R: "In the U.S. a student's race is an appropriate factor in admissions policies & practices at public elementary and secondary schools."

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Article (excerpt) By Debra Rosenberg

Dec. 1, 2006 - Crystal Meredith had a simple wish: she wanted her son, Joshua, to attend an elementary school near their home in Louisville, Ky. But when Meredith went to enroll him in kindergarten in 2002, she bumped up against the schools' voluntary integration policy. Designed to maintain racial balance in the once-segregated Louisville schools, the plan lets parents choose among schools in various clusters across the city. But the institutions all strive to keep the number of African-American students somewhere between 15 and 50 percent of the school population. If the number drops too low or grows too high, students of any race can be shunted to other schools.

When Meredith, who is white, tried to sign up Josh, he was assigned to an elementary school that required a long bus ride across town. "The bus didn't come anywhere near our house, so I had to drive him," Meredith tells NEWSWEEK. A single mom, she had to cut back her hours at work so she could serve as chauffeur. Meredith soon applied for a school transfer so that Josh could move to a closer school. But the request was denied: it would have thrown off the racial balance at the school across town. Meredith soon filed suit, losing twice in federal court. On Monday, she's taking her case as far as it can go—to the U.S. Supreme Court. "I see this as a parent wanting what's best for their child," says Meredith, who insists her case is not about race or affirmative action. "That's really all I see."

But it's not all that others see in the case, which will be heard along with a similar one from Seattle. Depending on how the high court rules, hundreds of school districts around the country may have to abandon—or at least adjust—student assignment policies that use race as a factor. "But the stakes are much higher than that," says Duke University law professor Neil Siegel. "It really could be the final legacy of Brown," he says, referring to the landmark 1954 Supreme Court ruling that said "separate but equal" facilities were not good enough. The court later embraced affirmative action in the 1978 Bakke decision; in a 1991 case from Oklahoma City, the court made it easier for school districts to abandon forced busing efforts once they'd desegregated. The last time the court addressed the issue—in two University of Michigan cases in 2003—it ruled against strict formulas that award admissions points based on race, but permitted a "holistic review" that considers race.

Supreme Court weighs role of race in school admissions

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WASHINGTON (CNN) -- More than 50 years after the Supreme Court outlawed segregation in public schools, the justices struggled over one controversial outgrowth of that decision Monday.

They are divided over what role race should play, if any, in competitive admissions at elementary and secondary schools.

Some justices highlighted the benefits of racial diversity in the classroom, while others on the bench worried about whether the voluntary integration programs constitute illegal racial quotas.

The cases from Kentucky and Washington state revisit past disputes over race and education. The issues stem from the landmark 1954 Brown v. Board of Education decision ending racial separation in public facilities. Louisville, Kentucky, and Seattle, Washington, have embraced their school-choice plans in many quarters.

But while local officials say a key goal is diversity, some families call it discrimination.

"It's very hard for me to see how you can have a racial objective," said Justice Ruth Bader Ginsburg, "but a non-racial means to get there."

She and Justices John Paul Stevens, David Souter, and Stephen Breyer seemed more sympathetic toward the diversity programs.

But judging from the questioning in two hours of spirited oral arguments, a conservative bloc led by Chief Justice John Roberts may have the five votes needed to overturn them.

"The purpose of the (Constitution's) equal protection clause is to ensure that people are treated as individuals, rather than based on the color of their skin," said Roberts. "So saying that this doesn't involve individualized determinations simply highlights the fact that the decision to distribute, as you put it, is based on skin color and not any other factor."

Equality without affirmative action programs?

While those on both sides of the issue agree classroom diversity is an important goal, differences remain over how to maintain it without the real or perceived consequence that some families may be discriminated against or inconvenienced.

A ruling next year could help clarify when, and to what lengths, state and local officials can go to promote diversity in K-12 education.

In a landmark case three years ago, the justices declared racial quotas unconstitutional while offering a limited, but powerful endorsement of affirmative action in higher education.

The justices disagreed on whether that legal standard should apply in elementary and secondary schools.

Outside the court, hundreds of demonstrators -- many of them African-American college students -- marched and chanted in support of the affirmative action plans.

Some carried signs such as "Equal education, not segregation."

Louisville-area schools endured decades of federal court oversight after schools there were slow to integrate.

When that oversight ended in the late 1990s, county officials sought to maintain integration, requiring most public schools have at least 15 percent and no more than 50 percent African-American enrollment.

The idea was to reflect the whole of Louisville's Jefferson County, which is 60 percent white and 38 percent black. Officials say the plan reflects not only the need for diversity, but also the desire of parents for greater school choice.

An admissions "tiebreaker"

A white parent, Crystal Meredith, sued, saying her child was twice denied admission to the school nearest their home and had to endure a three-hour bus ride to a facility that was not their top choice.

Her lawyer, Teddy B. Gordon, questioned why parents would be forced to choose between classroom quality and diversity.

"Educational outcome is the only key," he said.

But Breyer said he was worried about the long-term impact if diversity plans were abandoned.

"There's a terrible problem -- lots and lots of districts are becoming more and more segregated and school boards are struggling," he said. "And if they knew an easy way, they'd do it. I do know courts are not very good at figuring that out."

Countering that, Justice Anthony Kennedy told Francis Mellen Jr., attorney for Louisville, that the plan presented "a troubling case."

In Seattle, public schools often rely on a "tiebreaker."

Under the city's public school plan, initiated in 1998, families can send their children to any school in their district. When there are more applicants than spaces available, and when a school is not considered "racially balanced," race is one of several "integration tiebreakers" used to achieve diversity.

A group composed primarily of white parents from two neighborhoods sued in 2001. The complaint involved 200 students who were not admitted to the schools of their choice, preventing them from attending the facilities nearest to their homes.

One school at the center of the controversy is Franklin High. Half of its roughly 1,500 students are Asian-American, a third are African-American, and about 7 percent are Hispanic.

White enrollment dropped from 23 percent in 2000 to just 10 percent last year.

Franklin's diversity plan has been suspended while the appeals are working their way through the courts.

Justice Kennedy repeatedly raised concerns about Seattle's plan, telling attorney Michael Madden, "The problem is, that unlike strategic siting, magnet schools, special resources, special programs in some schools, you're characterizing each student by the reason of the color of his or her skin."

"That is quite a different means," he said. "And it seems to me that that should only be, if ever allowed, allowed as a last resort."

Madden replied that the Seattle school district has been competing with various forces.

"It's important to the credibility and functionality of the school system to have a system that is accepted by the public, by our constituents. And so people like choice," the attorney said.

"They also like neighborhood schools. They also like diverse schools. And the board recognized when it set about to develop this plan that accommodating all of those values would require some trade-offs."

Madden also argued Seattle's policy does not violate the law, since students are not turned away from the district.

And he claimed the current school-assignment plans require less busing for racial purposes and provide more choice for parents than did earlier plans.

The sticking point could be whether those efforts represent a "compelling government interest."

"Race-neutral" goes undefined

Solicitor General Paul Clement told the justices that the two plans at issue represent "very stark racial quotas."

He argued they are a "clear effort to get the schools to mimic the overall community," and that other "race-neutral" means to achieve classroom diversity should be used.

Souter pressed for specifics on what "race-neutral" means, but Clement did not elaborate. And Souter wondered how schools could ensure racial isolation in schools would not reach "extreme disparity."

"The question comes down to whether they (school officials) can do it candidly or do it clumsily," Souter said. "That is, it seems to me, an unacceptable basis to draw a constitutional line."