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Ideas

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NO EASY ANSWERS

PHOTONICA

Efforts by Lynn to better integrate the city's schools have resulted in classrooms that are far more diverse. But critics charge that race-conscious programs like Lynn's are discriminatory — an argument the Supreme Court will hear next month. How far can a public school system go to promote integration? | By Cara Feinberg

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Cara Feinberg is the senior writer at Boston College Magazine.

IN MARCH 1999, Samantha Comfort tried to enroll her daughter in kindergarten at Shoemaker Elementary, a school in a suburban neighborhood of Lynn, but was told there was no room for her child because she was white. Instead, Comfort was told to send her daughter to Sewell-Anderson, the school located in her own, more urban, neighborhood. Comfort herself had attended Sewell-Anderson, and had loved it. But the issue for this single, working mother of two was not simply a matter of school quality. Sewell-Anderson was closer to home, but farther from work, and Comfort could not make the school's closing bell. Shoemaker, on the other hand, was around the corner from her day-care provider.

"What I was told, basically, was that my daughter couldn't go to Shoemaker because she wasn't the right color," Comfort explained recently in a telephone interview from North Carolina, where she and her two children now live. Seven years later, she still bristles with anger when she talks about the incident.

What Comfort learned was that Lynn was one of 22 districts in Massachusetts and hundreds across the country that had voluntarily adopted a student-assign-

ment plan designed to promote racial diversity. For decades, Lynn children had been required to attend their neighborhood schools, but by the early 1980s, 13 of Lynn's 17 elementary schools were predominantly white, while four inner-city schools remained 35 to 50 percent minority. In 1977, the Massachusetts Board of Education confronted Lynn about its racial imbalance, and the city began to take measures to address its problems, including redrawing its neighborhood lines, creating a magnet school program, standardizing its curriculum, equalizing its distribution of resources, and, in 1988, initiating a new school-assignment plan.

The plan both guaranteed students seats in their neighborhood elementary and, space permitting, offered parents an alternative selection of any school within Lynn's city limits — provided that school's student body reflected the racial makeup of the school district as a whole, or provided the student's transfer helped make an unrepresentative school more diverse. Samantha Comfort was told she couldn't send her daughter to Shoemaker because that school already had a higher percentage of white students than the district. SCHOOLS, D4

Schools

Continued from page D1

To the extent that it increased classroom diversity, there was no question the school-assignment plan worked. By the time Comfort tried to send her daughter to Shoemaker, even that "racially-isolated" school maintained a 30 percent minority population. According to a study commissioned by the Massachusetts attorney general's office, that number would have dropped to 7 percent if the city returned to neighborhood schools.

But for parents like Samantha Comfort, the plan was hard to see as a success. In June 1999, Comfort decided to sue the Lynn School Committee for racial discrimination; she was later joined by other plaintiffs.

A US district judge initially ruled in favor of the school system, citing public education's responsibility to prepare students for the realities of an increasingly heterogeneous society, and the effectiveness of Lynn's plan in achieving that objective. "The goal of elementary education is, as the Supreme Court noted nearly fifty years ago, to foster good citizenship," the district judge wrote, referring to the court's 1954 ruling in Brown v. Board of Education.

That verdict was affirmed in 2005 by First Circuit Court of Appeals in a three-to-two decision. The plaintiffs petitioned the Supreme Court to hear the case, but the court declined, and Lynn remained the victor — a fact that lent validation to school districts across the country with similar plans.

But this past summer, the Supreme Court — Sandra Day O'Connor having been replaced by Samuel Alito — agreed to hear two new cases very similar to the Lynn suit. The cases, which will be heard on Dec. 4, challenge race-conscious school-assignment programs in Louisville and Seattle.

How the court rules in these cases may set a precedent for how far K-12 schools can go to promote diversity. It may also mark a new era in the ongoing struggle to integrate public schools. Fifty-two years after the Brown decision, the court will once again examine the importance of integration in K-12 education and the constitutionality of using race in school assignment. Only this time, the issues before the court come not because schools have resisted desegregation, but because they have embraced it.

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PATRICIA MCDONNELL/GLOBE STAFF

Sixth graders at Lynn's Pickering Middle School take part in a math class last week.

When the Massachusetts attorney general's office agreed to defend Lynn, the first thing its lawyers set out to do was paint a picture of the North Shore city's schools before and after the adoption of its racial balance program. Fourteen years after initiating the program, explained Assistant Attorney General Richard Cole, state and city records showed student achievement had made steady gains, suspension rates had dropped, attendance rates had risen, and teacher turnover rates had slowed.

"What happened in Lynn was by no means a fluke," said Gary Orfield, a professor at Harvard's Graduate School of Education and the director of the university's Civil Rights Project. An expert witness in both the Lynn and Louisville lower-court cases, Orfield and a group of 552 other social scientists filed a brief this fall with the Supreme Court in support of the Louisville and Seattle school districts, summarizing the body of desegregation research collected since Brown.

"There is an overwhelming amount of evidence showing both academic and social benefits of integrated schools to both students and communities, as well as the harmful implications of racially-isolated schools," he said. "Minority schools are often high-poverty schools," he explained, and those learning environments tend to have low parental involvement, less experienced teachers, higher staff turnover rates, and a lack of resources.

Academic success, however, is not the only goal of K-12 education, Orfield points out. Among the basic skills children need to learn, he says, are empathy, acceptance, and general knowledge about people different from themselves. "Our schools need to pre-

In the case of Lynn, said Michael Williams, another lawyer for the plaintiffs, the defense attempted to show a compelling interest by describing the district's successes in raising achievement across the board. "We didn't dispute Lynn's gains," Williams said, "we just disagreed with Richard Cole about what caused them."

Alongside its race-based assignment policy, the plaintiff lawyers noted, Lynn had undergone a comprehensive educational overhaul, including a standardization of curriculum and of resource distribution, the addition of a wide variety of multicultural and multiracial educational programs for both students and teachers, and the creation of systems to coordinate the programs and ensure that all schools offered the same opportunities. It was thus not clear, the plaintiffs argued, that the district's improvements stemmed from the school-assignment policy: These other, race-neutral factors might also have been at play, and if methods like these could create such sizable boosts in achievement, the use of race itself was unnecessary.

As for the expert testimony and academic studies bolstering the defense's case, several critics, the plaintiffs pointed out, have disputed their claims. David Armor, a professor of public policy at George Mason University who has researched and provided expert testimony on school desegregation for 35

years, points to his 1972 review of five desegregation plans, which found few significant gains by black students. "There is an enormous amount of variation in the findings on the correlation between racial integration programs and academic achievement" — results, he says, the Civil Rights Project rarely cites.

"Proof of a 'compelling purpose,' to me, means uniform, consistent, unequivocal evidence of a relationship between these policies and positive benefits," Armor says. "The primary purpose of K-12 schooling is the transmission of basic skills, and if there is no benefit to achievement, there's no benefit to a school's primary function."

Fifty-two years after Brown, the Supreme Court will again take up the question of race in public schools. Only this time, not because schools have resisted desegregation, but because they have embraced it.

Gary Orfield counters that his side "cited the most compelling research — we didn't cite most of the supportive research either." He also reiterates that academic achievement is not the only measure of success. "We don't see desegregation as an 'academic treatment' for minorities. We see it as a way to create a successful, multiracial society."

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In its decision in the Lynn case, the First Circuit Court of Appeals agreed with Orfield, citing the benefits of integration aside from achievement, including "breaking down stereotypes" and "promoting cross-racial understanding," which made integration a compelling interest.

Until recently, the issue of whether diversity was indeed a compelling interest in the educational context was an open legal question, but in 2003, in an opinion authored by Sandra Day O'Connor, the Supreme Court answered it definitively and affirmatively, siding with the University of Michigan Law School in a case that challenged an admissions policy that took race into account as one of several variables.

But even if a voluntary plan is seen as serving a compelling interest, there is still the question of narrow tailoring. While the Supreme Court upheld a race-based policy in the Michigan Law School case, in a companion case decided the same year the court struck down the use of race in another college admissions policy, finding the undergraduate admissions policy at the University of Michigan to be unconstitutional because the court determined there were more effective ways to achieve the school's diversity goals.

Williams believes there are also more effective ways for Lynn to achieve its goals. He points out that Cambridge, for instance, uses a "controlled-choice" program based on socioeconomic status. In his brief to the Supreme Court in the Louisville and Seattle cases, Solicitor General Paul D. Clement also cited this approach as an effective alternative to race-based policies.

According to Richard Kahlenberg, a senior fellow at the Century Foundation who specializes in education and civil rights, "socio-economic integration can often produce a fair amount of racial diversity." But, he adds, depending on the region, race and class are not always correlated. "If you want to achieve a certain racial mix," he says, "there's no better way to do it than by using race."

Where will the Supreme Court come down? It is curious that the court has agreed to consider an issue it declined to take up just a year ago. "The only thing that has changed since last year is the composition of the court," said Tomiko Brown-Nagin, a professor of law and history at the University of Virginia who has written extensively about school desegregation and the Supreme Court. That change may be significant. In the Lynn, Louisville, and Seattle cases, she explains, the appeals courts all sided with the school districts, and the Supreme Court typically does not weigh in on a subject if all the circuit courts are in agreement — unless enough justices think the issue itself warrants re-examination.

A reversal of the lower-court decisions could mean a step forward for those who tend to see race-based policies as a cause, not a cure, for disparity and prejudice. But for others, it would be a step back in history, threatening nothing less than the basic principles underlying Brown v. Board of Education. Either way, says Harvard law professor Charles Ogletree, "The definition of the purpose of public education is at stake."