STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0118

Alejandro Cruz-Guzman, as guardian
and next friend of his minor children, et al.,
Appellants,

vs.

State of Minnesota, et al.,
Respondents,

Higher Ground Academy, et al., intervenors,
Respondents.

Filed September 26, 2022
Certified question answered in the negative
Johnson, Judge

Hennepin County District Court
File No. 27-CV-15-19117

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Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Johnson, Judge.

SYLLABUS

An imbalance in the racial composition of schools within a school district or school system is not a *per se* violation of the Education Clause of the Minnesota Constitution, unless the imbalance is caused by intentional, *de jure* segregation of the type described in *Brown v. Board of Education*, 347 U.S. 483 (1954).

OPINION

JOHNSON, Judge

Parents of public-school children seek to establish a violation of the Education Clause of the Minnesota Constitution, which provides that the legislature has a duty "to establish a general and uniform system of public schools" and to "make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state." Minn. Const. art. XIII, § 1. This interlocutory appeal is focused on a certified question. We answer the certified question by stating that the existence of a racial imbalance in the student body of a school, as compared to other schools in the same school district or school system, is not a *per se* violation of the Education Clause of the Minnesota Constitution, unless the racial imbalance is caused by intentional, *de jure* segregation.

FACTS

This class action was commenced in 2015 by parents of children who are enrolled as students, or may in the future be enrolled as students, in a public school in Minneapolis or St. Paul. The parents sued the State of Minnesota, the senate, the house of representatives, the department of education, and the commissioner of education (to whom

we refer collectively as the state for purposes of this opinion). In addition, three charter schools located in Minneapolis or St. Paul, and three parents of students in those charter schools, were permitted to intervene as defendants.

The parents' lawsuit is summarized in the second paragraph of their amended complaint as follows:

> The Minneapolis and Saint Paul Public Schools have been in the past and currently are segregated on the basis of both race and socioeconomic status, such that plaintiffs and other school-age children attend schools the enrollment of which is disproportionately comprised of students of color and students living in poverty, as compared with a number of neighboring and surrounding schools and districts. The plaintiffs are therefore confined to schools that are separate and segregated in terms of both racial and socioeconomic composition. As a matter of both law and fact, such schools are not equal to neighboring and surrounding whiter and more affluent suburban schools. Because such schools are separate and unequal, the education the students receive is *per se* inadequate within the meaning of the Education Clause, the Equal Protection Clause, and the Due Process Clause of the Minnesota Constitution. Such discrimination also violates § 363A.13 subd. 1 of the Minnesota Human Rights Act.

This appeal is concerned only with the parents' claims arising under the Education Clause of the Minnesota Constitution and, more specifically, only with the parents' theory that a racial imbalance among schools is a *per se* violation of the Education Clause.

The parties' various allegations, claims, and defenses are described in detail in a prior opinion in this case in which the supreme court concluded that the parents' claims are justiciable. *See Cruz-Guzman v. State*, 916 N.W.2d 1, 5-7, 7-12 (Minn. 2018). After the supreme court remanded for further proceedings, the district court granted the parents'

motion for class certification. The parties thereafter engaged in alternative dispute resolution for more than 18 months but were unsuccessful in voluntarily resolving the case.

In July 2021, the parents moved for partial summary judgment on their theory of a *per se* violation of the Education Clause. In December 2021, the district court filed a 25-page order in which it denied the parents' motion. The district court reasoned that, to prevail on their claim under the Education Clause based on evidence of racial imbalance, the parents must prove that the racial imbalance is caused by *de jure* segregation. The district court's analysis is based in part on the premise that a remedy for a violation of the Education Clause would require the re-assignment of students based on race and the premise that such a remedy is permitted by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution only as a remedy for intentional segregation. The district court stated that the parents do not have evidence of *de jure* segregation. The district court also noted the parents' argument that "many state actions . . . contribute[d] to the current racial imbalance." The district court stated that "any challenged state action(s) must directly cause the racially imbalanced school environment" and concluded that the parents submitted no such evidence.

In the conclusion of its order, the district court certified the following question to this court pursuant to rule 103.03(i) of the rules of civil appellate procedure: "Is the Education Clause of the Minnesota Constitution violated by a racially imbalanced school system, regardless of the presence of *de jure* segregation or proof of a causal link between the racial imbalance and the actions of the state?" The parents filed a notice of appeal. The

parents also petitioned the supreme court for accelerated review, as did the intervenor-respondents. The supreme court denied both petitions.

ISSUE

Is the Education Clause of the Minnesota Constitution violated by a racially imbalanced school system, regardless of the presence of *de jure* segregation or proof of a causal link between the racial imbalance and the actions of the state?

ANALYSIS

A.

We begin by identifying and confirming the legal authority for this interlocutory appeal. The applicable rule provides: "An appeal may be taken to the Court of Appeals . . . if the trial court certifies that the question presented is important and doubtful, . . . from an order which denies a motion for summary judgment." Minn. R. Civ. App. P. 103.03(i).

Although a certified-question appeal may be initiated by a district court and a party, appellate courts retain authority to determine whether a certified question is both important and doubtful. *See, e.g.*, *Fedziuk v. Commissioner of Pub. Safety*, 696 N.W.2d 340, 344 (Minn. 2005); *Jostens, Inc. v. Federated Mut. Ins. Co.*, 612 N.W.2d 878, 885-87 (Minn. 2000). A question is important if "(1) it will have statewide impact, (2) it is likely to be reversed, (3) it will terminate lengthy proceedings, and (4) the harm inflicted on the parties by a wrong ruling by the district court is substantial." *Fedziuk*, 696 N.W.2d at 344. A question is doubtful "if there is no controlling precedent" and "there is substantial ground for a difference of opinion." *Jostens*, 612 N.W.2d at 884-85 (quotation omitted).

In this case, none of the parties has discussed—let alone questioned—whether the certified question is either important or doubtful. We believe that the certified question is important because the ultimate resolution of this case could have a significant effect on public schools in the two largest cities in the state as well as public schools elsewhere. *See Fedziuk*, 696 N.W.2d at 344. Also, the district court stated that if this court were to agree with its reasoning, an appellate opinion might be determinative of the parents' Education Clause claim in light of the "profound difficulty in successfully proving intent." On the other hand, if this court were to disagree with the district court's reasoning, the parents might prevail on their Education Clause claim without the need to gather and introduce additional evidence, thereby avoiding additional expense and delay. We believe that the certified question is doubtful because, as a general matter, there is a lack of caselaw interpreting the Education Clause. *See Cruz-Guzman*, 916 N.W.2d at 8. In addition, there is "no controlling precedent" on the certified question itself. *See Jostens*, 612 N.W.2d at 884.

Thus, the certified question is important and doubtful.

B.

We next consider the parties' requests that we rephrase the certified question. This court has discretion to reformulate a question that is certified pursuant to rule 103.03(i). *See N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553, 559 (Minn. App. 2020); *Ames & Fischer Co., II, LLP v. McDonald*, 798 N.W.2d 557, 561-62 (Minn. App. 2011), *rev. denied* (Minn. July 19, 2011); *Erdman v. Life Time Fitness, Inc.*, 771 N.W.2d 58, 60-

61 (Minn. App. 2009), *aff'd*, 788 N.W.2d 50 (Minn. 2010); *Professional Fiduciary, Inc. v. Silverman*, 713 N.W.2d 67, 71 (Minn. App. 2006), *rev. denied* (Minn. July 19, 2006).

The parents request that we reformulate the certified question by inserting the words "or socioeconomically imbalanced" after the words "racially segregated" and before the words "school system." The parents note that they presented arguments to the district court concerning both racial and socioeconomic imbalances. But the district court did not consider whether a socioeconomic imbalance is a *per se* violation of the Education Clause. This court "cannot answer a certified question which is not first decided and explained by the trial court." *Doe 175 ex rel. Doe 175 v. Columbia Heights Sch. Dist., ISD No. 13*, 842 N.W.2d 38, 44 (Minn. App. 2014) (quotation omitted). Accordingly, we will not reformulate the certified question in the manner requested by the parents.

The state requests that we reformulate the certified question by adding the following clause at the end of the question: "even if there is no evidence that the imbalanced school system denies students the opportunity to acquire an adequate education." The state notes that the parties presented arguments to the district court concerning the issue or issues referenced in the proposed additional language. But the district court chose to frame a certified question that is narrowly focused on the parents' *per se* theory. We decline to venture beyond the certified question into issues for which an answer was not requested by the district court. Accordingly, we will not reformulate the certified question in the manner requested by the state.

C.

The Education Clause of the Minnesota Constitution provides as follows:

> The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.

Minn. Const. art. XIII, § 1.

As the supreme court noted in its prior opinion in this case, the Education Clause has been interpreted by the supreme court on only a few occasions. *Cruz-Guzman*, 916 N.W.2d at 8. In the earliest case arising under the clause, the supreme court "stated that the object of the constitutional clause on education 'is to ensure a regular method throughout the state, whereby all may be enabled to acquire an education which will fit them to discharge intelligently their duties as citizens of the republic.'" *Id.* (quoting *Board of Educ. of Sauk Ctr. v. Moore*, 17 Minn. 412, 416 (1871)).

In another early case, the supreme court "held that the education system provided by the Legislature did not violate the Education Clause when it 'afford[ed] upon like terms the means for obtaining a common-school education to all resident scholars of the requisite age' and 'ha[d] a general and uniform application to the entire state, so that the same grade or class of public schools [could] be enjoyed by all localities similarly situated.'" *Id.* (alterations in original) (quoting *Curryer v. Merrill*, 25 Minn. 1, 6 (1878)).

More recently, in *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993), in which a group of 52 school districts and 10 parents claimed that the statewide education-finance system violated the Education Clause, the supreme court

> held that because the plaintiffs were "unable to establish that the basic system [was] inadequate" and "the existing system

> continue[d] to meet the basic educational needs of all districts," there was no "constitutional violation of the state constitutional provisions which require the state to establish a 'general and uniform system of public schools' which will secure a 'thorough and efficient system of public schools.'"

Cruz-Guzman, 916 N.W.2d at 8 (alterations in original) (quoting *Skeen*, 505 N.W.2d at 312).

In part I of the supreme court's prior opinion in this case, the court analyzed whether the parents' claims based on the Education Clause are justiciable. *Id.* at 7-10. The court emphasized that the constitution "assigns to the Legislature responsibility for establishing a public school system." *Id*. at 8. The court explained that the Education Clause "constitutes 'a mandate to the Legislature,' 'not a grant of power,'" *id.* at 9 (quoting *Associated Schs. of Indep. Dist. No. 63 v. School Dist. No. 83*, 142 N.W. 325, 327 (Minn. 1913)), and "is the only section of the Minnesota Constitution that imposes an explicit 'duty' on the Legislature," *id.* (quoting *Skeen*, 505 N.W.2d at 313). The court stated that the parents' Education Clause claim requires the judiciary "to determine whether the Legislature has violated its constitutional duty under the Education Clause" or, on the other hand, "whether the Legislature has satisfied its constitutional obligation under the Education Clause." *Id.* at 9-10. The court defined the ultimate issue as "whether the Legislature has violated its constitutional duty to provide a general and uniform system of public schools that is thorough and efficient, and ensure[s] a regular method throughout the state, whereby all may be enabled to acquire an education which will fit them to discharge intelligently their duties as citizens of the republic." *Id.* at 9 (alteration in original) (quotations and citations omitted).

In part II of its opinion, which concerned the justiciability of the parents' equal-protection and due-process claims, the court stated, "Claims based on racial segregation in education are indisputably justiciable." *Id.* at 10 (citing *Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954)). Immediately following the citation to *Brown* is a footnote, which states, in part, "It is self-evident that a segregated system of public schools is not 'general,' 'uniform,' 'thorough,' or 'efficient.'" *Id.* at 10 n.6 (quoting Minn. Const. art. XIII, § 1). The court added that "courts are well equipped to decide whether a school system is segregated, and have made such determinations since *Brown*." *Id.*[1]

The foregoing legal principles are the law of the case. "'Issues determined in a first appeal will not be relitigated in the trial court nor re-examined in a second appeal.'" *Interstate Power Co., Inc. v. Nobles Cnty. Bd. of Commissioners*, 617 N.W.2d 566, 582 (Minn. 2000) (quoting *Mattson v. Underwriters at Lloyds of London*, 414 N.W.2d 717, 720 (Minn. 1987)). The law-of-the-case doctrine "applies where an appellate court has ruled on a legal issue and has remanded the case to the lower court for further proceedings." *Id.* (quotation omitted).

[1]In part II, the supreme court also stated that the right conferred by the Education Clause is a fundamental right for purposes of an equal-protection or due-process analysis. *Id.* at 11 (citing *Skeen*, 505 N.W.2d at 313-18). The court stated, "The fundamental right recognized in *Skeen* was not merely a right to anything that might be labeled as 'education,' but rather, a right to a general and uniform system of education that is thorough and efficient, that is supported by sufficient and uniform funding, and that provides an adequate education to all students in Minnesota." *Id.* at 11. This discussion is supported by citations to part II of *Skeen*, which concerned an equal-protection claim. *See Skeen*, 505 N.W.2d at 312-20.

D.

Before answering the certified question, it is necessary to express our understanding of the meaning of certain terms used in the certified question.

First, the certified question includes the term "racially imbalanced" as an adjective describing "school system" and the term "racial imbalance" as a noun. The district court expressly refrained from defining those terms. The district court chose those terms in lieu of the parents' terms "segregated" and "segregation." The parents used the terms "segregated" and "segregation" to describe public schools in Minneapolis and St. Paul in which the percentage of students of color exceeds the district-wide average by more than 15 or 20 percent or in which the percentage of students of color is less than 20 percent or more than 60 percent of the student body at that school (notwithstanding district-wide averages of 63 percent and 79 percent, respectively). The parents' measurements compare the racial composition of the student body of a particular school to the racial composition of the student body of the entire district, without regard for the racial composition of the community served by either a particular school or the entire district. The parents' means of identifying schools that they consider segregated (and, thus, the district court's means of identifying racially imbalanced schools) differs from the United States Supreme Court's use of the term "racial imbalance," which reflects either "a comparison of the proportion of majority to minority students in individual schools with the proportions of the races in the district as a whole," *Freeman v. Pitts*, 503 U.S. 467, 474 (1992), or "the failure of a school district's individual schools to match or approximate the demographic makeup of

the student population at large," *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 749 (2007) (Thomas, J., concurring).

Second, the certified question uses the term "*de jure* segregation." The United States Supreme Court has used that term to describe "segregation resulting from intentional state action directed specifically to the . . . schools," *Keyes v. School Dist. No. 1, Denver*, 413 U.S. 189, 205-06 (1973), and, more specifically, the practice "of maintaining two sets of schools in a single school system deliberately operated to carry out a governmental policy to separate pupils in schools solely on the basis of race," *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 5-6 (1971). The Supreme Court has made clear that *Brown* was "the first case invalidating a *de jure* system." *Milliken v. Bradley*, 433 U.S. 267, 282 (1977) (citing *Brown*, 347 U.S. at 495). The term *de jure* segregation sometimes is used in contrast with the term *de facto* segregation, which also appears in the district court's December 2021 order. The Supreme Court has used the term *de facto* segregation to refer to the situation in which "racial imbalance exists in the schools but with no showing that this was brought about by discriminatory action of state authorities." *Swann*, 402 U.S. at 17-18. The Supreme Court has explained that "the differentiating factor between *de jure* segregation and so-called *de facto* segregation . . . is purpose or intent to segregate." *Keyes*, 413 U.S. at 208.

E.

The parents urge the court to answer the certified question in the affirmative. Their argument is based on footnote 6 of the supreme court's prior opinion in this case, which stated, "It is self-evident that a segregated system of public schools is not 'general,'

'uniform,' 'thorough,' or 'efficient.'" *Cruz-Guzman*, 916 N.W.2d at 10 n.6 (quoting Minn. Const. art. XIII, § 1). The parents urge this court to interpret footnote 6 expansively so that the word "segregated" would encompass not only a school system with a racial imbalance arising from intentional, *de jure* segregation of the type at issue in *Brown*, but also a school system with a racial imbalance arising from *de facto* segregation of the type that is alleged to exist presently in Minnesota. In response, the state argues that the *Brown* Court used the word "segregated" to refer to laws that prohibited students of color from attending the same schools as white students. The state further argues that the supreme court has not recognized the parents' *per se* theory and "would not have used a single line in a footnote on justiciability to stake out the extraordinary position appellants claim."

In answering the certified question, we are mindful of the many occasions on which this court has refrained from expanding existing caselaw on the ground that "the task of extending existing law falls to the supreme court . . . , but it does not fall to this court." *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *rev. denied* (Minn. Dec. 18, 1987); *see also, e.g.*, *SVAP III Riverdale Commons LLC v. Coon Rapids Gyms, LLC*, 967 N.W.2d 81, 86 (Minn. App. 2021); *State v. Thomas*, 890 N.W.2d 413, 420 (Minn. App. 2017), *rev. denied* (Minn. Mar. 28, 2017); *Dukowitz v. Hannon Sec. Servs.*, 815 N.W.2d 848, 851 (Minn. App. 2012), *aff'd*, 841 N.W.2d 147 (Minn. 2014). This prudential principle is especially appropriate in a case such as this one, given the supreme court's primary role in interpreting the state constitution. *See Forslund v. State*, 924 N.W.2d 25, 35 (Minn. App. 2019) (interpreting Education Clause); *Otto v. Wright County*, 899 N.W.2d 186, 196 n.9 (Minn. App. 2017) (interpreting article III of state constitution). Thus, in light

of the role of this court *vis-a-vis* the supreme court, as well as the fact that the parents' argument is based on a prior supreme court opinion, we seek to determine only whether, in footnote 6 of its prior opinion, the supreme court recognized as viable the *per se* theory that the parents presented to the district court.

First, proof of a racial imbalance among schools within a school district or school system due to intentional, *de jure* segregation of the type described in *Brown* is *sufficient* to establish a violation of the Education Clause of the Minnesota Constitution. This is so because the supreme court expressly said so in footnote 6 of its prior opinion in this case. *See Cruz-Guzman*, 916 N.W.2d at 10 n.6. Accordingly, a racial imbalance due to intentional, *de jure* segregation of the type described in *Brown* would be a *per se* violation of the Education Clause of the Minnesota Constitution.

Second, proof of a racial imbalance among schools within a school district or school system due to intentional, *de jure* segregation of the type described in *Brown* is *not necessary* to prove a violation of the Education Clause of the Minnesota Constitution. The ultimate question under the Education Clause is "whether the Legislature has violated its constitutional duty to provide a general and uniform system of public schools that is 'thorough and efficient, and ensure[s] a regular method throughout the state, whereby all may be enabled to acquire an education which will fit them to discharge intelligently their duties as citizens of the republic." *See Cruz-Guzman*, 916 N.W.2d at 9 (alteration in original) (quotations and citations omitted). A plaintiff could prove that the legislature violated its duty under the Education Clause without introducing any evidence of racial imbalance.

Third, proof of a racial imbalance among schools within a school district or school system due to *de facto* segregation is *not sufficient* to establish a violation of the Education Clause of the Minnesota Constitution. Again, the ultimate question under the Education Clause is "whether the Legislature has violated its constitutional duty to provide a general and uniform system of public schools that is thorough and efficient, and ensure[s] a regular method throughout the state, whereby all may be enabled to acquire an education which will fit them to discharge intelligently their duties as citizens of the republic." *See id.* (alteration in original) (quotations and citations omitted). A racial imbalance due to *de facto* segregation is beyond the scope of footnote 6 of the supreme court's prior opinion in this case, which cited *Brown*, *see id.* at 10 n.6, which was a case of *de jure* segregation, *see Milliken*, 433 U.S. at 282. Accordingly, a racial imbalance among schools within a school district or school system due to *de facto* segregation would *not* be a *per se* violation of the Education Clause of the Minnesota Constitution. This is so even if state action unintentionally contributed to a racial imbalance arising from *de facto* segregation. Such a situation is significantly different from the *de jure* segregation that was present in *Brown*.

Fourth, proof of a racial imbalance among schools within a school district or school system due to *de facto* segregation is *not necessary* to establish a violation of the Education Clause of the Minnesota Constitution. Again, the ultimate question under the Education Clause is "whether the Legislature has violated its constitutional duty to provide a general and uniform system of public schools that is thorough and efficient, and ensure[s] a regular method throughout the state, whereby all may be enabled to acquire an education which will fit them to discharge intelligently their duties as citizens of the republic." *See Cruz-*

Guzman, 916 N.W.2d at 9 (alteration in original) (quotations and citations omitted). A plaintiff could prove that the legislature violated its duty under the Education Clause without introducing any evidence of racial imbalance.

DECISION

A racially imbalanced school system, by itself, is not a violation of the Education Clause of the Minnesota Constitution. A racially imbalanced school system caused by intentional, *de jure* segregation of the type described in *Brown* would be a violation of the Education Clause of the Minnesota Constitution. A racially imbalanced school system caused by *de facto* segregation, by itself, is not a violation of the Education Clause of the Minnesota Constitution, even if state action contributed to the racial imbalance.

Certified question answered in the negative.