



Will New Jersey desegregate its schools? Ruling in 2018 lawsuit expected

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A much-awaited ruling on a school segregation lawsuit could have historic consequences for New Jersey's public schools and add more than a wrinkle to a school year that is already politically and culturally polarized.

New Jersey's public schools are intensely segregated racially and economically, alleges a lawsuit filed in 2018 in state Superior Court in Mercer County against the state by the Latino Action Network and the National Association for the Advancement of Colored People (NAACP) and other organizations.

The parents and guardians of nine Latino and Black children and one white child from Highland Park are also party to the suit, which states that Lamont Repollet, then the acting commissioner of the state Department of Education, and other state officials and agencies have long known how segregated the state's schools are, but neglected to make changes. The suit notes that the state publishes annual data on the racial and socioeconomic status of public school populations in district report cards.

The lawsuit was argued before Judge Robert Lougy in March, but sources close to the case said Friday that there is no word yet on when a ruling may be expected.

"We know that this is the civil rights issue of our time now," said Cuqui Rivera, program manager at Latino Action Network. "We're very much organized to react to all aspects of it, to a good decision or a fair decision or a bad decision or an indifferent continuance."

Rivera said the administration talks about the state's having "the best school system in the country, and it's true in certain areas of New Jersey, but when you come to urban districts it's completely upside down, reversed, so finish the sentence," she said.

Gov. Phil Murphy would not weigh in on the lawsuit, citing state policy not to comment on ongoing litigation, when asked about it during his visit to Ridge High School in Basking Ridge on Sept. 12.

New Jersey has among the most segregated schools in the nation, experts have said, and this affects the poorest communities in the state, which tend to have large Black and Hispanic populations.

Segregated schools in poor areas often have fewer resources, and students there suffer, funneling them back into poverty, some argue. Research shows that students from all backgrounds benefit from integrated schools.

“A system that segregates students by race typically serves to send more Black and Latino students to high-poverty schools,” said Stefan Lallinger, head of Bridges Collaborative, an integration-focused group at the Century Foundation, a progressive think tank.

Experts also say there is no easy fix to the problem, and any solution will come with a challenge, politically.

The majority of white and Asian students in New Jersey attend schools where 22% to 24% of students are poor, while many Black and Hispanic students attend schools where nearly 60% of students are living in poverty by the same standards, according to a 2017 report from UCLA’s Center for Civil Rights.

And the picture of segregation in the state has changed since 1965, when immigration opened to non-white countries outside Western Europe.

New Jersey’s school-age students comprise four races now: a declining number of white students while the number of Black students has remained relatively steady. More than a fourth of students in the state are Latinos, and one in 20 is Asian.

The lawsuit asks for the following:

1. A ruling declaring that New Jersey’s segregation of Black and Latino students is unlawful and that assigning students to public schools based on their municipality is unlawful because it causes segregation.
2. A ruling that it is unlawful to require charter schools to prioritize enrolling students who live in-district.
3. “Enjoin” or stop the practice of assigning students to public schools based on where they reside. Order the state Legislature and Education Department to adopt a “replacement assignment methodology” with a plan in three months.
4. Pay attorneys' costs as permitted by law

New Jersey's segregation history

Although mandatory school segregation is prohibited in New Jersey, roughly 270,000 Black and Latino students — nearly half — attend schools that are more than 90% non-white. Many of those schools are also marked by high levels of poverty.

Overall, New Jersey ranks sixth among the states in terms of the highest segregation of Black students and seventh in segregation of Latinos, according to a 2017 UCLA study.

New Jersey's segregation problem stems from already segregated residential neighborhoods and municipalities — a situation that has roots in discriminatory lending policies that targeted African American borrowers. The state has 686 school districts where wealthy towns share boundaries and shopping centers with poorer towns but do not share their schools.

In the 1940s and through the early '50s, school officials also unofficially contributed to segregation by redrawing neighborhood lines to exclude Black residents, even adjusting them when Black families moved in, according to Zoe Burkholder, a historian at Montclair State University.

Residential segregation was “incredibly powerful,” said Burkholder, but even in racially diverse towns like Montclair, “there was still gerrymandering of school assignment lines.”

School officials “would take out their maps every year and start drawing circles around which neighborhoods would be assigned to which schools, and that would give school officials a great deal of freedom ... Sometimes when they modified those catchment zones, they could cross the street and circle one Black family's house. They could literally free-draw neighborhood catchment zones,” said Burkholder, who lives in Montclair, where her children attend public schools.

Still, the extent of segregation in New Jersey schools makes little sense, given the state's progressive past. New Jersey was one among several northern states that outlawed segregation in schools as far back as the 1880s, because politicians recording votes at the time noticed that it would help secure the votes of Black men, Burkholder said.

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Court rulings have since repeatedly taken a position against it, including a 1965 ruling that said “formal” segregation and “de facto” segregation violated the spirit of the state's constitution, according to a report by the Century Foundation. In 1971, the state Supreme Court and the commissioner of the Department of Education stepped in to merge the Morris Town and Morris Township school districts when the latter considered breaking off to create its own high school.

Those decisions can have political costs. Carl Marburger, who was the education commissioner when that took place in 1971, was not confirmed by the state Senate for a second term.

Example of segregated schools

One example of school segregation is Essex County's Glen Ridge, a mostly white, wealthy and small district bordered by Bloomfield and Newark, both with mostly Black and Hispanic student populations, said Burkholder. Glen Ridge is 75% white, with 0.2% of its students considered low-income. Bloomfield schools' student population is 24% white and 32% low-income. Newark has a 7% white student population and 79% of its students fall in the low-income category.

As far as state aid given to each of the three Essex County school districts, Glen Ridge received \$1.9 million in the current school year, an increase of \$327,000 from last year, Newark received

\$1.04 billion, \$120 million more than last year, and Bloomfield schools received \$45.6 million, \$10 million more than last year. Aid, according to the state, is awarded on a per-pupil basis.

“School district assignment affects the value of real estate, so families get ferocious over basically protecting their assets, in this case, the value of their house, which is directly tied to the value of their school, which is directly tied to the racial and socioeconomic demographics of that school,” Burkholder said. “It would take a legal structure to change it.”

Is there a case to be made?

An attorney for the state argued in March that there is no magic number that points out segregation or integration in New Jersey’s schools. The plaintiffs said that even without a legal definition, segregation is a holistic problem the state must address. And to further complicate the matter, the state’s public charter school association “intervened,” or joined in the lawsuit as a third party, to defend against the argument by the Latino Action Network and the NAACP that charters, which can enroll children from different districts, make segregation worse. Most of the state’s public charter schools operate high-performing schools in Newark, Camden and Trenton, urban districts with a majority of low-income Black and Hispanic students.

Public schools were segregated long before charters entered the picture, and it is the state that limited charters from expanding into suburban areas, said Harry Lee, who heads the state’s Public Charter Schools Association.

Outside experts who have tried to address segregation using different approaches and worldviews also agree that the state has a problem.

“I would be surprised if most people in most districts in New Jersey don’t recognize that there is de facto segregation, that you have a lot of school districts that tend to be high concentrations of one race or the other,” said Neal McCluskey, director of the Center for Educational Freedom at the libertarian Cato Institute in Washington, D.C. His center looks at how schools can be more cohesive socially, but with less intervention from the government than is advocated by progressive think tanks like the Century Foundation.

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“There is no silver bullet for achieving racial integration in schools. One way or another, people end up choosing what they want, and people tend to want to go to schools with people similar to themselves,” he said.

He emphasized choice in any solution to desegregating schools, especially in New Jersey, where they have evolved over decades as community institutions maintained by property taxes. Integrating these districts would not be as easy, he said, “unless the state abolishes all these municipality-sized school districts, which, I would imagine, would be politically unpopular.”

A state-level action would probably be the only way to remedy this, said Lallinger, of the Century Foundation's Bridges Collaborative. “I think it would be hard for the judge to rule anything other than that schools are functionally segregated in New Jersey and that the state needs to come up with a comprehensive plan to remedy it,” he said.

And it would be politically difficult, said Lallinger, whose grandfather argued in the landmark *Brown v. Board of Education* case that desegregated schools in the Jim Crow South. His group examines social problems from a progressive lens.

“Lack of political will and courage have prevented segregation from being addressed on a national level in the last few decades,” he said, “... but it’s not a reason for inaction.”

Not the old fix for segregation

New Jersey’s hundreds of small school districts are unlike those in southern states, which are mostly on the county level, meaning the state would have to step in to address broad problems such as segregation, Lallinger said. He warned against “fear-mongering” around the lawsuit and its impact.

Fixing segregation does not mean busing children from one district to another, he said, a practice that occurred decades ago and was replaced by modern solutions that create incentives for families.

Regardless, there is some resistance to change.

“Because of the way we fund schools, people have felt that because they have purchased property in a particular place, that it is their right to a certain school. That is something people will attempt to argue before they even know what the potential remedies are,” said Lallinger.

But here, too, any solution would have to be customized to meet the needs of local communities, he said, and “there’s no one-size-fits-all” solution. He agreed that school choice is important, but that would work only with “stringent guidelines and barriers to prevent people from taking advantage of the system,” he said.

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District making changes faces challenges

Choice has become a thorny issue in the racially diverse, high-tax South Orange-Maplewood School District in Essex County. The district took away courtesy buses for families while rolling out a new integration program, unrelated to the segregation lawsuit. The system assigns students to a school within the district based on an algorithm that gives parents no choice. The system does not take work hours, child care or transportation into account as hardships.

South Orange-Maplewood's integration initiative is also facing a lawsuit from a family in the district.

Maplewood resident Greg Mortenson is suing the district for refusing to transfer his kindergarten child to a school that is walkable for the family or to a school that is far enough away to qualify for a bus. As a result of the refusal, the family spends an hour commuting to school every day. The district, according to the lawsuit, informed Mortenson that accommodating requests like his would defeat the purpose of the integration program, which is to create more diverse schools.

Mortenson's child was assigned to a school that is just short of 2 miles from the school and does not qualify for a state-mandated school bus. The complaint says the district did not "meaningfully engage" with the family's hardship even though they asked to transfer their child to three other schools.

"I feel that the way the district sold the integration program is a lot different from how it's working in practice," Mortenson said. "This is a really big change in how kids get assigned to school, and it's baffling to me that there's no acknowledgment that hey, this is a big change ... and let's work as a community and figure out the best possible way to make this work."

Making a case for magnet schools

Meanwhile, the Montclair School District, also in Essex County, is home to a relatively successful integrated school system from the 1980s through a magnet school system, recommended by the lawsuit's plaintiffs. The lawsuit's plaintiffs also suggest inter-district transfer programs, which allow Black and Hispanic students to elect to attend schools in other districts.

McCluskey and Lallinger recommended magnet systems as options that provide "controlled choice." Parents rank preferences, and schools are created with a specialty, or a "magnet," to attract families from other parts of town. Magnet schools can have any number of specialties: a highly successful model in Wake County, North Carolina, has schools focused on "language immersion" and "leadership and tech."

Court challenges have continued to change how integration programs work. Montclair schools have changed from a system that used racial identity to assign schools to one that draws children from zones with different income levels, after a 2007 court ruling in Seattle, said Burkholder, the Montclair State historian.