



Values in Conflict: The Furor over Admissions Policy at a Popular Virginia Magnet School

Introduction

At the October 11, 2001, meeting of the School Board in Fairfax County Virginia, School Superintendent Daniel A. Domenech took the podium to propose a new admissions procedure for the county's popular and prestigious magnet high school,¹ the Thomas Jefferson High School for Science and Technology. He was reasonably confident of a positive reception from the board. For one thing, he had drafted the proposal—aimed at diversifying the Jefferson student body—at the board's own request. His administrative team had done its homework, carefully crafting a policy that met several divergent goals, and providing a model to show how the new system would work. Before the meeting, the superintendent, himself, had informally consulted with sympathetic members of the School Board—in this case, his traditional Democratic allies, who held an eight to four majority over their Republican counterparts.² They had been well disposed toward the proposal.

But that evening, as he made his formal presentation, 200 parents watched from the gallery in barely contained anger—and some interrupted Domenech's presentation with boos and jeers. Over the next two weeks, the School Board members received hundreds of emails from parents protesting the new admissions proposal. The protesters represented a relatively small constituency, given the size of the Fairfax County Public Schools system, but they were politically well connected, and some had close ties to Democrats on the board. It soon became clear that the

¹ A "magnet" school—by contrast to a neighborhood school—has a special focus or theme and draws students from across a given school district. As the name implied, the Jefferson curriculum focused on mathematics, science and technology.

² The School Board was officially nonpartisan, but members from the same party had traditionally formed voting alliances.

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board had little stomach for a full-out political brawl over the issue. Almost immediately, Domenech's proposal was dead in the water.

At the heart of the controversy was the question of how to choose the students who would make up Thomas Jefferson's freshman class each year. Altogether, the school had space for only 1670 students, which meant 400-or-so freshmen—about one in six applicants. Since 1985, when the school opened, admissions had been based largely on a standardized entrance exam. In 1990, concerned about the low number of African American and Hispanic students at Jefferson, the FCPS had initiated an affirmative action program but, in 1998, the School Board had eliminated the program, worried about the possibility of a "reverse discrimination" lawsuit. In the next two years, African American and Hispanic admissions dropped precipitously; at this rate, the School Board could see that the student body would be almost entirely white and Asian in another two years. In addition, most of the Jefferson students came from just a small group of middle-class-to-affluent neighborhoods in what was a large, growing, and increasingly diverse county. In 2000, therefore, the board had asked Supt. Domenech to revisit the admissions question. Could he find a way to diversify the student body without sacrificing Jefferson's strong academic reputation or making the Fairfax school system vulnerable to lawsuit?

It was a tall order, but Domenech—a longtime champion of disadvantaged students—had been happy to take up the gauntlet. The School Board was leery of any policy that included racial preferences, per se, so Domenech had tried another tack: geographic diversity. It was this proposal that had met the stormy reception in October 2001, from families in currently "over-represented" neighborhoods. It would be unfair to hundreds of high-achieving children, they argued, and would weaken the school academically.

A community debate of several weeks followed the School Board meeting—and it was quite polarized; the chasm dividing the two sides appeared unbreachable. A few weeks later, the conflict was temporarily put to rest with a stopgap measure, but a bitter residue lingered, and it took little to re-ignite the passions of people on both sides of the divide. In this environment, it would not be easy to re-introduce the topic.

Domenech was not sanguine about changing the hearts and minds of the parents who opposed him. But he did feel honor-bound to re-engage the issue. The Thomas Jefferson school should not be the private preserve of well-educated, well-off families, he believed; it should be open to promising students from all parts of the county, including those who were not middle class and who struggled against an array of disadvantages as they navigated the education system. Says Domenech, "I can't abide by a hypocritical system that, on the one side, says, 'Leave no child behind,'³ and on the other hand, we're willing to establish blocks and barriers to having that happen. [We] say to kids, 'I'm sorry but we *are* going to leave you behind—as far as Jefferson is

³ This is a reference to the federal "No Child Left Behind Act," signed into law by Pres. George W. Bush on January 8, 2002.

concerned.” But how to broaden the range of students at Jefferson in a way that was fair, effective, legally safe—and also politically palatable? That was Domenech’s challenge.

Dan Domenech

Dan Domenech had developed and refined a distinctive, activist approach to education administration during the preceding 20 years when he had held a series of three superintendent positions on Long Island, New York. Especially as superintendent of South Huntington, which had a large lower middle class population, he had labored tirelessly to obtain the public and private funds necessary to launch a host of programs—many of them cutting edge—to give more time and attention to underachieving students and early childhood education.

Since the mid 1990s, he had steadily gained prominence both in New York state and nationally. In 1994, as district superintendent for the Board of Cooperative Education Services for western Suffolk County⁴, Domenech was asked by the New York state education commissioner to lead a special assessment of the Roosevelt Junior-Senior High School in Nassau County, a dilapidated, out-of-control school with severe academic and safety problems in the largely African American community of Roosevelt, Long Island. This placed him squarely in the press spotlight, and his report pulled no punches. “If a community could be charged with child neglect, possibly abuse, Roosevelt would be a strong candidate,” he wrote. The report and Domenech’s subsequent lobbying efforts were instrumental in persuading the state legislature to approve an unprecedented state intervention in—and eventually, state takeover of—the Roosevelt district. Domenech headed up the three-member state panel empowered to reform the school system. The state report and takeover infuriated many local residents and leaders, who complained that Domenech was high-handed, and was using Roosevelt’s difficulties to further his own reputation and career.

Partway through this highly charged battle, in 1995, Domenech was named one of three finalists in the selection of New York City chancellor, the official charged with running the huge and deeply troubled New York City school system. The process of selecting a chancellor was always politicized, but was even more politicized than usual in 1995, because Republican Mayor Rudolph Giuliani made no secret of his wish to increase his own authority over the schools—for instance, by putting city police in charge of school security. The Mayor was aggressively backing one of Domenech’s competitors for the post. Although on the short list, Domenech did not initially expect to get the job. At the time, he was presiding over an area less than a tenth the size of the New York district. In addition, he and Giuliani (an old Catholic high school classmate of Domenech’s) were poles apart politically and the Mayor had rebuffed Domenech’s efforts to meet with him. But when Giuliani’s candidate abruptly bowed out of the contest (in the face of embarrassing allegations that he had misrepresented his personal and career history), the New

⁴ In this position, Domenech oversaw 18 small school districts serving a total of 74,000 children.

York City Board of Education took swift action, voting four to three to appoint Domenech to the position—a move that local journalists described at the time as one of the Mayor’s biggest political defeats since taking office. Domenech was ecstatic and, in answer to questions about whether he was ready for the political pressures of the job, pronounced himself quite equal to dealing with such pressures “including the mayor,” if necessary.⁵ But under intense pressure from Giuliani, who dismissed Domenech as “unacceptable,” one of the four pro-Domenech board members was persuaded to change his vote, and the board rescinded its choice 24 hours later. The string of events was “an almost operatic drama” in the words of one reporter.⁶

This turnabout was a tremendous disappointment to Domenech. In 1997, however, he was back in the saddle, a finalist for another of the nation’s largest school systems—this time, in Los Angeles. In fact, the Los Angeles school board assured him that he had the job, according to Domenech, but later wavered when local Mexican-American activists pushed for another candidate. Domenech withdrew in anger, and shortly thereafter, departed public education for a position as an executive in an educational products company, Voyager Expanded Learning, that produced material for after-school programs for elementary school children. But a few months later, he was recruited for the Fairfax County superintendency and found he could not resist the siren call.

Domenech and the Changing Face of Fairfax County

Domenech had come to the United States from his native Cuba at age nine and, in that process, his family’s circumstances had been significantly reduced. From that point forward, Domenech grew up hardscrabble in a Brooklyn brownstone—street smart and tough enough to fend off a certain amount of ethnic taunting. Since those days, he had moved up and out, earning a psychology degree from Hunter College and a Ph.D. in educational research from Hofstra University. He was poised, well spoken and attractive, but he retained from his youth a gutsy, combative streak—a willingness to hold his ground and fight.

In some ways, this profile seemed an odd match for genteel, suburban Fairfax County, one of the wealthiest areas in the nation, with the country’s twelfth largest—and some said best—school system. But the Fairfax County Public Schools were at a tricky juncture—and the local School Board knew it. The county population was growing at a rapid rate, and its demographic mix was changing fast—shifts that were mirrored in the public school population. In the 15 years that preceded Domenech’s arrival, the number of children in the Fairfax County school system had grown from 123,000 to 147,000, while the proportion of white students in the system dropped from 83 percent to 62 percent. The African American population had grown slightly, from 8 percent to 11 percent, but the big jumps came from East Asian, South Asian and Latin American immigrants.

⁵ *New York Times*, September 30, 1995.

⁶ *New York Times*, October 1, 1995.

Over the previous 15 years, the proportion of Asian students doubled, from 7 to 14 percent, and the proportion of Hispanics jumped from 3 to 10 percent. What's more, all these growth trends were expected to continue for many years to come.

The new residents brought a greater vibrancy and bustle to Fairfax County, but also a rise in poverty and a sudden increase in people with minimal proficiency in English. It was one thing to run a successful school system when the students were predominantly white, from middle class to affluent families, with well-educated, savvy parents who read to them at bedtime, took them to concerts and museums, enrolled them in outside enrichment classes, expanded their horizons with travel, bought them educational toys and computers and, on a daily basis, cultivated their educational achievement by word and deed. It was another thing to successfully educate minority and immigrant children from lower income families who often had none of these advantages. Without a quick and sure response, Fairfax County's cherished reputation for fine schools could slip. Particularly to the eight Democrats on the School Board, Domenech's appeal was his energy, clarity of vision, and extensive track record for improving the performance of traditionally underachieving students. This was exactly what Fairfax County needed, they believed. In November 1997, they joined forces to offer Domenech the position of superintendent, and the four Republican board members, who had initially voted for another candidate, formally changed their votes to express support for the new school leader.

Domenech and the 'Gifted and Talented' Programs

To Domenech, the chance to run one of the country's largest school districts was a long-held dream. The mandate—to improve the performance of the district and, in particular, its underachieving students—was a perfect match for his own aspirations and talents. And it was appealing to think of working in a district that was, even in a sluggish economy, financially well off and committed to improving its top-flight school system. That meant he would probably be able to come up with resources for the programs he judged essential in helping the district's newer, poorer, children. He and a solid majority on the School Board were in synch on that score. As Domenech put it, "What's going to pull the school system down is these kids—unless we bring them up."⁷

The superintendent arrived in Fairfax in January 1998, and began to familiarize himself with his new district. He soon realized that his own educational philosophy was at odds with at least one much-beloved educational tradition in the area: the creation of separate schools for children identified as "gifted and talented." Beginning in the third grade, children who qualified as academically exceptional through IQ and achievement tests, grades, and teacher recommendations, could opt to leave their neighborhood schools to attend one of the county's 16 "Gifted and Talented Centers" for elementary students, and then move on to one of the 10 GT

⁷ *Washington Post*, October 1, 2002.

Centers for middle school students. “This county has a mania for separating out the gifted,” remarks one school administrator, who said the typical GT Center was “like a private school, but free.” The centers, which served about 3,700 students in all, had an excellent reputation, high-standardized test scores, and a devoted following. They were also mostly white and middle-class-to-affluent. (In 1998, the GT Centers were four percent African American and Hispanic, while the county’s overall student population was 21 percent African American and Hispanic. In fact, that year, the NAACP [National Association for the Advancement of Colored People] filed a civil rights complaint about the “achievement gap” between minority and white students in Fairfax County, and specifically identified the demographics of the GT Centers as a serious concern.)

At the high school level, most of the top students in Fairfax County attended their neighborhood high schools and enrolled in advanced classes. The exception to this rule was the Thomas Jefferson school, or “TJ” as it was locally known. Though TJ was officially a magnet school, it functioned much like a GT high school and had become enormously popular. The children who had attended the GT Centers, especially in middle school, were at a great advantage in applying to Jefferson. For one thing, they were talented students from middle class, education-oriented families, and had been studying above their grade level for as many as six years. Most were studying algebra or geometry in the eighth grade, which gave them a major advantage on the mathematics sections of the entrance exam. What’s more, the teachers and administrators at the GT Centers knew their client base, and they made it a point to prepare their students well for admission to Jefferson. TJ’s admission figures were a testament to their success: more than two thirds of students admitted to the school came from the GT Centers.

Domenech was philosophically opposed to the creation of separate public schools for the gifted—partly because he believed that the line separating the gifted from the rest was a blurry one. Most students identified as gifted were, in fact, gifted in some areas and not so gifted in others, he believed. In addition, he argued that the education system, in general, did a poor job of recognizing the gifts and potential of low income children and children with limited proficiency in English. The superintendent based this last view, in particular, on his own personal experience. Domenech had been a bright fifth grader when he arrived in New York City from Cuba. Because of his inability to speak English, he was placed in a second grade class, where he languished. Disoriented and misunderstood by the educators he first encountered, he later described himself sitting in the back of the class, spending so much time staring out the window at the construction of the Tappan Zee Bridge that he eventually recognized the construction workers by their hardhats and privately invented names for them.⁸ He recalls how the schools he attended—Catholic schools in his case—failed him during those first few years in the United States:

The expectations for me were, “This kid can’t cut it. He doesn’t have the ability to do it”—as opposed to giving me the opportunity—exposing me to the challenges and the rigors of a course that would have brought out

⁸ *Washington Post*, October 1, 2001.

the fact that the barrier was really the language, and not an inability to understand concepts of mathematics or science or social studies or whatever it was. ... Because I didn't speak the language, whatever intellectual capacity I had was buried.

In those frustrating years, Domenech had the good fortune of determined support and encouragement from his parents. "My education was their *raison d'être*," he has said.⁹ By the end of his high school years, Domenech's English proficiency had finally caught up with his intellect, and he made rapid progress. At the age of 16, he graduated from Brooklyn's Bishop Loughlin Memorial High School, and moved on to Hunter College—well on the path to another kind of life. But Domenech never forgot how it had felt to be lost, confused, and—perhaps most damaging—underestimated at school. The experience left him skeptical of the traditional appraisals teachers made of their students. For poor children, intelligence often took the form of street smarts rather than, for instance, precocious reading ability, he says. Just as a middle class white child would be at sea in a low-income neighborhood, these poor children were at sea "in an environment that is expecting them to use the words and phrases [they've never learned] and to rely on the kind of experiences they've never had," Domenech says. "But that does not mean that they don't have the intellectual ability to learn and understand."

Domenech also believed that by challenging underachieving students, by believing in their potential, the school system could have a powerful, transforming effect on these youths. Thus, he found it frustrating to see them effectively closed out of the county's GT Centers and Thomas Jefferson, its *de facto* GT high school. It would be better, he believed, to cultivate the talents of all children in their neighborhood schools. "I think it would be much more effective and better for the health of the community," he says. But Domenech was too much a political realist to consider anything so draconian as dismantling the GT schools. "In a place like this, where there's such a strong culture for these programs, to go against that culture would be suicidal!"

At the least, however, he wanted to make the GT Centers and Thomas Jefferson more inclusive. It would prove easier to do that with the GT Centers. With some shuffling of kids and facilities, Fairfax County could free up more space in order to accommodate a larger overall group of children. That would be disruptive to existing programs, admittedly, but it would make it possible to enroll a more diverse range of children in the centers without displacing children from the kinds of families who had traditionally expected their kids to go there.

The Jefferson School, however, was located in a cramped facility that could not accommodate more than a handful of extra students. If a broader range of students began to attend the school, fewer of the traditional TJ-type students could do so—a zero-sum game—and that

⁹ *New York Times*, September 30, 1995.

made diversifying the school a much more fraught proposition: there would be winners and losers.

Admissions at TJ

As he began to familiarize himself with the GT enclave in Fairfax County, Domenech discovered that admissions policy had been an issue at Thomas Jefferson ever since it opened its doors in 1985. When the School Board created the school, it had urged the selection committees to take into account “considerations relative to achieving an appropriate representative student population in regard to racial/ethnic and sex distributions.” At the same time, the school was intended to serve students with a special talent and passion for science and mathematics. What was the best way to identify those students? Some had argued for a combination of standardized test scores and grades. That time-honored system would be objective, and would capture the highest performing eighth graders in the county, they said. Others had objected. Statistically, minority students did not perform as well on standardized tests as did their white middle class counterparts, so they were likely to be excluded by this approach. In addition, a heavy reliance on test scores and grades could screen out “the basement computer hacker” and other creative students who might not test well, but could potentially find their niche—might thrive, in fact—at a school like TJ.

In the end, the School Board agreed on a two-step process. All interested students would take a standardized entrance exam. The FCPS would then rank the test-takers, based mostly on their test scores (which would count for 80 percent) and recent grades (which would count for 20 percent). The top 800 students in this ranking would then constitute the pool of semifinalists for admission the following year. After that, a group of committees would study each semifinalist, looking at additional material such as teacher recommendations, awards, activities, personal data, essays and so forth, and would select 400 finalists. [See Exhibit 1 for a detailed description.]

Establishing a Reputation. Domenech also learned the legend and lore of TJ—that the school had become a hot academic commodity just four years after it opened, and had become progressively hotter ever since. In creating the Thomas Jefferson magnet school, the FCPS had secured the support of the local business community, which was actively trying to cultivate a high tech business sector in the area. During the first few years of Jefferson’s conversion from a neighborhood high school to a magnet high school, these business leaders, through an organization called the Fairfax Education Foundation, donated millions of dollars to the Fairfax public schools to construct a series of specialized laboratories at TJ, and to upgrade the school’s planetarium, which had been constructed in 1967. By contrast to the average neighborhood high school, these laboratories were an extraordinary resource. They specialized in aerospace sciences, chemical analysis, computer-assisted design, computer systems, energy systems, geosciences, industrial automation and robotics, life sciences and biotechnology, microelectronics,

oceanography, prototyping and engineering materials, optics and modern physics, and video technology and communications.

From the beginning, therefore, Jefferson showed signs of being a special place—but in its first few years, it was still an experiment, and still untested. Between 1985 and 1989, the number of eighth grade applicants ranged from 814 to 1262 per year. Thus, between one third and one half of all applicants were admitted. TJ's first group of 400 ninth graders, enrolled in September 1985, set the school's tone for many years to come. "What other school postpones its prom at the request of students so there won't be any distractions before the end-of-the-year Advanced Placement examinations?" a reporter for *Washington Post* wrote in a 1989 feature article about TJ's first graduating class. "What other school has no bells between classes, requires no hall passes, and does not post hall monitors because it trusts its students? What other school would find that the biggest discipline problems are the students who skip class to do more homework?"¹⁰ Repeatedly, in fact, school officials had to intervene to keep TJ students from *overdoing* the schoolwork, the *Post* continued—for example, barring seniors from taking more than three Advanced Placement courses at a time.

Jefferson's lab facilities, combined with ongoing and technical assistance from local businesses, and the advanced academic preparation of many TJ students, meant that the school was able to offer classes on topics rarely encountered before college or even graduate school, such as computer architecture, elements of artificial intelligence, human genetics, and plant tissue culture. As the school evolved, it became the kind of place where ninth graders might map fragile wetland areas as a school project, and seniors might participate in cancer research.

By May 1989, TJ's first class was graduating and had acquitted itself well. Fifty-nine members of the class were National Merit semifinalists—the largest number in any Washington area high school, and the fifth largest number in any high school in the nation.¹¹ In addition, 15 TJ students were among the 300 national semifinalists chosen by the competitive Westinghouse Science Talent Search. And a team of four TJ students won the national "SuperQuest" contest for a \$1 million supercomputer—beating out 1,475 other teams. As a result, TJ became the first high school in the world to install a supercomputer. Heady from these extraordinary markers of success, the yearbook for the Class '89 arrived with a saucy question printed across the front: "Can you top this?" it read. The *Washington Post* wrote a laudatory editorial about TJ, and across Fairfax County, a "buzz" developed about this fabulous new public high school.

¹⁰ *Washington Post*, June 22, 1989.

¹¹ That same year, the other Fairfax County high schools collectively saw their number of National Merit semifinalists drop to 99 from 146 the previous year. (*Washington Post*, September 15, 1989)

Introducing Affirmative Action

Even amid the feel-good stories and general air of enthusiasm, however, there was some quiet uneasiness about TJ within the Fairfax County school administration. The Class '89 was 95.3 percent white or Asian. The freshman, sophomore, and junior classes at TJ were each, respectively, between 95 and 96 percent white or Asian as well. The proportion of African American and Hispanic students in Fairfax County, meanwhile, had grown to about 15 percent, and was rising at a steady pace. In 1986, a committee charged with “oversight” of the TJ admissions process recommended raising the admissions target from 400 to 430, to compensate for anticipated attrition and to accommodate more minorities. Between 1986 and 1989, there was “a lot of flapping about it,” but little action, says Nancy Sprague, chief academic officer for the Fairfax County Public Schools. There was also a push to encourage more of the under-represented minorities to apply in 1987 and 1988. This effort was apparently successful—more minorities did apply in these years—but more white and Asian students applied as well. This served to increase the competition to become one of the “top 800” semifinalists and disproportionately few African American or Hispanic students made the cut.¹²

In May 1989, the TJ admissions coordinator proposed the creation of an affirmative action plan, which was implemented in 1990. African American and Hispanic applicants to Jefferson would take the entrance exam, like all other applicants, but those who did not qualify for the 800-pool would receive a “second look” from the oversight committee. This committee would seek information from each minority applicant’s middle school principal and counselor, in an effort to see whether there were indications of academic promise not captured by the applicants’ grades and test scores. On this basis, an additional number of African American and Hispanic students would be added to the semifinalist pool. The admissions committees would then review all student applications to select the 400 finalists, as before. This change was a matter of public record, but was handled administratively and was not widely discussed or publicized.

In 1992, the Fairfax County School Board tackled the problem from another direction by introducing a two-year math and science enrichment program called “Visions” for promising African American and Hispanic middle school students in the county. The program was not exclusively for prospective Jefferson students, but it did include preparation for the TJ entrance exam.

Taken together, these initiatives succeeded at increasing the number of African American and Hispanic students admitted to TJ between 1991 and 1998. There was no set quota for minority

¹² Only 814 students had applied to the school for admission in September 1986—and, consequently, all were made semifinalists. There were 38 African American applicants and 15 Hispanic applicants that year. The following year, by contrast, there were 1,262 applicants, of whom 52 were African American and 20 were Hispanic, but the semifinalist pool that year included only 17 African Americans and 12 Hispanics. A similar pattern held in the 1988-89 school year.

students, so the numbers varied year by year, but between 1991 and 1998, the proportion of African American and Hispanic students accepted for the ninth grade class ranged from 8.5 to 12.3 percent. This still fell short of the proportion of African American and Hispanic students in the county, which had, by 1998, increased to 21 percent. But it was higher than the proportion of African American and Hispanic students accepted between 1985 and 1989, which ranged from 3.9 to 4.7 percent. This increase attracted little notice or controversy—until the fall of 1997.

Overwhelming Popularity

By the late 1990s, TJ had attained a near-mythological stature in the Fairfax public school system, school officials report. Applications had doubled over the course of the decade to 2,332 in 1998. That meant only 17 percent of applicants would be accepted—about the same percentage of students accepted at Princeton, perhaps the most exclusive of the country’s Ivy League colleges. In TJ’s early days, about a third of its students had come from the GT Centers, but by 1998, between 65 and 70 percent of the student body came from these centers. These students tested well and, as a result, competition for the 800-student semifinalist pool steadily increased; it now took a far higher score to win a semifinalist spot than it had when the school first opened. This high test-performance was reflected in the number of students who became National Merit semifinalists at the school—about 117 per year in the late 1990s—by far the highest number at any high school in the country.

Such numbers made the school even more desirable to many families, who viewed a TJ diploma as a passport to an Ivy League college. The competition to get into TJ reached a fevered pitch. “You have to understand the culture here,” says Domenech.

People move *into* this county to have their kids go to Jefferson. And they move into the communities where the three or four top [GT] middle schools are, because they know that they’re recognized as the “prep schools” for Jefferson.

In particular, families jockeyed to get their children into the GT Center at the Longfellow School, as it was known as the most effective of the TJ prep schools. Every year, between 65 and 95 of the 330 Fairfax County students admitted to TJ¹³ came from the Longfellow (a fact some attributed to the so-called “Vern Williams guarantee,” after a popular and rigorous math instructor at the GT Center).¹⁴

¹³ At its creation, TJ was designated a “governor’s regional school,” which meant that it received additional state funding and enrolled about 70 students a year from other North Virginia jurisdictions. Thus, although about 400 freshmen were admitted to TJ each year, only about 330 of them were from Fairfax County.

¹⁴ These figures do not distinguish between students at the Longfellow GT Center and students in the regular Longfellow Middle School, but by far the greater share was from the GT Center, school officials say.

In addition, Domenech says, “A cottage industry developed of Jefferson admission preparation academies, where people paid substantial sums of money to have their kids prepped on the tests and prepped on the essays and prepped on putting together the application for Jefferson.” In the county’s Indian and Korean communities, word of Jefferson’s desirability had become an article of faith by the late 1990s, and enormous resources were devoted to making children competitive. In fact, in the Korean community, many children were taken to weekly test preparation sessions beginning in the fourth grade—and a few, as early as kindergarten. “You truly have Korean kids, every weekend, studying for the TJ test, for years,” says the FCPS’ Sprague.

In this environment, the pressure both for the children and their parents sometimes became extreme. One year, on the day of the TJ entrance exam, a parent reportedly overheard another parent sending her child into the testing room with the sober warning, “You will never take a more important test in your life.” Another parent reports that the Longfellow School instituted grief counseling for the students who did not get into TJ—and for their parents.

Affirmative Action under Fire

It was in this climate, Domenech discovered, that TJ’s affirmative action program had come under fire, shortly before his own arrival in Fairfax County. The parents of several white eighth graders who qualified as semifinalists, but were not ultimately admitted to the school, became incensed to learn that some 30 African American and Hispanic students, who had tested below the top-800, had been admitted to TJ under the affirmative action program. They complained to school administrators and School Board members. And they reportedly intimated that they might file a lawsuit.

This threat came at a time when the constitutionality of affirmative action policies in school admissions was a matter of debate. [See Appendix 1 for a brief summary.] In Fairfax County’s own federal court district, a judge had ruled against two different affirmative action policies adopted one after the other by Arlington County. These policies had been intended to preserve a practice of admitting children of racial or ethnic minorities to half the slots in the kindergarten classes at the Arlington Traditional School, a popular magnet school. Students were admitted to Arlington Traditional by way of a lottery but, because far more white middle class families entered the lottery than anyone else, the School Department had developed a lottery formula that gave more weight to applicants who were low income, non-native English speakers, and racial or ethnic minorities. A federal district court judge ruled against this policy in May 1997 and—when Arlington County tried a slightly modified approach—ruled against Arlington again in April 1998, this time chiding the School Department for its “transparent attempt to circumvent” his previous ruling.

Given the general anti-affirmative bent in the courts, the Arlington County case in particular, and the present threat of a lawsuit in Fairfax County, the School Board decided to eliminate the affirmative action program at TJ. In addition, the board voted to phase out Visions, the middle school mathematics and science enrichment program. (Because the program was available only to African American and Hispanic youngsters, the board believed it, too, was vulnerable to a legal challenge.)¹⁵

These decisions were made publicly, but without much fanfare. Few parents had known beforehand that TJ had an affirmative action program, and few knew afterward that it had been eliminated. To anyone who was paying attention, however, the impact of the change was apparent almost immediately. "It didn't take but a year to see the significant drop in admissions of minorities at Jefferson," says Domenech. Between 1991 and 1998, 35 to 50 African American and Hispanic students were admitted each year. In 1999 and 2000, 17 and 13 African American and Hispanic students were admitted, respectively.

A small but active group of parents, focused on issues of special concern to minority students in Fairfax County, protested the decline of minority students at TJ.¹⁶ In 2000, the School Board, under the leadership of Bob Frye, one of the board's two African American members, directed the Superintendent to increase diversity at TJ, though he had to find a way to do so that would preserve the school's fine academic standards and also be legally "safe" in the opinion of the School Board majority.

A New Approach to Diversity

In internal discussions, Domenech and his staff debated how to approach this mandate. One early focus was the entrance exam itself. Clearly, African American and Hispanic students, collectively, performed less well on the test than white and Asian students. Did that disparity reflect a racial or ethnic bias in the test itself? Or was it a reflection of the differences in educational advantages and academic preparation among different groups of students? As no one knew the answer, the FCPS decided to undertake a study of the question.

That would be an involved project, however, which would require a racial and ethnic breakdown of student responses to the test, question by question. It would take time. Meanwhile,

¹⁵ Critics charged that such a full-scale retreat from the FCPS' previous race-conscious policies was unnecessary and that the School Board was being unduly cautious.

¹⁶ In TJ's school newspaper, Liz Howard, the only African American girl in the Class of 2004, wrote an op ed article that described offensive language and school traditions that she believed were a product of TJ's racial insularity: "For instance, use of the word 'ghetto' as an adjective. I feel like I'm always hearing, 'That's so ghetto,' or 'My base school's so ghetto.' What do people mean by this? Especially on the popular team sport day, 'Ghetto Day,' it seems that they intend 'ghetto' to mean minority, like African American and Hispanic, and poor, which is incredibly offensive to me. When I see people dressed up for 'Ghetto Day' it feels like they are mocking people of my race."

Domenech had to come back to the board with a proposal. From a political point of view, Domenech knew that the most palatable idea would probably be the creation of a “second TJ” — a magnet high school, perhaps with a focus on government and liberal arts instead of math, science and technology. In fact, Chris Braunlich, one of the four Republican members of the School Board, had suggested this idea.

The creation of a second academically selective high school would, in itself, ease the competition to get into TJ. It would allow the Fairfax County Public Schools to avoid the problem of the “zero sum game,” giving a whole new group of students the chance to attend an academically selective high school without displacing the kinds of students who currently attended TJ. But Domenech opposed creating another GT high school. Such schools inevitably led to an us-versus-them mentality, he believed. Also, by siphoning off high achievers from the neighborhood high schools, these GT schools threatened the ability of these neighborhood schools to continue to offer a full complement of advanced courses. What’s more, the Fairfax County School Board had not created TJ simply for the sake of providing the county with a selective public high school. The board had had a specific, pragmatic rationale for creating TJ: the world of science and especially technology was moving so quickly that it was impossible for all high schools to stay up-to-speed with the latest research developments and computer equipment—but if the county could keep one high school up-to-date, it could serve the most talented and dedicated science-technology students, day to day, and also be a resource to the rest of the county—for instance, making equipment and facilities available to other high school students in special circumstances. There was no comparable rationale for creating a government and liberal arts magnet.

Another possibility was simply to duplicate TJ—create another math-science-technology magnet school. But Domenech suspected that it would be seen as “a second class TJ.” In addition, if admission to this hypothetical new magnet school—whatever its focus—were based on an admissions exam, it was still unclear how many African American and Hispanic students would be served.

Instead, Domenech and his administrative staff began to think about how they might be able to diversify the TJ student body without using any system of racial preferences. Not only was the Jefferson school mostly white and Asian, it was mostly middle-class-to-affluent with large numbers of students coming from just a few neighborhoods. Thus, one way to diversify the student body would be to make an effort to include more low-income students and more students from other neighborhoods. Domenech believed such a program would be constitutional.

The Superintendent knew, however, that the School Board would never tolerate any proposal that did not preserve the school’s greatest claim to fame—its high academic standards. Thus Domenech and his team came up with a plan intended to do both—to preserve the school’s academic strength and to introduce income and geographic diversity into the student body. They decided to do this by retaining the first part of the admissions process. That is, the FCPS would

rank the 800 top-performing applicants using exam scores and grades, and these students would constitute the semifinalist pool, as under the existing system. At this point, however, there would be a change. The administration took the position that any of these 800 semifinalists would do well at TJ. In fact, given the margin of error on the test, these 800 students could be considered interchangeable from the point of view of the exam, they argued. Thus, instead of sifting through the materials of these 800 applicants to try to find the “best of the best,” Domenech proposed to choose among the 800 in a way that would ensure that TJ was more representative of the county as a whole. For instance, any of the 800 who were on the free-and-reduced-price school lunch plan would automatically be admitted. (Children from families earning at or below 185 percent of the federal poverty level were eligible for either a free or a subsidized lunch.) This change was expected to have little impact on the makeup of the school. In the fall of 2001, 166 students on the subsidized lunch program had applied to TJ, but only seven had qualified for the 800-list. Under the existing system, two of the seven had been admitted. Under the new system, all seven would have been admitted.

Second, all applicants on the 800-list would be sorted by neighborhood.¹⁷ Based on its share of the eighth grade population in the county, each of these neighborhoods would be allocated a certain number of places in the ninth grade class at TJ. If the number of semifinalists from a given neighborhood was less than or equal to the number of allocated places, all those students would automatically be admitted to TJ. If the number of semifinalists was more than the number of allocated places, the admissions committees would select among them to fill the allocated spots (using the same criteria as in the existing system). Any allocated places that a given neighborhood could not fill (because not enough students had qualified as semifinalists) would become part of the general pool, and could be filled by semifinalists from one of the “over-represented” neighborhoods.

Impact. Over time, this system would serve to shuffle the student body at TJ quite a bit, according to FCPS data. In particular, the administration showed how the geographic diversity plan would have affected the ninth grade class admitted in September 2001.

Altogether, 113 of the 330 Fairfax County students admitted to TJ that year would have been displaced by semifinalists from other neighborhoods, under the new plan. Eight neighborhoods would have lost spots, 14 neighborhoods would have gained, and 2 would have had no change. The biggest “losers” would have been the neighborhoods served by Cooper and Longfellow schools. In 2001, the Cooper area would have lost 37 of its 50 spots and the Longfellow, 28 of its 40 spots. The biggest “winners” would have been the neighborhoods served by Rocky Run and Lake Braddock schools. The Rocky Run area would have gained 11 spots, for a total of 18,

¹⁷ Each neighborhood was defined as the area served by a given neighborhood middle school. In fact, some children in the neighborhood would not be attending their neighborhood school—would instead be enrolled in a GT Center, for example, or in a private school. But for purposes of allocating places at TJ, all students would be “counted” in their own neighborhoods.

and Lake Braddock would have gained 9, for a total of 20. In only three neighborhoods—those served by Key, Whitman and Stone schools—would too few students have qualified for the 800-list to fill the neighborhoods' allocated places. In all, eight spots from these neighborhoods would have returned to the general pool.¹⁸

Domenech acknowledged that this geographic diversity plan had pluses and minuses. On the plus side, the data indicated that TJ would be able to serve all neighborhoods in the county just about equally, while preserving academic standards, and remaining safe from lawsuit; to meet all these objectives was, in itself, quite an accomplishment.

Long-term Hopes for Racial Diversity. On the other hand, the plan would do virtually nothing to improve the racial balance of TJ, as very few African American and Hispanic students ranked in the top 800 of the applicant pool. Even in the neighborhoods with the largest minority populations, the students who made the 800-list were nearly all white and Asian. Domenech believed that over time, this would change. To the small group of parents who were most concerned about racial balance at TJ, Domenech's message was "hang with me." The FCPS was launching several other initiatives that Domenech hoped would eventually boost more African American and Hispanic applicants onto the 800-list. For instance, a program called "Quest," funded by the Fairfax Education Foundation, had now replaced the defunct Visions. Because it was funded privately, Quest did not raise the same affirmative action concerns that Visions had. In some programmatic details, it differed as well, but its goal was the same—to provide a math and science enrichment program to African American and Hispanic middle school students, and to help prepare them for the TJ exam, should they decide to take it.

In addition, the FCPS intended to try to "level the playing field" with respect to student familiarity with the test itself. For one thing, the central administration had commissioned AGS—the firm that produced the TJ admissions test—to prepare a 16-page information booklet about the exam that included a general overview, tips, and sample questions. Beginning in the fall of 2002, the FCPS planned to offer a test preparation course for eighth graders from the middle schools that were most under-represented at TJ.

On another front, Domenech was working to increase the proportion of minority students in the GT Centers.¹⁹ Once enrolled in the centers, these minority students would be able to take advantage of the advanced courses and test preparation the centers offered, and thus would be

¹⁸ The figures in this paragraph are author calculations based on FCPS data.

¹⁹ He was attempting to do this in several ways. One was to add a non-verbal section to the entrance tests (the Nagliari test), to create a new venue for assessing children who might be gifted intellectually but verbally behind. Another was to expand the FCPS' "Young Scholars" program, which trained kindergarten-through-second grade teachers to do a better job of recognizing the potential of children from poor and non-English speaking families. A third was giving IQ tests to children in the second, rather than the first, grade. And a fourth was allowing parents to make a case that their child be considered for a GT Center even if he or she had not scored well enough on the entrance tests.

well-positioned to apply to TJ. Finally, the superintendent believed that the mere existence of the geographic representation plan at TJ would send a message to students in every neighborhood that “they had a real shot” at getting into TJ—that the school was not the private preserve of students from a handful of well-off white neighborhoods. Once that message filtered through the ranks, he hoped that some teachers would actively encourage math and science-oriented minority students to apply to TJ.

Reacting to Political Disappointment

Given this level of thought and preparation, it was hard on Domenech to see the geographic diversity plan pronounced dead on arrival at the October 11 School Board meeting. The superintendent was disappointed not to have received more support from the Democrats on the board or from the minority community, though he had approached several local leaders for backing. “I was surprised by the lack of support from the people that I would have expected to support it. I was surprised that groups like the NAACP and other minority groups didn’t come out in full force,” Domenech says.

Close observers of Fairfax County politics have suggested several reasons for the lack of support. One was, simply, that board members did not want to alienate their constituents, especially the well-heeled white and Asian parents who had been political allies in the past and wanted their children to go to TJ. But in addition, there was no passionate constituent support for the proposal to counterbalance the passion of the opposition. TJ was perhaps the most important educational issue in the county for the parents who opposed Domenech’s proposal, but it was not the most important educational issue for anyone else. Minority parents tended to have a long list of priorities that ranked above TJ, mostly pertaining to needed improvements in the neighborhood schools, according to one parent. The superintendent’s plan would not increase the number of minority students at TJ in the immediate future and, though minority parents were still inclined to support the proposal on general principle, they were not passionate about it. What’s more, the minority students who stood to gain the most by enrolling at TJ were the most successful, high-performing minority students in the county—and that was not the group of kids that usually galvanized African American or Hispanic activists, who reasoned that those kids would be okay no matter where they went to school.

A Public Debate

Once it became clear that his initial proposal was dead, Domenech tried to salvage some kind of compromise. He created a working group, made up of parents and FCPS administrators, and asked them to try to hammer out a compromise. Within this group, in public meetings, and on open pages, a lively subgroup of Fairfax County residents engaged in a debate about TJ admissions.

The opponents of Domenech's plan argued that admissions should be designed to pick the highest performing students—period. That was fairest to individual students and the only good way to meet the needs of the county's most academically gifted students, they said. If less gifted students were enrolled at TJ, the school would be forced to water down its offerings so as not to leave these students behind, and the gifted students would lose out. Yes, there were inequities in the broader society, they acknowledged, but they should not be solved by watering down TJ; that served no one. Disadvantaged children should be addressed when they were young, so that they could be truly competitive by the time they reached high school. Says School Board member Chris Braunlich, "We need to solve it at the front end. The problem is not with the kids. The problem is what the school system does in preparing them. The cheap and easy answer is jerry-rigging admissions to balance everything off."

What's more, the superintendent's opponents did not accept the FCPS' claim that all students who ranked in the top-800 on the test were equally qualified to attend TJ. There were significant differences within this group, they argued, but these differences were obscured by the fact that the test was too easy—and thus hundreds of students were able to score at the highest levels. A harder test—something more along the lines of the PSAT—would separate out the high-achievers more effectively, they said.

The superintendent and his supporters countered that it was unrealistic, if not disingenuous, to talk about bridging the achievement gap among all students when they were young. Domenech had, in fact, introduced several new programs designed to help underachievers in the first few grades of school, but students moved in and out of the county all the time, and at every age. The school system needed to address them at all ages. With respect to the fears of "watering down" TJ, Domenech noted that TJ's strong academic reputation had been established when the school had had an affirmative action program in place. As a group, African American and Hispanic students admitted to TJ under affirmative action had done well academically—and they had not even ranked in the "bottom half" of the 800-list, but below the 800-group altogether. The mean grade point averages of the last group of African American and Hispanic students admitted under the affirmative action program were 3.4 and 3.6, respectively, after two years at TJ, according to FCPS figures.

The debate did not help the participants to see eye-to-eye, but instead, fanned the flames of anger on both sides. In the end, Domenech's working group pronounced itself unable to agree on a compromise. In early December 2001, the School Board developed and approved its own temporary compromise. TJ admissions would be conducted exactly as they were under the existing plan, but at the end of the process, the FCPS would take a "second look" at all the rejected semifinalists from under-represented neighborhoods, and could add up to 30 more students from this group to TJ's ninth grade class. By contrast to Domenech's original plan, this was "crumbs" (but slightly better than the status quo) in the eyes of the superintendent's strongest supporters and wishy-washy (but relatively harmless) in the eyes of his opponents.

Results—Predictable and Surprising. In April 2002, when finalists were chosen for TJ's ninth grade class the following September, the FCPS used the "plus-30" plan for the first time. The results were much as Domenech had predicted. After the usual admission process, the oversight committee selected 29 additional semifinalists for admission. Of these, only one was African American and none were Hispanic—confirming that geographic diversity and racial diversity were not one-and-the-same.

But there was a curious development in the admission statistics that year: more African American and Hispanic students than usual had applied to TJ—394, compared to 271 the previous year. Of these applicants, 45 had ranked in the top-800—compared to 15 the previous year. And 30 had been accepted—compared to nine the previous year. School officials attributed the surge to several factors. First, the acrimonious debate about TJ admissions had generated considerable publicity, and, as a result, some minority students and parents had become aware of TJ and its desirability for the first time. Second, the public debate had coincided with a concerted push by the Diversity Committee of the PTSA (Parent Teacher Student Association) at TJ to host information sessions at TJ for minority families and to sponsor a series of test preparation sessions with eighth grade minority applicants.

The fortuitous rise in African American and Hispanic admissions was to last just one year, however. For the September 2003 cohort, the numbers of both minority applicants and admissions were back down to previous levels. Thus, once again, Domenech began to think about finding a new and better way to approach the diversity issue.

Meantime, however, two incidents indicated that the political waters were still choppy.

Test Prep

In the fall of 2002, the FCPS announced that it would hold a three-week TJ test preparation course for 225 eighth graders at eight under-represented middle schools. This precipitated a furious protest from parents of students at the over-represented middle schools, demanding parity: they wanted test-preparation sessions too. The School Board hastily voted to make the course available to all eighth graders in the county. Nearly 700 students took the course that fall—more than half of them from the over-represented middle schools. Ironically, says one TJ parent, the kids from these schools subsequently complained that the course was too easy. "Well, of course it was 'too easy!'" she says. "It wasn't designed for you. You are already prepared for the test. But God forbid that we level the playing field!"

‘Stealth Affirmative Action’

The admissions controversy erupted anew in the spring of 2003, when Lloyd Cohen, father of two TJ students, published an article in the Albany Law Review that criticized the existing TJ admission process as fundamentally “corrupt.”²⁰ He focused on the second half of the process—when the eight admissions committees reviewed the applications of the 800 semifinalists and made their final selections. He argued that this process provided “political camouflage” for a de facto system of racial preferences. African American and Hispanic semifinalists were statistically more likely to be chosen for admission than their white and Asian counterparts, he said. Analyzing admissions data for ninth graders enrolled in September 2002 (obtained through a Freedom of Information request), he reported that 10 out of 11 African American semifinalists had been admitted to TJ, and noted that 7 of the 10 had ranked in the “bottom half” of the 800-list.

This article sparked a new round of debate. It circulated like wild fire among TJ students and their parents. Liberal proponents of diversity were furious. To treat the admissions test as a lone, infallible arbiter of academic talent was absurd, they argued. TJ Principal Elizabeth Lodal and Supt. Domenech decried the article as an attack on the small group of African American and Hispanic freshmen at TJ. Under school policy, students were never told where they had “ranked” in the 800-pool, let alone where their classmates had ranked. Domenech wrote a rebuttal to Cohen’s article, arguing that given the margin of error on the test, the differences between number 1 and number 800 were so small as to be negligible, in the first place.²¹ “What that paper did is made these [minority] freshmen feel like garbage,” says the superintendent. “Here they make the 800, and somebody is writing that they don’t deserve to be there, that somebody else should have been picked.”

The debate grew more rancorous when TJ’s student body president, Matthew Wansley, invited Cohen to present his study at TJ—an event that was promptly nixed by Principal Lodal on grounds that no school should host an event that would expose 10 identifiable students to public ridicule and humiliation. These students were already in an uncomfortable position—“having to navigate a very unfriendly debate that was raging around them,” Lodal noted. Another fierce debate followed Lodal’s decision—this one about free speech, ostensibly, though the debate had strong racial overtones.

²⁰ “A study of invidious racial discrimination in admissions at Thomas Jefferson High School for Science and Technology: Monty Python and Franz Kafka meet a probit regression,” 66 Albany Law Review 447 (2003).

²¹ “Metamorphosis: From statistics to cockroaches, a response to Professor Cohen,” 67 Albany Law Review 279 (2003).

Back to the Drawing Board

In this volatile climate, Domenech and his administrative team went back to the drawing board in the summer of 2003 to come up with a new approach to diversifying the student body at TJ. They needed a new method—and a new political strategy, as well.

Exhibit 1

The Application Process

1. Student applies by November 1, using a one-page application form that includes demographic information. This registers the student for the admissions exam, which takes place the first Saturday in December
2. The admissions exam takes two-and-a-half hours and includes both mathematics and verbal reasoning. The student will also answer two essay questions, which come into play only for the 800 semi-finalists.
3. Thomas Jefferson Admissions Coordinator oversees the computer-calculated student ranking. The admissions exam counts 80 percent. The student's grade point average (using final marks in seventh grade and the first quarter of eighth grade in major subject areas) counts 20 percent.
4. The top 800 students on the ranking are semifinalists. They are notified, and then need to provide the admissions coordinator with more information: three teacher recommendations in mathematics, science and one other subject. A data sheet of activities, awards, and other indications of special interest in mathematics, science and technology in grades 6, 7, and 8.
5. The admissions coordinator creates packets for each student that include the initial application, test scores, grades (including second quarter grades), teacher recommendations, data sheets and student essays.
6. These 800 packets are then distributed to eight committees of five members each. Most of these committee members work for the FCPS, though a small number come from other nearby school systems that also send students to TJ. Each committee is balanced in various ways—by where in the county the staff members work, area of expertise, school level, race, ethnicity, and gender. Three committees, or 15 individuals, review each application, and each committee reviews 300 applications.
7. The committees have four days to review the applications. At that point, the members vote "accept," "reject," or "waiting list" for each student. Each committee may choose to accept up to 150 of the 300 students it is reviewing, and to place up to 30 on the waiting list. If there is strong disagreement about particular students, a ninth oversight committee steps in to resolve them.
8. This process results in a group of 400 to 410 students. If there is room in the school for a few more students, the students in the waiting list are reviewed, and those with the most "accept" votes are added.

Appendix 1

A Brief History of the Relevant Affirmative Action Decisions

Affirmative action had been initiated during the administration of President Lyndon Johnson in the mid 1960s, but the particular mechanisms used to increase African American presence in schools and workplaces varied. Early on, for instance, federal agencies and businesses that received federal funds were barred from using aptitude tests, as these were thought to discriminate against African Americans.

In many public colleges and universities, however, standardized tests had become the centerpiece of the admissions process, and their use was never curtailed. Instead, many schools continued to rely on these standardized tests, but created a different standard for African American students (and later, students from other groups considered disadvantaged) in order to fill pre-established quotas. This approach began receiving court challenges as early as the late 1970s. In the historic Bakke case of 1978, a rejected white applicant to the University of California Medical School at Davis sued the California university system on the grounds that his qualifications were better than those of minority students accepted as part of a racial quota.²² The Supreme Court split four to four on the legitimacy of using racial quotas in that case, with a “tie-breaking,” down-the-middle opinion by Justice Lewis Powell generally seen as carrying the day.²³ Powell agreed with conservative justices that racial quotas violated the constitutionally protected principle of equal protection under the law, but parted with them by arguing that race and ethnicity could be counted as a small plus—along with residing in an under-represented part of the country, for example—in the interest of promoting a diversity of students on campus.

During the 1990s, the Supreme Court seemed disposed to rule that, as designed, many school affirmative action programs were unconstitutional. In 1997, the Supreme Court refused to consider a constitutional challenge to California’s “Proposition 209,” a ballot initiative that banned public institutions—including the state’s huge system of colleges and universities—from granting any kind of preferences on the basis of race or gender.²⁴ In addition, in 1996, the US Court of Appeals in the Fifth Circuit ruled in *Hopwood vs. State of Texas* that the goal of enrolling a diverse student body did not justify the University of Texas Law School in systematically applying lower standards to African American and Hispanic applicants. After these two actions, there were further legislative and electoral challenges to affirmative action in many parts of the country, including two successful ballot initiatives in the states of Washington and Florida.²⁵

²² *Regents of the University of California vs. Bakke*.

²³ Some critics have argued that Powell’s opinion, which did not have the support of a majority on the court, has been given too much weight in the succeeding years of the affirmative action debate.

²⁴ A “refusal to consider” does not constitute a decision either way, but is nonetheless often interpreted as upholding the legal status quo.

²⁵ The Supreme Court’s 2003 ruling in *Grutter vs. Bollinger*—which upheld the right of the University of Michigan Law School to employ the “narrowly tailored use of race in admission decisions to further a compelling interest in

Another legal trend took shape in the 1990s, as well. Citizens began to challenge affirmative action programs—not just in universities and professional schools, but in public school districts, as well. In Fairfax County’s own federal court district, a judge had ruled in 1997 and again in 1998 against two different affirmative action policies adopted, one after the other, by neighboring Arlington County. Arlington County had been attempting, through these policies, to preserve a practice of admitting members of racial and ethnic minorities to half the slots in the kindergarten classes at the Arlington Traditional School, a popular magnet school.

obtaining the benefits that flow from a diverse student body”—would change the legal landscape for affirmative action. But, while the decision would clarify the right of a school to deliberately seek a diverse student body, it would leave educators still unsure which particular affirmative action mechanisms would be acceptable to the courts and which would not, according to Domenech.