

# CONNECTICUT LAW REVIEW

---

VOLUME 53(2)

MAY 2021

ONLINE EDITION

---

## Note

### School Segregation in New Haven County

MEGAN DEFRANK

*For decades Connecticut has made efforts to bridge racial gaps within the public-school system to little avail. Following alterations to the state constitution and successful judgments in lawsuits seeking to enforce students' rights to an equal education, the state has failed to make noticeable alternations to the racial composition of school communities within the state. Education in urban areas has a much different appearance and result than public education in suburban communities. We need to re-envision our state's approach to public education in Connecticut, so that our students may truly receive equal benefit of schooling as the state constitution proscribes.*

*This article examines current efforts to desegregate public schools in New Haven County, and argues that Connecticut public schools cannot meaningfully be desegregated without first addressing pervasive residential segregation. New Haven County has alarmingly exclusionary zoning policies making it difficult for residents to move between communities and preventing changes to the composition and character of communities. An examination of differently situated towns and cities within New Haven County reveals the need for state-wide zoning reform or shift towards regionalized public schools on a wider-scale to lessen the achievement gap within the state.*

## NOTE CONTENTS

INTRODUCTION .....	3
I. BEGINNING TO DE-SEGREGATE NEW HAVEN SCHOOLS .....	4
II. MODERN ATTITUDES AND LIMITATIONS ON PROGRAMS TO DE-SEGREGATE NEW HAVEN .....	7
A. INTER-DISTRICT MAGNET SCHOOLS .....	8
B. OPEN CHOICE IN NEW HAVEN COUNTY .....	9
C. SEGREGATION AND ACHIEVEMENT GAPS IN NEW HAVEN COUNTY .	11
III. RESIDENTIAL SEGREGATION AND EXCLUSIONARY ZONING IN NEW HAVEN COUNTY .....	12
A. MADISON: EXCLUSIONARY ZONING IN HIGH INCOME TOWN.....	16
B. BRANFORD: ZONING IN A MIXED INCOME TOWN .....	18
C. HAMDEN: MIXED ZONING .....	19
IV. ADDRESSING RACIAL IMBALANCE IN NEW HAVEN SCHOOLS MOVING FORWARD.....	21
A. REGIONALIZATION OF SCHOOL SYSTEMS .....	22
B. CREATING MORE INCLUSIVE ZONING .....	23
CONCLUSION .....	24



# School Segregation in New Haven County

MEGAN DEFRANK\*

*“This is a systemic problem, mediated by race and class. We’re asking schools to do something that the larger society doesn’t do . . . . What was supposed to be a remedy has now become a penalty, because they’re penalizing students for being black and brown.” – Board of Education Member.<sup>1</sup>*

## INTRODUCTION

New Haven was founded in 1638, and quickly became a city rich with innovation and artistry.<sup>2</sup> Elm City became the first “planned city in America” in 1641, when it adopted a grid system conceptual design centered around the town green.<sup>3</sup> Shortly after the city’s founding, New Haven became home to one of the leading educational institutions in the world, Yale University,<sup>4</sup> and rural-suburban neighborhoods quickly began developing.

During the mid-twentieth century, New Haven’s economy shifted from manufacturing to health services and higher education.<sup>5</sup> At the same time, the population the surrounding suburbs almost doubled in size.<sup>6</sup> In the 1960s, Connecticut experienced its highest growth in Black population, increasing sixty-eight percent, primarily within urban areas.<sup>7</sup> Along with the population boom and suburban flight, urban renewal efforts began in the twentieth century.<sup>8</sup> Yale University spearheaded these efforts in order to maintain

---

\* University of Connecticut School of Law, J.D. 2021; Fordham University, B.A. 2017. Thank you to my family for always encouraging me to explore my passions and freely speak my mind. A special thank you to my thoughtful and hard-working colleagues at the *Connecticut Law Review*.

<sup>1</sup> Ed Mayer to the New Haven Independent. Christopher Peak, *Magnets Seek “Right” (White) Suburbanites*, NEW HAVEN INDEP. (May 25, 2018, 1:26 PM), [https://www.newhavenindependent.org/index.php/archives/entry/magnet\\_schools\\_racial\\_isolation/](https://www.newhavenindependent.org/index.php/archives/entry/magnet_schools_racial_isolation/) [hereinafter Peak, *Magnets*].

<sup>2</sup> *History*, INFO NEW HAVEN, <https://www.infonewhaven.com/history/> (last visited Feb. 2, 2021).

<sup>3</sup> *Id.*

<sup>4</sup> While founded in 1701, Yale University was moved permanently to downtown New Haven in 1716. *Yale Traditions and History*, YALE UNIV., <https://www.yale.edu/about-yale/traditions-history> (last visited Feb. 2, 2021).

<sup>5</sup> ALAN BERUBE & CECILE MURRAY, *AMERICA’S OLDER INDUSTRIAL CITIES ARE KEY TO AN INCLUSIVE ECONOMY* (Brookings 2018), <https://www.brookings.edu/research/older-industrial-cities/#01073>.

<sup>6</sup> Robert C. Ellickson, *Zoning and the Cost of Housing: Evidence from Silicon Valley, Greater New Haven, and Greater Austin* 53 (January 13, 2020), <https://ssrn.com/abstract=3472145>.

<sup>7</sup> Carrie Rose, *Milestones in Connecticut Education: 1912–2012*, OLR RSCH. REP. (Feb. 28, 2012), <https://www.cga.ct.gov/2012/rpt/2012-R-0094.htm>.

<sup>8</sup> Mark Zaretsky, *Top 50: 75 Years Later, New Haven Still Reshaping ‘Urban Renewal,’* NEW HAVEN REG. (Oct. 6, 2018, 7:09 PM), <https://www.nhregister.com/news/article/75-years-later-New>

competition with the suburbs and competition with the attractive neighborhoods of other Ivy League schools.<sup>9</sup> As a result of urban renewal efforts and suburban flight, “walls of concrete highways separated neighborhoods, disrupted communities . . . [and] built space . . . largely unconnected to how people lived . . . .”<sup>10</sup> As suburban governments began to grow, exclusionary policies maintained segregated towns, and subsequently, segregated school systems.

While Connecticut has one of the highest education levels in the nation, the state is characterized by extreme educational inequalities between the central cities, such as New Haven, and the prosperous, educated suburbs.<sup>11</sup> Even after decades of planning and implementing programs to address racial segregation in Connecticut schools, New Haven still struggles to ensure that all students are able to access adequate and diverse educational experiences within their public-school system. Plans to de-segregate local schools have failed largely as a result of the segregated residential areas within and around the city.<sup>12</sup> Exclusionary zoning policies in New Haven County have functioned for decades to maintain income-exclusive municipalities and, as a result, limit access to public services in high-income towns. Without meaningfully de-segregating residential areas in and surrounding New Haven County, the school systems within the county may never be significantly integrated.

### I. BEGINNING TO DE-SEGREGATE NEW HAVEN SCHOOLS

New Haven maintained a segregated school system until 1874, when the Board of Education closed the last all-Black school located on Goffe Street.<sup>13</sup> Afterwards, the Connecticut General Assembly did not create any legislation with the goal of maintaining segregated schools within the state.<sup>14</sup> In the mid-twentieth century, the number of children attending public schools grew drastically, creating a shortage in school facilities.<sup>15</sup> Between 1956 and 1960, twenty-seven new junior high schools were built throughout the state.<sup>16</sup> With population increases and the emerging school

---

Haven-still-reshaping-the-13266864.php.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See Gary Orfield & Jongyeon Ee, *Connecticut School Integration: Moving Forward as the Northeast Retreats*, C.R. PROJECT 20–22 (Apr. 2015), <https://files.eric.ed.gov/fulltext/ED558556.pdf> (discussing immigration patterns to Connecticut and the effect of immigration patterns on Connecticut public schools).

<sup>12</sup> *Id.* at 24–25.

<sup>13</sup> Christopher Peak, *Dear White Parents*, NEW HAVEN INDEP. (Mar. 30, 2018, 12:37 PM), [https://www.newhavenindependent.org/index.php/archives/entry/school\\_segregation\\_nikole\\_hannah-jones/](https://www.newhavenindependent.org/index.php/archives/entry/school_segregation_nikole_hannah-jones/).

<sup>14</sup> *Sheff v. O’Neill*, 678 A.2d 1267, 1288 (Conn. 1996).

<sup>15</sup> Rose, *supra* note 7.

<sup>16</sup> *Id.*

system, segregation was becoming a more visible problem in Connecticut cities and schools.

In 1965, the Connecticut Constitution was amended to include a constitutional right to a free education.<sup>17</sup> The new constitutional provision provided for the “support and encouragement of the public schools throughout the state, and for the equal benefit of all the people thereof,”<sup>18</sup> meaning that all students are entitled to receive equal educational opportunities. The state Constitution charged the General Assembly with prescribing funding and support for public schools.<sup>19</sup> The 1965 amendments also provided for a right to be protected from “segregation or discrimination in the exercise or enjoyment of his or her civil or political rights,”<sup>20</sup> prescribing the right to live free of segregation.

The New Haven Board of Education began discussing a mandatory desegregation plan in the mid-1960s.<sup>21</sup> The proposal began with elementary school students and targeted integration of a couple middle schools in New Haven County.<sup>22</sup> When the program was proposed, there was a lot of backlash from suburban residents.<sup>23</sup> Although some (perhaps even most) families in the area purported to support school integration, families also used the desire to keep students close to home as a means to reject widespread plans to bus suburban students.<sup>24</sup> Parents declared that busing students twelve miles away from their homes to schools with unfamiliar students posed an unknown risk to their children.<sup>25</sup> Parents feared integrating and socializing their children with other, unfamiliar communities.

As a result, the Connecticut Board of Education turned to voluntary school choice programs. Notably, Project Concern, the first school choice program in Connecticut and one of the first school choice programs in the nation, began in Hartford and allowed students from the city to be bused to the suburbs to attend school.<sup>26</sup> The program had two goals: to promote racial diversity in suburban schools and to provide Hartford students with high

---

<sup>17</sup> CONN. CONST. art. VIII, § 4.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* art. I, § 20. Together, the anti-segregation and discrimination clause and the equitable educational opportunities clause provided a basis for the parties in *Sheff v. O’Neill*, alleging educational inequalities in the Hartford public school system violated rights provided by the Connecticut Constitution. *Sheff v. O’Neill*, 678 A.2d 1267, 1270–71 (Conn. 1996).

<sup>21</sup> Melinda Tuhus, *Connecticut Q&A;: Robert J. Schreck; Sponsoring Diversity in the Classroom*, N.Y. TIMES (Apr. 16, 1995), <https://www.nytimes.com/1995/04/16/nyregion/connecticut-qa-robert-j-schreck-sponsoring-diversity-in-the.html>.

<sup>22</sup> *Id.* The desegregation program targeting elementary schools was never implemented. Instead, the Board of Education decided to target two middle schools. *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Jessica Bosco, *1966+40 Years: A Look Back at Project Concern*, CITIES, SUBURBS & SCHS. PROJECT (Apr. 22, 2016), <https://commons.trincoll.edu/cssp/2016/04/22/40-years-of-project-concern-a-look-back>.

quality educations that Hartford public schools could not afford.<sup>27</sup> Throughout the 1960s, Connecticut continued to push legislation and initiatives to address school segregation, including creating regional education service centers. The General Assembly passed the “racial imbalance” law, which addressed what constituted a substantial racial imbalance in school composition and ensured the fair allocation of resources between school systems.<sup>28</sup> In the same year, regional education service centers, including the Area Cooperative Educational Services (ACES) in New Haven County, were established to address education inequality.<sup>29</sup>

In the 1970s, courts across the country began ordering large city school districts to bus portions of students outside of their neighborhoods in order to integrate schools. But in response, the Supreme Court in *Milliken v. Bradley* limited mandatory desegregation efforts to school districts that participated in de jure segregation.<sup>30</sup> In response to *Milliken*, plaintiffs in Connecticut dropped a pending lawsuit for regional desegregation, *Lumpkin v. Meskill*, which was brought to challenge the district lines of towns.<sup>31</sup> Alternatively, a case arose concerning disparities in educational funding in Connecticut.<sup>32</sup>

Plaintiffs in *Horton v. Meskill* challenged the system of financing public schools in Connecticut.<sup>33</sup> The unequal distribution of wealth throughout the state, particularly between urban and suburban school districts, created vast disparities between the education and resources available to students in public schools.<sup>34</sup> The Connecticut Supreme Court held that the discrepancies in school funding between urban and suburban schools violated the constitutional requirement of equal educational opportunity for all students.<sup>35</sup> Not only did the case lead to diversified funding for education

---

<sup>27</sup> *Id.*

<sup>28</sup> For full text of the “racial imbalance” law, see CONN. GEN. STAT. §§ 10-226a–226h.

<sup>29</sup> Each largely segregated urban district in Connecticut has a Regional Educational Service Center that oversees integration efforts in the designated municipalities. In Bridgeport county, schools report to and are overseen by Cooperative Educational Services (CES). In Hartford, Capitol Region Education Council (CREC) assists in creating and implementing plans to integrate schools. Area Cooperative Educational Services (ACES) is the service center for south central Connecticut. In addition to these three regional service centers, there are three more service centers which oversee the remaining regions of Connecticut. For more on each regional service center, see individual websites listed at *Educational Organizations in CT*, CONN. STATE DEP’T OF EDUC., <https://portal.ct.gov/SDE/Educational-Organizations-in-CT> (last visited Feb. 2, 2021); *About Us*, RESC ALL., <http://rescalliance.org/about> (last visited Feb. 2, 2021). See also CONN. GEN. STAT. § 10-66a (incorporating regional education service centers into state planning of the public-school system).

<sup>30</sup> *Milliken v. Bradley*, 418 U.S. 717, 721–22 (1974).

<sup>31</sup> Case was originally *Lumpkin v. Dempsey*. Ambar Paulino, *The Struggle for Educational Equity During the 1970s: Lumpkin v. Dempsey*, CITIES, SUBURBS & SCHS. PROJECT (Oct. 16, 2013), <https://commons.trincoll.edu/cssp/2013/10/16/educationalequitylumpkin>.

<sup>32</sup> *Horton v. Meskill*, 376 A.2d 359, 361 (Conn. 1977).

<sup>33</sup> *Id.* at 361.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 374–75.

provided by the General Assembly, the case provided a standard of education equality later used by plaintiffs in *Sheff*.<sup>36</sup>

Unable to pursue a solution under federal law after *Milliken v. Bradley*, plaintiffs filed *Sheff v. O'Neill* in 1989 to seek a solution under state law.<sup>37</sup> The *Sheff* plaintiffs alleged elementary and high school students in Hartford suffered from the “devastating effects that racial and ethnic isolation . . . had on their education.”<sup>38</sup> In 1996, the Connecticut Supreme Court announced its decision in *Sheff*, holding that racial and ethnic segregation present within Connecticut’s school system had a “pervasive and invidious impact” whether it resulted from intentional conduct or demographic factors.<sup>39</sup> The segregation present in schools violated the state constitutional right to a fair and equal education.<sup>40</sup>

Following the *Sheff* decision, the legislature passed “An Act Enhancing Educational Choices and Opportunities.”<sup>41</sup> The act articulated the interests of the state to provide increased opportunities and interactions between students and teachers of different backgrounds.<sup>42</sup> Afterwards, the General Assembly authorized the creation of more state and local charter and magnet schools as an alternative to regular public school education.<sup>43</sup> In addition, the General Assembly formally established the Open Choice program, allowing Connecticut cities to send and receive students from participating suburban school districts in their respective region.<sup>44</sup> Aside from limited funding, an obstacle to implementing programs to de-segregate was the lack of support for widespread integration “for its own sake.”<sup>45</sup>

## II. MODERN ATTITUDES AND LIMITATIONS ON PROGRAMS TO DE-SEGREGATE NEW HAVEN

Currently, Connecticut has five school choice programs.<sup>46</sup> These programs allow parents to choose to enroll their children in either a particular program in their own towns or a school located outside of their

---

<sup>36</sup> Rose, *supra* note 7.

<sup>37</sup> Orfield & Ee, *supra* note 11, at 12.

<sup>38</sup> *Sheff v. O'Neill*, 678 A.2d 1267, 1270 (Conn. 1996).

<sup>39</sup> *Id.* at 1284–85.

<sup>40</sup> *Id.* at 1288–91.

<sup>41</sup> PA 97-290, AN ACT ENHANCING EDUCATIONAL CHOICES AND OPPORTUNITIES (1997), <https://www.cga.ct.gov/ps97/sum/sum0290.htm>.

<sup>42</sup> *Id.*

<sup>43</sup> PA 96-214, AN ACT CONCERNING PUBLIC CHARTER SCHOOLS (1996), <https://www.cga.ct.gov/ps96/Act/pa/1996PA-00214-R00SB-00059-PA.htm>.

<sup>44</sup> CONN. SCH. FIN. PROJECT, CONNECTICUT’S OPEN CHOICE PROGRAM 2–3 (May 2018), <http://ctschoolfinance.org/assets/uploads/files/Open-Choice-Policy-Brief.pdf>.

<sup>45</sup> George Judson, *School Integration: Connecticut Struggles*, N.Y. TIMES (Oct. 7, 1994), <https://www.nytimes.com/1994/10/07/nyregion/school-integration-connecticut-struggles.html>.

<sup>46</sup> Robert Cotto, Jr. & Kenneth Feder, *Choice Watch: Diversity and Access in Connecticut’s School Choice Programs*, CONN. VOICES FOR CHILDREN 3 (Apr. 2014), <https://commons.trincoll.edu/cssp/files/2015/02/Cotto2014ChoiceWatchFullReport.pdf>.

town.<sup>47</sup> Two of the five programs, inter-district magnet schools and the Open Choice program, were created to reduce racial and ethnic segregation.

#### A. *Inter-District Magnet Schools*

The inter-district magnet school system was introduced in the 1980s.<sup>48</sup> Following the *Sheff* decision in 1996 the General Assembly authorized the funding and construction of more state and local charter schools and magnet schools within New Haven. Both construction of new schools and revitalization of public schools aimed to increase the quality of education and attract suburban students. Inter-district magnet schools within New Haven were created to attract suburban students to voluntarily enter schools within the city.<sup>49</sup> The inter-district magnet schools receive more state funding per pupil than traditional neighborhood schools.<sup>50</sup> New Haven now has the largest inter-district magnet School of Choice program in the state, giving students a choice between twenty schools.<sup>51</sup> The quality of the educational services at the school attracts record numbers of students from suburban towns in the region, making New Haven the city with the highest suburban student enrollment in the state.<sup>52</sup> Enrollment at magnet schools became, and remains, attractive for students and parents because students at magnet schools consistently show high levels of achievement and almost no achievement gap between minority and white students at many grade levels.<sup>53</sup>

Still, there are a number of challenges arising with enrollment and integration efforts within the inter-district magnet school program. Some of the inter-district magnet schools in New Haven struggle to meet the benchmarks required in order to obtain magnet schools funds.<sup>54</sup> Another issue currently facing magnet schools is disparate funding. The Education Cost Sharing (ECS) Formula implemented by the General Assembly attempted to make up the difference between the funding each student received from towns with disparate property tax income.<sup>55</sup> Districts that send students to inter-district magnet schools, however, are profiting off of the magnet school system. Even though they are sending students to magnet schools, rather than educating them in neighborhood classrooms, district

---

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Orfield & Ee, *supra* note 11, at 15.

<sup>50</sup> *Id.* at 22.

<sup>51</sup> NEW HAVEN PUB. SCHS., *Our Schools*, <https://livingnh.yale.edu/new-haven-schools> (last visited Feb. 2, 2021).

<sup>52</sup> *Id.*

<sup>53</sup> Orfield & Ee, *supra* note 11, at 22.

<sup>54</sup> Peak, *Magnets*, *supra* note 1. All inter-district magnet schools are required to maintain no more than a seventy-five percent enrollment of Black or Hispanic students. *Id.*

<sup>55</sup> Christopher Peak, *Suburbs Profit off New Haven's Magnets*, NEW HAVEN INDEP. (July 5, 2019, 12:29 PM), [https://www.newhavenindependent.org/index.php/archives/entry/suburbs\\_ecs\\_inter-district\\_magnets\\_tuition/](https://www.newhavenindependent.org/index.php/archives/entry/suburbs_ecs_inter-district_magnets_tuition/).



schools that receive ECS grants get to keep the grant money regardless of the students being sent to other schools.<sup>56</sup>

Overall, inter-district magnet schools have seen some success in creating integrated school environments and have provided greater educational opportunity. Currently, there are sixteen magnet schools open to suburban families.<sup>57</sup> The schools aim to create a ratio of approximately sixty-five percent New Haven students and thirty-five percent suburban families, without focusing on race.<sup>58</sup> No more than seventy-five percent of students in the city's magnet schools can be city residents and no more than seventy-five percent can be Black or Latino.<sup>59</sup> The number of overall white students enrolled in New Haven schools has, in recent years, remained between fifteen and thirteen percent.<sup>60</sup> However, concerns about the number of seats and students being placed in their second and third choice schools constantly arise.<sup>61</sup> Another complaint has been that parents in New Haven do not feel as though they are provided with the necessary resources to navigate the enrollment system.<sup>62</sup> While the inter-district magnet school network has boomed, it has not had a significant impact on school composition across the county.

#### B. *Open Choice in New Haven County*

The Open Choice program was started in the 1960s, as Project Concern in Hartford.<sup>63</sup> Since the program's creation, it has expanded to other major cities in Connecticut, including New Haven. Along with extracurricular educational programming and services, ACES performs three main functions in New Haven and the surrounding suburbs: operates three inter-district magnet schools, operates six special education schools, and facilitates and operates transportation for the school Open Choice program.<sup>64</sup> As of 2019, ACES facilitated the exchange of students from New Haven to thirteen different suburban school districts.<sup>65</sup> Conversely, ACES provided transportation from twenty-four suburban school districts to New Haven

---

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Brian Zahn, *Education Bill Could Give New Haven Magnet Schools 2 Years' Relief*, NEW HAVEN REG. (June 11, 2019, 5:49 PM), <https://www.nhregister.com/news/article/Education-bill-could-give-New-Haven-magnet-13969387.php>.

<sup>59</sup> *Id.*

<sup>60</sup> Christopher Peak, *State Puts 4 Magnet Schools on Notice*, NEW HAVEN INDEP. (May 24, 2018, 11:07 AM), [https://www.newhavenindependent.org/index.php/archives/entry/magnet\\_school\\_diversity\\_compliance/](https://www.newhavenindependent.org/index.php/archives/entry/magnet_school_diversity_compliance/).

<sup>61</sup> *Id.*

<sup>62</sup> Brian Zahn, *Complaints Prompt New Haven Board of Education to Review School Lottery System*, NEW HAVEN REG. (Jan. 9, 2019, 8:15 PM), <https://www.nhregister.com/news/article/Complaints-prompt-New-Haven-school-board-to-13521846.php>.

<sup>63</sup> Cotto & Feder, *supra* note 46, at 3.

<sup>64</sup> *Aces 2018-2019 Annual Report*, Area Coop. Educ. Servs. 4–8 (2019), <https://www.aces.org/our-agency/publications/annual-report/2018-2019-annual-report/#5>.

<sup>65</sup> *Id.* at 8.

schools.<sup>66</sup> Similar to the process for applying to inter-district magnet schools, students in New Haven can apply to, and rank preferentially, schools from participating suburban towns in the region, and suburban students can elect to attend a school in New Haven.<sup>67</sup>

Through the Open Choice program, school districts in New Haven County can elect to offer seats to students from the New Haven school district and are able to determine how many seats they would like to offer.<sup>68</sup> The Regional Education Service Center for New Haven, ACES, determines the eligibility and feasibility for the suburban school district to receive Open Choice students.<sup>69</sup> The Department of Education distributes grants to schools on a per-pupil basis to the local boards of education, which are determined based on the percentage of Open Choice students attending the school.<sup>70</sup> The grant process is intended to incentivize district participation, allowing for more grant money to be given as the district increases enrollment.<sup>71</sup> Under the Education Cost Sharing grant implemented in Connecticut, the school district sending the students and the school district receiving the student share the allocation for the student participating in the program.<sup>72</sup>

Student enrollment in the Open Choice program slowly but steadily increased since the program's establishment following *Sheff*.<sup>73</sup> In Fiscal Year 2018, the last school year in which statistics were officially reported, Open Choice enrollment slightly decreased from a peak in 2017.<sup>74</sup> The number of Open Choice students attending New Haven public schools in 2018 actually exceeded the number of Open Choice students attending Hartford public schools, where the program began. In New Haven, 179 Open Choice students were brought to urban schools, whereas in Hartford 132 students attended public schools from outside school districts.<sup>75</sup> In the New Haven region, the following suburban schools had New Haven students enrolled in the Open Choice program in 2018:

---

<sup>66</sup> *Id.*

<sup>67</sup> Note that students in suburban schools cannot elect to attend a school in another suburban school district. CONN. SCH. FIN. PROJECT, *supra* note 44, at 1–2.

<sup>68</sup> *Id.* at 1.

<sup>69</sup> *Id.*

<sup>70</sup> For example, a school with a less than two percent population of students in the open choice program receives a \$3,000 grant per student. The grant amount per student increases as the percentage population of students increases in the school district. A school district with a two to three percent population of Open Choice participants receives \$4,000 per student. A school district with a three to four percent population of Open Choice students receives \$6,000 per student. Lastly, school districts that have over four percent population of Open Choice students receive an \$8,000 grant per student. *Id.* at 4–5, fig.1.

<sup>71</sup> *Id.* at 4.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 2.

<sup>74</sup> *Id.* at 8, fig.4<sup>50.1</sup>.

<sup>75</sup> *Id.*

Town	Total Open Choice Students	Total District Enrollment
Ansonia	11	2,283
Bethany	5	364
Branford	55	2,901
Cheshire	37	4,284
East Haven	16	2,853
Hamden	2	5,362
Milford	40	5,751
North Branford	26	1,777
North Haven	40	3,1136
Orange	7	1,173
Wallingford	6	5,824
Woodbridge	14	830
District No. 5 (Bethany, Orange, Woodbridge)	17	2,197

\*Numbers selected from Fig. 4<sup>50,J</sup> 76

Altogether, in the Greater New Haven Region, only 276 students from New Haven were transported in 2018 to attend suburban school districts.

The Open Choice program operates a regional mechanism for school desegregation. Contrary to the desired “regional” nature of the program, the choice to participate in the program is left to district control. Even with monetary incentives to participate in the program, some wealthier districts within New Haven County are not in need of extra funding because of the tax schemes funding their schools and are therefore not motivated to participate in the program.

### C. *Segregation and Achievement Gaps in New Haven County*

Despite the creation of more schools and the establishment of the Open Choice school program, many schools in New Haven still remain predominantly Black, while many schools in surrounding suburban towns remain predominantly white. Sixteen out of the twenty-three districts in New Haven county are still racially imbalanced.<sup>77</sup> Black students are disproportionately clustered in New Haven and Waterbury, while white students are disproportionately located in North Branford, Oxford, Madison,

<sup>76</sup> These statistics also include the percentage of Open Choice enrollment, grant money awarded per student within the schools, and any additional funding allocated for students. *Id.* at 8, fig.4<sup>50,J</sup>.

<sup>77</sup> Christopher Peak, *2 Segregated Schools, 2 Reactions*, NEW HAVEN INDEP. (Sept. 3, 2019, 6:37 AM), [https://www.newhavenindependent.org/index.php/archives/entry/school\\_seggregation\\_measures/](https://www.newhavenindependent.org/index.php/archives/entry/school_seggregation_measures/) [hereinafter Peak, *2 Segregated Schools*].

Wolcott, Guilford, Bethany, Cheshire, and North Haven.<sup>78</sup> Hamden is one of the only districts whose student demographics look like the county as a whole.<sup>79</sup>

At schools that have successfully integrated and maintain diversity, “students perform at higher levels and are better prepared for the world.”<sup>80</sup> Despite high performance at magnet schools, highly segregated schools within New Haven still struggle to reach state achievement goals, and the achievement gap between Black students and white students in Connecticut persists.<sup>81</sup> A 2019 report on student academic performance on state standardized testing shows that gaps in test scores between Black and white students on language arts and math assessments have actually grown between the 2015–16 and 2017–18 school years.<sup>82</sup> Additionally, the index score gap between Hispanic and white students grew over the past five school cycles.<sup>83</sup> Overall, Asian and white students remain the highest-performing student demographic groups, while the lowest-performing groups remain Black and Hispanic students.<sup>84</sup> Over a century and a half after the end of de jure segregation in New Haven, schools within New Haven County remain profoundly segregated, and achievement between white and minority students continues to grow apart.

### III. RESIDENTIAL SEGREGATION AND EXCLUSIONARY ZONING IN NEW HAVEN COUNTY

The school choice program has its limitations—one being that the program does not address racially discriminatory practices in residential housing.<sup>85</sup> Continued school segregation results from persisting residential segregation in New Haven County. The programs currently implemented in an effort to desegregate schools in New Haven County do not address discriminatory housing practices or exclusionary zoning in suburban towns.

Discriminatory practices in the advertising and sale of real estate in Connecticut began in the 1930s and 1940s.<sup>86</sup> In the 1930s, New Deal agencies sought to boost the economy by investing public funds into privately owned homes.<sup>87</sup> The Home Owners’ Loan Corporation (HOLC) began purchasing and refinancing mortgage loans for homeowners and

---

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> See Jessica Callahan, *Connecticut’s Academic Achievement Gap*, OFF. OF LEGIS. RSCH. 1–2 (Aug. 19, 2019), <https://www.cga.ct.gov/2019/rpt/pdf/2019-R-0172.pdf> (showing the academic performance disparity among students of different racial groups in Connecticut).

<sup>82</sup> *Id.* at 2, tbl.1.

<sup>83</sup> *Id.* at 3, tbl.2.

<sup>84</sup> *Id.* at 3–4, figs.1 & 2.

<sup>85</sup> COTTO & FEDER, *supra* note 46, at 3.

<sup>86</sup> *Id.*

<sup>87</sup> Jack Dougherty, *The Federal Government and Redlining in Connecticut*, CONN. EXPLORED (2019), <https://www.ctexplored.org/the-federal-government-and-redlining-in-connecticut/>.

providing favorable lending terms to new homebuyers.<sup>88</sup> While the programs created expanded homeownership, they also created a system that unfairly favored upper-class white families over lower-class Black families and immigrants.<sup>89</sup> Rather than assessing investment risks of individual applicants, federal agencies created a system that marked certain, predominantly white neighborhoods, for investment, while denying loans to predominantly Black and immigrant neighborhoods.<sup>90</sup> The HOLC created color-coded and graded “Residential Security Maps” of cities, including New Haven, which guided banks in determining which neighborhoods were safe for lending and where investment was encouraged.<sup>91</sup> Neighborhoods with residents that had higher earnings were marked best for lending, while neighborhoods comprised of individuals in informal or domestic work were marked as “hazardous” neighborhoods for investment.<sup>92</sup> Generations removed from the creation of the maps, the segregation marked by the maps remains.<sup>93</sup>

Discriminatory practices included not only advertisements, government policies, and bank practices that made suburban living primarily available to white families but also frequent, outright refusal by real estate agents to sell suburban homes to Black families who were able to move to the suburbs.<sup>94</sup> Racially discriminatory practices in the real estate market led to dramatic racial and ethnic segregation between urban and suburban neighborhoods.<sup>95</sup> White families began to move throughout suburban towns in Connecticut, while minority families remained concentrated within urban centers.<sup>96</sup>

In comparison to surrounding suburbs, New Haven has drastically lower homeownership rates.<sup>97</sup> Single-family housing that once existed in New Haven is now subdivided into multifamily housing, while single-family housing is the predominant form of housing in the suburbs.<sup>98</sup> The types of housing available within New Haven neighborhoods and surrounding towns

---

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> The process now referred to as “redlining” denied home loans in predominantly Black and immigrant neighborhoods, while providing generous loans and mortgages to homeowners in white neighborhoods. *Id.*

<sup>91</sup> Camille Seaberry, *CT Data Story: Housing Segregation in Greater New Haven*, CT DATAHAVEN (May 5, 2018), <https://www.ctdatahaven.org/reports/ct-data-story-housing-segregation-greater-new-haven>. For original copies of HOLC assessments and maps, see *Mapping Inequality: Redlining in New Deal America*, UNIV. RICHMOND, <https://dsl.richmond.edu/panorama/redlining/#loc=12/41.303/-72.922&city=new-haven-ct&adview=full> (last visited Feb. 28, 2021) [hereinafter *Mapping Inequality*].

<sup>92</sup> Seaberry, *supra* note 91; *Mapping Inequality*, *supra* note 91.

<sup>93</sup> Seaberry, *supra* note 91.

<sup>94</sup> Jack Dougherty, *Shopping for Schools: How Public Education and Private Housing Shaped Suburban Connecticut*, 38 J. URB. HIST. 205, 215 (2012).

<sup>95</sup> Cotto & Feder, *supra* note 46, at 3.

<sup>96</sup> *Id.*

<sup>97</sup> New Haven has a homeownership rate of twenty-eight percent, while the suburbs in New Haven County have an overall homeownership rate of seventy-three percent. Seaberry, *supra* note 91.

<sup>98</sup> *Id.*

mirror the targets for investment created by the HOLC.<sup>99</sup> Areas marked positively for investment are now zoned for single-family housing, while single-family housing is practically nonexistent in neighborhoods that were given low grades.<sup>100</sup> Aside from New Haven, West Haven, and Milford, suburbs in New Haven County require permits to build or maintain multifamily housing, or in some cases, forbid multifamily housing altogether.<sup>101</sup> Families living in New Haven generally have lower incomes, making it harder for them to move to suburban towns with a higher income bracket and putting homeownership out of reach for the average New Haven family.<sup>102</sup> Zoning practices influenced by investment policies trap lower-income families and families of color within certain neighborhoods in New Haven County.<sup>103</sup>

Connecticut has an internal, local political process that gives control to town governments to create local zoning policy. Even before zoning practices began, residents of Connecticut were “ferverly devoted to the principle of local autonomy.”<sup>104</sup> Having decentralized zoning powers within the state has allowed for exclusionary zoning policies to thrive.<sup>105</sup> Zoning power is given to local government under the theory that local communities should be able to determine the character of the community.<sup>106</sup> Even if zoning policies have racially exclusionary results, these policies are viewed as a legitimate product of local democratic processes.<sup>107</sup> Courts across the country, including Connecticut courts, defer to local governments to define community space.<sup>108</sup>

Although exclusionary zoning is not the only cause of residential segregation, it largely contributes to maintaining class segregation in residential areas.<sup>109</sup> Exclusionary zoning “effectively exclude[s] a particular class of persons from a locality by restricting the land uses those persons are most likely to require.”<sup>110</sup> These zoning practices prevent individuals from lower socioeconomic backgrounds, such as New Haven residents, from moving to higher-income neighborhoods that have better school systems. Exclusionary zoning policies can take the form of restrictions on multifamily

---

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> Ellickson, *supra* note 6, at 53.

<sup>105</sup> *Id.* at 54.

<sup>106</sup> Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1870 (1994).

<sup>107</sup> *Id.* at 1874.

<sup>108</sup> Ellickson, *supra* note 6, at 53–54.

<sup>109</sup> *Id.* at 9.

<sup>110</sup> Ford, *supra* note 106, at 1870.

housing, restrictions on affordable housing zones, and creation of minimum acreage requirements for the construction of single-family homes.<sup>111</sup>

New Haven suburbs are incredibly intolerant of subdivisions of small house-lots and hostile towards multifamily housing, making it difficult for residents of New Haven to move to suburban towns.<sup>112</sup> Suburban towns outside of New Haven have large minimum-lot size regulations.<sup>113</sup> The lot size regulations determine population density of suburban neighborhoods.<sup>114</sup> Denser neighborhoods tend to be more affordable, however, New Haven suburbs are primarily zoned to create more open space.<sup>115</sup> Larger lots are often preferred because they provide for greater privacy, open space for children to play, and more room for expansion.<sup>116</sup> Seventy-four percent of residentially zoned lands in the New Haven suburbs are restricted to single-family detached houses on lots requiring one acre of land or more.<sup>117</sup> In New England, the median house-lot requirements for a new detached dwelling is nearly twice the national average.<sup>118</sup> Suburban towns in New Haven County do not have friendly policies towards multi-family housing.<sup>119</sup> Bethany, Branford, Madison, North Branford, and Orange currently have no multi-family housing.<sup>120</sup> Meriden has the largest percentage of multi-family housing in New Haven County at 8.9%.<sup>121</sup> Zoning policies prevalent throughout New Haven County favor greater amounts of open space and facilitate income-exclusive neighborhoods.

In Connecticut, zoning impacts the funding available for town amenities because town amenities and services are funded by the municipal tax base. Although funding is distributed equally among services within the municipality, expenditures do not go beyond town lines.<sup>122</sup> White towns have a higher average tax base than racially diverse cities or “mixed” cities.<sup>123</sup> As a result, public services, such as schools, in white towns are substantially superior.

---

<sup>111</sup> *Id.* at 1870.

<sup>112</sup> Ellickson, *supra* note 6, at 16–18.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 59.

<sup>116</sup> *Id.* at 17.

<sup>117</sup> *Id.* at 22 tbl.1.

<sup>118</sup> *Id.* at 18.

<sup>119</sup> *Id.* at 28–29.

<sup>120</sup> *Id.* at 29 tbl.6. Bethany and Orange do not permit multi-family housing anywhere in the town. Other towns listed do not currently have multi-family housing available, but have areas in which multi-family housing is permissible. *Id.*

<sup>121</sup> *Id.* For comparison, the highest percentage of multifamily housing in a suburb of Silicon Valley is 41.4%. *Id.*

<sup>122</sup> Ford, *supra* note 106, at 1850–51.

<sup>123</sup> *Id.*

Middle- and upper-class families have greater capital that allows them to search and select school districts they want their children to be in. From the 1980s to present, “shopping for schools” has become more common.<sup>124</sup> Within real estate, quality of schools became an important tool for communicating the quality neighborhoods to homebuyers.<sup>125</sup> “[H]omeownership . . . [was a] strategy for upward mobility,” particularly when parents were able to buy access to higher-achieving public schools.<sup>126</sup> For suburban families, school was seen as an investment in their children to achieve higher status and earnings.<sup>127</sup> Even if parents had to pay higher mortgage rates and taxes in a particular town, many would choose to do so as an investment in their child’s future status.<sup>128</sup> Rather than overt racial discrimination, creating school systems based on municipal boundaries allows white families to maintain privilege and distance from other minority populations in Connecticut.<sup>129</sup> For middle class families, buying property in the suburbs meant more than investing in real estate; they were also purchasing access to more well-funded public amenities, including increasingly valuable public education.<sup>130</sup>

#### A. *Madison: Exclusionary Zoning in High Income Town*

Madison is one of New Haven’s most exclusionary suburbs.<sup>131</sup> Overtly, Madison has a desire and focus on maintaining a small community and high quality of life in the town.<sup>132</sup> The town puts maintaining the current character of the community and quality of life at the forefront of its government practices.<sup>133</sup> In addition, there is a focus on maintaining the environmental integrity of the town, including protecting scenic resources (such as beaches and wetlands), providing for open recreational space and trails, and “retaining undeveloped land for as long as possible.”<sup>134</sup> Many of these government objectives contribute to maintaining exclusionary zoning.

Currently, Madison has large lot requirements, no multi-family housing, and limited affordable housing, making it difficult if not impossible for low-income residents to move to Madison. The town has a two-acre minimum house lot requirement on the majority of its residentially-zoned

---

<sup>124</sup> Dougherty, *Shopping for Schools*, *supra* note 94, at 217.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 220.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 220–21.

<sup>131</sup> Ellickson, *supra* note 6, at 54.

<sup>132</sup> PLANNING & ZONING COMM’N, MADISON: 2013 PLAN OF CONSERVATION AND DEVELOPMENT 11 (2013), <https://www.madisonct.org/DocumentCenter/View/318/Community-Character-and-Quality-of-Life-PDF>.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*



land.<sup>135</sup> Proffered justifications for larger lot sizes are the needs for space for the water supply, on-site wells, and individual septic tanks.<sup>136</sup> Connecticut courts continue to accept these as justifications for towns' large-lot zoning.<sup>137</sup>

Further, Madison's zoning map does not include any areas that are specifically zoned for multi-family housing,<sup>138</sup> in fact, the town currently does not have any specifically multi-family housing at all.<sup>139</sup> Only two areas in Madison currently allow multi-family housing: the commercial district and adjacent transition district.<sup>140</sup> And while multi-family housing is permitted in these areas, any development proposals of multiple family dwellings are subject to further, ambiguous requirements—such as not eroding the commercial development potential of the District, subject to review by the Planning and Zoning Commission.<sup>141</sup> Madison has not increased its low-income housing unit since 2010.<sup>142</sup> The large-lot size requirements and the lack of multi-family and affordable housing means that individuals attempting to move to Madison would have to purchase a single-family home on a larger lot, which would be incredibly challenging for low, and even some middle-class families. Based on 2019 census data, Madison is 93.6% white, 2.4% Asian, 0.4% Black, and the remaining percentage is comprised of individuals who identify as two or more races.<sup>143</sup>

Currently, Madison Public Schools do not make Open Choice slots available to students from New Haven.<sup>144</sup> Since the 1960s, minority student enrollment in Madison public schools has scarcely increased.<sup>145</sup> If the local Board of Education wanted to begin participating in the Open Choice

<sup>135</sup> Ellickson, *supra* note 6, at 54.

<sup>136</sup> *Id.* at 58–59.

<sup>137</sup> *See id.* at 58 (citing *DeMars v. Zoning Comm'n of Town of Bolton*, 115 A.2d 653, 654 (Conn. 1955)).

<sup>138</sup> TOWN OF MADISON ZONING (2011), <https://www.madisonct.org/DocumentCenter/View/332/Districts-Zoning-Map-PDF>. *See also* TOWN OF MADISON, ZONING REGULATIONS AND SUBDIVISION REGULATIONS 63 (2019), <https://www.madisonct.org/DocumentCenter/View/327/Zoning-and-Subdivision-Regulations-PDF> (showing the town's zoning scheme, which does not include an area explicitly for multi-family housing); Ellickson, *supra* note 6, at 54 (explaining that the majority of Madison's residentially zoned land is zoned for single-family dwellings).

<sup>139</sup> Ellickson, *supra* note 6, at 29.

<sup>140</sup> ZONING REGULATIONS AND SUBDIVISION REGULATIONS, *supra* note 138, at 62, 68. *See* TOWN OF MADISON ZONING, *supra* note 138 (showing areas that *permit* multi-family housing).

<sup>141</sup> ZONING REGULATIONS AND SUBDIVISION REGULATIONS, *supra* note 138, at 66.

<sup>142</sup> *Id.* at 112.

<sup>143</sup> These statistics are limited to individuals who identify as only one race, not two or more races. *Quickfacts: Madison Town, New Haven County, Connecticut*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/madisontownnewhavencountyconnecticut/AGE295218> (last visited Mar. 15, 2021).

<sup>144</sup> CONN. DEP'T EDUC., BUREAU FIN. SERVS., 2018-19 OPEN CHOICE ATTENDANCE GRANT (2019), [https://portal.ct.gov/-/media/SDE/Grants-Management/Report1/opench\\_PDF.pdf?la=en](https://portal.ct.gov/-/media/SDE/Grants-Management/Report1/opench_PDF.pdf?la=en). *See* CONN. SCH. FIN. PROJECT, *supra* note 44, at 4–5 (Madison is not shown as a town participating in the Open Choice program).

<sup>145</sup> Jacqueline Rabe Thomas & Jake Kara, *The State of CT's Public Schools in Charts*, CT MIRROR (Sept. 28, 2017), <https://ctmirror.org/2017/09/28/the-state-of-cts-public-schools-in-charts/>.

program, ACES would provide transportation to Madison schools from New Haven. But compared to schools that do actively participate in the Open Choice program, the program has not been mentioned at Board of Education meetings in Madison within the past five years.<sup>146</sup> The lack of discussion could indicate that the local Board is likely not considering opting into the Open Choice program. With the high tax rates in Madison, the Board may likely not be considering the program because there is no need for additional state funding.<sup>147</sup>

#### B. Branford: Zoning in a Mixed Income Town

All of New Haven suburbs, not just the most exclusionary suburbs, have a tendency towards large-lot zoning and limiting multi-family developments.<sup>148</sup> Many New Haven suburbs, including Branford, have increased their minimum lot requirements for single-family housing over time.<sup>149</sup> Between 1950 and 1980, Branford was maintained policies to encourage development.<sup>150</sup> By 1989, about one-quarter of the housing in Branford was comprised of condominium complexes.<sup>151</sup> Despite the creation of denser housing complexes, these complexes remained separated from other housing by strips of land to ensure there was enough open space throughout the town.<sup>152</sup>

With local government turnover in the 1980s, the ability to develop multi-family housing in Branford was greatly reduced.<sup>153</sup> The restrictions on multi-family housing remain in place today.<sup>154</sup> Approvals for condominium development in Branford dropped from 160 units per year in the 1960s and 1970s to eight units per year between 1997 through 2016.<sup>155</sup> The restrictions were, supposedly, in part spurred by the desire to maintain the shoreline and wetlands.<sup>156</sup> Since 1990, Branford's population has remained stagnant.<sup>157</sup> Although there is still vastly more multi-family housing present in Branford than in the most exclusionary suburbs of Connecticut, multi-family and

---

<sup>146</sup> See, e.g. *Meetings and Minutes*, MADISON PUB. SCHS., <https://www.madison.k12.ct.us/board-of-education/meetings-minutes> (last visited Mar. 15, 2021) (no discussion about joining Open Choice program).

<sup>147</sup> Cotto & Feder, *supra* note 46, at 11.

<sup>148</sup> Ellickson, *supra* note 6, at 64–67.

<sup>149</sup> *Id.* at 64.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> In 1987, a zoning amendment was enacted that reduced the density of future multifamily housing units from 18 units per acre to 6 units per acre. *Id.* at 65.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

low-income housing in Branford is no longer growing.<sup>158</sup> Continued condominium growth would have allowed urban residents to move nearby to the shoreline town. However, without allowing for any further development and subsequent population growth, Branford remains 89.6% white, 1.4% Black, 4.6% Asian, and the remaining percentage are comprised of individuals who identify as mixed race.<sup>159</sup>

Unlike some of the most exclusionary suburbs in New Haven County, Branford is an active participant in the Open Choice program. Within the New Haven Open Choice program, Branford is a town that opens more spots for New Haven students to attend their public schools, particularly compared with total enrollment.<sup>160</sup> In 2018, Branford had 55 Open Choice students and 2,901 total students enrolled.<sup>161</sup> Compared to other towns in New Haven County, Branford had a higher percentage of Open Choice enrollment in their school system.<sup>162</sup> Racial composition within the schools has changed over the past few decades.<sup>163</sup> Total enrollment in the public schools in the town between the 1968-1969 school year has decreased by over one thousand students.<sup>164</sup> Although overall enrollment has decreased and white enrollment decreased, minority enrollment has steadily increased from almost no minority students to twenty-four percent minority students in the 2016-2017 school year.<sup>165</sup> Even though it has higher Open Choice enrollment, the school still remains predominantly white because of the racial composition of the town.<sup>166</sup>

### C. Hamden: Mixed Zoning

A few of the suburbs around New Haven are beginning to flip demographically, making it even more difficult for New Haven schools to diversify.<sup>167</sup> Hamden is an example of a diverse suburb in which school demographics have flipped over the past decade to become majority minority.<sup>168</sup> This means that in order to integrate New Haven schools, students will have to either be transported from New Haven to farther, whiter suburbs or more students from white suburban towns will need to be

---

<sup>158</sup> *Id.*; BRANFORD CONNECTICUT TOWN ZONING MAP (2015), [https://www.branford-ct.gov/sites/default/files/field/files-docs/zoning\\_22x34.pdf](https://www.branford-ct.gov/sites/default/files/field/files-docs/zoning_22x34.pdf).

<sup>159</sup> *Quickfacts: Branford Town, New Haven County, Connecticut*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/branfordtownnewhavencountyconnecticut> (last visited Mar. 15, 2021).

<sup>160</sup> CONN. SCH. FIN. PROJECT, *supra* note 44, at 4<sup>50</sup>J.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> Thomas & Kara, *supra* note 145.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*; U.S. CENSUS BUREAU, *supra* note 159.

<sup>167</sup> Peak, *Magnets*, *supra* note 1.

<sup>168</sup> *Id.*

transported into New Haven.<sup>169</sup> Suburbs father from New Haven continue to be majority white, while closer districts, such as Hamden, have more mixed demographics.<sup>170</sup>

Compared to exclusionary suburbs around New Haven, such as Madison and Guilford, Hamden has been able to diversify because of more inclusive zoning throughout the city and prevalence of multi-family housing. Additionally, many of the areas that were marked as low-investment areas in the 1930s have remained minority and low-income communities.<sup>171</sup> In particular, communities bordering New Haven in the 1930s were predominantly Black and Latino, which remains true today.<sup>172</sup> Within New Haven County, Hamden is friendliest suburb toward multi-family housing.<sup>173</sup> Hamden has highly stratified housing, providing areas for low-density residential housing, moderate-density zoning with small-lot one-family dwellings, and high-density residential zones.<sup>174</sup> In comparison to many other New Haven suburbs, Hamden allows for single-family dwellings on much smaller lots.<sup>175</sup> There is much more housing availability for lower-income families in Hamden than in the more exclusive suburbs. Overall, Hamden is 60.9% white, 25.3% Black, 5.1% Asian, 12.5% Hispanic or Latino, and the remaining percent is mixed race.<sup>176</sup>

Student enrollment in Hamden has decreased from the 1960s.<sup>177</sup> More students are now attending magnet and private schools located in the area.<sup>178</sup> In the 1967-1968 school year, Hamden schools were majority white.<sup>179</sup> Throughout the second half of the twentieth century, there was a steady decrease in white enrollment and increase in minority enrollment.<sup>180</sup> In the twenty-first century, school enrollment in Hamden has shifted from split demographics to majority minority enrollment.<sup>181</sup> Enrollment during the

---

<sup>169</sup> *Id.*

<sup>170</sup> Thomas & Kara, *supra* note 145.

<sup>171</sup> Seaberry, *supra* note 91.

<sup>172</sup> *Id.*

<sup>173</sup> Ellickson, *supra* note 6, at 31.

<sup>174</sup> See TOWN OF HAMDEN, CT, ZONING REGULATIONS 5 (2017), <http://www.hamden.com/DocumentCenter/View/359/08-07-2017-Zoning-Regulations-Effective-08-17-2017-PDF> (describing residential zones); see also TOWN OF HAMDEN, ZONING MAP 2020, <https://www.hamden.com/DocumentCenter/View/3316/12-31-20-Current-Zoning-Map> (showing different zones).

<sup>175</sup> See TOWN OF HAMDEN, CT, ZONING REGULATIONS, *supra* note 174, at 6–7 (providing specifications for zoning requirements).

<sup>176</sup> *QuickFacts Hamden Town, New Haven County, Connecticut*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/hamdentownnewhavencountyconnecticut> (last visited Mar. 8, 2021).

<sup>177</sup> Thomas & Kara, *supra* note 145.

<sup>178</sup> Vincent Salzo, *Three Hamden Private Schools Rank Among Connecticut's Best*, PATCH (Sept. 3, 2015, 12:00 PM), <https://patch.com/connecticut/hamden/three-hamden-private-high-schools-rank-among-connecticuts-best-0>.

<sup>179</sup> Thomas & Kara, *supra* note 145.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

2016-2017 school year was 38.3% white and 61.7% minority.<sup>182</sup> Hamden schools now produce exactly the statewide average testing scores.<sup>183</sup>

With decreasing enrollment and impending racial imbalances, the town has had to restructure the school system over the past few years.<sup>184</sup> The re-structuring included closing and combining schools, creating more intra-district magnet schools for students in Hamden, and redrawing school attendance zones.<sup>185</sup> Parents in south Hamden, which borders New Haven and remains the poorer section of Hamden, are not happy about the school re-structuring because it resulted in the closure of the closest neighborhood schools.<sup>186</sup> Parents of children who attended the school have criticized the state's racial balancing law that led to the school closures, calling it "archaic in their definition of racial balancing."<sup>187</sup>

Hamden does participate in the Open Choice program in New Haven, but does not open many spots for New Haven students in the schools.<sup>188</sup> In 2018, Hamden only had two Open Choice students.<sup>189</sup> The limited participation is likely a result of the increase in minority students in the school system and the decrease of white students enrolled in Hamden public schools.

#### IV. ADDRESSING RACIAL IMBALANCE IN NEW HAVEN SCHOOLS MOVING FORWARD

Efforts to address racial segregation in New Haven County have, for the most part, failed to integrate schools in the region in a significant way. Municipalities within New Haven County remain largely segregated as a result of continued residential segregation between towns, stemming from exclusionary zoning practices and income-restrictive neighborhoods. Without significantly breaking municipal school boundaries or reducing exclusionary town zoning policies, the schools in New Haven County may never be integrated in a meaningful way.

---

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> Sam Gurwitt, *Hamden Ed Board Approves School Closings; Parents Decry North-South Divide*, NEW HAVEN INDEP. (Nov. 30, 2018, 8:00 AM), [https://www.newhavenindependent.org/index.php/archives/entry/hamden\\_school\\_closings/](https://www.newhavenindependent.org/index.php/archives/entry/hamden_school_closings/).

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* Three schools are considered to be imbalanced because their minority enrollment exceeds fifteen percent above the districtwide minority enrollment. The only two racial categories under the law are white and minority students. Minority students are defined as students who are of a race other than white. *Id.*

<sup>188</sup> CONN. SCH. FIN. PROJECT, *supra* note 44, at 8 fig.4.

<sup>189</sup> *Id.*

### A. *Regionalization of School Systems*

One proposed way to address racial imbalance in New Haven schools is to change school district boundaries. The superintendent of the struggling Hamden school system believes that schools should be looking more regionally to integrate, and step away from the “town vs. town” mentality that has long existed in Connecticut school systems.<sup>190</sup> While there are regional education systems in New Haven,<sup>191</sup> the regional education systems alone have not effectively desegregated schools since being implemented over forty years ago.<sup>192</sup> Despite efforts to create regional education mechanisms to integrate, education in public schools remains autonomous within the 169 towns in Connecticut.<sup>193</sup> Implementing integration efforts while trying to accommodate local control has led to disjointed efforts towards desegregation in the region. Especially considering in the majority of the districts, segregation does not exist within the district itself, rather between the school districts.<sup>194</sup>

Regionalizing schools would involve combining school districts, local boards of education, and board of education staff.<sup>195</sup> Although regionalizing schools would result in more integrated school systems, there would be some downfalls that could pose obstacles. Some downfalls of regionalization would be closing some neighborhood schools, limiting teaching positions, reducing administrative staff, and increasing student-to- teacher ratios.<sup>196</sup> However, regionalizing schools would maximize economic efficiencies within the state, even if regionalization affects rural communities’ ability to thrive socioeconomically.<sup>197</sup>

Regardless of what many opponents to school regionalization might believe, students from high socio-economic backgrounds have similar educational achievement in both smaller and larger school systems.<sup>198</sup> In contrast, students from low-income communities have higher potential for educational achievement in smaller schools, and diminished achievement in

---

<sup>190</sup> Peak, 2 *Segregated Schools*, *supra* note 77.

<sup>191</sup> ACES functions as the regional mechanism in New Haven County and facilitates part of the Open Choice program transportation.

<sup>192</sup> *Our Agency: About ACES*, AREA COOP. EDUC. SERVS., <https://www.aces.org/our-agency-about-us/about-aces> (last visited Feb. 2, 2021).

<sup>193</sup> Rachel M. Cohen, *Desegregated, Differently: Half of Hartford’s Schoolkids Attend Integrated Schools, Thanks to a Legal Strategy That Might Work Elsewhere*, AM. PROSPECT (Oct. 18, 2017), <https://prospect.org/power/desegregated-differently/>.

<sup>194</sup> *Id.*

<sup>195</sup> ORLANDO J. RODRIGUEZ, K-12 REGIONALIZATION IN CONNECTICUT: PROS, CONS AND SURPRISES, HARTFORD FOUND. FOR PUB. GIVING 2 (2018), <https://www.cga.ct.gov/2019/EDdata/Tmy/2019SB-00874-R000301-Burnham,%20Mary-TMY.PDF>.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Id.* at 12.

larger schools.<sup>199</sup> Urban schools in Connecticut tend to have higher enrollment rates and are majority-minority schools, versus majority white suburban schools, which have lower enrollment rates.<sup>200</sup>

Case studies on school regionalization in Connecticut, Maine, New York, and Vermont have all resulted in at least some measure of lowered school expenditures.<sup>201</sup> In New York, studies regarding whether school consolidation improved educational achievement revealed mixed results.<sup>202</sup> Proposals to modify the regional system include allowing more rural schools to find their own solutions and allowing rural schools to only be schools of choice for urban students, rather than forcing integration.<sup>203</sup> In almost all of the case studies, regionalization has not become widespread enough to produce significant data on the effects of regionalization on educational achievement.<sup>204</sup>

Creating regional school systems would pose a large challenge in Connecticut because schools have always been left to local control. In Hartford, *Sheff* plaintiffs have advocated for more regional coordination among schools, but have been unsuccessful in gaining political support.<sup>205</sup> Many towns are not willing to dispose of the status of the schools to whose success they feel they have greatly contributed.<sup>206</sup> Rather than redistricting lines altogether, Connecticut could start with expanding incentives to voluntarily participate in inter-district programs.<sup>207</sup> Alternatively, schools can start regionalizing and reducing expenditures by sharing administrative staff and using Regional Education Services more.<sup>208</sup> Greater regional cooperation regarding the funding of school systems would also benefit the state's current fiscal status.<sup>209</sup>

### B. *Creating More Inclusive Zoning*

To achieve significant school and residential integration, towns in New Haven County may have to change exclusionary zoning policies and create new redevelopment policies to allow a wider range of income levels to live in the suburbs.

---

<sup>199</sup> *Id.*

<sup>200</sup> Thomas & Kara, *supra* note 145, at fig. "Racial Breakdown of Students Since 1969, by District."

<sup>201</sup> See RODRIGUEZ, *supra* note 195, at 15–18 (discussing case studies of potential effects of school regionalization in different states, including Connecticut).

<sup>202</sup> *Id.* at 16–17.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.* at 19.

<sup>205</sup> Cohen, *supra* note 2.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> RODRIGUEZ, *supra* note 195, at 20.

<sup>209</sup> *Id.*

In the string of remedial cases following *Brown v. Board of Education*, the United States continued to provide guidance on when and how to address segregation in schools. In 1968, the Court determined that a “freedom of choice” plan was not sufficient to create a transition to integrated schools.<sup>210</sup> The Court ordered the Board to formulate a new plan and consider other courses of action, such as zoning, to realistically convert the school system.<sup>211</sup> Although the case originated where de jure segregation was present, the remedies suggested by the Court could provide indication as to plans that could potentially be successful in Connecticut, and how creating a permissive choice plan may not be sufficient to achieve a fully integrated school system.

Future reforms within residential housing could include incentives or requirements to increase smaller-lot housing developments in the suburbs, increase multi-family zoning areas in the suburbs, or create more affordable housing units in suburban towns. As it stands, the suburbs of New Haven County remain unfavorable for low-income families. As a result, families in New Haven, or even low-income neighborhoods in Hamden, will be unable to move into white suburban towns.

#### CONCLUSION

After nearly six decades of attempting to desegregate public schools in Connecticut, New Haven County schools remain predominantly segregated. Current programs to desegregate have limitations, including their inability to address or remedy exclusionary zoning practices and residential segregation in New Haven County that lead to school segregation. As such, these programs may never function to the extent necessary to facilitate racial integration in the Connecticut school system. In order to create more integrated schools, Connecticut would need to consider more expansive school integration policies or more inclusive zoning policies in suburban towns.

---

<sup>210</sup> *Green v. County School Board*, 391 U.S. 430, 439–42 (1968).

<sup>211</sup> *Id.* at 441–42.