

Magnet Schools as a Strategy for Integration and School Reform

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In July 1986, the authors, attorneys for a student advocacy organization, received a letter from a New York parent who wrote:

I have two children. One [my son] attends an elite [public] school. . . . My daughter, on the other hand, must spend her days at a [public] school for throw-aways. An emotional crisis caused her to have poor attendance in the ninth grade. She did not make an elite school. She didn't even make an "ed op" school. . . . So now, she is in a school where all the kids have serious attendance and academic problems. While the kids are "enrolled," they have really dropped out. Everyone in the place has problems—and I think the worst problem is that these kids are totally isolated from kids who will stay in school and achieve. My son says that when kids misbehave in his school, the threat is that they have to go to my daughter's school. . . . Maybe someone might care about "holding pens for rejects!" Maybe kids who need help should be in a viable institution and occasionally see an achieving kid. I wish I lived in the suburbs where both my kids could go to the same school. My daughter's shame about herself, her classmates and her school are a problem that no better teachers, better curriculum and more accountability can overcome.

The New York City school system, like many other medium- and large-sized school districts, runs a number of special "unzoned" public high schools. This article explores how two students from the same family could have such different experiences in the public schools. Using New York City's school system as an example, the article examines the problems raised by this mother's plea, problems replicated in cities with magnet schools across the country.

In New York City, the school system has three "tracks." Some schools, like the son's, are as highly selective as the finest private

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schools; others, known as educational option ("ed op") or vocational-technical schools,¹ are less selective. Both, however, screen out students with poor grades or low attendance records. Students not accepted at one of these selective schools go to schools in their own neighborhoods. As this mother describes, this system produces neighborhood schools with grave dropout problems and a disproportionately high number of students with educational difficulties.

This mixed system of selective unzoned "magnet" and unselective zoned schools has benefited some children, but only at the expense of many others. The selectivity of the son's school, and others like it, has exacerbated the problems afflicting schools like the daughter's. The concerned parent correctly asserts that isolation from achieving students is the worst possible educational setting for her daughter.

"Magnets" are so termed because they are intended to attract students away from their neighborhood schools. The key characteristics of a magnet school are: (1) a distinctive school curriculum organized around a special theme or method of instruction; (2) voluntary enrollment elected by students and their parents; and (3) students drawn from many attendance zones. Magnets are largely an urban phenomenon, because a certain density of population is necessary to permit multiple schools to serve the same geographical area.² Magnets were initially developed to promote desegregation by attracting students of different races from various school zones. Experience has shown magnets also are often effective in improving the quality of schools and increasing family choice.³ Magnets may

1. See text accompanying note 43, *infra*, for a discussion of New York City's educational option schools.

2. One-third of the nation's school districts enrolling 20,000 or more students use magnets. Where magnets are used, they enroll, on average, five percent of all public school students in that district, but the percentage is as high at 37% in some large cities. Raywid, *Family Choice Arrangements in Public Schools: A Review of the Literature*, 55 *Rev. of Educ. Research* 435, 449 (1985).

3. Magnet programs are by far the most successful and widely implemented of the educational choice models that have been proposed over the last two decades. Each of the other choice models has serious disadvantages. Tuition tax credits and vouchers offer no benefit to low-income families who cannot advance or pay the balance of the tuition and would divert monies from the public schools. Even regulated voucher plans, which would require schools to accept vouchers as full payment from poor families, fail to deal with the complex issues involved in educating children with special needs, e.g., handicapped pupils, children of limited English proficiency, or homeless children. Moreover, the government regulations required to protect equity under a private voucher system would undermine the freedom of choice and flexibility that are the scheme's purposes. Open enrollment plans, as well as tuition tax credits, will not stimulate new initiatives or school reform, since they simply allow parents to enroll in existing programs.

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provide opportunities for school-based innovation and program development by directly involving teachers in school reform. Magnets also have the potential to attract new financial resources and students to public education. Finally, magnets often enlist the support of foundations and businesses in the development of a special theme, such as computers, telecommunications, or engineering.

For all their potential benefits, magnets raise serious questions of equity. These issues must be addressed if magnets are to succeed in revitalizing school systems for the full range of students that the public schools must educate. If magnets either siphon off those students who are easiest to teach or receive a disproportionately high percentage of available resources, the remaining schools become places of last resort. Only the poor and those with special needs will be left in the neighborhood schools. Not only is such a two-tiered system unfair to individual students, but also it does little to stimulate reform in less advantaged neighborhood schools.

This article focuses on the potentials and dangers of magnet systems. Our viewpoint is that of attorneys who have participated in efforts to make access to magnet schools in New York City more equitable. In this article, we examine the origins and stated goals of magnet schools as well as the failure of one particular set of magnet schools in New York City high schools to achieve their goals. We also examine a more successful program of junior high schools in New York's Community School District Four in East Harlem. District Four offers a real choice between a wide variety of programs without most of the inequities characteristic of the City's high school magnet program.

In the final section of this article, we propose a model magnet system that aims to maximize the educational and desegregative effects of magnet schools, while minimizing the inequities an inappropriately structured system can foster. In our model, every school would be a magnet school in order to minimize selectivity and maximize choice. In addition, there would be: (1) district-level policy-making, planning and coordination to ensure fairness, maximize integration, and provide a full range of programs; (2) involvement of the public in the development of these policies; (3) adequate information systems to inform all families of available options; and (4) a mechanism to guarantee the equitable apportionment of resources. With these protections in place, magnet schools would offer urban communities the best chance for both promoting desegregation and improving the quality of public education.

I. Magnet Schools: Goals And Reality

The magnet school was developed as a means of implementing desegregation. In *Swann v. Charlotte Mecklenberg*, decided in 1971, the Supreme Court set out basic guidelines for urban school desegregation and included magnet schools as an acceptable component in an overall plan.⁴ Since then, magnets have been used extensively as part of court-ordered desegregation plans in Boston, St. Louis, Buffalo, and other major American cities.⁵ Other court-mandated plans have made more modest use of magnets: for example, converting one school in a minority neighborhood into a districtwide magnet to attract white students.⁶

The 1976 amendments to the Emergency School Assistance Act (ESAA) provided substantial federal funding for the creation of magnet schools aimed at desegregation and integration. The availability of these funds vastly increased the use of magnets by school districts, including many that were not under a court-ordered desegregation plan.⁷ As of 1982, there were roughly 138 school districts running over 1,000 magnet schools across the country for the express purpose of promoting desegregation. In addition, there are

4. *Swann v. Charlotte-Mecklenburg*, 402 U.S. 1 (1971).

5. *Liddell v. Missouri*, 731 F.2d 1294 (8th Cir. 1984) (en banc), *cert. denied*, 454 U.S. 1091 (1985) (St. Louis); *United States v. Board of Educ. of City of Chicago*, 554 F. Supp. 912 (N.D. Ill. 1983); *Arthur v. Nyquist*, 514 F. Supp. 1133 (W.D.N.Y. 1981) (Buffalo). Perhaps the most recent example of a court-ordered plan involving extensive use of magnets is *Jenkins v. Missouri*, 639 F. Supp. 19 (W.D. Mo. 1986) (Kansas City).

6. *See, e.g., Hart v. Community School Bd. of Educ., N.Y. Sch. Dist. #21*, 512 F.2d 37 (2d Cir. 1975).

7. The Emergency School Aid Act, Pub. L. No. 92-318, tit. VII, 86 Stat. 235, 354 (1972), provided initial funding for magnet schools. The Education Amendments of 1976, Pub. L. No. 94-482, 321, 90 Stat. 2081, 2216—17 (1976), increased this funding and the types of schools that were eligible for aid. Whereas in 1976 only 14 districts in the country had magnet schools, by 1980, 100 districts had joined the bandwagon. In fiscal year 1979, at the height of funding, the federal government spent \$398.5 million on magnet schools. The last year of the program was 1981-82. In 1981, the grants were subsumed into the Educational Consolidation and Improvement Act of 1981, Subtitle D of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, 95 Stat. 357, 403—commonly known as the Chapter Two Block Grants. The federal contribution to magnets was drastically reduced. In Fiscal Year 1982, only \$25.2 million was allocated for this purpose. Although many of the 65 ESAA-funded magnet programs have cut back, relatively few have disappeared in spite of the drastic reduction of funding. *See R. Blank, Survey of Magnet Schools: Analyzing a Model for Quality Integrated Education, Final Report of a National Study for the U.S. Dept. of Education (1983) [hereinafter Blank]*. In 1984, Congress allocated new funds for magnets in the Education for Economic Security Act Amendments, Pub. L. No. 98-377, 98 Stat. 1299 (1984). Because of delays by the Department of Education in issuing regulations and an attempt by the federal Office of Management and Budget to rescind funding, school districts received no funds under this Act until the 1985-86 school year.

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approximately 10,000 “optional” public schools with many of the same features as magnets.⁸

A. Magnets as a Device to Promote Desegregation

In 1983, the United States Department of Education commissioned a major national study of ESAA-funded magnet programs, *Survey of Magnet Schools: Analyzing a Model for Quality Integrated Education* (hereinafter National Magnet Study).⁹ This study found that nationwide, 40% of the districts that developed magnet schools to affect districtwide desegregation experienced positive results.¹⁰ Larger districts, districts experiencing population growth due to new economic opportunities, and districts that were multiracial and multiethnic had the most success desegregating with magnets.¹¹ The study also indicated that districts had a better chance for successful desegregation if they used magnets as one aspect of a total plan, which also included a variety of voluntary and involuntary desegregation methods such as pairing, rezoning, two-way busing, and mandatory assignment.¹²

For instance, in Buffalo, New York, which offers a broad array of magnet choices, most students who do not choose a magnet will be assigned to an integrated school outside their neighborhood for at least half of their years in elementary school.¹³ In Cambridge, Massachusetts, a “controlled-choice assignment policy” requires parents to indicate their school choices in order of preference. Assignments are then made on the basis of a variety of factors, among them, ensuring stable desegregation. In effect, participation in the desegregation program is mandated, but parents have a say in where their children will go to school. Every student must choose a

8. Smith, Educational Options: What's Happening Today? in *Magnet Schools: Legal and Practical Implications* 109 (N. Estes & D. Waldrup eds. 1978).

9. Blank, *supra* note 7. This two-year study involved 45 schools in 15 school districts, nationwide, of which 11 were under court order to desegregate. All of the schools had received ESAA funds to set up magnet schools for the purpose of desegregation.

10. *Id.* at 55.

11. *Id.* at 116.

12. *Id.* at 36.

13. See Gewirtz, Choice in Transition: School Desegregation and the Corrective Ideal, 86 Colum. L. Rev. 728, 767-68 (1986) for a discussion of Buffalo as an example of a successful court-ordered desegregation plan using magnets. The author suggests that choice plans work best as a desegregation measure if they are treated as an experiment with a mandatory, court-ordered “back-up” plan in case choice mechanisms fail to achieve specified integration goals. This serves to give plaintiffs the commitment to corrective action that they deserve and gives the community a necessary incentive to make the choice plan work. *Id.* at 767.

school, although one of the choices may be the neighborhood school.¹⁴

The element of choice in plans using magnet schools may have an impact on the eventual success of efforts to desegregate. An unreleased federal study based on data collected between 1965 and 1985 concludes that while in the short-run voluntary magnet school plans produce less desegregation than mandatory reassignment plans, over time the voluntary plans produce greater interracial exposure and, on average, half as much "white flight" as mandatory plans.¹⁵

Choice plus educational improvement is an attractive combination, one that may even unite some whites who traditionally have opposed mandatory integration, and some blacks who have become frustrated with the difficulty of achieving it. But conflict may be reduced at the cost of districtwide desegregation. In some districts, magnets represent only a symbolic attempt to desegregate, particularly where conflict over integration is intense and school officials are unwilling or politically unable to press through the conflict.¹⁶

White parents may agree to send their children to desegregated magnets but not to other desegregated schools. Whites then get more than their fair share of seats in magnets, especially if the system bends to white parents' pressure in order to prevent white flight. Desegregated magnets certainly will not eliminate segregation in non-magnet schools.¹⁷ The ultimate danger of magnets is

14. C. Rossell & C. Glenn, *Controlled Parent Choice in Cambridge and Buffalo* (Jan. 1987) (unpublished manuscript).

15. Plans were considered voluntary if they relied primarily on voluntary magnet school enrollment and voluntary transfers from schools where the student was in the majority to schools where the student was in the minority to reach desegregation goals. Plans were considered mandatory if they relied mainly on reassignment of students to achieve racial balance. A separate comparison of voluntary and mandatory plans in predominantly minority large urban school districts found little difference in results between the two approaches. Snider, *Voluntary Programs Said More Effective in Desegregating*, *Educ. Week*, Apr. 28, 1987, at 1, col. 1. However, where all assignments are voluntary and the choice is between the segregated neighborhood school and a desegregated magnet school, such plans do not have a significant effect on districtwide desegregation except in districts where less than 30% of the population is minority. Rossell, *Applied Social Science Research: What Does It Say About the Effectiveness of School Desegregation Plans*, 12 *J. Legal Stud.* 69, 73 (1983).

16. Blank, *supra* note 7, at 91. The magnet survey gives the example of one district where the Ku Klux Klan actually stood behind board members as they deliberated on a magnet school settlement to a long-standing desegregation lawsuit. The plaintiffs, frustrated with years of pyrrhic court victories, agreed to the largely symbolic settlement.

17. As one political scientist has observed, white opponents of busing who enroll their children in desegregated magnet schools are distinguishing implicitly between middle-class and poor blacks. Hochschild, *Approaching Racial Equality Through Indirection: The Problem of Race, Class, and Power*, 4 *Yale L. & Pol'y Rev.* 307, 308 (1986). Magnets can result in integration opportunities for middle-class minority members while lower-income minority group members remain in segregated schools that do not offer

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that they might achieve high quality education at a small number of schools for a few mainly white or middle-class students, but only at the expense of the others in the system.

Desegregation does not equal integration. The National Magnet Study defined an integrated school as one in which there is equality among students, intergroup respect, educative use of cultural differences, and inclusiveness towards all students. The survey found a strong positive correlation between integration and high quality education. It also found that schools are more likely to be integrated if they actually offer the course of study they are advertising and if at least 25% of their population is made up of minority students.¹⁸ These findings confirm the well-recognized theory that a critical mass of minorities is necessary to prevent feelings of isolation and powerlessness among minority students.¹⁹

B. Magnets as a Device to Promote School Improvement

Although developed as a means of desegregation, magnet schools have improved the overall quality of education as well. The National Magnet Study concluded that magnets have the potential to provide high quality education in urban settings. One-third of the schools studied were deemed to be of high quality based on outcome indicators, such as test scores, and observed school processes, such as student-teacher interaction. Most of the other magnets rated high on some of the criteria, although vast differences in educational quality existed among schools.

High quality magnets have three things in common: (1) an entrepreneurial principal who exerts strong leadership in developing curriculum and motivating students and staff; (2) coherence in theme, curriculum, and teaching methods, which results in a strong program identity; and (3) special treatment by the district, including freedom from some district rules and procedures—what the National Magnet Study calls “permission to be different.”²⁰

the educational improvements of magnets, as illustrated by the New York City experience.

18. Blank, *supra* note 7, at 97.

19. C. Willie, *The Sociology of Urban Education* 20 (1978). A recent study argues that racial hostilities are highest when blacks and whites attend school in equal numbers. The authors recommend that where the student population is biracial, black enrollment should be either 20% to 40% or 60%. Schofield & Sagan, *The Consequences of School Desegregation*, in *The Consequence of School Desegregation* 58, 72 (C. Rossell & W. Hawley eds. 1985).

20. Blank, *supra* note 7, at 55.

Because students and parents *choose* magnet schools and are not compelled to be there, magnets are also ideal "laboratories" for experimenting with new teaching methods, curricula, and school structure. A magnet school can require additional time from students beyond what is required by compulsory attendance laws (e.g., a commitment to community service or year-round attendance), precisely because students can avoid the additional requirements by choosing to attend some other public school.²¹

The process of choosing a school and, in some cases, being "chosen" by it, can be a motivating factor not only for students but also for teachers. The National Magnet Study found that teachers in many of the most successful magnets were specially chosen for their interest in, and commitment to, the theme of the school.

High quality magnets also engage teachers in curriculum development, in sharp contrast to top-down educational reforms, for which important educational decisions are made at the district or even the state level. Encouraging participation in curriculum development is good for teacher morale and may improve the quality of instruction. Such participation, or "ownership," makes it easier for magnet schools to attract competent, motivated teachers; in fact, the National Magnet Study indicated that magnets employ more experienced teachers than other schools.²² In addition to teachers, a high quality magnet also may involve the surrounding community, including local businesses, in innovative ways not commonly found in neighborhood schools.²³

One obvious difference between magnets and neighborhood schools is that magnets cost on average 8% more.²⁴ Recent court-ordered desegregation plans have included elaborate magnet schemes costing millions of dollars.²⁵ Usually transportation and the higher salaries of more experienced teachers are the sources of the extra cost.²⁶ Sometimes, however, the added expense is not due to the costs of transportation and salaries; rather, it is due to attempts to make inner city schools competitive with private and sub-

21. J. Goodlad, *A Place Called School: Prospects for the Future* (1983).

22. Blank, *supra* note 7, at 116.

23. *Id.* at 36.

24. The magnet survey pins the average excess per capita cost at \$200 in 1982 buying power for the start-up year when there are one-time planning and equipment costs and \$59 per capita in subsequent years.

25. In Chicago, for example, the federal court estimated the annual cost of that magnet plan to be \$171.6 million. *United States v. Board of Educ. of City of Chicago*, 554 F. Supp. 912 (N.D. Ill. 1983).

26. Blank, *supra* note 7.

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urban schools, in the hope of luring back whites. In Kansas City, much of the cost is for repairing and refurbishing school buildings.²⁷ The magnet remedy can serve as a device for the district to get more government support for public education.²⁸ One common reason given for making a priority of keeping whites in public schools is that "green follows white." But recent court cases' remedies have called for increased spending evidently on the theory that "white follows green."

Again, the danger is that magnets become so attractive that they detract from the rest of the schools in a district. Skimming off the best teachers or the highest achieving students, for instance, can only be detrimental to neighborhood schools that do not have the luxury of selecting students and may be held to more rigid rules regarding teacher hiring.

C. Problems in the Current Implementation of Magnet Schools

Although the National Magnet Study found that magnets have been used successfully to promote integration, it also offered instructive examples of how magnets can be utilized to obstruct, not advance, integration. Some magnets serve as "shell games" to create the mere appearance of desegregation. Some serve to relieve pressure from courts and state agencies to desegregate. Some use "elitist" selection criteria to reduce minority access to the best available learning opportunities. Others admit minority students but then fail them and remand them to inferior schools.²⁹ Even in desegregated magnets the danger remains that tracking within the school will have resegregative effects.³⁰

Equitable access to magnet schools depends not only on fair selection methods, but also on adequate information about the available options. Poor, non-English speaking, and illiterate families are severely disadvantaged under traditional information systems. They are often unaware even of those entitlement programs, such as food

27. *Jenkins v. Missouri*, 639 F. Supp. 19 (W.D. Mo. 1986).

28. Chicago and Kansas City have sought additional funds from the federal and state governments respectively. Gewirtz, *supra* note 13, at 772.

29. Blank, *supra* note 7, at 92.

30. Ascher, Educ. Resources Info. Center/Clearinghouse on Urb. Educ. Digest, ED 269518, No. 3, Mar. 1986. Recent studies recommend heterogeneous groups and cooperative learning techniques, using teams of racially and academically mixed students who work together on problems. This teaching method has yielded positive effects on race relations, achievement, self-esteem, and concern for others. See, e.g., Slavin, Cooperative Learning, 41 J. Soc. Issues 45 (1985).

stamps and welfare, that have simple eligibility criteria.³¹ Unless magnet systems include methods to make sure that families and students receive information about their choices in an understandable form, many children will be denied the choice opportunities. Moreover, the cost of preparing students to meet special qualifications, and the time and travel necessary to find out about options and to complete applications for admission, are obstacles for poor and overburdened parents.³² Finally, the timing of application processes frequently prevents students new to an area from selecting special programs. This works a serious injustice in school districts where families are mobile and concentrations of immigrant and homeless families are high.

While the National Magnet Study found that relatively few magnets were selective, it did discover that 89% of magnets had some method for weeding out students with severe academic or behavioral problems.³³ Elite student bodies, in practice, if not intent, can also result from student self-selection, school marketing strategies directed at middle-class neighborhoods or higher achieving feeder schools, and guidance practices that steer children to different schools on the basis of their perceived abilities.³⁴ In addition, if magnets fail to provide services for populations with special needs, such as non-English-proficient or special education students, neighborhood schools are left to meet the requirements of the legally mandated programs for these populations.³⁵ The result can be devastating for the schools that must take the students other schools reject and for the students consigned to "dumping grounds."

In effect, the entire student body of these schools of last resort is tracked into lower ability groups. Assignment to these schools essentially tells the student, "We have lower expectations for you." When this message is communicated to students by their teachers and their schools, it has a real effect on their achievement.³⁶ A sub-

31. Olivas, *Information Access Inequities: A Fatal Flaw in Educational Voucher Plans*, 10 J. L. & Educ. 441 (1981).

32. For instance, in Pittsburgh, where magnet programs accept students on a first-come, first-serve basis, parents camp out in the street for as long as six nights running to enroll their children. N.Y. Times, Nov. 16, 1986, at A50, col. 5.

33. Blank, *supra* note 7, at 66.

34. Raywid, *supra* note 2, at 450.

35. *Lau v. Nichols*, 414 U.S. 563 (1974); Education of the Handicapped Act, Pub. L. No. 94-142, 89 Stat. 773 (1975); Education Amendments of 1974, Pub. L. No. 93-380, § 105(a)(1), 88 Stat. 503 (1974); Bilingual Education Act, Pub. L. No. 90-247, § 702, 81 Stat. 816 (1968).

36. H. Howe & M.W. Edelman, *Barriers to Excellence: Our Children at Risk* 6-7 (1985).

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stantial body of research on student tracking indicates not only that low-achieving students do better when they are grouped heterogeneously, but that high-achieving students are not harmed and indeed can also profit from such groupings.³⁷

The National Magnet Study concluded that the quality of magnet schools is not related to the selectivity of the student admission policy. Only 13% of the schools studied either used devices such as achievement test scores or grade averages to select students or sent students back to their zoned school if they failed to meet performance requirements. The Study found that these selective schools were not any more likely to be of high quality than schools that selected students using the lottery method.³⁸

The survey also found that public support for magnet programs is stronger when application is based on interest and selection is by lottery. It warned:

Local planners should be aware that student selectivity is a policy choice. It should be faced openly and publicly in the earliest planning stages and the policy debate should be inclusive of all groups. The district that fails to do this may subsequently discover that its magnets are perceived by many sectors of the community as elitist and inequitable even when they are non-selective and widely inclusive. . . .

Misperceptions arising out of insufficiently realized or sub rosa policy debates on the issue tend to induce resentment and conflict from community groups who feel shut out and regular school personnel who feel pushed aside and unjustly compared to what they perceive as exclusive and favored magnets. Over time this can undermine the support accorded magnets and undercut their identity and definiteness which are associated with educational quality.³⁹

The above is an accurate depiction of the controversy that in fact erupted in New York City when selective magnet schools were set up without public discussion or even public dissemination of the specific admission criteria to be applied. A 1985 Advocates for Children study found that students in minority neighborhoods had far worse admissions rates into selective schools than those who attended predominantly white "feeder" schools. The most impoverished neighborhoods had the worst rates of all.⁴⁰

Similarly, a study of 44 magnet schools in Chicago showed that middle-class students, including blacks, attend magnets at far higher

37. J. Oakes, *Keeping Track: How Schools Structure Inequality* (1986).

38. Blank, *supra* note 7, at 62.

39. *Id.* at 63.

40. Advocates for Children, *Public High Schools: Private Admissions* 35-39 (1985).

rates than low-income students.⁴¹ This was true even after admissions procedures had been reformed to prohibit selective criteria at all but six of the schools. The study attributed the under-representation of low-income students to screening that continued even where it was officially prohibited, to selective recruitment, and to the fact that, while the majority of students enrolled in magnets come from the immediate surrounding neighborhoods, there are fewer magnet opportunities close to the homes of poor students. Students who attended magnet elementary schools in Chicago found it easier to gain admission to magnet high schools. In fact, some elementary schools were set up to feed into the most prestigious high school programs. Students were thus tracked early for acceptance or rejection on the basis of socioeconomic status.

In predominantly minority school districts, access to magnet schools is often an issue. Minority participation in magnet programs is sometimes limited to a proportion far smaller than the group's representation in the overall school population. Disproportionate racial quotas may be imposed out of fear that whites will not attend a school unless ensured a white majority, or policymakers may believe that a school is not integrated unless whites are in the majority.

The use of explicit racial classifications to prevent white flight, as opposed to their use to correct past discrimination through affirmative action, is extremely troubling but is at least straightforward. There is no doubt that this practice is subject to strict scrutiny by the courts.⁴² But when admissions criteria rather than racial quotas result in disproportionately low minority participation, it can be difficult to determine whether the criteria were set high with the *intent* of reducing minority enrollment or for a permissible purpose, which simply has the *effect* of reducing minority enrollment.⁴³

II. Two Contrasting New York City Examples

The New York City school system provides examples of both the advantages and the pitfalls of magnet school programs. On the one hand, the citywide high school system has all the problems of a poorly coordinated system of neighborhood schools and magnets

41. Allen, *Nonselective Magnet Schools Use Selective Criteria*, Chicago Rep., Apr. 1986, at 6-8.

42. *Parent Ass'n v. Ambach*, 598 F.2d 705, 717 (2d Cir. 1979); *Parent Ass'n v. Ambach*, 738 F.2d 574, 581 n.9 (2d Cir. 1984).

43. Federal regulations prohibit admissions criteria that have a discriminatory effect, unless a validating reason exists. See *infra* note 84.

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with various degrees of selectivity. On the other hand, East Harlem's Community School District Four's junior high school program demonstrates the potential of an all-magnet system to give every student a real choice.

Example A: An Abundance of Choice and Frustration in the Nation's Largest Public School System

New York City's huge, 275,000 student, part-magnet high school system, with its complex admissions procedures, demonstrates the effects of developing a system without districtwide planning and coordination.⁴⁴ New York's system has created some islands of excellence, but it has also undermined formerly effective neighborhood schools, failed to improve weak institutions, and resulted in serious inequities.

Each year over 90,000 entrants apply to a dazzling array of over 200 unzoned schools and programs featuring everything from "the humanities" to "oil burner service and installation." Students must list up to eight ranked choices on a complicated four-page form used citywide. One-third of all applicants are not accepted at any of their choices.⁴⁵ Through a separate procedure, some minority students are given the opportunity to compete by lottery for a limited number of seats in white-majority neighborhood schools. All other students attend their zoned, comprehensive-academic high schools or private schools. Students who fail to meet the application deadline or enter the school system after the deadline has passed must attend their zoned school.

The information system available to explain these complex options is inadequate. The information on which students base their choices is limited. Applicants receive, on average, 20 minutes of a guidance counselor's time.⁴⁶ A 324-page directory lists available programs and, in some cases, required courses within the programs. However, it does not describe program content in detail, nor does it

44. Two complementary studies of choice in New York City high schools are: Educational Priorities Panel, *Lost in the Labyrinth: New York City High School Admissions* (1985) (analyzing the mechanisms for applying to schools and the availability of information and counseling); and Advocates for Children, *supra* note 40 (analyzing admissions criteria and integration policy and their effect on low-income and minority students). A third study that analyzes the city's integration policy in the light of applicable case law and compares inputs and outcomes in integrated and segregated city high schools is Education Law Project, Columbia Law School, *Promoting Integration in the New York City High Schools* (1987).

45. Educational Priorities Panel, *supra* note 44, at 5.

46. *Id.* at 45.

indicate what admissions criteria, if any, are used.⁴⁷ A curriculum, prepared by the central board for districts to use with students before they apply, focuses on the process of making a choice rather than on the content of specific programs. Sending schools, in most cases, have no more information than parents and students can get from the directory. Once a year, a citywide fair is held at which every high school runs a booth. High schools may also hold open houses for parents or make presentations at parent meetings. Such recruitment tends to be done selectively, however, with the high schools' targeting junior highs and neighborhoods seen as particularly desirable.

Although high schools are centrally administered in New York City, this part-magnet high school system was developed without a coordinated plan. The Board of Education never considered the impact that the creation of a program for some select students would have on other schools and students. Instead, many individual decisions were made that turned a system of mainly zoned, comprehensive high schools into a system in which: (1) virtually every zoned school also runs unzoned selective programs; (2) nearly every vocational school offers highly technical and relatively selective career programs; (3) several zoned schools have been closed down and redesigned as unzoned schools with selective criteria; (4) new "theme" high schools selectively accept students on a boroughwide or citywide basis; and (5) highly selective programs in fields such as medical science compete for the city's most gifted students. Most of the decisions to create such programs were made on an ad hoc basis without significant public discussion or consideration of systemwide effects. The issues that were discussed the least, until recently, are who sets admission criteria and what criteria are appropriate.

Programs handpick applicants from computer printouts of applications that indicate test scores, attendance, grades, specific course work, and participation in special education, bilingual, or gifted programs. Educational options schools (or programs) are required to take a certain number of students with below-average reading scores.⁴⁸ Other schools, however, are permitted to set their admissions criteria as high as they wish. Generally, the more popular the program, the higher the criteria.

47. New York City Board of Educ., *Directory of the Public High Schools*, September 1987. A program in "Health Career Professions," for instance, is described as including courses in hematology, cytology, and histology. These are not exactly household words in most New York City homes.

48. Advocates for Children, *supra* note 40, at 9.

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The cumulative effect of these programs has been devastating to many neighborhood zoned schools in the city. The selective programs decline to take students with poor grades or attendance while attracting the highest achieving students away from zoned schools. These programs also have strict limits on their enrollment and can know in May whom to expect in September. In contrast, zoned schools are frequently overcrowded and must take hundreds of "over the counters" who show up throughout the year, including transfers who have not succeeded at the selective schools. As the Schools Chancellor and Board of Education President acknowledged in a letter to the editor published in the *New York Times*: "Nearly a third of all high school students are attend[ing] schools with selection criteria. Those schools are succeeding at the expense of the majority of schools which continue to do poorly."⁴⁹

In the fall of 1986, the New York City Board of Education instituted some reforms to address this problem.⁵⁰ First, schools must publish their admissions criteria, in order to help students make more realistic choices and hold schools accountable for their method of selection. Second, each educational option school must select one-half of its entering class by lottery. As a result, these programs will enroll, for the first time, some students with serious educational problems. Students will continue to be admitted in three reading test categories—below-average, average, and above-average—with half of the entrants in each category hand-selected and half picked by lottery. Depending on how schools handle their hand-selection, they may have 67% of their entrants reading above the citywide mean.⁵¹ In contrast, at many zoned schools, the vast majority of students read below the mean. Third, all schools are prohibited from using school-devised entrance examinations or in-

49. Nuzum, Litow, Wagner & Quinones, *New York Can Have School Excellence and Excellent Schools*, N.Y. Times, Oct. 20, 1986, at A26, col. 5.

50. Board of Education of the City of New York, Div. of High Schools, *High School Memorandum No. 38, Re: Admissions Policies for the Selection of Students to Screened and Educational Options Schools and Programs* (Oct. 6, 1986).

51. The new rule provides for student selection to reflect the normal distribution of reading test scores among applicants. Thus, 16% are to be selected from among applicants scoring more than one standard deviation above the mean, 68% from those scoring between one standard deviation below and one standard deviation above the mean, and 16% scoring more than one standard deviation below the mean. *Id.* However, half of the students in each category are handpicked, and, in the past, schools have generally handpicked students at the top end of their test category. Thus, it is expected that in the middle test category, all of the handpicked students, will be reading above the mean. Hence admissions will be skewed toward students reading above the mean.

interviews to screen candidates.⁵² Finally, in response to findings that special-needs students are excluded from many programs, the Board of Education has ordered that seats be set aside for limited-English speaking students and students with handicapping conditions.⁵³

These modest reforms were passed in the face of vociferous opposition from principals and parents at selective schools who feared the changes would destroy their programs. At least one education expert warned that "it is hard to create good schools but easy to ruin them."⁵⁴ The Board of Education will carefully monitor admissions results in 1987 to determine the effect of these changes.

Clearly, a number of serious equity issues remain unresolved in the New York City high school system. For the non-lottery spots, schools are still allowed to set their own admissions criteria. Sometimes these are absurdly high.⁵⁵ An earlier plan to create "clusters" of programs with similar themes and coordinated admissions criteria has not yet been instituted. There is no effective monitoring of the geographic distribution of acceptance; schools are free to bypass low-income neighborhoods, and they frequently do. Particularly troubling are the quotas used to limit minority enrollment at a number of special programs; minority enrollment is often capped at 50% even though 80% of the school population citywide is black, Hispanic, or Asian.⁵⁶

The genesis of present racial ceilings in New York City can be traced to high school "Choice of Admissions Plans." In the mid-

52. These devices were only banned after two studies found that school-administered tests were a patchwork quilt of unvalidated questions from various standardized tests that were not validated for their use in admissions and that interviews were often used to determine the race of the applicant. Advocates for Children, *supra* note 40, at 17-19. F. Smith, University Consultants Report on High School Admissions for the New York City Board of Education 28-29 (1986).

53. Board of Education of the City of New York, Div. of High Schools, High School Memorandum No. 99, Re: Admissions for Limited English Proficient Students to Educational Option High Schools and Unit Trade Vocational High Schools and . . . Admission for Special Education Students to Educational Option Schools and Educational Option Programs (Feb. 25, 1987). The policy for LEP students is that at least 6% of all offers by each selective program should go to this population and that full bilingual programs should be set up in the 13 schools most in demand among major language groups. Special education students are permitted to apply to either regular education or separate, self-contained, special education programs; however, they are always admitted to the special education program and considered for mainstreaming only when they arrive at the high school. At least 6% of all seats in vocational and career programs are supposed to be reserved for special education students in self-contained programs.

54. Ravitch, Making Good Schools Worse, N.Y. Times, Oct. 3, 1986, at A31, col. 1.

55. Advocates for Children, *supra* note 40, Appendix.

56. Office of Student Information Services, New York City School Census Data, 1985-86.

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1970s, the Board of Education abandoned attempts to integrate two all-minority high schools in Brooklyn and Queens and instead made seats in white majority schools available by lottery to students zoned for the segregated schools. Seats are limited so that the integrated schools do not dip below 50% white enrollment and so that the racial composition changes no more than four percent annually in order to prevent "white flight." Many students seeking an integrated school experience are turned away.⁵⁷

Because the number of seats available to minorities must equal or remain below the number of non-Hispanic whites attending school, opportunities for minorities decline as the percentage of whites in the system declines. Board of Education statistics reveal a steady decline over the past 20 years of about one percentage point per year in the proportion of whites in the system.⁵⁸ At the same time, the number of students seeking an integrated education who are *not* accepted by one of their first four choices in the Choice of Admissions Program has increased, in some cases dramatically.⁵⁹ The Board will permit white-majority schools to be underutilized, even in the face of overcrowding at segregated schools, rather than tip the racial balance at a school by admitting additional minority student volunteers from the overcrowded school zones. When the proportion of white students within a white-majority zone appears to be dipping below the 50% mark, the Board uses optional assignment plans to encourage minority students within the zone to apply to other schools for "stabilization" purposes.⁶⁰

Minority-group parents at Andrew Jackson High School in Queens challenged the Choice of Admissions Program in federal court. Parent groups at Jackson High School and at Erasmus Hall High School in Brooklyn initially had been successful in appealing the Program to the New York State Commissioner of Education, but the Commissioner later reversed himself and ordered the Program to continue. The district court found that the Program recreated a dual school system in which some schools were integrated while Jackson remained segregated, and ordered the Board of Education

57. Advocates for Children, *supra* note 40, at 42.

58. New York City Board of Education, School Profiles, 1982-83 (1986).

59. For example, in 1977, no student designating the segregated Andrew Jackson High School as a fourth or lower choice was assigned there. But in the 1985-86 school year, 264 such students were assigned to Jackson. Office of Zoning and Integration, New York City Board of Education, Computer Final: Andrew Jackson Optional Assignment Program 1985-86, (Sept. 1986).

60. Advocates for Children, *supra* note 40, at 23-24.

to desegregate.⁶¹ The appeals court ruled that, in a voluntary integration plan not ordered by any court, it was permissible to set quotas on racial minority participation in order to prevent "white flight," but that the Board had to prove that each component of its Program was necessary to maintain integration and that there was no less restrictive alternative.⁶² On remand to the district court, the Program was ruled invalid because there was found to be no factual justification for the 50% tipping point.⁶³ When this finding was appealed, the Second Circuit remanded for still more findings, ruling that the lower court's interpretation of statistical data was erroneous.⁶⁴ The case remains, unresolved, on the district court docket.

The Choice of Admissions Program considered in the *Jackson* case randomly assigned students to non-selective comprehensive schools in other attendance zones. Since the court ruling, without public discussion, New York City school officials have extended the imposition of racial ceilings to unzoned programs that offer special courses of study not available at the comprehensive high schools and to schools that select students based on academic achievement. It is thus New York City's avowed practice to ensure that non-Hispanic whites have greater access to magnet programs than racial and ethnic minorities.

This practice is not found in any written Board of Education policy but is freely acknowledged by Board officials.⁶⁵ They offer two justifications. The first is that the establishment of highly selective programs with a guaranteed proportion of white students has brought whites back to schools in which changing demographics previously had resulted in declining white enrollments. School officials argue that once the white population declines to below 50%, all whites rapidly flee, leaving behind a racially identified school. This argument relies on the same premise that was challenged in the *Jackson* case. By giving whites preference for seats in special programs, they prevent the school from tipping and thus prevent white flight. This argument is flawed. The School Board has provided no

61. *Parent Ass'n v. Ambach*, 451 F. Supp. 1056 (E.D.N.Y. 1978).

62. *Parent Ass'n v. Ambach*, 598 F.2d 705 (2d Cir. 1979).

63. *Parent Ass'n v. Ambach*, 738 F.2d 574, 577-79 (2d Cir. 1984) (discussing the litigation history of the case and the findings of the District Court).

64. *Id.* However, the Seventh Circuit approved a similar Chicago Plan after it was adjusted so that minority students turned away from the nearest schools to prevent white flight were guaranteed busing to integrated schools elsewhere. *Johnson v. Chicago*, 567 F. Supp. 290 (N.D.Ill. 1983).

65. *Advocates for Children*, *supra* note 40, at Appendix. Also see *Education Law Project*, *supra* note 44.

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evidence to suggest that whites are not willing to send their children to predominately non-white schools if the programs are attractive and the school population is multiethnic. East Harlem's magnet schools illustrate that whites are willing to send their children to such schools.⁶⁶

The Board also argues that the racial ceilings in selective programs actually expand access for minorities, because schools are required to bend their admissions criteria if necessary to meet the quota. The argument is, in effect, that a system that sets explicit racial ceilings may be less burdensome to minorities than one that reduces minority opportunity by setting admissions criteria high enough to exclude all but the most gifted or economically advantaged blacks and Hispanics. The latter practice is a common ploy for limiting minority enrollment.⁶⁷ But neither disproportionately low racial ceilings nor inflated admissions criteria are justifiable.

The New York City high school system inadequately serves the needs of its students. The selection procedures are overly complex, information systems are inadequate, and integration policies unfairly limit opportunities for minorities. There are some fine individual schools, but the mixed system of selective unzoned schools and nonselective zoned schools has sabotaged the zoned schools most in need of help. The incremental reforms passed in the last year are intended to make access to unzoned schools more equitable, but they do not address the basic flaws of the mixed system.

Example B: A Place for Everyone in the East Harlem "Alternative Concept" Junior High Schools

The "alternative concept" junior high schools run by Community School District Four, which serves East Harlem, provide a sharp contrast to the immense, complicated New York City high school system.⁶⁸ The District Four program is notable because all of its

66. See *infra* note 72.

67. Blank, *supra* note 7, at 92.

68. The information on District Four's program is derived from interviews by J. Stern with District officials at the Office of Community School District Four, and written materials provided by the District on file with the authors, as follows: Telephone interview with Dori Collazo, Director, Bilingual Education, District Four (Feb. 17, 1987); telephone interview with John Tainsch, Office of Funded Programs, District Four (Feb. 12, 1987); interview with John Falco, Director, Office of Alternative Concept Schools, District Four (Feb. 10, 1987); interview with Seymour Fliegel, Deputy Superintendent, District Four (Feb. 10, 1987); New York City Community School District Four, Decisions About 7th Grade: 1986 (undated) (mimeograph); New York City Community School District Four Alternative Concept Schools (undated) (mimeograph); East Harlem Mag-

junior high schools are unzoned, and students can attend the school of their choice.⁶⁹ Most schools have special themes or unique teaching philosophies that contribute to their ability to attract students. The district's strategy of deliberately keeping "alternative concept" programs small was initiated in the mid-1970s and has received considerable favorable publicity.⁷⁰ The programs are also credited with raising the district's reading scores.⁷¹ The alternative concept junior high schools are intended to accommodate students' individual needs by: (1) drastically reducing the size of the educational unit; (2) offering a variety of themes and teaching methods; (3) encouraging educational innovation at each of the individual schools; (4) increasing staff participation in decision-making; and (5) facilitating and stimulating greater parental involvement in education. Some of the programs achieve voluntary racial integration by attracting white children from private schools and neighboring districts. These programs receive some federal magnet school funds and are primarily located on the boundaries of the district.⁷²

This small school district operates its magnet alternative programs with both district-level planning and school-centered,

net School Project 1987-88, District Four, Application for Funding under the Magnet Schools Assistance Program (undated); and Community School District Four, Reading Summary Statistics (Spring 1986).

69. Community School Board District Four has jurisdiction over the public elementary and junior high schools within its district. The district enrolls approximately 14,000 students. Fifty-nine percent of the District's students are Hispanic, 37% black, and only 4% white. About 11,000 of the students receive free or reduced lunch. Interview with J. Tainsch and S. Fliegel, *supra* note 68.

The alternative concept program was started in the mid-1970s. The students at the junior high level choose from a variety of programs, including schools specializing in math and science, the performing arts, maritime study, as well as programs for students with learning and math problems.

Small size is a key aspect of the District's approach to junior high school level education; the alternative concept junior high schools range from less than 100 to under 300, in contrast to regular New York City junior high schools that may have 1,000 to 2,000 students. This reflects the district's belief that "most large junior high school behavior is not acceptable; in small environments we can achieve the degree of decorum necessary for learning." The district now has five alternative concept schools at the elementary level; however, most elementary school-age pupils attend their zoned school. Interview with S. Fliegel, *supra* note 63.

70. See, e.g., A. Bastian, N. Fruchter, M. Gittell, C. Greer & K. Haskins, Choosing Equality: A Report of the New World Foundation 76, 77 (1985); Fishman, Middle Class Parents' Guide to the Public Schools, New York Magazine, Jan. 13, 1986, at 28, 29; Ellison, A School District With Choices, Christian Science Monitor, Dec. 13, 1985, at 27, col. 4; Schools That Dare to Compete, N.Y. Times, Mar. 23, 1982, at B3, col. 1; Maeroff, Exploring Alternatives in East Harlem Schools, N.Y. Times, Jan. 2, 1982, at A1, col. 7.

71. See, e.g., Schools that Dare to Compete, *supra* note 70.

72. East Harlem Magnet Project 1987-1988, *supra* note 68, at 2. In 1985-86, the district's five magnet schools had an enrollment of 20% to 49% non-minority students. *Id.*

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teacher-based innovation. The initiative for creating individual programs usually is generated by teachers at the local school level; however, there is overall district planning to ensure that the programs meet the range of district needs and respond to student and parent interest.⁷³

A potential obstacle to a successful magnet school system is developing an effective plan for informing the public of options, advantages, and selection processes. The information dissemination system in effect in District Four suggests that this obstacle can be overcome.⁷⁴ Over time, an information system has been designed for implementing parental choice that appears to meet the needs of the district's low-income community. In the sixth grade all students and their parents are required to choose junior high schools for the following year. There are special orientation sessions for sixth grade teachers, who are crucial in ensuring informed choice. Since the teachers know the individual students and are familiar with the district's programs, they are able to give personal counseling.⁷⁵ There are meetings with parents conducted in English and Spanish, and a two-week school visitation period. A booklet entitled *Decisions About Seventh Grade*, describing the program in straightforward, simple English and Spanish, is given each year to students and their parents. The system has been in operation for thirteen years, so much information is available to parents by word-of-mouth. The students make six choices, in order of preference, on an uncomplicated, one-page form that is countersigned by the parent, teacher, and principal.⁷⁶ The form includes special student interests and abilities, standardized test scores, and teacher recommendations.

The East Harlem system provides the great majority of its students with a real choice. Students are selected by the receiving school directors, who hand-select based mainly on the sending schools' appraisals of who would do well in a particular program. Only a few programs have more specific entrance criteria. The di-

73. Interviews with S. Fliegel, J. Falco, *supra* note 63.

74. Another example of an effective information system is the school system in Cambridge, Massachusetts. There the state funds a parent liaison in every school.

75. Interviews with S. Fliegel, J. Falco & D. Collazo, *supra* note 56. According to Ms. Collazo, the District Four Director of Bilingual Education, the district's information system does reach non-English-speaking parents. She did raise concerns, however, about how the choice system worked for families newly arrived in the District.

76. *Decisions About 7th Grade*, *supra* note 63, at 54.

rectors actually meet together to divide up the entering class. Generally, students are accepted into one of their top three choices.⁷⁷

While the opportunity for choice is encouraging, the District Four program does raise certain concerns about tracking and limiting opportunities for some children. There are extreme variations in the reading and math scores among the various middle schools. For instance, in 1986 the percentages of seventh grade students reading at or above grade level in alternative concept schools ranged from highs of 97.7, 97.3, and 90.0, to lows of 30.0, 36.8, and 42.1.⁷⁸ These statistics, coupled with the small, homogeneous nature of each program and the deliberate counseling of students toward programs geared to their perceived ability level, indicate a degree of tracking. Ten percent of the district's students are of Limited English Proficiency (LEP) and a majority of its school population is Hispanic. However, LEP students and others who want a bilingual program cannot enroll in the alternative concept programs. Instead, they may choose from three bilingual junior high school programs. Those LEP students who wish to enroll in alternative concept schools are given language assistance.⁷⁹ More disturbing is the situation for the 10% of the district's students who, because of handicapping conditions, are assigned to special education. They do not participate in the choice system at all, but are administratively assigned to separate programs located in the district's schools.⁸⁰

Yet the East Harlem schools can point to considerable success. These junior high schools provide the varying types of education that a heterogeneous student body needs. Teachers counsel their students in the selection and assignment processes. Parents also participate in the procedure. Thus the East Harlem schools are able to provide a diverse, yet cohesive, system that serves student needs.

77. According to district officials, early in the history of District Four's alternative concept schools, there were hundreds of complaints from students each fall who wished to transfer. Presently, because of the increased level of knowledge and the attention given by the schools to the selection and assignment process, there are very few complaints. The officials also attribute their success to the fact that the alternatives are all real choices, and to the district's willingness to close programs that fail. Interviews with S. Fliegel, J. Falco & D. Collazo, *supra* note 63. Similarly, in Cambridge, Massachusetts, district officials changed leadership at schools that were not attracting students. Rossell & Glenn, *supra* note 14, at 20, 21.

78. Reading Summary Statistics, *supra* note 63. This comparison excludes programs for students with learning and adjustment problems.

79. Interview with D. Collazo, *supra* note 63.

80. Interviews with S. Fliegel & J. Falco, *supra* note 63.

III. *A Model Magnet System*

In order to improve some schools without destroying others, magnets must be part of a coherent, districtwide scheme. Where desegregation is court-mandated, it often takes the form of a combination of strategies, including mandated-school reassignments and magnet alternatives.⁸¹ Or the court may take a carrot and stick approach with mandated reassignment as the back-up plan if a magnet program fails to meet integration goals.⁸² In either case, the mixed system may work well if it is well planned and has the power of a court order behind it. In contrast, school board-initiated integration plans are generally the product of political compromise. School officials rarely have the political power to mandate reassignment for integration purposes.⁸³

Unfortunately, voluntary integration plans without choice incentives accomplish little. In a system of neighborhood schools, income and housing segregation may severely limit integration opportunities or place all the burden on minorities through one-way busing. In a mixed system of neighborhood schools and magnets, without mandated assignments, zoned schools may become dumping grounds for students not admitted to magnets.

However, if everyone goes to a school of his or her choice, as the case of District Four demonstrates, presumably no one goes to a school of last resort. If everyone has to choose a school in order to go to school at all, and if the sending schools take responsibility for ensuring that informed choices are made for every child, then the disadvantages of children with less sophisticated or aggressive parents are mitigated, and the benefits of choice and the burdens of travel are distributed more fairly among all classes and races.

We believe a system of magnet schools could be developed that would avoid the problems the New York City high schools now have and would emulate the best features of District Four's junior high school program. Such a system would meet the needs of a diverse city's student-age population without sacrificing the education of some for the good of others.

81. See Gewirtz, *supra* note 13.

82. See Hoschschild, *supra* note 17.

83. See Raywid, *supra* note 2.

A. District-Level Responsibilities

The district must assume responsibility for overall planning and coordination of magnet programs.⁸⁴ Coordinated planning is essential to assure a range of options that meets the needs of the total school population and takes into account such issues as geographic balance and program popularity. (For instance, the district must consider replicating oversubscribed programs.) Most important, centralized planning must assess the impact that the creation of each magnet will have on the system's other schools. New York City's high school system demonstrates the problems that occur when central planning is not done. In that system, capped enrollments at magnet schools have resulted in overcrowding at others. The lack of planning has resulted in, for example, highly popular programs being duplicated in some boroughs, while other boroughs have none.

Central policies must also be formulated at the district level to ensure fairness and equity. Plans for racial integration, mandates to safeguard the rights of vulnerable populations with special needs, due process protections in discipline and transfer procedures, and systems to respond to districtwide issues such as homelessness, mobility, and the influx of new immigrants all require centrally determined policymaking.

Centralized planning does not necessarily require uniformity. Rather, district policies should be sufficiently flexible to allow the design of a school to reflect the imperatives of the particular community and to encourage local initiatives. However, this flexibility cannot be permitted to favor one neighborhood at the expense of another or to undermine basic equity and due process rights. Nor should policies be so complicated that they cannot be commonly understood or they will be perceived as being unfair.

The planning process of magnet schools also must be open to debate, involving both the public and the school community. Within the basic framework established centrally, the community should participate in determining the mission—the theme or educational philosophy—of each magnet school.

84. The Director of the Bureau of Equal Educational Opportunity of the Massachusetts Department of Education calls this type of district control "conditional choice" and emphasizes that a central coordinating office must be responsible for providing current and accurate information. Glenn, *Putting Choice to Work for Public Education*, 2 *Equity and Choice*, 5-7 (May 1986).

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Although school-level initiatives should be encouraged, guaranteeing that every school teaches essential facts, skills, and concepts is a district-level responsibility. The district must be willing to reorganize schools that fail to teach the essentials or that few students choose; otherwise, the schools that fail to attract students will become dumping grounds. A magnet system will not achieve district reform unless each school represents a real choice and each student is given a real choice.

B. School-Level Responsibilities

The opportunity to encourage school-based educational initiatives is a major asset of magnet systems. The structure of a magnet school program should place at the school level decision-making for such matters as school organization, teaching methods, teaching materials, and even curriculum (within broad standards set centrally). The involvement of teachers, parents, and older students should be maximized.

It is essential that flexibility and school-level involvement extend to all schools in the system, not just a few select institutions. Otherwise the schools that educate those easiest to teach will be afforded maximum autonomy and the opportunity for creativity, while the other schools will be forced to operate under narrow, centrally dictated policies. The magnet system's structure should ensure that all students in the system benefit from school-level resourcefulness.

C. Information Systems

If a magnet system is to present true opportunities to all students, information must be made available in a manner that allows real choice. While there are inherent difficulties in reaching some groups, programs such as District Four's in East Harlem demonstrate that low-income and language-minority parents can be reached. Application requirements and procedures should be as simple as is practical, with information about the process and the range of options widely distributed. The key element in successful information dissemination, however, is the sending schools. The sending schools must be knowledgeable about the options, in a position to advise students and families, and responsible for providing the information. At the same time, the magnet schools must be held accountable to the district for ensuring that their sending schools are provided with adequate information. The district must give

both the sending and the magnet schools the resources necessary for this purpose.

Both the schools and the district must be prepared to adjust their information systems in response to the changing conditions of the district and local community, e.g., language needs, new arrivals, changing demographics. Information dissemination must be a planned element of the magnet structure, and resources must be allocated accordingly in order to carry out this function.

D. Admissions Criteria and Procedures

Selective admissions criteria should never be used by popular magnet programs simply because the demand for seats outweighs the supply. Nor should acceptance into a specific program be regarded as a reward to students for prior performance. The promise of such a reward cannot be kept when, as in some New York City schools, there are 10 applicants for every seat. Furthermore, the mission of public schools must be to serve students with less-than-perfect records and special needs, as well as high-achieving, well-behaved students. The goal of the American public school system is to provide an education to *every* child; thus no child is *entitled* to a more effective education than another.

Admissions to magnet programs should be based solely on interest. Students who select a particular school as their first choice should be the first to be admitted there. If demand outweighs availability of seats, students should be assigned by lottery, again with first-choice selections being given priority. System-wide goals, such as integrating special education students, can be met by "stratified random selection," i.e., grouping applicants within categories and employing a lottery for seats available within each category. This is also a useful way to ensure the desired range of achievement levels among entrants.

Since most magnets are not highly selective, it would not be an impossible task to assimilate some harder-to-educate students within individual schools. Moreover, providing a student with a good program in a school of his or her choice is likely to reduce academic, attendance, and behavior problems. There should be one track and one set of expectations for all students, with special-needs students receiving supplemental services.

Although the general rule must be against selectivity, there may be instances where certain selection criteria can be justified. The district may decide, for instance, that the way to attract white and

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middle-class students to an impoverished minority neighborhood is by offering an advanced academic program. Selectivity also might be justified for a music or art program intended to help talented youngsters, including those whose families could not afford private lessons, meet their full potential. But when a program clearly requires a certain level of ability or achievement, the school must be able to justify its admissions criteria to the district and to the public in objective terms, in writing. The federal civil rights guidelines, which limit criteria to those that can be validated as necessary for participation, are a good yardstick for all theme programs and, arguably, are legally binding whenever the school's theme is related to a vocation.⁸⁵ The guidelines prohibit any admissions criterion that results in the disproportionate exclusion of applicants based on gender, race, ethnicity, a handicapping condition, or limited English proficiency, unless the school district can show that the criterion is essential for participation in that particular program.

The New York State Education Department has used this test, looking to effect rather than intent, to require a wide range of New York City magnets to admit students with limited English proficiency.⁸⁶ The guidelines also have been used successfully in New Jersey to fashion a consent decree guaranteeing equitable access to non-English speaking students.⁸⁷ The guidelines also prohibit discriminatory impact in recruitment and counseling and in the application process itself.

No school should be permitted to set its admissions policy unilaterally, but every school should be represented when admissions policies are determined at the district level. The actual selection and assignment of students also must be done at the district level. It is impossible to enforce limits on selectivity or to meet districtwide goals for racial or economic integration without district control over assignments. Naturally, each school looks out for its own interests and wants the strongest possible student body. No particular magnet school has a stake in assuring that individual students obtain the placement most appropriate for them. The district, in contrast, is responsible for each child, is obligated to place each child, and

85. Most if not all "theme" programs in New York City, and elsewhere, are covered under federal civil rights guidelines for vocational programs. U.S. Dep't of Health and Human Services: Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex and Handicap, 25 C.F.R. § 80, Appendix B (1986).

86. New York State Dep't of Education, Letter of Findings (Sept. 24, 1985) (on file with authors).

87. *Berrios v. Board of Educ.*, CA No. 80-3211 (D.N.J. July 1, 1981).

therefore has a greater incentive to ensure fairness and to ensure that some schools do not thrive at the expense of others.

E. Integration Policy

Ideally an all-magnet system should have as many integrated schools as possible. Historically, a school system has been considered desegregated once the racial composition of its schools roughly reflects that of the district as a whole. But when the school district is overwhelmingly made up of minority students, it may not be possible to spread white enrollment throughout the schools in the district. Courts have ruled that school districts may put disproportionately low ceilings on minority enrollment in integrated schools and permit disproportionately high enrollment by whites in order to prevent white flight. The courts have required, however, that such plans be narrowly tailored so that they restrict minority participation no more than is necessary to meet the permissible goal of retaining whites.⁸⁸

Plans that require white majorities in every integrated school systemwide cannot meet this narrowly tailored requirement. The notion of guaranteeing whites at least half the seats in a school is based on the experience of biracial, black-white school districts in the South. But today, many urban school districts are multiracial. This multiraciality offers schools an opportunity to distribute students in such a way that no one ethnic/racial group is in the majority, and participation rates approximate more closely representation in the overall population.

The notion of a white majority being required to prevent white flight is also based on experience with mandatory assignment of students to regular neighborhood schools lacking special programs. It may well be unnecessarily restrictive for voluntary programs with distinctive themes to be required to keep white enrollment at an arbitrary level. If the district uses disproportionate racial ceilings at all, the decision should be made on a school-to-school basis. A school that offers a theme that is attractive to certain whites may be able to attract them to the school even if they will be in the minority. However, in order to attract whites to a more typical school in a minority neighborhood, the district may have to guarantee them a large proportion of seats in the school. In addition, magnet school plans should not put all the burden of travel on minority students.

88. *Parent Ass'n v. Ambach*, 598 F.2d 705 (2nd Cir. 1979); *Johnson v. Chicago*, 604 F.2d 504 (7th Cir. 1979).

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Where residential segregation exists, it is important that magnets be designed to attract whites into minority neighborhoods, as well as minorities into white neighborhoods.

Disproportionately low ceilings on minority participation are legally impermissible for unique programs in the school system. There may not be a fundamental right to attend any particular school, but students cannot be denied equal educational opportunity based on what courts have termed a "suspect classification."⁸⁹ In a city with a declining white population, there is no reason to have an all-white or white-identified school. However, schools with no white students may be unavoidable. When it is not possible to integrate every school, it is essential that segregated schools get the same, if not greater, resources as integrated schools.⁹⁰

F. Resource Allocation

To ensure that having a choice is meaningful, the alternative schools must be equivalently attractive. Building maintenance, low student-staff ratio, well designed auditoriums and playing fields, and adequate computer facilities and libraries all cost money and are factors that contribute to the relative desirability of magnet schools. The basic rule must be equal, per capita expenditures within grade levels throughout the system.

There are, however, certain types of education that are inherently more expensive. These include drastically reduced class size to permit individualized remedial instruction, extra class periods for students who can handle a heavier course load, special equipment and reduced student-teacher ratio in vocational-technical shop courses, and summer school. Not every school would be funded to provide all of these programs. When budgets are tight, districts may be justified in simply not offering expensive shop courses or unlimited summer school in every school.

89. Johnson, *supra* note 80. See Education Law Project, *supra* note 44, as it relates to the New York City integration policy.

90. In fashioning a desegregation remedy, federal courts can go beyond ordering reassignment of students to include "remedial programs in desegregation plans to overcome the inequalities inherent in dual school systems." *Milliken v. Bradley*, 433 U.S. 267, 283-86 (1976). When the predominance of minority students in a school district necessitates some children attending all-minority schools, courts have ordered special enhancements at the segregated schools. See, e.g., *Adams v. United States*, 620 F.2d 1277 (8th Cir. 1980); *Liddell v. Missouri*, 731 F.2d 1294, 1313-14 (8th Cir. 1984). As the *Liddell* court explained, "When no other feasible desegregation techniques exist, then specific remedial programs for students in the remaining one-race schools may be included as a means of ensuring equal educational opportunity." 731 F.2d at 1314. For further discussion, see Education Law Project, *supra* note 44.

It is important to deal openly with competing demands for resources and to provide a public forum for setting budget priorities. Advocates of program enhancements for the highest achieving students are often the most vocal. The district must take special care to protect the interests of average and low-achieving students.

Money is not the only resource that must be equitably allocated. The all-magnet district must take pains to distribute experienced and new teachers fairly. Judicious selection of sites for specific programs is crucial. For instance, school buildings in particularly desirable locations should not be used for highly selective programs. Schools in locations perceived as unsafe or otherwise undesirable should be given special enhancements such as attended parking lots, security guards, and attractive, well-maintained physical plants.

Capping enrollment at magnets to ensure small school size may lead to overcrowding at other schools. Similarly, limiting minority enrollment at integrated schools may lead to overcrowding at segregated schools. Effective districtwide planning must include close attention to utilization patterns, and timely construction and rehabilitation of school buildings, so that policies that benefit one school do not lead to overcrowding another.

Conclusion: Magnet Schools—The Least Dangerous Alternative

Magnets offer the best chance for both quality education and integration in urban public schools. However, a mixed system of zoned and magnet schools is likely to result in a few good programs that take the best students from zoned schools and undermine integration. Nor will an unplanned laissez-faire system of competitive magnets guarantee quality at every school. Unless there are far more seats than students, inadequate schools do not get shut down; they just get assigned the students the other schools do not want. The students at greatest risk for academic failure and for dropping out will be forced to attend the schools least able to serve them. The least dangerous alternative, then, is a planned system of magnet schools operated with centralized coordination of program choice and local control over educational decisions.

The New York City high schools illustrate how unplanned development of magnets can result in chaos, defeating both equity and school improvement goals. Such a system can have tragic consequences for the child who is shut out of its "elite schools" and assigned to one of its "holding pens," to use the language of the mother's letter that opened this article. In contrast, the East Har-

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lem junior high schools, by no means a perfect model, do illustrate how an effective information system and a combination of district coordination and school-based initiative can improve the quality of education systemwide.

Implementing our model magnet plan would be no easy task. Not only are we asking district officials to buck highly vocal special interests in order to open up magnets to the full range of students, but also we are asking them to be the ultimate guarantors of educational quality. We are asking them not to be satisfied with running a few good schools for the children of the most affluent or most determined parents, but rather, to make sure that they are providing *every* child with an appropriate and effective education.