school qualifies for Level 4 status if it is “both low performing on the Massachusetts Comprehensive Assessment System (MCAS) over a four year period... and not showing signs of substantial improvement over that time” (Massachusetts Department of Elementary & Secondary Education, 2011). Springfield students perform significantly lower on MCAS tests than their peers in the state. Only 37% of students in Springfield scored proficient or advanced for English Language Arts and 27% for Math, compared to 68% and 59%, respectively, at the state level.

Most of the students in Springfield’s public schools are non-White. Of the approximately 25,000 students, about 22% are African-American/Black, 58% are Hispanic/Latino, and 15% are White (see Figure 5). For example, in Springfield’s High School of Commerce – a Level 4 school – approximately 62% of the students are Hispanic and most students either have limited proficiency in English or do not speak English as their first language. The 2010 drop-out rate among Commerce’s Hispanic students was 37.6% and among limited-English students it was 53.5% (Massachusetts Department of Elementary and Secondary Education, 2011).

In Springfield, 84.2% of students are eligible for free or reduced priced lunch, significantly higher than the surrounding school districts and the state level of 34.2% (School District Profiles, 2011) (see Figure 6). Graduation rates in Springfield are well below those for neighboring

communities in the Pioneer Valley (see Figure 3). Student to teacher ratios are on a par with other Pioneer Valley communities, and are somewhat better than the ratios for Longmeadow, Northampton, and the state as a whole (see Figure 7).

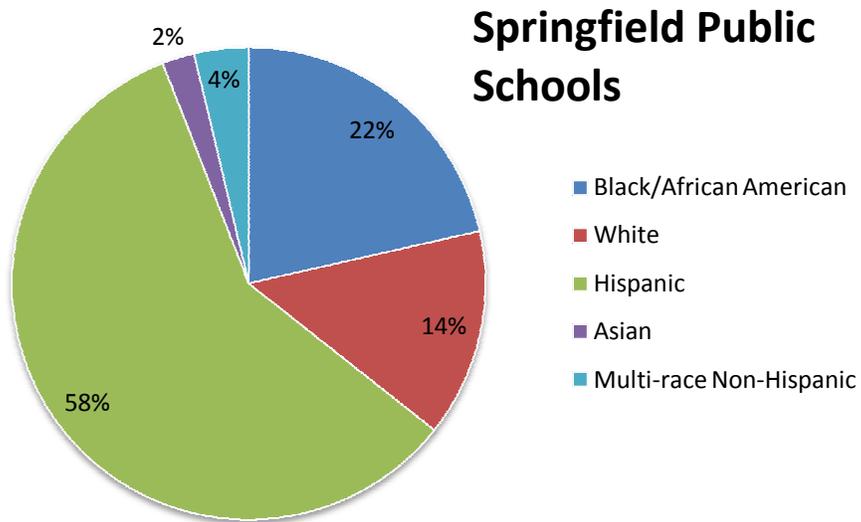


Figure 5: Enrollment by race

Source: (Massachusetts Department of Elementary and Secondary Education, 2011)

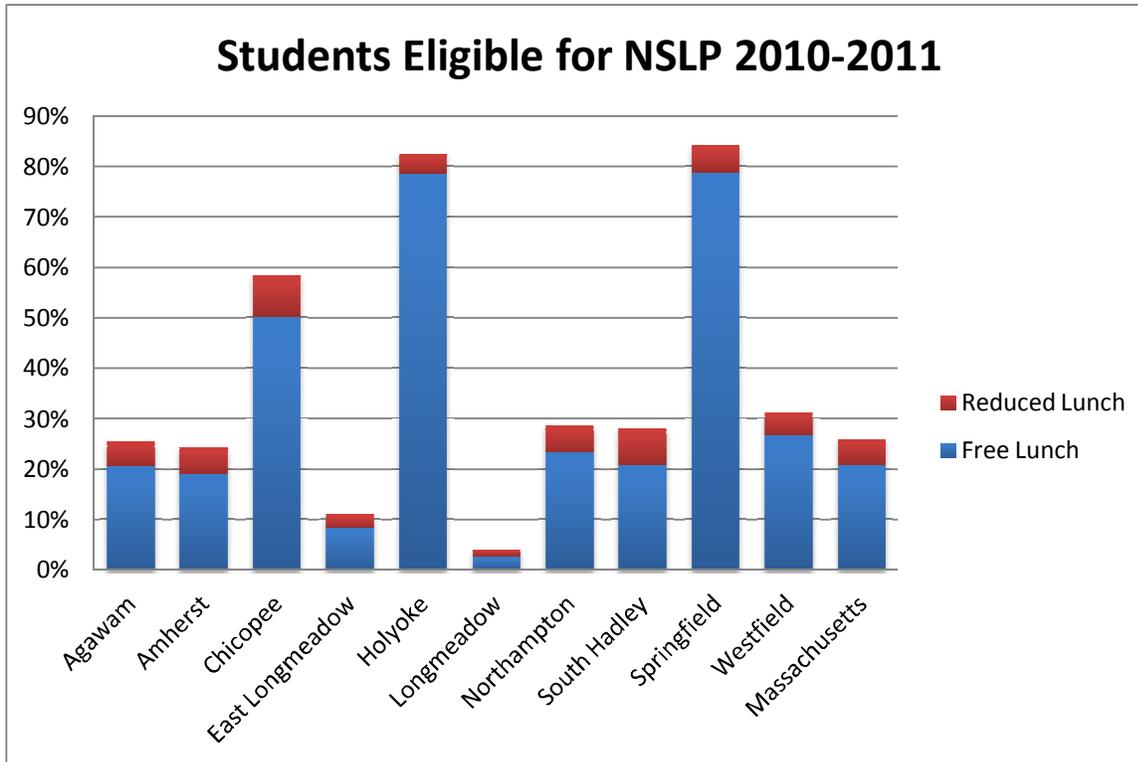


Figure 6: Students Eligible for NSLP

Source: Massachusetts Department of Elementary & Secondary Education, School/District Profiles, 2010-11

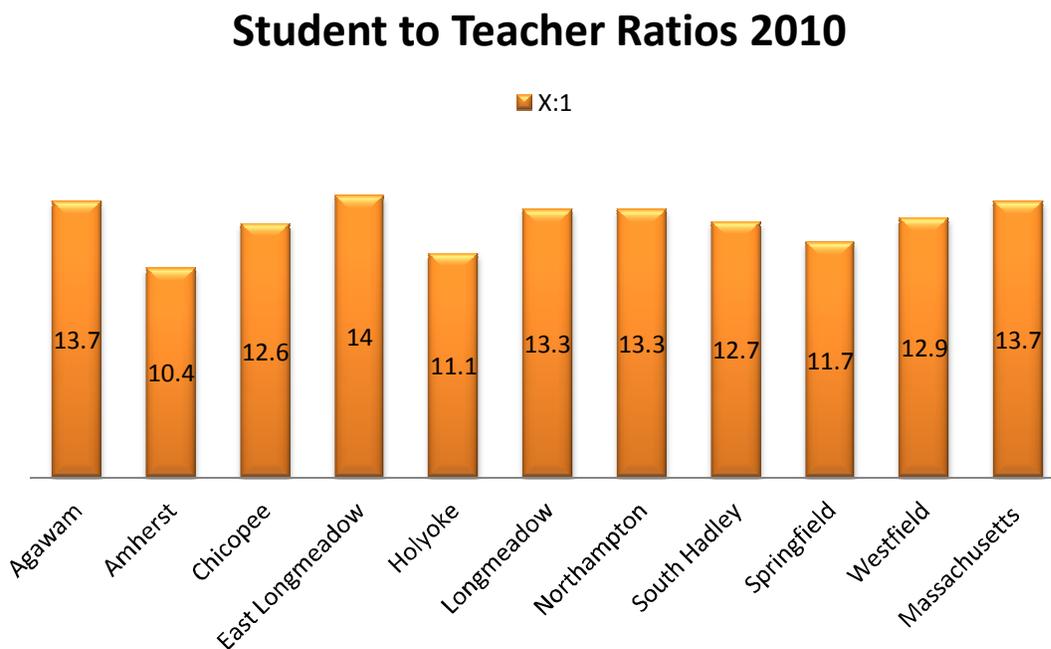


Figure 7: Student:Teacher Ratios

Source: Massachusetts Department of Elementary & Secondary Education, School/District Profiles, 2008-09

Policy Criteria

In our analysis we employ the criteria that Rossell (1993) recommends specifically for evaluating school desegregation policies: equity, efficiency, effectiveness and political feasibility.

Effectiveness

Effectiveness refers to “the extent to which a policy achieves its goals” and differs from efficiency in that it is a measure of the alternative actually attaining its desired goal as opposed to the costs of reaching the goal (Rossell, 1993, p.164). The alternatives proposed in this analysis seek to be effective by achieving economic integration and racial desegregation.

Equity

Rossell (1993) points out that, in the U.S. “equity is synonymous with social justice rather than equality” (p. 162). In the context of education, because of the history of state-sanctioned Jim Crow, equity and equality are inextricably interlaced. Here in Massachusetts, policymakers have already decided that racially-imbalanced schools are unjust, reflecting the *Brown* principle that in education separate is inherently unequal.

Efficiency

According to Rossell (1993) “policies that achieve more of a desired goal at less cost are more efficient than those that achieve the same goal at greater cost or less of a goal at the same cost” (p.163). Accordingly, we can measure efficiency by looking at the extent to which an alternative brings Springfield closer to the requirements of the Racial Balance Law, measured against the costs of implementation.

Political Feasibility

One feature that is crucial to the success or failure of any policy alternative is whether or not the alternative is politically feasible. For the purpose of this analysis, we consider political feasibility in the context of the “support, goals, and values” of the key actors within the government, community, business, and organizational entities that the proposal would affect (Meltsner, 1972, p. 859).

Proposals

This report examines three proposals: (1) an inter-district magnet school; (2) an investigation by the Massachusetts Commission Against Discrimination; and (3) a revitalized METCO program.

We measure them against the four criteria discussed above (see Appendix A for a table of our analysis).

1. Inter-District Magnet School

A magnet school is a public school with a specialized theme, such as arts, science, or information technology. Some scholars believe that inter-district magnet schools “provide more racially integrated experiences than students’ home districts do [and] they... tend to offer more supportive environments for learning and foster more cross-cultural skills” (Orfield,2010, p. 26). Currently in Massachusetts, a magnet school is open only to students who reside within the home district. Our proposal would adapt the current model by eliminating the in-district attendance boundaries. By establishing a magnet school open to students neighboring districts Springfield could attract students from wealthier, majority-White communities such as Longmeadow and Wilbraham. These communities currently receive METCO students from Springfield and the inter-district magnet school alternative is an attempt to encourage a more balanced two-way exchange.

This proposal has its roots in the State of Connecticut’s response to a 1996 court decision, *Sheff v. O’Neill*, 678 A.2d 1267. In *Sheff*, the Connecticut Supreme Court held that by creating local school districts the state had helped concentrate racial minorities in Hartford. The Connecticut Supreme Court instructed the lower court to retain jurisdiction over the case while the executive and legislative branches devised solutions.

The *Sheff* case arrived at a settlement in 2008 with the state agreeing to develop a comprehensive management plan and a regional school choice office to oversee it. In the meantime, soon after the 1996 decision, the governor had set up an educational improvement panel which included giving school boards the option of creating inter-district magnet schools (Sheff v. O'Neill, 1999). The City of Hartford, regional magnet district, and suburbs currently operate 26 charter schools with the express goal of racially integrating urban and suburban schools. Springfield could follow suit, albeit on a smaller scale, by setting up one magnet school subject to city control, as opposed to control by a regional inter-district office. Maintaining the city's jurisdiction over the school would help ensure its political feasibility.

Effectiveness

Danger, both real and perceived, constitutes a significant deterrent to parents who might otherwise wish to send their children to a public school in Springfield. Although it is not as pervasive as the public might think, drug-related gang violence in Springfield is real, and it sometimes claims the lives of school-age young people in Springfield. Springfield is home to two of the street gangs that the law enforcement includes in its Top Three Security Threat Groups. Inter-gang rivalry has led to shootings, beatings, and arrests, which have garnered publicity in the local media (Massachusetts Executive Office of Public Safety and Security, 2011; *The Republican*, April 27, 2008).

A first-rate, specialty-themed school might help some parents from neighboring communities overcome their reluctance to send their children to school in Springfield. Without suggesting that one inter-district magnet school could transform the whole district, correcting the racial and socio-economic skew of the city and its schools, there is reason to believe that it could lead to some degree of both integration and educational opportunity.

Precedents from other jurisdictions are cause for caution, however. While this would be a first for Massachusetts, there is some evidence from Texas that inter-district charter schools “do not expand interracial contact but instead on average lead to increased racial segregation”

(Hanushek, 2009, p. 377). Closer to home, Hartford’s record of racial and socio-economic integration through this method is mixed. Greater educational opportunity seems to be a feature of Hartford’s inter-district magnet schools, but the enrollments remain disproportionately non-White (A Visual Guide to Sheff vs. O’Neill School Desegregation, 2006). With approximately 40% of the minority students living in the suburbs, not the city, it is clear that the program is not leading to as much socio-economic integration as policymakers had hoped.

In short, the most an inter-district magnet school could promise in the short-term would be one school within Springfield that was slightly more racially diverse than the other 40-plus schools in the district. Over the longer-term, however, depending on its success in attracting a more racially-balanced student body, the school could produce knock-on effects within and beyond

Springfield. If this school flourishes – if the students it serves excel academically regardless of race and class – policymakers will have good cause for replicating it. Due to these factors, this proposal ranks “good” for effectiveness.

Equity

Under the simplest definition of equity the proposal falls short because only students attending the inter-district magnet school would have the full benefit of it. On the other hand, if the proposal succeeds and leads to replication, there would be more widespread advantages over time. This more expansive standard brings us to a better context-specific measure of equity.

While an inter-district magnet school would help empower Springfield’s low-income families of color by providing them with more choice than they would have under a mandatory reassignment plan, there are “defects” that make the proposal’s “equity superiority more muddled” (Rossell, 1993, p. 170). The two drawbacks that Rossell (1993) identifies are elitism, because the school caters to non-minority students from more affluent neighborhoods and the sense of “part-time integration” (p. 170). For these reasons, inter-district magnets score a “moderate” ranking for equity.

Efficiency

Compared to mandatory reassignment plans, magnet schools have historically appeared more efficient in that “[m]ost of the students... do indeed show up” (Rossell, 1993, p. 171). White

loss is not a factor. A voluntary, inter-district magnet school would be less costly than years of litigation, which is a likely alternative if the state continues to oversee a system that so clearly violates the equal-protection rights of Springfield's Latino and African-American students.

Protracted courtroom battles may well be the price for letting present trends continue and, weighed against that, an inter-district magnet school would satisfy the efficiency criterion.

That said, given that the district is trying to organize around the Springfield Improvement Framework, administrators might see an inter-district magnet school as a distraction and, more important, a competitor for resources. Nevertheless, by using existing facilities, staff, and institutions – as opposed to creating a new inter-district agency – the magnet school need not impose any additional costs on the city or state. Policymakers could minimize any transactional costs by making the key funding decisions prior to implementation.

Another efficiency factor would be the extent to which the city and state would need to devote resources to popularizing the magnet school among Springfield's Black and Latino families, and among White families in neighboring communities. Existing programs, such as the state's long-running program METCO, may work in conjunction with this alternative, offering another possible school that can serve the applicants. Inter-district magnets are, therefore, a "good" proposal in terms of efficiency.

Political Feasibility

As a voluntary measure, the constitutional ban on assigning students on the basis of race does not come into play. An inter-district magnet school would not, therefore, be liable to courtroom attack, at least not on the basis of Amendment 111. Because establishing an inter-district magnet school would require legislation and the support of the Department of Elementary and Secondary Education, the proposal depends on both the Legislature and the Governor. If the members of Springfield's legislative delegation were actively opposed, the Governor, Senate President, and Speaker would all have to spend some political capital to move the measure forward. However, if the measure was supported by Springfield's city councilors and school-committee members it might encounter only minimal resistance from the state representatives and senators.

Much would depend on how successful proponents were at building support at the city-council level. Devoid as it is of any hint of coercion, it is not an inherently risky measure politically speaking. But, absent sufficient groundwork beforehand, the putative allocation of resources to a specialized magnet school (one designed to attract non-Springfield students) might rile city residents and, perhaps, their elected representatives. The mere perception that city and state politicians were lavishing resources on a single school – to the benefit of wealthier suburban communities and to the detriment of Springfield's struggling schools – could present a public-

relations challenge. Due to its novelty as a program, requiring action by the Legislature, this proposal ranks “moderate” for political feasibility.

2. Massachusetts Commission Against Discrimination (MCAD)

There is no lack of good ideas about tackling residential and education segregation in Springfield. What the community often lacks is an effective vehicle for moving good ideas from the drafting table to enactment at something faster than a glacial pace. As the ward-representation case shows, even when the community organizes, lobbies, and litigates at length, meaningful change only comes when an outside actor (such as the control board) joins the fight. This proposal would introduce a new actor to serve as the vehicle for eliciting ideas, turning them into legislative proposals, and driving them forward. The state has a duty to remedy the ongoing denial of equal educational opportunity to Springfield’s students of color, and to tackle the underlying problem of residential segregation. The Massachusetts Commission against Discrimination (MCAD) is a state agency that has a legislative mandate to investigate just such instances of discrimination, including its underlying historic causes, and to design remedial policies. Accordingly, we propose that a representative group of plaintiffs file a complaint under 151B and demand that the MCAD (1) investigate and research the discriminatory impact and (2) formulate policies to minimize/eliminate it.

Under Sections 2 and 3 of Chapter 151B, the MCAD has a broad remit. Its task is not simply to adjudicate disputes and render decisions like a regular court. It also has the “authority to issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination” and the duty to “formulate policies to effectuate the purposes of this chapter and may make recommendations to agencies and officers of the commonwealth or its political subdivisions in aid of such policies and purposes” (M.G.L. c. 151B, Sections 2 and 3).

What might the MCAD propose? One possibility is inclusionary zoning subject to regional (as opposed to city-level) control. This would get at the problem that underlies school segregation, namely residential segregation. Community members will be able to present the MCAD with examples of inclusionary housing policies that have tackled segregation in combination with other urban/suburban challenges (e.g. sprawl) such as Oregon’s comprehensive land use legislation (Orfield, 2006). A home-grown analogy to Oregon’s Land Conservation and Development Commission would be the Cape Cod Commission, which reviews and regulates development in Barnstable County to protect the natural beauty of the landscape.

One of the policies that the MCAD committee *could* recommend to the Legislature via the Governor might be a regional commission covering Hampden and Hampshire counties, with

exclusive jurisdiction over land-use decisions and the power to reject land-use proposals that would perpetuate racial and income-based segregation.

Why not simply offer regional inclusionary zoning as a proposal? First, because we believe that policymakers need to know the causes of segregation—its historic roots—before they can create effective solutions. Springfield’s segregated schools are a product of a segregated community, and it is essential to understand how residential segregation arose in Springfield in the first place, whether it was through the restriction of affordable housing to certain areas, discriminatory steering on the part of real-estate agents, zoning bylaws, decisions by developers and their political allies, redlining, or some combination of those factors. Any investigative committee that the MCAD convenes should include people whose specialty is causation (e.g. historians), as well as educators, planners, and fair-housing experts, and should ensure that the investigative process is methodologically and legislatively sound.

Secondly, we aim to build a better process. Our MCAD proposal offers a vehicle for moving policy proposals from the community to the Governor and legislative leadership in a way that bypasses the traditional roadblocks, namely the city council and local legislators.

Effectiveness

Under this proposal, there would be no quick fix to the problem of segregation. The investigative and policy-formulating process would likely take several years. However, the

terms of engagement would be such that the MCAD would have to produce a raft of policy proposals that would, ultimately, put an end to *de facto* segregation and guarantee students of color their full constitutional rights. As for proposals that the MCAD might generate in collaboration with the community, e.g. inclusionary zoning and regional planning, there would be considerable resistance from the city council and local legislators. However, recent experience suggests that resistance from those actors would not prevent action. In 2004, when Springfield approached financial meltdown, during the FBI's corruption investigations, the Governor and legislative leadership imposed a control board despite opposition from councilors and local legislators. The MCAD and Governor are best placed to persuade the Legislature that, like the city's financial crisis, Springfield's segregation has statewide impacts and that a regional body, outside the control of the city council, is part of the solution. Despite the time to implementation, this proposal, for its long term impact on segregation, ranks "good".

Equity

If successful, the complaint would shift the power dynamic. Instead of *ad hoc* groups of volunteers coming up with proposals and asking state actors to adopt them, the people most directly affected would be demanding that their government devise remedies for problems for which the state is legally responsible. However, the investigative and policy-development process would consume years rather than months, during which time policymakers might use it

as cover for inaction. A MCAD investigation ranks “good” for increasing equity for Springfield’s minority population.

Efficiency

The Commonwealth, through the MCAD, has the resources to investigate the causes thoroughly and to recommend concrete remedial legislative and budgetary proposals. The MCAD’s annual funding is approximately \$4.5 million and it is not likely that the investigation would require a significant amount of additional funding (Commonwealth of Massachusetts, 2010). The long-term costs of this proposal are currently indeterminable, however costs could skyrocket depending on proposals and any litigation that comes as a result. Therefore, the MCAD investigation ranks “moderate” for efficiency.

Political Feasibility

To set the process in motion, no executive order or legislation is necessary. Parents and students would initiate the process by filing a complaint at the Springfield office of the MCAD, with supporting studies from the Mauricio Gaston Institute and the Center for Public Policy and Administration. The Legislature moves on stage only when the MCAD has completed its investigation and fashioned its legislative remedies. This proposal would simply require the MCAD to act on its existing legislative authority by investigating both the historical causes of

residential segregation in Springfield and the causes of the Commonwealth's failure to provide students of color with an adequate education.

Because the state's constitutional duty is already well established, the complainants would not be asking the Commission to break new ground. But in the event that the MCAD refused to investigate, the complainants could ask the courts for an order compelling the agency to undertake the investigation. It seems reasonable to believe that the Commissioners (and the Governor) would prefer to avoid such an order, and would be more likely to conduct the investigation willingly. Looking ahead, although the Governor appoints the Commissioners and would bear some political responsibility for their recommendations, albeit attenuated, by the time the investigation is complete Governor Patrick's second term will have concluded. The task of presenting the MCAD's recommendations to the Legislature would fall to his successor.

This proposal shifts responsibility upward from the city to the state level, with obvious appeal to the mayor, city council, and school committee, at least in the short term. On the other hand, these actors might fear that the investigation itself will raise expectations and that the recommendations will empower a traditionally quiescent segment of the voting-age population.

Similarly, if the MCAD considers the inclusionary zoning/regional planning proposal, some councilors will undoubtedly voice strong opposition. But filing a motion to intervene in the proceedings in order to prevent the MCAD conducting its investigation at all would require

considerable courage, risk-taking, and unified collective action on the part of local elected officials, so this outcome seems only a remote possibility.

In summary, the MCAD proposal puts the onus on an unelected body that is traditionally subject to little overt political interference. Accordingly, it demands no immediate legislative action and no expenditure of political capital on the part of elected officials at the city or statewide level, and therefore ranks “excellent” for this criterion.

3. Metropolitan Council for Educational opportunity (METCO)

The 44-year old METCO program is a relation of Chapter 76, §12A, which complements Chapter 71, §37D (the Racial Imbalance Act). It allows non-White students from districts where a racial imbalance exists to attend schools in other districts, and its goal is to provide participating students with greater educational opportunity. Most METCO students from the sending districts are Black (75%) or Hispanic (17%) and most students in the receiving districts are White (METCO Council for Educational Opportunity, Inc., n.d). METCO is available in Springfield, applicants are selected through a lottery drawing, and families must reapply every year (C. Mahoney, personal communication, May 6, 2011).

METCO is funded through “a state appropriation grant” that is based on the prior year’s enrollment figures (Massachusetts Department of Elementary & Secondary Education, 2007).

The cost of the METCO program in FY’11 was \$16,489,123 and the request for FY’12 is close

to \$17 million (Massachusetts Department of Elementary & Secondary Education, 2011). In F'08, the allotted grant amount was \$5,828 was divided into \$4,000 for an instructional allotment, and \$1,828 for transportation costs (Massachusetts Department of Elementary & Secondary Education, 2007). The Springfield METCO program recently received a sizable grant to help expand its reach to Springfield's students (C. Mahoney, personal communication, May 6, 2011).

Springfield's METCO program serves 150 students in kindergarten through grade twelve in Springfield and averages approximately 250 applications per year (C. Mahoney, personal communication, May 6, 2011). The program's popularity in the Springfield community is evident, according to the Director of the Springfield METCO program the families whose children are not selected are often emotional and upset (C. Mahoney, personal communication, May 6, 2011).

A comparison of the figures between Boston's METCO program and Springfield's METCO program is deceiving: in 2007 there were 3,274 students participating in the METCO program, and 133 of them were from Springfield (METCO Council for Educational Opportunity, n.d.). However, this is not because the Springfield community does not use METCO; the low numbers, as Mahoney points out, are due to the fact that neighboring schools are not willing to offer more of their "seats" to METCO students (personal interview, May 6, 2011). Figures from 2006 show

that 46 of Springfield's METCO students went to Longmeadow, 43 to East Longmeadow, 21 to Southwick-Tolland, and 18 to Hampden-Wilbraham (Frankenberg, 2007).

Expanding METCO in Springfield would improve the education of participating students and, for those students, would go some way to reducing the effects of *de facto* segregation. Thus, this alternative suggests that the METCO program be expanded to encompass more neighboring schools to participate in the program. This can be achieved by increasing the funding each school receives per pupil.

Effectiveness

The fact that the Boston waiting list for METCO runs into the thousands demonstrates that parents perceive the program to be effective, and for past METCO students the program's effects seem to have been positive (Lang, 2004). According to the Metropolitan Council for Educational Opportunity, Inc. (METCO, Inc.) "educational results lead the list [of dividends]" that justify the public spending (p. 1). The organization states that "92% of the program's graduating seniors (238) indicated their intent of going on to higher education ... compare[d] to less than 70% of their siblings and friends in Boston, with less than 80% state-wide" (METCO Council for Educational Opportunity, Inc., n.d., p. 2). Therefore, based on the participation of the Springfield community, and the positive results witnessed in Boston, we would expect that expanding the METCO program in Springfield would be effective in assisting students to move

further in their education, while simultaneously achieving integrated classrooms and diverse schools; METCO would be ranked “good” on this criterion.

Equity

Students of color in Springfield have a right to an education that is equal to their white counterparts. On the whole, White students do not have to undergo the burden of traveling to another town for their schooling nor should African-American and Hispanic students who happen to live in Springfield. Proponents of greater integration might well argue that equity for Springfield’s students of color means being able to attend good public schools in their home district, the same right that White students in the East Longmeadow, Hampden-Wilbraham, Longmeadow, and Southwick-Tolland school districts, for example, do enjoy. Because the burden of travel falls on Springfield school-children only, this proposal ranks “poor” in terms of equity.

Efficiency

METCO is less costly than the school choice programs, appears to improve graduation rates among participating students, and does not appear to have a negative impact on the test scores of non-METCO students in the receiving districts (Lang, 2004). With respect to the Racial Balance Law, the alternative receives a moderate ranking: the grant money can help METCO serve a greater number of students and achieve a greater level of integration because the increased

funding may serve as an incentive for schools to agree to receive more students. The proposed alternative is efficient in that it is less costly than other policies, and because this alternative is voluntary, it complies with the Racial Balance in law in that it does not assign students to schools based on their race, therefore and would receive a “good” ranking on this criterion.

Political Feasibility

That METCO has been able to survive for more than four decades, becoming an apparently permanent feature of the educational system in Massachusetts, shows that the support for any expansion of it is present at the state level as well as within the Springfield community. Because the program recently was awarded a grant, expanding and enhancing it in Springfield would not require greater funding from the state in the short term; this creates more support for the expansion of the program. If any political capital is to be spent in this alternative it would be due to its implementation, as currently participating school districts must not only agree to take in more children, but more school districts must also participate. For the implementation of this alternative to be successful METCO would need to develop partnerships within Springfield and within potential and participating school districts in order to have the political influence on their school-boards and the legislative representatives of those neighboring cities.

In sum, taking into consideration the recent availability of funding, the program's long history and potential opposition from receiving schools, this alternative would receive a "moderate" ranking on this criterion.

Recommendations

Decades of laws, customs, and practices on the part of political leaders, banks, real-estate agents, and ordinary homebuyers have produced a situation in Springfield familiar in many American cities: *de facto* residential segregation. The otherwise perfectly sensible policy of assigning children to schools on the basis of where they live has created the obvious corollary: *de facto* educational segregation. Transforming this legacy demands action by many actors along several fronts. The desegregation of Springfield's public schools requires the desegregation of Springfield. Although all of the alternatives would have a positive effect for students in Springfield, we recommend requesting the MCAD to conduct an in-depth investigation into the causes of residential segregation in Springfield in order to fashion a raft of policies to promote residential desegregation.

In the short run, expanding METCO and inter-district magnets would improve integration, depending on the number of students served. This said, expanding METCO would do nothing to positively affect schools in Springfield, with grant money and any federal Title I funds following the student to the suburban district. Inter-districts would have the opposite effect, bringing additional monies from the affluent suburbs, and possibly the state, into the beleaguered district. In terms of short-run costs, MCAD is the least costly up-front, however, policies, and possible litigation, in the future have an indeterminable cost.

All alternatives require state-level action, which is appropriate as the state government should remedy its failure to provide the children with a quality education. However, by requiring state action, the proposals broaden the scope of the conflict to a different level. MCAD, however, does a better job of narrowing the scope, as it will be solely focused on the Springfield context.

Both MCAD and METCO are established line-items in the budget, giving them an advantage over inter-districts, which, as a new program, must be approved by the Legislature.

A large benefit of MCAD is that it is unelected authority with little outside pressure, and therefore is most likely to determine proper causation and propose unbiased recommendations to remedy segregation. This said, MCAD's involvement in an investigation on this magnitude is unprecedented, which may lead to legal challenges surround the Commission's authority over this issue, and it may not be able to successfully implement policies in a timely manner. While

inter-district magnets and expanding METCO are more immediate proposals, the MCAD investigation is the only alternative that addresses the underlying issues of segregation in the Springfield region.

Conclusion

Educational segregation is a symptom of a deeply embedded malady, and to provide a cure (not simply a bandage) we need the patient's full medical history. Otherwise we run the risk of treating the symptoms without addressing the disease, or perhaps even making matters worse.

So rather than Springfield's leaders merely passing the buck, introducing in the Massachusetts Commission Against Discrimination is a responsible and good faith effort to call in an actor with the necessary expertise and political heft.

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Appendix A

Criteria	Definition	Policy Alternatives		
		Inter-district Magnet School	MCAD Investigation	Expand
Effectiveness	The extent to which a policy achieve its goals of economic integration and desegregation	Good—Depends on implementation, must be in safe neighborhood, with distinctive theme to attract suburban students	Good—Long run solution, but needs several years to investigate/implement	Good—past pr have been doesn't mak cha
Equity	The equal distribution of education as a good or resource	Moderate—more choices for minority but only students attending inter-district school have benefits	Moderate –empowers a usually quiescent group and is only as good as MCAD policy proposals.	Poor—burden on minorit
Efficiency	The extent to which a policy achieves a goal with the least cost to implement	Good—less costly than years of litigation, however state would need to give extra money	Moderate—within the MCAD's annual funding, but indeterminable future costs	Good—less c school cho
Political feasibility	The support, goals and values of the key actors	Moderate—constitutional, but requires state level action by governor and legislature	Excellent—onus is on an unelected body and demands no immediate legislative action and no expenditure of political capital	Moderate—re support of sub

Ranking scale: Poor, Moderate, Good, Excellent