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INCENTIVIZING POST-*PICS* INTEGRATION
IN OVERWHELMING UNCERTAINTY

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by

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Abstract

This paper intends to analyze the similarities and dissimilarities between the Emergency School Aid Act and the Technical Assistance for Student Assignment Plans grant program. Both grants intended to incentivize integration by providing funding in the form of an inducement. However, these inducements were implemented under different circumstances that may have led to the variation in implementation among the grantees of these two programs. This paper analyzes the factors that may have influenced implementation and provides recommendations for incentivizing post-*PICS* integration efforts.

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Introduction

The alarming trends in today's racial isolation and segregation reflect the trends of the 1970s. The Civil Rights Project found that 80% of Latino students and 74% of black students attend schools in which 50-100% of their peers are also minorities (Orfield, Kucsera, & Siegel-Hawley, 2012). Approximately 43% of Latino students and 38% of black students attend severely segregated schools, in which 90-100% of the student body is comprised of minorities (Orfield et. al, 2012). America has attempted to overcome segregation for decades with the use of various policy tools. However, the context in which these policy tools were implemented greatly determined their success in reducing racial isolation. This paper seeks to examine the use of inducements to guide desegregation efforts by analyzing the Emergency School Aid Act and the recent Technical Assistance for Student Assignment Plans grant program.

The Emergency School Aid Act

Although *Brown v. Board of Education of Topeka* (1954) is regarded as a landmark victory for civil rights, modern readers must not forget about the local resistance that followed. When segregated districts did not readily comply with the *Brown* decision, this firm opposition to desegregation was commended by ninety-six southern members of Congress who pledged to use “all lawful means to bring about a reversal of [the *Brown*] decision” (Southern Manifesto, 1956). In the Southern Manifesto, these members of Congress wrote that that *Plessy* “became a part of life... It [was] founded on elemental humanity and common sense, for parents should not be deprived by Government of the right to direct the lives and education of their own children” (Southern Manifesto, 1956). These congressmen, and many other members of society, were prepared to do anything to preserve segregation.

Although the justices ruled that the operation of segregated schools was unconstitutional, the burden of proof fell upon the victims of segregation. The hostility of these districts was not only intimidating to the minority families, but it also frightened the district court judges as well. Even the benefits of tenure could not outweigh the consequences of opposing the social norms to uphold the *Brown* decision (Orfield, 1969). If a judge happened to muster up enough courage to find the district in violation of the Fourteenth Amendment, there were not proper enough consequences to force the district to pursue integration. When the federal government stepped in with legislation that mandated compliance with the Civil Rights Act of 1964, and later, incentivized integration with the Emergency School Aid Act (ESAA) of 1972, the executive branch began to support the precedent set forth by the judicial branch.

Prior to the passing of ESAA, approximately 70% of minority children attended segregated schools in which 50-100% of their peers were minorities, and almost half of the nation's minority children attended schools in which 95% of their peers were students of color (Committee on Education and Labor, 1970). In an effort to gain support for his reelection campaign, President Richard Nixon asked Congress for 1.5 billion dollars in funding for ESAA to provide an incentive for districts to comply with the Civil Rights Act of 1964 (Hodge, 2011). After many revisions, Congress passed ESAA and made the Department of Health Education and Welfare and Office of Civil Rights responsible for reviewing applications (Committee, 1970; Hodge 2012).

Applications went through a rigorous pre-grant review process. Whether voluntary or in response to court order, a district had to prove that it had not engaged in any unlawful discrimination since 1969 and that the policies proposed in its applications would not contribute to any unintentional segregation or inequalities (Committee, 1970). If it were later proved that either of these obligations were not fulfilled, the contractual agreement between the government and the district would dissolve, and the district would be required to repay all of the funding that it had received (Committee, 1970). In addition to these assurances, the reviewers ensured that the district had eliminated all vestiges of segregation with a standard that was similar to the factors set forth in *Green v. New Kent County* (Hodge, 2011). Once approved, a district could use ESAA funding for additional staff, training, counselors, transportation, community outreach, evaluation, and other projects that related to integration and increasing equity (Committee, 1970).

The Emergency School Aid Act reserved 1% of its funding for periodic evaluation (Committee, 1970). Many of the studies funded through HEW focused on the minuscule gains

in test scores from ESAA to determine its successfulness. However, the greatest gains were made in race relations. Douglas Longshore found that when ESAA funds were targeted towards improving race relations through organized activities, it had a profound impact on the overall climate (Longshore, 1983). Students were more comfortable interacting with students who belonged to a different race and reported forming cross-cultural friendships. These friendships might not have formed if the students would have continued to attend segregated schools.

Removing Judicial and Legislative Support for Desegregation

Although the Emergency School Aid Act provided the financial assistance that was necessary to achieve racial diversity, it was later repealed and aspects of the Act were included in a Chapter II block grant of the Education Consolidation and Improvement Act of 1981 (Stedman, 1983). As a result, districts that received ESAA funding were faced with devastating budget cuts (Stedman, 1983). These Chapter II grants provided funding for various programs, including desegregation; however, desegregation was not required (Hodge, 2011). The consolidation ultimately removed the incentive to integrate schools just as it began to appear that legislative and judicial support was finally upholding the *Brown I* and *Brown II* decisions. The honeymoon officially ended, and scholars have labeled the series of decisions in the 1990s as the quiet reversal of the *Brown* decision (Orfield & Eaton, 1996).

In *Freeman v. Pitts* (1992), *Board of Education of Oklahoma City v. Dowell* (1991), and *Missouri v. Jenkins* (1995), the U.S. Supreme Court reiterated the idea that districts did not have a constitutional obligation to remedy *de facto* segregation. Without regard to the social science research that stated the harms of racial isolation, the Court determined that segregation that resulted from individual choices (*de facto* segregation) did not bear the same constitutional violations as state-imposed segregation (*de jure* segregation). By separating *de facto* from *de jure*, the Court imposed a requirement of intentional segregation (Orfield & Thorton, 1993). The Court's evolved interpretation of unitary status in the 1990s, and later, its stance on race-conscious voluntary assignment plans in 2007 presented unique challenges for future desegregation efforts.

In *Parents Involved in Community Schools v. Seattle School District No. 1 (PICS)* (2007), the Supreme Court examined the implementation of race-conscious integration plans absent from a court order (Le, 2010). The Court stated that the districts' definition of achieving 'diversity' by matching the surrounding communities' demographics was not a compelling state interest (*Parents Involved*, 2007). Chief Justice Roberts reiterated that race balancing is unconstitutional. In addition to this, the race-conscious plans were not narrowly tailored, and the districts had not demonstrated that they had previously attempted to implement race-neutral student assignment plans (*Parents Involved*, 2007). Thus, the race-conscious voluntary integration plans at stake were in violation of the Fourteenth Amendment. In the concurring opinion, Justice Kennedy disagreed with the Court's stance. Although race neutral policies would not necessitate judicial review under strict scrutiny, Justice Kennedy suggested that race-conscious plans that are narrowly tailored might withstand this level of scrutiny. Following the *PICS* decision, the federal government created a technical assistance grant program to incentivize the creation of voluntary integration plans that could withstand the Court's scrutiny.

The Technical Assistance for Student Assignment Plans Grant Program

Parents Involved outlined new standards for achieving racial diversity through voluntary student assignment plans. Following the *PICS* decision, districts that tried to achieve racial balance through their student assignment policies needed to consider the new legal constraints on various voluntary integration plans. In the years following *PICS*, the U.S. Department of Education released guidance on race-conscious integration plans. In its initial guidance in 2008, the Department strongly advised against using race in any context¹. In 2009, the Department of Education provided a one-time competitive grant, known as the Technical Assistance for Student Assignment Plans (TASAP).

Hoping to prevent resegregation and aid districts' pursuit of diversity, the U.S. Department of Education attempted to provide an incentive for creating legally acceptable integration plans (Office of Elementary, 2009). The TASAP grants were created to promote innovative techniques in achieving diversity. Of the \$2,250,000 TASAP budget, a successful applicant could receive a maximum of \$250,000 to obtain technical assistance in modifying the district's student assignment policy by hiring consultants, demographers, and other relevant experts. In the request for proposals (RFP), the Department stated that the grant's purpose was to encourage districts to implement updated methods to avoid racial isolation and maintain diversity within the new legal parameters of the *PICS* decision (Office of Elementary, 2009). While trying to prevent resegregation but not clarifying what, if any, legally permissible race

¹ The U.S. Department of Education later removed the incorrect guidance from 2008 from its website and replaced it with guidelines that encompass the alternatives that Justice Kennedy suggested (such as siting, redistricting, and strategic recruitment) as well as several race-neutral alternatives (Office for Civil Rights, 2011).

conscious means remained to achieve integration, the Department coupled flexibility with the change-provoking power of an inducement to encourage innovative strategies. However, it left the grant recipients responsible for interpreting the *PICS* decision and resolving racial isolation with limited oversight from the U.S. Department of Education, and incorrect guidance on the *PICS* decision was still listed on the Department's website in 2009.

As a result, implementation varied among the grant recipients. Of twenty-two applicants, eleven districts received funding. The grant recipients used their grant to fund a variety of projects, but most frequently hired demographers. Only a few grantees sought out the expertise of attorneys to stretch the legal boundaries of post-*PICS* integration. Evangeline Parish School District in Louisiana and Orange County School District in Orlando, Florida used the grant to achieve unitary status (McDermott, Frankenberg, & Diem, under review). San Francisco Unified School District and Jefferson County School District used the grant to add to their preexisting efforts to diversify their student population in a way more similar to capacity building than an inducement, whereas San Diego Unified School District has not appeared to use the grant to assist in any effort to decrease racial isolation within its schools (Orfield, Siegel-Hawley, & Kucsera, 2011).

The Same Policy Tool, but Different Results

Inducements assume that financial incentives will motivate actors to solve social issues and meet a policy's goals without coercion (McDonnell & Elmore, 1987). Mandates, on the other hand, use coercion as a means to achieve change. However, the Supreme Court has reiterated that the government does not have the responsibility to correct *de facto* segregation (Milliken, 1974; Board of Ed., 1991; Missouri, 1995; Freeman, 1992; Parents Involved, 2007). Thus, when creating the Technical Assistance for Student Assignments Plans grant program, the U.S. Department of Education needed to choose a policy tool that would allow districts to correct the racial isolation that resulted from *de facto* or *de jure* segregation within the guidelines of the Court.

In choosing an inducement, there are several assumptions that accompany this policy tool. Typically, an inducement would require stringent oversight if the policymakers were uncomfortable with any variation from the expected means of achieving the policy's goals (McDonnell & Elmore, 1987). This policy tool acknowledges that districts will vary in capacities, but the financial incentive is sufficient to ensure that these districts will meet the policy's goals (McDonnell & Elmore, 1987). Inducements assume that the implementers understand the policy's intent, but need a financial incentive to create the results that the policymakers expect (McDonnell & Elmore, 1987). According to McDonnell and Elmore's (1987) theory, the Department assumed that, even with limited oversight, the recipients would still meet TASAP's goals. However, it overlooked some of the limitations of this inducement.

Ambiguity and Uncertainty:

Inducements assume that the recipients are rational, knowledgeable, and fully capable of making decisions that will meet the policy's goals (Schneider & Ingram, 1990). In the case of the TASAP grants, the Department assumed that the applicants were rational decision-makers even as they were faced with contradictory or ambiguous information on the *PICS* decision (Office for Civil Rights, 2009; Office of Elementary, 2009). Uncertainty and lack of authority were among five reasons that authors Anne Schneider and Helen Ingram (1990) found to cause actors to fail to address social issues. Lack of guidance on legally permissible ways to achieve diversity may have led to high levels of uncertainty and the belief that the *PICS* decision did not authorize the districts to address *de facto* segregation (McDermott, Frankenberg, & Diem, under review). The rational choice theory assumes that proper policy tools can alleviate this uncertainty and facilitate change, but when uncertainty is not properly addressed, it can lead to serious repercussions (Schneider & Ingram 1990; O'Toole, 1995).

In addressing some of the limitations of the rational choice theory, Laurence O'Toole (1995) found that issues of uncertainty, in particular, are seen in interorganizational implementation. According to his findings, issues arise in implementation because the actors are constantly attempting to give meaning to the intended goals. With limited guidance, the TASAP recipients needed to interpret the Department's objective while determining if the districts had the authority to pursue diversity within the legal parameters of *PICS*. According to O'Toole (1995), when uncertainty is exacerbated by weak oversight, the actors may face significant challenges in meeting the policy's intent.

For instance, the Emergency School Aid Act successfully provided financial assistance for integration. However, the initial round of funding produced embarrassing results because of the Department of Health Education and Welfare's (HEW) ambiguity and weak oversight. Instead of fostering integration as the policy intended, limited oversight allowed more than half of the receiving districts to use the money for illegal policies that promoted segregation (Hodge, 2011). After the American Friends Service Council published these findings in a report, HEW quickly established a more stringent review process to alleviate uncertainty and increase oversight (Hodge, 2011). Although stringent rules and guidance can limit innovation, it can relieve the uncertainty that can subvert the policy's goals (Bergek, Jacobsson, Hekkert, & Smith, 2007). Reducing uncertainty is crucial to implementation because the actors must have enough confidence in the policy's intentions in order to gain local support. It is possible that stronger guidance from the Department of Education might have reduced uncertainty among school boards and administrators as the judicial system has moved away from racial integration and towards race-neutrality (McDermott, Frankenberg, & Diem, under review).

The Burden of Proof for Unitary Districts:

The Court's new interpretation of unitary status in *Board of Education of Oklahoma City v. Dowell* (1991) and *Freeman v. Pitts* (1992) had two consequences: it hastened the speed of achieving unitary status and, upon receiving unitary status, it shifted the burden of proof from the district to the plaintiff (Orfield, 1997; Orfield & Thornson, 1993). Withdrawing supervision does not, however, mean that a district will maintain its commitment to diversity. Orfield (1997) noted that when a district court grants unitary status, it assumes that, if the district becomes segregated

again, it is not intentional unless a plaintiff can prove otherwise. Orfield and Thornson (1993) highlighted the consequences of unitary status in Austin Independent School District.

Shortly after Austin Independent School District was declared unitary, the board altered the student assignment plan (Orfield & Thornson, 1993). No longer under court order, the district redrew attendance boundaries, and the students were assigned to a neighborhood school. From this new attendance policy, a third of the district's schools were racially identifiable with minority enrollment of eighty percent or higher (Orfield & Thornson, 1993). Upon review, the court found that the racial isolation resulted primarily from demographic shifts, not the district's plan. Interestingly, Orfield and Thornson (1993) noted that when the district was under court order, a plan that created racially identifiable schools was rejected. While under court supervision, the burden of proof fell on the district. The district needed to show that it had removed all vestiges of segregation. However, once a district is granted unitary status, the burden of proof shifts to the plaintiff (Orfield & Thornson, 1993).

As Justice Marshall predicted in the *Dowell* decision, unitary districts may segregate once again; however, now the plaintiff must prove that the unitary district's actions have intentionally segregated students (*Board of Ed.*, 1991). School districts do not have a legal responsibility to correct *de facto* segregation. The lack of legal repercussions for remedying *de facto* segregation gives an incentive for inaction as explained by decision theory.

Risks of Integration:

According to decision theory, rational actors decide to invest in projects by evaluating past experiences and predicting future financial stability (Karlsson, Juliusson, Grankvist, &

Gärling, 2002). When choosing a course of action, it is necessary to avoid potential losses (Karlsson, et al, 2002). Although the TASAP grant was created in a way to induce the creation of innovative student assignment plans, innovation is risky (Office of Elementary, 2009; He & Mittal, 2007). Under the new guidelines of *PICS*, a voluntary integration plan, although created with good intentions, could potentially come under legal fire for attempting create a more balanced student body by using race conscious methods. A skilled attorney and demographer could potentially help a district craft a student assignment policy that could withstand judicial review, but this is a risk that a school district must be willing to take. School districts with a long and costly history of desegregation litigation may be less likely to undertake voluntary integration plans. Karlsson and his colleagues found that when actors needed to reduce costs, they were less likely to take risks when prior investments had little or negative returns. Analyzing the risks and benefits of a course of action not only rests on previous experiences but also on acquiring new information.

Level of Commitment Required:

As displayed by the figure to the right, Xin He and Vikas Mittal (2007) found that the commitment to a project's goals not only relied on acknowledging the risks that were emphasized by Karlsson's study, but it was also influenced by the project's stage of completion. He and Mittal argued that actors

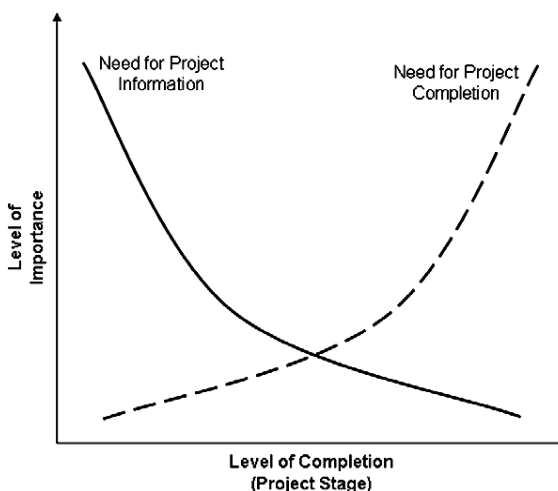


Figure retrieved from: He, X., & Mittal, V. (2007). The effect of decision risk and project stage on escalation of commitment. *Organizational Behavior and Human Decision Processes*, 103(2), p 227.

need to collect a sufficient amount of information in order to make an informed decision (He & Mittal, 2007). However, during these initial stages, the actors have relatively low levels of commitment to completing the project; the desire to complete a project increases in the later stages. He & Mittal's framework suggests that an inducement that requires an insufficient level of project completion may create an environment that enables the recipients to stray from the policy's goals due to low commitment.

The evaluators reviewed each district's TASAP grant application based on its "need for the project, significance, quality of project design, quality of project services, quality of personnel, adequacy of resources, quality of management plan, [and] quality of project evaluation" (San Francisco TASAP Proposal, 2009). The Department might have benefited from evaluating the project's level of completion in addition to these categories. The Emergency School Aid Act's second round of implementation fits in line with decision theory. The reviewers assessed the district's level of completion. In order to receive funding, the district needed to have already implemented a board-approved desegregation plan. Hypothetically speaking, we could expect that if the Department had imposed this requirement with TASAP, there may have been less variation among the grantees. For instance, San Francisco Unified School District and Jefferson County School District, the districts used the grant to add to their preexisting efforts in a manner more akin to capacity building with a strong commitment to diversifying their student bodies.

Political Context:

Although both grants were inducements that were created to incentivize reducing racial isolation and increasing diversity, the context in which these grants were created differed greatly. In the year following the Civil Rights Act's implementation, HEW increased its stance on noncompliance and developed more rigid legal standards for evaluating compliance reviews under Title VI (Le, 2009). Between 1965 and 1970, HEW (and later the Office for Civil Rights) brought over 600 suits against segregated districts (Le, 2009). When ESAA was first passed in 1972, it was clear that the nation was dealing with segregation. Over the past few decades, OCR's compliance reviews have drastically decreased (Le, 2009). The recent Supreme Court decision in *PICS* and the decisions of the 1990s have implied that *de facto* segregation does not impose the same psychological damage as *de jure* segregation on minority children and has made it difficult for government entities to correct *de facto* segregation (Le, 2009; Giroux, 2003). In ESAA's RFP, evaluators gave preference to districts with higher proportions of racially-isolated children, whereas TASAP's RFP avoided mentioning racial classification of students (Office of Elementary, 2009). The level of importance of desegregation initiatives was reflected in the amount of funding that the grants provided.

Level of Financial Support:

In 1972, ESAA was not the only form of financial assistance for desegregating districts. The RFP requested that districts prove that they had exhausted all other forms of funding before applying for additional money under ESAA. As part of a \$1.5 billion budget, the annual appropriation for ESAA between the fiscal years of 1973 and 1981 was between \$200 and 300 million (Longshore, 1983). The Emergency School Aid Act was a larger grant program that lasted over a longer period of time than TASAP. The grant was later consolidated and phased out

around the time that National Commission on Excellence in Education published its *A Nation at Risk* report- putting even more of America's focus on test scores (Hodge, 2011). The need for academic excellence and meeting No Child Left Behind's standards was reflected in many of the districts' TASAP applications (McDermott, Frankenberg, & Diem, under review). Many listed that the grant would allow the district to make adjustments that could potentially help their subgroups make Adequate Yearly Progress (Rockford TASAP Application, 2009; McDermott, Frankenberg, & Diem, under review). Even with these ambitious goals, the main intention of the grant was to help districts decrease racial isolation.

Conclusion

Both ESAA and TASAP were inducements that were created by the U.S. Department of Education, formerly known as HEW, to incentivize integration. Thus, we would expect similar results. However, the uncertainty that the TASAP's guidelines were framed, coupled with the judicial context of the 1990s and 2000s, provided for the variation in implementation that the literature supports and predicts. However, there are several limitations. This paper is retrospective in nature, and as an author, I cannot generalize the thought process of every stakeholder among the ESAA and TASAP grant recipients. Instead, this paper intends to lay the groundwork for future researchers to investigate the decision-making processes of district officials pursuing voluntary integration plans, so that granting agencies at the state and federal levels can effectively use the decision theory and the level of commitment frameworks described above to create stringent pre-grant review processes to effectively create inducements for post-*PICS* integration.

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