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EDUCATIONAL ADEQUACY CHALLENGES: THE IMPACT ON MINNESOTA CHARTER SCHOOLS

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Introduction

Years after the civil rights movement, educational challenges in public schools have continued to plague classrooms and fill courtrooms. During the 1970s, litigation examined the

equitability of financing in public education systems.[1] Equity challenges later progressed into challenging academics, resources, and opportunities.[2] By 1989, the Kentucky Supreme Court found that the Kentucky public education system failed to provide its students with an "adequate education."[3] In the years that followed, an "adequacy movement" across the nation began—its purpose was to address whether state constitutions were providing students with the opportunity to "achieve certain desired educational outcomes."[4] These challenges have collectively been referred to as "educational adequacy."[5]

As challenges to finances and school resources have evolved, one emerging factor has been adequacy in segregated environments. After the civil rights movement, racial segregation in public schools initially improved but has since continued to increase.[6] Desegregation orders from federal courts were initially prevalent, but their use has since been reduced.[7] Desegregation orders also varied but included the racial integration of students in educational environments and addressed local policies and practices.[8] For years, states and local districts have struggled to find racial balance within the public education system.[9] Some Supreme Court decisions have left states to

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[1] Michael A. Rebell, *Educational Adequacy, Democracy, and the Courts*, *in* ACHIEVING HIGH EDUCATIONAL STANDARDS FOR ALL: CONFERENCE SUMMARY 218, 226 (Nat'l Acad. Press, 2002), https://www.nap.edu/read/10256/chapter/13.

[2] Anthony P. Carnevale, Artem Gulish & Jeff Strohl, *Educational Adequacy in the Twenty-First Century*, CENTURY FOUNDATION (May 2, 2018), https://tcf.org/content/report/educational-adequacy-twenty-first-century/.

[3] Paul A. Minorini & Stephen D. Sugarman, *Educational Adequacy and the Courts: The Promise and Problems of Moving to a New Paradigm*, *in* EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES 175 (Nat'l Acad. Press, 1999), https://www.nap.edu/read/6166/chapter/8#175; Rose v. Council for Better Educ. Inc., 790 S.W.2d 186, 189–90 (Ky. 1989).

[4] Minorini & Sugarman, *supra* note 3.

[5] *Id.*

[6] Beverly Daniel Tatum, *Segregation Worse in Schools 60 Years After* Brown v. Board of Education, SEATTLE TIMES (Sept. 14, 2017), https://www.seattletimes.com/opinion/segregation-worse-in-schools-60-years-after-brown-v-board-of-education/.

[7] Nikole Hannah-Jones, *School Districts Still Face Fights and Confusion on Integration*, ATLANTIC (May 2, 2014), https://www.theatlantic.com/education/archive/2014/05/lack-of-order-the-erosion-of-a-once-great-force-for-integration/361563/.

[8] *Id.*

[9] GROVER J. WHITEHURST, RICHARD V. REEVES & EDWARD RODRIGUE, SEGREGATION, RACE, AND CHARTER SCHOOLS: WHAT DO WE KNOW? 21–27 (Ctr. on Child. & Fam. Brookings) (Oct. 2016), https://www.brookings.edu/wp-content/uploads/2016/10/ccf_20161021segregation_version-10_211.pdf.

deal with segregation issues that could not be remedied through purposeful racial balance or quotas.[10]

Projected to transform public education in the country, charter schools began opening in the early 1990s, beginning in Minnesota.[11] Minnesota is now facing challenges on educational adequacy amid concern that segregation has once again crept into the public education system. The ongoing Minnesota case *Cruz-Guzman* has challenged the adequacy of public education and renewed concern over the role charter schools play in segregation.[12] As such challenges emerge in courtrooms, the judicial treatment of educational adequacy may present legal and policy implications for Minnesota and for the future of its charter schools. This article will explore the educational adequacy movement and the challenges arising for charter schools based on the outcome of *Cruz-Guzman*.

First, this article discusses the history of federal education adequacy challenges stemming from segregation, fundamental rights, and economic disparities. Historically significant and current educational adequacy challenges in Minnesota are discussed. Educational adequacy challenges in Minnesota have ranged from complaints of unequal funding and resources[13] to the segregation of public schools.[14] However, relief for adequacy advocates has been met with judicial barriers. Most notable, *Skeen v. State* and *Cruz-Guzman v. State* confronted the justiciability of the plaintiffs' right to seek relief in court for lack of educational adequacy.[15]

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[10] Bob Egelko, *Supreme Court: Schools Can't Use Race to Assign Students*, SFGATE, https://www.sfgate.com/bayarea/article/Supreme-Court-Schools-can-t-use-race-to-assign-2584155.php (last updated Jan. 17, 2012).

[11] Chester E. Finn, Jr. & Brandon L. Wright, *Where Did Charter Schools Come From?*, EDUC. NEXT, https://www.educationnext.org/where-did-charter-schools-come-from/ (last updated May 9, 2016).

[12] Cruz-Guzman v. State, 916 N.W.2d 1 (Minn. 2018). The Supreme Court has remanded the case, and the final outcome has not been determined.

[13] *See* Skeen v. State, 505 N.W.2d 299 (Minn. 1993).

[14] *See Cruz-Guzman*, 916 N.W.2d 1.

[15] *Skeen*, 505 N.W.2d at 312; *Cruz-Guzman*, 916 N.W.2d at 4.

Second, this article discusses the history of charter schools, the rise of charter schools in Minnesota, and issues surrounding charter schools' racial isolation. To reformers, the opening of charter schools was a "market-based" model poised to give parents more choice in where their children receive educational services.[16] The model was expected to drive out poor-performing traditional schools by offering an alternative to the underserved traditional schools.[17]

According to a Century Foundation fellow, student-integration was also an initial charter school goal.[18] However, the introduction of charter schools into the public education arena has contributed to the resegregation of American public schools.[19] The issue of resegregation seems to have strengthened challenges to educational adequacy.[20]

Finally, this article discusses the legal and policy implications of a still undecided legal challenge seeking desegregation as a remedy to ensure educational adequacy in Minnesota public schools. This article evaluates options for charter schools concerned that the Minnesota judiciary could declare voluntarily-segregated schools unconstitutional. Charter schools' options likely include altering their business models and also the use of mediation to resolve adequacy challenges. Additionally, this article explores steps the Minnesota legislature could take to clarify the standard of adequacy students are entitled to.

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[16] Valerie Strauss, *What and Who Are Fueling the Movement to Privatize Public Education—and Why You Should Care*, WASH. POST (May 30, 2018), https://www.washingtonpost.com/news/answer-sheet/wp/2018/05/30/what-and-who-is-fueling-the-movement-to-privatize-public-education-and-why-you-should-care/?noredirect=on&utm_term=.2caaa8c7ad63 (referencing to Joanne Barkan's "market-based" public education reform in the United States. Joanne Barkan, *Death by A Thousand Cuts: The Story of Privatizing Public Education in the USA*, 70 SOUNDINGS: J. POL. & CULTURE 97 (2018)).

[17] *Id.*

[18] Matt Barnum, *Are Charter Schools a Cause of—or a Solution to—Segregation?*, THE 74 (Apr. 11, 2016), https://www.the74million.org/article/are-charter-schools-a-cause-of-or-a-solution-to-segregation/.

[19] Jenn Ayscue et al., *Charters as a Driver of Resegregation*, CIVIL RIGHTS PROJECT 5–7 (Jan. 2018), https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/charters-as-a-driver-of-resegregation/Charters-as-a-Driver-of-Resegregation-012518.pdf.

[20] *See Cruz-Guzman*, 916 N.W.2d 1.

I. A BRIEF HISTORY OF EDUCATIONAL ADEQUACY CHALLENGES

A. A Summary of Federal Educational Adequacy Challenges

The separate but equal standard defined in *Plessy v. Ferguson*[21] paved a constitutional path for public education facilities to purposefully maintain racially segregated schools.[22] It took decades before the Supreme Court overturned *Plessy*. In *Brown v. Board of Education*,[23] the Court reconsidered its previous position on "separate but equal" and declared that "in the field of public education" segregation is "inherently unequal."[24] The Court reasoned that public school segregation was a violation of the Fourteenth Amendment's Equal Protection Clause.[25] The violation, the Court proffered, was that "separate education[] facilities" lacked equality, and a lack of equality was akin to a deprivation of equal protection.[26] Although the decision in *Brown* acknowledged inherent inequality within segregated schools, it failed to establish a definitive standard for education beyond integration.[27] Further, *Brown* did not establish a fundamental right to public education.[28] Instead, the Court opined that if a state had established a public education right, students were entitled to that right "on equal terms."[29]

The fundamental right to public education made its way into the courtroom again, nearly twenty years after *Brown*. *San Antonio Independent School District v. Rodriguez*[30] challenged disproportionate funding for predominately impoverished, racially-segregated schools as a basis

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[21] Plessy v. Ferguson, 163 U.S. 537 (1896).
[22] *Id.* at 552 (declaring that "If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.").
[23] Brown v. Bd. of Ed. of Topeka, Shawnee Cty., Kan., 347 U.S. 483 (1954).
[24] *Id.* at 495.
[25] *Id.*; U.S. CONST. amend. XIV.
[26] *Brown*, 347 U.S. at 495.
[27] *Id.* at 494–95.
[28] *Id.* at 493.
[29] *Id.*
[30] San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973).

for an inadequate education.[31] In its decision, the Court maintained that a fundamental right to public education for any student did not exist.[32] The Court found that education did not fall into any category of fundamental rights written in the Constitution or previously recognized by the Court.[33] It reasoned that "the importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause."[34]

In addition to the absence of a constitutional right to education, the *San Antonio* decision also proffered that "the Equal Protection Clause does not require absolute equality or precisely equal advantages" when "wealth is involved."[35] The Court found that since many factors contribute to the education of students, no system can adequately ensure that all are equal.[36] Thus, a state's ability to demonstrate all students have access to a free education with "teachers, books, transportation, and operating funds" demonstrates a level of adequacy, even if financial equality is not met.[37] In the majority opinion, Justice Powell dismissed consideration of constitutional implications when the state of Texas "assures 'every child in every school district an adequate education.'"[38]

With only general legal guidance on methods of desegregating from *Brown* and a clear statement by *San Antonio* that education was not a constitutional entitlement, institutions grappled with creating diverse student populations and often found their diversity strategies challenged.[39]

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[31] *Id.* at 13–17.
[32] *Id.* at 35.
[33] *Id.* at 35–39.
[34] *Id.* at 30.
[35] *Id.* at 24.
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *See* Grutter v. Bollinger, 539 U.S. 306 (2003) (determining that a law school's policy to establish student diversity was not a quota system, satisfied a compelling interest, and was narrowly tailored); Gratz v. Bollinger, 539

In at least one documented account, a Virginia county shut down all public education services to avoid desegregation.[40] The Supreme Court reaffirmed that unequal access to public education was not constitutionally protected.[41]

One year after *San Antonio*, the Supreme Court once again heard arguments challenging adequate education policies, specifically desegregation. In *Milliken v. Bradley*, the Supreme Court found that court-ordered desegregation plans, which called for inter-district transfers as a remedy for racially-imbalanced school environments, were unconstitutional when external districts are not a party in the segregation case nor responsible for causing the segregation.[42] The Court reasoned that

> [b]efore the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district.[43]

At least one scholar has argued that the *Milliken* decision accounted for nearly 60% of the school segregation across the nation that followed.[44]

Subsequently, the Supreme Court in *Parents Involved in Community Schools v. Seattle School District* found that utilizing a whole-school racial-balancing technique to alleviate segregation and diversify the student population was also unconstitutional.[45] The Court found that race-balancing was a demographic goal and not an educational one.[46] A plan to create racial-balance in schools

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U.S. 244 (2003) (finding that a university's use of a numerical point-based application system providing points for certain racial groups amounted to racial preference).

[40] Griffin v. Cty. Sch. Bd. of Prince Edward Cty., 377 U.S. 218, 220–23 (1964).

[41] *Id.* at 234 (stating that Defendant "can no longer justify denying these Prince Edward County school children their constitutional rights to an education equal to that afforded by the public schools in the other parts of Virginia.").

[42] Milliken v. Bradley, 418 U.S. 717, 752–53 (1974).

[43] *Id.* at 744–45.

[44] Erwin Chemerinsky, *Making Schools More Separate and Unequal:* Parents Involved in Community Schools v. Seattle School District No. 1, 2014 MICH. ST. L. REV. 633, 634 (2014).

[45] Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 708–11 (2007).

[46] *Id.* at 726.

that does not promote a "pedagogic concept" dependent on diversity achieves no "educational benefit."[47] The Court further articulated that a sole focus on demographics to diversify a school was a "fatal flaw."[48] In the plurality opinion, Chief Justice Roberts proffered that "[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race."[49]

In its decision, the Court referred to precedent, which offered two areas where primary and secondary public education institutions can demonstrate a compelling government interest to racially-balance its enrollment. First, the Court affords a public education entity a right to remedy its historical and intentional discrimination.[50] Second, the Court permits a public entity to enforce a racially-balanced plan when it is limited to a strategy that more widely seeks to expose student populations to diversity.[51] As a result, states are challenged by an education system that can neither mandate segregated schools nor purposefully create racially balanced ones.[52]

B. A Summary of Educational Adequacy Challenges in Minnesota

The United States Constitution does not grant citizens a right to a public education."[53] However, every state in the country entitles its students to such a right.[54] It is under state constitutional provisions that educational adequacy challenges have gained momentum across the United States.[55] State courts have grappled with legal adequacy challenges.[56]

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[47] *Id.*
[48] *Id.* at 729–30.
[49] *Id.* at 748.
[50] *Id.* at 754 (Thomas, J., concurring).
[51] *Id.* at 723–24.
[52] *See* Egelko, *supra* note 10.
[53] Kelly Thompson Cochran, *Beyond School Financing: Defining the Constitutional Right to an Adequate Education*, 78 N.C. L. REV. 399, 407 (2000).
[54] *Id*. at 408.
[55] *See* cases cited *infra* note 56.
[56] *See* San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973) (rationalizing that public education adequacy challenges are legislative concerns since no fundamental right to education exists.); Rose v. Council for Better Educ. Inc., 790 S.W.2d 186 (Ky. 1989) (determining inequitable public-school funding violated Kentucky's Constitution and was inadequate); Skeen v. State, 505 N.W.2d 299 (Minn. 1993) (ruling that financial disparity does not constitute public school inequality).

For states where the right to an adequate education exists, there is a real challenge in both defining adequacy appropriately and in finding a way to employ that definition.[57] There is no universal definition of adequacy for educational purposes, so states must rely on their own provisions and previous judicial decisions to define adequate public education.[58] The absence of clearly identifying a measure with which to assess educational adequacy rights likely negates the effect of such a right.[59]

In Minnesota, the state constitution provides for a "general and uniform system" of public education.[60] In 1913, *Associated Schools of Independent District No. 63 of Hector, Renville County v. School District No. 83 of Renville County*, upheld a legislative mandate to ensure that all Minnesota students "may be enabled to acquire an education which will fit them to discharge intelligently their duties as citizens . . . ."[61] The constitutional requirement has served as the basis for educational legal challenges, including race, financial inequities, and student outcomes.

1. Racial Isolation Challenges

Minnesota was a party to a federal educational adequacy challenge stemming from racial isolation in 1973. *Booker v. Special School District* sought to demonstrate that Minneapolis public schools were out of compliance with *Brown* and illegally engaging in segregation practices.[62] The court found that the Minneapolis school district enacted policies that promoted racial segregation.[63] At the time, three Minneapolis elementary schools and two junior high schools had greater than 70% minority enrollment, even though only a small portion of the entire district population

[57] Rebell, *supra* note 1, at 232.
[58] *Id.* at 231–32
[59] William F. Dietz, *Manageable Adequacy Standards in Education Reform Litigation*, 74 WASH. U. L. Q. 1193, 1203 (1996).
[60] MINN. CONST. art. XIII, § 1.
[61] Associated Sch. of Indep. Dist. No. 63 v. Sch. Dist. No. 83, 142 N.W. 325, 327 (Minn. 1913) (citing Bd. of Educ. of Sauk Ctr. v. Moore, 17 Minn. 412, 416 (1871)).
[62] Booker v. Special Sch. Dist. No. 1, Minneapolis, Minnesota, 351 F. Supp. 799, 802 (D. Minn. 1972).
[63] *Id.* at 809.

identified as a minority race.[64] The court determined that policy decisions regarding the placement and capacity of school buildings, the assignment of teachers to schools, and the transfer of students "aggravate[d] and increase[d]" race-based segregation.[65] As a remedy, *Booker* established a percentage threshold for Minneapolis public schools, stating that 35% or less of a given school's population should belong to a minority race.[66]

The second major challenge came a little over a decade later, in 1996.[67] Minneapolis NAACP and St. Paul School District wanted to establish racial integration as a component of an adequate educational environment.[68] The net result was a settlement between the parties, that led to the development of the "Choice is Yours" program.[69] The program provided an opportunity for economically-disadvantaged students to exercise school choice by transferring into more "suburban schools."[70] The Minnesota Department of Education established an Administrative Rule addressing the classification of public school districts and schools based on racial demography.[71] The rule provided an operational definition of racially-isolated schools and districts.[72] A school district is racially-isolated when a protected student group exceeds 20% of a neighboring school district's protected student group population.[73] Minnesota also identifies a school as racially-identifiable once the school's enrollment of the protected student group exceeds 20% of all district students in the protected group in "the grade levels served by that school."[74]

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[64] *Id.* at 802.
[65] *Id.* at 809.
[66] *Id.* at 810.
[67] Minorini & Sugarman, *supra* note 3, at 199.
[68] *Id.*
[69] Beena Raghavendran, *School Integration Lawsuit Heads to Minnesota Supreme Court*, STAR TRIBUNE (Jan. 8, 2018), http://www.startribune.com/school-integration-lawsuit-heads-to-minnesota-supreme-court/468264213/.
[70] *Id.*
[71] MINN. R. 3535 (2015).
[72] *Id.* R. 3535.0110.
[73] *Id.* subp. 7.
[74] *Id.* subp. 6.

Despite oversight and new programs, the Minnesota State Department of Education's efforts to voluntarily integrate schools have shown no discernable effect.[75] Legal challenges in the state have continued.[76] Questions about the judiciary's ability to address educational adequacy claims also arose as an issue of justiciability.[77]

2. Inequitable Funding Challenges

Though not directly challenging the adequacy of school systems, *Skeen v. State* challenged the relative harm produced by unequal school funding.[78] The plaintiff sought to demonstrate that unequal funding disproportionately harmed low-income students and students of color.[79] The core of the argument was that, given the wealth disparities in neighborhoods, students in non-wealthy communities were severely disadvantaged in education.[80] The plaintiff claimed such a disadvantage demonstrated a lack of uniform education; thus, the plaintiff claimed that unequal funding was a violation of the Minnesota Constitution's Education Clause.[81] The court ruled that Minnesota's Constitution provides free and public education as a fundamental right, as well as an entitlement to an adequate education.[82] However, it failed to find that funding disparities amounted to a non-uniform education.[83] Citing a "broad purpose" and a "standardized system," the court found that local school systems' capacity to raise their own revenue from their respective tax bases

[75] Allison McCann, *When School Choice Means Choosing Segregation*, VICE NEWS (Apr. 12, 2017), https://www.vice.com/en_us/article/j5d3q3/when-school-choice-means-choosing-segregation.

[76] *Id.*

[77] Will Stancil & Jim Hilbert, *Justiciability of State Law School Segregation Claims*, 44 MITCHELL HAMLINE L. REV., 399, 424–27 (2018).

[78] Skeen v. State, 505 N.W.2d 299 (Minn. 1993).

[79] *Id.* at 302–03.

[80] *Id.* at 306.

[81] *Id.* at 302–03; MINN CONST. art. XIII, § 1 ("Uniform system of public schools. The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.").

[82] *Skeen*, 505 N.W.2d at 315.

[83] *Id.* at 315–16.

signified that "uniform" was not the same in meaning as "identical."[84]

However, the court in *Skeen* did remark on the failure of the Minnesota legislature to properly define "uniform."[85] The court determined the state legislature has a duty to define the elements of public education under the Minnesota Constitution.[86] Thus, *Skeen* left open the question of whether courts could intervene if the legislature fails to adequately define the quality of education a student is entitled to receive.

3. Inadequate Student Outcomes Challenges

Following the *Skeen* decision, plaintiffs in *Cruz-Guzman v. State* sought to force the Minnesota Department of Education to desegregate schools, citing that persistently segregated schools infringe upon Minnesota students' right to an adequate education.[87] *Cruz-Guzman* plaintiffs focused on disparities in student enrollment along racial and socioeconomic grounds.[88] The plaintiffs argued that racial disparities in the Minneapolis and Saint Paul school districts amounted to state-sanctioned segregation, and segregation on its face was inadequate.[89] The primary complaint was that the State of Minnesota promotes or encourages segregated school systems through its policies and regulations.[90]

The Minnesota Administrative Rules define "segregation" within schools and districts as:

> [T]he intentional act or acts by a school district that has the discriminatory purpose of causing a student to attend or not attend particular programs or schools within the district on the basis of the student's race and that causes a concentration of protected students at a particular school.
> A. It is not segregation for a concentration of protected students or white students to exist within schools or school districts:
> (1) if the concentration is not the result of intentional acts motivated by a

[84] *Id.* at 311.
[85] *Id.* at 309.
[86] *Id.* at 313.
[87] Class Action Complaint at paras. 3–4, Cruz-Guzman v. State, No. 27-CV-15-19117, 2015 WL 6774682 (Minn. Dist. Ct. Nov. 5, 2015) (hereinafter "Cruz-Guzman Class Action Complaint").
[88] *Id.* at para. 3.
[89] *Id.* at para. 2.
[90] *Id.* at paras. 23–34.

> discriminatory purpose;
> (2) if the concentration occurs at schools providing equitable educational opportunities based on the factors identified in part 3535.0130, subpart 2; and
> (3) if the concentration of protected students has occurred as the result of choices by parents, students, or both.[91]

According to the Minnesota Administrative Rules, segregation only occurs intentionally and not where the parents or students exercise school choice.[92] *Cruz-Guzman* challenged that the policies implemented by the Minnesota Department of Education promote segregation.[93] Plaintiffs asserted that education policies such as "boundary decisions for school districts and school attendance areas; the formation of segregated charter schools and the decision to exempt charter schools from desegregation plans; the use of federal and state desegregation funds for other purposes; the failure to implement effective desegregation remedies; and the inequitable allocation of resources" all supported segregation.[94]

The State fought to have the initial *Cruz-Guzman* claim dismissed but was denied.[95] The State appealed to the Minnesota Court of Appeals.[96] The court reasoned that the *Baker v. Carr* six-factor political analysis was the appropriate measure to assess whether the court could hear the claim.[97] Utilizing *Baker*, the court found that the issues posed by the plaintiffs were non-justiciable questions.[98] Further, the court cited *Skeen* and ruled that educational adequacy claims are legislative policy matters and are not matters for the judiciary.[99] Since the court determined the issue was non-justiciable, the case was dismissed.[100]

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[91] MINN. R. 3535.0110, subp. 9 (2015).
[92] *Id.*
[93] Cruz-Guzman v. State, 916 N.W.2d 1, 6 (Minn. 2018).
[94] *Id.*
[95] Cruz-Guzman v. State, Nos. A16-1267, A16-1297, 2016 Minn. App. LEXIS 109 (Minn. Ct. App. Sept. 13, 2016).
[96] Cruz-Guzman v. State, 892 N.W. 2d 533 (Minn. Ct. App. 2017).
[97] *Id.* at 538–39 (referring to Baker v. Carr, 369 U.S. 186 (1962)).
[98] *Id.* at 541.
[99] *Id.*
[100] *Id.*

After the Minnesota Court of Appeals dismissed the case, the Minnesota Supreme Court agreed to hear the case.[101] In 2018, the state Supreme Court heard arguments challenging educational equity in Minnesota schools.[102] At issue was whether the Minnesota judiciary might intervene when a question of justiciability hinders legal action on either uniform education or equal protection for students.[103]

The Minnesota Supreme Court focused on the justiciability of the claim under the Education Clause and the Equal Protection Clause.[104] The Minnesota Supreme Court rejected the Appellate Court's use of the U.S. Supreme Court's *Baker v. Carr* analysis, stating that the Minnesota Supreme Court had never adopted the *Baker* analysis to assess a case concerning political matters.[105] Instead, the court evaluated the text of Minnesota's Constitution and applicable case law.[106] In a 4-2 decision, the court found challenges under both clauses justiciable and remanded the case.[107]

The court's decision hinged on two primary considerations. First, the court found that the separation of powers doctrine is insufficient to prohibit the judiciary from determining whether the legislature carried out its duty.[108] The court considered it irresponsible to "unquestioningly accept[] that whatever the Legislature has chosen to do fulfills the Legislature's duty to provide an adequate education."[109] The court referenced previous cases where challenges to the Education Clause were brought and the issues were resolved on the merits of those cases.[110] Therefore, the court found

[101] Cruz-Guzman v. State, 916 N.W.2d. 1 (2018).
[102] *Id.* at 4.
[103] *Id.* at 4–5.
[104] *Id.*
[105] *Id.* at 8 n.4.
[106] *Id.* at 8–12.
[107] *Id*. at 15.
[108] *Id.* at 9.
[109] *Id.* at 12.
[110] *Id.* at 8 (citing Bd. of Educ. of Sauk Ctr. v. Moore, 17 Minn. 412, 416 (1871) (ruling that a constitutional duty

that to decide against the plaintiff would be a dereliction of the court's duty.[111] The court concluded that designating racial segregation and public education as non-justiciable issues would be tantamount to concluding that no Education Clause claims are remediable in court.[112] Thus, the court held that the Minnesota constitutional definitions of "general and uniform system of public schools" and "thorough and efficient system of public schools" were subject to judicial interpretation.[113]

Second, the court found that no single system of measurement for educational adequacy exists in Minnesota.[114] While the majority opinion acknowledged the need for a measurable assessment of adequacy in Minnesota, it proffered that constructing an evaluative measure was separate and apart from the issue of justiciability.[115] The majority also wrote that under the Minnesota Constitution, the issue of a segregated school system was "indisputably justiciable."[116] The court also made no distinction between intentional and incidental segregation and noted "[i]t is self-evident that a segregated system of public schools is not 'general,' 'uniform,' 'thorough,' or 'efficient.'"[117]

In his dissent, Justice Anderson undertook a textualist approach.[118] He wrote that the term "adequate education" did not appear in the Minnesota Constitution.[119] While the dissent noted that "segregation" was justiciable, it objected to the plaintiff's position that racially imbalanced schools

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to ensure public education throughout Minnesota existed); Curryer v. Merrill, 25 Minn. 1, 6 (1878) (determining that the state's Education Clause was not violated when "common-school education" was afforded to all students in Minnesota); Skeen v. State, 505 N.W.2d 299, 312 (Minn. 1993) (finding that when "basic educational needs" were met there was no evidence the constitutional standard of education was not met)).

[111] *Cruz-Guzman*, 916 N.W.2d at 12.
[112] *Id*. at 9.
[113] *Id.* at 11–12.
[114] *Id.*
[115] *Id.*
[116] *Id.* at 10.
[117] *Id.* at 10 n.6.
[118] *Id.* at 15.
[119] *Id.* at 16.

are inadequate because they are akin to segregation.[120] The dissent submitted that educational adequacy is not equivalent to "traditional segregation."[121]

Additionally, the dissent emphasized that Minnesota's Education Clause was "a [legislative] constitutional mandate" and was not subject to judicial activism.[122] The majority disagreed, however, and asserted that "[t]he framers could not have intended for the Legislature to create a system of schools that was 'general and uniform' and 'thorough and efficient' but that produced a wholly inadequate education."[123] The case was remanded.[124] The parties are undergoing mediation, and a trial is set to proceed in 2021.[125]

II. A BRIEF HISTORY OF CHARTER SCHOOLS

A. What Are Charter Schools?

Historically, charter schools are said to have begun as an alternative environment to foster teacher flexibility and to target student populations underserved by traditional public schools.[126] In 1988, Professor Ray Budde revisited one of his previous ideas on improving education.[127] Budde offered a proposal that public schools and local school districts could develop new programs that were innovative and unique within the traditional school system model.[128] Albert Shanker, who served as the President of the American Federation of Teachers at the time, was drawn to the idea and further developed Budde's concept.[129] Shanker was the first national

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[120] *Id.* at 16 n.1.
[121] *Id.*
[122] *Id.* at 16.
[123] *Id.* at 12.
[124] *Id.* at 15.
[125] J.D. Duggan, *MN's Education Gap—Some Challenge School Integration As Solution*, MINN. SPOKESMAN-RECORDER (Sept. 4, 2019), https://spokesman-recorder.com/2019/09/04/mns-education-gap-some-challenge-school-integration-as-solution.
[126] Zachary Jason, *The Battle Over Charter Schools*, HARV. ED. MAG. (Summer 2017), https://www.gse.harvard.edu/news/ed/17/05/battle-over-charter-schools.
[127] *Id.*
[128] *Id.*
[129] *Id.*

supporter of the charter schools movement.[130]

Within a few years, the charter school movement saw an increase in advocates and adoption in school districts.[131] Advocates for charter schools initially wanted a local charter school system that enhanced existing schools.[132] Once the movement expanded, the initial idea of supplementing traditional schools with specialized programs for specific students "gave way to the reality of a parallel education system."[133]

The National Alliance for Public Charter Schools characterizes charter schools as flexible alternatives to traditional public schools.[134] Third-party contracts independently govern the operation of charter schools.[135] The contracted party is referred to as the "authorizer" and may include but is not limited to "a nonprofit organization, government agency, or university."[136] While charter schools primarily operate as nonprofit educational organizations, 12% nationwide do operate on a for-profit basis.[137]

The structure and operations of charter schools today notably differ from traditional public schools in two ways. First, charter schools operate without conventional attendance zones.[138] Second, charter schools largely focus on running a "business" that provides education.[139] Thus, charter schools offer students and parents a choice as to where educational services are received.[140]

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[130] *Id.*
[131] *Id.*
[132] *Id.*
[133] *Id.*
[134] *What is a Charter School? Reimagining Education: One School, One Classroom, One Student at a Time*, NAT'L ALL. FOR PUB. CHARTER SCH., https://www.publiccharters.org/about-charter-schools/what-charter-school (last visited Dec. 19, 2018).
[135] *Id.*
[136] *Id.*
[137] *Charter School FAQ*, NAT'L ALLIANCE FOR PUB. CHARTER SCH., https://www.publiccharters.org/about-charter-schools/charter-school-faq (last visited Dec. 19, 2018).
[138] *Id.*
[139] Tim Walker, *Racial Isolation of Charter School Students Exacerbating Resegregation*, NEA TODAY (May 4, 2018), https://neatoday.org/2018/05/04/racial-segregation-in-charter-schools.
[140] *What is a Charter School?*, *supra* note 134.

B. The Rise of Charter Schools in Minnesota

Minnesota has long adopted legislation that allows charter schools to operate within the state.[141] Saint Paul, Minnesota, is believed to have been the originator of the modern-day charter school movement, opening the first charter school, City Academy Charter, in 1992.[142] The school "recruited students from the streets" as part of its original mission.[143] It opened its first year with a population of approximately 25% homeless students.[144] The school also targeted students who were low-income and students who had previously dropped out or had prior disciplinary infractions.[145]

After the opening of the first charter school in Minnesota, charter schools in the state have experienced notable increases in student population.[146] Between 2013 and 2017, the population of students attending charter schools increased by 36%, compared to a 2% student population increase at traditional public schools.[147] At that time, the Minnesota Association of Charter Schools attributed the growth to existing charter schools expanding the grade levels served and to the opening of new charter schools.[148] It also projected continued growth for charter schools in both student population and in new school openings.[149] Despite the population growth, however, at that time charter schools accounted for only 6% of the entire public education population across the state of Minnesota.[150]

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[141] *See* MINN. STAT. § 120.064, subdiv. 7 (1995) (renumbered as MINN. STAT. § 124E.03, subdiv. 1 (2019)).

[142] Peter Jacobs, *Here's How America's First-ever Charter School Got Off the Ground*, BUSINESS INSIDER (June 20, 2015, 1:52 PM), https://www.businessinsider.com/inside-the-first-charter-school-in-america-city-academy-2015-6.

[143] *Id.*

[144] *Id.*

[145] *Id.*

[146] Beena Raghavendran, *Charter School Enrollment is Surging in Minnesota*, STAR TRIBUNE (Mar. 2, 2017, 6:06 AM), http://www.startribune.com/charter-school-enrollment-is-surging-in-minnesota/415018793.

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] *Id.*

C. The Segregation Effect

Nationally, many charter school students are educated in "extreme racial isolation."[151] Charter schools are more likely to be established in segregated urban communities[152] and are often identifiable along racial lines.[153] Charter schools are particularly vulnerable to racial isolation since the schools operate under a business model that traditionally targets non-diverse racial and ethnic communities.[154] There is growing concern that the routine practice of charter models targeting communities of color threatens to return students to the educational times of "separate but equal."[155]

Though the historical era of segregation was largely related to the design of public-school systems and segregation laws, the modern era of segregation is correlated with extrinsic factors such as "housing patterns" and the socioeconomic status of communities.[156] In both local public-school systems and charter schools, neighborhoods and communities are increasingly segregated.[157] Segregation within some public school districts has a relationship with the number of charter schools in its communities.[158] In other words, segregation in some local public schools

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[151] Ivan Moreno, *US Charter Schools Put Growing Numbers in Racial Isolation*, ASSOCIATED PRESS (Dec. 3, 2017), https://www.apnews.com/e9c25534dfd44851a5e56bd57454b4f5.

[152] ERICA FRANKENBERG, GENEVIEVE SIEGEL-HAWLEY & JIA WANG, CHOICE WITHOUT EQUITY: CHARTER SCHOOL SEGREGATION AND THE NEED FOR CIVIL RIGHTS STANDARDS 57–58 (Jan. 2010), http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/choice-without-equity-2009-report/frankenberg-choices-without-equity-2010.pdf.

[153] GROVER J. WHITEHURST, RICHARD V. REEVES, NATHAN JOO, & EDWARD RODRIGUE, BALANCING ACT: SCHOOLS, NEIGHBORHOODS AND RACIAL IMBALANCE 20–21 (Ctr. on Child. & Fam. Brookings) (Nov. 2017), https://www.brookings.edu/wp-content/uploads/2017/11/es_20171120_schoolsegregation.pdf.

[154] Walker, *supra* note 139.

[155] *Id*.

[156] Grover J. Whitehurst, *New Evidence on School Choice and Racially Segregated Schools*, BROOKINGS INST. (Dec. 14, 2017), https://www.brookings.edu/research/new-evidence-on-school-choice-and-racially-segregated-schools/.

[157] *Id*.

[158] T. Keung Hui, *NC Should Close Charter Schools that Aren't Diverse, New Report Says*, THE NEWS & OBSERVER (Mar. 16, 2018, 11:07 AM), https://www.newsobserver.com/news/local/education/article205190044.html (In North Carolina, 72% of public school districts showed an increase in segregation when a charter school was operating in the same district.).

increases as charter schools are introduced into the community.[159] Further, data suggests that even when local public schools begin to racially-diversify, racially-isolated charter school populations in the community increase.[160]

The National Alliance for Public Charter Schools maintains that school choice is the priority.[161] Charter school advocates perceive the racially isolated environment of a school as immaterial when a parent favorably views a school and chooses it for their child.[162] However, the policy implications of creating segregated environments are disastrous; research cites multi-faceted problems with racially imbalanced schools.[163] For example, schools with large minority populations "historically have fewer resources, less experienced teachers and lower levels of achievement."[164] Thus, the problem exists beyond an individual's choice of school and moves into a broader societal view of educational adequacy.

III. CHARTER SCHOOL CHALLENGES

The increasing non-diverse student population in Minnesota charter schools has coincided with a number of educational adequacy legal challenges citing racial isolation as harmful.[165] Even as the final outcome of *Cruz-Guzman* is undetermined, new expansive adequacy challenges have arisen.[166] The outcome of these adequacy challenges likely threatens the design of independently

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[159] *See Id.*

[160] *See* Linda A. Renzulli & Lorraine Evans, *School Choice, Charter Schools, and White Flight*, 52 SOC. PROBS. 398, 410 (2005) (finding that when faced with integrated school districts, there appears to be a "white-flight" movement into charter schools). *See* Whitehurst, *supra* note 156 (noting that high schools in school districts with greater school-choice attendance policies have greater racial disparities in enrollment.).

[161] Andre M. Perry, *How Charter Schools Are Prolonging Segregation*, BROOKINGS INST. (Dec. 11, 2017), https://www.brookings.edu/blog/the-avenue/2017/12/11/how-charter-schools-are-prolonging-segregation/.

[162] *Id.*

[163] Moreno, *supra* note 151.

[164] *Id.*

[165] *See* Skeen v. State, 505 N.W.2d 299 (Minn. 1993); Cruz-Guzman v. State, 916 N.W.2d 1 (Minn. 2018).

[166] *See* Forslund v. State, 924 N.W.2d 25 (Minn. Ct. App. 2019) (The plaintiffs unsuccessfully argued that certain teacher-tenure decisions violated the Minnesota State Constitution because the decisions may provide some students with an inadequate education).

operated charter schools. Charter schools in Minnesota will need to adopt reforms to sustain legal challenges and survive legislative changes as educational adequacy challenges play out in Minnesota courtrooms.

A. Implications of Cruz-Guzman

The court in *Cruz-Guzman* dismissed the State's argument that school districts and charter schools needed to be separate parties to the claim.[167] The court determined the impact was "hypothetical" and "those possible effects are not enough to require that the school districts and charter schools be joined as necessary parties."[168] The impact on charter schools, thus, will depend on the outcome of the lower court decision. While the final court decision is outstanding, the potential impact the decision will have should concern charter leaders. Charter schools in Minnesota should be proactive in their preparation for a verdict in either direction.

1. Implications from a Favorable *Cruz-Guzman* Ruling for Plaintiffs

If *Cruz-Guzman* is favorable for plaintiffs seeking to desegregate Minnesota schools, courts are likely to be plagued with more educational adequacy disputes. Minnesota charter schools must be prepared to reconcile enrollment procedures in the face of the educational adequacy movement. One Minnesota educational advocacy group called the *Cruz-Guzman* ruling to continue the case "bittersweet."[169] The group praised the court for its decision on the issue of justiciability but expressed concern that a future ruling could threaten school-choice options for parents and students.[170] If the *Cruz-Guzman* case is decided in favor of the plaintiffs, charter schools' traditional enrollment process becomes uncertain.

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[167] *Cruz-Guzman*, 916 N.W.2d at 14.

[168] *Id.*

[169] *As* Cruz-Guzman *Lawsuit Advances, Parents and Community Members Speak Out on Potential Unintended Consequences for Students and Families of Color*, EDALLIES (July 25, 2018), https://edalliesmn.org/blog/pr/cruz-guzman-lawsuit-advances-parents-community-members-speak-potential-unintended-consequences-students-families-color/.

[170] *Id.*

Minnesota charter schools must be prepared to reconcile enrollment procedures in the face of the educational adequacy movement. Specific Minnesota charter schools could be affected by a favorable *Cruz-Guzman* outcome.[171] At the Friendship Academy of the Arts, African-American students make up 96% of the school's total student population.[172] The school also primarily serves students from economically disadvantaged backgrounds, with 85% of students meeting that classification.[173] Saint Paul is also home to Higher Ground Academy, which boasts a 100% African-American student population.[174] Due to the racially-isolated populations of these schools, a *Cruz-Guzman* ruling ordering desegregation threatens the traditional operation of these and similar schools. Unless a significant effort is undertaken to diversify the schools, it is unlikely they could continue to operate with their current demographics.

So, how are charter schools to respond to the racial segregation crisis? School-choice advocates have weighed in on the court's decision to send *Cruz-Guzman* back to the lower courts, and one attorney is hopeful *Cruz-Guzman* can separate involuntary segregation and "culturally affirming schools."[175] However, suppose *Cruz-Guzman* finds that Minnesota's racially isolated schools are segregated and thereby tantamount to an inadequate educational environment. In that case, charter schools may choose to consider: (1) changing business models to reduce racial isolation or (2) using Alternative Dispute Resolution (ADR) to resolve disputes.

a. Changing business models may alleviate the segregating effect in charter schools.

With a business emphasis, an economic charter school model focuses minimally on "civil

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[171] Erin Hinrichs, *Why Charter School Advocates Have Mixed Feelings About the State Supreme Court's Integration Decision*, MINNPOST (July 26, 2018), https://www.minnpost.com/education/2018/07/why-charter-school-advocates-have-mixed-feelings-about-state-supreme-courts-integr/.

[172] *Id.*

[173] *Id.*

[174] *Id.*

[175] *Id.*

rights protections."[176] The focus on market protection increases researchers' concern that charter schools may promote, rather than hinder, segregation.[177] Charter schools have demographically shifted public school enrollment since their inception.[178] In Minnesota, it is alleged that charter schools have also contributed significantly to isolated educational services for impoverished minority students.[179] The majority of non-racially integrated populations in the Twin Cities are found in its charter schools.[180]

However, charter models in Minnesota have and can be adapted to seek more diverse student populations. The Century Foundation conducted a study on charter schools nationwide to identify models that undertook a methodological approach to create a diverse environment concerning student population, known as a "diverse-by-design model."[181] Diverse-by-design models are charter models that are designed to have a diverse student population and that through student enrollment have achieved student diversity.[182] Utilizing IntegrateNYC's "5 Rs of Real Integration," the study found 125 charter schools models that were "intentionally diverse."[183] Of all charter schools in operation across the state of Minnesota, only two have been identified as operating under a diverse-by-design model.[184] The two charter models in Minnesota, Bright Water Elementary (Minneapolis) and Cornerstone Montessori Elementary (Saint Paul), had visible or strong diversity designs.[185] These two schools can serve as models for Minnesota charter school

[176] Ayscue et al., *supra* note 19, at 4–5.
[177] *Id.* at 5.
[178] Moreno, *supra* note 151.
[179] *Cruz-Guzman*, 916 N.W.2d at 5–6.
[180] INSTITUTE ON METROPOLITAN OPPORTUNITY, UNIV. MINN. L. SCH., THE MINNESOTA SCHOOL CHOICE PROJECT PART I: SEGREGATION AND PERFORMANCE 4 (Feb. 2017), https://www.law.umn.edu/sites/law.umn.edu/files/metro-files/imo-mscp-report-part-one-segregation-and-performance.pdf_0.pdf.
[181] Halley Potter & Kimberly Quick, *Diverse-by-Design Charter Schools*, THE CENTURY FOUND. (May 15, 2018), https://tcf.org/content/report/diverse-design-charter-schools/?agreed=1.
[182] *Id.*
[183] *Id.*
[184] *Id.*
[185] *Id.*

operators hoping to survive a favorable *Cruz-Guzman* ruling.

The change from an economic model to a diverse-by-design model does present challenges. Charter schools are limited in how to purposefully create diverse models. In *Parents Involved in Community Schools v. Seattle School District No. 1*, the court ruled the interest of promoting racial diversity alone could not be a determining factor in denying admission to a public school.[186] Therefore, charter schools will need to seek creative methods for increasing student diversity without specifically targeting race. One potential solution is to expand the reach beyond the geographical neighborhoods where charter schools are located. For example, transportation can be a barrier to families that might otherwise want to choose a charter school.[187] To overcome these barriers, Minnesota charter schools may be able to work with the community to provide or expand transportation services or other resources to provide more children an opportunity to attend.[188]

b. Alternative Dispute Resolution (ADR) is a remedy.

Since *Cruz-Guzman* attempts to secure integrated schools in Minnesota, particularly in the Twin Cities,[189] it seems unlikely financial settlements would satisfy *Cruz-Guzman*'s call for diverse student bodies. Although injunctive relief is the goal of *Cruz-Guzman*, the Minnesota Department of Education, charter schools, and the plaintiffs could use ADR to resolve education inadequacies resulting from racial isolation. Mediation may serve as a remedy now, just as it did when the "Choice is Yours" program was developed.[190]

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[186] Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 726–30 (2007).

[187] *See* Valerie Strauss, *The Link Between Charter School Expansion and Increasing Segregation*, WASH. POST (Mar. 13, 2014), https://www.washingtonpost.com/news/answer-sheet/wp/2014/03/13/the-link-between-charter-school-expansion-and-increasing-segregation/; *See also* Moreno *supra* note 151.

[188] *See generally* Frankenberg, Siegel-Hawley, & Wang *supra* note 152, at 81 (identifying transportation as one way to increase diversity); *See generally* Stancil & Hilbert *supra* note 77, at 414 (noting transportation and other options available to desegregate schools); *See generally* McCann *supra* note 75 (claiming that Minnesota has tried a variety of options to integrate students).

[189] Cruz-Guzman Class Action Complaint at paras 75–77.

[190] Raghavendran, *supra* note 69.

Solving disputes through mediation is particularly successful in areas where neither party is an experienced negotiator.[191] Further, mediation is a useful legal tool when both parties have a strong desire to represent their voice.[192] Here, charter school advocates are eager to make a case that single-race or predominate-race charter schools are choices, not segregated mandates.[193] Conversely, the plaintiffs in *Cruz-Guzman* want across-the-board desegregation.[194] However, the problem facing charter schools in a traditional judicial setting, is that the logic used to justify racial-isolation as a choice still creates a segregating effect. Using such logic, a charter school not enrolling any students of color by choice, could also be construed as a culturally affirming parental choice. The result of such a legal dispute then becomes a question of whether charter schools are merely segregated by choice and not by mandate. Thus, mediation serves as an effective alternative to litigating a segregation issue because it can allow both sides to express their positions and desired outcomes, which may not be relevant in or available to do in a judicial proceeding on segregation.

Historically, mediation has successfully been used to resolve segregation and racial isolation issues in lawsuits against public institutions of higher learning.[195] For example, Tennessee used mediation to resolve a decades-long legal battle over segregation in higher education systems.[196] The conflicting parties in Tennessee agreed to monetary settlements to improve diversity and

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[191] HAROLD I. ABRAMSON, MEDIATION REPRESENTATION: ADVOCATING IN A PROBLEM-SOLVING PROCESS 117 (2004).

[192] *Id*.

[193] Josh Verges, *MN Supreme Court: Parents' Lawsuit Accusing State of Racially Segregating Students Can Proceed*, TWIN CITIES PIONEER PRESS (July 25, 2018, 10:17 AM), https://www.twincities.com/2018/07/25/mn-supreme-court-parents-lawsuit-accusing-state-of-racially-segregating-students-can-proceed/.

[194] Cruz-Guzman Class Action Complaint at paras. 76–77.

[195] *See* Geier v. Univ. of Tenn., 597 F.2d 1056 (6th Cir. 1979).

[196] *Two Sides Celebrate Lawsuit's End*, ASSOCIATED PRESS (Jan. 26, 2001), http://www.utdailybeacon.com/news/two-sides-celebrate-lawsuit-s-end/article_3825d2da-b316-5af7-9fac-9c0ccde1b990.html (The mediation process took over 1,200 hours to find a resolution.).

equality within the college system.[197] After years of court battles with no resolution, mediation resolved the matter within one year.[198] After the mediation agreement, the parties denoted that the resolution in Tennessee "provides a lesson" that even in lengthy cases concerning civil rights issues, resolution can occur.[199] European communities have even utilized mediators to tackle cultural-segregation issues.[200] One program sought to use mediation as a way to improve communication between public service institutions and Roma families and students.[201]

However, resolving segregation cases with mediation has not always benefited both parties. In 2000, the Maryland Higher Education Commission and the U.S. Department of Education's Office of Civil Rights worked out a resolution where Maryland would consolidate some education programs and provide "unique and popular programs at historically black universities."[202] Historically black colleges filed suit after Maryland Higher Education Commission approved online and cross-campus programs that drew white student populations from the historically black colleges' campus programs.[203] By 2006, claims levied against the higher education system alleged that Maryland Higher Education Commission failed to desegregate institutions of higher learning.[204] The crux of the conflict resided with historically black colleges' demand that other universities cease offering the same or similar programs, while the Commission on Higher Education maintained that monopolizing degree platforms "would harm students of all races."[205]

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[197] *Id.*
[198] *Id.*
[199] *Id.*
[200] *About ROMED1*, COUNCIL OF EUROPE, http://coe-romed.org/romed1.
[201] *Id.*
[202] Tim Prudente, *Decade-long Legal Battle to Scrub Segregation from Maryland Universities Returns to Federal Court*, BALTIMORE SUN (Jan. 8, 2017, 3:54 PM), http://www.baltimoresun.com/news/maryland/education/higher-ed/bs-md-college-segregation-lawsuit-20170108-story.html.
[203] *Id.*
[204] *Id.*
[205] *Id.*

Shortly after the lawsuit began, historically black colleges and the Maryland Higher Education Commission utilized mediation to try and resolve or reduce segregation within state institutions.[206] After a series of unsuccessful court-ordered mediations in 2011 and 2014, litigation in federal court was back on the table.[207]

Critics of mediation in segregation cases are also critical that an ADR process could underserve the "social importance" of a desegregation movement.[208] While acknowledging that mediation can create productive environments for settlement, critics argue that certain conflicts are best placed in the public purview.[209] Authors Suzanne McCorkle and Melanie J. Reese offer the example of Rosa Parks as a time in history when ADR would have had an underserved effect.[210] During the civil rights movement, Parks's defiance on a public bus played out in the public purview and is said to have been instrumental in tackling segregation.[211] McCorkle and Reese argue that if Parks had internally settled the dispute through mediation, then "one crucial spark that exposed segregation and ignited public protest might not have occurred."[212]

However, given that educational adequacy challenges often arise in connection with entire student population groups and not individual cases, mediation is not likely to underserve the parties or dampen a movement the way it may have in the case of Rosa Parks. Here, mediation gives all concerned parties a seat at the table, and the solutions derived from mediation are likely to affect an entire student group, not just one individual. Further, given the lack of specific desegregation ideas offered by courts, mediation may be an avenue to build a range of possible solutions. Thus, the mediation process and lessons learned are relevant considerations for charter schools that hope

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[206] *Id.*
[207] *Id.*
[208] SUZANNE MCCORKLE & MELANIE J. REESE, MEDIATION THEORY AND PRACTICE 76 (3d ed. 2019).
[209] *Id.*
[210] *Id.*
[211] *Id.*
[212] *Id.*

to maintain their structure and models of operation in a post *Cruz-Guzman* environment.

2. Implications from a Non-favorable *Cruz-Guzman* Ruling for Plaintiffs

If the court in *Cruz-Guzman* decides in favor of the Minnesota Department of Education, charter schools will seemingly remain safe until the next legal challenge. However, the court's hesitance to define adequacy leaves legislative challenges as the primary method of reform available to a populace expressing concern for the educational needs of students. Therefore, the issue of adequacy is still one the Minnesota legislature and the Minnesota Department of Education's administrative rules may be forced to address.

a. Legislative Implications

Legislative change is likely the next major step for educational adequacy advocates. The *Cruz-Guzman* dissent proffered that if the legislature is mandated to undertake the duty of establishing uniform education, then it should be reasoned the legislature do so.[213] Even the plaintiffs in *Cruz-Guzman* concede that the legislature should address the unresolved issue of defining what an adequate education for Minnesota students provides and make provisions to protect all students from segregated school environments.[214]

However, Minnesota has not yet tackled judicial decisions criticizing the legislature for inadequately meeting its educational duty. How the Minnesota legislature would grapple with the juxtaposition of a public requirement to operate non-segregated schools and a public-choice movement designed to serve specific student and community needs is unknown. However, other states offer examples of directions the Minnesota legislature could follow if there is a favorable *Cruz-Guzman* decision.

In Kentucky, a case challenging the equity of school system funding resulted in a court decision

[213] Cruz-Guzman v. State, 916 N.W.2d 1, 20–22 (Minn. 2018) (Anderson, J., dissenting).
[214] *Id.* at 9.

rendering "the entire educational system unconstitutional."[215] The court found that Kentucky did not provide a uniform and adequate education to its students.[216] The legislature's response was to engage in a complete "overhaul" and offer a package of education reforms.[217] Kentucky legislators focused on laws that increased state spending, endorsed new statewide programs for teaching and learning, and administered performance-based student assessments.[218]

However, not all states have positively responded after being judicially challenged on adequacy claims. In Alabama, a court rendered the public education system partially unconstitutional because it provided an inadequate education to students.[219] Political opposition to the court decision led the state to defeat subsequent legislative measures designed to comply with judiciary standards of adequacy.[220]

The Minnesota legislature has previously attempted to tackle racial isolation in traditional public schools. In 2013, the Achievement and Integration Law was enacted.[221] The law, still in effect today, provides funding for school districts that have a comprehensive plan for racially integrating schools and creating more equitable environments.[222] While 171 school districts in Minnesota have recently undertaken Achievement and Integration Programs,[223] Minnesota Administrative Rule exempts charter schools[224] from being identified as "racially-isolated"

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[215] Peter Applebome, *Kentucky's Sweeping Overhaul of Education Offers Lessons Both Positive and Negative*, N.Y. TIMES (Mar. 25, 1996), https://www.nytimes.com/1996/03/25/us/kentucky-s-sweeping-overhaul-education-offers-lessons-both-positiveand-negative.html.

[216] *Id.*

[217] *Id.*

[218] *Id.*

[219] Minorini & Sugarman, *supra* note 3, at 196.

[220] *Id.* at 201–02.

[221] Beth Hawkins, *Key Minnesota Desegregation Case Asks Chilling Question: Can Supreme Court Intervene to Guarantee an Adequate Public Education?*, THE 74 (Jan. 8, 2018) https://www.the74million.org/article/key-minnesota-desegregation-case-asks-chilling-question-can-supreme-court-intervene-to-guarantee-an-adequate-public-education/.

[222] MINN. STAT. §§ 124D.861–.862 (2019).

[223] *Achievement and Integration Program*, MINN. DEP'T EDUC., https://education.mn.gov/MDE/dse/acint/ (last visited Sept. 20, 2020).

[224] MINN. R. 3535.0110, subp. 8.

schools or districts[225] or engaging in "segregation."[226] In light of *Cruz-Guzman*, the Minnesota legislature can expand the Achievement and Integration program and require charter schools to be included as participants. Further, the Minnesota legislature has the capacity to and should amend its charter school statutes to require charter schools to be subject to existing statutes on racial isolation.

Without expanding the program, the legislature should clarify the Education Clause in the Minnesota Constitution. Given the history of adequacy challenges relating to Minnesota's Education Clause, it seems unlikely that the courts can sufficiently resolve future matters unless the legislature takes action. The legislature should set forth a definition of "a general and uniform"[227] education system. The Minnesota Constitution delegates authority to the legislature to define adequate education; still, the court in *Cruz-Guzman* noted that the judiciary is not prohibited from determining whether it has been exercised appropriately.[228] The level of adequacy that students in a state are entitled to is precisely the type of policy decision that legislatures are designed to tackle. Abdicating that responsibility to courts shifts the policy-making burden away from the legislative branch and onto the judiciary. The Minnesota legislature should resolve this matter.

b. Administrative/Agency Implications

Should *Cruz-Guzman* determine a formula for measuring adequacy, the Minnesota Administrative Rule might be a starting point for reform. Currently, statute permits charter schools to operate outside the bounds of many public-school regulations that are applicable to traditional

[225] MINN. R. 3535.0110, subp. 6–7.
[226] MINN. R. 3535.0110, subp. 9.
[227] MINN. CONST. art. XIII, § 1.
[228] Cruz-Guzman v. State, 916 N.W.2d 1, 9 (Minn. 2018).

districts and schools.[229] Their statutory status makes them unable to qualify as a "racially isolated school district" or as a "racially identifiable school" in Minnesota under Administrative Rule.[230] Education agencies could refine the rule to apply to charter schools since Minnesota Statute § 124E.03 provides that educational rules can be "made specifically applicable to a charter school."[231] The rule could also be revamped to revise the definitions of racially-isolated and of segregation to ensure both definitions encapsulate stand-alone or choice-based racial isolation.

CONCLUSION

The history of segregation and racial isolation in the United States is lengthy and not without its own set of challenges. The lack of a fundamental right to education on a national level leaves states responsible for creating such an entitlement.[232] States are also left to assess the adequacy of any such entitlement.[233]

In Minnesota, segregation in public schools persists.[234] The question of whether non-mandated segregation qualifies as an inadequate education remains unanswered. Schools must compete with a legislature void of adequacy definitions and a judiciary hesitant to impart its interpretation. The ongoing legal battle involved in the *Cruz-Guzman* case is the start of what may be a drawn-out legal battle of the definition of adequacy in the Minnesota Constitution.

With the question of justiciability resolved, challenging the issue of educational adequacy will depend on the outcome of the *Cruz-Guzman* case. The decision, however, is poised to have lasting impacts on Minnesota charter schools. Charter schools will likely need to adapt to survive race-based adequacy challenges. It is advisable that charter schools either change their operational

[229] MINN. STAT. § 124E.03, subdiv. 1 (2019).
[230] *See* MINN. R. 3535.0110, subp. 6–8.
[231] MINN. STAT. § 124E.03, subdiv. 1.
[232] *See* Cochran *supra* note 53, at 404–05.
[233] Rebell, *supra* note 1, at 231–32.
[234] McCann, *supra* note 75.

model to promote and achieve more diverse student populations or seek to mediate segregation and race-based cases. Since charter schools are independent educational-service providers,[235] they seem uniquely positioned to negotiate and create settlement agreements.

To quell the rise in educational adequacy challenges, Minnesota Administrative Rule on segregation and racially isolated schools must be inclusive of all public schools, including charter schools. The rule should also prohibit segregation by mandate and segregation by choice. Further, Minnesota legislation must address the ambiguous terms in the Minnesota Constitution of the "general and uniform system"[236] of education. The legislature should clarify what it means for a Minnesotan to receive an adequate public education because the legislature is most appropriate body to establish education policy in the state.

[235] *See Charter School FAQ*, *supra* note 137.
[236] MINN. CONST. art. XIII, § 1.