

The lower courts' use of the foreseeable effect test to strike down the neighborhood school policy completely ignores the strong educational and public policy reasons for assigning children to schools located in their neighborhood. The purposes and benefits of the policy were forcefully articulated by Mr. Justice Powell in his separate opinion in *Keyes*:

“Neighborhood school systems, neutrally administered, reflect the deeply felt desire of citizens for a sense of community in their public education. Public schools have been a traditional source of strength to our Nation, and that strength may derive in part from the identification of many schools with the personal features of the surrounding neighborhood. Community support, interest, and dedication to a public school may well run higher with a neighborhood attendance pattern.”

Keyes, supra, 413 U.S. at 246 (Powell, J., concurring in part and dissenting in part).

The United States Congress has declared it to be the policy of the United States that “the neighborhood is the appropriate basis for determining public school assignments.” Equal Educational Opportunity Act of 1974, 88 Stat. 516, 20 U.S.C. § 1701. Moreover, the same statute provides that “the assignment by an educational agency of a student to the school nearest his place of residence . . . is not a denial of equal educational opportunity or of equal protection of the laws.” 20 U.S.C. § 1705.

In addition to these strong public policy foundations, neighborhood schools have a statutory foundation in Ohio. Section 3313.48, OHIO REVISED CODE, requires school boards to:

“. . . provide for the free education of the youth of school age within the district under its jurisdiction, at such places as will be most convenient for the attendance of the largest number thereof.” (Emphasis added)

The Sixth Circuit has held that this statute mandates Ohio school boards to construct schools in the neighborhoods where the children live. *Deal v. Cincinnati Board of Education*, 369 F.2d 55 (6th Cir. 1966), *cert. denied*, 389 U.S. 847 (1967).

The Columbus public schools have been operated as a neighborhood school system since before the turn of the century, and this experience has demonstrated the overwhelming benefits of the neighborhood school policy. The policy has provided the Columbus community with the best possible education that limited financial resources would allow, has kept transportation at a minimum, and has provided a sound foundation for parental and community support of the schools. *See* pp. 17-18, *supra*.

In view of the uncontradicted record evidence concerning the benefits derived from the neighborhood school policy in Columbus, and its strong legal and public policy foundations, the lower courts had absolutely no justification in finding that the maintenance of a system of neighborhood schools in a community with racially imbalanced residential patterns permitted an inference of segregative intent.

The trial court was correct that this Court has not yet directly confronted the question of whether segregative intent can be inferred from the mere adherence to a neighborhood school policy in a school system which is residentially imbalanced. In *Keyes*, the Court specifically reserved the question:

“whether a ‘neighborhood school policy’ of itself will justify racial or ethnic concentrations in the absence of a finding that school authorities have committed acts constituting de jure segregation.”

Keyes, supra, 413 U.S. at 212.

The Court’s subsequent rejection of the “impact” test in *Washington v. Davis*, *Austin*, *Arlington Heights*, *Spangler*, and *Dayton*, however, now clearly requires that the ques-

tion reserved in *Keyes*, and the question posed by the district court in this case, be answered in the negative.

Particularly in *Austin*, the Court has indicated its negative answer to these questions. In *Austin*, the Court vacated and remanded, for reconsideration in light of *Washington v. Davis*, a Fifth Circuit decision which had explicitly relied on a foreseeable effect concept to draw an inference of segregative intent from the mere adherence to a neighborhood school policy. As the district court in this case had done, the Fifth Circuit held in *Austin* that:

“[S]chool authorities may not constitutionally use a neighborhood assignment policy that creates segregated schools in a district with ethnically segregated residential patterns. A segregated school system is the foreseeable and inevitable result of such an assignment policy. When this policy is used, we may infer that the school authorities have acted with segregative intent.”

United States v. Texas Education Agency, 532 F.2d 380, 392 (5th Cir. 1976).

Mr. Justice Powell's concurring opinion in *Austin* correctly found that this holding adopted the “effect” test which the Court had rejected in *Washington v. Davis*. *Austin, supra*, 429 U.S. at 991 and n.1.

By holding that they could infer segregative intent from the use of a neighborhood school policy in Columbus, merely because it foreseeably resulted in racially imbalanced schools, the lower courts in the present case made precisely the same error which the Fifth Circuit made in *Austin*. In both cases, the courts failed to require proof of segregative intent, and elected instead to impose liability under an “effect” standard.

We urge the Court to explicitly answer the question reserved in *Keyes* in the negative, and to reject the inference of segregative intent which the lower courts drew from the maintenance of a neighborhood school policy in Columbus. Since it is an acknowledged fact that residential racial imbalance is a characteristic of nearly all urban

areas of the United States, if the decisions below are allowed to stand, no urban school system in this country can adhere to a neighborhood school policy without being presumed to be in violation of the equal protection clause.

VI. CONCLUSION AND RELIEF REQUESTED

For all the foregoing reasons, Petitioners respectfully request that the Court reverse the judgments below and direct that judgment be entered for Petitioners. In the alternative, Petitioners request that the Court vacate the judgments below and remand the case to the district court with the direction that it:

- (a) determine and specify any acts by the Columbus Board which were intentionally discriminatory under the standards of *Washington v. Davis* and *Arlington Heights*;
- (b) determine and specify any current incremental segregative effect of these actions on the racial composition of individual schools within the system, as required by *Dayton*, *Brennan*, and *Omaha*; and
- (c) only if it finds that there were any intentionally discriminatory acts which have a current segregative effect, to formulate, with the assistance of the parties, a remedy confined to the correction of that effect.

Respectfully submitted,

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**SCHOOL BUILDINGS IN USE IN 1976 WITH
REFERENCES TO DATES CONSTRUCTED AND
STUDY RECOMMENDATIONS OF NEED FOR
FACILITIES BUILT DURING 1950-76**

Name of School	Date Constructed	Recommendations of Need for Facilities Built During 1950-76*
ELEMENTARY		
Alpine	1966	1963 Study, #19, p. 65
Alum Crest	1961	1958 Study, #57, p. 64
Arlington Park	1957	1955 Study, #49, p. 64; #51, p. 64
Avondale	1891	
Barnett	1964	1958 Study, #39, p. 62
Beatty Park	1954	1950 Study, #2, p. 77; 1953 Study, p. 70
Beaumont	1957	1955 Study, #47, p. 64
Beck	1884	
Bellows	1905	
Berwick	1956	1955 Study, #22, p. 60
Binns	1957	1955 Study, #10, p. 58
Brentnell	1962	1958 Study, #23, p. 60
Broadleigh	1952-53	1950 Study, #14, p. 86
Burroughs	1921	
Calumet	1961	1958 Study, #10, p. 58
Cassady	1964	[Annexed from Mifflin, 1971]
Cedarwood	1965	1963 Study, #67, p. 70
Chicago	1897	
Clarfield	1926	[Annexed from Marion- Franklin, 1957]
Clearbrook	1957	1955 Study, #33, p. 61
Clinton	1904-22	
Colerain	1957	1955 Study, #37, p. 62
Como	1954-55	1953 Study, #19, p. 65
Courtright	1927	[Annexed from Whitehall, 1957]
Cranbrook	1957	1955 Study, #38, p. 62
Crestview	1915	
Dana	1911	

Name of School	Date Constructed	Recommendations of Need for Facilities Built During 1950-76*
ELEMENTARY (Continued)		
Deshler	1953	1950 Study, #62, p. 98
Devonshire	1963	1958 Study, #22, p. 59; 1963 Study, #23, p. 66
Douglas	1976	1972 Project UNITE, p. 8
Duxberry	1959	1955 Study, #50, p. 64; #51, p. 64
Eakin	1960	1958 Study, #29, p. 60
East Columbus	1920	
Eastgate	1954	1953 Study, #15, p. 64
Easthaven	1968	1963 Study, #44, p. 67
East Linden	1911	[Annexed from Mifflin, 1971]
Eleventh	1906	
Fair	1890	
Fairmoor	1950	1950 Study, #13, p. 85
Fairwood	1924	
Fifth Avenue	1976	1972 Project UNITE, p. 10
Forest Park	1962	1958 Study, #20, p. 59
Fornof	1925-27	[Annexed from Marion-Franklin, 1957]
Franklinton	1953	1950 Study, #10, p. 84
Gables	1976	1972 Project UNITE, p. 21
Garfield	1953	1950 Study, #44, p. 94
Georgian Heights	1959	1958 Study, #30, p. 61
Gettysburg	1969	1968 Study, #39, p. 82 1963 Study, #10, p. 64
Gladstone	1965	1963 Study, #20, p. 65
Glenmont	1952	1950 Study, #27, p. 90
Hamilton	1953	1950 Study, #24, p. 89
Heimandale	1955	[Annexed from Marion-Franklin, 1957]
Heyl	1910	
Highland	1894-1905	
Homedale	1923	[Annexed from Worthington, 1956]
Hubbard	1894	
Hudson	1966	1963 Study, #21, p. 65

Name of School	Date Constructed	Recommendations of Need for Facilities Built During 1950-76*
ELEMENTARY (Continued)		
Huy	1955	1953 Study, #21, p. 65
Indianola	1904	
Innis	1975	1972 Project UNITE, p. 21
Indian Springs	1950	1950 Study, #26, p. 90
James Road	1952	1950 Study, #14, p. 86
Kent	1960	1958 Study, #49, p. 63
Kenwood	1962	1958 Study, #13, p. 58
Kingswood	1952	1950 Study, #12, p. 85
Koebel	1964	1963 Study, #64, p. 70
Leawood	1960	1955 Study, #27, p. 60
Lexington	1966	1963 Study, #22, p. 65
Liberty	1976	1972 Project UNITE, p. 21
Lincoln Park	1924	
Lindbergh	1958	1955 Study, #11, p. 58
Linden	1905, 1921	[Annexed from Mifflin, 1971]
Linden Park	1975	1972 Project UNITE, p. 21
Livingston	1901	
Main	1876-1906	
Maize Road	1960	1958 Study, #14, p. 59
Marburn	1960	1958 Study, #12, p. 58
Maryland Park	1958	1955 Study, #32, p. 61
Maybury	1964	1963 Study, #52, p. 68
McGuffey	1927	
Medary	1892	
Milo	1894	
Moler	1963	1963 Study, #62, p. 69
North Linden	1950	1950 Study, #23, pp. 88-89
Northridge	1956	1953 Study, #23, p. 66
Northtowne	1968	1963 Study, #17, p. 65
Oakland Park	1952	1950 Study, #24, p. 89
Oakmont	1966	1963 Study, #47, p. 68
Ohio	1893	
Olde Orchard	1965	1963 Study, #48, p. 68
Parkmoor	1966	1963 Study, #16, p. 64
Parsons	1960	1958 Study, #55, p. 64
Pilgrim	1922	

Name of School	Date Constructed	Recommendations of Need for Facilities Built During 1950-76*
ELEMENTARY (Continued)		
Pinecrest	1959	1955 Study, #26, p. 60
Reeb	1904	
Salem	1962	1958 Study, #16, p. 59
Scioto Trail	1927	[Annexed from Marion-Franklin, 1956]
Scottwood	1957	1955 Study, #25, p. 60
Second	1874-1883	
Shady Lane	1956	1953 Study, #17, p. 64
Sharon	1947	[Annexed from Worthington, 1956]
Shepard	1906	
Siebert	1888-1902	
Sixth Avenue	1961	1958 Study, #11, p. 58
Smith Road	1915	[Annexed from Marion-Franklin, 1957]
South Mifflin	1952	[Annexed from Mifflin, 1971]
Southwood	1894	
Stewart	1874-1893	
Stockbridge	1959	1958 Study, #54, p. 64
Sullivant	1954	1950 Study, #11, p. 84
Thurber	1922	
Trevitt	1964	1958 Study, #37, p. 62
Valley Forge	1963	1958 Study, #15, p. 59
Valleyview	1957	1955 Study, #12, p. 58
Walden	1968	1963 Study, #18, p. 65
Walford	1961	1958 Study, #17, p. 59
Watkins	1961	1958 Study, #56, p. 64
Wayne	1968	1963 Study, #40, p. 67
Weinland Park	1952	1950 Study, #33, pp. 91-92
West Broad	1910	
West Mound	1952	1950 Study, #4, pp. 82-83
Westgate	1952	1950 Study, #5, p. 83
Willis Park	1958	1955 Study, #24, p. 60
Windsor	1959	1955 Study, #46, p. 64
Winterset	1968	1963 Study, #9, p. 64
Woodcrest	1961	1958 Study, #44, p. 62

Name of School	Date Constructed	Recommendations of Need for Facilities Built During 1950-76*
JUNIOR HIGH		
Barrett	1898	
Beery	1956-57	[Annexed from Marion-Franklin, 1957]
Buckeye	1963	1958 Study, #77, p. 69
Champion	1909	
Clinton Jr.	1955	1953 Study, #46, p. 70
Crestview	1915	
Dominion	1956	1953 Study, #47, p. 71
Eastmoor Jr.	1962-63	1958 Study, #73, p. 68
Everett	1898	
Franklin	1898	
Hilltonia	1956	1953 Study, #45, p. 70
Indianola Jr.	1929	
Johnson Park	1958-59	1955 Study, #56, p. 65
Linmoor	1957	1955 Study, #58, p. 66
McGuffey	1927	
Medina	1959-60	1955 Study, #59, p. 66
Monroe	1963-64	1958 Study, #71, p. 67
Ridgeview	1966	1963 Study, #69, p. 70
Roosevelt	1916	
Sherwood	1966	1963 Study, #82, p. 73
Southmoor	1968	1963 Study, #87, p. 73
Starling	1908	
Wedgewood	1965-66	1963 Study, #77, p. 72
Westmoor	1958-59	1955 Study, #55, p. 65
Woodward Park	1967	1963 Study, #72, p. 71
Yorktown	1967	1963 Study, #83, p. 73
SENIOR HIGH		
Beechcroft Jr.-Sr.	1976	1972 Project UNITE, p. 21
Briggs	1976	1972 Project UNITE, p. 21
Brookhaven	1961-63	1958 Study, #61, p. 65
Centennial	1976	1972 Project UNITE, p. 21
Central	1924	
East	1922	

Name of School	Date Constructed	Recommendations of Need for Facilities Built During 1950-76*
SENIOR HIGH (Continued)		
Eastmoor	1955	1953 Study, #48 and #51, p. 71
Independence Jr.-Sr.	1976	1972 Project UNITE, p. 21
Linden McKinley	1928	
Marion-Franklin	1952-53	[Annexed from Marion-Franklin, 1957]
Mifflin Jr.-Sr.	1924	[Annexed from Mifflin, 1971]
Mohawk Jr.-Sr.	1953	1950 Study, #7, p. 79
North	1924	
Northland	1966	1963 Study, #71, p. 71
South	1923	
Walnut Ridge	1961	1958 Study, #72, p. 68
West	1929	
Whetstone	1961	1958 Study, #60, p. 65

***THE RECOMMENDATIONS ARE ABBREVIATED AS FOLLOWS:**

- 1950 Study: "A Re-Study of the Public School Building Needs of Columbus, Ohio," by the Bureau of Educational Research, College of Education, The Ohio State University, 1950. [Px 59.]
- 1953 Study: "A Further Study of the Public School Building Needs of Columbus, Ohio," by the Bureau of Educational Research, College of Education, The Ohio State University, May, 1953. [Px 60.]
- 1955 Study: "The 1955-56 Study of the Public School Building Needs of Columbus, Ohio," by the Bureau of Educational Research, College of Education, The Ohio State University, January, 1956. [Px 61.]
- 1958 Study: "The 1958-59 Study of the Public School Building Needs of Columbus, Ohio," by the Bureau of Educational Research, College of Education, The Ohio State University, July, 1959. [Px 62.]

7a

- 1963 Study: "The 1963-64 Study of the Public School Building Needs of Columbus, Ohio," by the Bureau of Educational Research, College of Education, The Ohio State University, June, 1964. [Px 64.]
- 1968 Study: "The 1967-68 Study of the Public School Building Needs of Columbus, Ohio," by the Educational Administration and Facilities Unit, College of Education, The Ohio State University, March, 1969. [Px 63.]
- 1972 Project UNITE: "Report of the Buildings Search and Solve Team to the Project UNITE Steering Committee," March, 1972. [Px 219.]