

# From the Courtroom to the Classroom

## The Shifting Landscape of School Desegregation

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## *Sheff v. O'Neill*

### Weak Desegregation Remedies and Strong Disincentives in Connecticut, 1996–2008

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When word of the *Sheff v. O'Neill* decision hit the headlines in 1996, school desegregation advocates expressed a note of optimism. The Connecticut Supreme Court's 4–3 ruling in favor of the plaintiffs signaled an important victory for integrated education in one state, particularly at a time when Chief Justice Rehnquist and the U.S. Supreme Court were rolling back federal rulings across the rest of the nation (such as in *Missouri v. Jenkins*).<sup>1</sup> In a case that centered on the capital city of Hartford, Connecticut's highest court declared that "the existence of extreme racial and ethnic isolation in the public school system deprives schoolchildren of a substantially equal educational opportunity and requires the state to take further remedial measures," regardless of whether or not the segregation had been deliberate.<sup>2</sup> In contrast to most of the other case studies in this volume, Connecticut's judicial branch advanced the cause of school integration at a time when the federal government was retreating.

However, this local policy analysis traces how the story took a different turn over the next decade. First, it briefly reviews how Connecticut's legal and political process stalled on providing a meaningful desegregation remedy for seven years after the plaintiffs' courtroom victory (1996–2003). The chapter concentrates next on the limited results of the four-year legal settlement known as *Sheff I* (2003–07), with an analysis of the multiple reasons behind its failure and its meaning within the national context of the PICS decision.

Furthermore, it contrasts two consecutive attempts to build political consensus around the next phase of the legal remedy, *Sheff II* (2008–13), and its promise to meet the state's constitutional requirement for equal educational opportunity. Previous scholars have long debated the merits of voluntary versus mandatory approaches to desegregation.<sup>3</sup> This case study updates our current understanding of school desegregation policy and practice by illustrating what a voluntary plan—driven by weak policy tools and blocked by powerful disincentives—has not yet achieved in Connecticut.

### A CITY, ITS SUBURBS, AND THE SHEFF CASE (1996–2003)

Nearly two decades ago, the *Sheff v. O'Neill* (1989) lawsuit gained national attention as an innovative legal challenge to city-suburban school segregation.<sup>4</sup> Filed on behalf of the lead plaintiff, an African American Hartford student named Milo Sheff, the suit challenged state officials, represented by then-governor William O'Neill. The *Sheff* plaintiffs included eighteen students, including both minority children from Hartford and white children from nearby suburbs, all of whom argued that their education was compromised by the lack of diversity. At that time, the Hartford Public Schools' population consisted of 91 percent minority students, surrounded by suburban districts comprised of 88 percent white students.<sup>5</sup> Furthermore, nearly half of Hartford's schoolchildren lived in poverty, while the broader metropolitan region was consistently ranked as one of the nation's wealthiest. But the federal court system offered no means for addressing metropolitan segregation. The U.S. Supreme Court's *Milliken v. Bradley* decision held that city-suburban desegregation remedies were valid only when there was evidence that multiple districts had deliberately acted to segregate.<sup>6</sup> As a result, rather than taking their case to federal court under the Fourteenth Amendment's equal protection clause, the *Sheff* plaintiffs filed their complaint in state court, arguing that segregated schooling violated Connecticut's constitutional guarantee of equal educational opportunity.

The Connecticut Supreme Court's 1996 decision in favor of the *Sheff* plaintiffs was remarkable for both what it did and did not say. On the one hand, the state's highest court challenged one of the fundamental causes of city-suburban inequality. The court's majority pointed specifically to Connecticut's school districting statute, which established "town boundaries as the dividing line between all school districts in the state," as a constitutional violation.<sup>7</sup> Although school district boundaries were not intended to be dis-

crimatory when originally drawn by the state in 1909, they were "the single most important factor contributing to the present concentration of racial and ethnic minorities in the Hartford public school system."<sup>8</sup> Therefore, the court ruled that the state's maintenance of these boundaries, which separated Hartford schoolchildren from their suburban peers, violated Connecticut's constitutional prohibition against segregation, as well as its obligation to provide substantially equal educational opportunity for all.<sup>9</sup>

On the other hand, the court's 1996 decision did not specify any remedy, timetable, or goal for how this constitutional violation should be addressed. While mindful of the urgent plight of Hartford's schoolchildren, the judicial branch took a more cautious approach: "We direct the legislature and the executive branch to put the search for appropriate remedial measures at the top of their respective agendas."<sup>10</sup> Connecticut's Republican governor and the suburban-dominated Democratic legislative leaders immediately proclaimed that they would never invoke mandatory busing but would instead promote more gradual steps toward desegregation.<sup>11</sup>

In 1997, the legislature passed "An Act Enhancing Educational Choices and Opportunities," whose title clearly emphasized voluntary actions without mentioning racial integration. Although the law codified a state interest in diversity and contained some mandatory language—such as requiring all school districts to submit biannual reports on their activities "to reduce racial, ethnic, and socioeconomic segregation"—the main provisions encouraged voluntary participation in school choice programs, such as interdistrict magnet schools, to help achieve these goals.<sup>12</sup> Political scientist Kathryn McDermott and her colleagues emphasized that "the act was designed to encourage interdistrict programs, but not to require them."<sup>13</sup> A year later, the legislature also transformed Project Concern, a 30-year-old voluntary school transfer program for Hartford students wanting to attend suburban schools, into what is commonly known today as Project Choice.<sup>14</sup>

Some *Sheff* advocates followed the court's logic by proposing a more radical desegregation remedy: merge Hartford and its neighboring suburbs into a metropolitan school district. Naming their proposal "The Unexamined Remedy," these advocates sought to eliminate or greatly reduce the influence of the school district boundaries that had been described as the single most important factor behind the constitutional violation in the *Sheff* decision. But in the eyes of most state legislators, this metropolitan remedy entailed mandatory actions that would threaten local school governance in districts across the Hartford region, and it eventually disappeared from the political discourse due to lack of support.<sup>15</sup>

By March 1998, nearly two years after the *Sheff* ruling, the plaintiffs had seen very little progress by state officials in response to the court's "urgent" call for relief for Hartford schoolchildren. Only two interdistrict magnet schools enrolled Hartford students, both in substandard facilities, and only 469 participated in the suburban district transfer program, its lowest number ever.<sup>16</sup> The *Sheff* plaintiffs filed a motion for a court order for an effective remedy, but a year later the superior court declined, ruling that "the plaintiffs failed to wait a reasonable time" and that "the legislative and executive branches should have a realistic opportunity to implement their remedial programs before further court intervention."<sup>17</sup> After continued limited progress, the plaintiffs filed a similar motion in December 2000, which resulted in a three-week hearing in 2002, followed by settlement negotiations into the next year.<sup>18</sup>

#### THE SHEFF I SETTLEMENT AND FAILURE TO MEET THE GOAL (2003–07)

In January 2003, after several years of litigation, the *Sheff* plaintiffs and the Connecticut attorney general (representing the defendants) announced a legal settlement. This four-year remedy, known today as *Sheff I*, called for the expansion of voluntary desegregation measures, with the modest goal of enrolling 30 percent of Hartford minority students in reduced-isolation settings by 2007.<sup>19</sup> At that time, both parties estimated that 10 percent of Hartford minority students were already enrolled in its two key programs: interdistrict magnet schools and Project Choice city-suburb transfers. Under Connecticut statute, the attorney general must submit a legal settlement with financial appropriations to the legislature, but it requires a three-fifths majority vote in both houses to override it. When Connecticut's house of representatives voted 87–60 in favor of the \$135 million resolution and the state senate did not object, the *Sheff I* settlement became law.<sup>20</sup>

Under this four-year agreement, the number of interdistrict magnet schools in the region rose to twenty-two, featuring a wide range of themes designed to attract both city and suburban students: the arts, character education, classics, Montessori, multiple intelligences, and science. Fourteen magnets were located within the City of Hartford, while the others were established in nearby suburbs with significant percentages of minority students. Most were managed by a regional service cooperative known as the Capitol Region Education Council (CREC), or directly by the Hartford Public Schools (HPS). All of the CREC magnets had been established before 2003 as partnerships between districts that reserved a number of seats in new buildings that were

constructed primarily with state subsidies.<sup>21</sup> By contrast, the *Sheff I* settlement specifically called for creating eight additional "host" magnet schools, to be operated by HPS, over the four-year agreement. Most of these began by converting an HPS neighborhood school into a thematic magnet school, with long-term plans for major renovations or new building construction, using state subsidies.<sup>22</sup>

On average, interdistrict magnet schools were more racially balanced than most of the typical city or suburban school that students would have attended.<sup>23</sup> Yet the racial composition of magnet schools varied widely, particularly at the end of the four-year settlement. At one extreme, the Simpson-Waverly Classical elementary magnet school (operated by HPS) enrolled 95 percent minority students in a building that had previously been a regular neighborhood school by the same name. At the other extreme, the Greater Hartford Academy of the Arts high school resource center (operated by CREC) enrolled 26 percent minority students in a brand-new building with multiple spaces for rehearsals and performances. Accordingly, these two magnet schools served very different student populations. Simpson-Waverly Classical enrolled 154 Hartford minority students (or 74 percent of its magnet population) among all grade levels that had been phased into the magnet program. In contrast, the Greater Hartford Academy of the Arts enrolled only 49 Hartford minority students (or 12 percent of its magnet population), drawing a far larger percentage of suburban students in 2006–07.<sup>24</sup>

To the surprise of some desegregation planners, over 40 percent of all minority students who attended magnets lived in suburban school districts in 2006–07. When the *Sheff* case was filed in 1989, many people envisioned the "suburbs" as uniformly white towns and did not anticipate the growth of black and Latino student populations, particularly in inner-ring suburbs, during the 1990s and 2000s. Between 1989 and 2007, the minority student population rose sharply in nearly all suburbs, including those with previously sizable numbers of minority students (Windsor rose from 31 percent to 66 percent) and those that were previously nearly all white (Wethersfield rose from 4 percent to 20 percent). When Hartford-area magnet schools opened and began advertising for students, many planners anticipated that the suburbs would generate primarily white applicants. But when totaling all magnet enrollments in 2006–07, the share of suburban minority students (29%) surpassed that of suburban white students (25%). Most important, given the majority of white students in all Hartford-area suburbs, this means that suburban minorities are enrolling in magnets at significantly higher rates than whites.<sup>25</sup>

Initially, the highly favorable publicity surrounding new magnet schools may have led the public to mistakenly believe that all magnet schools counted toward reaching the *Sheff* goal of 30 percent Hartford minority students in reduced-isolation settings by 2007. But this was not the case. The “Missing the Goal” report by the authors of this chapter found a greater number of Hartford minority students enrolled in magnets that did not meet *Sheff* desegregation standards than in those that did. According to the 2003 *Sheff I* settlement, a magnet school meets the desegregation standard if the proportion of minority students does not exceed a specified limit, calculated as 74 percent in 2006–07. (The calculation is based on the percentage of minority students in the entire twenty-two-district *Sheff* region [44 percent in that year], plus thirty percentage points, to create the 74 percent standard.) To complicate matters, the settlement exempted magnet schools from meeting the desegregation standard during their first three years of operation, meaning a magnet would qualify for a period of time, then not qualify when its exemption expired. In addition, many Hartford students attended HPS magnet schools but were not officially enrolled in magnet programs, since converted elementary magnets typically phased in grades from kindergarten upward each year. Some older elementary students attended schools that were magnets in name only.<sup>26</sup>

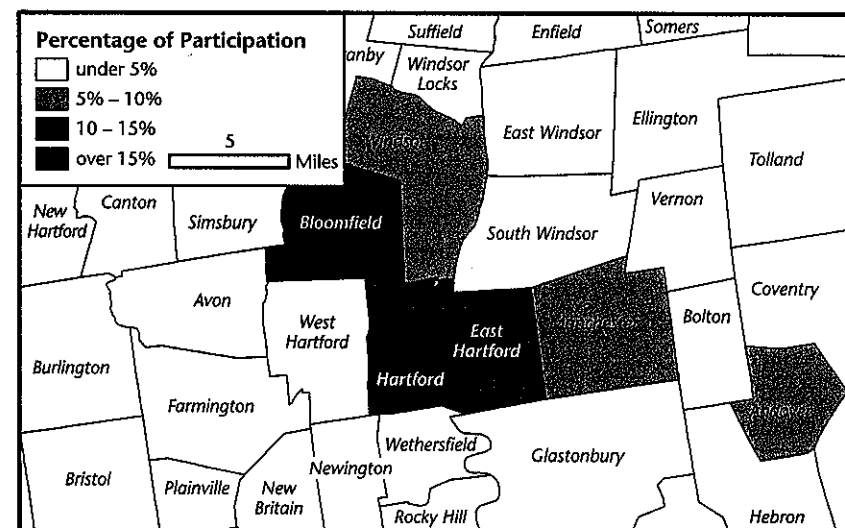
The second major initiative of the *Sheff I* desegregation agreement called for expanding the Project Choice city-suburb transfer program, also operated by CREC. When the 2003 settlement was announced, Project Choice enrolled almost nine hundred students, the vast majority of them Hartford minority students who transferred to suburban school districts. (Officially, Project Choice permits transfers in either direction, but hardly any suburban students apply to enroll in Hartford neighborhood schools, and few of Hartford’s remaining white students use the program to leave the city school district.) During settlement negotiations, both parties expected that suburban districts would agree to enroll seven hundred more Project Choice minority students from Hartford, for a projected total of 1,600. Despite these intentions, Project Choice remained stuck at 1,070 students in 2007, making only a fraction of the progress hoped for by desegregation planners.<sup>27</sup>

In comparing maps of the Hartford region, suburban district participation in magnet schools is nearly the opposite of its participation in Project Choice. Districts sending the highest percentage of students to magnet schools tend to be in the inner-ring suburbs with the largest proportions of minority students (see map 5.1). For example, Bloomfield, a suburban district with 95 percent minority students, has the highest magnet participation rate, with

one out of five students (21%) attending an interdistrict magnet. Other suburban districts with high levels of minority students (East Hartford, 76 percent; Windsor, 66 percent; and Manchester, 46 percent) follow with the next highest magnet participation rates, ranging from 5 percent to 10 percent. Conversely, Project Choice participation rates are highest in outer-ring suburban districts with large proportions of white students, such as Canton and Granby, where magnet rates also rank among the lowest (see map 5.2).<sup>28</sup> Note that when students apply to the magnet program, they select one or more specific schools, but when students apply to Project Choice, they have little control over the suburban district they are assigned to.

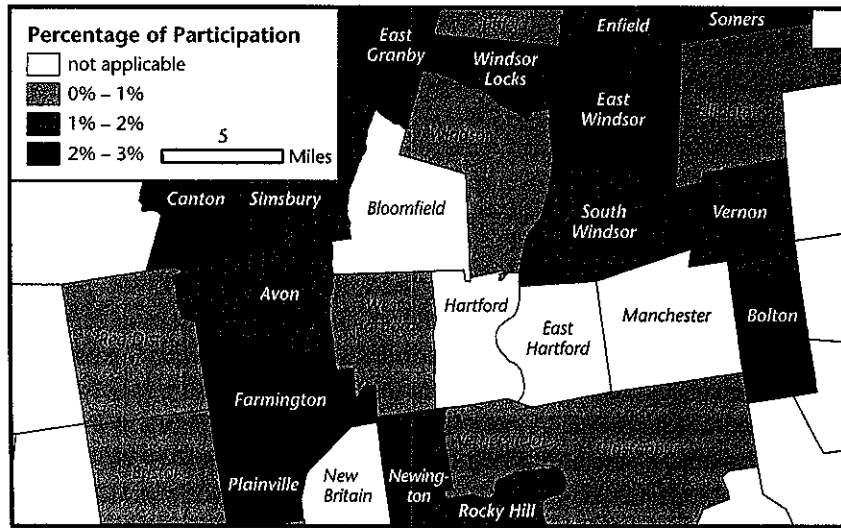
By 2007, the *Sheff I* remedy had failed to meet its goal for 30 percent of Hartford minority students to be educated in reduced-isolation settings. When adding up all of the data permitted under the settlement, the percentage had climbed to only 17 percent, far short of the targeted goal for June 2007. The numbers became more troubling when broken down into two categories: legal compliance and actual students. The “Missing the Goal” report distinguished between the percentage of the goal attained from all factors (“legal compliance,” which included all exemptions and part-time programs) versus those attained by Hartford minority students enrolled in full-time reduced-isolation programs (“actual students”). After subtracting 1,033 stu-

MAP 5.1: Magnet School Participation, as Percentage of Total District Enrollment, 2006–07



a higher-quality, color version of this map is available:  
<http://www.trincoll.edu/depts/educ/css/Sheff2007.html>

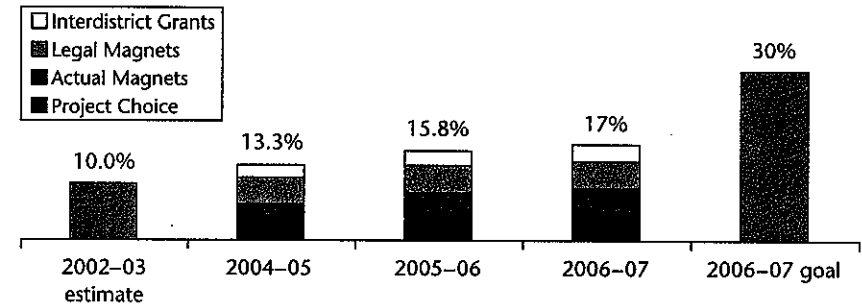
MAP 5.2: Project Choice Participation, as Percentage of Total District Enrollment, 2006-07



dents (4.7%) enrolled in racially imbalanced magnet schools (exempted due to being opened within the previous three years), and another three percentage points (based on full funding levels for part-time interdistrict cooperative grants, not full-time schools), the rate of actual Hartford minority students enrolled in reduced-isolation settings fell to 9.3 percent. In other words, the settlement began with an official estimate of 10 percent in 2002-03, but four years later the actual percentage of Hartford minority students in reduced-isolation magnet schools and Project Choice suburban districts had fallen slightly backwards, to 9.3 percent (see figure 5.1 and table 5.1).<sup>29</sup>

During the eighteen years between the original filing of the *Sheff* lawsuit in 1989 to the end of the settlement period in 2007, the racial demographics of students remained nearly the same in central city schools but rose dramatically in most suburbs. Minority students comprised 91 percent of the Hartford Public Schools in 1988-89, a figure that rose slightly to 94 percent in 2006-07. But during the same period, every one of the suburban school districts in the Hartford metropolitan region experienced substantially more growth in the percentage of its minority students. In some suburbs, the growth appeared small (like rural Suffield, from 3 percent to 6

FIGURE 5.1: Actual and Legal Progress toward *Sheff I* Goal, 2003-2007



percent minority), while in many other suburbs, racial change was widely noticed (like West Hartford, from 12 percent to 34 percent minority, and East Hartford, from 23 percent to 76 percent minority). Overall, in the twenty-one suburban districts named in the original *Sheff* lawsuit (excluding the city of Hartford), the proportion of minority students rose from 12 percent in 1988-89 to 30 percent in 2006-07. Programmatic voluntary integration efforts such as magnet schools and city-suburban transfers did not change

TABLE 5.1: Hartford Minority Students in Public Schools, 2006-07

| Magnet Schools   | Students      | Percentage toward Sheff Goal |
|--|---------------|------------------------------|
| Actually meeting <i>Sheff</i> standard ( $\leq 74\%$ minority)   | 973           | 4.4                          |
| Legally meeting <i>Sheff</i> standard ( $\leq 3$ rd year of operation)   | 1,033         | 4.7                          |
| Not meeting <i>Sheff</i> standard ( $> 74\%$ minority and 3+ years)  | 1,043         |                              |
| Grade levels not phased into magnet program  | 1,406         |                              |
| Project Choice city-suburb transfers   | 1,070         | 4.9                          |
| Hartford neighborhood schools  | 16,412        |                              |
| <b>Total</b>   | <b>21,937</b> |                              |
| Interdistrict cooperative grants (calculated by level of state funding for part-time program, not actual students) |               | 3.0                          |
| <b>Total Percentage</b>  |               | <b>17.0</b>                  |

Source: Connecticut State Department of Education, 2007.<sup>30</sup>

the circumstances for the vast majority of Hartford students who continued to attend racially isolated neighborhood public schools (over 16,400 out of nearly 22,000 students, or 75 percent).<sup>31</sup> But suburban districts did experience non-programmatic forms of voluntary integration, as minority families rented apartments and purchased homes, bringing demographic changes that could not be ignored. The ground had shifted under the feet of the *Sheff* remedies because the suburban schools of today no longer look as white as they did over twenty years ago.

#### WHY THE PICS DECISION DOES NOT (YET) APPLY TO SHEFF

When the *Sheff* plaintiffs and defendants were publicly discussing the limited outcomes of the four-year remedy with Connecticut state legislators in June 2007, the U.S. Supreme Court delivered its highly contested ruling in the Seattle/Louisville case. In its 4–1–4 decision, the Court held that school districts may take voluntary steps to promote racial diversity, but placed limits on classifying individual students solely by race to achieve this goal. Although Justice Kennedy, the swing vote, recognized racial diversity as a compelling interest and specifically approved of several of race-conscious measures (such as considering race when drawing attendance boundaries and recruiting students), he rejected both the Seattle and Louisville student assignment plans. Both districts considered the race of individual students as the sole factor in making “tie-breaker” decisions about the schools they would attend, thereby using race in a way that was not “narrowly tailored to its purpose.”<sup>32</sup>

Amid the confusion and anxiety surrounding this complex decision from Washington, D.C., local advocates and officials in Connecticut asked whether or not it applied to the *Sheff* case. Dennis Parker, an American Civil Liberties Union attorney and long-term counsel for the *Sheff* plaintiffs, provided some clear answers. First, Parker explained that “*Sheff* is a court-ordered remedial case and not a voluntary one.”<sup>33</sup> Unlike the Seattle and Louisville districts, which voluntarily decided to promote racial diversity, the Connecticut Supreme Court ruled in 1996 that the state constitution’s equal education clause had been violated, and it required a remedy to address the needs of Hartford’s schoolchildren. Hypothetically, the U.S. Supreme Court could issue a future ruling that a violation of Connecticut’s state constitution would be insufficient grounds to meet federal court standards on race and schooling, but such a conflict between federal and state courts seems highly unlikely. Given the existing context, Connecticut’s court-ordered remedy blocks federal intrusion into *Sheff*.

Attorney Parker pointed to a second reason why the Seattle/Louisville ruling does not apply to *Sheff*. Unlike desegregation plans overturned by the U.S. Supreme Court for classifying students solely on the basis of race, Parker explained to state legislators that in the *Sheff* remedy “there’s no specific program that says that you have to achieve these goals by denying students the opportunity to go to individual schools on the basis of their race.”<sup>34</sup> Connecticut’s policy and practices on interdistrict magnet schools support Parker’s claim. For example, the state law that established magnets specifically mentions their goal of promoting racial diversity and requires that newer magnets meet a racial target to qualify for state funds, but it does not consider the race of individual students.<sup>35</sup> When students apply to Hartford-area magnet schools they indicate their individual race on the form, but the lottery system is driven by students’ place of residence. In HPS magnet school lotteries, applications are divided into two categories: Hartford-resident versus non-resident. In CREC magnets, where several districts cooperate to pay for their allocation of seats, separate lotteries are run for applicants from each district. “We’ve never had to use a lottery that was race based,” explained Bruce Douglas, CREC’s executive director.<sup>36</sup> Instead, magnet school planners avoid individual student race by using residence as a proxy.

But Connecticut policy underlying the Project Choice city-suburb transfer program is different, and its use of racial classification might not meet the strict scrutiny standard of the Seattle/Louisville ruling if it were to be challenged in federal court. Although Project Choice eligibility is open to students of all races, statutory language specifically restricts the percentage of white Hartford students who may participate. The law states: “Beginning with the 2001–02 school year, the proportion of students who are not minority students to the total number of students leaving Hartford . . . to participate in the program shall not be greater than the proportion of students who were not minority students in the prior school year to the total number of students enrolled in Hartford . . . in the prior school year.”<sup>37</sup> In other words, white Hartford students may apply to Project Choice to leave Hartford (and therefore increase racial isolation), but their numbers must be proportionate (or lower) than the previous year.

Consider this hypothetical test case, which could happen only if a federal court intervened against Connecticut’s constitutional basis for its court-ordered *Sheff* remedy. The vast majority of Project Choice students are black or Hispanic, but there is a small handful of white students who also use the program to transfer out of Hartford Public Schools. All applications are entered into the same database, for a race-neutral lottery. Looking back on

previous years, the number of white Hartford participants has been slowly declining from seven (0.65%) in 2006–07, down to six (0.55%) in 2007–08 (see table 5.2).<sup>38</sup> But imagine that, in 2008–09, the lottery selected at least two white Hartford applicants who both accepted the Project Choice transfer, thereby raising the number of whites to eight, while the base total remained constant. This increase in the proportion of white Hartford participants over the previous year would clearly violate the statute above. In order to comply with state law, would CREC (the Project Choice manager) be required to remove one of the white Hartford participants from the program solely on the basis of the individual's race? If so, would that white individual have a case against Connecticut on the grounds of the Seattle/Louisville decision?

If such a case went to federal court with no recognition for the state court-ordered remedy, then the Seattle/Louisville decision would force the question, Is the use of race in Project Choice “narrowly tailored” to its compelling interests? Most likely, the answer is no, for three reasons. First, like the Seattle case, the Connecticut statute supporting Project Choice uses a simplistic binary system of racial classification (“minority” versus “not minority”), which does not recognize multiple dimensions of diversity. Second, Connecticut does not yet have a strong body of evidence that it has considered race-neutral alternatives. In Project Choice, white student participation is restricted by a race-specific statute (unlike the magnet program, which uses residence as a proxy for race). No other student characteristics are considered, with the exception of their residence in the City of Hartford and a routine preference for siblings or No Child Left Behind transfers. Third, Project Choice's race-conscious plan does not affect a sufficient number of white students to be deemed “necessary” to achieve integration.<sup>39</sup> While only a hypothetical case (premised on an unlikely federal-state conflict), the exercise suggests that the Seattle/Louisville ruling may have placed one aspect of the *Sheff* remedy on shakier legal ground than previously realized.

TABLE 5.2: Project Choice Participants from Hartford, by Race, 2006–08

| Year    | Black | Hispanic | White | Other | Total | Percentage White |
|---------|-------|----------|-------|-------|-------|------------------|
| 2006–07 | 858   | 208      | 7     | 4     | 1077  | 0.65             |
| 2007–08 | 862   | 217      | 6     | 6     | 1091  | 0.55             |

Source: Connecticut Department of Education, 2007, 2008.

### WHY DID THE SHEFF I REMEDY FAIL?

Why did the *Sheff I* remedy fail to meet its goal of enrolling 30 percent of Hartford minority students in reduced-isolation settings by 2007? Competing interpretations arose among the wide range of stakeholders: the plaintiffs, defendants, legislators, and state education officials. For each of these parties, their diagnosis of the problem behind the original *Sheff I* remedy was informed by their desire to shape negotiations over the subsequent *Sheff II* remedy. Furthermore, as the policymaking process expanded simultaneously in the state's judicial and legislative branches, stakeholders clashed on whether the next remedy should be determined by a judge's order or political compromise.

Before the four-year settlement period ended, many observers pointed to logistical barriers that slowed progress toward the goal. On a practical level, state education officials lamented delays in new magnet school construction, which reduced the number of available seats. Many observers also called attention to the absence of a joint magnet office, a “one-stop-shopping” destination where applicants could submit one common application form to the twenty-two interdistrict magnet schools operated by CREC, HPS, and two suburban districts. Similarly, both magnet and Project Choice managers complained about the difficulty of arranging an efficient school bus system to prevent students' having long bus rides between city and suburban districts.<sup>40</sup>

Although every metropolitan desegregation plan faces logistical challenges, the absence of clear governance over the *Sheff I* remedy made these problems even worse in Connecticut. “Murky accountability” was the key problem identified by journalist Rachel Gottlieb Frank, who listed a long string of oversight changes during the 2003–07 settlement period, including “five state education commissioners, multiple reorganizations of the state Department of Education, four Hartford superintendents, a transition from State control over Hartford schools to local control, and the creation and disbanding of a magnet school office in Hartford.”<sup>41</sup> Although the *Sheff v. O'Neill* lawsuit was filed by plaintiffs against the State of Connecticut, most of the responsibility for implementing the *Sheff I* settlement rested with the HPS and CREC, which managed the magnet schools, and with CREC, which managed Project Choice. Oddly, the Connecticut Department of Education played an indirect monitoring and funding role during most of 2003–07. “The overall process has no quarterback, no lead manager, no commander,” Leonard Stevens, the plaintiffs' desegregation expert, complained in 2004. “The State

permits the process to unfold virtually at will, limits its role to observation, unintrusive technical advice and distribution of state-level funding.<sup>42</sup>

Beyond governance issues, the *Sheff I* remedy also suffered from two significant flaws in its policy design. First, as noted above, Hartford-area magnet schools are somewhat ineffective policy tools for achieving racial balance. Although the *Sheff I* remedy specified numerical goals for the percentage of Hartford minorities in desegregated settings, the interdistrict magnet lotteries used urban/suburban residence as a proxy for race. Given the suburban minority students' high level of interest in magnets (over 40 percent of all magnet minority students reside in a suburb outside of Hartford), planners were surprised by how few of the magnet schools met the desegregation standard.<sup>43</sup> In the wake of the Seattle/Louisville ruling, advocates of voluntary desegregation plans should pay close attention to the negative example taught by *Sheff I*: this implementation of a perfectly legal, residence-based magnet lottery did not produce the intended racial-balance results.

A second major desegregation policy flaw was the legislature's failure to align the *Sheff I* magnet enrollment goals in with its own magnet funding requirements. When the *Sheff* plaintiffs and defendants agreed to the 2003 legal settlement, it called for all interdistrict magnet schools to meet a specific desegregation standard—to enroll fewer than 75 percent minority students within three years—in order to count toward the overall goal. However, Connecticut statutes continued to fund interdistrict magnets that violated this portion of the *Sheff I* remedy as long as they were established before July 2005.<sup>44</sup> As a result, several long-standing magnet schools continued to receive funding while enrolling 75 percent or more minority students. Connecticut's financial incentives for magnet administrators were not directly aligned with the goals of the *Sheff I* remedy.

On another policy level, the *Sheff I* remedy was burdened by powerful disincentives against suburban participation in magnet schools and Project Choice. Indeed, several observers have commented on suburban whites' fears about attending schools with black or Hispanic urban students. "Suburban parents have some trepidation about sending their children into the inner city," noted Tom Murphy, spokesperson for the Connecticut Department of Education. "Whether it's perceived or accurate, we are aware of it."<sup>45</sup> Nevertheless, white racism alone does not explain the failure of *Sheff I*. According to combined datasets, approximately eight hundred suburban whites applied to magnet schools located within the City of Hartford for 2006–07.<sup>46</sup> Similarly, for every suburban district that enrolls a small percentage of urban Project Choice students (such as Wethersfield, which enrolled only thirteen

Hartford minorities, or 0.3 percent of its total student population), there are other suburbs that enroll a greater share (such as Farmington, which enrolled ninety-five Hartford minorities, or 2.2 percent of its total student population). White racism exists, but it is not uniformly pervasive enough to fully justify the demise of *Sheff I*.

The most important suburban disincentives against magnet and Project Choice participation are those created by state policies. Local school board member and policy analyst David MacDonald identified the two-part problem behind magnet school funding. First, the typical state reimbursement for magnet school students during the *Sheff I* settlement did not cover the actual costs of providing this education. In 2003, the typical reimbursement rate for a suburban student in a CREC-managed magnet was about \$5,000 per pupil, while the actual operating expense ranged between \$7,000 and \$10,000 per pupil. Suburban districts were expected to pay "tuition" to cover the \$2,000 to \$5,000 gap for each of their pupils, and when several districts refused or were unable to pay, CREC ran a multimillion-dollar deficit.<sup>47</sup> Second, when the Connecticut legislature modified the magnet funding formula in 2002, the outcome favored Hartford-managed host magnets, which created "a disincentive for school districts to develop a significant number of interdistrict magnet schools that have a balance of students from multiple districts," such as the CREC model.<sup>48</sup>

Project Choice also has been seriously hampered by state-level financial disincentives against suburban participation. Connecticut reimburses suburban districts only \$2,500 per student transfer from Hartford, despite an average expenditure of \$10,000 per pupil. As a result, school desegregation researcher Erica Frankenberg concluded, "Most districts report that they determine how many seats to offer for Project Choice students by looking at their projected enrollments by grade. . . . In other words, they will take [Hartford] students if it is convenient for them."<sup>49</sup> The state's financial incentive is so low that it only makes sense for suburban districts to accept Project Choice students into a handful of seats that would otherwise remain empty in an existing classroom. The funding fills in the margins, where they exist, but does not inspire more meaningful participation. Furthermore, suburban legislators and school board members are very aware that Project Choice is "a losing proposition" for them financially. "In communities that have a reputation for being fiscally conservative," Frankenberg warns, "Project Choice could be targeted" in local town budget disputes.<sup>50</sup>

Perhaps the most troubling disincentive against suburban participation in the *Sheff* remedy is the one caused by the federal No Child Left Behind

Act, whose original purpose was to reduce the racial achievement gap. Under NCLB, school districts experience increased pressure to maintain “adequate yearly progress” in subgroup test scores, but this federal pressure runs counter to the state’s desegregation agenda. According to Connecticut law, for the purposes of standardized testing requirements, Hartford students who participate in the Project Choice transfer program “shall be considered residents of the school district in which they attend school,” meaning the suburban district.<sup>51</sup> Given that Hartford minority student scores, on average, fall below NCLB cutoffs, suburban districts risk penalties in accepting Project Choice students. Furthermore, as Frankenberg points out, some suburban schools “have so few minority students that accepting a substantial number of Project Choice students might trigger an additional ‘subgroup’ that they would be held accountable for under NCLB.”<sup>52</sup> For example, under NCLB regulations, the suburban district of Avon was not required to report African American students’ scores as a subgroup in 2006–07 because there were slightly fewer than forty black students in grades three through eight combined that year. If the Avon School District increased its number of Project Choice minority students, it would risk crossing the forty-student threshold for black students, which would require them to report data for this subgroup. If an insufficient percentage of black students in Avon met the NCLB cutoff, then the entire district would lose its currently “perfect” status in achieving adequately yearly progress (see figure 5.2).<sup>53</sup> According to Frankenberg, one way to remove this suburban disincentive would be “to provide a waiver for an initial period in exchange for a school accepting a certain number of students,” which is possible under the safe haven provision of NCLB.<sup>54</sup> But this safe haven provision would only mask the problem for a specific period of time, and suburban state legislators are very aware of this disincentive.<sup>55</sup>

Beyond these questions of policy disincentives, there have been persistent questions about whether a voluntary desegregation plan comprised of inter-district magnets and city-suburban transfers could truly integrate Hartford schools with its surrounding suburban neighbors. By design, Project Choice can only serve a small proportion of Hartford minority students (currently 1,000 out of nearly 22,000), unless its goal shifts to “emptying out” all of Hartford’s neighborhood schools, which has never been a realistic option. Similarly, constructing new magnet schools in Hartford can only go so far until it replaces all neighborhood schools. Both interdistrict magnets and Project Choice are also limited by transportation constraints across distance: students can only travel so far before the amount of time spent on buses conflicts with the broader mission. Hartford minority student attrition from

FIGURE 5.2: Adequate Yearly Progress (AYP) Status Data for the Avon School District, 2006–07 School Year

**Adequate Yearly Progress (AYP) Status Data for the 2006–07 School Year**

4-00

Based on 2007 Connecticut Mastery Test (CMT) results and the 2007 Connecticut Academic Performance Test (CAPT)

The tables below show this district’s performance on the AYP indicators. A district fails AYP if there is a “No” under the AYP Target Met column for BOTH the CMT and the CAPT. Only students who were enrolled in this district for the full academic year were included in these calculations.

**Connecticut Mastery Test (CMT) Results (Grades 3 through 8)**

| Subgroup                               | Participation Rate (95% participation needed) |             |         |             |                 |                                     | % At or Above Proficient                |                                 |                 |     |
|--|---|-------------|---------|-------------|-----------------|-------------------------------------|---|---------------------------------|-----------------|-----|
|  | Mathematics                                   |             | Reading |             | AYP Target Met? | Mathematics (74% proficient needed) |   | Reading (68% proficient needed) |                 |     |
|  | Current                                       | 3 Year Avg. | Current | 3 Year Avg. |                 | AYP Calculation                     | AYP Target Met?                         | AYP Calculation                 | AYP Target Met? |     |
| Whole District                         | 99.9  | 100         | 100     | 99.9        | 100             | 100                                 | 96.6                                    | Yes                             | 94.9            | Yes |
| American Indian                        | Fewer than 40 students in this subgroup       |             |         |             |                 |                                     | Fewer than 40 students in this subgroup |                                 |                 |     |
| Asian American                         | 100   | 100         | 100     | 99.3        | 100             | 99.5                                | 99                                      | Yes                             | 99.7            | Yes |
| Black                                  | Fewer than 40 students in this subgroup       |             |         |             |                 |                                     | Fewer than 40 students in this subgroup |                                 |                 |     |
| Hispanic                               | 100   | 100         | 100     | 100         | 100             | 100                                 | 99.1                                    | Yes                             | 99              | Yes |
| White                                  | 99.9  | 100         | 100     | 99.9        | 100             | 100                                 | 97.2                                    | Yes                             | 95.3            | Yes |
| Students with Disabilities             | 100   | 100         | 100     | 100         | 99.5            | 99.7                                | 77.4                                    | Yes                             | 70.3            | Yes |
| English Language Learners              | Fewer than 40 students in this subgroup       |             |         |             |                 |                                     | Fewer than 40 students in this subgroup |                                 |                 |     |
| Economically Disadvantaged             | 100   | 100         | 100     | 100         | 100             | 100                                 | 90.5                                    | Yes                             | 88.7            | Yes |
| Additional Academic Indicator: Writing | AYP Target Met?                               |             |         |             |                 |                                     | Yes                                     |                                 |                 |     |

(continues)

FIGURE 5.2: (Continued)

| Subgroup                                       | Participation Rate (95 % participation needed) |             |             |         |             |             | % At or Above Proficient                |                 |   |                 |
|--|--|-------------|-------------|---------|-------------|-------------|---|-----------------|---|-----------------|
|  | Mathematics                                    |             |             | Reading |             |             | Mathematics (69 % proficient needed)    |                 | Reading (72 % proficient needed)        |                 |
|  | Current  | 2 Year Avg. | 3 Year Avg. | Current | 2 Year Avg. | 3 Year Avg. | AYP Calculation                         | AYP Target Met? | AYP Calculation                         | AYP Target Met? |
| Whole District                                 | 99.2   | 99.6        | 99.7        | 98.7    | 99.4        | 99.6        | 100                                     | Yes             | 100                                     | Yes             |
| American Indian                                | Fewer than 40 students in this subgroup        |             |             |         |             |             | Fewer than 40 students in this subgroup |                 | Fewer than 40 students in this subgroup |                 |
| Asian American                                 | Fewer than 40 students in this subgroup        |             |             |         |             |             | Fewer than 40 students in this subgroup |                 | Fewer than 40 students in this subgroup |                 |
| Black  | Fewer than 40 students in this subgroup        |             |             |         |             |             | Fewer than 40 students in this subgroup |                 | Fewer than 40 students in this subgroup |                 |
| Hispanic                                       | Fewer than 40 students in this subgroup        |             |             |         |             |             | Fewer than 40 students in this subgroup |                 | Fewer than 40 students in this subgroup |                 |
| White  | 99.1   | 99.6        | 99.4        | 98.6    | 99.3        | 99.2        | 100                                     | Yes             | 100                                     | Yes             |
| Students with Disabilities                     | Fewer than 40 students in this subgroup        |             |             |         |             |             | Fewer than 40 students in this subgroup |                 | Fewer than 40 students in this subgroup |                 |
| English Language Learners                      | Fewer than 40 students in this subgroup        |             |             |         |             |             | Fewer than 40 students in this subgroup |                 | Fewer than 40 students in this subgroup |                 |
| Economically Disadvantaged                     | Fewer than 40 students in this subgroup        |             |             |         |             |             | Fewer than 40 students in this subgroup |                 | Fewer than 40 students in this subgroup |                 |
| Additional Academic Indicator: Graduation Rate |  |             |             |         |             |             | AYP Target Met?                         |                 | Yes                                     |                 |

Source: No Child Left Behind Report, Avon School District, 2006-07.

Project Choice is becoming a more serious issue, as participation rates grow higher in the outer-ring suburbs than the inner-ring suburbs.<sup>56</sup> As Leonard Stevens, the *Sheff* plaintiffs' desegregation expert, warned, "Integration programs by definition depend on a two-way flow of students; otherwise, students of one racial group bear a disproportionate share of the burden of traveling to get to integrated schools."<sup>57</sup>

**THE INITIAL SHEFF II PROPOSAL—AND WHY IT COLLAPSED**

In late May, 2007, as the four-year *Sheff I* remedy drew to a close, the plaintiffs and defendants negotiated a new settlement proposal, the first attempt to craft a *Sheff II* agreement. The new plan featured the ambitious goal of increasing the percentage of Hartford minority students in reduced-isolation settings from 22 percent (in 2008-09) to 41 percent (in 2011-12)—far above the level of 17 percent in the original remedy.<sup>58</sup> Most important, to achieve the numerical goal, the *Sheff II* proposal envisioned a dramatic change in implementation authority. The proposal outlined a "comprehensive management plan" for bringing existing interdistrict magnets into compliance, creating new school choice options and expanding Project Choice in the suburbs. "The responsibility for implementing [it] now rests clearly in the State Department of Education," *Sheff* attorney Dennis Parker explained, rather than with the Hartford Public Schools and CREC, which would continue to provide services but were not legally responsible under the 1996 *Sheff* decision.<sup>59</sup> Under Connecticut law, Attorney General Richard Blumenthal (representing the state as the defendant) submitted the proposal and its financial appropriation to the state legislature, which, during a 30-day period, could strike down the settlement with a three-fifths majority in both houses.

State legislators from both suburban and urban districts sharply critiqued the initial *Sheff II* remedy. State senator Thomas Gaffey, cochair of the education committee and a key Democratic leader behind the 1997 legislative response to *Sheff*, opened the public hearing on the 2007 proposal with a challenge to its supporters. "Prove to us how investing another \$112 million in essentially the same model we've been following for the last decade will produce real results in easing racial isolation and enhancing student achievement for the school district of the City of Hartford," Gaffey insisted, raising a concern felt by many suburban lawmakers.<sup>60</sup> Representative Doug McCrory, an African American educator from Hartford, also expressed serious doubts. McCrory asked whether the *Sheff* remedy placed too much emphasis on achieving numerical desegregation goals rather than lifting minority

student achievement, particularly given Connecticut's status as having the highest racial achievement gap in the nation. "We focus a lot on the desegregation part, but one part we refuse to talk about is the academic achievement of children," McCrory began. "I don't want anyone to think that I'm not a supporter of *Sheff*," he continued, adding that many of his peers had excelled in their education by leaving the Hartford Public Schools for suburban districts or parochial schools. But McCrory clearly was enamored of recent examples of predominantly black and Latino charter schools whose students scored exceptionally well on the Connecticut Mastery Test (CMT). "If we can develop some [charter] schools in the Hartford region [that are] 95 percent minority, and those kids are kicking butt on CMTs and the academic levels are high and they're going to college, I think our children should be in those schools."<sup>61</sup>

But the strongest opposition to the *Sheff II* agreement came from an unexpected political opponent: the City of Hartford. While *Sheff II* negotiations were underway between the plaintiffs and the attorney general, the City of Hartford received permission from the court to intervene in the litigation. Mayor Eddie Perez, the first elected Hispanic leader of a major Northeastern city, who also served as chair of its Board of Education, spoke at a public legislative hearing to stress "the unintended consequences of the financial burden that the first phase of the implementation had on the City of Hartford."<sup>62</sup> Although Hartford was not a party to the *Sheff I* settlement, that agreement required the city to pay up front to create eight new magnet schools, although the incomplete and delayed state reimbursement only covered 80 percent of the city's costs. Perez's newly appointed superintendent of Hartford Public Schools, Steve Adamowski, also criticized *Sheff II* on the grounds that "at this time it still has no specific plan" for realistically achieving its goal for 41 percent of Hartford minority students to be enrolled in reduced-isolation settings.<sup>63</sup>

Taken together, the legislature's skepticism about the costs and effectiveness of the *Sheff II* remedy, along with the City of Hartford's refusal to endorse it, caused a political derailment. Although the *Sheff* plaintiffs and the attorney general had negotiated an agreement in May 2007, the state legislature refused to act on it during the last few days of its regular session or its brief special session. Officially, the 30-day legislative review period had not expired and would not do so until the next regular session in spring 2008. *Sheff II* was going nowhere in the political process. As a result, in July 2007 the plaintiffs filed a motion to take the case back to court.<sup>64</sup>

Amid all of the controversy, one important piece of the *Sheff II* remedy was quietly approved by the legislature's June 2007 special session. The successful bill required that extra seats in magnet schools be filled by students whose districts did not participate in CREC magnet partnerships. For years, magnet advocates called attention to white suburban families who wanted to send their children to magnet schools but whose home district refused to participate by paying a share of the costs. The poster child was a white student from South Windsor, who wanted to attend the Greater Hartford Academy of Math and Science but was blocked by his home district. The boy's mother, Laurie O'Brien, lobbied the South Windsor Board of Education, the commissioner of education, and even the governor, but could not persuade anyone to let her son attend the magnet school, even after she offered to pay the cost. South Windsor refused to participate in interdistrict magnets, she concluded, because "towns want top intelligent students to stay in their towns because that keeps their [test] numbers up."<sup>65</sup> The new legislation now required magnets with open seats to give preference to students from nonparticipating districts, like South Windsor. The law also included a financial mandate: the home school district "shall contribute funds to support the operation of the interdistrict magnet school in an amount equal to the per student tuition, if any, charged to participating districts."<sup>66</sup> Identical language had appeared in the initial *Sheff II* proposal. In other words, Connecticut's magnet school law now had some (small) teeth: if a suburban family voluntarily wished to send their child to a magnet school, their decision would force their suburban district to pay a share of the costs. The law still supported the concept of voluntary desegregation, but if parents wanted to participate, it forced suburban districts to help fund it.

#### THE REDESIGNED SHEFF II PROPOSAL—AND WHY IT WAS APPROVED

When Connecticut Superior Court judge Marshall Berger opened the *Sheff v. O'Neill* hearing in November 2007, he faced attorneys for three separate parties. First, the *Sheff* plaintiffs, led by ACLU attorney Dennis Parker and his colleagues, filed the motion for a court-ordered remedy because eleven years had passed since the 1996 decision and the state legislature had failed to act on the *Sheff II* remedy the previous summer. The plaintiffs' witnesses testified about the limited progress achieved by the *Sheff I* remedy, plus the need for a stronger, comprehensive voluntary desegregation plan.<sup>67</sup> Second, Ralph Urban, the assistant attorney general defending the state, insisted that

no court-ordered action was necessary and that incremental improvements to the existing magnet schools and Project Choice program were clear signs of progress. Finally, John Rose, counsel for the City of Hartford, played the odd role of the third-party intervener in this long-running litigation. While Hartford's chief complaint was the state's failure to fully reimburse its magnet costs, the city's leading witness, Superintendent Adamowski, strongly supported the plaintiffs' demand for a comprehensive desegregation plan with a special master, and pushed it further by calling for a metropolitan school district—a politically unpopular plan last raised in the 1990s.<sup>68</sup>

After two weeks of testimony and two additional months of deliberation, Judge Berger issued what appeared to be an anticlimactic ruling in January 2008. Technically, the initial *Sheff II* proposal was still pending before the legislature, since the 30-day review period had not officially expired when the session adjourned. Therefore, Judge Berger officially ruled that the initial *Sheff II* plan would become law thirty days after the legislature reconvened in spring 2008, if the resolution was not voted down or withdrawn by the attorney general.<sup>69</sup> But behind closed doors, negotiations continued over a revised *Sheff II* proposal that would address concerns raised in the courtroom and the legislature. In March 2008, the initial agreement was withdrawn and subsequently replaced in April 2008 with a revised agreement reached by the plaintiffs and the defendants.<sup>70</sup> The City of Hartford did not sign on to this version, nor did it actively oppose it.

Like its predecessor, the revised *Sheff II* remedy identifies specific goals for increasing the number of Hartford minority students in reduced-isolation settings over a five-year period. While the agreement begins with conventional percentage goals (starting at 19 percent in 2008–09), it now concludes with a demand-driven goal, where 80 percent of the applications by Hartford minority students for reduced-isolation settings must be met by 2012–13.<sup>71</sup> According to plaintiff attorney Dennis Parker, this is the only demand-driven school desegregation goal by law in the nation. At this point, it remains unclear what a demand-driven goal would look like in practice or if it might introduce unforeseen issues, such as a disincentive against marketing magnets and Project Choice by the State of Connecticut, which is legally obligated to meet 80 percent of the Hartford minority demand.

To help achieve the revised *Sheff II* goals, the settlement agreement includes a lengthy outline for a comprehensive management plan to be produced by the state by the end of 2008, which encompasses magnets, Project Choice, and other existing school choice programs such as charters and vocational-technical schools. The revised five-year operating cost (\$125 million) is simi-

lar to the initial proposal's price tag (\$112 million), but the revised plan also could result in an additional \$483 million of construction costs and debt service for approximately five new magnet schools.<sup>72</sup> Overall, the second draft of *Sheff II* is much more robust than the first draft.

When the *Sheff* plaintiffs and defendants testified on behalf of the revised *Sheff II* remedy before the state legislature's education committee in April 2008, they encountered similar skepticism and doubts that had arisen nearly a year earlier. Suburban and urban legislators sharply questioned the witnesses about the costs and expected results, the role of academic achievement, and their concerns about acting on this resolution before the comprehensive management plan has been drafted. Most interesting was an exchange between education committee cochair Senator Gaffey and the new commissioner of education, Mark McQuillan, regarding the proper degree of governmental authority necessary to implement the desegregation agreement. Commissioner McQuillan suggested that suburban school superintendents had expressed more support for enrolling Hartford students through Project Choice. Senator Gaffey replied that suburban superintendents serve at the behest of their boards of education, which may not be as supportive. He then pointedly asked his witness, "Do you contemplate the need to seek additional authority?"

"At this point, no," Commissioner McQuillan replied, demurring the senator's offer for greater authority to pressure suburban districts to participate in school desegregation.<sup>73</sup> Perhaps this dance between the branches of state government is part of an elaborate diplomatic strategy to entice voluntary cooperation from reluctant suburbs. Given the context, Commissioner McQuillan can present suburban districts with a "choice": either increase participation in *Sheff* voluntarily or face mandatory participation requirements from the state legislature—or, if that fails, the plaintiffs will win an even stronger court order from Judge Berger. The outcome of this political calculus is unclear, but it would not be the first (or the last) time that Connecticut has grappled with the question of voluntary versus mandatory desegregation policymaking.

Nevertheless, the revised *Sheff II* remedy effectively became law in mid-2008. The house education committee voted 15–9 in favor, followed by a senate committee vote of 5–0. Neither full body of the legislature voted it down before the review period ended in May, and Judge Berger officially approved the agreement in June.<sup>74</sup> Judge Berger's role helps to explain why the first version of *Sheff I* failed while the revised version passed. To some degree, the 2008 settlement is a better designed plan than its 2007 predecessor, in part due to the multiple issues raised and considered in the courtroom. But,

more important, Judge Berger's activity in the negotiations exerted significant indirect pressure on the legislature: if they did not approve the revised plan, that would have opened the door for the *Sheff* plaintiffs to return to Judge Berger's courtroom with a demand for stronger judicial action, most likely a court-appointed special master. Behind the legislature's vote in favor of a renewed voluntary desegregation plan is the veiled threat of a mandatory one.

#### CONTINUING MANDATORY-VOLUNTARY DESEGREGATION DILEMMA

"The notion that we're going to get a better result by voluntary programs is ridiculous," Senator Gaffey announced to the press at the beginning of Judge Berger's courtroom hearing on the failed *Sheff I* remedy in November 2007. "We need to shift away from the model of remedy that the State has been pursuing for years," he urged, suggesting that the commissioner needed more authority to require suburban desegregation, although it would be difficult to gain approval for this measure in the legislature.<sup>75</sup>

Gaffey acknowledged the continuing dilemma of mandatory versus voluntary desegregation that Connecticut has endured for nearly two decades. The state has weaved back and forth between demanding action on school integration and then implementing only weak policy tools to achieve that goal. The 1996 Connecticut Supreme Court ruled the existing system of school districting unconstitutional, but the 1997 legislature merely required each district to report on its progress toward racial and economic diversity while providing millions of dollars of interdistrict magnet and city-suburban transfer funding without mandating any goals for suburban participation. In 2003, the *Sheff* plaintiffs and state defendants agreed on a legal settlement with numerical goals and a timetable for partial desegregation in the metropolitan Hartford region, but no mandates for individual suburbs. Not a single suburban district is required to send students to interdistrict magnets or to accept Project Choice students from Hartford. The 2008 *Sheff II* settlement adds a stronger state role in designing and executing a comprehensive management plan, but the details over how this authority will be used remain unclear at this point in time. Voluntary methods still prevail, yet powerful disincentives remain in place.

Other than approving the five-year *Sheff II* remedy, the only significant change in state policy has been a quiet shift toward a demand-side mandate for suburban magnet funding. Although districts are not required to send students to magnet schools, as a result of the 2007 legislature, if a suburban fam-

ily wishes to attend a magnet with available space, then the suburban district is mandated to pay the same share of costs borne by other suburbs that regularly participate in that magnet. Essentially, Connecticut has inserted a suburban funding mandate into an otherwise all-voluntary magnet desegregation program. Suburban dollars must follow the child to the magnet school.

A test of this policy recently arose in the form of magnet school tuition bills. The Greater Hartford Classical Magnet School, operated by the Hartford Public Schools, sent a \$2,500 per-pupil tuition bill to suburban districts that was designed to cover the gap between the \$6,730 state subsidy it receives and the approximately \$10,000 actual cost of educating each pupil who attends the magnet school. In past years, the City of Hartford picked up the cost, but Hartford officials no longer intend to subsidize suburban participation. The practice is perfectly legal under the 2007 law, but this is the first time a Hartford-operated magnet has tested it. J. Callender Heminway, chair of the Board of Education in suburban Granby, told the press that he understood the reasoning but was unhappy with the decision. "From our perspective," Heminway observed, "I think it would have a terrible chilling effect upon the willingness of suburban districts to participate in the magnet program."<sup>76</sup> Will this new suburban funding mandate conflict with *Sheff's* voluntary goal of attracting more white suburban participation to interdistrict magnets? Perhaps the next five years of the *Sheff II* settlement will provide an answer.<sup>77</sup>

67. Guido, "S.J. Unified Settlement Agreement Would Reduce Forced Busing."
68. L. Murray, personal communication.
69. L. Murray, personal communication.
70. Guido, "S.J. Unified Settlement Agreement Would Reduce Forced Busing."
71. Guido, "S.J. Unified Settlement Agreement Would Reduce Forced Busing."
72. Guido, "S.J. Unified Settlement Agreement Would Reduce Forced Busing."
73. Consent Decree, *Vasquez v. San Jose Unified School District*, No. C-71-2130 RMW (N.D. Cal. 2004), 33.
74. Consent Decree, *Vasquez v. San Jose Unified School District*, 44.
75. L. Murray, personal communication.
76. S. Lubman, "'The Olive Branch Has Been Extended to Me.' S.J. Unified Chief Holds Off Ouster Bid Trustees Drop Resign or Be Fired Ultimatum," *San Jose Mercury News* (San Jose, California), January 25, 1996.
77. Oakes, Welner, and Yonezawa, *Mandating Equity*.
78. Lubman, "S.J. Unified Chief Holds Off Ouster."
79. Stipulation and Order Regarding Student Assignment, *Vasquez v. San Jose Unified School District*, No. 71-2130 RMW (N.D. Cal. Aug. 28, 1996).
80. District administrators predicted that within a few years, eleven of the district's twenty-eight elementary campuses would be more than 70 percent "minority," while five will be more than 90 percent "minority." (Oakes et al., *International Handbook on Educational Change*.)
81. L. Murray, personal communication.
82. M. B. Arias, *Five Year Summative Report for the Years 1986-1990*, *Vasquez v. San Jose Unified School District*, No. 71-2130 RFP (N.D. Cal. 1991).
83. The district reported that, in February 1997, it had 234 Spanish bilingual classrooms in grades K-5; see San Jose Unified School District, Status Annual Report for the 1996-97 Academic Year, *Vasquez v. San Jose Unified School District*, No. C-71-2130 RMW (N.D. Cal. Feb. 27, 1998).
84. M. B. Arias, "The Impact of Brown on Latinos: A Study of Transformation and Policy Intentions," *Teachers College Record*, 107 (2005): 1994. The board's racial/ethnic composition remained all white until 1992 when one Latino was elected. By 1996, however, the board became majority Latino—three Latinos, two whites.
85. Hon. R. M. Whyte to the parties, *Vasquez v. San Jose Unified School District*, No. C-71-2130 RMW (N.D. Cal. May 13, 2002).
86. L. Slonaker, "Integration Plan OK'd for Schools," *San Jose Mercury News* (San Jose, CA), August 23, 2003.
87. L. Slonaker, "Still Separate but Unequal Three Decades after the S.J. Uni-

- ified School District Was Sued for Discrimination, Segregation Is Accepted as a Fact of Life. The Focus Has Switched to Providing Equal Opportunity," *San Jose Mercury News* (San Jose, CA), May 16, 2004.
88. L. Murray, personal communication.
89. Passing all of these courses with a grade of C or better is required for students to be considered for admission at all of California's four-year public universities. Students who received a D grade in one or more courses were still awarded diplomas, as they met the district's graduation requirement of passing those courses.
90. B. Lin, "A Dream Still Being Realized? Using San Jose Unified School District as a Case Study for the Effects of Structural Change on the College-Going Culture of Underrepresented Minorities," unpublished paper, University of California, Berkeley, 2007.
91. D. A. Sylvester, "San Jose Offers Minority Education Overhaul," *San Francisco Chronicle*, January 15, 1994.

#### CHAPTER FIVE: SHEFF V. O'NEILL: Weak Desegregation Remedies and Strong Disincentives in Connecticut

##### Dougherty, Wanzer, and Ramsay

1. *Missouri v. Jenkins*, 515 U.S. 70 (1995).
2. *Sheff v. O'Neill*, 678 A.2d 1267 (Conn. 1996) [Connecticut Supreme Court decision for plaintiffs, July 9, 1996], 1281.
3. J. L. Hochschild, *The New American Dilemma: Liberal Democracy and School Desegregation* (New Haven, CT: Yale University Press, 1984); C. H. Rosell, *The Carrot or the Stick for School Desegregation Policy: Magnet Schools or Forced Busing* (Philadelphia: Temple University Press, 1990); and D. Armor, *Forced Justice: School Desegregation and the Law* (New York: Oxford University Press, 1995).
4. *Sheff v. O'Neill*, Complaint in Superior Court, Judicial District of Hartford/New Britain, April 26, 1989.
5. Connecticut Department of Education, Public School Enrollment Data, by Race, October 1988 [in author's possession].
6. *Milliken v. Bradley*, 418 U.S. 717 (1974).
7. *Sheff v. O'Neill* 1996, 1274.
8. *Sheff v. O'Neill* 1996, 1289.
9. S. Eaton, *The Children in Room E4: American Education on Trial* (Chapel Hill, NC: Algonquin Books, 2007), 176-81.
10. *Sheff v. O'Neill* 1996, 1290.

11. R. Frahm, "Court Orders Desegregation: Rowland Rules Out Busing, Vows to Keep Local School Control," *The Hartford Courant* (Hartford, CT), July 10, 1996.
12. *An Act Enhancing Educational Choices and Opportunities*, Public Act 97-290, Connecticut General Assembly, June 26, 1997.
13. K. McDermott, G. Bruno, and A. Varghese, "Have Connecticut's Desegregation Policies Produced Desegregation?" *Equity & Excellence in Education*, 35, no. 1 (2002): 21.
14. *An Act Concerning . . . Interdistrict Public School Education Program, etc.*, Public Act 98-168, Connecticut General Assembly, June 4, 1998.
15. G. A. Bruno and K. A. McDermott, "The Unexamined Remedy," (report, Connecticut Center for School Change, Hartford, CT, June 1998); "Beyond the Unexamined Remedy: Moving Toward Quality, Integrated Schools" (report, Connecticut Center for School Change, Hartford, CT, July 2000). [Both documents in possession of the author.]
16. J. Dougherty, J. Wanzer, and C. Ramsay, "Missing the Goal: A Visual Guide to *Sheff vs. O'Neill* School Desegregation" [Plaintiff's exhibit 2 at the *Sheff* 2007 compliance hearing] (Hartford: Cities, Suburbs, and Schools Research Project at Trinity College, 2007), [http://www.trincoll.edu/depts/educ/css/research/Sheff\\_Report\\_July2006.pdf](http://www.trincoll.edu/depts/educ/css/research/Sheff_Report_July2006.pdf).
17. *Sheff v. O'Neill*, 45 Conn Sup. 630 (1999) [Connecticut Superior Court decision for defendants, March 3, 1999], 657, 667.
18. *Sheff v. O'Neill*, Motion for Order Regarding Implementation of the Project Choice Program and the Interdistrict Magnet School Program in the Hartford Region, in Superior Court, Judicial District of New Britain, December 28, 2000.
19. *Sheff v. O'Neill*, Stipulation and Order, Superior Court at New Britain, January 22, 2003 [*Sheff I* Remedy].
20. *Approving the Stipulated Settlement Agreement in Sheff v. O'Neill*, Office of Legislative Reference report, House Resolution No. 9, Connecticut General Assembly, January 27, 2003; R. Frahm, "Legislators Approve *Sheff* Settlement," *The Hartford Courant* (Hartford, CT), February 26, 2003.
21. Dougherty et al., "Missing the Goal."
22. *Sheff v. O'Neill* 2003.
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77. This chapter was a collaborative effort between faculty and students from the Cities, Suburbs, and Schools research project (<http://www.trincoll.edu/depts/educ/css>) at Trinity College in Hartford, Connecticut. Jack Dougherty, associate professor of educational studies, took primary responsibility for researching and writing the policy analysis, which drew significantly from the school desegregation data collection and analysis by Jesse Wanzer (Class of 2008) and Christina Ramsay (Class of 2009) in the "Missing the Goal" *Sheff* progress report of 2007. We appreciate the comments received on earlier drafts of this chapter from Kathryn McDermott and Doug Reed. This interpretation does not necessarily represent the views of anyone other than the authors, who alone are responsible for any errors.

## CHAPTER SIX: RESEGREGATION, ACHIEVEMENT, AND THE CHIMERA OF CHOICE IN POST-UNITARY CHARLOTTE-MECKLENBURG SCHOOLS

Mickelson, Smith, Southworth

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