

Examining the Racial Impact of Public School Attendance Zones in Colorado



A Report of the
Colorado Advisory Committee to the
U.S. Commission on Civil Rights

March 2025

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. They are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

Letter of Transmittal

Colorado Advisory Committee to the U.S. Commission on Civil Rights

The Colorado Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding public school attendance zones and segregation as part of its responsibility to study and report on civil rights issues in the state. The contents of this report are primarily based on testimony the Committee heard during public meetings held via videoconference on February 1, 2023, March 15, 2023, April 19, 2023, July 19, 2023 and in person on May 15, 2023. The Committee also includes related written testimony and other resources submitted during the relevant period of public comment.

This report was voted on unanimously by the Committee on March 19, 2025. It begins with a brief background of the issues to be considered by the Committee and presents findings as they emerged from this testimony, as well as recommendations for addressing areas of civil rights concerns. While additional important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion.

Colorado Advisory Committee to the U.S. Commission on Civil Rights

Alvina Earnhart, *Chair*, Milliken

*William Trachman, *Vice Chair*, Denver

Christine Alonzo, Denver

Charles King, Castle Pines

William Banta, Englewood

David Kopel, Boulder

Pamela Benigno, Arvada

Joseph Peters, Denver

Darrell Jackson, Broomfield

Douglas Spencer, Superior

*Submitted Statement (*See Appendices B for Committee Member Statement*)

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Introduction

Topics Addressed

The Colorado Advisory Committee to the U.S. Commission on Civil Rights (Committee) has investigated the effect of school attendance boundaries—also known as “catchment areas”—on school segregation.¹ The Committee has focused in particular on 20 U.S.C. §1703(c), a long-overlooked provision in the federal Equal Educational Opportunities Act of 1974 that provides both:

1. A qualified individual right to public school choice, as a federal civil right; and
2. A reliable legal basis for taking segregative/integrative effects—as defined by the law—into account when drawing attendance boundaries and setting school-assignment policies.

The jurisdiction of the U.S. Commission, and thus of the Committee, encompasses deliberate discrimination or disparate impact that affects civil rights. This report addresses deliberate discrimination or disparate impact in violation of 20 U.S.C. §1703(c).

Topics Not Addressed

Some scholars question whether school integration is the correct normative goal for civil rights law.² A related literature doubts the individualist (or non-classification) framing of American civil rights law, as compared to a collectivist (or non-subordination) framing.³ This report does not engage with these debates. The report takes the current structure of civil rights law as a given.

Similarly, a growing literature in education policy raises debates about school choice that are rooted in political economy writ large, rather than educational efficacy or individualized civil rights.⁴ This report engages with policy debates over school choice related to its historical origins

¹ Although the term “segregation” often refers to intentional, or *de jure*, efforts to divide individuals of different races, e.g., *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 495 (1954), we use the term and its variants here to include *de facto* racial disparities because the relevant federal statute embraces that usage.

² Bell, Jr., Derrick A. *Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform*. Oxford, UK & New York, NY: Oxford University Press, 2005; Rickford, Russell. *We Are an African People: Independent Education, Black Power, and the Radical Imagination*. Oxford, UK & New York, NY: Oxford University Press, 2016.

³ Goluboff, Risa. *The Lost Promise of Civil Rights*. Cambridge, MA: Harvard University Press, 2007; Gordon, Leah N. *From Power to Prejudice: The Rise of Racial Individualism in Midcentury America*. Chicago, IL: University of Chicago Press, 2015.

⁴ Rooks, Noliwe. *Cutting School: Privatization, Segregation, and the End of Public Education*. New York, NY & London, UK: New Press, 2017; Ewing, Eve L. *Ghosts in the Schoolyard: Racism and School Closings on Chicago’s South Side*. Chicago, IL: University of Chicago Press, 2018; Morel, Domingo. *Takeover: Race, Education, and*

and its effects on segregation,⁵ but does not engage in the broader debate over political economy. As with the alternative normative visions of civil rights just mentioned, this report acknowledges such debates where relevant but leaves the merits of the matter as outside of scope.

Sources of Information

The Committee held a series of web hearings with national experts, followed by an in-person hearing (and supplemental web hearing) with Colorado-based scholars, advocates, community groups, and administrators.⁶

The Committee heard first from a series of national experts. On February 1, 2023, Dr. Genevieve Siegel-Hawley from Virginia Commonwealth University School of Education and Dr. Meredith Richards from the Simmons School of Education and Human Development at Southern Methodist University presented published research concerning attendance zones. On March 15, 2023, Tim DeRoche, founder of Available to All, presented on his book *A Fine Line: How Most American Kids Are Kept Out of the Best Public Schools* (Redtail Press 2020). And on April 19, 2023, Jude Schwalbach from the Reason Foundation and Dr. Tomás Monarrez from the Urban Institute presented their empirical research on open enrollment policies and attendance zones, respectively.

The Committee next convened an in-person hearing on May 15, 2023. The Committee heard first from a panel designated for policy advocates, featuring the testimony of Dr. Brenda Dickhoner from the advocacy group Ready Colorado; Dr. Tom I. Romero II from the Sturm College of Law at the University of Denver; and Kathy Gebhardt from the Boulder Valley School District Board of Education. The Committee next heard from a panel designated for community organizers, featuring the testimony of Nicholas Martinez from 50CAN/Transform Education Now; Deborah Hendrix from Parents Challenge; and Dr. Antwan Jefferson from the School of Education and Human Development at the University of Colorado at Denver and the *Denver Journal of Education*

American Democracy. New York, NY: Oxford University Press, 2018; Todd-Breland, Elizabeth. “The Janus-Faced Neighborhood School.” In *The Return of the Neighborhood as an Urban Strategy* (Michael Pagano, ed.), (Champaign, IL: University of Illinois Press, 2015), pp. 133-138.

⁵ Orfield, Gary and Erica Frankenberg (eds.). *Educational Delusions? Why Choice Can Deepen Inequality and How to Make Schools Fair*. Berkeley, CA: University of California Press, 2013; MacLean, Nancy. *Democracy in Chains: The Deep History of the Radical Right’s Stealth Plan for America*. New York, NY: Viking Press, 2017; Suitts, Steve. *Overturing Brown: The Segregationist Legacy of the Modern School Choice Movement*. Montgomery, AL: NewSouth Books, 2020; Hale, Jon N. *The Choice We Face: How Segregation, Race, and Power Have Shaped America’s Most Controversial Education Reform Movement*. Boston, MA: Beacon Press, 2021.

⁶ Meeting records and transcripts are available here: <https://usccr.box.com/s/yg9f2b0d9erunj4nszdmc26ra30wh0gx>. Hearing before the *Colorado Advisory Committee to the U.S. Commission on Civil Rights*, February 1, 2023, (web-based), Transcript (hereafter cited as “2/1/2023 Hearing”); Hearing before the *Colorado Advisory Committee to the U.S. Commission on Civil Rights*, March 15, 2023, (web-based), Transcript (hereafter cited as “3/15/2023 Hearing”); Hearing before the *Colorado Advisory Committee to the U.S. Commission on Civil Rights*, April 19, 2023, (web-based), Transcript (hereafter cited as “4/19/2023 Hearing”); Hearing before the *Colorado Advisory Committee to the U.S. Commission on Civil Rights*, May 15, 2023, Transcript (hereafter cited as “5/15/2023 Hearing”); Hearing before the *Colorado Advisory Committee to the U.S. Commission on Civil Rights*, July 19, 2023, (web-based), Transcript (hereafter cited as “7/19/2023 Hearing”).

and Community. Last, the Committee heard from a panel designated for school administrators, featuring the testimony of Dr. Damon Brown, the deputy superintendent of Mapleton Public Schools; Brian Eschbacher, founder of Eschbacher Consulting LLC and formerly a district administrator in Denver Public Schools; and Vernon Jones Jr., executive partner of FaithBridge and formerly a principal in Denver Public Schools. On July 19, 2023, Rico Munn, former superintendent of Aurora Public Schools and former member of the State Board of Education (among several other relevant experiences), testified as well.

Methodology

As a matter of historical precedent, and in order to achieve transparency, Committee studies involve a collection of public, testimonial evidence and written comments from individuals directly impacted by the civil rights topic at hand; researchers and experts who have rigorously studied and reported on the topic; community organizations and advocates representing a broad range of backgrounds and perspectives related to the topic; and government officials tasked with related policy decisions and the administration of those policies.

Committee studies require Committee members to use their expertise in selecting a sample of panelists that is the most useful to the purposes of the study and will result in a broad and diverse understanding of the issue. This method of (non-probability) judgment sampling requires Committee members to draw from their own experiences, knowledge, opinions, and views to gain understanding of the issue and possible policy solutions. Committees are composed of volunteer professionals who are familiar with civil rights issues in their state or territory. Members represent a variety of political viewpoints, occupations, races, ages, and gender identities, as well as a variety of background, skills, and experiences. The intentional diversity of each Committee promotes vigorous debate and full exploration of the issues. It also serves to assist in offsetting biases that can result in oversight of nuances in the testimony.

In fulfillment of Committees' responsibility to advise the Commission of civil rights matters in their locales, Committees conduct an in-depth review and thematic analysis of the testimony received and other data gathered throughout the course of their inquiry. Committee members use this publicly collected information, often from those directly impacted by the civil rights topic of study, or others with direct expert knowledge of such matters, to identify findings and recommendations to report to the Commission. Drafts of the Committee's report are publicly available and shared with panelists and other contributors to ensure that their testimony was accurately captured. Reports are also shared with affected agencies to request for clarification regarding allegations noted in testimony.

For the purposes of this study, **Findings** are defined as what the testimony and other data *suggested, revealed, or indicated* based upon the data collected by the Committee. Findings refer to a synthesis of observations confirmed by majority vote of members, rather than conclusions

drawn by any one member. **Recommendations** are specific actions or proposed policy interventions intended to address or alleviate the civil rights concerns raised in the related finding(s). Where findings indicate a lack of sufficient knowledge or available data to fully understand the civil rights issues at hand, recommendations may also target specific directed areas in need of further, more rigorous study. Recommendations are directed to the Commission; they request that the Commission itself take specific action, or that the Commission forward recommendations to other federal or state agencies, policy makers, or stakeholders.

Legal Framework

The Committee conducted this study in light of Fourteenth Amendment equal protection principles, the Equal Educational Opportunities Act of 1974 (EEOA), and Colorado law governing the assignment of students to schools.

Fourteenth Amendment

As interpreted by the U.S. Supreme Court, the Fourteenth Amendment’s Equal Protection Clause prohibits intentional discrimination on the basis of race.⁷ State actions drawing explicit racial classifications must thus be narrowly tailored to a compelling state interest (a heightened standard of review known as “strict scrutiny”).⁸ Under the Supreme Court’s interpretations, the Equal Protection Clause does not prohibit facially neutral laws that disproportionately burden racial or ethnic minorities, in the absence of intent to discriminate.⁹ Yet even facially neutral laws must satisfy strict scrutiny when they are driven by discriminatory intent, and context (including disparate impacts) can provide evidence of such intent.¹⁰

These principles have long been applied to public education, prohibiting intentional school segregation on the basis of race.¹¹ Because the Equal Protection Clause prohibits only intentional discrimination, “de jure” segregation is facially unconstitutional, but “de facto” racial disparities are unconstitutional only if there is evidence of discriminatory intent.¹² And because racial

⁷ U.S. Const. amend. XIV; *Washington v. Davis*, 426 U.S. 229 (1976).

⁸ E.g., *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023) (noting that college’s race-based admissions program failed strict scrutiny).

⁹ *Washington*, 426 U.S. 229.

¹⁰ *Id.* at 241 (citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)); *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977) (“Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face.”); *Lawrence v. Texas*, 539 U.S. 558, 600 (2003) (Scalia, J., dissenting) (“A racially discriminatory purpose is always sufficient to subject a law to strict scrutiny, even a facially neutral law that makes no mention of race.”).

¹¹ *Brown v. Board of Education*, 347 U.S. 483 (1954).

¹² *Milliken v. Bradley*, 418 U.S. 717 (1974). This report discusses the “de jure” and “de facto” distinction in more detail below.

classifications are subject to strict scrutiny, school districts must show how their actions are narrowly tailored to a compelling state interest even when the classifications are intended to benefit (rather than discriminate against) racial minorities.¹³

Given these interpretations of the Equal Protection Clause, it's unclear whether school districts may ever intentionally consider race while setting policy. In the Supreme Court's most recent K-12 case, *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, Justice Anthony Kennedy argued that districts could do so as long as they do not use race in individualized determinations on student placement:

If school authorities are concerned that the student-body compositions of certain schools interfere with the objective of offering an equal educational opportunity to all of their students, they are free to devise race-conscious measures to address the problem in a general way and without treating each student in different fashion solely on the basis of a systematic, individual typing by race.

School boards may pursue the goal of bringing together students of diverse backgrounds and races through other means, including strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race. These mechanisms are race conscious but do not lead to different treatment based on a classification that tells each student he or she is to be defined by race, so it is unlikely any of them would demand strict scrutiny to be found permissible.¹⁴

The Obama Administration adopted Justice Kennedy's reasoning and encouraged school districts to take such non-individualized measures in the interest of "achiev[ing] diversity or avoid[ing] racial isolation."¹⁵ But the Trump Administration withdrew the guidance, indicating that the documents were improper statements of advocacy and "inconsistent with governing principles for agency guidance documents."¹⁶ The Biden-Harris Administration subsequently placed both the 2011 and 2018 letters under review.¹⁷

Outside the K-12 context, the Supreme Court's decision in *Students for Fair Admissions v. President and Fellows of Harvard College* casts considerable doubt on the use of race even in non-

¹³ *Parents Involved in Community Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007).

¹⁴ *Id.* at 789-90 (Kennedy, J., concurring). The First and Fourth Circuits have recently upheld non-individualized efforts in the context of gifted-and-talented magnet schools, citing Justice Kennedy's opinion. *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.*, 89 F.4th 46, 60 (1st Cir. 2023); *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864, 886-87 (4th Cir. 2023). The Supreme Court has denied certiorari, with noted dissents from denial, in both cases. Neither case involved allegations under the Equal Educational Opportunities Act of 1974.

¹⁵ U.S. Department of Education's Office for Civil Rights and U.S. Department of Justice's Office for Civil Rights, *Guidance on Voluntary Use of Race To Achieve Diversity Or Avoid Racial Isolation*, Dec. 2, 2011. (hereafter cited as Dec. 2011 Dear Colleague Letter).

¹⁶ U.S. Department of Education's Office for Civil Rights and U.S. Department of Justice's Office for Civil Rights, *Guidance on Withdrawing Dec. 2011 Dear Colleague Letter*, July 3, 2018, at <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-title-vi-201807.pdf>.

¹⁷ See Office of Civil Rights, "Under Review." <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/underreview.html>.

individualized ways.¹⁸ That said, the Supreme Court’s interpretations reserve a role for the use of race-conscious remedies to address race-based legal violations.¹⁹ Further, the Supreme Court interprets Section 5 of the Fourteenth Amendment to authorize “prophylactic” legislation—that is, legislation defining violations more broadly than the Fourteenth Amendment itself does, and providing corresponding remedies—so long as the legislation is “congruent and proportional” to the relevant constitutional injuries.²⁰

Equal Educational Opportunities Act of 1974

In 1972, President Nixon wrote to Congress about busing and other desegregation remedies.²¹ He noted that court-imposed remedies had “included such plans as redrawing attendance zones” and “pairing, clustering and consolidat[ing]” school districts, leading to “extensive additional transportation of students,” “disrupting communities,” and “imposing hardship on children.”²² He thus proposed a bill that would set both (1) “criteria for determining what constitutes a denial of equal opportunity” and (2) “priorities of remedies” with busing “only as a last resort.”²³ Nixon hoped the bill would “ensure against racial discrimination in school assignments” but also “protect the principle of the neighborhood school.”²⁴

Congress enacted legislation two years later as the EEOA that largely tracked Nixon’s original proposal. It began by expressly endorsing the neighborhood school, declaring federal policy to be that “(1) all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin,” and that “(2) the neighborhood is the appropriate basis for determining public school assignments.”²⁵

Congress then created a series of tests for defining violations of equal educational opportunity, while also clarifying what is not a violation. As most relevant here, Congress prohibited assigning

¹⁸ See *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 229 (2023) (embracing the color-blindness mandate espoused by Justice Harlan in his dissent in *Plessy v. Ferguson*, 163 U.S. at 559 (1896)).

¹⁹ See, e.g., *Parents Involved*, 551 U.S. at 721 & n.10 (distinguishing on this basis *Green v. Cnty. Sch. Bd. of New Kent Cnty., Va.*, 391 U.S. 430 (1968), and *Swann v. Charlotte–Mecklenburg Bd. of Ed.*, 402 U.S. 1 (1971)).

²⁰ E.g., *Allen v. Cooper*, 589 U.S. 248 (2020); *City of Boerne v. Flores*, 521 U.S. 507 (1997).

²¹ House Doc. 92-195 (Mar. 20, 1972). For the underlying controversy, see Melnick, R. Shep. *The Crucible of Desegregation: The Uncertain Search for Educational Equality*. Chicago, IL: University of Chicago Press, 2023; Delmont, Matthew F. *Why Busing Failed: Race, Media, and the National Resistance to School Desegregation*. Oakland, CA: University of California Press, 2016; Formisano, Ronald P. *Boston Against Busing: Race, Class, and Ethnicity in the 1960s and 1970s* (2d ed.). Chapel Hill, NC: University of North Carolina Press, 2004; Orfield, Gary. *Must We Bus? Segregated Schools and National Policy*. Washington, DC: Brookings Institution, 1978.

²² House Doc. 92-195, at 2-3.

²³ *Id.*

²⁴ *Id.* at 8.

²⁵ Pub. L. 93-380, §202, 88 Stat. 514 (codified at 20 U.S.C. §1701(a)).

a student to a school other than the one closest to the student’s home, if doing so has the effect of increasing “segregation” as defined by the statute:

No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by--

. . . (c) the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency providing the appropriate grade level and type of education for such student[.]²⁶

Congress further provided that racial imbalance in student assignment is not, on its own, a violation of the EEOA.²⁷ Finally, it provided that assigning students to the school nearest their house is not a violation unless the “assignment is for the purpose of segregating students on the basis of” protected characteristics.²⁸

Together, these provisions use the neighborhood-school model as a benchmark to define illegal discrimination in the context of student-assignment policies:

- Assigning a student to the closest school is lawful regardless of segregating effects, unless there is discriminatory intent; but
- Assigning a student to not the closest school is unlawful if it has segregating effects, regardless of discriminatory intent.

Although the EEOA predates *Washington v. Davis*,²⁹ the first element codifies the “de jure”/ “de facto” distinction now familiar to Equal Protection doctrine. The second element sweeps more broadly as a prophylactic matter, essentially substituting deviations from the neighborhood-school model for evidence of discriminatory intent.

After defining violations, the EEOA provides a private, civil cause of action to enforce its terms.³⁰ It also sets priorities and limits for remedies. Courts or agencies should impose only the remedies needed to correct “particular denials” of equal educational opportunity or equal protection.³¹ And in considering remedies (or combinations of remedies), courts and agencies must proceed in the following order of preference:

²⁶ Pub. L. 93-380, §204(c), 88 Stat. 515 (codified at 20 U.S.C. §1703(c)).

²⁷ Pub. L. 93-380, §§205 & 208, 88 Stat. 515-16 (codified at 20 U.S.C. §§1704 & 1707).

²⁸ Pub. L. 93-380, §206, 88 Stat. 515-16 (codified at 20 U.S.C. §1705).

²⁹ 426 U.S. 229 (1976).

³⁰ Pub. L. 93-380, §207, 88 Stat. 516 (codified at 20 U.S.C. §1706).

³¹ Pub. L. 93-380, §213, 88 Stat. 516 (codified at 20 U.S.C. §1712).

- (a) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;
- (b) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account only school capacities;
- (c) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin;
- (d) the creation or revision of attendance zones or grade structures without requiring transportation beyond that described [in the EEOA];
- (e) the construction of new schools or the closing of inferior schools;
- (f) the construction or establishment of magnet schools; or
- (g) the development and implementation of any other plan which is educationally sound and administratively feasible [subject to limitations in the EEOA].³²

The EEOA then limits transportation remedies to the school closest or next closest to a student's residence, and it disallows transportation across district lines unless those lines were themselves found to be drawn with discriminatory intent.³³ In combination, the statute prioritizes transferring individual students to legally compliant assignments, turning to more aggressive options only if such reassignments would fail to remedy the violation at hand.

The first four remedies are most relevant to this Committee's study. For individual students assigned in violation of §204(c)—that is, assigned to a school other than the nearest school, when doing so has segregative effects—these students have a right to some remedy. Under §§213-216, that remedy is (1) as a first preference, to attend the nearest school regardless of catchment area, if doing so will remedy the denial of equal educational opportunity; (2) to attend some other school as the next preference, so long as doing so has de-segregative effects; or (3) to redraw the catchment areas, otherwise. If the remedy involves re-assignment to the closest or next closest school within the district, the remedy includes transportation.

³² Pub. L. 93-380, §214, 88 Stat. 517 (codified at 20 U.S.C. §1713).

³³ Pub. L. 93-380, §§215-216, 88 Stat. 517-18 (codified at 20 U.S.C. §§1714-1715). This limit echoes the familiar holding from *Milliken v. Bradley* (1974), issued roughly a month before Congress adopted the EEOA. It appeared in President Nixon's 1972 message to Congress, and his solicitor's general pressed this argument in desegregation litigation as least as early as 1973 (and presumably earlier).

Colorado State Laws

The Colorado Constitution requires the state legislature to create a “a thorough and uniform system of free public schools throughout the state.”³⁴ It also provides that no “distinction or classification of pupils [shall] be made on account of race or color, nor shall any pupil be assigned or transported to any public educational institution for the purpose of achieving racial balance.”³⁵

The General Assembly meets its thorough-and-uniform obligations primarily through geographic school districts.³⁶ As a result, students have a right to attend school, gratuitously, in the district in which they reside.³⁷ Each local board of education has the statutory authority to “fix the attendance boundaries of each school in the district.”³⁸ Aside from the constitutional prohibition on assigning students based on race or color or to achieve racial balance, state law does not regulate how school districts use their authority to fix attendance boundaries.

State law provides two forms of school choice by which individual students can override a district’s authority to assign students by attendance boundaries. First, Colorado has a limited “open enrollment” law allowing students to enroll at any school (or any program within a school) across the state.³⁹ Districts thus cannot deny enrollment based solely on attendance zones.⁴⁰ They can deny enrollment based on: capacity/resources; eligibility criteria (like course prerequisites, age limits, or required levels of performance); or a court-ordered desegregation plan.⁴¹ School districts can also enforce regular annual enrollment processes,⁴² and they can deny transportation benefits to open-enrolled students.⁴³ Second, Colorado’s charter-schools law requires that district-authorized charter schools be open to all students within the district, and that state-authorized charter schools be open to all students within the state.⁴⁴ Charter schools thus cannot have catchment areas, though they can have enrollment preferences—including geographic preferences—as long as the preferences do not impose a disparate impact on students with certain

³⁴ COLO. CONST. art. IX, § 2.

³⁵ *Id.* § 8. The prohibition on racial classifications appeared in Colorado’s original constitution. It and other equal-protection provisions were compelled by the state’s Enabling Act, traceable to § 5 of the Fourteenth Amendment. *See Colo. Anti-Discrimination Comm’n v. Case*, 380 P.2d 34, 43-45 (Colo. 1962) (Frantz, J., concurring). The prohibition on busing was added by a 1974 amendment.

³⁶ *Id.* §§ 2 & 15.

³⁷ Co. St. § 22-1-102, C.R.S.

³⁸ Co. St. § 22-32-110(1)(m), C.R.S.

³⁹ Co. St. § 22-36-101(1), C.R.S.

⁴⁰ *Id.*

⁴¹ *Id.* at (2)(b), (3).

⁴² *Id.* at (2)(a), (2)(a)(IV).

⁴³ Co. St. §§ 22-32-113(1)(c) & -115(2)(b), C.R.S.

⁴⁴ Co. St. §§ 22-30.5-104(3) & -107(3), C.R.S.

characteristics.⁴⁵ As with open enrollment, students in charter schools are not guaranteed access to the district’s transportation program.⁴⁶ Finally, unlike most states, Colorado does not have a law criminalizing “school theft” or “address theft,” i.e., the act of using a false address to enroll at a school outside of one’s own catchment area.

Historical & Policy Context

The Committee took testimony and reviewed additional resources on (1) the history and current status of racial disparities within schools in Colorado, (2) the relationship between attendance zones and school racial disparities, nationally, and (3) common policy interventions proposed for disrupting or mitigating that relationship.

School Segregation in Colorado

Colorado has an unfortunate history of racial segregation in its public schools. Education historian Dr. Ruben Donato has documented extensive segregation of Hispanic and Mexican students throughout Colorado, during the first half of the 20th century.⁴⁷ During the committee’s hearings for this report, legal historian Dr. Tom Romero testified to Colorado’s history of statutorily authorized school racial segregation in pre-statehood days; of race riots, anti-miscegenation laws, and the Ku Klux Klan’s power in the early twentieth century; of redlining and racially restrictive covenants through the mid-century; and of racialized policing and school-attendance policies in more recent decades.⁴⁸ And, in Dr. Romero’s view, that history continues to manifest in today’s racial disparities.⁴⁹

⁴⁵ See 1 Colo. Code Regs. § 301-88-2.02(E)-(F).

⁴⁶ See Co. St. § 22-36-112.5, C.R.S.

⁴⁷ Donato, Rubén. *Mexicans and Hispanos in Colorado Schools and Communities, 1920–1960*. Albany, NY: SUNY Press, 2007. (Colorado also appears to be home to one of the first successful desegregation cases in the country.) See Donato, Rubén, Gonzalo Guzmán and Jarrod Hanson. 2017. “*Francisco Maestas et al. v. George H. Shone et al.*: Mexican American Resistance to School Segregation in the Hispano Homeland, 1912–1914.” *Journal of Latinos and Education* 16(1): 3-17. (describing successful lawsuit to challenge segregation of Hispanic students in Alamosa, as early as 1914); cf. *Jones v. Newlon*, 253 P. 386 (Colo. 1927) (declaring unconstitutional segregation of African American and Caucasian students in extracurricular school activities, in Denver).

⁴⁸ Romero Testimony, *5/13/2023 Hearing*, pp. 5-21; see also Romero II, Tom I. 2004. “Our Selma Is Here: The Political and Legal Struggle for Educational Equality in Denver, Colorado, and Multiracial Conundrums in American Jurisprudence.” *Seattle Journal for Social Justice* 3(1): 73-142; Romero II, Tom I. 2013. “How I Rode the Bus to Become a Professor at the University of Denver Sturm College of Law; Reflections on Keyes’s Legacy for the Metropolitan, Post-Racial, and Multiracial Twenty-First Century.” *Denver Law Review* 90(5): 1023-58.

⁴⁹ Romero Testimony, *5/13/2023 Hearing*, pp. 20, 50-52, 63-68; see also Laura Meckler and Kate Rabinowitz, “More students are going to school with children of different races. But schools in big cities remain deeply segregated.” *Washington Post* (Sept. 12, 2019). <https://www.washingtonpost.com/education/2019/09/12/more-students-are-going-school-with-children-different-races-schools-big-cities-remain-deeply-segregated/>

Perhaps most famously, Colorado was home to the U.S. Supreme Court’s first “northern” desegregation case, *Keyes v. Denver Public Schools*.⁵⁰ A key feature of the litigation was the use of ordinary acts of school administration to achieve racial segregation, rather than legislative acts like statutes or board-adopted policies. As Dr. Romero testified to this Committee, “[w]hat the court found was the way that the school board manipulated attendance boundaries beginning in the 1950s. Each and every year, attendance boundaries were changed, ultimately to maximize segregation.”⁵¹

The Tenth Circuit’s opinion in *Keyes* addressed these acts at more length:

In its findings, the trial court noted specific instances of boundary gerrymandering, construction of a new school and classrooms, minority-to-majority transfers, and excessive use of mobile classroom units in this section of the district, all of which amount to unconstitutional state segregation. . .

Appellants maintain that although a racial imbalance does exist in the Park Hill area schools, it is justifiable under their neighborhood school policy which has been and is now operated with total neutrality regarding race. It is true that the rule of the Circuit is that neighborhood school plans, when impartially maintained and administered, do not violate constitutional rights even though the result of such plans is racial imbalance. However, when a board of education embarks on a course of conduct which is motivated by purposeful desire to perpetuate and maintain a racially segregated school, the constitutional rights of those students confined within that segregated establishment have been violated.

. . . [I]f the criteria asserted as justification for the construction and designation of attendance lines are a sham or subterfuge to foster segregation, odious intent may be inferred. Here there is sufficient evidence to support segregative intent.⁵²

Keyes thus held that “de jure” segregation can exist even without formal race-conscious legislation—and that Denver Public Schools had indeed segregated its schools through such subtle but very real, and intentional, state action.⁵³

Countless reports have suggested that yesterday’s intentional segregation continues to impact today’s schools.⁵⁴ When the U.S. Supreme Court declared Denver Public Schools to be unitary and therefore ended busing, its schools returned to high rates of segregation with alarming speed

⁵⁰ 413 U.S. 189 (1973); see also Melnick, R. Shep. *The Crucible of Desegregation: The Uncertain Search for Educational Equality* (Chicago, IL: University of Chicago Press, 2023) pp. 128-31; Pascoe, Pat. *A Dream of Justice: The Story of Keyes v. Denver Public Schools*. Louisville, CO: University Press of Colorado, 2022; Driver, Justin. *The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle for the American Mind* (New York, NY: Pantheon Books, 2018) pp. 274-84.

⁵¹ Romero Testimony, 5/13/2023 Hearing, p. 18.

⁵² *Keyes v. Sch. Dist. No. 1, Denver, Colo.*, 445 F.2d 990, 995, 999-1000 (10th Cir. 1971) (internal citations omitted).

⁵³ 413 U.S. 189, 212 (1973).

⁵⁴ Natasha Gardner, “The Legacy of Denver’s Forced School Busing Era.” *5280.com* (June 2018). <https://www.5280.com/the-legacy-of-denvers-forced-school-busing-era/>

(Figure 1).⁵⁵ By 2015, fewer than a third of the district’s schools were integrated under the criteria used during court-ordered busing. As the advocacy group A+ Colorado put it, “Denver’s schools resegregated according to housing patterns almost overnight.”⁵⁶

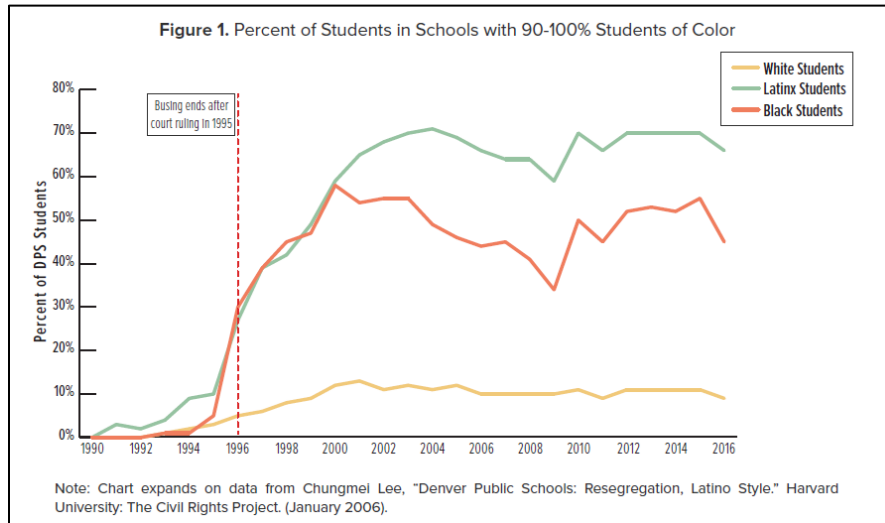


Figure 1

Further, these patterns predictably correspond with income. As Brian Eschbacher testified to the Committee, Denver’s schools do not follow a normal bell-curve distribution.⁵⁷ Instead, most students are served in identifiably high- or low-income schools (Figure 2):

⁵⁵ Yesenia Robles, “Denver district focuses on quality as schools resegregated.” *Denver Post* (Oct. 10, 2015). <https://www.denverpost.com/2015/10/10/denver-district-focuses-on-quality-as-schools-resegregated/>

⁵⁶ A+ Colorado, “Learn Together, Live Together: A Call to Integrate Denver’s Schools,” 2018. pp. 3-4, <https://apluscolorado.org/a-plus-colorado/press-release-learn-together-live-together-call-integrate-denvers-schools/>

⁵⁷ Eschbacher Testimony, 5/15/2023 Hearing, p. 182.

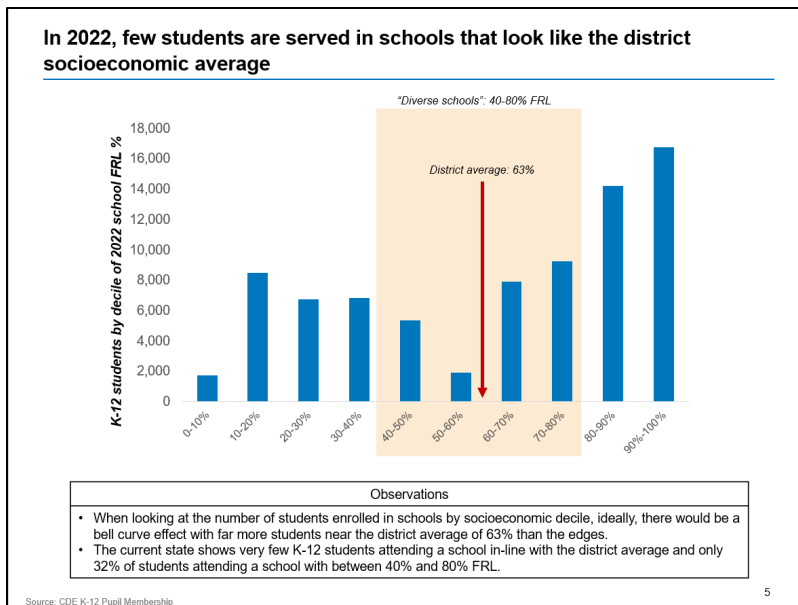


Figure 2

Indeed, the Century Foundation reports that the schools in the Denver metropolitan area are among the nation’s top ten most income-segregated.⁵⁸

The pattern of sociodemographic disparities may be most noticeable in Denver Public Schools, but it is not unique to that district. As the *Denver Post* reported in 2019, most school districts in the greater metropolitan area (home to nearly two-thirds of the state’s population) show high rates of racial polarization, at least by one measure (Figure 3).⁵⁹

⁵⁸ Potter, Halley. 2022. *School Segregation in U.S. Metro Areas*. The Century Foundation. <https://tcf.org/content/report/school-segregation-in-u-s-metro-areas/> (hereafter cited as Potter, *School Segregation in U.S. Metro Areas*).

⁵⁹ Meg Wingerter, “Diversity in class a work in progress; 25 years after busing, schools are as segregated as in the 1960s.” *Denver Post* (Sept. 8, 2019). <https://www.denverpost.com/2019/09/08/denver-school-segregation/>

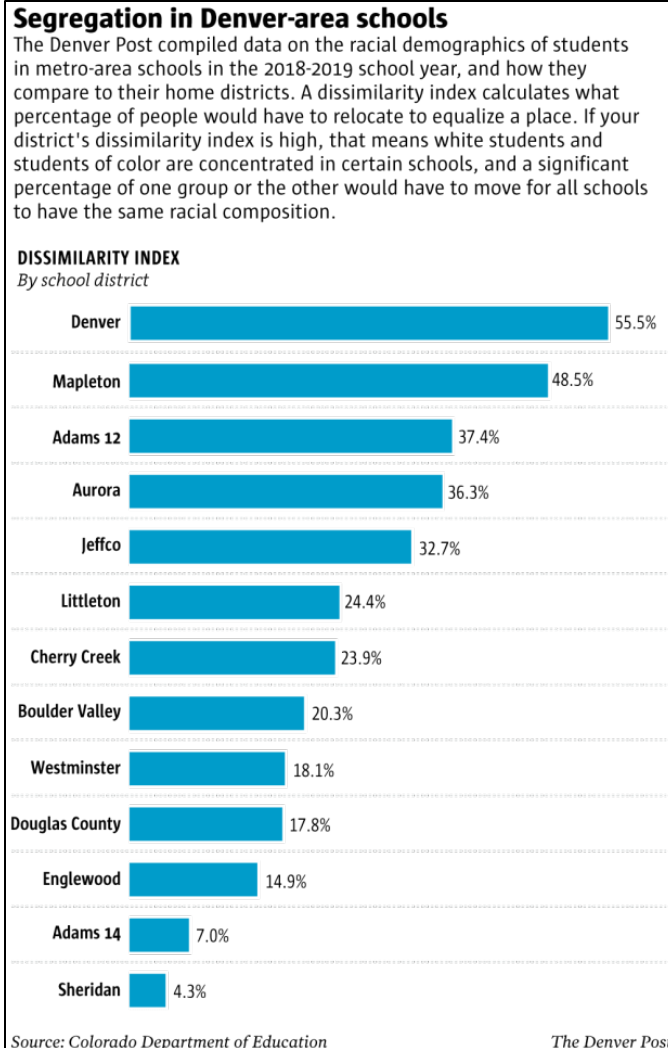


Figure 3

Notably, the only districts with single-digit dissimilarity index scores are those that are already so highly polarized by their external district boundaries that further internal polarization is nearly impossible as a matter of simple math.

Nor is the pattern confined to the greater Denver area. The advocacy group Colorado Children's Campaign has reported high rates of racial polarization throughout the state:

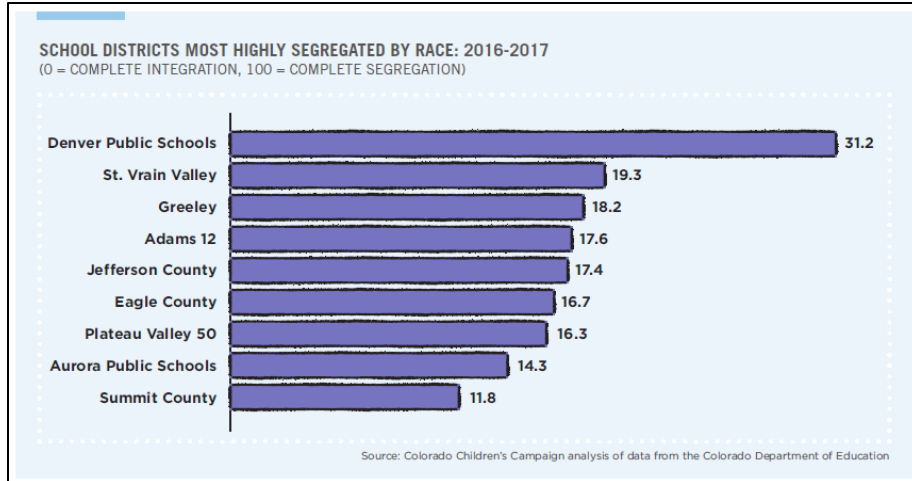


Figure 4

As the report noted: “School segregation is not simply a problem facing the Denver metro area; it extends beyond Denver into suburban and rural districts as well. Other highly segregated Colorado districts include St. Vrain Valley, Eagle County and Greeley” (Figure 4).⁶⁰ And unsurprisingly, the correlation with income exists as a statewide phenomenon as well (Figure 5):

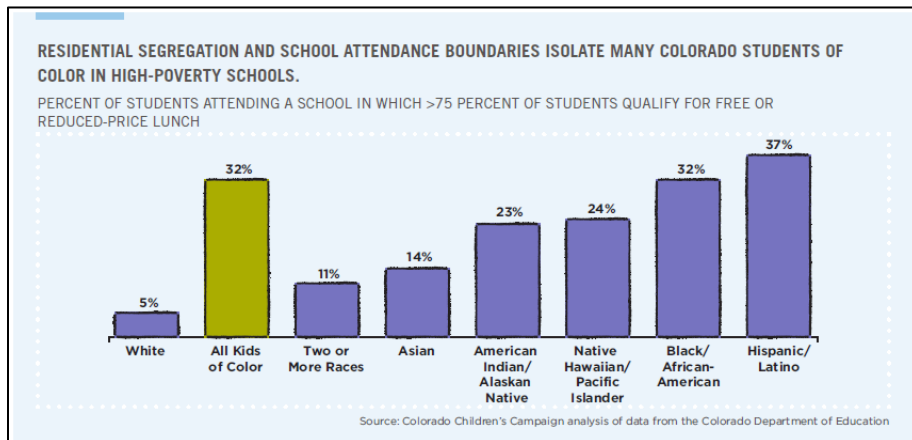


Figure 5

The report also found that, statewide, “[d]ue to policies that have isolated many families of color in high-poverty neighborhoods, as well as segregating school district attendance boundaries,

⁶⁰ Colorado Children’s Campaign. 2017. “Kids Count in Colorado! Elevating Equity (2017).” pp. 62-63, <https://www.coloradokids.org/data/kids-count-archive/2017-kids-count/> (hereafter cited as Colorado Children’s Campaign, *Kids Count in Colorado! Elevating Equity*); Monte Whaley, “Segregation still dogs state schools.” *Denver Post* (June 19, 2017). <https://www.denverpost.com/2017/06/19/segregation-denver-colorado-schools/>.

Colorado students of color are more than six times as likely to attend one of these high-poverty schools as their White peers.”⁶¹

Colorado’s schools thus share much of the history of racial and ethnic segregation—and the same current pattern of “de facto” polarization—as schools elsewhere across the country.

Attendance Zones & School Segregation

There is an extensive, albeit recent, literature on the relationship between school attendance zones and school segregation.

Advocate Tim DeRoche’s testimony highlighted examples of gerrymandered attendance zones that appear designed to increase racial polarization in certain schools. For example, one elementary school in northeast Los Angeles has the following catchment area (Figure 6):

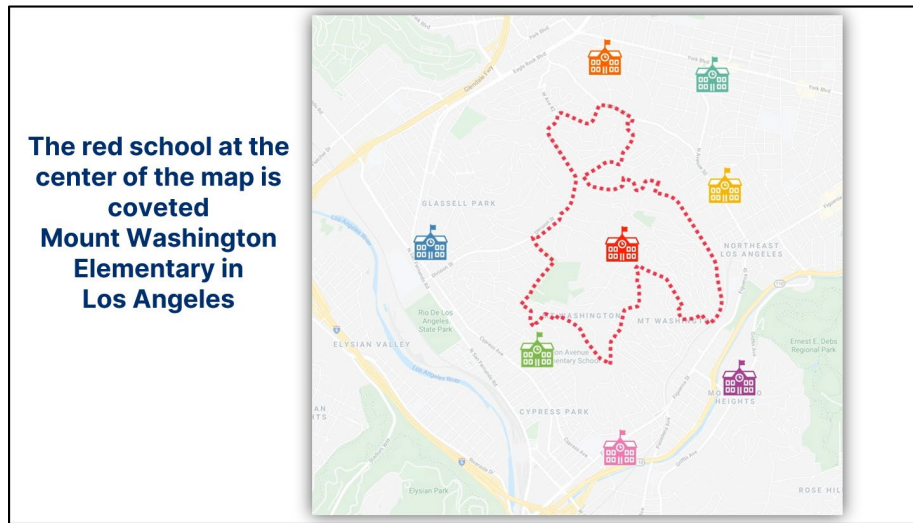


Figure 6

The boundary has no obvious explanation—except that that it excludes neighborhoods where fewer Caucasians reside:

⁶¹ Colorado Children’s Campaign, *Kids Count in Colorado! Elevating Equity*, p. 57. Some members of the Advisory Committee note that phrases like “people of color” or “students of color” are not based in law or reflected in legal authorities like Supreme Court opinions or the U.S. Census Bureau, and that they can be especially confusing insofar as Caucasians are generally (inaccurately) excluded from the category of “people of color” when used by activists. See Will Trachman, *American Greatness*, “We’re All People of Color Now” (Feb. 8, 2021); see generally Bernstein. David E. *Classified: The Untold Story of Racial Classification in America*. New York, NY: Bombardier Books, 2022.

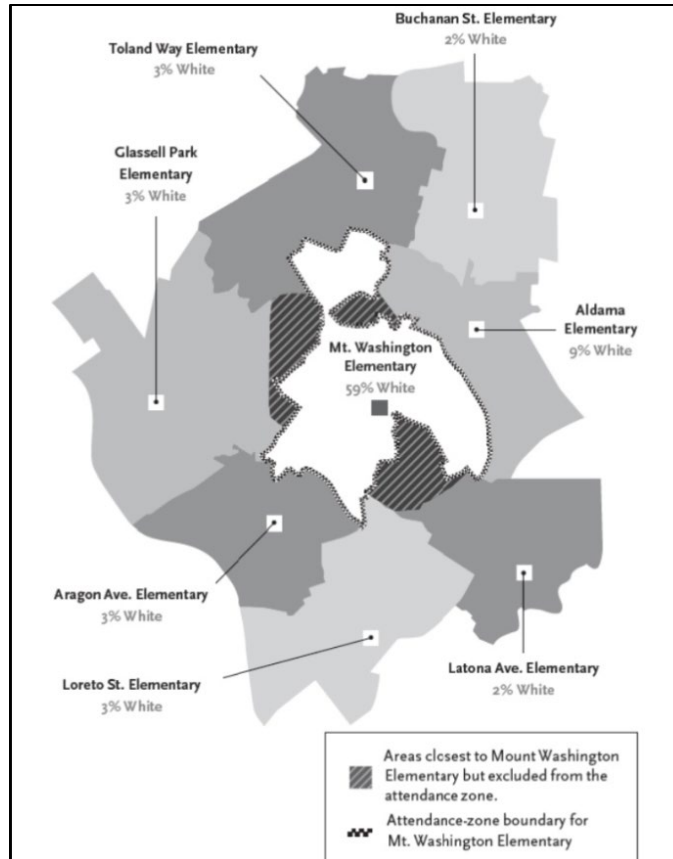


Figure 7

The conclusion we should draw, in Mr. DeRoche’s opinion, is that Mount Washington Elementary’s attendance zone is designed to protect a racially and economically privileged enclave (Figure 7).⁶² Property values jump once one crosses the line from outside Mount Washington Elementary’s attendance zone to inside of it (a relationship robustly established by decades of economic research⁶³), and those that can afford to purchase property within the zone thereby purchase access to the coveted school. As Mr. DeRoche testified:

⁶² DeRoche, Tim. 2020b. “Public-School Attendance Zones Violate a Civil Rights Law.” Education Next. <https://www.educationnext.org/public-school-attendance-zones-violate-civil-rights-law-equal-educational-opportunities-act-a-fine-line/>.

⁶³ Schwartz, Black, Sandra E. 1999. “Do Better Schools Matter? Parental Valuation of Elementary Education.” *Quarterly Journal of Economics* 114 (2): 577-599; Thomas J. Kane, Stephanie K. Riegg & Douglas O. Staiger, *School Quality, Neighborhoods, and Housing Prices*, 8 Am. L. & Econ. Rev. 183 (2006); Dhar, Paramita & Stephen L. Ross. 2012. “School district quality and property values: Examining differences along school district boundaries.” *Journal of Urban Economics* 71(1): 18-25; Gibbons, Stephen, Stephen Machin, and Olmo Silva. 2013. “Valuing school quality using boundary discontinuities.” *Journal of Urban Economics* 75: 15-28; Schwartz, Amy Ellen, Ioan Voicu, and Keren Mertens Horn. 2014. “Do choice schools break the link between public schools and property values? Evidence from house prices in New York City.” *Regional Science and Urban Economics* 49: 1-10; U.S. Senate, Joint Economic Committee (Republican Caucus), *Zoned Out: How School and Residential Zoning Limit*

“This [attendance zone] covers most of the more expensive homes in the neighborhood already, the larger single-family homes with big lots. But on top of that, because the home comes [bundled with] access to this very coveted school, families are then paying premiums of \$200- or \$300,000 to buy the same home, whether it’s on one side of the line or the other.

Basically, what you had happening is just that Mount Washington Elementary became . . . it’s basically operated as a quasi-private school for the upper middle-income folks who lived in the area.”⁶⁴

In other words, as Mr. DeRoche sees it, the boundary not only recreates and likely increases the underlying residential segregation by race and income—but also belies the foundational promise of “public” education. Like a country club, Mount Washington Elementary is available only to those who can afford the membership.

Policy Analyst Jude Schwalbach testified to the same effect:

“This practice of residential-based school assignment fundamentally ties schooling to housing and property wealth. In fact, the U.S. Senate Joint Economic Committee reported in 2019 that homes and zip codes associated with highly ranked public schools were quadruple the price of homes and zip codes associated with poorly ranked schools.”⁶⁵

The premium for homes falling on the right side of a catchment line can reach 20 percent of a home’s value.⁶⁶ And by sorting access to schools by property wealth, Schwalbach tells us, attendance zones inevitably sort access by race, because income disparities often correlate with racial ones.⁶⁷ Indeed, as Mr. DeRoche and Mr. Schwalbach both argued, many attendance-zone boundaries still reflect 1930s-era redlining.⁶⁸

Studies show that these attendance zones often have the effect of increasing school racial disparities relative to residential patterns, as one would expect from the Mount Washington Elementary example above. Dr. Tomás Monarrez found that across 1,600 districts nationally, a majority of attendance zones replicate the underlying residential segregation, with substantial

Educational Opportunity, 2019, <https://www.jec.senate.gov/public/index.cfm/republicans/analysis?ID=E4DD88F7-4D98-4FD4-B68A-20689CB4F94C>.

⁶⁴ DeRoche Testimony, *5/15/2023 Hearing*, pp 3-4.

⁶⁵ Schwalbach Testimony, *4/19/2023 Hearing*, p. 2.

⁶⁶ Fischel, William A. *Making the Grade: The Economic Evolution of American School Districts*. Chicago, IL: University of Chicago Press, 2009.

⁶⁷ Schwalbach Testimony, *4/19/2023 Hearing*, p. 2; Burke, Lindsey M. and Jude Schwalbach. 2021. “Housing Redlining and Its Lingering Effects on Education Opportunity.” Heritage Foundation Center for Education Policy. <https://www.heritage.org/sites/default/files/2021-03/BG3594.pdf> (hereafter cited as Lindsey Burke and Jude Schwalbach, *Housing Redlining and Its Lingering Effects on Education Opportunity*).

⁶⁸ Lindsey Burke and Jude Schwalbach, *Housing Redlining and Its Lingering Effects on Education Opportunity*; DeRoche, Tim. *A Fine Line: How Most American Kids Are Kept Out of the Best Public Schools*. Los Angeles, CA: Redtail Press, 2020a; Russell Contreras, “School Boundaries Often Reflect 1930s-era Housing Discrimination,” *Axios*, September 14, 2021, <https://www.axios.com/2021/09/14/school-boundary-gis-segregated-1930s-redlining>.

minorities either increasing or decreasing (rather than replicating) the underlying pattern.⁶⁹ In a study of the nation’s largest 350 school districts, Dr. Meredith Richards and Kori Stroub found that attendance zones are gerrymandered nearly as much as are state legislative districts—and that the degree of gerrymandering increases in areas of relative privilege, and in areas facing rapid change in racial demographics.⁷⁰ In a case study of one school district experiencing rapid demographic change, Dr. Genevieve Siegel-Hawley found that the district selected the most racially polarizing options both in locating a new school building and in revising the district’s attendance zones accordingly.⁷¹

This dynamic exists in Colorado. In his book and in testimony to this Committee, Mr. DeRoche presented the attendance zones of Denver’s Cory Elementary School and Ellis Elementary School as an example (Figure 8):

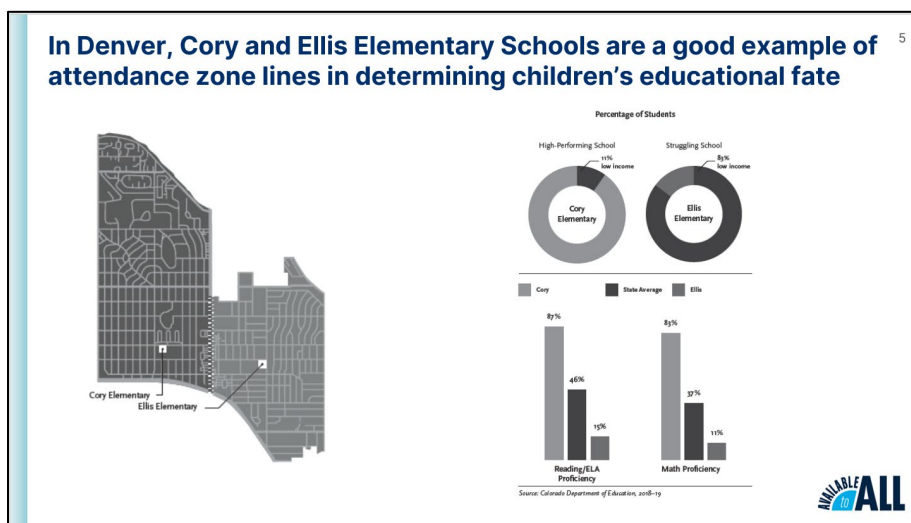


Figure 8

As Mr. DeRoche testified:

Really, whether you live on one side of that line or the other right, is going to determine whether you’re going to a school where 80 percent of the kids are at grade level academically or less than 20

⁶⁹ Monarrez Testimony, 4/19/2023 Hearing, pp. 8-11; Monarrez, Tomás E. 2023. “School Attendance Boundaries and the Segregation of Public Schools in the United States.” *American Economic Journal: Applied Economics* 15(3): 210-237.

⁷⁰ Richards, Meredith P. and Kori James Stroub. 2015. “An Accident of Geography? Assessing the Gerrymandering of School Attendance Zones.” *Teachers College Record* 117(7): 1-32.

⁷¹ Siegel-Hawley Testimony, 2/1/2023 Hearing, pp. 3-9; Siegel-Hawley, Genevieve. 2013. “Educational Gerrymandering? Race and attendance boundaries in a demographically changing suburb.” *Harvard Educational Review*, 83(4), 580-612.

percent are on grade level. That is a significant difference and to me, presents very, very strong questions around civil rights.⁷²

Indeed, the racial implications of this same attendance boundary can be seen on the Urban Institute’s “Dividing Lines” website (Figure 9).⁷³



Figure 9

These two schools are about one mile apart—but one has an attendance zone comprised almost entirely of Caucasian residents, and the other has a zone featuring far more neighborhoods with a lower percentage of Caucasians. The dividing line between them may be rational under race-neutral criteria: it’s Colorado Boulevard, a state highway several lanes wide, and thus unsafe for children to cross as pedestrians.⁷⁴ But even so, the attendance zones plainly recreate the residential patterns.

⁷² DeRoche Testimony, 5/15/2023 Hearing, pp. 4-5; see also DeRoche, Tim. *A Fine Line: How Most American Kids Are Kept Out of the Best Public Schools*. (Los Angeles, CA: Redtail Press, 2020a), pp. 192-93.

⁷³ Monarrez, Tomás and Carina Chien. 2021. “Dividing Lines: How School Districts Draw Attendance Boundaries to Perpetuate School Segregation.” The Urban Institute. <https://apps.urban.org/features/dividing-lines-school-segregation/>.

⁷⁴ The Committee notes that it may also *not* be race-neutral; Siegel-Hawley Testimony, 2/1/2023 Hearing, p. 7; Noel King, “A Brief History of How Racism Shaped Interstate Highways.” *NPR.org* (Apr. 7, 2021). <https://www.npr.org/2021/04/07/984784455/a-brief-history-of-how-racism-shaped-interstate-highways>

Remarkably, the testimony to the Committee showed that the very schools at issue in *Keyes*⁷⁵ continue today to be a focus of Denver Public Schools’ demographic changes—though the picture is more nuanced than it appears. As Mr. DeRoche testified, the schools feature unusual attendance zones and high rates of racial or ethnic polarization.⁷⁶

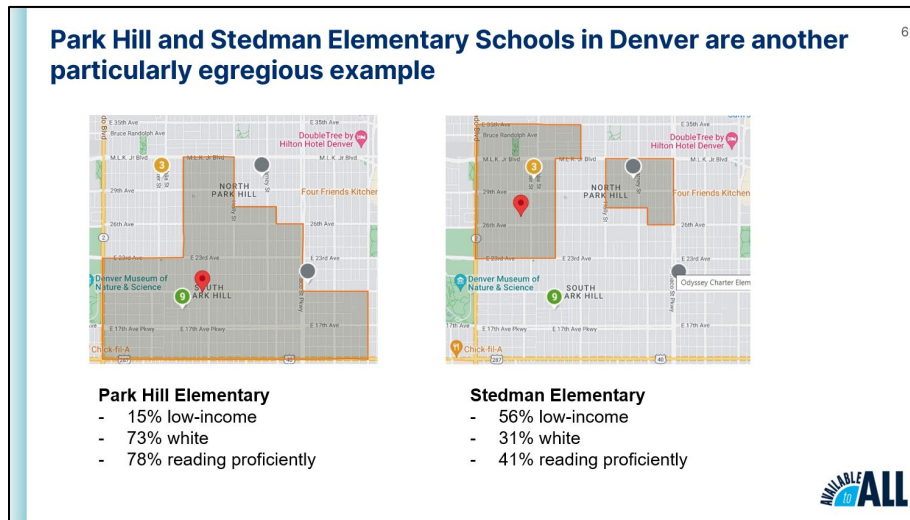


Figure 10

These maps show a noncontiguous attendance zone assigning lower-income and non-Caucasian students to Stedman Elementary—the same school Denver Public Schools had isolated African American students in during the 1960s, leading to the *Keyes*⁷⁷ litigation. Meanwhile, higher-income Caucasian students are still assigned to Park Hill Elementary, despite living closer to Stedman (Figure 10). Further, the Committee’s testimony established that Park Hill has a long waiting list, functionally excluding students from outside the attendance zone, even students who live closer to it than to any other school, and even students who live closer to it than many of the families assigned to it.⁷⁸

But the picture gets more complicated if we step back to view the attendance zone for Smith Elementary, which abuts both Stedman’s and Park Hill’s zones on the north (Figure 11):

⁷⁵ 413 U.S. 189 (1973).

⁷⁶ DeRoche Testimony, 3/15/2023 Hearing, p. 5.

⁷⁷ 413 U.S. 189 (1973).

⁷⁸ DeRoche Testimony, 3/15/2023 Hearing, p. 83.

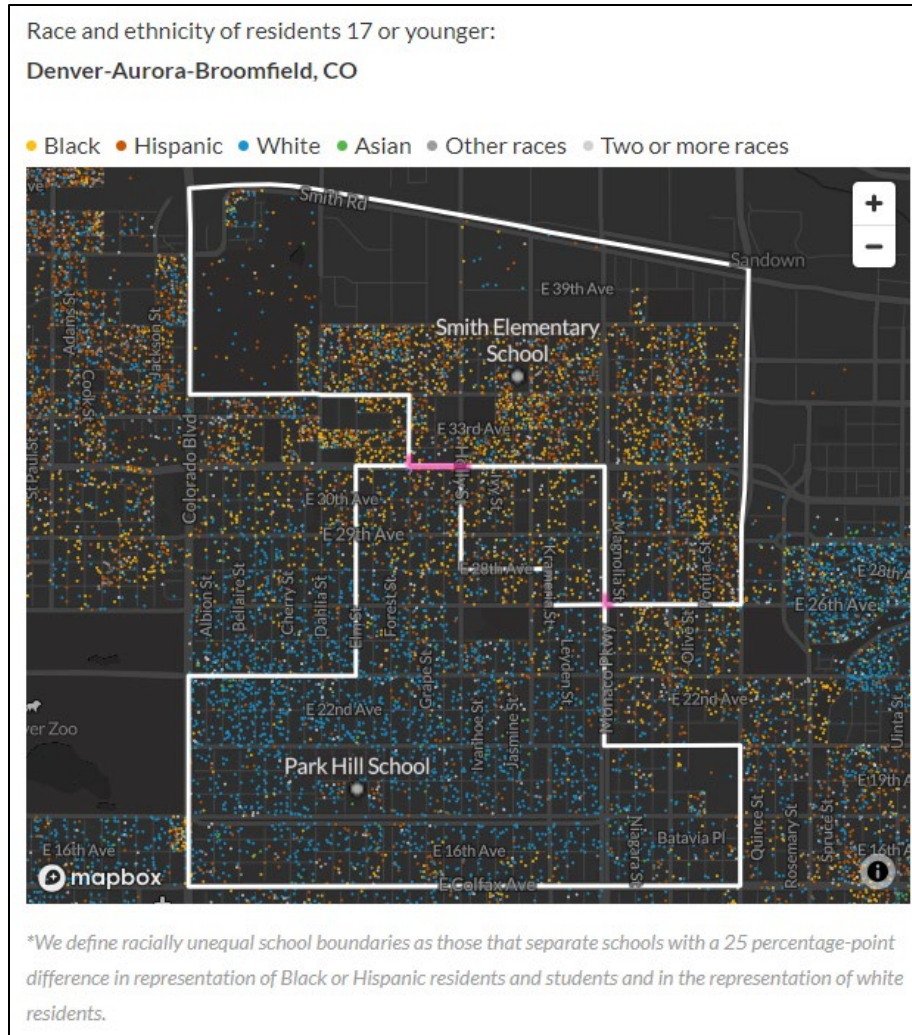


Figure 11

The Urban Institute’s research identified the boundary between Park Hill and Smith as a highly segregative boundary. Stedman Elementary’s two noncontiguous zones, meanwhile, can be seen sitting between those boundaries. And with the racial demographics of all three zones visible, it becomes clear that Smith’s zone includes almost exclusively non-Caucasian students, Park Hill’s zone includes almost entirely Caucasian students, and Stedman’s zone includes most of the racially mixed boundary between the two neighborhoods. Stedman is in fact one of Denver Public Schools’ most racially diverse schools, with a student body divided evenly among Caucasian, African American, and Hispanic students—partly due to neighborhood demographics, and partly due to

dual-language programs and related recruiting efforts intentionally designed to lead to integration.⁷⁹

Denver Public Schools has also changed its approach to attendance zones in ways that add further nuance. In several neighborhoods, the district has replaced single-school catchment areas with multi-school “enrollment zones.”⁸⁰ The goal was to partially disrupt the relationship between residence and school assignment, thus making demographic shifts easier to manage and, also, increasing the degree of racial and economic integration in schools.⁸¹ Yet Park Hill, Stedman, and Smith are not in one of these zones, sitting instead in-between the “Greater Five Points” and “Central Park” enrollment zones (Figure 12).

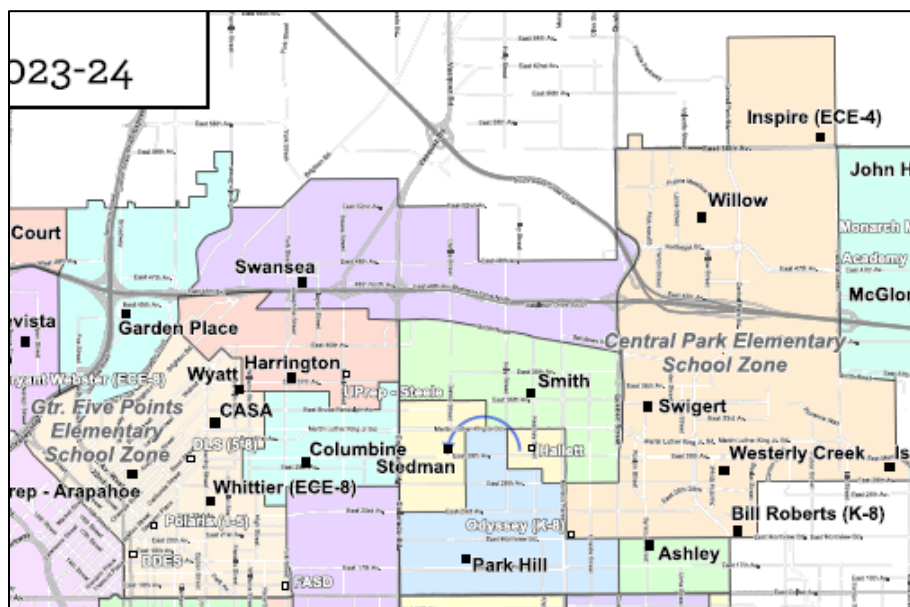


Figure 12

Returning, again, to the Urban Institute’s website—and zooming out to add the two nearby multi-school zones—the challenge of Denver Public Schools’ approach becomes evident (Figure 13).

⁷⁹ Melanie Asmar, “A once-segregated Denver school fights to stay integrated 50 years after historic court order.” *Chalkbeat Colorado* (Jan. 16, 2023). <https://www.chalkbeat.org/colorado/2023/1/16/23552379/denver-public-schools-integration-desegregation-busing-wilfred-keyes-case-stedman-elementary/>.

⁸⁰ Denver Public Schools, “School Choice: Enrollment Zones.” <https://schoolchoice.dpsk12.org/o/schoolchoice/page/enrollment-zones>.

⁸¹ Melanie Asmar, “Denver school choice: What are enrollment zones? And are they working?” *Chalkbeat Colorado* (Jan. 15, 2020). <https://www.chalkbeat.org/colorado/2020/1/15/21121740/denver-school-choice-what-are-enrollment-zones-and-are-they-working/>; Ann Schimke, “The thorny problem of segregated schools and Denver’s newest plan to address it.” *Chalkbeat Colorado* (Apr. 27, 2017). <https://www.chalkbeat.org/colorado/2017/4/27/21099759/the-thorny-problem-of-segregated-schools-and-denver-s-newest-plan-to-address-it/>.

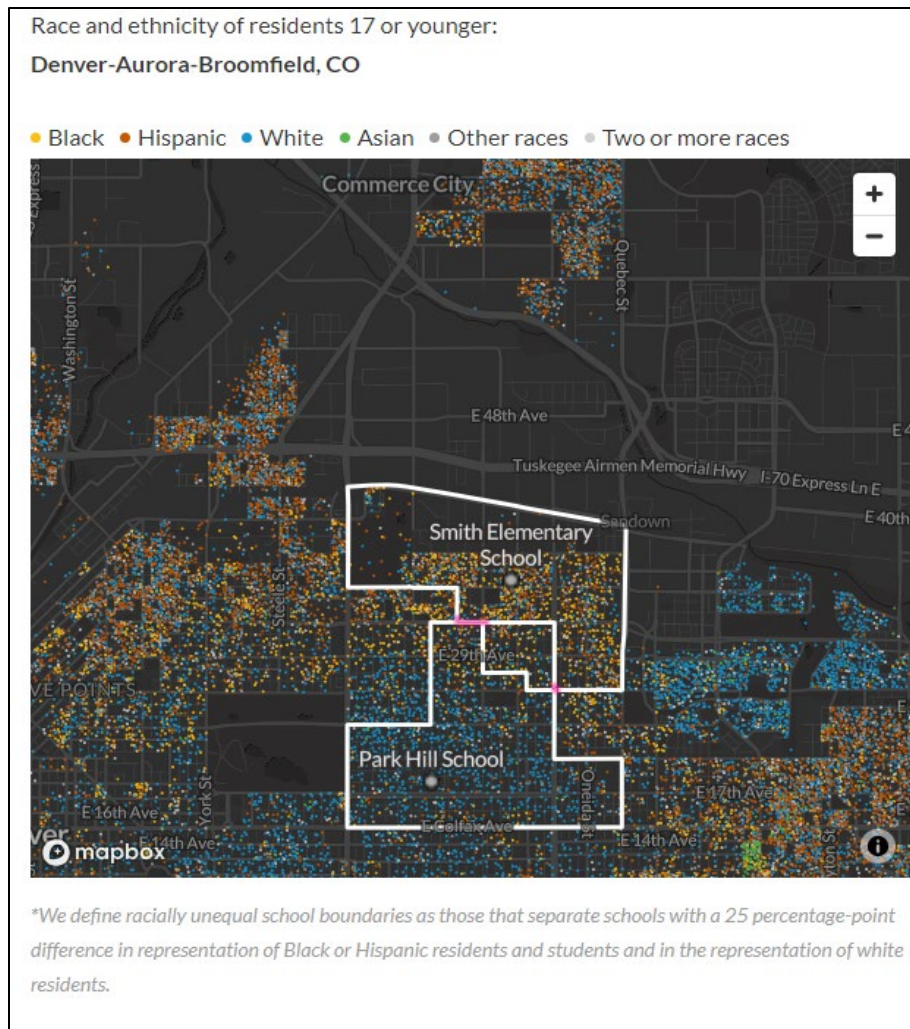


Figure 13

Although the Urban Institute is missing data for the north Denver neighborhoods immediately south of Commerce City, a pattern is nonetheless clear. The two multi-school enrollment zones exist in traditionally non-Caucasian but now gentrifying neighborhoods, on the left and right (with the dense-blue pockets on the right reflecting new-build developments in Central Park). Meanwhile, the one area in this picture reflecting an older, established neighborhood of relatively wealthy and Caucasian residents maintains a single-school catchment zone—as do most neighborhoods immediately adjacent to it. In this middle stretch of the picture, access to specific and racially identifiable schools remains bundled with property wealth.

Remarkably, Park Hill Elementary sits in one of the same neighborhoods that featured racially restrictive covenants over a century ago, as Dr. Tom Romero testified.⁸² But to add still more nuance to this picture: attendance zones tell only part of the story. Contrary to the normal pattern

⁸² Romero Testimony, 5/15/2023 Hearing, pp. 12-13, 18-20.

of disproportionately non-Caucasian or low-income schools being under-funded relative to their counterparts,⁸³ Denver Public Schools’ funding system provides Park Hill with a per pupil budget matching the state average—but gives Stedman 112 percent of that average, and Smith fully 138 percent.⁸⁴ This “student-based” system provides funding based not only on pupil counts, but also on categories of student need. Perhaps as a result, although Park Hill’s accountability scores are indeed the highest by a healthy margin, all three schools earn the top “performance” rating on the state’s accountability system.⁸⁵ As Mr. DeRoche suggests, these catchment boundaries are cause for concern—but in context, the reality is highly nuanced.

Still, student-based budgeting is not a complete solution. While the Committee notes the debate over reducing racial polarization as a normative goal,⁸⁶ the witnesses who testified on the matter uniformly endorsed integration as a descriptively positive good, associated with strong academic outcomes.⁸⁷ The literature appears largely uniform on this point as well.⁸⁸ Historically, children subjected to desegregation orders fared dramatically better than those who remained in segregated

⁸³ See Blagg, Kristin, Julien Lafortune and Tomás Monarrez. 2022. “Measuring Differences in School-Level Spending for Various Student Groups.” The Urban Institute. <https://www.urban.org/research/publication/measuring-differences-school-level-spending-various-student-groups>; Baker et al. 2020. “School Funding Disparities and the Plight of Latinx Children.” *Education Policy Analysis Archives* 28(135); Morgan, Ivy and Ary Amerikaner. 2018. “Funding Gaps 2018: An Analysis of School Funding Equity Across the U.S. and within Each State.” Education Trust. <https://edtrust.org/resource/funding-gaps-2018/>.

⁸⁴ See Colo. Dep’t of Educ, “Financial Transparency for Colorado Schools.” <https://www.cde.state.co.us/schoolview/financialtransparency/homepage>; see also Reason Foundation, “Weighted Student Formula Yearbook 2009.” <https://reason.org/policy-study/weighted-student-formula-yearb/> (grading Denver Public Schools highly for student-based funding); Melanie Asmar, “The \$3,500-per-student difference between two Denver schools.” *Chalkbeat Colorado* (Apr. 28, 2022). <https://www.chalkbeat.org/colorado/2022/4/28/23045997/denver-student-based-budgeting-smith-carson-elementary/>

⁸⁵ Colorado Department of Education, “School View” <https://www.cde.state.co.us/schoolview/>.

⁸⁶ Derrick A Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 (4): YALE L. J 470-517 (1976); Bell, Jr., Derrick A. *Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform*. Oxford, UK & New York, NY: Oxford University Press, 2005; Rickford, Russell. *We Are an African People: Independent Education, Black Power, and the Radical Imagination*. Oxford, UK & New York, NY: Oxford University Press, 2016.

⁸⁷ Siegal-Hawley Testimony, 2/1/2023 Hearing, pp. 21-2; Richards Testimony, 2/1/2023 Hearing, p. 22.

⁸⁸ Johnson, Rucker C. and Alexander Nazaryan. *Children of the Dream: Why School Integration Works*. New York, NY: Basic Books, 2019; Levesque, Roger J.R. *The Science and Law of School Segregation and Diversity*. New York, NY: Oxford University Press, 2018; Reardon Sean F. 2016. “School Segregation and Racial Academic Achievement Gaps.” *RSF: Russell Sage Foundation Journal of the Social Sciences* 2(5): 34-57; Reardon Sean F. and Ann Owens. 2014. “60 Years After *Brown*: Trends and Consequences of School Segregation.” *Annual Review of Sociology* 40: 199-218; Condron, Dennis J., Daniel Tope, Christina R. Steidl and Kendralin J. Freeman. 2013. “Racial Segregation and the Black-White Achievement Gap, 1992 to 2009.” *Sociological Quarterly* 54(1): 130-157; Kahlenberg, Richard D. (ed.). *The Future of School Integration: Socioeconomic Diversity as an Education Reform Strategy*. New York, NY: The Century Foundation Press, 2012; Hanushek, Eric A. John F. Kain and Steven G. Rivkin. 2009. “New Evidence about *Brown v. Board of Education*: The Complex Effects of School Racial Composition on Achievement.” *Journal of Labor Economics* 27(3): 349-383; Card, David and Jesse Rothstein. 2007. “Racial Segregation and the Black-White Test Score Gap.” *Journal of Public Economics* 91(11-12): 2158-2184.

schools (de facto or otherwise).⁸⁹ More recently, efforts that combine racial integration with school-finance reforms show synergy effects, substantially increasing results relative to either intervention alone.⁹⁰ And when intentional desegregation efforts end, leading to de facto resegregation, the academic and non-academic outcomes for all students are dire.⁹¹ These empirical studies generally do not rely on the causal theory that racial diversity in and of itself leads to a better educational environment (though many other studies explore that dynamic). Instead, they expect—and find—that increased racial diversity leads to increased resources, because public resources typically follow wherever Caucasian students go.⁹² In other words, integration works because it corrects the unequal investments endemic even to de facto segregated schools—a pattern of underinvestment with well-documented intergenerational consequences.⁹³

Colorado is no exception. The Bueno Center for Multicultural Education found that Denver Public Schools’ pervasive segregation “impacts a majority of certain student populations such as Latino and English Learner students, represents disparate and at times inferior resources and designations, and reflects reduced student outcomes.”⁹⁴ Similarly, the Colorado Children’s Campaign reported that highly racially polarized schools are substantially more likely to lack high-quality, experienced teachers:

⁸⁹ Johnson, Rucker C. 2011. “Long-run Impacts of School Desegregation & School Quality on Adult Attainments.” NBER Working Paper No. 16664. <https://www.nber.org/papers/w16664>.

⁹⁰ Johnson, Rucker C. and Alexander Nazaryan. *Children of the Dream: Why School Integration Works* (New York, NY: Basic Books, 2019) Ch. 5.; Reber, Sarah J. 2011. “From Separate and Unequal to Integrated and Equal? School Desegregation and School Finance in Louisiana.” *Review of Economics and Statistics* 93(2): 404-415 (hereafter cited as Sarah Reber, *From Separate and Unequal to Integrated and Equal?*); Holme, Jennifer Jellison and Kara S. Finnigan. 2015. “Regional Educational Equity Policies: Learning from Inter-district Integration Programs (Research Brief No. 9).” *National Coalition on School Diversity*. <https://www.school-diversity.org/research-briefs/>.

⁹¹ Billings, Stephen B., David J. Deming and Jonah Rockoff. 2013. “School Segregation, Educational Attainment, and Crime: Evidence from the End of Busing in Charlotte-Mecklenburg.” *Quarterly Journal of Economics* 129(1): 435-476.

⁹² Sarah Reber, *From Separate and Unequal to Integrated and Equal?*.

⁹³ Gilraine, Michael, James Graham and Angela Zheng. 2023. “Public Education and Intergenerational Housing Wealth Effects.” NBER Working Paper No. 31345. <https://www.nber.org/papers/w31345>; Goldsmith, Pat Rubio. 2010. “Learning Apart, Living Apart: How the Racial and Ethnic Segregation of Schools and Colleges Perpetuates Residential Segregation.” *Teachers College Record* 122(6): 1602-1630; Holme, Jennifer Jellison, Kara S. Finnigan, and Sarah Diem. 2016. “Challenging Boundaries, Changing Fate? Metropolitan Inequality and the Legacy of Milliken.” *Teachers College Record* 118(3): 1-40 (hereafter cited as Jennifer Holme, Kara Finnigan, and Sarah Diem, *Challenging Boundaries*).

⁹⁴ Carrasco Strong, Kim and Craig Peña. 2023. *Resegregation in Denver Public Schools: Overlapping Systems of Student Segregation, Disparate Contexts, and Reduced Outcomes*. Report by The Bueno Center for Multicultural Education at the University of Colorado at Boulder; Erica Meltzer, “‘Pervasive’ Denver school segregation harms Latinos, English learners, study finds.” *Chalkbeat Colorado* (Aug. 1 2023). <https://www.cpr.org/2023/08/01/pervasive-denver-school-segregation-harms-latinos-english-learners-study-finds/>

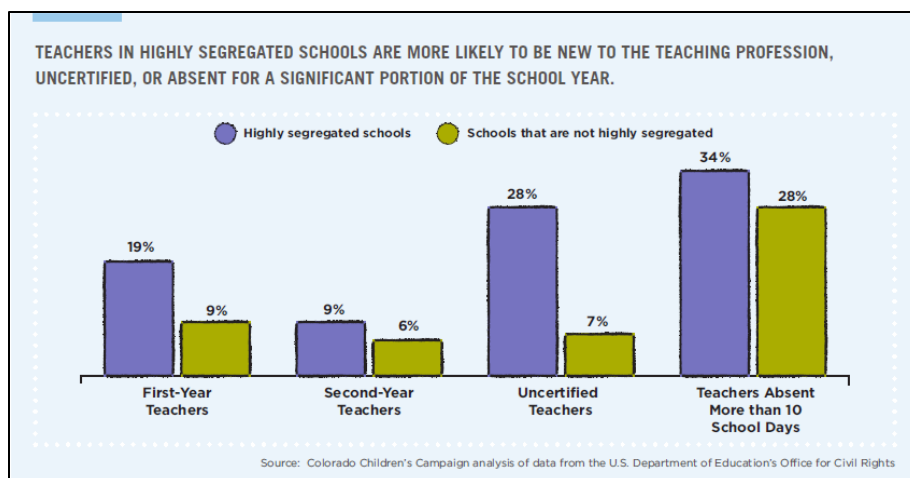


Figure 14

As the report concluded,

“[in an ideal world], all students would have access to high-quality, effective educators . . . In reality, however, students of color and students who attend highly segregated schools are less likely to be taught by experienced or certified teachers.”⁹⁵

Further:

Data from the Colorado Department of Education also show that schools in which students of color make up a large share of the student population tend to have fewer teachers who received an effective rating in the educator evaluation process. In Denver Public Schools, for example, nearly 90 percent of teachers in “low-minority schools” received a rating of effective or higher, compared to only 63 percent of teachers in “high-minority schools”—a nearly 30 percentage point gap. The same pattern exists in Douglas County, where 82 percent of teachers in “low-minority” schools earned a rating of effective or higher, compared to only 42 percent of teachers in “high-minority” schools. In both of these districts, the gap based on race was larger than the gap based on family income.⁹⁶

One witness, Hasira Ashemu, an activist with Our Voice, Our Schools in Denver, asserted to the Denver Post: “Wherever white skin goes, so do the resources.”⁹⁷ According to reports like these,

⁹⁵ Colorado Children’s Campaign, *Kids Count in Colorado! Elevating Equity*, p. 64. While this report quotes these sources accurately, some members of the Advisory Committee note again the unhelpfulness of terms like “people of color” or “students of color.” See Will Trachman, *American Greatness*, “We’re All People of Color Now” (Feb. 8, 2021); Bernstein, David E. *Classified: The Untold Story of Racial Classification in America*. New York, NY: Bombardier Books, 2022.

⁹⁶ Colorado Children’s Campaign, *Kids Count in Colorado! Elevating Equity*, p. 65. While this report quotes these sources accurately, some members of the Advisory Committee note that the terms “majority” or “minority” create confusion when applied to Denver Public Schools, given that Caucasian students are a numerical minority within the student population. Cf. *Keyes v. Sch. Dist. No. 1*, 413 U.S. 189, 195-98 (1973) (discussing the difficulty of defining “segregated” in the context of “a tri-ethnic, as distinguished from a bi-racial, community”).

⁹⁷ Quoted in Meg Wingerter, “Diversity in class a work in progress; 25 years after busing, schools are as segregated as in the 1960s.” *Denver Post* (Sept. 8, 2019); see also Colorado Children’s Campaign, *Kids Count in Colorado!*

racial polarization matters because—despite funding reforms like Denver Public Schools’—“separate but equal” is just as untrue today as it was seventy years ago

Proposed Solutions: School Choice & Integrative Assignments

The solutions proposed in the academic and policy literature fall into two basic groups, both seeking to reduce the relevance of property wealth in school-assignment policies. The first bucket includes various forms of individualized school choice, decoupling school assignment from residence. The second bucket maintains the basic structure of residence-based assignment but seeks to modify it, incorporating integration standards into the process of drawing attendance boundaries. Some proposals combine elements of both approaches.

Choice-Oriented Solutions

The most common policy proposal is to decouple school assignment from residence, either partially or entirely. These proposals reflect a belief that neighborhood-school policies are inherently racist. For instance, Dr. Rucker Johnson has asserted: “[N]eighborhood school was the opposite of a school that was racially integrated. Neighborhood meant white.”⁹⁸ Other education scholars have long seen neighborhood-school policies as a tool for inhibiting racial integration, including being used expressly for this purpose during the post-*Brown*⁹⁹ resistance to desegregation.¹⁰⁰ Dr. Genevieve Siegel-Hawley testified to this Committee: “[W]e know what the legacy of neighborhood schools means in this country, where our neighborhoods were designed to segregate.”¹⁰¹

The Committee notes in this regard the recent surge of polemical literature framing school choice, but not neighborhood schools, as rooted in the post-*Brown* resistance to integration.¹⁰² These tales

Elevating Equity, p. 65; cf. Calarco, Jessica McCrory. *Negotiating Opportunities: How the Middle Class Secures Advantages in School*. New York, NY: Oxford University Press, 2018.

⁹⁸ Johnson and Nazaryan, *Children of the Dream: Why School Integration Works*, p. 188 (emphasis in original); see also *id.* at 262 (“Belue’s innovation was to replace the neighborhood school, that long-standing bane of integration, with the community school.” (emphasis added)).

⁹⁹ 347 US 483 (1954).

¹⁰⁰ E.g., Weinberg, Meyer. *Race & Place: A Legal History of the Neighborhood School*. Washington, DC: U.S. Government Printing Office, 1966; Todd-Breland, “The Janus-Faced Neighborhood School.” In *The Return of the Neighborhood as an Urban Strategy*; Hilton, Michael. 2015. “Neighborhood Schools—an Etymology.” *Poverty & Race Journal* 24(6): 12-13; Erika Wilson, *White Cities, White Schools*, 123(1) COLUM. L. REV., 1221-1270 (2023).

¹⁰¹ Siegel-Hawley Testimony, 2/1/2023 Hearing, p. 7.

¹⁰² E.g., Orfield, Gary. “Choice Theories and the Schools.” In *Educational Delusions? Why Choice Can Deepen Inequality and How to Make Schools Fair* (Gary Orfield and Erica Frankenberg, eds.), pp. 37-68. Berkeley, CA: University of California Press, 2013; MacLean, *Democracy in Chains: The Deep History of the Radical Right’s Stealth Plan for America*; Hackett, Ursula and Desmond King. 2019. “The Reinvention of Vouchers for a Color-Blind Era: A Racial Orders Account.” *Studies in American Political Development* 33 (2): 234–257 & 305; Suits, *Overturing Brown: The Segregationist Legacy of the Modern School Choice Movement*; Fitzpatrick, Cara. *The*

are wrong. Efforts by racially and ethnically oppressed minorities to secure educational autonomy predate not only *Brown* but indeed nationhood itself.¹⁰³ Such efforts included forms both of individualized choice and of community autonomy, both historically and in recent decades.¹⁰⁴ And they were made necessary by the homogenizing and racially/ethnically subjugating common-school movement, with its residence-based school assignments.¹⁰⁵ To ignore this history and attribute the school-choice movement primarily to post-*Brown* resistance (and not do the same as to neighborhood schools) is an act of willful blindness, motivated by simple ideology. More to the point, it contributes to the erasure of subjugated communities—denying their agency, negating the legitimacy of their efforts to secure educational autonomy, and naturalizing a narrative of powerlessness.¹⁰⁶ The Committee emphatically rejects these false, polemical, and disempowering narratives.

Extensive research has shown that choice policies improve the academic performance of schools. Campos and Kearns (2023) found that multi-school enrollment zones in Los Angeles—much like Denver’s multi-school enrollment zones described above—markedly increased student outcomes, closing achievement and college enrollment gaps between the zones and the rest of the district. Several studies show similar, powerful achievements for charter schools and for competitive enrollment in general.¹⁰⁷ Indeed, one recent study found that Denver Public Schools’ “portfolio

Death of Public School: How Conservatives Won the War Over Education in America. New York, NY: Basic Books, 2023.

¹⁰³ Mills, ShaVonte’. 2021. “An African School for African Americans: Black Demands for Education in Antebellum Boston.” *History of Education Quarterly* 61 (4): 478-502.; Miletsky, Zebulon Vance. *Before Busing: A History of Boston’s Long Black Freedom Struggle.* Chapel Hill, NC: University of North Carolina Press, 2022; Gross, Robert N. *Public vs. Private: The Early History of School Choice in America.* New York, NY: Oxford University Press, 2018.

¹⁰⁴ Erickson, Ansley T. and Ernest Morrell, eds. *Educating Harlem: A Century of Schooling and Resistance in a Black Community.* New York, NY: Columbia University Press, 2019; Fuller, Howard. *No Struggles, No Progress: A Warrior’s Life from Black Power to Education Reform.* Milwaukee, WI: Marquette University Press, 2014; James Forman, Jr., *The Secret History of School Choice: How Progressives Got There First*, 93 (4) *GEO L. J.*, 1287-1319. (2005); Clark, Kenneth B. 1968. “Alternative Public School Systems.” *Harvard Educational Review* 38 (1), 110-113 (hereafter cited as Clark, *Alternative Public School Systems*).

¹⁰⁵ Salomone, Rosemary C. *True American: Language, Identity, and the Education of Immigrant Children.* Cambridge, MA and London, UK: Harvard University Press, 2010; Glenn, Jr., Charles Leslie. *The Myth of the Common School.* Ann Arbor, MI: University of Michigan Press, 1988; Tyack, David B. *The One Best System: A History of American Urban Education.* Cambridge, MA: Harvard University Press, 1974.

¹⁰⁶ Cf. Maggie Blackhawk, *On Power & the Law: McGirt v. Oklahoma*, SUP. CT. REV., 2020: 367-421. (2021).

¹⁰⁷ E.g., Abdulkadiroglu et al. 2011. “Accountability and Flexibility in Public Schools: Evidence from Boston’s Charters and Pilots.” *Quarterly Journal of Economics* 126(2): 699-748; Abdulkadiroglu et al. 2017. “Research Design Meets Market Design: Using Centralized Assignment for Impact Evaluation.” *Econometrica* 85(5): 1373-1432; Angrist et al. 2012. “Who Benefits from KIPP?” *Journal of Policy Analysis and Management* 31(4): 837-860; Angrist et al. 2016. “Stand and Deliver: Effects of Boston’s Charter High Schools on College Preparation, Entry, and Choice.” *Journal of Labor Economics* 34(2): 275-318; Cohodes, Sarah R. and Katherine S. Parham. 2021. “Charter Schools’ Effectiveness, Mechanisms, and Competitive Influence.” NBER Working Paper No. 28477. <https://www.nber.org/papers/w28477>; Cordes, Sarah A. 2018. “In Pursuit of the Common Good: The Spillover

model” reforms improved student outcomes by a full standard deviation—an unheard-of level of success—relative to peer districts.¹⁰⁸ The effects of choice on integration specifically, however, are more mixed. Isolating these effects is statistically challenging in large part because most education-reform policy interventions (including choice) specifically target high-minority and typically urban districts, leading to an unavoidable degree of disproportionality in the data.¹⁰⁹ Still, the most robust research suggests that choice policies can both increase and decrease school segregation, depending on policy design and broader context.¹¹⁰

Among the national experts who testified, advocate Tim DeRoche and policy analyst Jude Schwalbach focused most heavily on choice-oriented solutions. Mr. DeRoche advocated for either the total elimination of catchment areas (requiring all schools instead to admit students on the basis of a lottery) or, more moderately, limiting the power of catchment areas by requiring schools to reserve a portion of their seats for out-of-zone students; converting to distance-based enrollment (i.e., guaranteed admission to all schools within a given distance of one’s residence); and/or narrowing the existing exceptions to open-enrollment laws.¹¹¹ Mr. DeRoche also endorsed recent policy proposals by the advocacy group Excel in Ed, such as requiring all new-built schools to be open without attendance zones.¹¹²

Effects of Charter Schools on Public School Students in New York City.” *Education Finance and Policy* 13(4): 484-512; Dobbie, Will, and Roland G. Fryer Jr. 2011. “Are High-Quality Schools Enough to Increase Achievement among the Poor? Evidence from the Harlem Children’s Zone.” *American Economic Journal: Applied Economics* 3(3): 158-187; Walters, Christopher R. 2018. “The Demand for Effective Charter Schools.” *Journal of Political Economy* 126(6): 2179-2223.

¹⁰⁸ Baxter et al. 2023. “The System-Level Effects of Denver’s Portfolio District Strategy.” Center for Education Policy Analysis, School of Public Affairs, University of Colorado at Denver. <https://publicaffairs.ucdenver.edu/research-and-impact/research-centers/center-for-education-policy-analysis>. For background on the “portfolio model,” see Buckley et al. 2012. *Between Public and Private: Politics, Governance, and the New Portfolio Models for Urban School Reform*. Cambridge, MA: Harvard Education Press, 2023.

¹⁰⁹ See, e.g., Angrist, Joshua D., Parag A. Pathak, and Christopher R. Walters. 2013. “Explaining Charter School Effectiveness.” *American Economic Journal: Applied Economics* 5(4): 1-27; Denice, Patrick. 2022. “Spatial Mismatch and the Share of Black, Hispanic, and White Students Enrolled in Charter Schools.” *Sociology of Education* 95(4): 276-301.

¹¹⁰ Monarrez, Tomás, Brian Kisida, and Matt Chingos. 2019. “Do Charter Schools Increase Segregation? First National Analysis Reveals a Modest Impact, Depending on Where You Look.” *Education Next* 19(4): 66-74; Monarrez, Tomás, Brian Kisida, and Matt Chingos. 2022. “The Effect of Charter Schools on School Segregation.” *American Economic Journal: Economic Policy* 14(1): 301-340; see also Orfield and Frankenberg (eds.). *Educational Delusions? Why Choice Can Deepen Inequality and How to Make Schools Fair*; Zimmer et al. 2009. *Charter Schools in Eight States: Effects on Achievement, Attainment, Integration, and Competition*. Santa Monica, CA: RAND Corporation.

¹¹¹ DeRoche Testimony, 3/15/2023 Hearing, pp. 9-10.

¹¹² Ibid., see also Patricia Levesque, “Four New Policies to Eliminate School Boundaries.” *ExcelinEd.org* (May 17, 2022). <https://excelined.org/2022/05/17/four-new-policies-to-eliminate-school-boundaries/>

Mr. Schwalbach, in turn, advocated for minor tweaks to improve Colorado’s current open-enrollment law.¹¹³ Colorado’s statute does not define “capacity,” leaving school districts near-total discretion to determine whether a given school or classroom is available for out-of-zone enrollment. For Mr. Schwalbach, adding more precise definitions is a “key way Colorado can improve its open enrollment policy. State policy makers should ensure that school districts don’t arbitrarily define capacity to keep transfer students out.”¹¹⁴ Colorado’s statute also does not require reporting or other public disclosure of schools’ capacity/availability, of open-enrollment applications, or of decisions to accept or reject applications. Mr. Schwalbach also urged a fix to such nontransparency:

“Without transparency, districts could reject all transfer applicants or discriminate against certain applicants. Accountability through transparent reports published annually by the SEA helps ensure that school districts maintain a fair open enrollment process. . . . The lack of transparency regarding open seats [also] creates a burden on families, requiring them to reach out to school districts and try to find out relevant information and available schools.”¹¹⁵

Boundary-Oriented Solutions

The second bucket of policy proposals is oriented around the intentional use of attendance zones and related policies to foster integration. These solutions echo Justice Kennedy’s concurrence in *Parents Involved*:

School boards may pursue the goal of bringing together students of diverse backgrounds and races through other means, including strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race.¹¹⁶

Such approaches maintain (1) the primacy of school districts (rather than parents) in selecting the school each student will attend, and (2) the primacy of residence in doing so. They still seek to disrupt the relationship between property wealth and school assignment, but do so primarily by locating schools and drawing attendance boundaries to include racially diverse neighborhoods within each school’s catchment area, as well as by using magnet schools and programs to

¹¹³ Schwalbach Testimony, *4/19/2023 Hearing*, pp. 6-8.

¹¹⁴ Ibid. Recent research supports Mr. Schwalbach’s suspicions, showing that districts’ discretion over choice enrollments leads to fewer low-income and non-Caucasian transfers. See Singer, Jeremy. 2022. “School Choice, Local Discretion, and Stratification: Evidence from Inter-District Open Enrollment in Metro Detroit.” *Education and Urban Society* (OnlineFirst): <https://doi.org/10.1177/00131245221137571>.

¹¹⁵ Schwalbach Testimony, *4/19/2023 Hearing*, pp. 6-8. This testimony echoes the analysis and recommendations of Hasler and Benigno (2007).

¹¹⁶ *Parents Involved in Community Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 789 (2007) (Kennedy, J., concurring).

encourage voluntary racially integrative choices.¹¹⁷ For many of these advocates, neighborhood schools can be a tool for empowerment just as much as for disempowerment.¹¹⁸

Among the national experts who testified, Dr. Meredith Richards and Dr. Genevieve Siegel-Hawley focused most heavily on boundary-oriented solutions. Dr. Siegel-Hawley urged school districts to focus on integration as an explicit goal in setting student-assignment policies:

Districts and communities really need to surface the racialized history that is going to inform and be a part of these processes. They need to set clear, measurable, and race conscious, because that's still permitted at the moment, rezoning goals so that communities understand what they're working towards and which options are going to move them closer to the goal or further away and they need to rank order the priorities so they're not all in tension with each other all the time.¹¹⁹

Dr. Siegel-Hawley also urged school districts to mitigate disparities through deliberate, targeted community and public engagement.¹²⁰ Research shows that districts using such intentional efforts to foster integration in fact succeed, reducing school polarization despite underlying residential segregation, and that substantial integration gains are possible without increasing average commute times.¹²¹

Dr. Richards, in turn, advocated for the same effort to draw catchment areas with an affirmative goal of reducing racial polarization.¹²² Further, Dr. Richards encouraged greater oversight and transparency of zoning decisions. “If we were to have more stringent oversight and monitoring of our local zoning, to have equity audits with very specific racial criteria, and were to enforce our existing laws . . . that such gerrymandering on the basis of race is illegal, this would be a viable policy lever for reducing some segregation.”¹²³

¹¹⁷ See generally Frankenberg, Erica and Elizabeth DeBray. *Integrating Schools in a Changing Society: New Policies and Legal Options for a Multiracial Generation*. Chapel Hill, NC: University of North Carolina Press, 2011.

¹¹⁸ E.g., Todd-Breland, *The Janus-Faced Neighborhood School (In The Return of the Neighborhood as an Urban Strategy)*; Baugh, *The Detroit School Busing Case: Milliken v. Bradley and the Controversy over Desegregation* (Lawrence, KS: University Press of Kansas, 2011), Ch. 4.

¹¹⁹ Siegel-Hawley Testimony, *2/1/2023 Hearing*, p. 8; see also Siegel-Hawley et al. 2021, “Race and School Rezoning Criteria.” *Contexts* 20(3): 72-75.

¹²⁰ *Ibid.*

¹²¹ Taylor, Kendra, Jeremy Anderson, and Erica Frankenberg. 2019. “School and Residential Segregation in School Districts with Voluntary Integration Policies.” *Peabody Journal of Education* 94(4): 371-387; Siegel-Hawley et al. 2020. “School Segregation by Boundary Line in Virginia: Scope, Significance and State Policy Solutions.” State College, PA/Richmond, VA: Center for Education and Civil Rights/Virginia Commonwealth University. https://scholarscompass.vcu.edu/edlp_pubs/13/; Gillani et al. 2023. “Redrawing Attendance Boundaries to Promote Racial and Ethnic Diversity in Elementary Schools.” *Educational Researcher* 52(6): 348-364.

¹²² Richards Testimony, *2/1/2023 Hearing*, p. 19.

¹²³ *Ibid.* While this report quotes these sources accurately, some members of the Advisory Committee note that the term “equity” is often associated with treating similarly-situated individuals differently based on race and thus has

Hybrid Solutions

Finally, several policy proposals involve hybrid approaches, combining individualized choice with district-directed integration as a system of “controlled choice.”¹²⁴ Perhaps the quickest summation of this position can be seen in a Twitter exchange with education historian (and popular podcast host) Dr. Jack Schneider:¹²⁵



Figure 15

This exchange acknowledges the privilege-hoarding nature of property-based school assignment, as well as the valid role of choice in overcoming that problem—but rejects the market logic on which many choice advocates rely. For advocates of this orientation, choice must be part of a broader package designed to empower families without over-extending the market analogy.¹²⁶

deep negative connotations, and that as a civil rights body, the Advisory Committee should not be understood as endorsing any specific usage or meaning of the term.

¹²⁴ Alves, Michael J. and Charles V. Willie. 1987. “Controlled Choice Assignments: A New and More Effective Approach to School Desegregation.” *Urban Review* 19(2): 67-88; Orfield and Frankenberg, *Educational Delusions? Why Choice Can Deepen Inequality and How to Make Schools Fair*; Ehlers et al., 2014. “School Choice with Controlled Choice Constraints: Hard Bounds versus Soft Bounds.” *Journal of Economic Theory* 153: 648-683.

¹²⁵ Twitter.com (Sept. 27, 2023), https://twitter.com/Edu_Historian/status/1707019195358069136.

¹²⁶ For research into the determinants of parental choice, see, Abdulkadiroglu et al. 2020. “Do Parents Value School Effectiveness?” *American Economic Review* 110(5): 1502-1539; Houston, David. M. and Jeffrey R. Henig. 2023. “The ‘Good’ Schools: Academic Performance Data, School Choice, and Segregation.” *AERA Open* (9): <https://doi.org/10.1177/23328584231177666>; Beuermann, Diether W., C. Kirabo Jackson, Laia Navarro-Sola, and Francisco Pardo. 2023. “What Is a Good School, and Can Parents Tell? Evidence on the Multidimensionality of School Output.” *Review of Economic Studies* 90(1): 65-101; Harris, Douglas N. and Matthew F. Larsen. 2023. “What Schools Do Families Want (and Why)? Evidence on Revealed Preferences From New Orleans.” *Educational*

For an example of such hybrid approaches, Dr. Meredith Richards endorsed Berkeley Unified School District’s enrollment zones. Berkeley district uses “affirmative zoning” to create “a zone-based system where they have, basically, created large attendance zones that are balanced in terms of parental income, race, and education” along with “controlled choice within those larger boundaries” so that “parents can choose . . . where they want to go” subject to “a secondary check to ensure that the balance of students is still even.”¹²⁷ As further described elsewhere, Berkeley’s plan divided the district into three elementary zones (each with 3 to 4 schools), each comprised of about 150 “planning areas” of about a half-dozen city blocks.¹²⁸ The district assigns a “diversity score” to each planning area—equally weighting the neighborhoods’ average income, average educational attainment of adults, and percentage non-Caucasian individuals—and then adjusts the results of choice-based admissions and lotteries to ensure that each classroom in each school is within 10 percent of the enrollment zone’s distribution of scores.¹²⁹ Along with extensive outreach and transportation support, the system is intended to create a degree of choice while preventing any stratification by race or class due to those individual choices. Relatedly, Dr. Genevieve Siegel-Hawley endorsed magnet schools as a diverse-by-design form of choice.¹³⁰

Evaluation and Policy Analysis, 45(3): 496-519 (hereafter cited as Harris and Larsen, *What Schools Do Families Want (and Why)? Evidence on Revealed Preferences From New Orleans*); Harris, Douglas N. and Matthew F. Larsen. 2024. “Going-to-School Shopping: Investigating family preferences in New Orleans.” *Education Next*, 24(1): 62-69 (hereafter cited as Harris and Larsen, *Going-to-School Shopping: Investigating family preferences in New Orleans*); Campos, Christopher and Kearns, Caitlin. 2024. “The Impact of Public School Choice: Evidence from Los Angeles’s Zones of Choice,” *The Quarterly Journal of Economics*, 139(2), pp. 1051-1093; Jefferson, Antwan and Plashan McCune. 2020. *Engagement Report: Family Decision-Making* Denver, CO: Denver Journal of Education and Community (hereafter cited as Jefferson and McCune, *Engagement Report: Family Decision-Making*). At a high level, these studies show that choice decisions correlate with school quality (along both academic and non-academic dimensions) but also with racial stereotyping and sorting, suggesting an appropriate role for “regulated” or “controlled” choice.

¹²⁷ Richards Testimony, 2/1/2023 Hearing, p. 19.

¹²⁸ Erica Frankenberg, *The Promise of Choice: Berkeley’s Innovative Integration Plan* (In *Educational Delusions? Why Choice Can Deepen Inequality and How to Make Schools Fair* (Gary Orfield and Erica Frankenberg, eds.) (Berkeley, CA: University of California Press, 2013), pp. 69-88.

¹²⁹ *Ibid*; Some members of the Advisory Committee note that broad terms like “diversity” are often ambiguous because they are occasionally used to refer to differences in the racial demographics of a specific population—without regard to other types of diversity. *Cf. Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 231 (2023) (“In other words, the student must be treated based on his or her experiences as an individual—not on the basis of race. Many universities have for too long done just the opposite. And in doing so, they have concluded, wrongly, that the touchstone of an individual's identity is not challenges bested, skills built, or lessons learned but the color of their skin. Our constitutional history does not tolerate that choice.”).

¹³⁰ Siegel-Hawley Testimony, 2/1/2023 Hearing, p. 26; Genevieve Siegel-Hawley and Erica Frankenberg, “Designing Choice: Magnet School Structures and Racial Diversity.” In *Educational Delusions? Why Choice Can Deepen Inequality and How to Make Schools Fair* (Gary Orfield and Erica Frankenberg, eds.), (Berkeley, CA: University of California Press, 2013,) pp. 107-128; Richard D. Kahlenberg and Halley Potter. *A Smarter Charter: Finding What Works for Charter Schools and Public Education*. New York, NY: Teachers College Press, 2014; Jennifer Holme and Kara Finnegan *Striving in Common: A Regional Equity Framework for Urban Schools*; Seifert,

Dr. Tomás Monarrez’s testimony was consistent with this hybrid approach. Pointing to the mixed record on integration of both current choice practices and current boundary practices, Dr. Monarrez concluded:

“[U]nless they are purposefully formulated to try to improve diversity . . . neither of these policies is naturally going to lead to diversity. There’s always going to be a degree of intentionality from local policy makers, whether it’s on the basis of race intentionally or just correlated factors that happen to be correlated with increased segregation and these things. We are finding that if the policy is not geared towards raising the level of diversity, it’s most likely not going to.”¹³¹

Testimonial Findings

The Committee convened a full-day hearing on May 15, 2023, to receive in-person testimony from nine witnesses on the effects of school attendance zones in Colorado. The Committee reconvened on Zoom on July 19, 2023, for additional testimony from a tenth witness. The ten witnesses reflected a highly diverse array of professional, personal, demographic, and ideological backgrounds and perspectives.

While the testimony also reflected a diverse set of policy preferences, there was broad agreement on several points. The testimony established largely unanimously that (A) attendance zones contribute to unequal access to educational opportunity; (B) attendance zones contribute as well to racialized perceptions of school quality; (C) despite the disparate impacts, neighborhood schools can be an appropriate policy goal; and (D) school choice can be a powerful but incomplete remedy.

Finding I: Colorado students do not have equal educational opportunity, and attendance zones are part of the problem.

The witnesses unanimously testified that many students in Colorado currently lack equal access to quality public schools. Dr. Brenda Dickhoner, the president of the advocacy group Ready Colorado, presented recent research findings of dramatic geographic disparities and noted:

“families living in high-income zip codes are seven times as likely to have excellent access to a top high school than families living in low-income zip codes. Elementary school students living in affluent zip codes are four times more likely to have access to a high-quality school.”¹³²

Sophia, Lorna Porter, Sarah A. Cordes, and Priscilla Wohlstetter. 2022. “Pursuing Diversity: The Context, Practices, and Diversity Outcomes of Intentionally Diverse Charter Schools.” *Teachers College Record* 124(12): 95-134.

¹³¹ Monarrez Testimony, *4/19/2023 Hearing*, p. 9. Again, some members of the Advisory Committee note that racial and ethnic diversity are not the same as “diversity” itself. *Cf. Students for Fair Admissions, Inc.*, 600 U.S. at 220 (rejecting the idea that “race in itself ‘says something about who you are.’”) (internal brackets omitted).

¹³² Dickhoner Testimony, *5/15/2023 Hearing*, pp. 23-4; Ready Colorado. 2020. “High Quality Schools Heat Map.” https://readycolo.org/wp-content/uploads/2021/02/ReadyCO-Report-020821_interactive_fixed-1.pdf (see also <https://coloradoschoolmap.com/>), p. 4. (hereafter cited as Ready Colorado, *High Quality Schools Heat Map*). The study defined “quality” according to the state’s statutory accountability system. It measured “access” as a weighted composite index of “(1) the ratio between student-aged children in the zip code and the number of seats available in

Consistent with the arguments made by advocate Tim DeRoche, Dr. Dickhoner noted that these disparities allow “power and influence” to be “clustered together and . . . increasingly isolated from nearby communities.” Indeed, Ready Colorado’s research shows that the geographic disparities are closely associated with income:

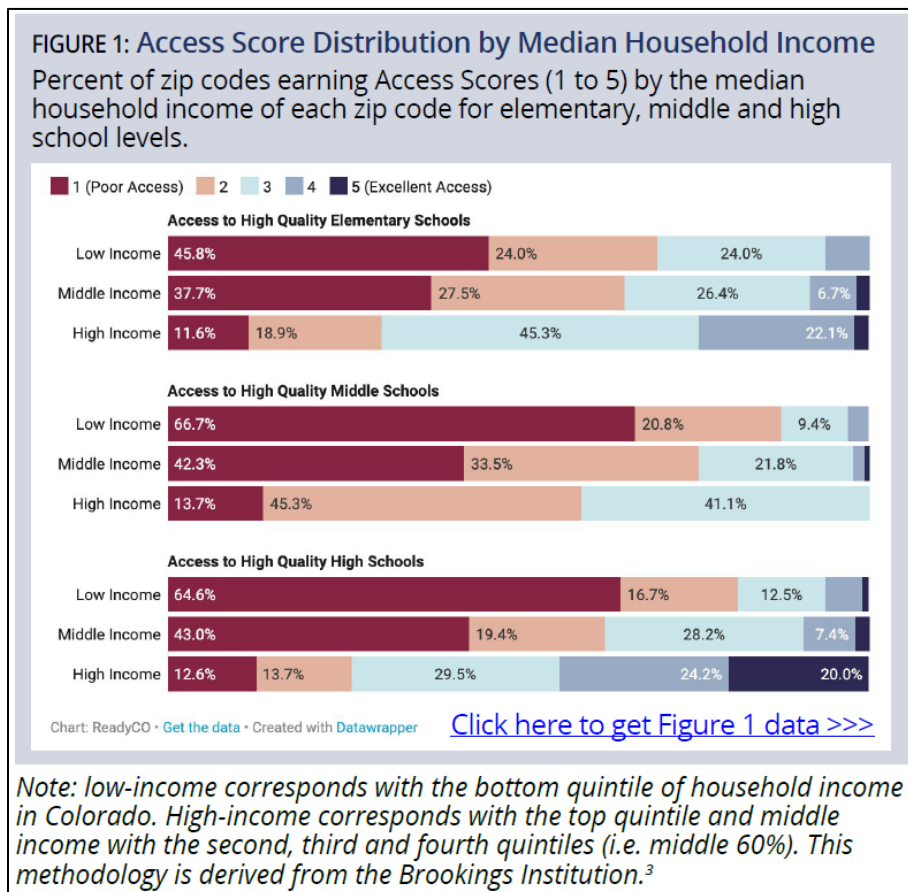


Figure 16

According to these measures, 24 percent of high-income areas have ready access to high-quality elementary schools, compared to just 6 percent of low-income areas. Meanwhile, a “staggering” 87.5 percent of low-income areas and 76 percent of middle-income areas lack meaningful access to quality middle schools, with even more stratification at the high-school level.¹³³ Ready Colorado presented the same data as a scatterplot, depicting both the disparities and the exceptions to the rule:

high-quality schools; and 2) the actual driving time to the nearest high-quality school from the center of the zip code.”

¹³³ Ready Colorado, *High Quality Schools Heat Map*, pp. 5-7.

FIGURE 2: Zip Code Access Scores by Median Household Income, Elementary Level

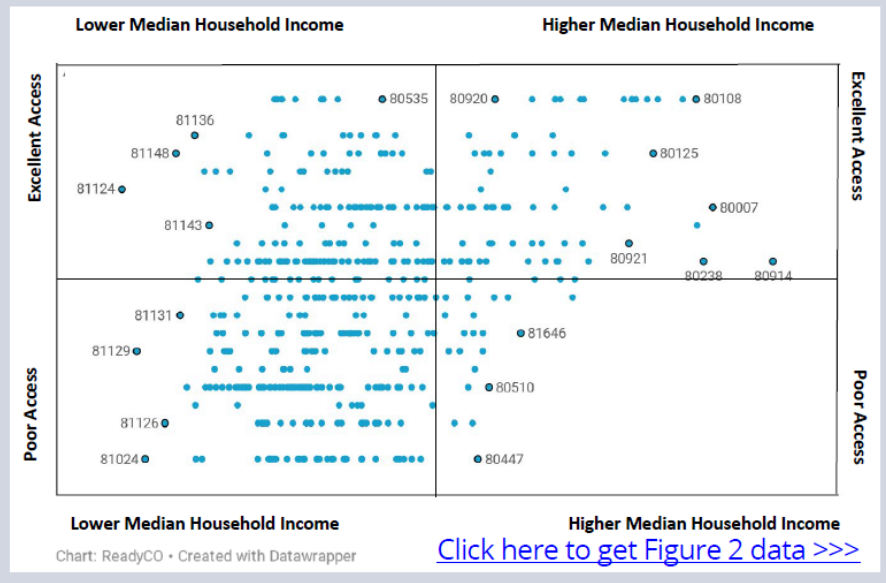


Figure 17

As Dr. Dickhoner presented these findings, the upper left quadrant—low-income areas that nonetheless have access to high-quality schools—shows that “demographics do not have to determine destiny for a school or the students attending it.”¹³⁴ In other words: disparate access is not inevitable. It’s a policy choice.

The witnesses also agreed that attendance zones have the effect of replicating these geographic disparities. Stepping back from the specific details of Colorado law, Dr. Romero testified that politically-determined boundaries are often the “perfect example” of racialized policymaking. He stated:

“I think [borders and boundaries] are a perfect example of the way that the legal system can reinforce patterns of segregation [and] patterns of inequity... [W]hether it’s the school boundary, whether it’s the neighborhood boundary, [and] certainly the jurisdictional boundary.”¹³⁵

Ready Colorado’s research likewise concluded:

“The current dominant model in schooling—automatic assignment to a zoned boundary school—is unfortunately a model for exclusion and inequality.... This is obvious to every parent, whether it is a wealthy family paying a premium for a home with a guaranteed seat in a top public school or the

¹³⁴ Dickhoner Testimony, 5/15/2023 Hearing, p. 24.

¹³⁵ Romero Testimony, 5/15/2023 Hearing, p. 67; see also Jennifer Holme, Kara Finnigan, and Sarah Diem, *Challenging Boundaries*; Wilson, *supra* note 100.

family without means that drives 40 minutes each way to get their child to a better school. That’s because the boundary model of schooling is purposefully designed to exclude certain children.”¹³⁶

The quantitative and qualitative evidence heard by the Committee agreed that attendance zones generally replicate patterns of segregation. Quantitatively, Dr. Tomás Monarrez’s research, as featured on Vox.com, included data visualizations for elementary school catchment areas in 29 Colorado school districts, compiled as Appendix A.¹³⁷ Based on 2013 boundary zones and demographics, the data showed that roughly 45 percent of the districts used attendance zones that either recreate the underlying residential segregation or actually increase segregation—and while another 30 percent marginally decreased the level of segregation relative to residential patterns, only about 25 percent did so substantially. Qualitatively, several witnesses testified to the effects of attendance zones in replicating inequality. As Nicholas Martinez from Transform Education Now phrased it:

“We want our kids to be in the same communities as their peers. We want our teachers to all live in that neighborhood. But when the price tag of a quality public education is a downpayment on a \$1.3 million home, that’s not realistic for so many families, and it’s exclusionary to so many...”¹³⁸

Mr. Martinez testified as well to the connection between historical residential discrimination and today’s attendance zones. He noted:

“You look at the neighborhoods, you look at communities where folks like myself were allowed to buy homes [] and those have remnants today... I think zoned enrollment of schools is a byproduct of that.”¹³⁹

As Mr. Martinez concluded:

“If you’re like my family, the folks on the other side of the street went to a really good high school. The folks behind us went to a really good high school. But we had a gerrymandered school district. And I was, like, the last house that they were able to grab in the zoning. And it ensured that I went to a school, like I said, that ultimately closed because of poor performance, and there was nothing my family could do about it.”¹⁴⁰

Finding II: Attendance zones contribute to racialized perceptions of quality.

Several witnesses testified not only to the relationship between residential and school segregation, but also to the broader effects of racially identifiable schools. By contributing to racialized perceptions of quality, school segregation feeds disenrollment and ultimately disinvestment.

¹³⁶ Ready Colorado, *High Quality Schools Heat Map*, p. 16.

¹³⁷ Monarrez, *School Attendance Boundaries and the Segregation of Public Schools in the United States*; Chang, Alvin. 2018. “We can draw school zones to make classrooms less segregated. This is how well your district does.” Vox.com, available at <https://www.vox.com/2018/1/8/16822374/school-segregation-gerrymander-map>.

¹³⁸ Martinez Testimony, *5/15/2023 Hearing*, p. 104.

¹³⁹ Ibid., p. 106.

¹⁴⁰ Ibid., p. 107.

The testimony tended to show that these distinctions are rooted in purposeful social policy. For instance, Dr. Tom Romero testified that the distinction between “de jure” and “de facto” segregation is politically constructed to artificially screen otherwise relevant context out of the legal analysis:

“This distinction between de jure and de facto is one that is artificial, it is one that is political and, as you'll hopefully see here in terms of my presentation, that has deep understanding and meaning in terms of our history.”¹⁴¹

According to this testimony, the distinction reinforces what Dr. Romero referred to as “the color line” the forms of legal policy that give content and power to the social construct of race.¹⁴² For these witnesses, the same redlining, racially restrictive covenants, and other mechanisms for enforcing the color line throughout Colorado history also led—and still lead—to schools that reflect the broader neighborhood segregation.¹⁴³

The testimony further tended to show that racialized perceptions of school quality emerge from de facto segregation. As Vernon Jones of the nonprofit group FaithBridge stated:

“The reason why we are still sitting at a table like this, talking to you about segregated schools, is because the mindsets remain the same, is that people believe, “Hey, if my kid goes to a school that is in closer proximity to whiteness or affluence or privilege, that's going to be a great school.” But if he goes to a school where there's predominantly minority kids, higher free and reduced lunch, higher Sp[ecial] Ed[ucation], higher whatever, then they assume that that's not a quality school.”¹⁴⁴

These perceptions, in turn, contribute to disenrollment from families exercising choice and by districts setting attendance boundaries. As then-President of the Boulder Valley School Board, Kathy Gebhardt, testified:

“Most under-enrolled schools are located in historically marginalized neighborhoods. The schools tend to serve a disproportionate number of emerging bilinguals, students of color, students with disabilities, and students that qualify for free and reduced lunch. As kindergarten enrollment has

¹⁴¹ Romero Testimony, *5/15/2023 Hearing*, pp. 8-9 (citing Lassiter, Matthew D. “De Jure/De Facto Segregation: The Long Shadow of a National Myth.” In *The Myth of Southern Exceptionalism* (Matthew D. Lassiter and Joseph Crespino, eds.), (New York, NY: Oxford University Press, 2009), pp. 25-48., for the proposition: “The label of de facto segregation is so historically loaded—so wrapped up in artificial binaries between deliberate state action and private forces, between White culpability and White innocence—that historians should discard it as an analytical and descriptive category and evaluate it instead as cultural and political construct.”). The Committee does not, in this report, question the validity of the distinction for assigning legal liability—as noted on page 1, the committee takes the current structure of civil rights law as given. Some members of the committee object to the more sweeping conclusions drawn by Dr. Romero.

¹⁴² Romero Testimony, *5/15/2023 Hearing*, pp. 7-9; see also Douglas, Frederick. 1881. “The Color Line.” *North American Review* 132: 567-577; DuBois, W. E. Burghardt. *The Souls of Black Folk*. Chicago, IL: A.C. McClurg & Co, 1903.

¹⁴³ Romero Testimony, *5/15/2023 Hearing*, pp. 16-9.

¹⁴⁴ *Ibid.*, p. 173.

declined, a stigma now exists for small schools which accelerates the school's enrollment decline.”¹⁴⁵

The most compelling testimony on this dynamic was from the University of Colorado at Denver’s Dr. Antwan Jefferson. Describing a zip code in Denver with four schools facing very different enrollment patterns, Dr. Jefferson explained that the demand, and resulting resources, follow patterns of segregation:

“So the disparities are in the school with the fewest number of children they have the fewest number of resources, because the dollars follow the child. Also in that same school is mostly low-income families of color. The school is about 92 percent free and reduced lunch, greater than 90 percent kids of color. So you've got economic and racial segregation that is also tracked alongside of what is perceived to be the school's desirability.”¹⁴⁶

Importantly, these patterns reflect perceptions of quality, not actual school quality. As Dr. Jefferson testified at length, the official standardized and publicized metrics of school quality are often unrelated to the qualities disadvantaged communities value. He testified, “[t]hese families were asking questions about something that wasn't easily quantifiable on a data dashboard. They were asking questions about the humane treatment, the dignity of their children.”¹⁴⁷

Dr. Jefferson described his research finding that low-income non-Caucasian parents look primarily for information about schools on (1) the nature of student-teacher relationships, (2) student-teacher ratios, (3) variations in student outcomes, and (4) the range of academic programs available.¹⁴⁸ By instead providing information about test scores and aggregate academic outcomes that largely correlate with income and race, most public ratings thus fail to provide relevant information, and contribute to the racialized stereotyping of schools.

The testimony to the Committee did not expressly attribute these racialized perceptions to attendance zones. But to the extent attendance zones replicate residential segregation and thus create racially identifiable schools, the relationship between attendance zones and racialized understandings of school quality is clear.

Finding III: School districts often use attendance zones to create neighborhood schools and increase racial diversity.

The witnesses largely (though not uniformly) agreed that attendance zones can be used for desirable purposes—namely, creating neighborhood schools, promoting integration, or both.

Rico Munn, former Superintendent of Aurora Public Schools, provided the most robust defense of neighborhood schools. A community’s public schools, as Superintendent Munn sees it, are usually

¹⁴⁵ Ibid., p. 39.

¹⁴⁶ Ibid., pp. 127-8.

¹⁴⁷ Ibid., p. 111.

¹⁴⁸ Ibid., pp. 124-6; Hendrix Testimony, 5/15/2023 Hearing, pp. 146-48.

“the largest single government investment in that community of any kind.”¹⁴⁹ From a school’s educational program to the adults who work there, to the many statutory promises delivered through schools—for education, but also for civil rights, for meals, for clothing, for disability services, for counseling, and for increasingly more wraparound services—these investments make the most sense, both normatively and logistically, when organized by place. “If you move away from a boundary or an attendance area, you’re diffusing that government investment across an indeterminate group of folks” rather than in a specific community, making it “very difficult to deliver upon all the other services that the state is saying that we have to deliver in conjunction with our services.”¹⁵⁰ Relatedly, Superintendent Munn testified, “neighborhood schools and attendance areas are very important for the concept of accountability.”¹⁵¹ To ensure that parents have the needed transparency and agency, “[w]e want to have the ability for parents to be able to see, feel, touch what is happening with their child’s education in order to be able to provide true accountability.”¹⁵² This direct parental engagement—direct interactions between school personnel and the community they serve—is necessary for “true accountability,” and it becomes more challenging with distance.¹⁵³ As Superintendent Munn concluded this portion of his testimony:

Transportation can solve some of that, but it doesn’t solve the everyday reality of people as they are seeing what’s happening in their community, as they’re seeing what’s happening in their neighborhood. So, neighborhood schools or attendance zones help connect people to the resources that are on the ground right around them and can serve as a hub to do that.¹⁵⁴

Superintendent Munn was not alone on this point. Dr. Antwan Jefferson from the University of Colorado at Denver testified to similar themes, noting that removing place from the equation signals disinvestment:

“So you get the sense that the district doesn't care, that there are too many children, that there's not enough money, that the classes – the school is under enrolled but the classrooms are over enrolled. That mix does not communicate that we actually care about children. I'm saying it in a sort of universal sense. It doesn't communicate that we care about children []. What it communicates is that we believe that school is a thing that matters and the variations across schools is less consequential, and that is not true.”¹⁵⁵

This perception of disinvestment, Dr. Jefferson testified, comes from inadequate attention to community within the broader portfolio of enrollment models:

¹⁴⁹ Munn Testimony, *7/19/2023 Hearing*, p. 4.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

¹⁵³ *Ibid.*; Lay, Celeste *Public Schools, Private Governance: Education Reform and Democracy in New Orleans*. Philadelphia, PA: Temple University Press, 2022.

¹⁵⁴ Munn Testimony, *7/19/2023 Hearing*, p. 5.

¹⁵⁵ Jefferson Testimony, *5/15/2023 Hearing*, p. 130.

“If there are boundaries for some, zones for others, and neither for a third group, those kinds of inequities are persistent over time, and the collateral outcome of that has been, for families in this school, the belief that the district is just waiting for us to die on the vine so they can do something else with it...

But with as much flexibility as districts have to make decisions about how they carry out their public responsibility, these kinds of inequities really fall more disproportionately to the families that are already without the means, the resources, and the proximity that they need to otherwise have a fair shot for their children.”¹⁵⁶

While Dr. Jefferson did not expressly endorse the neighborhood-school model or its attendance zones, this testimony supports the arguments made by Superintendent Munn.

These witnesses did not, however, deny the harmful effects of attendance zones. As Superintendent Munn stated: “I believe that [attendance zones] can be a source for both equity and justice. However, there need to be certain safeguards and commitments in place for that to be the situation. Or else, they are a real concern.”¹⁵⁷ His testimony continued: “[A]ttendance zones need supporting structures in order to not go down the path of de facto segregation.”¹⁵⁸ One such supporting structure is a measure of individualized school choice: “I do believe that you do need to have some level of choice within that structure so that people can exact that agency to different ideas and different structures[.]”¹⁵⁹

Kathleen Gebhardt, then-President of the Board of Education for the Boulder Valley School District and a longtime leader in Colorado’s progressive education-reform movement, testified to these same points. She endorsed redrawing attendance boundaries with a focus on how catchment areas and school-assignment policies more broadly can be tied to a school district’s strategic plan and stated: “[b]ut the way we need to define that is we need to define those racial-integration standards as important to one of our overall strategic and student-outcome standards.”¹⁶⁰ Further, President Gebhardt testified, this process should take place frequently “every three to four years.”¹⁶¹

As President Gebhardt testified, quoting from a proposed policy that the Denver Public Schools school board has since altered, this continual revision can support community-driven neighborhood schools as well as greater sociodemographic integration:

¹⁵⁶ Ibid., pp. 129-30.

¹⁵⁷ Munn Testimony, *7/19/2023 Hearing*, p. 2.

¹⁵⁸ Ibid., p. 5.

¹⁵⁹ Ibid.

¹⁶⁰ Gebhardt Testimony, *5/15/2023 Hearing*, p. 36.

¹⁶¹ Ibid., p. 37.

The recommended policy is to “[a]nalyze and adjust enrollment boundaries and enrollment zones every four years or less.”¹⁶² Additionally,

“Understand uniqueness of neighborhoods and impacts of declining enrollment by involving the community through regional meetings and conversations to help inform or create future recommendations. Avoid enrollment boundaries and enrollment zones that socioeconomically segregate schools, creating an imbalance of funding, resources, programs, electives, opportunities, and PTA/PTO fundraising”¹⁶³

Ultimately, like Superintendent Munn, President Gebhardt saw attendance zones as tools that can be used inappropriately or negligently to reinforce forms of perceived privilege, or instead to foster both community and integration.

Brian Eschbacher testified that neighborhood schools should themselves be understood as a type of school choice, albeit one made through the real-estate market. His presentation showed that just under half of Denver Public Schools students attend their neighborhood school, with the rate much higher in affluent attendance zones than otherwise (Figure 18):¹⁶⁴

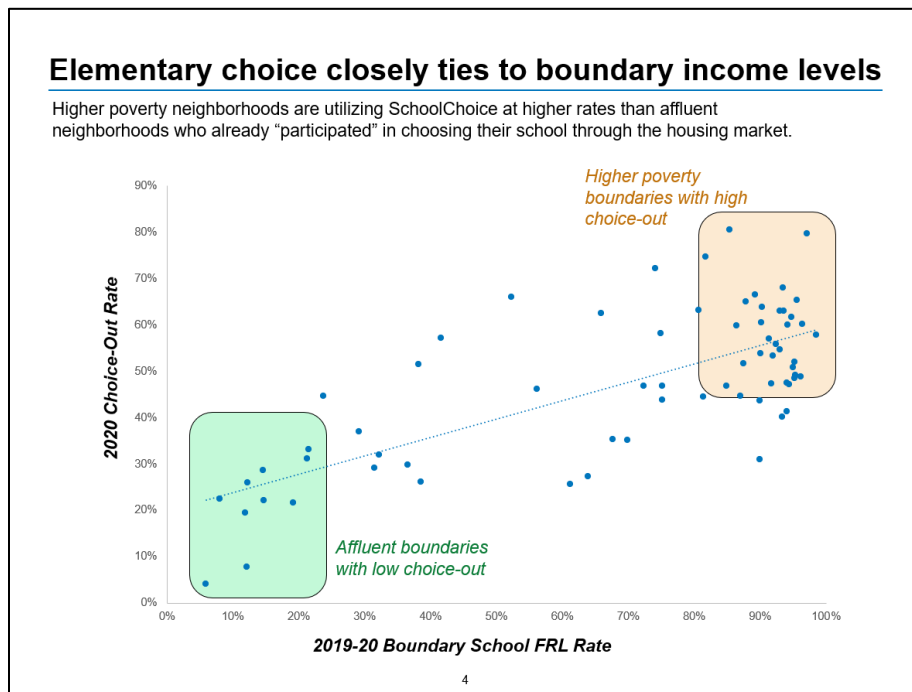


Figure 18

Drawing conclusions from this data, Eschbacher testified that neighborhood-based assignment is simply a different form of school choice, privileging those with the ability to exercise choice

¹⁶² Ibid., p. 40; see also Bartels, Bradley, and Donato, Rubén. 2009. Unmasking the school re-zoning process: Race and class in a Northern Colorado community. *Lat Stud* 7, 222–249.

¹⁶³ Gebhardt Testimony, 5/15/2023 Hearing, p. 40.

¹⁶⁴ Eschbacher Testimony, 5/15/2023 Hearing, p. 181.

through property purchases. He stated, “Affluent families have often already participated in school choice when they bought their home, and that’s something that we’ve seen in Denver.”¹⁶⁵

The implications of this testimony, in the aggregate, are that neighborhood schools and their attendance zones should be considered not the opposite of school choice, but an element of it:

“I think this slide really sticks with me, because when some stakeholders say we should be shutting them off public-school choice, I question who that’s helping, who that’s hurting. If you’re not going to shut off the housing market with it, then I think it’s clear who you’re going to impact in your ability to evaluate and attend other school options.”¹⁶⁶

Understood as a qualified endorsement of neighborhood schools with appropriate structures to protect marginalized communities, Mr. Eschbacher’s testimony reinforces the points made by Superintendent Munn, Dr. Jefferson, and President Gebhardt.

The weight of the testimony thus supports the conclusion that the neighborhood-school model and its attendance zones can play a valid and important role in a school district’s student-assignment policy. This conclusion is largely consistent with Congress’s judgment as expressed in §202 of the EEOA. The testimony also establishes, however, that the neighborhood-school model must be coupled with “support structures,” including intentionality in their design as well as sufficient non-residence-based school choice, to guard against the model’s potential to replicate privilege and de facto segregation.

Finding IV: Individualized school choice is a useful but not complete solution to the disparate impacts created by attendance zones.

The witnesses were also unanimous—or nearly so—in characterizing school choice as a necessary but not sufficient remedy for the harmful effects of residence-based school assignments.

Dr. Brenda Dickhoner presented the most robust endorsement, arguing that “[s]chool choice can and should result in equitable access to high-quality schools for all students.”¹⁶⁷ As she further testified, Colorado’s charter schools have proven to improve access:

“Another finding from this research from Ready Colorado is that Colorado’s charter schools played a significant role in expanding access to top schools from historically underserved communities. In Denver, for instance, charter schools are overrepresented in the district’s top schools at all levels. At the high-school level, 67 percent of the top schools in Denver are charter schools, even though charter schools only comprise 36 percent of district’s high schools.”¹⁶⁸

According to Ready Colorado’s research, without charter schools, 18 percent of Colorado’s zip codes would have worse access to high-quality elementary schools, fully 43 percent would have

¹⁶⁵ Ibid.

¹⁶⁶ Ibid., p. 182.

¹⁶⁷ Dickhoner Testimony, 5/15/2023 Hearing, p. 22.

¹⁶⁸ Ibid., p. 25.

worse access to high-quality middle schools, and 26 percent would have worse access to high-quality high schools.¹⁶⁹ Dr. Dickhoner likewise testified that Colorado’s open-enrollment law contributes to equal access and noted that “at least one quarter of public-school students are exercising school choice and open-enrolling in a school that is not their assigned neighborhood school.”¹⁷⁰

Because both options allow enrollment without regard to residence, both options help erode the relationship between property wealth and school access. Dr. Dickhoner was far from alone on this assessment. Deborah Hendrix spoke to the power of choice to “disrupt the legacy of educational failure.”¹⁷¹ Nicholas Martinez testified that “school choice is a powerful lever, [a] powerful policy for families to kind of exercise their own agency and self-determination for their children.”¹⁷² Even the witness most committed to neighborhood schools, former Superintendent Rico Munn, testified that school choice is a needed support structure—a safeguard—to prevent the neighborhood-school model from limiting access to school.¹⁷³

The witnesses also testified that school choice has been hamstrung by policy choices that constrain the supply of, and access to, choice-based enrollments. Echoing the arguments made by advocates Tim DeRoche and Jude Schwalbach, Dr. Dickhoner noted that Colorado’s open-enrollment system is limited by its exceptions. She stated:

“State law provides families with the power to choose schools outside of their zone’s neighborhood school. But that doesn’t mean the process is easy or that the seat is guaranteed. Districts define and measure school capacity locally, and in cases where space or capacity in a school is limited, in-boundary residence students do have the priority in enrollment.”¹⁷⁴

For Dr. Dickhoner, addressing these exceptions is essential to overcoming the effects of residentially sorted schooling:

“Parents’ rights to make choices for their children is a value that should not be superseded. The value of local governance and parents’ rights can come into conflict when districts or schools operate intentionally or unintentionally in ways that put up unnecessary barriers for families or disempower them.”¹⁷⁵

¹⁶⁹ Ready Colorado, *High Quality Schools Heat Map*, pp. 9-10.

¹⁷⁰ Dickhoner Testimony, *5/15/2023 Hearing*, pp. 27-8; *see also* Ready Colorado. 2018. “Open Doors, Open Districts: School Choice in Colorado’s Traditional Public Schools.” <https://readycolo.org/open-doors-open-districts/>.

¹⁷¹ Hendrix Testimony, *5/15/2023 Hearing*, pp. 92-6.

¹⁷² Martinez Testimony, *5/15/2023 Hearing*, pp.101-2.

¹⁷³ Munn Testimony, *7/19/2023 Hearing*, pp. 2, 5.

¹⁷⁴ Dickhoner Testimony, *5/15/2023 Hearing*, p. 26.

¹⁷⁵ *Ibid.*, p. 27.

Ms. Hendrix echoed this point, pointing to caps on charter enrollment as an obstacle to meeting students' needs.¹⁷⁶ Mr. Martinez testified to the same problem: “[T]he out-of-district opportunity is limited just by the capacity of a building, by the agreements from a school to a district and then rules that say, ‘We have to take these kids first.’”¹⁷⁷ Without additional capacity, Mr. Martinez explained, choice fails to meet its promise:

“We've had so many conversations with families that say, ‘I want this school. This is the school that I think will serve my kid best,’ or, ‘My sister's kids go here. We've seen the wonderful experience of my niece and nephew. We want something like that.’ And we have the wonderful conversation of being able to tell them that that's not a reality, that they are excluded from that because of an enrollment zone that says we're going to take all of these kids at this very high-demand school first before we ever open it up to anybody else, that it's just not a reality for so many families. And that's -- one of the terrible, terrible aspects of our work is kind of that reality dose for folks.”¹⁷⁸

Vernon Jones similarly testified that, due to capacity constraints, “choice is really chance. . . . [It's] hoping that after the algorithm runs, that your son or daughter's going to get their first or second choice.”¹⁷⁹ As Mr. Jones further testified, this lack of capacity is evidence of something shameful:

“And some of our providers even at Denver Public Schools and Aurora Public Schools -- they take great pride in their waiting list. And I say waiting lists should be the shame of the education world, is that those are people -- it's like people waiting in the food line to say, ‘I'm starving,’ and you're saying, ‘Hey, we can't feed you tonight, but maybe tomorrow.’ And that's what we keep telling the young people all across our state, all across this country, kids who are in line waiting for a great education, and we keep saying, ‘We can't do it now because of ABC politics.’”¹⁸⁰

Colorado's laws thus limit the power of choice enrollments by not properly allowing capacity in high-demand schools to rise to meet demand.

Similarly, Colorado's laws not only do not require districts to provide transportation for choice enrollments but also allows them to block such transportation.¹⁸¹

Ms. Hendrix identified this same obstacle, explaining that “when we talk about open enrollment, that's great, but the transportation is not ‘open enrollment’ as well.”¹⁸² Mr. Martinez further testified: “One of the key questions that we have is transportation. That is the number one barrier. School choice, choice of opportunity, isn't a choice if you can't actually get there.”¹⁸³ And citing research from the Urban Institute and Bellwether Education Partners, Dr. Dickhoner testified that

¹⁷⁶ Hendrix Testimony, *5/15/2023 Hearing*, pp. 98-9.

¹⁷⁷ Martinez Testimony, *5/15/2023 Hearing*, pp. 103-04.

¹⁷⁸ *Ibid.*, pp. 104-05.

¹⁷⁹ Jones Testimony, *5/15/2023 Hearing*, pp. 170-71.

¹⁸⁰ *Ibid.*, pp. 175-76.

¹⁸¹ Dickhoner Testimony, *5/15/2023 Hearing*, pp. 25, 28 (making similar observations about charter enrollment being limited by capacity and transportation policies).

¹⁸² Hendrix Testimony, *5/15/2023 Hearing*, p. 98.

¹⁸³ Martinez Testimony, *5/15/2023 Hearing*, p. 103.

the lack of transportation for choice enrollments—whether for school choice on its own, or for choice as part of “diverse by design” or “controlled choice” efforts—means that most enrollment continues to reflect the underlying residential segregation.¹⁸⁴ She stated that,

“School transportation serves as an important tool to counteract the forces of residential segregation and give students access to schools they might not otherwise be able to reach...Recent analyses from the Urban Institute estimated that neighborhood segregation by race explains about 76 percent of the variation in school segregation by race across cities and found that Black students travel farther to reach their school than their white peers, even after controlling for income. As a result, policies that do not offer families transportation support limit access to diverse schools.”¹⁸⁵

These limits—on capacity and on transportation—perpetuate the relationship between property wealth and school access, limiting choice’s ability to overcome that relationship.

Finally, the witnesses were also largely unanimous that school choice is only a partial solution, even if implemented with greater fidelity. Limiting the salience of residence-based school assignments does nothing to reduce within-school segregation and disparate treatment, for example.¹⁸⁶ Without proper controls on within-school tracking, choice runs the risk of simply relocating rather than mitigating segregation.¹⁸⁷ And even with sufficient transportation and capacity for choice enrollments, the combination of residential segregation and racialized perceptions of school quality will still leave the commuting burden disproportionately on students of color.¹⁸⁸ Finally, choice exists within a complex system that often fails to convey relevant information to families.¹⁸⁹ Without appropriate attention to the values and lived histories of marginalized communities, school choice is not, on its own, meaningful as a remedy.¹⁹⁰

At bottom, the witnesses broadly agreed (1) that school choice is a powerful tool for disrupting the relationship between property wealth and access to schools, and (2) that current Colorado law unduly limits the corrective role that school choice can play. Yet no witness argued that school

¹⁸⁴ Dickhoner Testimony, *5/15/2023 Hearing*, pp. 29-30; *see also* Burgoyne-Allen, O’Keefe and O’Neal Schiess. 2019. “Intersection Ahead: School Transportation, School Integration, and School Choice.” Bellwether Education Partners. https://bellwether.org/wp-content/uploads/2019/08/Bellwether_WVPM-IntersectionAhead_FINAL.pdf (Hereafter cited as Burgoyne-Allen, O’Keefe, and O’Neal Schiess, *Intersection Ahead: School Transportation, School Integration, and School Choice*.) (discussing diverse-by-design and controlled-choice case studies).

¹⁸⁵ Dickhoner Testimony, *5/15/2023 Hearing*, pp. 29-30.

¹⁸⁶ Romero Testimony, *5/15/2023 Hearing*, pp. 66, 74-5; *see also* Meckler, Laura. *Dream Town: Shaker Heights and the Question for Racial Equity*. New York, NY: Henry Hold and Co, 2023.

¹⁸⁷ Martinez Testimony, *5/15/2023 Hearing*, pp. 134-35.

¹⁸⁸ Dickhoner Testimony, *5/15/2023 Hearing*, p. 30.

¹⁸⁹ Jefferson Testimony, *5/15/2023 Hearing*, pp. 110-13; Jefferson and McCune, *Engagement Report: Family Decision-Making*.

¹⁹⁰ Further, the witnesses were uniform in testifying to the need for outreach, guidance, and assistance to help families navigate choice systems.

choice alone—not even abandoning attendance zones altogether—could completely remedy the harmful effects of residential segregation on the public school system.

Policy Recommendations

1. The civil rights bar, school choice advocates, and community-based organizers should embrace §204(c) of the EEOA, including its associated private cause of action.

Given the strict terms of the statute, the Committee finds that thousands—perhaps tens of thousands—of Colorado students are likely to be assigned to schools in violation of §204(c) of the EEOA (20 U.S.C. §1703(c)). The EEOA uses the neighborhood-school model as a benchmark to define one type of illegal discrimination, as follows:

- Assigning a student to the closest school is lawful regardless of segregating effects, unless there is discriminatory intent; but
- Assigning a student to not the closest school is unlawful if it has segregating effects, regardless of discriminatory intent.¹⁹¹

The research presented in Appendix A shows that only a minority of Colorado’s school districts use catchment areas that reduce school segregation relative to underlying housing patterns. For those students assigned to schools not closest to their homes, with segregative effects, the EEOA provides a statutory right to attend and be transported to the school nearest their home or (if that doesn’t remedy the denial of equal educational opportunity) some other school within the district, regardless of catchment area. This federal remedy preempts any conflicting limits imposed by state law or local ordinance, including the enrollment limits in § 22-36-101(2)(b) & (3), C.R.S., and associated limits on student transportation.

Lawyers who work with students and families should be aware of §204(c) and be willing to invoke it. Advocates and activists supportive of school choice should be cognizant of the statute’s power to drive change. And community groups that support students and families looking for the best school to fit their child’s needs—groups like those whose leaders testified for this report—should leverage §204(c) to benefit families excluded from high-quality schools by unfair attendance zones.

2. School districts should rely on §204(c) of the EEOA when drawing catchment areas and setting student-assignment policies.

The Committee finds that school districts can and should rely on the EEOA to overcome patterns of racial polarization, rather than perpetuating those patterns. To this end, the Committee urges the

¹⁹¹ *Supra*, pp. 4-7.

Colorado General Assembly to amend § 22-32-110(1)(m), C.R.S., to incorporate the terms of the EEOA.

3. School districts should revise their catchment areas and assignment policies regularly, at least every four years.

The Committee strongly endorses the policy proposal of then-President of the Boulder Valley School Board, Kathy Gebhardt, that school districts revise their catchment areas and assignment policies regularly—at least every four years.¹⁹² As President Gebhardt testified, most school districts currently face declining enrollment and potential school closures, making an intentional approach to the segregative impacts of attendance zones both timely and imperative.¹⁹³ Further, the Committee recommends that these rezoning processes can and should include a civil-rights focus that takes into account the mandates of the EEOA.

There are few empirical findings better established in academic literature than the close relationship between schools, property values, and the residential real-estate market.¹⁹⁴ This relationship unequivocally contributes to and perpetuates racial, ethnic, and economic inequality. And it is the Committee’s emphatic opinion that no plausible policy justification whatsoever exists for this relationship; it is, as Dr. Tom Romero testified about legal boundaries in general, “a perfect example of the way that the legal system can reinforce patterns of [de facto segregation].”¹⁹⁵ School districts do not have unilateral control over their external boundaries. But they do have control over the internal boundaries set by attendance zones, and the regular and routine revision of those boundaries can destabilize and thus ameliorate the racial polarization tied to the residential real estate market. Further, the regular and routine revision of these boundaries is a school district’s only reliable tool for minimizing legal exposure under §204(c) of the EEOA.

4. School districts can and should consider racial and ethnic integration as part of the rezoning process.

The Committee acknowledges the unsettled constitutionality of race-conscious but non-individualized tools to address integration, in the absence of unlawful segregation requiring a remedy. The Committee is aware of no dispute, however, that (1) race-conscious remedies are appropriate for race-related legal violations, and (2) in the EEOA, Congress used its prophylactic authority under § 5 of the Fourteenth Amendment to define certain assignment policies to be unlawful acts requiring race-conscious remedies even without evidence of discriminatory intent.

¹⁹² Gebhardt Testimony, *5/15/2023 Hearing*, p. 37.

¹⁹³ *Ibid.*, pp. 35-9.

¹⁹⁴ See Potter, *School Segregation in U.S. Metro Areas*; Siegel-Hawley, Genevieve. *When the Fences Come Down: Twenty-First-Century Lessons from Metropolitan School Desegregation*. Chapel Hill, NC: University of North Carolina Press, 2016.

¹⁹⁵ Romero Testimony, *5/15/2023 Hearing*, p. 67.

Justice Anthony Kennedy’s concurring opinion in *Parents Involved*¹⁹⁶ may or may not become the Supreme Court’s interpretation of § 1 of the Fourteenth Amendment—but it appears indisputably viable as an interpretation of the EEOA and § 5 of the Fourteenth Amendment.

The testimony heard by the Committee endorsed the use of both demographically driven attendance zones and controlled-choice mechanisms to foster diversity. Rico Munn testified that despite his commitment to the neighborhood-school model, such controls remain necessary to address de facto segregation.¹⁹⁷ Brian Eschbacher spoke to Denver Public Schools’ pursuit of diversity measured by income levels.¹⁹⁸ Kathy Gebhardt addressed intentionally pursuing diversity more broadly—to include racial and ethnic integration—by incorporating attendance zones within school districts’ strategic plans.¹⁹⁹ Dr. Meredith Richards and Dr. Genevieve Siegel-Hawley endorsed the approach of districts across the country that have pursued integration through attendance zones, school-siting decisions, and controlled choice.²⁰⁰ Dr. Brenda Dickhoner endorsed diverse-by-design and controlled-choice tools as part of an “all of the above” commitment to school choice.²⁰¹ The Committee heard no testimony opposed to such practices.

Consistent with this testimony, the Committee endorses and encourages such efforts, to the extent they can be grounded in the provisions of the EEOA. Unless school districts are to assign students to schools (and set school buildings’ capacities) with perfect geographical precision, every catchment area will contain some students assigned in violation of §204(c). The only way districts can minimize violations is thus to take into account segregative effects—and therefore integration—when drawing catchment areas and setting assignment policies. This logic extends to attendance zones, school siting, and similar non-individualized determinations to the extent a district’s reasoning can be grounded in the text of the EEOA.²⁰²

5. School districts that implement neighborhood-school policies should do so through a system of controlled choice that respects the civil rights of students.

The Committee also acknowledges the desirability and propriety of the “neighborhood school” model, notwithstanding its clear contribution to racial polarization. This model sits at the core of

¹⁹⁶ 551 U.S. 701, 789 (2007).

¹⁹⁷ Munn Testimony, 7/19/2023 Hearing, pp. 2, 5.

¹⁹⁸ Eschbacher Testimony, 5/15/2023 Hearing, pp. 182-86, 205-07.

¹⁹⁹ Gebhardt Testimony, 5/15/2023 Hearing, pp. 36, 61, 72.

²⁰⁰ Siegel-Hawley Testimony, 2/1/2023 Hearing, pp. 19, 26.

²⁰¹ Dickhoner Testimony, 5/15/2023 Hearing, pp. 32-3, 57-8, 84-5.

²⁰² It may also extend to individualized determinations, like limiting certain pro-segregative selections within a controlled-choice environment—similar (though not identical) to the tie-breaker mechanisms disapproved of in *Parents Involved*—provided that the limits apply only within the confines of §204(c) of the EEOA. The Advisory Committee notes this possibility but takes no position on it.

the EEOA.²⁰³ It was also endorsed repeatedly by the Committee’s witnesses. The testimony of Rico Munn was unequivocal on this point—while school-choice advocates like Vernon Jones embraced the importance of schools as neighborhood institutions, and attendance-zone skeptics like Tim DeRoche attacked the gerrymandering of catchment areas more than the existence of them. Deputy Superintendent Damon Brown testified that Mapleton School District’s attendance-zone-free system works because it was chosen by the community, bottom-up, and would not be an appropriate one-size-fits-all solution for communities that do not choose it.²⁰⁴ Although prohibiting all attendance zones was proposed in testimony,²⁰⁵ the Committee does not endorse this policy as a top-down mandate. The Committee endorses instead the clear weight of the testimony, consistent with §202 of the EEOA, that the neighborhood school plays a proper role in school districts that choose to embrace the model.

Given the undeniable role that the neighborhood-school model plays in replicating and perpetuating the geography of privilege, however, the Committee also endorses the testimony of Dr. Brenda Dickhoner said:

“[P]arents’ rights to make choices for their children is a value that should not be superseded. The values of local governance and parents’ rights can come into conflict when districts or schools operate intentionally or unintentionally in ways that put up unnecessary barriers for families or disempower them. Balancing this potential for conflict is where policy change can play an important role, making sure that parents ultimately end up in the driver’s seats.”²⁰⁶

Among the more robust findings established by the extensive academic literature on school choice is that families themselves value neighborhood schools and give great weight to both community and geography in making school-choice decisions.²⁰⁷ Indeed, Brian Eschbacher testified that just shy of half of Denver Public Schools students attend their zoned schools notwithstanding the unified application system, extensive choice options, and excellent public transit available within the district,²⁰⁸ while former Superintendent Rico Munn testified that over 80 percent of Aurora Public Schools’ students do so.²⁰⁹ The necessary implication is that heavy-handed mandates, compelling families to enroll in neighborhood schools, are unnecessary—and that such

²⁰³ Pub. L. 93-380, §202, 88 Stat. 514 (codified at 20 U.S.C. §1701(a)).

²⁰⁴ Brown Testimony, *5/15/2023 Hearing*, pp. 166-67.

²⁰⁵ Dickhoner Testimony, *5/15/2023 Hearing*, p. 31.

²⁰⁶ *Ibid.*, p. 27.

²⁰⁷ *E.g.*, Jefferson and McCune, *Engagement Report: Family Decision-Making* (for role of community); Harris and Larsen, *Going-to-School Shopping: Investigating family preferences in New Orleans*, and Harris and Larsen, *What Schools Do Families Want (and Why)? Evidence on Revealed Preferences From New Orleans* (for role of geography).

²⁰⁸ Eschbacher Testimony, *5/15/2023 Hearing*, pp. 180-81.

²⁰⁹ Munn Testimony, *6/19/2023 Hearing*, pp. 2-3.

neighborhood institutions can and do exist in large part through the voluntary acts of parents selecting schools.

The Committee therefore recommends that school districts employ attendance zones only as part of a controlled-choice system that incorporates the terms of the EEOA and respects the civil rights of students. Reasonable approaches include using attendance zones as a default setting for students that fail to make a choice, creating residence-based set-asides for separate enrollment processes in oversubscribed schools (as suggested by Brian Eschbacher and by Dr. Brenda Dickhoner), or using distance as a weighted factor within a single choice-application system.²¹⁰ By incorporating the principles of §204(c) of the EEOA and associated remedies, these mechanisms can properly prioritize neighborhood schools *and* integration.

6. To facilitate compliance with the EEOA, Colorado should adopt transparent enrollment systems with information relevant to parents.

The Committee also endorses the recommendations for increased transparency both in enrollment/assignment procedures and in relevant information about schools. Nearly every witness urged such transparency.²¹¹ Jude Schwalbach, Tim DeRoche, and Dr. Brenda Dickhoner all testified to the need for greater clarity in defining the “capacity” limitations on open enrollment, with Mr. Schwalbach and Mr. DeRoche arguing for public reporting of data on districts’ treatment of open-enrollment applications.²¹² Dr. Dickhoner testified to the need for uniform enrollment windows and timelines statewide, to reduce the “burdensome paperwork and bureaucratic hoops” and thus “make choice more accessible for families.”²¹³ And Dr. Antwan Jefferson, Deborah Hendrix, and Nicholas Martinez all testified that parents need information about schools not provided by the state’s report cards—most notably standardized methods of reporting disciplinary data, statements about school culture and disciplinary philosophy, and information about class sizes and educational programming.²¹⁴ Any policy intervention that relies on individual agency as part of its causal theory must also provide the information needed to exercise that agency. The Committee therefore concludes that these proposals for greater transparency around enrollment facilitate the purposes of the EEOA.

²¹⁰ See generally Gary Orfield and Erica Frankenberg (eds.). *Educational Delusions? Why Choice Can Deepen Inequality and How to Make Schools Fair*.

²¹¹ Jefferson, Martinez, Hendrix Testimonies, *5/15/2023 Hearing*, pp. 90-152. These testimonies echo the longstanding analysis and recommendations of Hasler and Benigno (Hasler, Kirstin and Pamela Benigno. 2007. “Open Enrollment and the Internet.” *Independence Institute*. <https://i2i.org/open-enrollment-and-the-internet/>)

²¹² Schwalbach Testimony, *4/19/2023 Hearing*, pp. 5-8; DeRoche Testimony, *3/15/2023 Hearing*, p. 10; Dickhoner Testimony, *5/15/2023 Hearing*, pp. 26-27.

²¹³ Dickhoner Testimony, *5/15/2023 Hearing*, pp. 19-20, 67.

²¹⁴ Martinez Testimony, *5/15/2023 Hearing*, p. 131; Jefferson Testimony, *5/15/2023 Hearing*, pp. 124-6, 138; Hendrix Testimony, *5/15/2023 Hearing*, pp. 146-9.

7. The Colorado General Assembly should correct the systemic racial and ethnic disparities wrought by its school-transportation system.

The final policy position supported unanimously by witnesses and by the Committee is to correct the deep flaws—what some members of this Committee would refer to as institutionalized racism—of Colorado’s current school-transportation system.²¹⁵

The focus of this Committee’s study is intradistrict boundaries and assignment, taking districts’ external boundaries as given. The Committee notes, however, that school district boundaries have historically been influenced by race.²¹⁶ The Colorado General Assembly adopted its current strict limit on interdistrict busing in § 22-32-113(1)(c) & (4), C.R.S., in 1964.²¹⁷ By design or otherwise, the historical context of the law makes plain its racial implications. The voluntary and court-ordered use of busing to integrate schools had been controversial since at least 1957, had been discussed at length in the U.S. Commission on Civil Rights’ reports of the early 1960s, had led to widespread anti-busing protests in several major cities in 1964, and was expressly addressed (and limited) in Title IV of the Civil Rights Act of 1964.²¹⁸ In Colorado, Denver Public Schools had bused for both segregative and integrative purposes throughout the 1960s.²¹⁹ By 1974, following *Keyes*, Colorado voters would adopt the Poundstone Amendment and a constitutional prohibition on race-conscious busing.²²⁰ Against this backdrop, the state legislature amended § 22-32-113 to

²¹⁵ Other members of the Advisory Committee object to the term “institutionalized racism” as causing more confusion than clarity.

²¹⁶ Orfield, *Must We Bus? Segregated Schools and National Policy*, (Washington, DC: Brookings Institution, 1978), pp. 407-11; Rothstein, Richard. *The Color of Law: A Forgotten History of How Our Government Segregated America*. New York, NY: Liveright Publishing Corp., 2017; see also EdBuild.org, Fault Lines: America’s Most Segregating School District Borders (2020), available at <https://edbuild.org/content/fault-lines/full-report.pdf>.

²¹⁷ 1964 Colo. Sess. Laws, ch. 73, pp. 584-85.

²¹⁸ U.S. Commission on Civil Rights, “Education,” pp. 104-06 (1961); U.S. Commission on Civil Rights, “Civil Rights U.S.A.: Public Schools North and West 1962,” *passim* (1962); Civil Rights Act of 1964, Pub. L. 88-352, §407(a), 78 Stat. 241, 248 (Jul. 2, 1964) (“nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance”); Orfield, *Must We Bus? Segregated Schools and National Policy*; Delmont, *Why Busing Failed: Race, Media, and the National Resistance to School Desegregation*; Formisano, *Boston Against Busing: Race, Class, and Ethnicity in the 1960s and 1970s*.

²¹⁹ See Pascoe, *A Dream of Justice: The Story of Keyes v. Denver Public Schools*, pp. 113-29 (discussing evidence from *Keyes* litigation); *Denver Blade*, Nov. 8, 1962, p.3 (discussing Denver’s “fervent bussers”).

²²⁰ See Dickhoner Testimony, *5/15/2023 Hearing*, p. 31; Romero Testimony, *5/15/2023 Hearing*, pp. 31, 67-68. The Poundstone Amendment limited the City & County of Denver’s ability to annex surrounding communities, which (in combination with an earlier constitutional amendment) hardened the boundaries of Denver Public Schools. The Advisory Committee does not wish to be misunderstood as suggesting that all resistance to remedial busing was invidious in nature. The nation’s experience with the matter was neither simple nor uniform, and in some instances court-ordered remedies had the perverse effect of disempowering the very communities they sought to benefit (Dunn, Joshua M. *Complex Justice: The Case of Missouri v. Jenkins*. Chapel Hill, NC: University of North Carolina Press, 2008), Chs. 5-6). For purpose of this report, however, the committee notes that precious few conversations

make school district boundaries harder to cross for families enrolling outside their district of residence. Whatever its stated intent, the act was not free from racial implications—nor is it free from such implications today, along with the related limit in § 22-32-115(2)(b), C.R.S., to the extent these laws reinforce the actions of an earlier generation.

With respect to intradistrict transportation, the witnesses before the Committee were unanimous on two points of surpassing importance. The first is that insufficient transportation aggravates and compounds racial polarization within the system.²²¹ As documented throughout this report, attendance zones contribute to unequal access to quality educational opportunities throughout Colorado. They often do so in direct violation of §204(c) of the EEOA. To the extent school districts fail to provide transportation for students enrolling outside their assigned boundary school, school districts compound those harms. As Dr. Dickhoner testified, quoting from a report by Bellwether Education partners:

“School transportation serves as an important tool to counteract the forces of residential segregation and give students access to schools they might not otherwise be able to reach. . . . Recent analyses from the Urban Institute estimated that neighborhood segregation by race explains about 76 percent of the variation in school segregation by race across cities and found that Black students travel farther to reach their school than their white peers, even after controlling for income. As a result, policies that do not offer families transportation support limit access to diverse schools. . . . [I]f school transportation systems are not equitable and efficient, families will not have equitable access to schools that are located outside of their segregated residential area.”²²²

The testimony presented to the Committee was uniformly in agreement. Kathy Gebhardt, Nicholas Martinez, Damon Brown, Vernon Jones, and Deborah Hendrix all echoed the importance of school transportation for empowering families and overcoming unequal access to educational opportunity—as well as the inadequacy of Colorado’s current policies on school transportation.²²³ Given the weight of the testimony and the implications of this Committee’s findings on attendance zones, the Committee adds its own endorsement to this position.

about political boundaries *in this era especially* were free from racial overtones, nor indeed free from overt racism on the part of some. Indeed, it was due to the widespread resistance to desegregation, including resistance to busing outside the south, that famed civil rights leader Kenneth Clark proposed abandoning geographically-based districts altogether—in the first proposal advocating for what later became known as charter schools (Clark, *Alternative Public School Systems*; Reichgott Junge, Ember. *Zero Chance of Passage: The Pioneering Charter School Story*, (Edina, MN: Beaver’s Pond Press, 2012), p. 42-43).

²²¹ In fact, Holme and Richards (2009) found that interdistrict choice in Colorado is used disproportionately by higher-income families who live in, and choice out of, lower-income districts—thus increasing the degree of segregation by race and class in Denver-area schools—in large part due to the lack of transportation. Holme, Jennifer Jellison and Meredith P. Richards. 2009. “School Choice and Stratification in a Regional Context: Examining the Role of Inter-District Choice.” *Peabody Journal of Education* 84(2): 150-171.

²²² Dickhoner Testimony, *5/15/2023 Hearing*, pp. 29-30; Burgoyne-Allen, O’Keefe, and O’Neal Schiess, *Intersection Ahead: School Transportation, School Integration, and School Choice*.

²²³ Dickhoner Testimony, *5/15/2023 Hearing*, p. 31; Gebhardt Testimony, *5/15/2023 Hearing*, pp. 41, 79-9; Hendrix Testimony, *5/15/2023 Hearing*, pp. 96-8; Martinez Testimony, *5/15/2023 Hearing*, pp. 102-03; Brown Testimony, *5/15/2023 Hearing*, pp. 164-65, 187; Jones Testimony, *5/15/2023 Hearing*, p. 168.

The second area of unanimity among witnesses was that the proper solutions involved greater or more flexible funding for transportation—and are thus properly set by the legislature rather than through litigation or through unilateral district action. Kathy Gebhardt pointed to the drain that transportation costs (well over half of which are funded through local rather than state dollars) already impose on total program spending.²²⁴ Dr. Tom Romero identified the legislature’s “power of the budget” and obligations under the thorough-and-uniform clause as the surest avenue for building true equity into the system.²²⁵ And Dr. Brenda Dickhoner urged the Committee to adopt policy recommendations of not only addressing regulatory barriers on school transportation, but also “explor[ing] innovative transportation models and inclusive funding structures.”²²⁶

The Committee agrees.²²⁷ As noted in the Committee’s testimony, the legislature has a currently pending “Colorado School Transportation Modernization Task Force” created by Senate Bill 23-094. School districts cannot unilaterally overcome the effects of residential racial polarization, but they can limit the degree to which they replicate those harms. The Committee urges the task force to right the wrongs currently perpetuated by Colorado’s school-transportation systems.

Recommendations Issued to the U.S. Commission on Civil Rights

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.²²⁸ In keeping with these responsibilities, and given the testimony heard on this topic, the Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should send this report and issue the following recommendations to the U.S. Department of Justice, Civil Rights Division to:
 - a. Review options for enforcing the EEOA's qualified individual right to public school choice, as a federal civil right; and

²²⁴ Gebhardt Testimony, *5/15/2023 Hearing*, pp. 41, 77-80, 87-88.

²²⁵ Romero Testimony, *5/15/2023 Hearing*, p. 45.

²²⁶ Dickhoner Testimony, *5/15/2023 Hearing*, pp. 32, 80-2.

²²⁷ The committee also notes that the EEOA requires transportation to the closest school or next closest school as part of its remedial scheme, for students assigned in violation of it terms. For these students, transportation is a federal statutory right and, given the remedial scheme, is unlikely to be terribly expensive.

²²⁸ 45 C.F.R. § 703.2 (2018).

- b. Review options for enforcing 20 U.S.C. §1703(c)'s parameters for the permissible and impermissible use of race in drawing attendance boundaries and setting school-assignment policies.
2. The U.S. Commission on Civil Rights should send this report and issue the following recommendations to the U.S. Department of Education, Office for Civil Rights to:
 - a. Review options for enforcing the EEOA's qualified individual right to public school choice, as a federal civil right; and
 - b. Review options for enforcing 20 U.S.C. §1703(c)'s parameters for the permissible and impermissible use of race in drawing attendance boundaries and setting school-assignment policies.
3. The U.S. Commission on Civil Rights should send this report and issue the following recommendations to the Colorado General Assembly to:
 - a. Amend § 22-32-110(1)(m), C.R.S., to incorporate the terms of the EEOA.
 - b. Correct the systemic racial and ethnic disparities wrought by its school-transportation system by exploring innovative transportation models and inclusive funding structures.
 - c. Adopt transparent enrollment systems with information relevant to parents. This includes but is not limited to: defining the “capacity” limitations on open enrollment, public reporting of data on districts’ treatment of open-enrollment applications, uniform enrollment windows and timelines statewide, standardized methods of reporting disciplinary data, statements about school culture and disciplinary philosophy, and information about class sizes and educational programming.
 - d. Right the wrongs currently perpetuated by Colorado’s school-transportation systems.
4. The U.S. Commission on Civil Rights should send this report and issue the following recommendations to the Colorado School Transportation Modernization Task Force to:
 - a. Right the wrongs currently perpetuated by Colorado’s school-transportation systems.

5. The U.S. Commission on Civil Rights should send this report and issue the following recommendations to the Colorado Department of Education to:
 - a. Adopt transparent enrollment systems with information relevant to parents. This includes but is not limited to: defining the “capacity” limitations on open enrollment, public reporting of data on districts’ treatment of open-enrollment applications, uniform enrollment windows and timelines statewide, standardized methods of reporting disciplinary data, statements about school culture and disciplinary philosophy, and information about class sizes and educational programming.

6. The U.S. Commission on Civil Rights should send this report and issue the following recommendations to Colorado School Districts to:
 - a. Rely on §204(c) of the EEOA when drawing catchment areas and setting student-assignment policies.
 - b. Revise catchment areas and assignment policies regularly, at least every four years. These rezoning processes can and should include a civil rights focus that takes into account the mandates of the EEOA.
 - c. Consider racial and ethnic integration as part of the rezoning process, to the extent they can be grounded in the provisions of the EEOA.
 - d. Employ attendance zones only as part of a controlled-choice system that incorporates the terms of the EEOA and respects the civil rights of students if implementing neighborhood-school policies. These approaches include using attendance zones as a default setting for students that fail to make a choice, creating residence-based set-asides for separate enrollment processes in oversubscribed schools, or using distance as a weighted factor within a single choice-application system.

Additionally, the Committee recommends that the civil rights bar, school choice advocates, and community-based organizers should embrace §204(c) of the EEOA, including its associated private cause of action.

Acknowledgements

The Committee wishes to thank Tim DeRoche for publishing *A Fine Line: How Most American Kids Are Kept Out of the Best Public Schools* (Redtail Press 2020). His related post on EducationNext.org, titled “Public-School Attendance Zones Violate a Civil Rights Law” brought this topic to the Committee’s attention.

Academic References

- A+ Colorado. 2018. “Learn Together, Live Together: A Call to Integrate Denver’s Schools.” <https://apluscolorado.org/a-plus-colorado/press-release-learn-together-live-together-call-integrate-denvers-schools/>
- Alves, Michael J. and Charles V. Willie. 1987. “Controlled Choice Assignments: A New and More Effective Approach to School Desegregation.” *Urban Review* 19(2): 67-88.
- Abdulkadiroglu, Atila, Joshua D. Angrist, Susan M. Dynarski, Thomas J. Kane, and Parag A. Pathak. 2011. “Accountability and Flexibility in Public Schools: Evidence from Boston’s Charters and Pilots.” *Quarterly Journal of Economics* 126(2): 699-748.
- Abdulkadiroglu, Atila, Joshua D. Angrist, Yusuke Narita, and Parag A. Pathak. 2017. “Research Design Meets Market Design: Using Centralized Assignment for Impact Evaluation.” *Econometrica* 85(5): 1373-1432.
- Abdulkadiroglu, Atila, Parag A. Pathak, Jonathan Schellenberg, and Christopher R. Walters. 2020. “Do Parents Value School Effectiveness?” *American Economic Review* 110(5): 1502-1539.
- Angrist, Joshua D., Sarah R. Cohodes, Susan M. Dynarski, Parag A. Pathak, and Christopher R. Walters. 2016. “Stand and Deliver: Effects of Boston’s Charter High Schools on College Preparation, Entry, and Choice.” *Journal of Labor Economics* 34(2): 275-318.
- Angrist, Joshua D., Susan M. Dynarski, Thomas J. Kane, Parag A. Pathak, and Christopher R. Walters. 2012. “Who Benefits from KIPP?” *Journal of Policy Analysis and Management* 31(4): 837-860.
- Angrist, Joshua D., Parag A. Pathak, and Christopher R. Walters. 2013. “Explaining Charter School Effectiveness.” *American Economic Journal: Applied Economics* 5(4): 1-27.
- Baker, Bruce D., Ajay Srikanth, Robert Cotto Jr., and Preston C. Green III. 2020. “School Funding Disparities and the Plight of Latinx Children.” *Education Policy Analysis Archives* 28(135).
- Bartels, Bradley, and Donato, Rubén. 2009. Unmasking the school re-zoning process: Race and class in a Northern Colorado community. *Lat Stud* 7, 222–249.

- Baugh, Joyce A. *The Detroit School Busing Case: Milliken v. Bradley and the Controversy over Desegregation*. Lawrence, KS: University Press of Kansas, 2011.
- Baxter, Parker, Anna Nicotera, Erik Fuller, Jakob Panzer, Todd Ely, and Paul Teske. 2023. "The System-Level Effects of Denver's Portfolio District Strategy." Center for Education Policy Analysis, School of Public Affairs, University of Colorado at Denver. <https://publicaffairs.ucdenver.edu/research-and-impact/research-centers/center-for-education-policy-analysis>.
- Bell, Jr., Derrick A. 1976. "Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation." *Yale Law Journal* 85 (4): 470-517.
- Bell, Jr., Derrick A. *Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform*. Oxford, UK & New York, NY: Oxford University Press, 2005.
- Bernstein, David E. *Classified: The Untold Story of Racial Classification in America*. New York, NY: Bombardier Books, 2022.
- Beuermann, Diether W., C. Kirabo Jackson, Laia Navarro-Sola, and Francisco Pardo. 2023. "What Is a Good School, and Can Parents Tell? Evidence on the Multidimensionality of School Output." *Review of Economic Studies* 90(1): 65-101.
- Billings, Stephen B., David J. Deming and Jonah Rockoff. 2013. "School Segregation, Educational Attainment, and Crime: Evidence from the End of Busing in Charlotte-Mecklenburg." *Quarterly Journal of Economics* 129(1): 435-476.
- Black, Sandra E. 1999. "Do Better Schools Matter? Parental Valuation of Elementary Education." *Quarterly Journal of Economics* 114 (2): 577-599.
- Blackhawk, Maggie. 2021. "On Power & the Law: *McGirt v. Oklahoma*." *Supreme Court Review* 2020: 367-421.
- Blagg, Kristin, Julien Lafortune and Tomás Monarrez. 2022. "Measuring Differences in School-Level Spending for Various Student Groups." The Urban Institute. <https://www.urban.org/research/publication/measuring-differences-school-level-spending-various-student-groups>
- Buckley, Katrina E., Jeffrey R. Henig, and Henry M. Levin (eds.). *Between Public and Private: Politics, Governance, and the New Portfolio Models for Urban School Reform*. Cambridge, MA: Harvard Education Press, 2023.
- Burgoyne-Allen, Phillip, Bonnie O'Keefe, and Jennifer O'Neal Schiess. 2019. "Intersection Ahead: School Transportation, School Integration, and School Choice." Bellwether Education Partners. https://bellwether.org/wp-content/uploads/2019/08/Bellwether_WVPM-IntersectionAhead_FINAL.pdf

- Burke, Lindsey M. and Jude Schwalbach. 2021. "Housing Redlining and Its Lingering Effects on Education Opportunity." Heritage Foundation Center for Education Policy.
<https://www.heritage.org/sites/default/files/2021-03/BG3594.pdf>
- Calarco, Jessica McCrory. *Negotiating Opportunities: How the Middle Class Secures Advantages in School*. New York, NY: Oxford University Press, 2018.
- Campos, Christopher and Kearns, Caitlin. 2024. "The Impact of Public School Choice: Evidence from Los Angeles's Zones of Choice," *The Quarterly Journal of Economics*, 139(2), pp. 1051-1093.
- Card, David and Jesse Rothstein. 2007. "Racial Segregation and the Black-White Test Score Gap." *Journal of Public Economics* 91(11-12): 2158-2184.
- Carrasco Strong, Kim and Craig Peña. 2023. *Resegregation in Denver Public Schools: Overlapping Systems of Student Segregation, Disparate Contexts, and Reduced Outcomes*. Report by The Bueno Center for Multicultural Education at the University of Colorado at Boulder.
- Chang, Alvin. 2018. "We can draw school zones to make classrooms less segregated. This is how well your district does." Vox.com, *available at*
<https://www.vox.com/2018/1/8/16822374/school-segregation-gerrymander-map>.
- Clark, Kenneth B. 1968. "Alternative Public School Systems." *Harvard Educational Review* 38 (1), 110-113.
- Colorado Children's Campaign. 2017. "Kids Count in Colorado! Elevating Equity (2017)."
<https://www.coloradokids.org/data/kids-count-archive/2017-kids-count/>
- Cohodes, Sarah R. and Katherine S. Parham. 2021. "Charter Schools' Effectiveness, Mechanisms, and Competitive Influence." NBER Working Paper No. 28477.
<https://www.nber.org/papers/w28477>
- Condrón, Dennis J., Daniel Tope, Christina R. Steidl and Kendralin J. Freeman. 2013. "Racial Segregation and the Black-White Achievement Gap, 1992 to 2009." *Sociological Quarterly* 54(1): 130-157.
- Cordes, Sarah A. 2018. "In Pursuit of the Common Good: The Spillover Effects of Charter Schools on Public School Students in New York City." *Education Finance and Policy* 13(4): 484-512.
- Delmont, Matthew F. *Why Busing Failed: Race, Media, and the National Resistance to School Desegregation*. Oakland, CA: University of California Press, 2016.
- Denice, Patrick. 2022. "Spatial Mismatch and the Share of Black, Hispanic, and White Students Enrolled in Charter Schools." *Sociology of Education* 95(4): 276-301.

- DeRoche, Tim. *A Fine Line: How Most American Kids Are Kept Out of the Best Public Schools*. Los Angeles, CA: Redtail Press, 2020a.
- DeRoche, Tim. 2020b. "Public-School Attendance Zones Violate a Civil Rights Law." Education Next. <https://www.educationnext.org/public-school-attendance-zones-violate-civil-rights-law-equal-educational-opportunities-act-a-fine-line/>
- Dhar, Paramita & Stephen L. Ross. 2012. "School district quality and property values: Examining differences along school district boundaries." *Journal of Urban Economics* 71(1): 18-25.
- Dobbie, Will, and Roland G. Fryer Jr. 2011. "Are High-Quality Schools Enough to Increase Achievement among the Poor? Evidence from the Harlem Children's Zone." *American Economic Journal: Applied Economics* 3(3): 158-187.
- Donato, Rubén. *Mexicans and Hispanos in Colorado Schools and Communities, 1920–1960*. Albany, NY: SUNY Press, 2007.
- Donato, Rubén, Gonzalo Guzmán and Jarrod Hanson. 2017. "Francisco Maestas et al. v. George H. Shone et al.: Mexican American Resistance to School Segregation in the Hispano Homeland, 1912–1914." *Journal of Latinos and Education* 16(1): 3-17.
- Douglas, Frederick. 1881. "The Color Line." *North American Review* 132: 567-577.
- Driver, Justin. *The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle for the American Mind*. New York, NY: Pantheon Books, 2018.
- DuBois, W. E. Burghardt. *The Souls of Black Folk*. Chicago, IL: A.C. McClurg & Co, 1903.
- Dunn, Joshua M. *Complex Justice: The Case of Missouri v. Jenkins*. Chapel Hill, NC: University of North Carolina Press, 2008.
- Ehlers, Lars, Isa E. Hafalir, M. Bumin Yenmez, and Muhammed A. Yildirim. 2014. "School Choice with Controlled Choice Constraints: Hard Bounds versus Soft Bounds." *Journal of Economic Theory* 153: 648-683.
- Erickson, Ansley T. and Ernest Morrell, eds. *Educating Harlem: A Century of Schooling and Resistance in a Black Community*. New York, NY: Columbia University Press, 2019.
- Ewing, Eve L. *Ghosts in the Schoolyard: Racism and School Closings on Chicago's South Side*. Chicago, IL: University of Chicago Press, 2018.
- Fischel, William A. *Making the Grade: The Economic Evolution of American School Districts*. Chicago, IL: University of Chicago Press, 2009.
- Fitzpatrick, Cara. *The Death of Public School: How Conservatives Won the War Over Education in America*. New York, NY: Basic Books, 2023.

- Forman, Jr., James. 2005. "The Secret History of School Choice: How Progressives Got There First." *Georgetown Law Journal* 93 (4): 1287-1319.
- Formisano, Ronald P. *Boston Against Busing: Race, Class, and Ethnicity in the 1960s and 1970s* (2d ed.). Chapel Hill, NC: University of North Carolina Press, 2004.
- Frankenberg, Erica. "The Promise of Choice: Berkeley's Innovative Integration Plan." In *Educational Delusions? Why Choice Can Deepen Inequality and How to Make Schools Fair* (Gary Orfield and Erica Frankenberg, eds.), pp. 69-88. Berkeley, CA: University of California Press, 2013
- Frankenberg, Erica and Elizabeth DeBray. *Integrating Schools in a Changing Society: New Policies and Legal Options for a Multiracial Generation*. Chapel Hill, NC: University of North Carolina Press, 2011.
- Fuller, Howard. *No Struggles, No Progress: A Warrior's Life from Black Power to Education Reform*. Milwaukee, WI: Marquette University Press, 2014.
- Gibbons, Stephen, Stephen Machin, and Olmo Silva. 2013. "Valuing school quality using boundary discontinuities." *Journal of Urban Economics* 75: 15-28.
- Gillani, Nabeel, Doug Beeferman, Christine Vega-Pourheydarian, Cassandra Overney, Pascal Van Hentenryck, and Deb Roy. 2023. "Redrawing Attendance Boundaries to Promote Racial and Ethnic Diversity in Elementary Schools." *Educational Researcher* 52(6): 348-364.
- Gilraine, Michael, James Graham and Angela Zheng. 2023. "Public Education and Intergenerational Housing Wealth Effects." NBER Working Paper No. 31345. <https://www.nber.org/papers/w31345>
- Glenn, Jr., Charles Leslie. *The Myth of the Common School*. Ann Arbor, MI: University of Michigan Press, 1988.
- Goldsmith, Pat Rubio. 2010. "Learning Apart, Living Apart: How the Racial and Ethnic Segregation of Schools and Colleges Perpetuates Residential Segregation." *Teachers College Record* 122(6): 1602-1630.
- Goluboff, Risa. *The Lost Promise of Civil Rights*. Cambridge, MA: Harvard University Press, 2007.
- Gordon, Leah N. *From Power to Prejudice: The Rise of Racial Individualism in Midcentury America*. Chicago, IL: University of Chicago Press, 2015.
- Gross, Robert N. *Public vs. Private: The Early History of School Choice in America*. New York, NY: Oxford University Press, 2018.

- Hackett, Ursula and Desmond King. 2019. "The Reinvention of Vouchers for a Color-Blind Era: A Racial Orders Account." *Studies in American Political Development* 33 (2): 234–257 & 305.
- Hale, Jon N. *The Choice We Face: How Segregation, Race, and Power Have Shaped America's Most Controversial Education Reform Movement*. Boston, MA: Beacon Press, 2021.
- Hanushek, Eric A. John F. Kain and Steven G. Rivkin. 2009. "New Evidence about *Brown v. Board of Education*: The Complex Effects of School Racial Composition on Achievement." *Journal of Labor Economics* 27(3): 349–383.
- Harris, Douglas N. and Matthew F. Larsen. 2023. "What Schools Do Families Want (and Why)? Evidence on Revealed Preferences From New Orleans." *Educational Evaluation and Policy Analysis*, 45(3): 496-519.
- Harris, Douglas N. and Matthew F. Larsen. 2024. "Going-to-School Shopping: Investigating family preferences in New Orleans." *Education Next*, 24(1): 62-69.
- Hasler, Kirstin and Pamela Benigno. 2007. "Open Enrollment and the Internet." *Independence Institute*. <https://i2i.org/open-enrollment-and-the-internet/>
- Hilton, Michael. 2015. "Neighborhood Schools—an Etymology." *Poverty & Race Journal* 24(6): 12-13.
- Holme, Jennifer Jellison and Kara S. Finnigan. 2015. "Regional Educational Equity Policies: Learning from Inter-district Integration Programs (Research Brief No. 9)." *National Coalition on School Diversity*. <https://www.school-diversity.org/research-briefs/>
- Holme, Jennifer Jellison and Kara S. Finnigan. *Striving in Common: A Regional Equity Framework for Urban Schools*. Cambridge, MA: Harvard Education Press, 2018.
- Holme, Jennifer Jellison and Meredith P. Richards. 2009. "School Choice and Stratification in a Regional Context: Examining the Role of Inter-District Choice." *Peabody Journal of Education* 84(2): 150-171.
- Holme, Jennifer Jellison, Kara S. Finnigan, and Sarah Diem. 2016. "Challenging Boundaries, Changing Fate? Metropolitan Inequality and the Legacy of *Milliken*." *Teachers College Record* 118(3): 1-40.
- Houston, David. M. and Jeffrey R. Henig. 2023. "The 'Good' Schools: Academic Performance Data, School Choice, and Segregation." *AERA Open* (9): <https://doi.org/10.1177/23328584231177666>
- Jefferson, Antwan and Plashan McCune. 2020. *Engagement Report: Family Decision-Making*. Denver, CO: Denver Journal of Education and Community.

- Johnson, Rucker C. 2011. “Long-run Impacts of School Desegregation & School Quality on Adult Attainments.” NBER Working Paper No. 16664.
<https://www.nber.org/papers/w16664>.
- Johnson, Rucker C. and Alexander Nazaryan. *Children of the Dream: Why School Integration Works*. New York, NY: Basic Books, 2019.
- Kahlenberg, Richard D. and Halley Potter. *A Smarter Charter: Finding What Works for Charter Schools and Public Education*. New York, NY: Teachers College Press, 2014.
- Kahlenberg, Richard D. (ed.). *The Future of School Integration: Socioeconomic Diversity as an Education Reform Strategy*. New York, NY: The Century Foundation Press, 2012.
- Kane, Thomas J., Stephanie K. Riegg, and Douglas O. Staiger. 2006. “School Quality, Neighborhoods, and Housing Prices.” *American Law and Economics Review* 8(2): 183-212.
- Lassiter, Matthew D. 2009. “De Jure/De Facto Segregation: The Long Shadow of a National Myth.” In *The Myth of Southern Exceptionalism* (Matthew D. Lassiter and Joseph Crespino, eds.), pp. 25-48. New York, NY: Oxford University Press.
- Lay, J. Celeste. *Public Schools, Private Governance: Education Reform and Democracy in New Orleans*. Philadelphia, PA: Temple University Press, 2022.
- Levesque, Roger J.R. *The Science and Law of School Segregation and Diversity*. New York, NY: Oxford University Press, 2018.
- MacLean, Nancy. *Democracy in Chains: The Deep History of the Radical Right’s Stealth Plan for America*. New York, NY: Viking Press, 2017.
- Meckler, Laura. *Dream Town: Shaker Heights and the Question for Racial Equity*. New York, NY: Henry Hold and Co, 2023.
- Melnick, R. Shep. *The Crucible of Desegregation: The Uncertain Search for Educational Equality*. Chicago, IL: University of Chicago Press, 2023.
- Miletsky, Zebulun Vance. *Before Busing: A History of Boston’s Long Black Freedom Struggle*. Chapel Hill, NC: University of North Carolina Press, 2022.
- Mills, ShaVonte’. 2021. “An African School for African Americans: Black Demands for Education in Antebellum Boston.” *History of Education Quarterly* 61 (4): 478-502.
- Morgan, Ivy and Ary Amerikaner. 2018. “Funding Gaps 2018: An Analysis of School Funding Equity Across the U.S. and within Each State.” Education Trust.
<https://edtrust.org/resource/funding-gaps-2018/>.

- Monarrez, Tomás E. 2023. "School Attendance Boundaries and the Segregation of Public Schools in the United States." *American Economic Journal: Applied Economics* 15(3): 210-237.
- Monarrez, Tomás and Carina Chien. 2021. "Dividing Lines: How School Districts Draw Attendance Boundaries to Perpetuate School Segregation." The Urban Institute. <https://apps.urban.org/features/dividing-lines-school-segregation/>.
- Monarrez, Tomás, Brian Kisida, and Matt Chingos. 2019. "Do Charter Schools Increase Segregation? First National Analysis Reveals a Modest Impact, Depending on Where You Look." *Education Next* 19(4): 66-74.
- Monarrez, Tomás, Brian Kisida, and Matt Chingos. 2022. "The Effect of Charter Schools on School Segregation." *American Economic Journal: Economic Policy* 14(1): 301-340.
- Morel, Domingo. *Takeover: Race, Education, and American Democracy*. New York, NY: Oxford University Press, 2018.
- Orfield, Gary. 1978. *Must We Bus? Segregated Schools and National Policy*. Washington, DC: Brookings Institution.
- Orfield, Gary. "Choice Theories and the Schools." In *Educational Delusions? Why Choice Can Deepen Inequality and How to Make Schools Fair* (Gary Orfield and Erica Frankenberg, eds.), pp. 37-68. Berkeley, CA: University of California Press, 2013.
- Orfield, Gary and Erica Frankenberg (eds.). *Educational Delusions? Why Choice Can Deepen Inequality and How to Make Schools Fair*. Berkeley, CA: University of California Press, 2013.
- Pascoe, Pat. *A Dream of Justice: The Story of Keyes v. Denver Public Schools*. Louisville, CO: University Press of Colorado, 2022.
- Potter, Halley. 2022. *School Segregation in U.S. Metro Areas*. The Century Foundation. <https://tcf.org/content/report/school-segregation-in-u-s-metro-areas/>
- Ready Colorado. 2018. "Open Doors, Open Districts: School Choice in Colorado's Traditional Public Schools." <https://readycolo.org/open-doors-open-districts/>.
- Ready Colorado. 2020. "High Quality Schools Heat Map." https://readycolo.org/wp-content/uploads/2021/02/ReadyCO-Report-020821_interactive_fixed-1.pdf (see also <https://coloradoschoolmap.com/>).
- Reardon Sean F. 2016. "School Segregation and Racial Academic Achievement Gaps." *RSF: Russell Sage Foundation Journal of the Social Sciences* 2(5): 34-57.
- Reardon Sean F. and Ann Owens. 2014. "60 Years After *Brown*: Trends and Consequences of School Segregation." *Annual Review of Sociology* 40: 199-218.

- Reber, Sarah J. 2011. "From Separate and Unequal to Integrated and Equal? School Desegregation and School Finance in Louisiana." *Review of Economics and Statistics* 93(2): 404-415.
- Reichgott Junge, Ember. *Zero Chance of Passage: The Pioneering Charter School Story*. Edina, MN: Beaver's Pond Press, 2012.
- Richards, Meredith P. and Kori James Stroub. 2015. "An Accident of Geography? Assessing the Gerrymandering of School Attendance Zones." *Teachers College Record* 117(7): 1-32.
- Rickford, Russell. *We Are an African People: Independent Education, Black Power, and the Radical Imagination*. Oxford, UK & New York, NY: Oxford University Press, 2016.
- Romero II, Tom I. 2004. "Our Selma Is Here: The Political and Legal Struggle for Educational Equality in Denver, Colorado, and Multiracial Conundrums in American Jurisprudence." *Seattle Journal for Social Justice* 3(1): 73-142.
- Romero II, Tom I. 2013. "How I Rode the Bus to Become a Professor at the University of Denver Sturm College of Law; Reflections on Keyes's Legacy for the Metropolitan, Post-Racial, and Multiracial Twenty-First Century." *Denver Law Review* 90(5): 1023-58.
- Rooks, Noliwe. *Cutting School: Privatization, Segregation, and the End of Public Education*. New York, NY & London, UK: New Press, 2017.
- Rothstein, Richard. *The Color of Law: A Forgotten History of How Our Government Segregated America*. New York, NY: Liveright Publishing Corp., 2017.
- Salomone, Rosemary C. *True American: Language, Identity, and the Education of Immigrant Children*. Cambridge, MA and London, UK: Harvard University Press, 2010.
- Schwartz, Black, Sandra E. 1999. "Do Better Schools Matter? Parental Valuation of Elementary Education." *Quarterly Journal of Economics* 114 (2): 577-599
- Schwartz, Amy Ellen, Ioan Voicu, and Keren Mertens Horn. 2014. "Do choice schools break the link between public schools and property values? Evidence from house prices in New York City." *Regional Science and Urban Economics* 49: 1-10.
- Siegel-Hawley, Genevieve. 2013. "Educational Gerrymandering? Race and attendance boundaries in a demographically changing suburb." *Harvard Educational Review*, 83(4), 580-612.
- Siegel-Hawley, Genevieve. *When the Fences Come Down: Twenty-First-Century Lessons from Metropolitan School Desegregation*. Chapel Hill, NC: University of North Carolina Press, 2016.
- Siegel-Hawley, Genevieve, Andrene J. Castro, Kimberly Bridges, and Kendra Taylor. 2021. "Race and School Rezoning Criteria." *Contexts* 20(3): 72-75.

- Siegel-Hawley, Genevieve and Erica Frankenberg. “Designing Choice: Magnet School Structures and Racial Diversity.” In *Educational Delusions? Why Choice Can Deepen Inequality and How to Make Schools Fair* (Gary Orfield and Erica Frankenberg, eds.), pp. 107-128. Berkeley, CA: University of California Press, 2013
- Seifert, Sophia, Lorna Porter, Sarah A. Cordes, and Priscilla Wohlstetter. 2022. “Pursuing Diversity: The Context, Practices, and Diversity Outcomes of Intentionally Diverse Charter Schools.” *Teachers College Record* 124(12): 95-134.
- Siegel-Hawley, Genevieve, Kendra Taylor, Kimberly Bridges, Erica Frankenberg, Andrene Castro, Shenita Williams, and Sarah Haden. 2020. “School Segregation by Boundary Line in Virginia: Scope, Significance and State Policy Solutions.” State College, PA/Richmond, VA: Center for Education and Civil Rights/Virginia Commonwealth University. https://scholarscompass.vcu.edu/edlp_pubs/13/.
- Singer, Jeremy. 2022. “School Choice, Local Discretion, and Stratification: Evidence from Inter-District Open Enrollment in Metro Detroit.” *Education and Urban Society* (OnlineFirst): <https://doi.org/10.1177/00131245221137571>
- Suits, Steve. *Overturing Brown: The Segregationist Legacy of the Modern School Choice Movement*. Montgomery, AL: NewSouth Books, 2020.
- Taylor, Kendra, Jeremy Anderson, and Erica Frankenberg. 2019. “School and Residential Segregation in School Districts with Voluntary Integration Policies.” *Peabody Journal of Education* 94(4): 371-387.
- Todd-Breland, Elizabeth. “The Janus-Faced Neighborhood School.” In *The Return of the Neighborhood as an Urban Strategy* (Michael Pagano, ed.), pp. 133-138. Champaign, IL: University of Illinois Press, 2015.
- Tyack, David B. *The One Best System: A History of American Urban Education*. Cambridge, MA: Harvard University Press, 1974.
- U.S. Senate, Joint Economic Committee (Republican Caucus). 2019. “Zoned Out: How School and Residential Zoning Limit Educational Opportunity.” <https://www.jec.senate.gov/public/index.cfm/republicans/analysis?ID=E4DD88F7-4D98-4FD4-B68A-20689CB4F94C>
- Urban Institute. 2018. “Data Tool: Segregated Neighborhoods, Segregated Schools?” <https://www.urban.org/data-tools/segregated-neighborhoods-segregated-schools>
- Walters, Christopher R. 2018. “The Demand for Effective Charter Schools.” *Journal of Political Economy* 126(6): 2179-2223.
- Weinberg, Meyer. *Race & Place: A Legal History of the Neighborhood School*. Washington, DC: U.S. Government Printing Office, 1966.
- Wilson, Erika. 2023. “White Cities, White Schools.” *Columbia Law Review* 123(1):

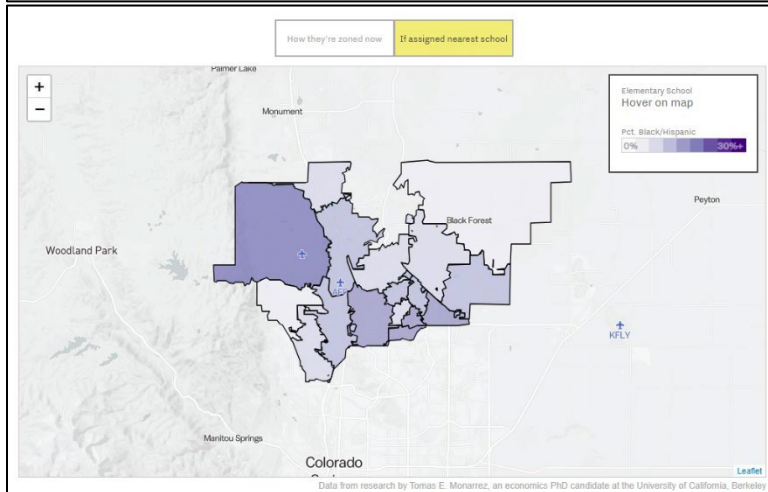
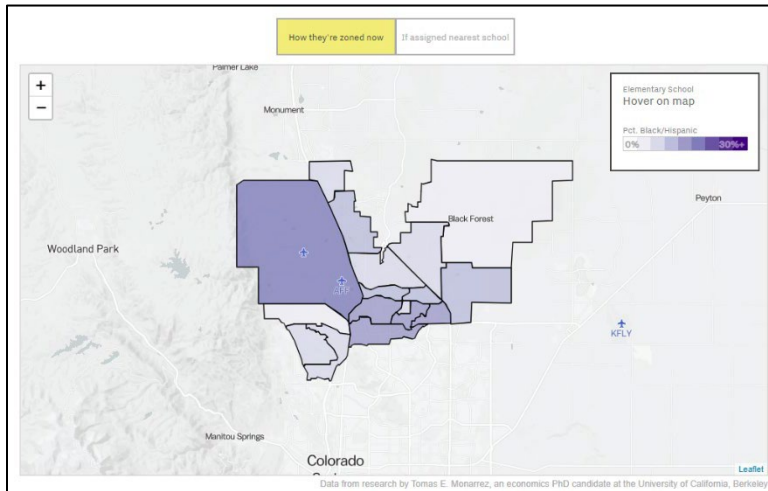
Zimmer, Ron, Brian Gill, Kevin Booker, Stephane Lavertu, Tim R. Sass, and John Witte. 2009. *Charter Schools in Eight States: Effects on Achievement, Attainment, Integration, and Competition*. Santa Monica, CA: RAND Corporation.

Appendices

Appendix A: Graphics of Dr. Tomás Monarrez's Research

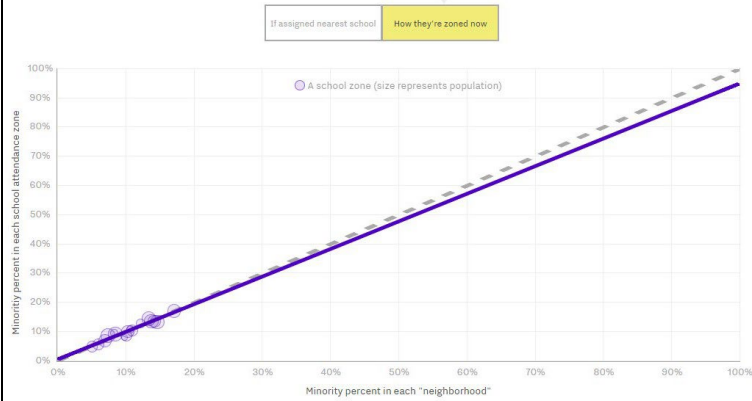
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Academy School District No. 20 (El Paso County)

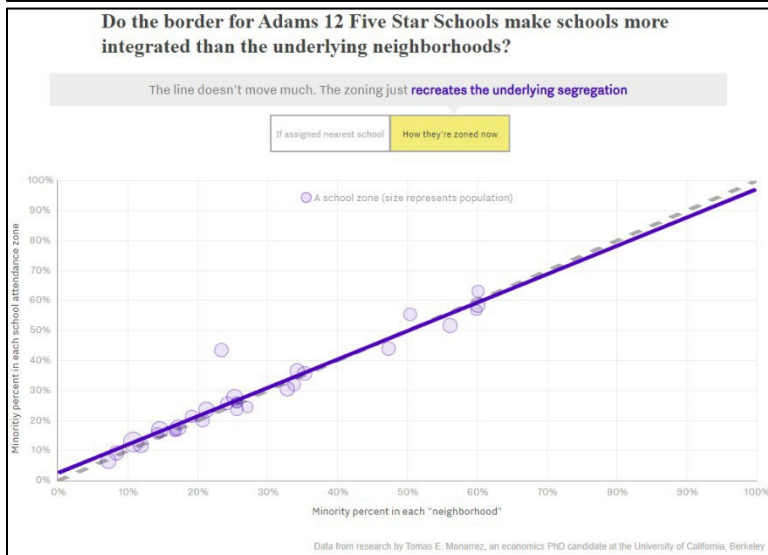
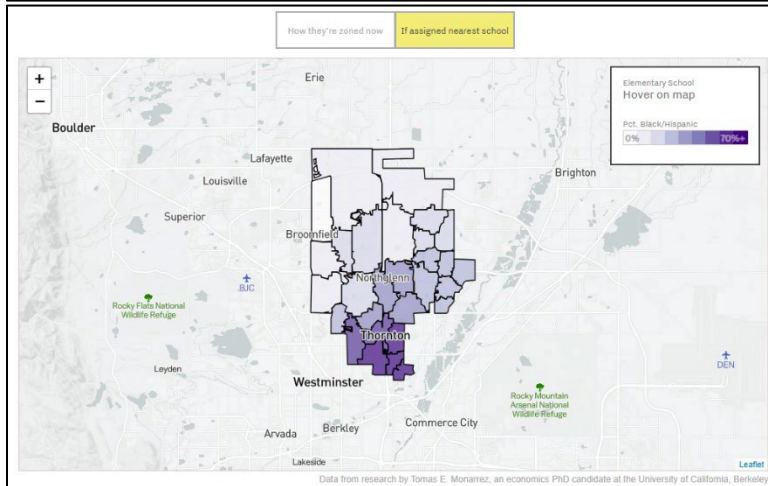
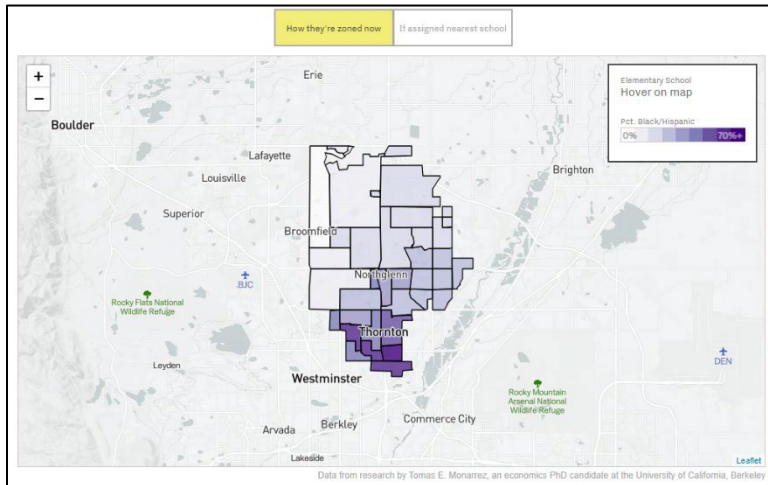


Do the border for Academy School District No. 20 In The County Of El Paso An make schools more integrated than the underlying neighborhoods?

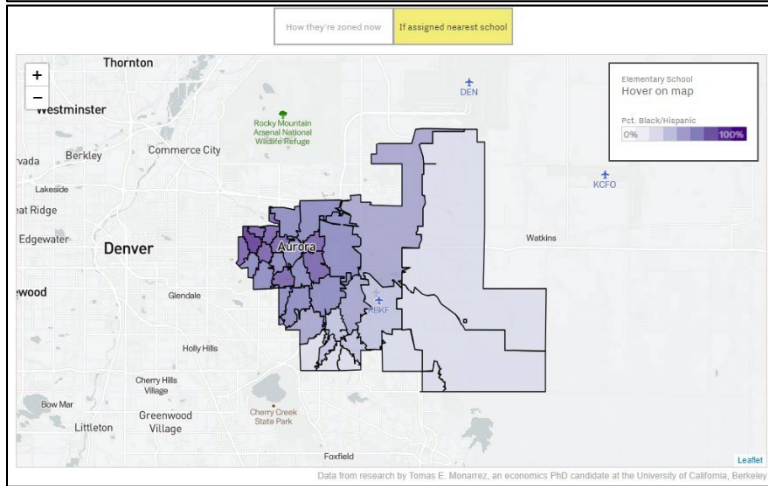
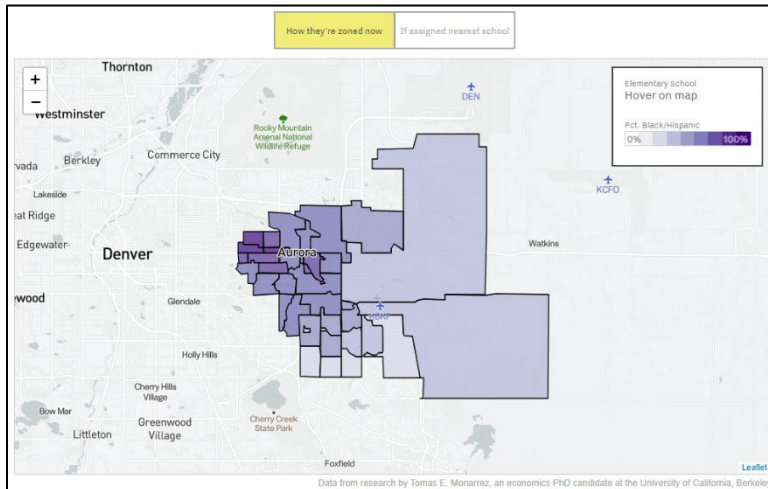
The line doesn't move much. The zoning just **recreates the underlying segregation**



Adams 12 Five Star Schools (Adams County)

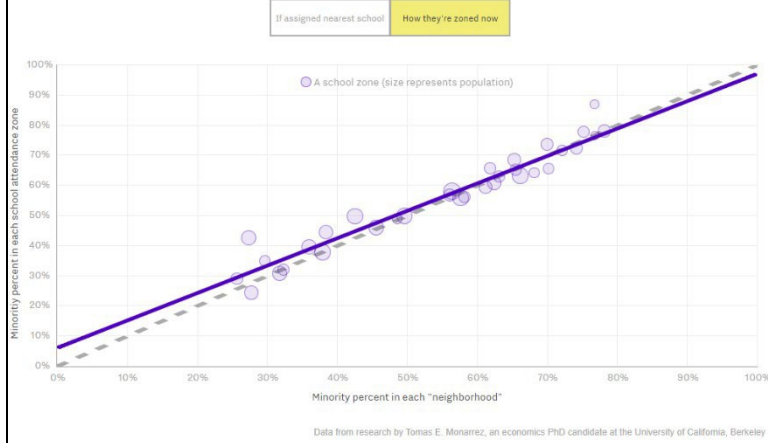


Aurora Public Schools (Arapahoe & Adams Counties)

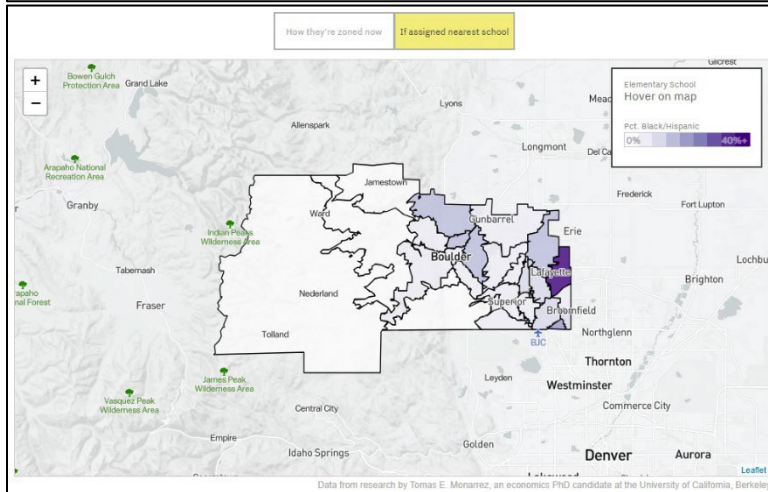
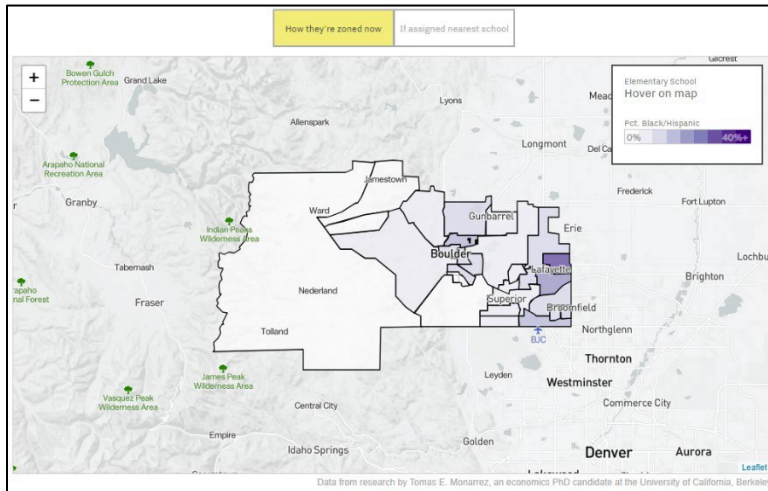


Do the border for Aurora Joint District No. 28 Of The Counties Of Adams And A make schools more integrated than the underlying neighborhoods?

The line doesn't move much. The zoning just **recreates the underlying segregation**

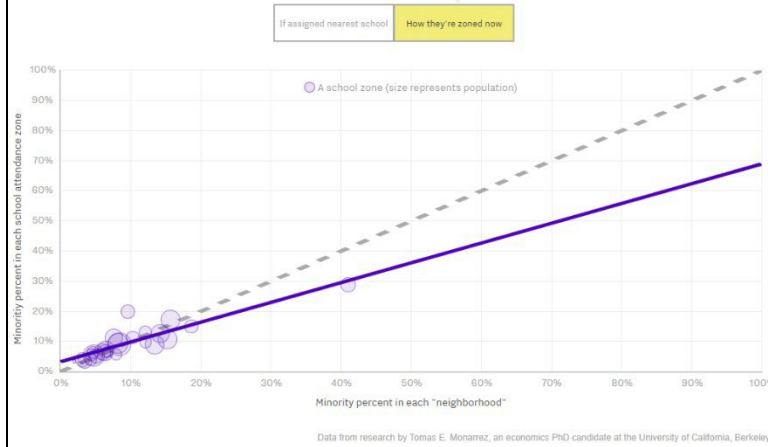


Boulder Valley School District No. Re2 (Boulder County)

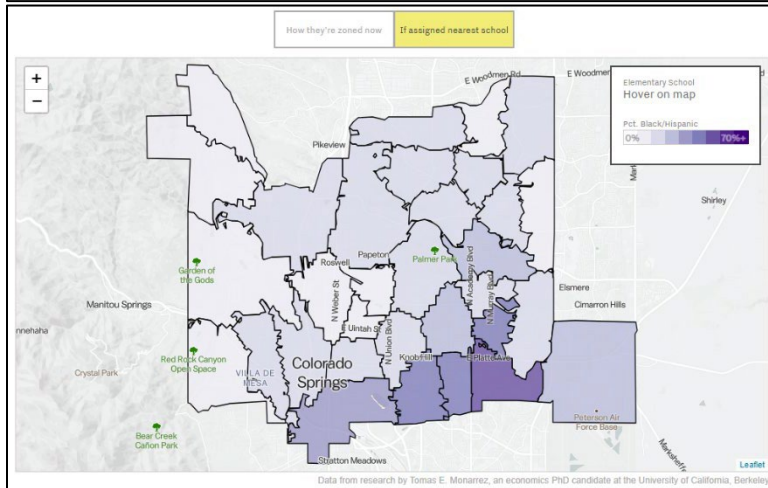
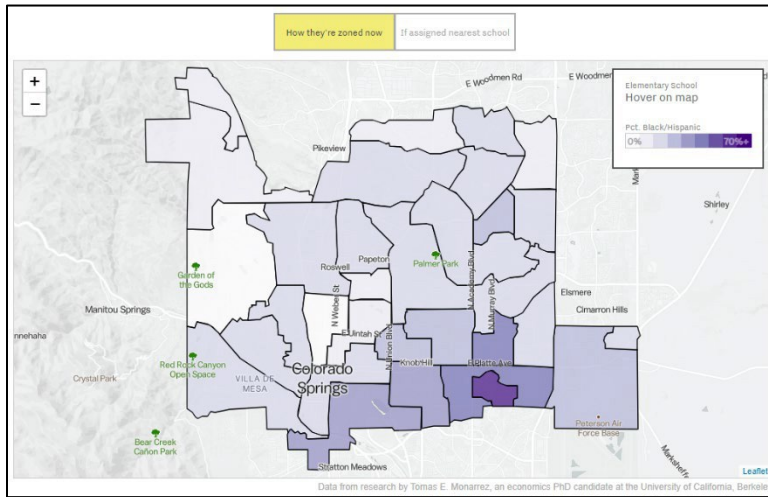


Do the border for Boulder Valley School District No. Re2 make schools more integrated than the underlying neighborhoods?

This line is easier to climb! The district's zoning makes it **less segregated**.



Colorado Springs School District No. 11 (El Paso County)

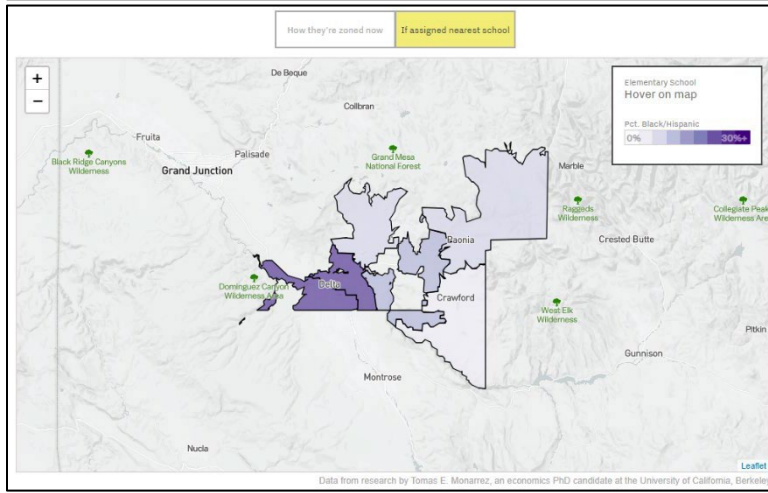
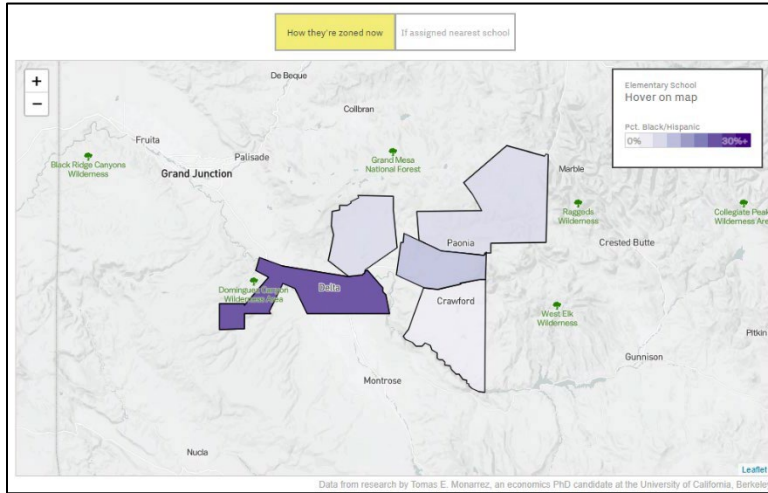


Do the border for Colorado Springs School District No. 11 In The County Of E make schools more integrated than the underlying neighborhoods?

The line doesn't move much. The zoning just **recreates the underlying segregation**

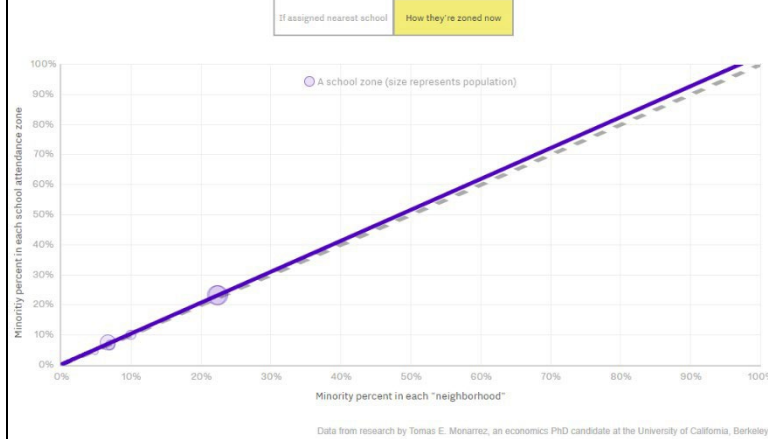


Delta County Joint District No. 50 (Delta County)

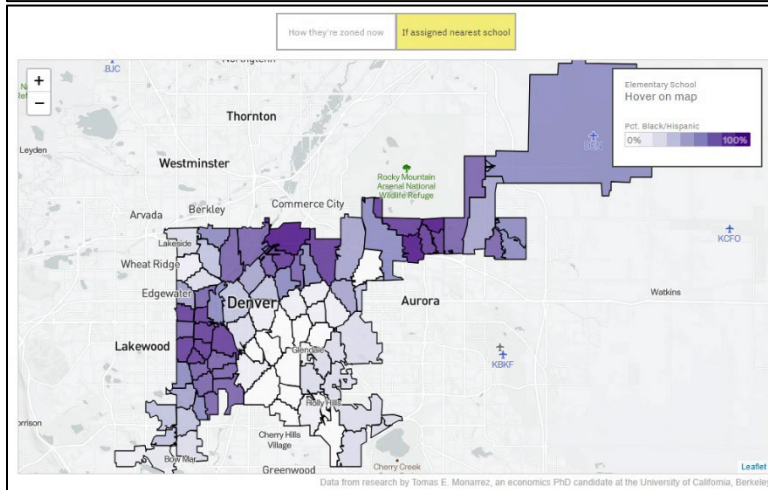
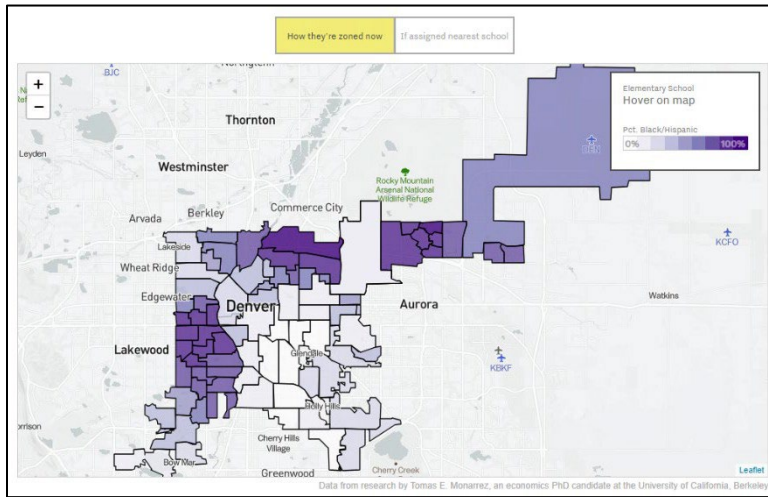


Do the border for Delta County Joint District No. 50 make schools more integrated than the underlying neighborhoods?

The line doesn't move much. The zoning just **recreates the underlying segregation**



Denver Public Schools (Denver County)

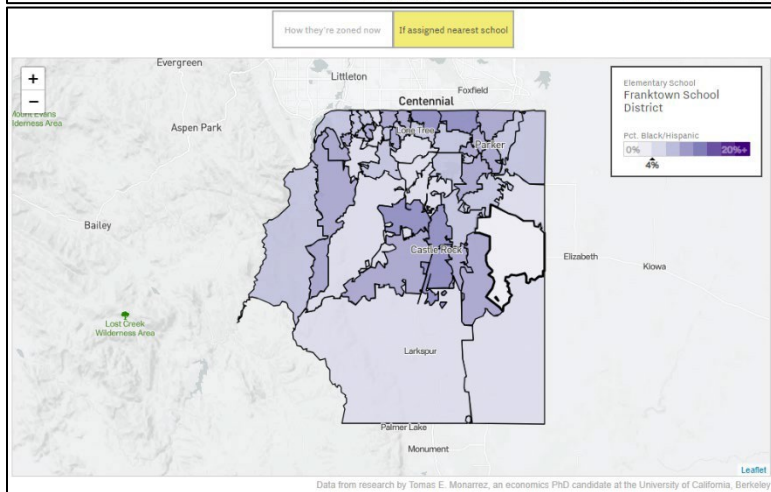
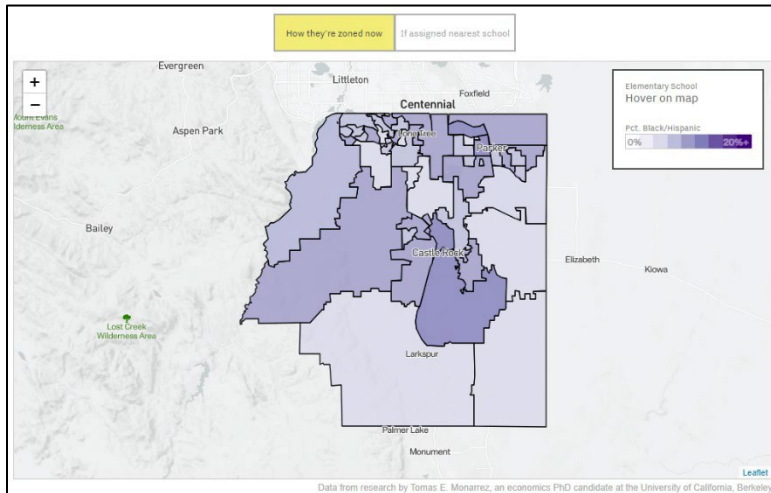


Do the border for School District No. 1 In The County Of Denver And State Of C make schools more integrated than the underlying neighborhoods?

This line is easier to climb! The district's zoning makes it **less segregated**.

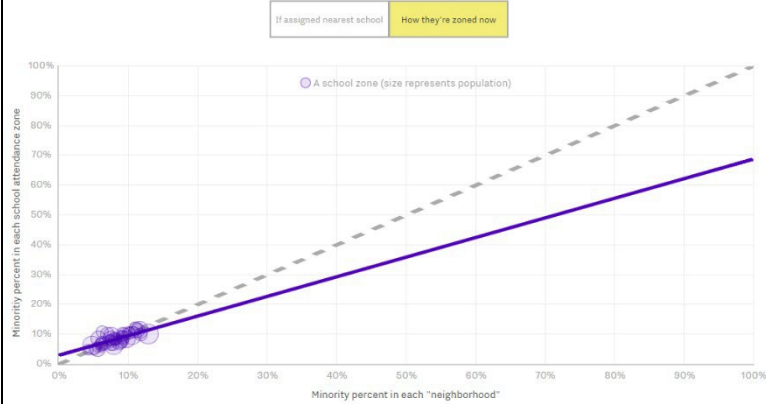


Douglas County School District No. Re 1 (Douglas County)

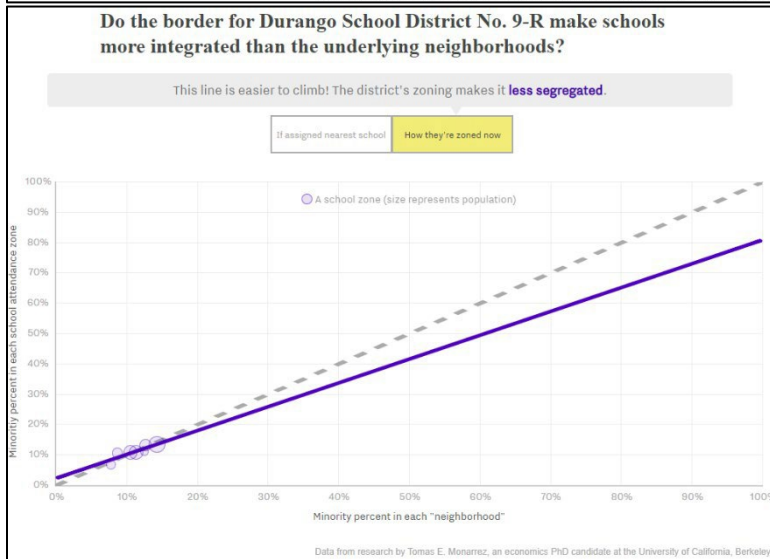
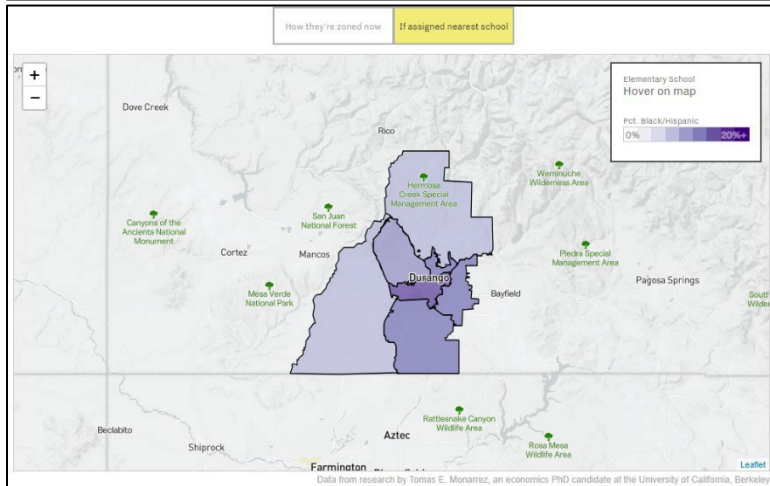
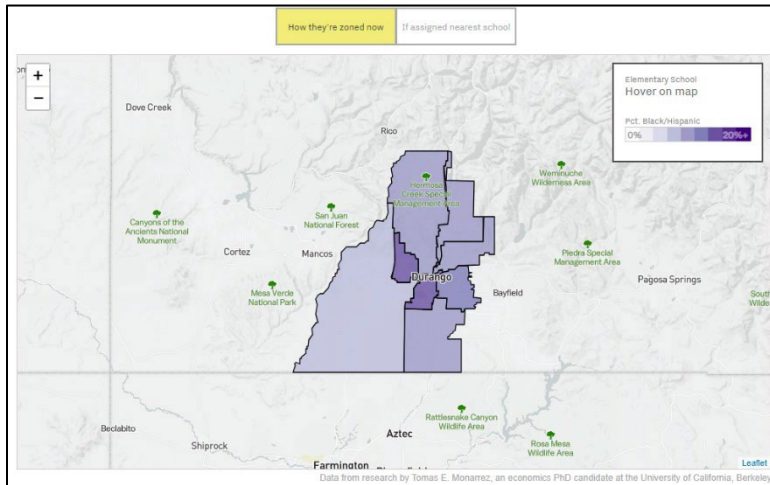


Do the border for Douglas County School District No. Re 1 make schools more integrated than the underlying neighborhoods?

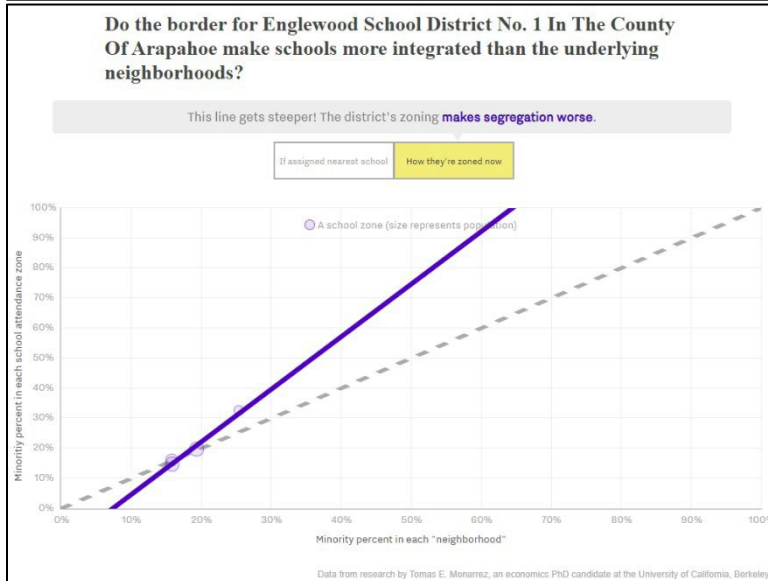
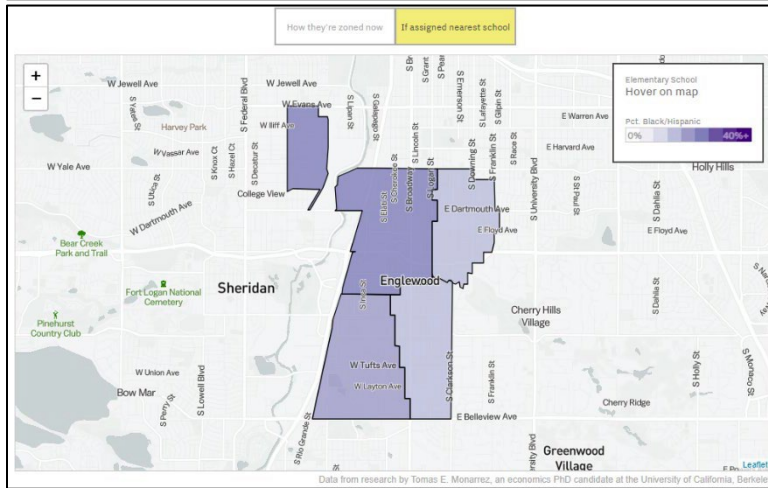
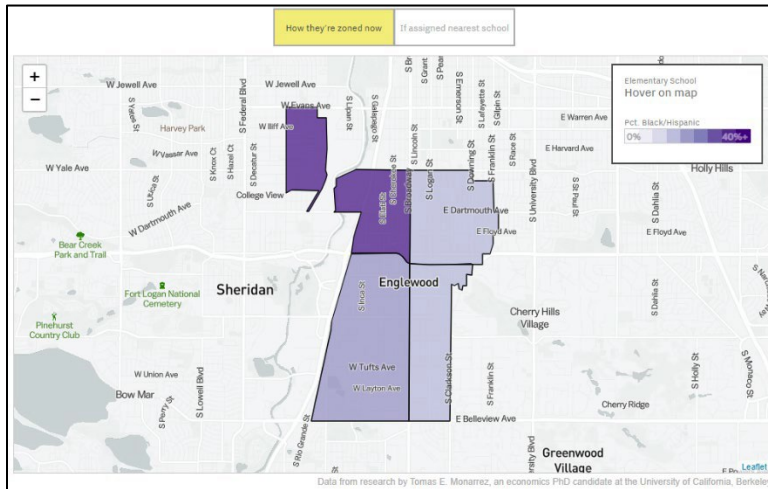
This line is easier to climb! The district's zoning makes it **less segregated**.



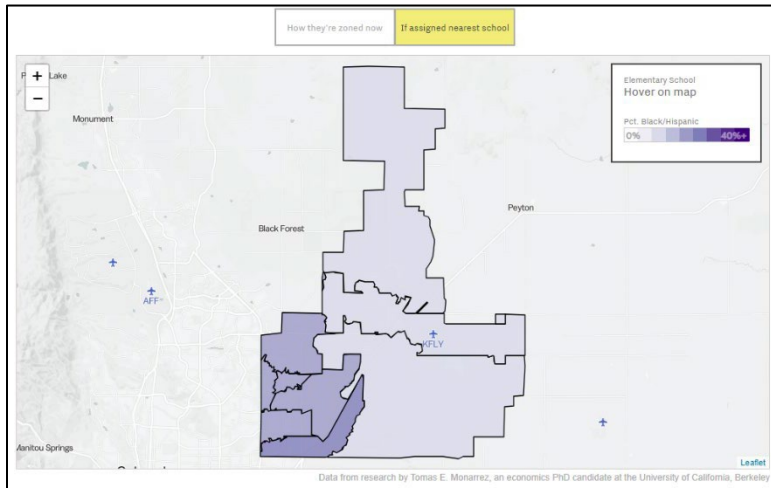
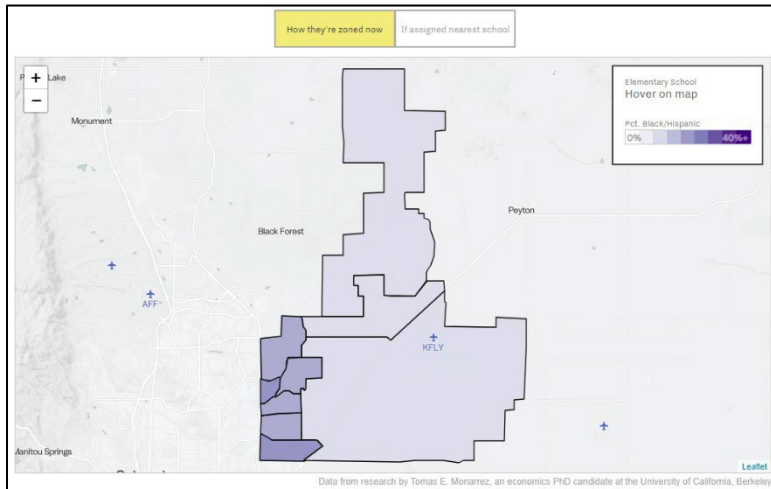
Durango School District No. 9-R (La Plata County)



Englewood School District No. 1 (Arapahoe County)

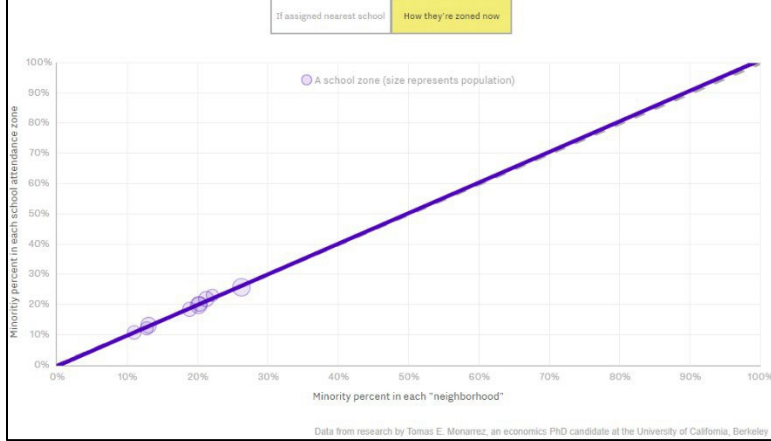


Falcon School District No. 49 (El Paso County)

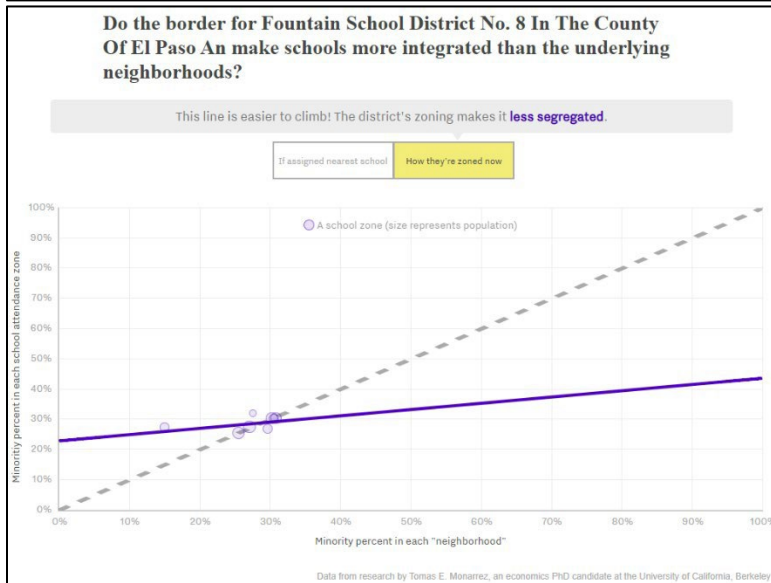
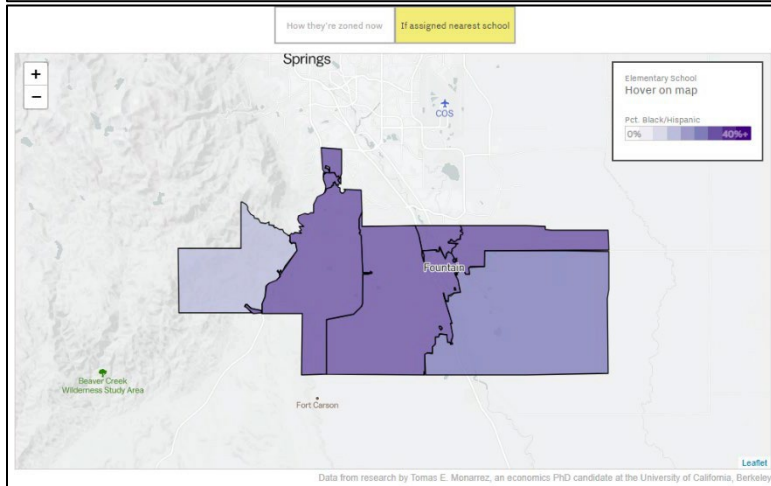
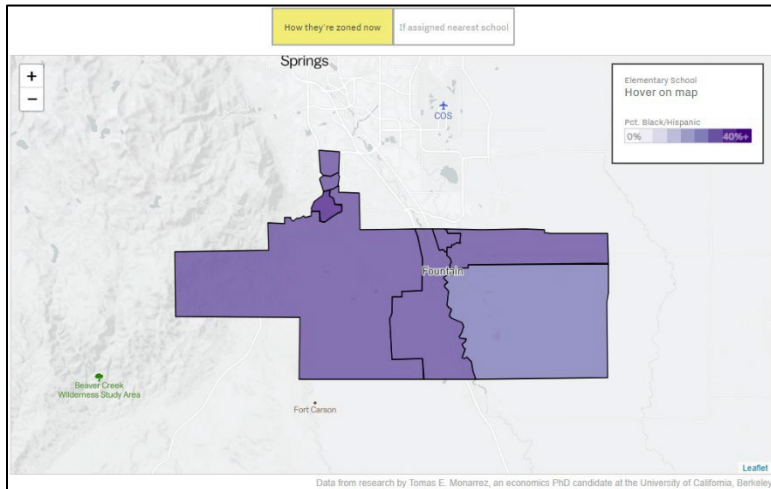


Do the border for Falcon School District No. 49 In The County Of El Paso And make schools more integrated than the underlying neighborhoods?

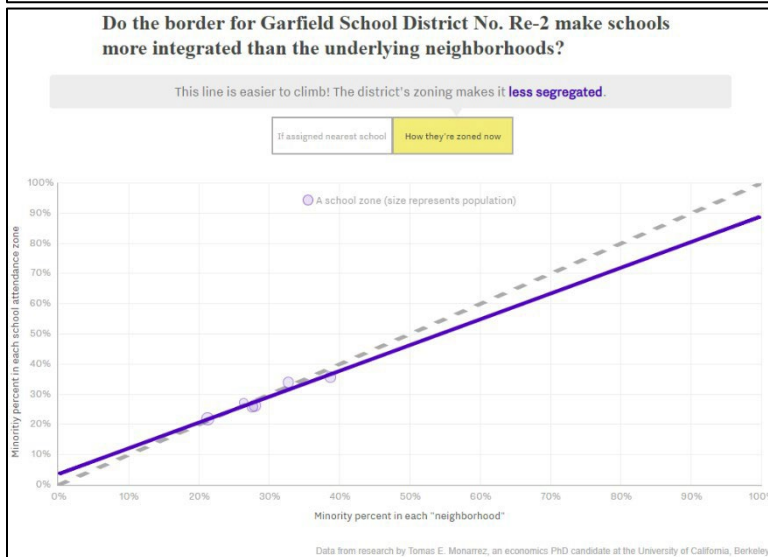
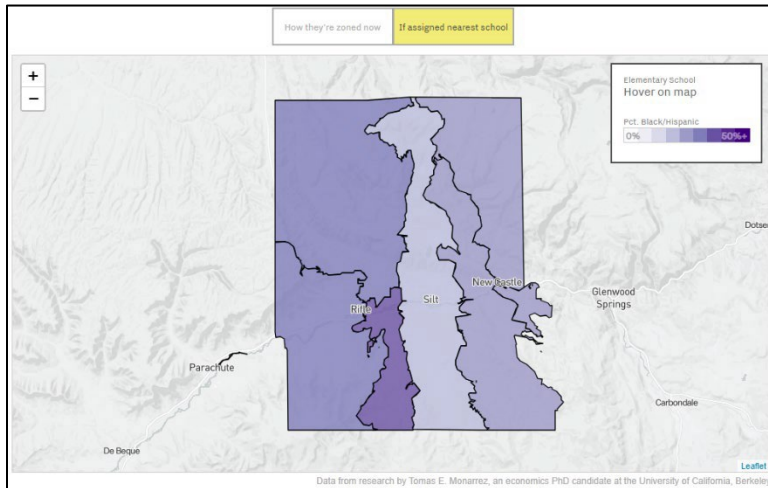
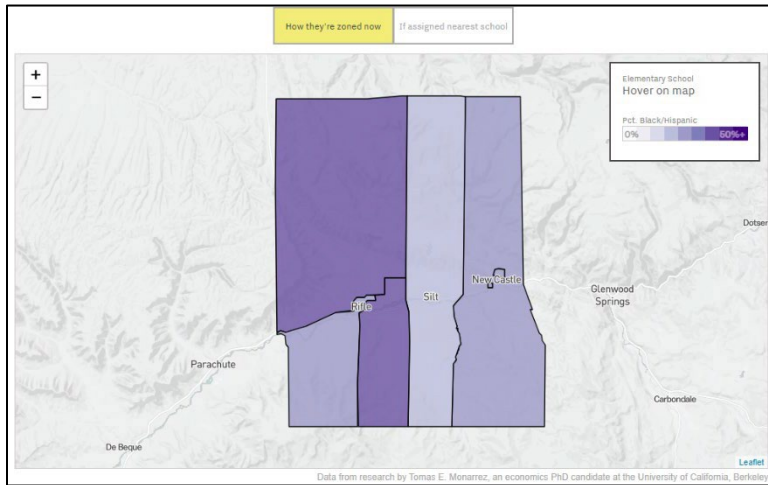
The line doesn't move much. The zoning just **recreates the underlying segregation**



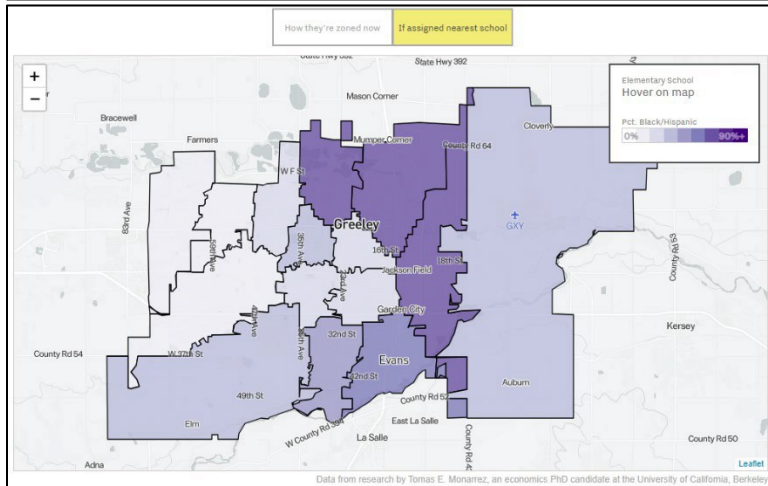
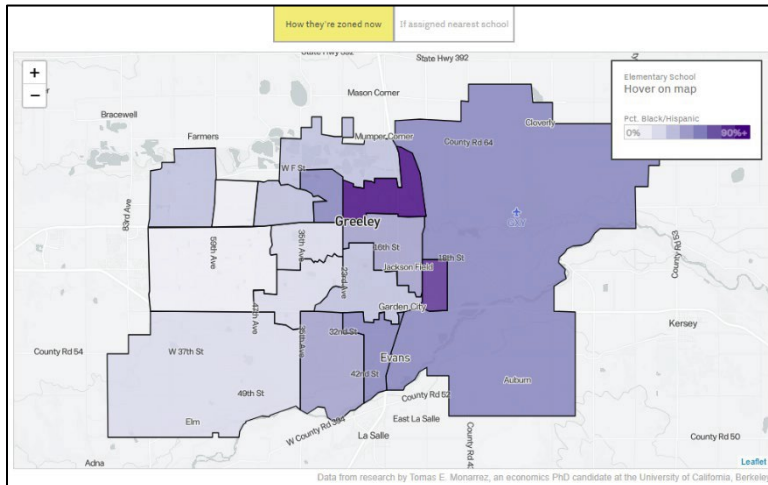
Fountain School District No. 8 (El Paso County)



Garfield School District No. Re-2 (Garfield County)

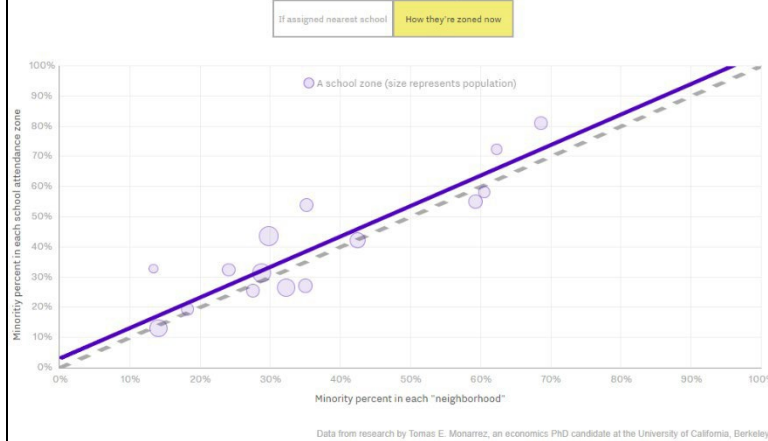


Greeley School District No. 6 (Weld County)

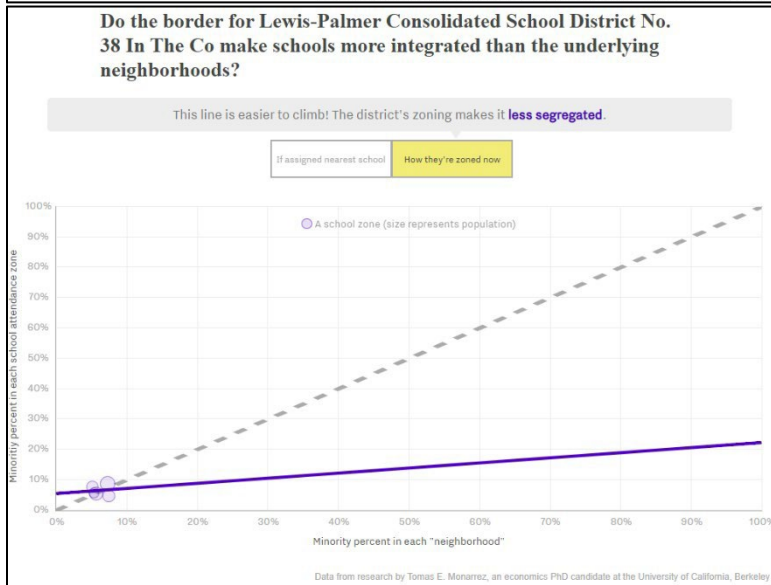
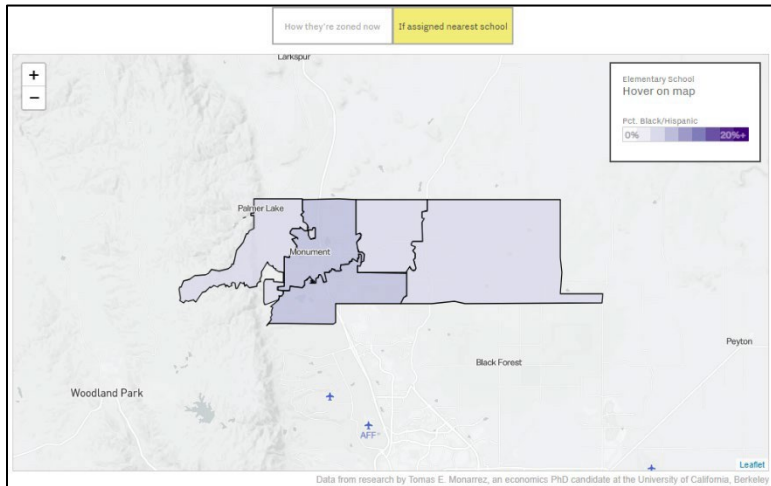
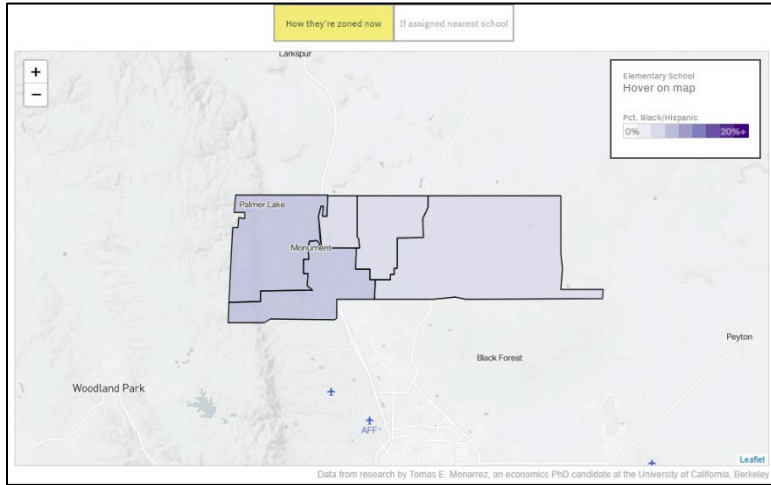


Do the border for Greeleyschool District No. 6 In The County Of Weld And Sta make schools more integrated than the underlying neighborhoods?

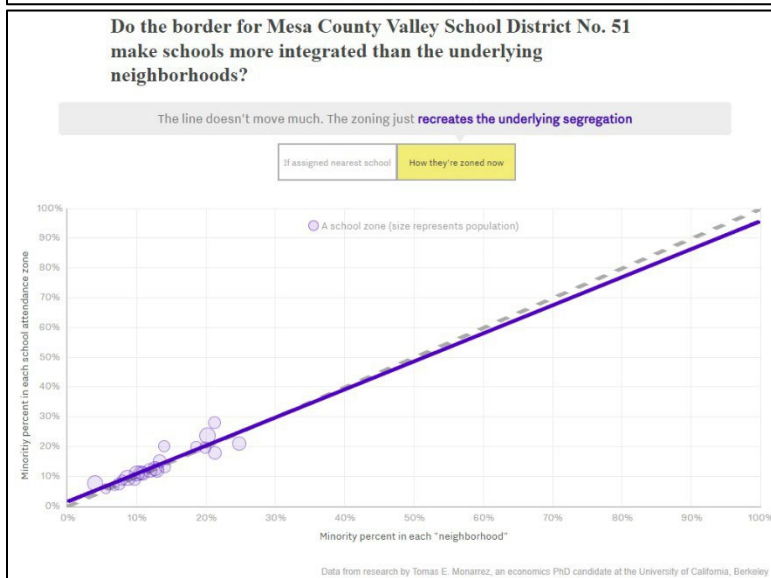
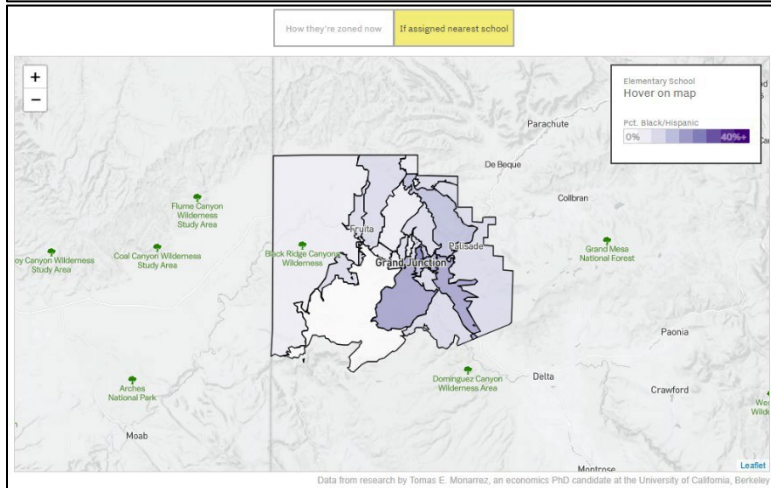
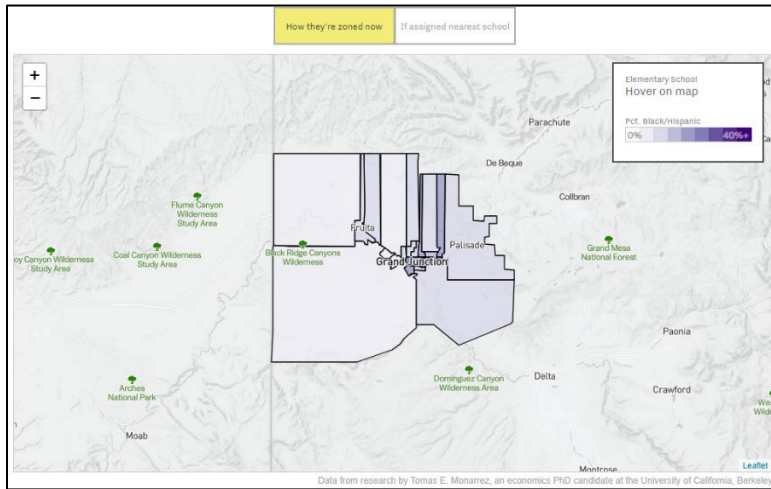
The line doesn't move much. The zoning just **recreates the underlying segregation**



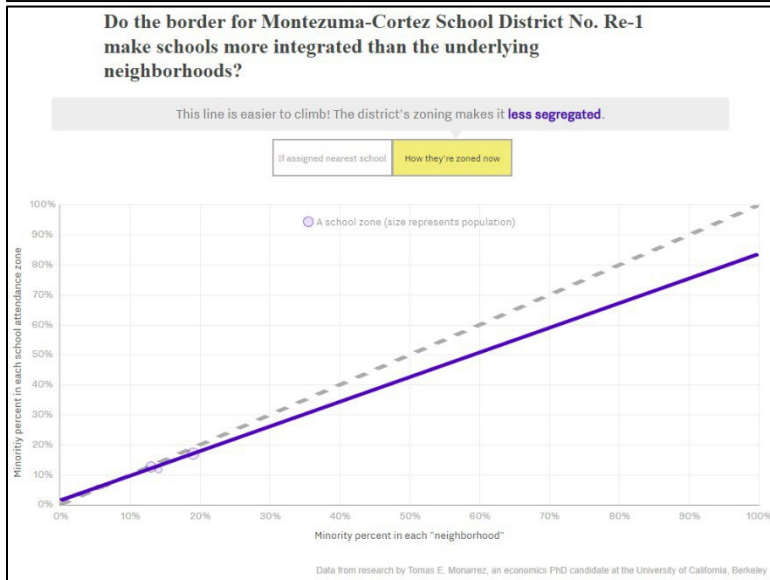
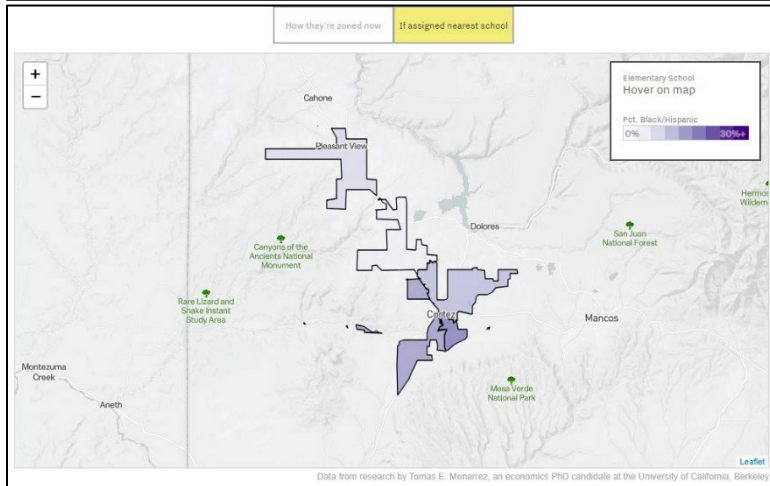
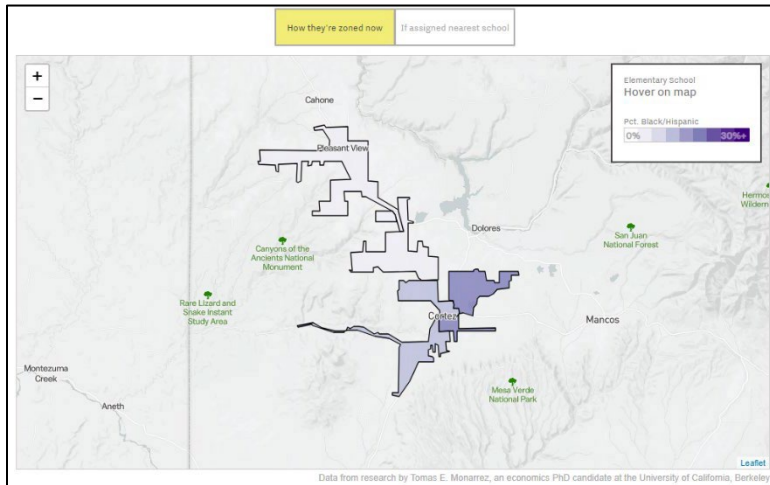
Lewis-Palmer Consolidated School District No. 38 (El Paso County)



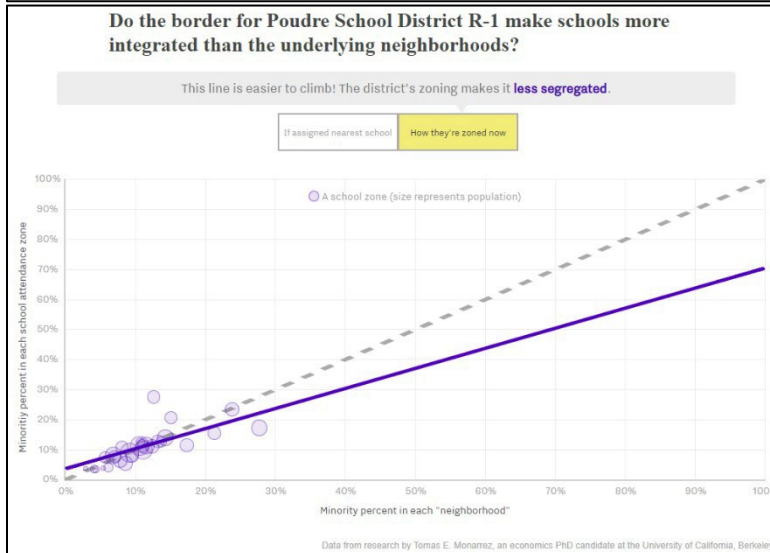
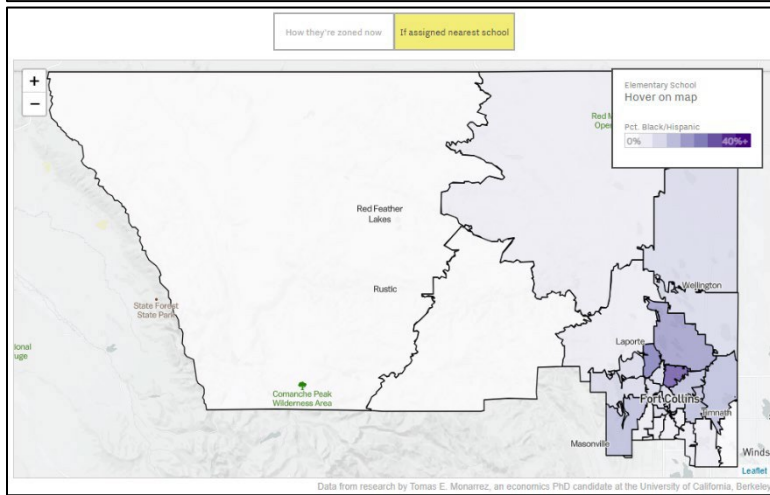
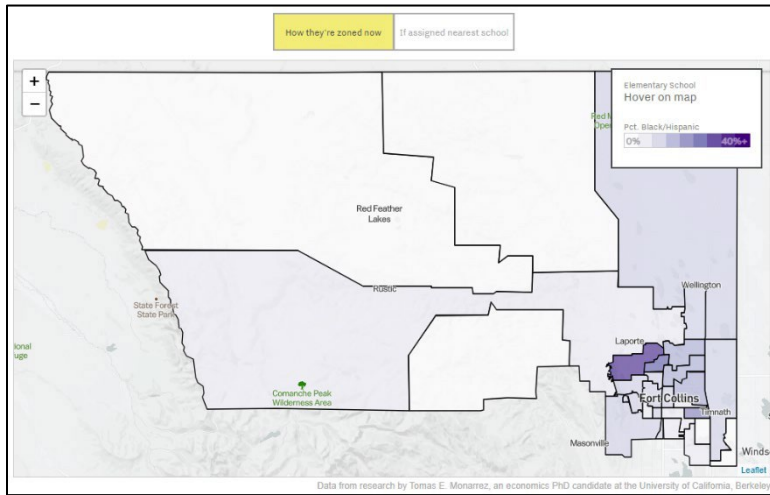
Mesa County Valley School District No. 51 (Mesa County)



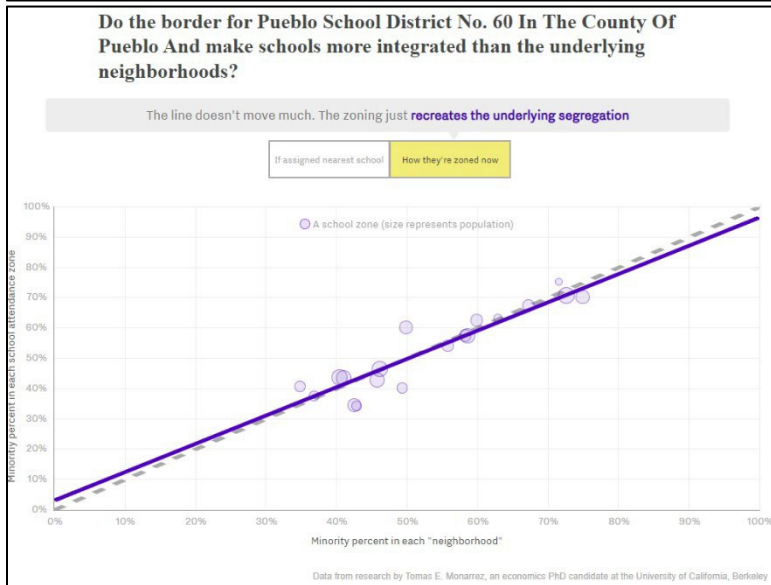
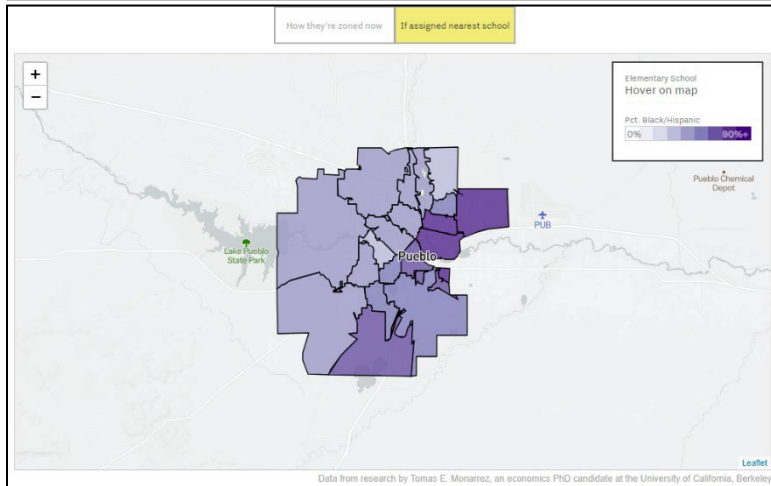
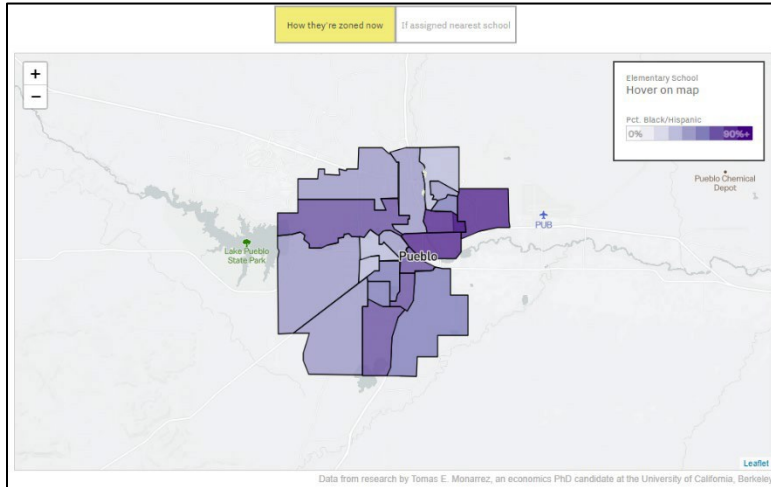
Montezuma-Cortez School District No. Re-1 (Montezuma County)



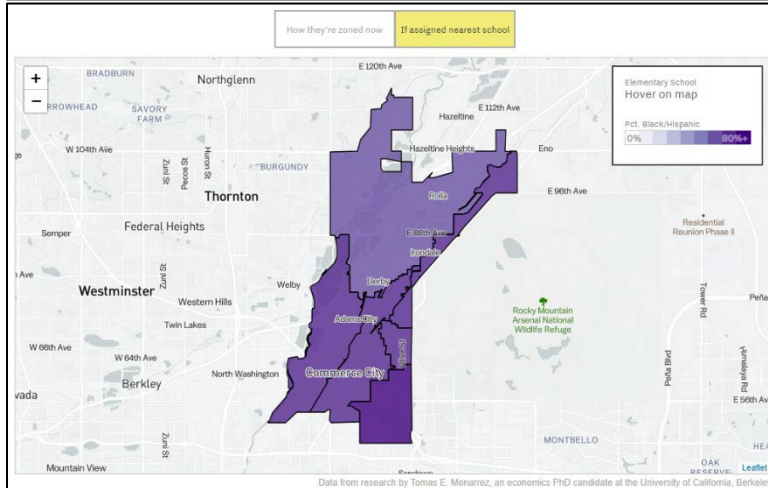
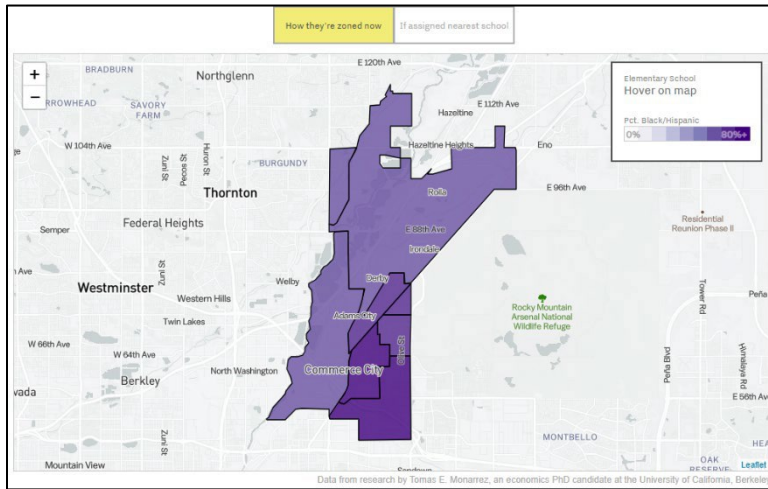
Poudre School District R-1 (Larimer County)



Pueblo School District No. 60 (Pueblo County)

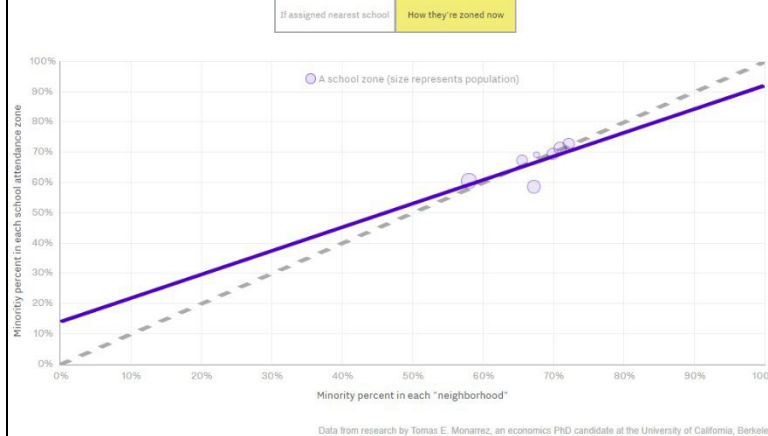


School District No. 14 (Adams County)

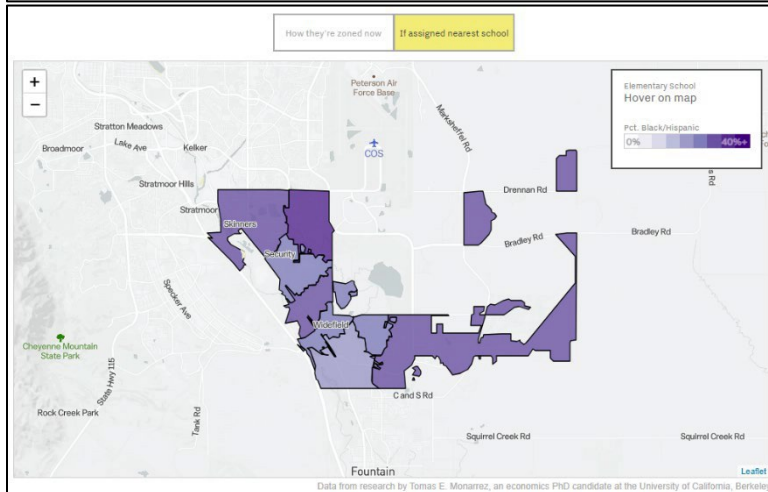
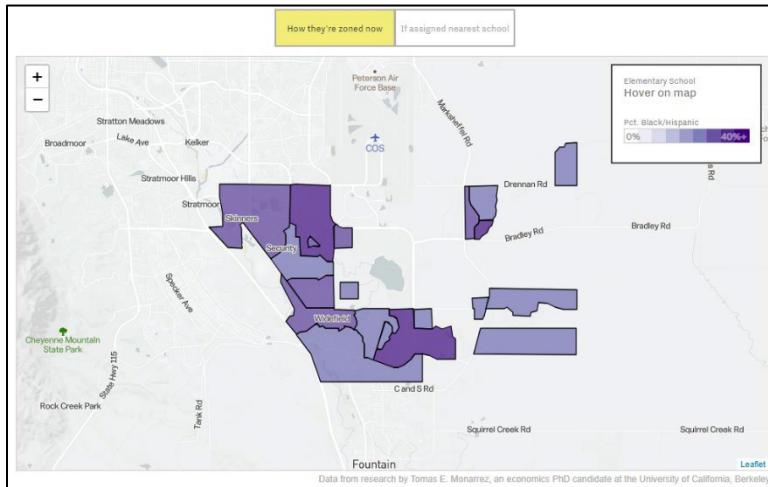


Do the border for School District N. 14 In The County Of Adams & State Of Colo make schools more integrated than the underlying neighborhoods?

This line is easier to climb! The district's zoning makes it **less segregated**.

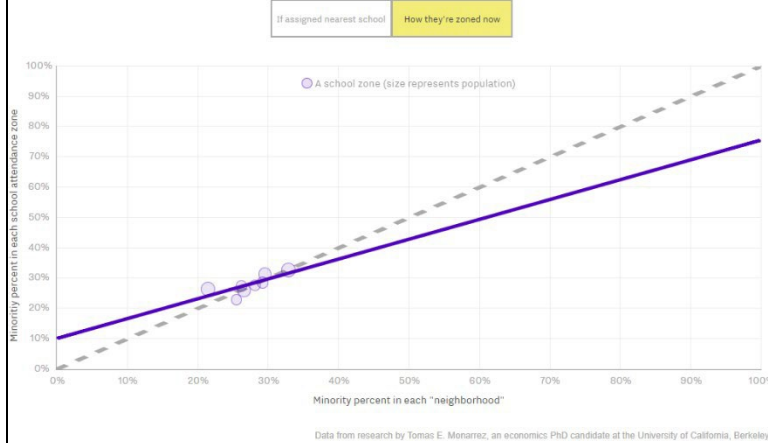


School District No. 3 (El Paso County)

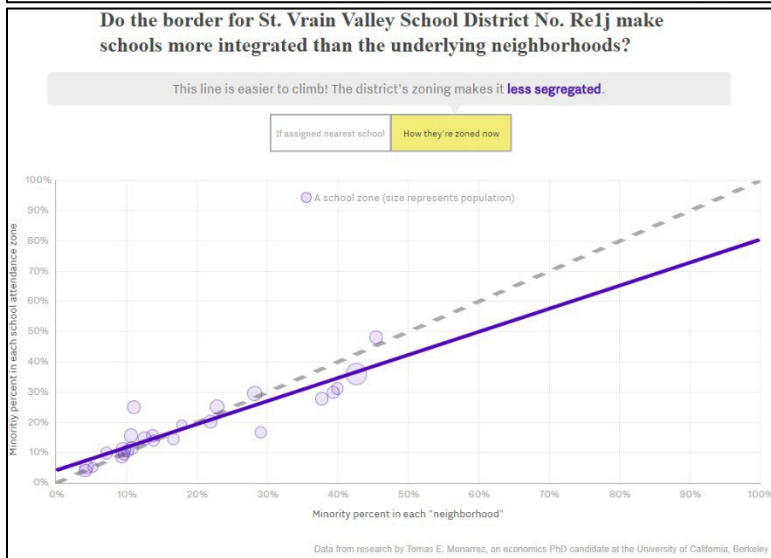
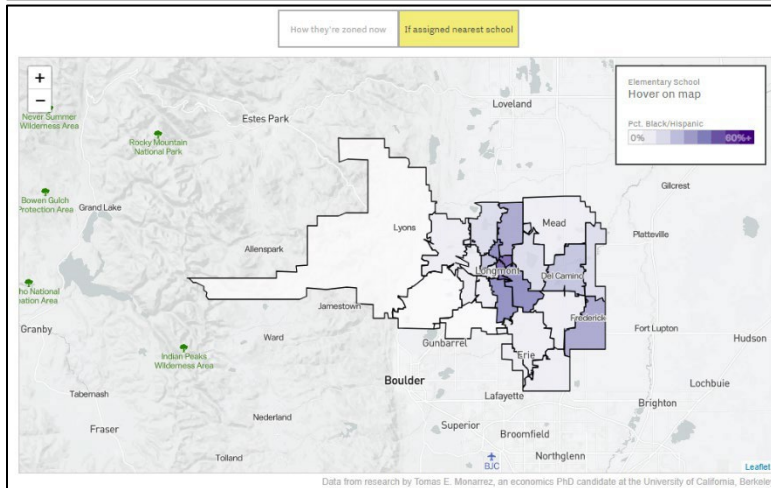
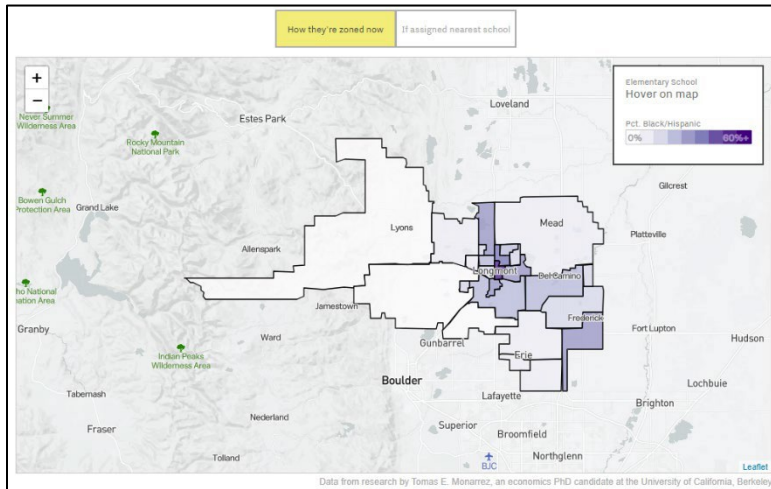


Do the border for School District No. 3 In The County Of El Paso And State Of make schools more integrated than the underlying neighborhoods?

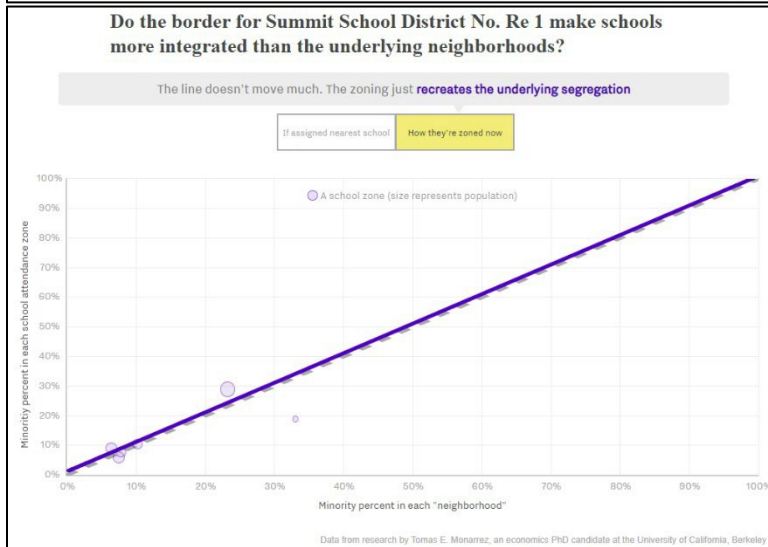
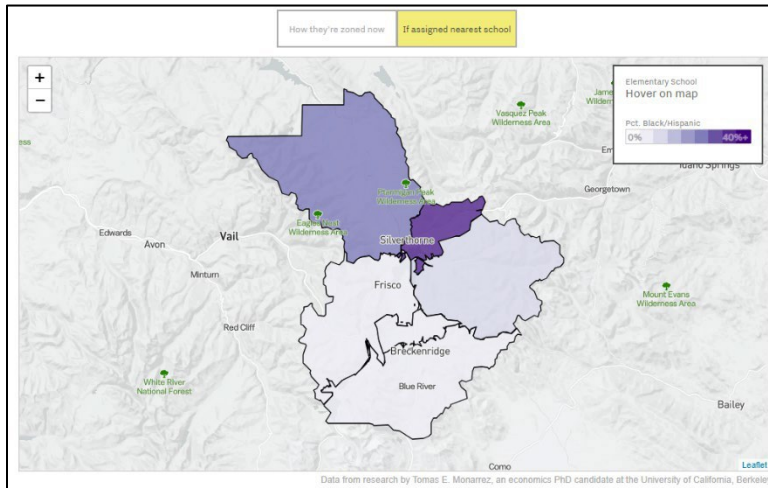
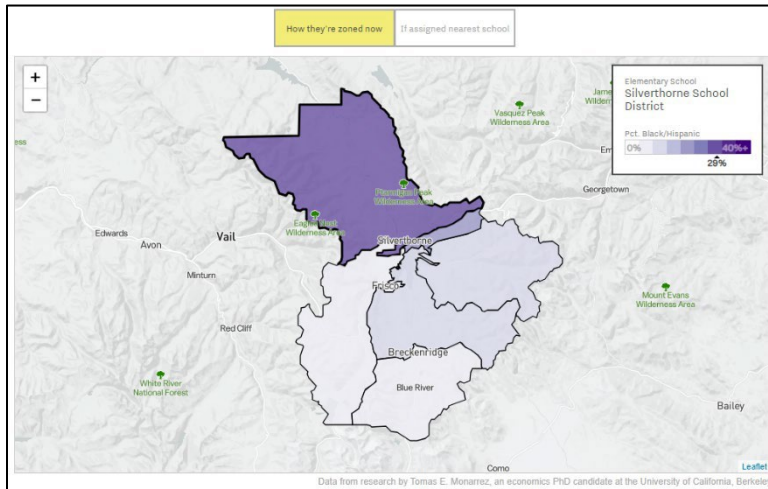
This line is easier to climb! The district's zoning makes it **less segregated**.



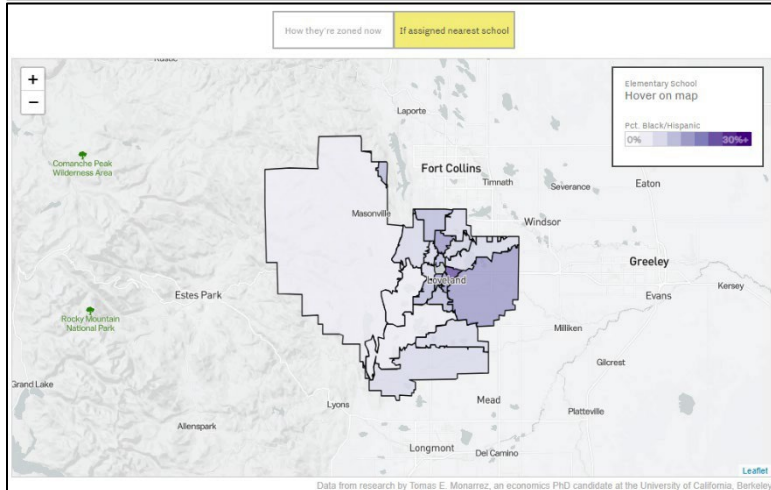
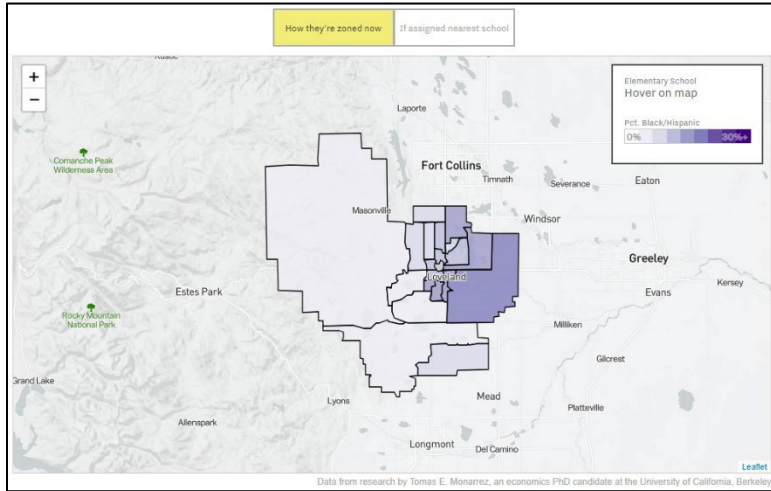
St. Vrain Valley School District No. Re-1J (Boulder County)



Summit School District No. Re 1 (Summit County)

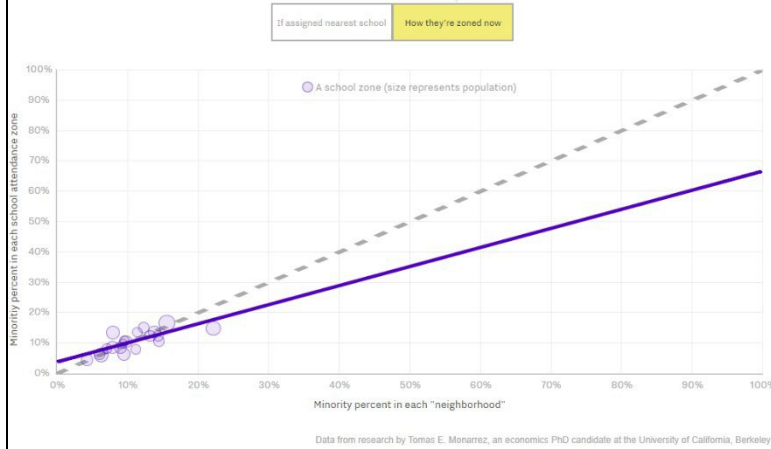


Thompson School District R-2J (Larimer County)

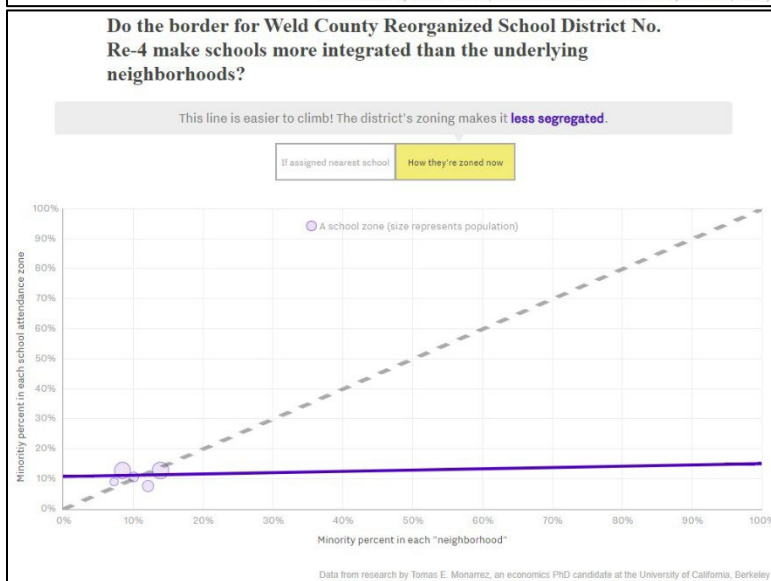
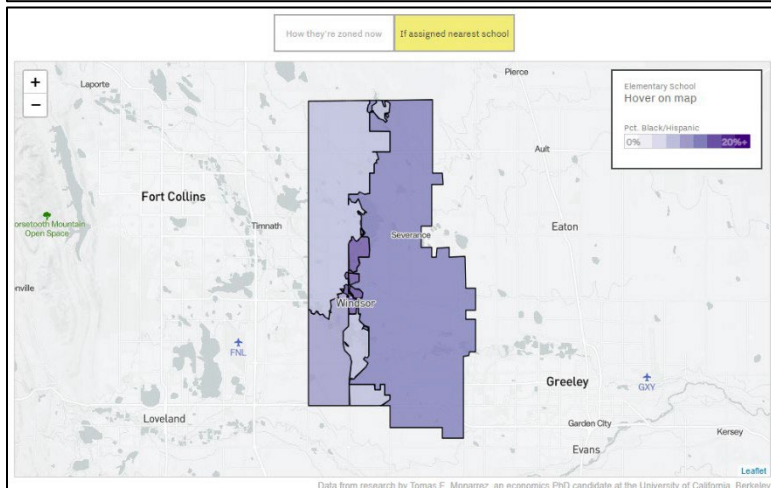
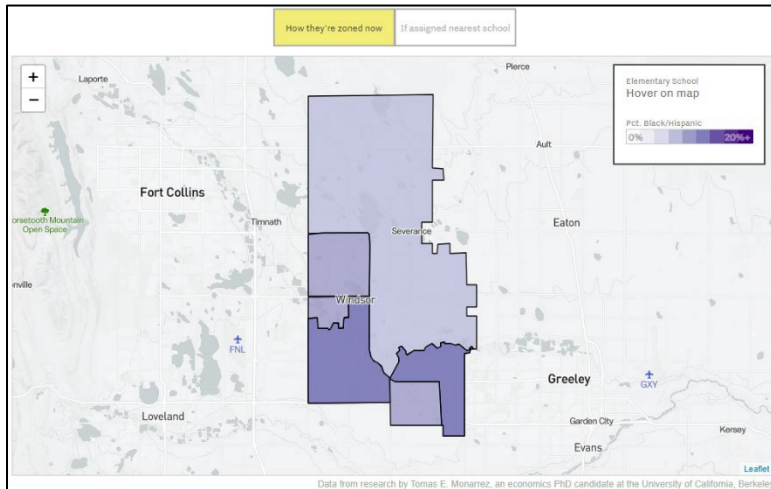


Do the border for Thompson School District R-2j make schools more integrated than the underlying neighborhoods?

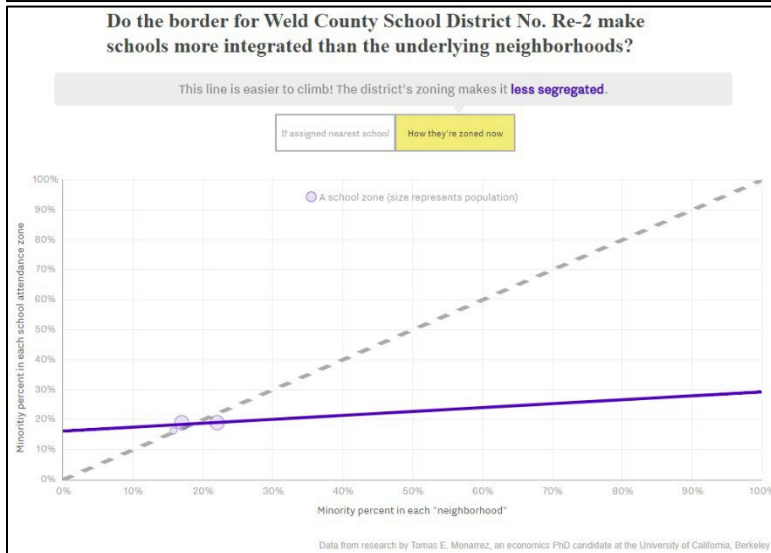
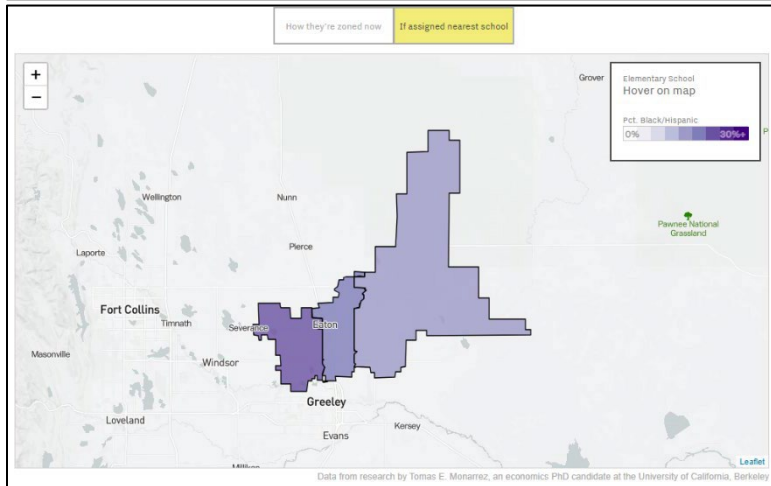
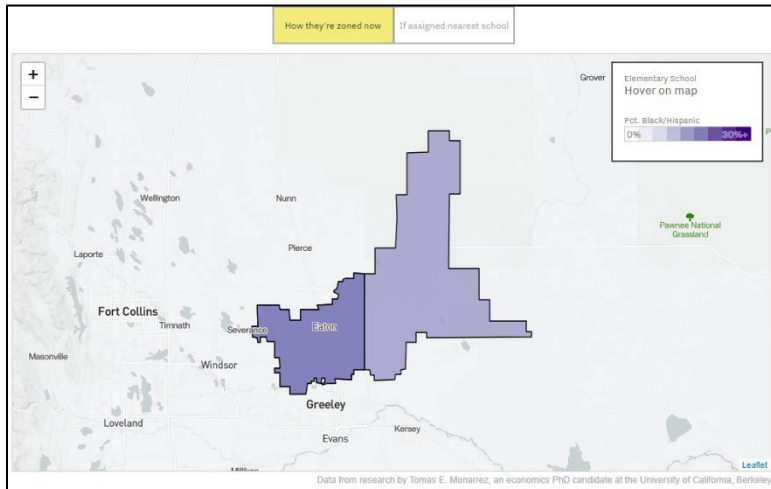
This line is easier to climb! The district's zoning makes it **less segregated**.



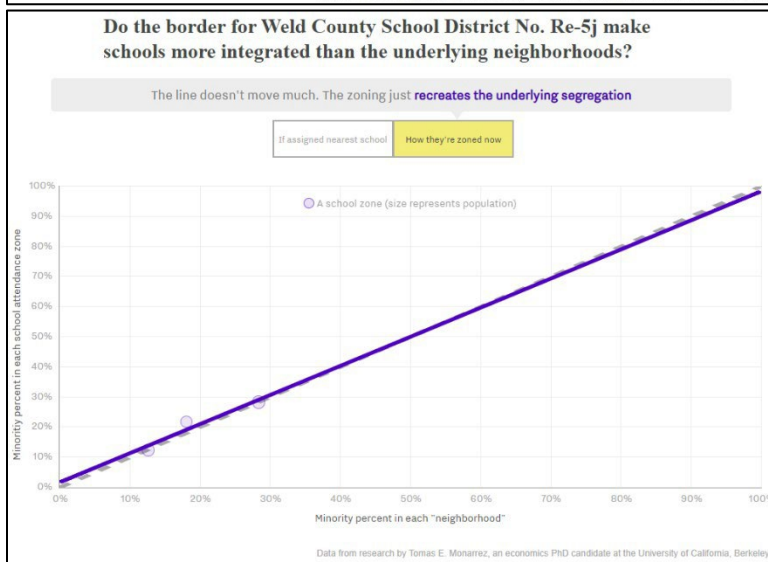
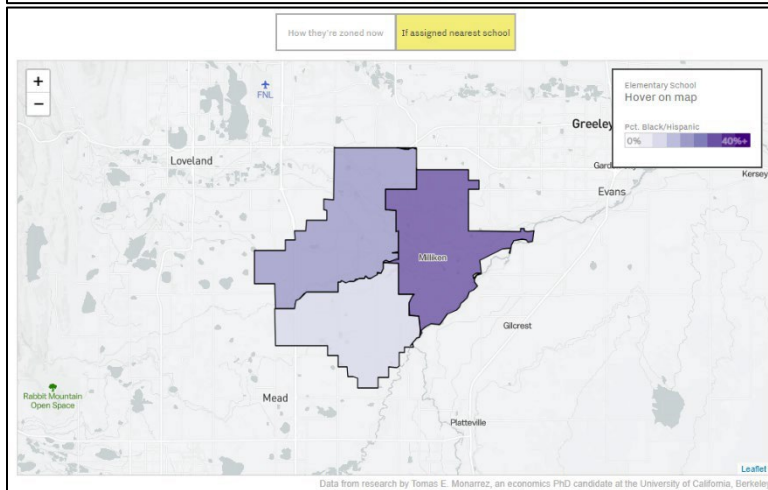
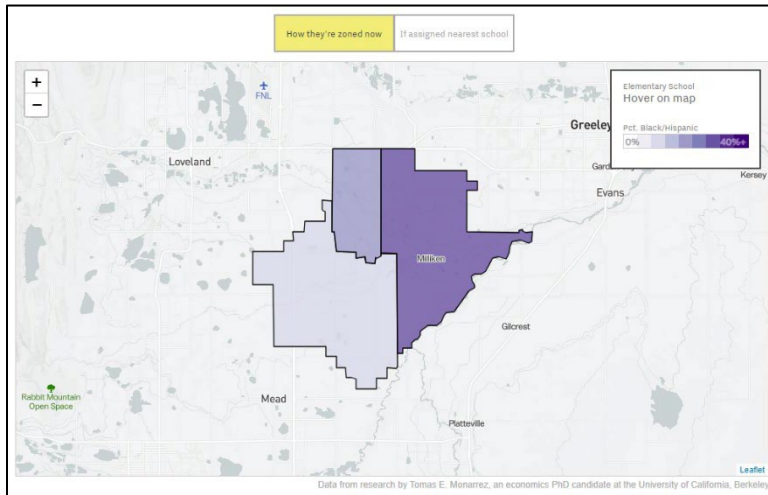
Weld County Reorganized School District No. Re-4 (Weld County)



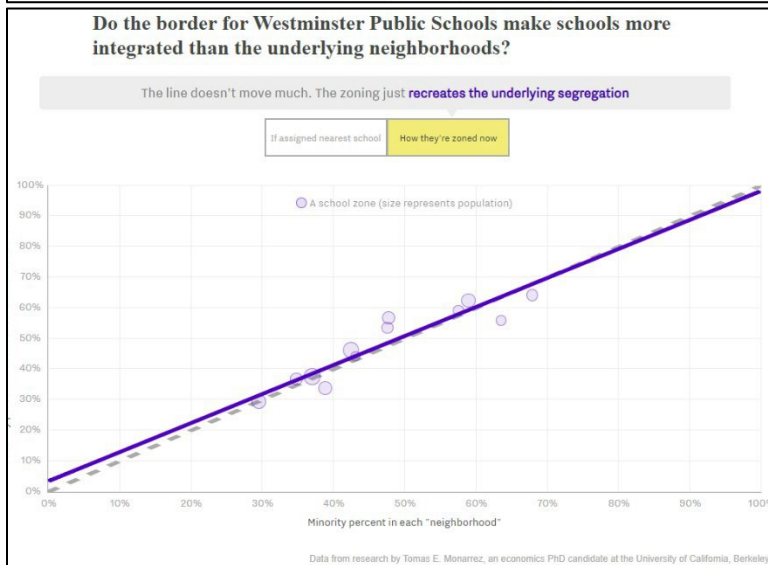
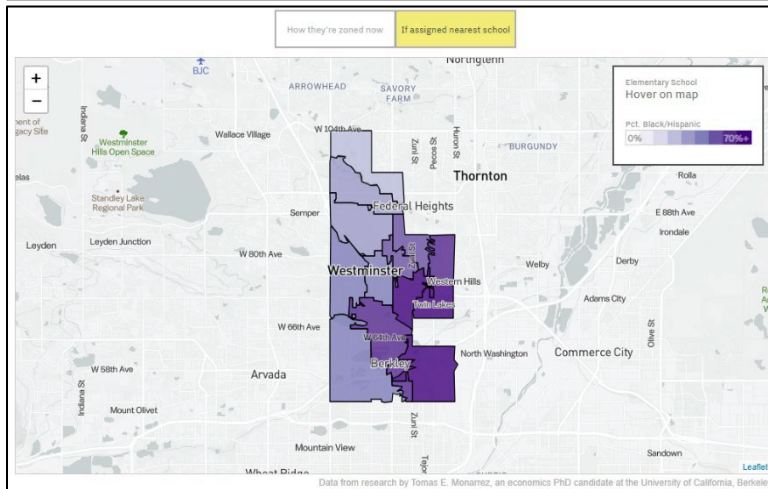
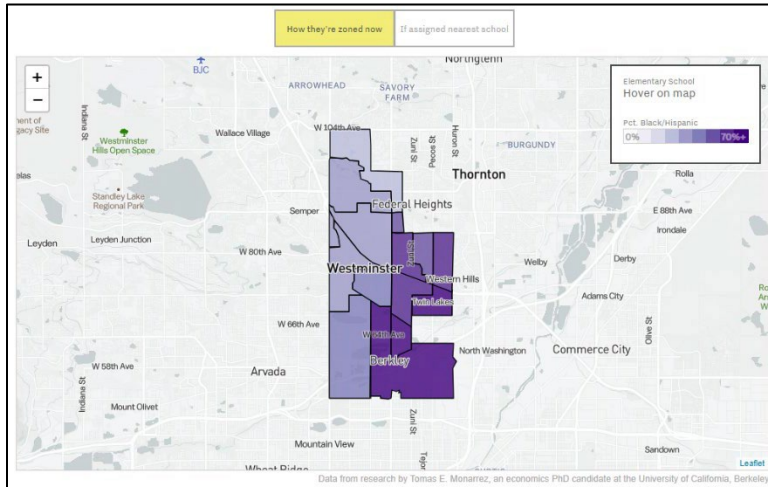
Weld County School District No. Re-2 (Weld County)



Weld County School District No. Re-5J (Weld County)



Westminster Public Schools (Adams County)



Appendix B: Statement by William E. Trachman

Concurrence by Vice Chair William E. Trachman

I commend the work that went into the report, and thank all of the witnesses for their time and expertise in offering testimony to the Committee. I concur with many of the reports findings, most especially its discussion of the possibility that school choice will lead to further racial integration in America’s schools.

I reject, however, the implication that ongoing segregation—by which I mean intentional, discriminatory student placement of non-Caucasian students—is occurring in Colorado. Indeed, the idea that Denver Public Schools, specifically, is engaged in such a practice is in deep tension with its public statements that it is prioritizing the interests of non-Caucasian students and parents, out of a drive for what it calls “equity.” I am personally counsel of record on several pending complaints against DPS with the U.S. Department of Education’s Office for Civil Rights, where the complaint contains “smoking gun” evidence that DPS is engaged in systemic discrimination against Caucasian (and likely Asian American) students, parents, and community members. It stretches belief to say that the school district is, at the same, systemically engaged in discrimination against non-Caucasian students to segregate them from Caucasian students.

Separately, I concur to say that while the report expresses ambivalence about whether school districts may adopt student assignment plans for “racial diversity” purposes, I believe that the matter is essentially settled. After *Parents Involved v. Seattle School District No. 1*,²²⁹ followed by the *Students for Fair Admissions* case in 2023,²³⁰ I do not believe that using race as a factor in achieving vague notions of “racial diversity” is constitutionally permissible. In *SFFA*, for instance, the Court rejected the University of North Carolina’s argument that racial diversity was a valuable goal, which was based on the assumption that “race says something about who you are.”²³¹

As Justice Scalia once wrote, “we are just one race here. It is American.”²³² As such, I abhor race discrimination in all forms, and reject both its immediate and lingering effects. However, the solution to previous instances of racism is rarely, if ever, to engage in race-based contemporary measures. Instead, the way to stop discrimination based on race is to

²²⁹ 551 US 701 (2007).

²³⁰ 600 U.S. 181 (2023)

²³¹ *Id.* at 220.

²³² *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 239 (1995) (Scalia, J., concurring).

stop discriminating based on race.²³³ I therefore concur with the report only to the extent that it embraces measures that are colorblind and designed to stop race discrimination—not to engage in more of it, out of a misguided effort to remedy discrimination with more discrimination.

²³³ *Parents Involved*, 551 U.S. at 748 (Roberts, C.J.).

**Colorado Advisory Committee to the
United States Commission on Civil Rights**



U. S. Commission on Civil Rights Contact

USCCR Contact Regional Programs Unit
U.S. Commission on Civil Rights
230 S. Dearborn, Suite 2120
Chicago IL, 60604
(312) 353-8311

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