

How do we maintain a free society in American Schools?

An Overview of Segregation and Desegregation in Public Education

Kathleen M. Leonovich (Dormody)

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Dr. Christopher Sny, Professor
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Whether discussing physical or within-school segregation, an intellectual and educational divide still exists within the United States. Physical segregation is defined as the use of separate facilities to house whites and minorities. This term can be traced back to the time of separate restaurants, drinking fountains, restrooms, and schools for blacks and whites. Within-school segregation is defined as the use of separate tracts, course offerings, and curriculums for white and minority students. This term can be connected to the pre-inclusion era in education as well as the separation of Latino students from the rest of a school's population.

Throughout this paper, I will trace the history and trends of segregation versus desegregation in American schools. I will address examples of segregation pertaining to black, Latino, and Native American students, focus upon de jure segregation (institutional by way of laws, regulations, and policy), and span 1954 to present day in southern, northern, and border states.

The 1896 case of *Plessy v. Ferguson*, though not the desegregation case on record, upheld the doctrine of "separate but equal," ruling that the Constitution permitted governments to require separation of the races in schools, public transportation, and elsewhere, so long as the opportunities offered the separate races were characterized as equal (Civil Rights 101 Website). In 1954, however, the Topeka, Kansas case, *Brown v. Board of Education*, ruled that the "separate but equal" doctrine was inherently unequal by stating "segregation of white and negro children in the public schools of a state solely on the basis of race, pursuant to state laws permitting or requiring such segregation, denies to negro children the equal protection of the laws guaranteed by the Fourteenth Amendment – even though the physical facilities and other "tangible" factors of white and negro schools may be equal" (347 U.S. 483). As a result, *Brown v. Board of Education* required that schools implement mass integration plans.

Since this ruling, there have been two major developments in the current trend of school desegregation. One occurred during the 1970s and 1980s at which time the “focus of desegregation was on the physical integration of African-American and white students through such measures as busing, school choice, magnet schools, use of rations, redrawn school district boundaries mandatory and voluntary intra- and inter-district transfers, and consolidation of city districts with suburban districts” (Weiler, 1998). The second peak in growth occurred during the 1990s at which time the focus of desegregation was on the within-school arena defined as school tracking, unfair grouping practices, differences in the choices of courses available to different groups of students, poorly qualified teachers, demeaning and non-challenging curriculums, few resources, and by-race designation of teaching assignments (Kozol, 2005). Due to the current growth rate of emigrating Asian and Latino students, the United States is again faced with the issue of inequality in education. This is evidenced by the Supreme Courts current docket of two major cases from Kentucky and Washington State, and the consideration of race in the context of student assignment to elementary and secondary schools.

Section One of the Fourteenth Amendment reads “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

It is important, for the purpose of understanding school desegregation cases, that one is aware that an equal and fair education falls under the stipulation “privileges or immunities that are attendant to national citizenship” (Rohde, 2001). This is evident in the “due process clause”

of the Fourteenth Amendment which provides that “no person shall be deprived of life, liberty, or property without due process of law.”

The “equal protection of the law” clause provides that even “peoples of color” are included in the U.S. Constitution because man is devoid of racial criteria and/or stipulations. This is evident in the preamble to the Declaration of Independence which considers Americans “one people” entitled to the rights enjoyed by the British; it declares “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty, and the pursuit of Happiness” (Rohde, 2001).

The Fourteenth Amendment prohibits discrimination in public schools. Post *Plessy v. Ferguson*, the landmark desegregation case out of Kansas, *Brown v. Board of Education*, deviated from its 1896 ruling of “separate but equal.” This was done mainly because the United States Supreme Court, at that time, decided that “separate schools deprive minority children of equal educational opportunities, even if the physical facilities and other factors are equivalent” (Zirkel, 2002) and was, therefore, unconstitutional, violating the “due process clause,” due to its promoting racial discrimination.

Brown v. Board of Education, 1954, was a compilation of five state cases all seeking the same solution to segregation problems of busing and inferior school conditions; they are *Belton v. Gebhart* (Delaware), *Brown v. Board of Education* (Kansas), *Briggs v. Elliot* (South Carolina), *Davis v. County School Board of Prince Edward County* (Virginia), and *Bolling v. Melvin Sharpe* (Washington, DC).

In 1995, the Supreme Court ordered a mass desegregation plan in Little Rock, Arkansas under the *Brown II* case, calling for desegregation with “all deliberate speed.” The reason this

case came about was because Central High School, from a previous lawsuit's District Court ruling, was in the process of desegregation their school systems. In 1957, nine African American students had their admission to an all-white school blocked by a National Guard Unit, per directive of Arkansas' governor. The governor's actions were declared violative of the "due process clause" of the Fourteenth Amendment, therefore, unconstitutional.

In 1960, a young girl, Ruby Bridges, was chosen to be one of four African American girls to be integrated into a New Orleans public school. This was just one of several civil rights laws enacted by the NAACP in the 1960's. And, in 1964 the Civil Rights Act was enacted. Title 11, Injunctive Relief Against Discrimination in Places of Public Accommodation, Section 201 of the Civil Rights Act states "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin." Title VI of the Civil Rights Act of 1964 allows the federal government to withhold funding from schools that do not completely desegregate. During the first five years of the act, substantial progress had been made in desegregating public schools. In 1968, under another title of the Civil Rights Act, established the Fair Housing Act, giving minorities the right to buy and sell property where they chose. By the 1970s, the South had become the nation's most integrated region within the United States.

In March of 1963, Martin Luther King Jr. gave his infamous "I Have a Dream" speech in Washington, DC. This doctrine of equality afforded Dr. King the opportunity to speak out against racial segregation and promote integrated education. This is prevalent when he states two of his four dreams: (1) "I have a dream that one day on the red hills of Georgia, sons of former slaves and sons of former slave-owners will be able to sit down together at the table of

brotherhood.” (2) “I have a dream my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.”

Whereas during the 1970s and 1980s desegregation issues focused on the physical separation of students, whether black and white or Latino and white, through such measures as busing, school choice, magnet schools, use of rations, redrawn school district boundaries, district transfers, and consolidation of city and suburban school districts, the 1990s spawned a second trend of within-school segregation (Weiler, 1998). Within-school segregation is referred to as the use of ability grouping strategies, rote, demeaning curriculums, lack of resources, low expectations, and tracking. It can also be established through a separation of white and minority students based upon the courses offered to them such as IB or AP classes. Such separation leads to an even wider achievement gap between black and white students than already exists. The 1971 landmark case *Swann v. Charlotte-Mecklenburg* concluded “in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole” (402 U.S. 1). The court found the existence of four major problems on the issue of students’ assignment to schools: racial quotas, one-race schools, attendance zones, and transportation. Regarding racial quotas, not every school in a community is required to reflect the racial composition of an entire school system. Though one-race schools do not indicate a segregation system, these types of schools must be highly scrutinized. The altering of attendance zones is not a remedy to segregation, and, a student assignment plan is not acceptable because of the appearance of being neutral, as it may not counteract past segregation. Transportation via busing may be suggested as a viable solution to school segregation. After all, the court ruled that “all approaches to school segregation must be implemented so as to achieve integrated school” (402 U.S. 1).

The 1954 *Bolling v. Sharpe* case ended up on the Supreme Court docket because the District Court of DC dismissed a complaint by African American children which alleged that being segregated from white students deprives them of their due process of law under the Fourteenth Amendment. The Supreme Court took the position that the Equal Protection Clause of the Fourteenth Amendment prohibits states from maintaining racially segregated public schools. Their rationale was that “racial segregation is a denial of Negro children of the due process of law guaranteed by the Fifth Amendment” and that “segregation in public education imposes on Negro children a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause” (347 U.S. 497). Specifically, the court clarified that liberty is not confined solely to bodily restraint. It “extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective” which, according to the U.S. Constitution, segregation is not (347 U.S. 497). Their decision was to require the students be integrated into the school they chose to attend.

The 1958 *Cooper v. Aaron* case was presented to the Supreme Court by the Little Rock School Board because, in trying to adhere to a previous directive of desegregating their school district, they were blocked by Arkansas Governor and Legislature. The court held that “no state legislator or executive or judicial officer can war against the Constitution without violating his solemn oath to support it.” Because of a court ordered desegregation plan in Little Rock, Arkansas, four African American children were to start the 1957-1958 school year at an all-white school. The State Legislator and State Governor disagreed and opposed the idea. This opposition also caused resulting violence toward the students and racial tension in the school. The decision was for the Little Rock School District to continue with their desegregation plan, and an injunction was placed upon the Arkansas governor.

There were four main reasons for the court's ruling. First, enforced racial segregation in public schools is a denial of equal protection of the law enjoined by the Fourteenth Amendment. Second, the Fourteenth Amendment is the supreme law of the land, and Article VI of the Constitution makes it of binding effect on the States "and Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Third, no state legislator or executive or judicial officer can war against the Constitution without violating his solemn oath to support it. Finally, state support of segregated schools through any arrangement, management, funds or property cannot be squared with the command of the Fourteenth Amendment that no State shall deny to any person within its jurisdiction the equal protection of the laws.

In the 1973 *Keyes v. School District No. 1*, petitioners sought desegregation of the Denver school system, alleging that because the Park Hill area schools had segregation policies the entire Denver school system was guilty of segregation as well. Members of the Park Hill community in Denver, Colorado sued the Denver school system for promoted educational segregation, merely because the Park Hill School practiced segregatory policies. The Denver District Court disagreed with members of the Park Hill community that the entire school district was segregated. They cited "manipulation of student attendance zones, school-site selection and a neighborhood school policy, created or maintained racially or ethnically segregated schools throughout the district" (413 U.S. 189). Petitioners appealed the case and it proceeded to the Supreme Court docket. The finding of the court was that segregation appeared to be the case. The decision was to order the school board to remedy the situation. And, if that objective was not accomplished the District Court must declare all-out desegregation of the core city schools. The court's reasons were as follows: (1) the mere assertion of such policies are not dispositive where the school authorities have been found to have practiced de jure segregation in a

meaningful portion of the school system by techniques that indicate that the “neighborhood school” concept has not been maintained free of manipulation, (2) neighborhood school systems, neutrally administered, reflect the deeply felt desire of citizens for a sense of community in their public education, and (3) the court found no credence to the accusation that the entire system was practicing segregation (413 U.S. 189).

The 1974 *Milliken v. Bradley* case charged that the Detroit, Michigan school system was racially segregated as a result of official policy. The District Court ordered a desegregation plan encompassing the 85 outlying school districts; it was affirmed by the U.S. Court of Appeals (Oyez). The Supreme Court found a serious lack of evidence supporting the allegation of school system segregation and noted desegregation is not about “any particular racial balance in each school, grade, or classroom” (418 U.S. 717). They also noted that according to their ruling in *Brown v. Board of Education* they did not feel comfortable making such a ruling, as control over a school system falls under state and local control. They concluded the use of erroneous standards in the decisions of the lower court and reversed the Court of Appeals ruling. This ruling limited a lower court’s ability to order suburbs to join with inner cities in school desegregation plans.

The 1991 *Board of Education of Oklahoma v. Dowell* case was about a school system being accused of racial segregation due to neighborhood demographics. The Supreme Court concluded a school was not responsible for “remedying local conditions, such as segregated housing patterns (Fife, 1996). They ruled that, if a school district has made all possible attempts to desegregate and failed, they could be released from court ordered busing orders.

The 1992 *Freeman v. Pitts* case declared that as long as schools desegregated, they could do so over time rather than immediately. The Supreme Court ordered incremental withdrawal of

court supervision. The court declared that to be considered desegregated a school system does not have to achieve unitary status of all “Green Factors”: student assignment, faculty, staff, transportation, extracurricular activities, and facilities (Weiler, 1998). They stated that, as long as certain levels of desegregation had been achieved and the other issues were being addressed, court-ordered school supervision could be withdrawn.

The 1995 Missouri v. Jenkins case was about the achievement gap between white and minority students. The supreme Court ruled “a desegregation plan does not have to continue just because minority student achievement scores remain below a national average.” They noted that, if this were the case, a school system was not required to pay for all necessary improvement plans or attract white students for the purpose of narrowing that gap. The Missouri School System was ordered to narrow the achievement gap by 1998.

In March of this year, the American Civil Liberties Union filed a lawsuit in Sioux Falls, South Dakota against the Winner School District. The allegation is one of prejudice, isolation, and hostility towards Native American students who seem to be coerced into paying legal penalties for minor school offenses.

In August of this year, in Orange County, California, a judge blocked an attempt to resist the segregation of students in the Capistrano Unified School District. He ruled they were allowed “to consider race to avoid segregation in schools” (Parker, 2006) because the objective, nor desired result is unconstitutional.

On the current Supreme Court docket there are two cases presented from Kentucky and Washington State. Again, the court will address equality in K-12 Education by “reviewing constitutional limits on the consideration of race in the context of student assignment to elementary and secondary schools” (Parker, 2006). Because of serious inner-district segregation,

Jefferson County Public Schools in Kentucky worked on desegregating their school system, from 1973-2000. For the past four years, they have fought to maintain integrated learning environments. The court's decision could take race out of the equation of assigning a student to a particular class. The Seattle School District also worked toward racial balance in their school system, despite neighborhood segregation, since the 1960s. After many tried and failed approaches, they adopted a program allowing students to choose the schools they attended. Both school systems believe diverse education is valuable to the learning process, but because of an increase in emigration statistics, they are again faced with issues of segregation.

It is important to be aware of the fact that educational segregation is no longer just a southern issue; it infiltrated itself into the northern states decades ago and is now filtering into other locales in the country. It is also important to be aware that segregation is no longer just a black-white issue. Many of the students emigrating into this country from Asian and Latino or Hispanic regions, as well as Native Americans, are being segregated from white school populations either because of language barriers or poverty levels. The Civil Rights Project which conducted a Harvard University study examined the trends in racial transformation and the changing nature of segregation in schools, from 1954-2003.

From 1954 through 2003, there has been an up-and-down growth rate of black students in majority white southern schools. From 1954 until 1990, the percentage of blacks in majority white schools rose from 0% to roughly 43%. This can be contributed to the fact that between 1970 and 1980 there was a "steady increase in black exposure to white students in Southern and Border States" (Orfield and Lee, 2005). In the early 1990s, however, there was a return to neighborhood schools, causing a decline in the percentage of blacks in majority schools, from 43% to roughly 27% (Orfield and Lee, 2005). The other shift in trend that occurred between

1991 and 2003 was the significant influx of Latino students. Because of their poverty levels and language restrictions confining them to ESOL classes, whites are still more exposed to black students than to Latino students; this is also a form of educational segregation.

The strong relationship between poverty, race and educational achievement and graduation rates shows that, but for a few exceptional cases under extraordinary circumstances, schools that are separate are still unquestionably unequal (**Racial Transformation and the Changing Nature of Segregation**). This is important to note because, today, segregation is not only about a physical separation of ethnic groups, but also about differences in educational offerings, poverty levels, and emigration statistics affected by residential restrictions. This is, in part, due to the federal adoption of No Child Left Behind because, it seems, that schools have interpreting the law in a way that allows them to continue promoting within-school segregation practices. Specifically, “No Child Left Behind promised to deal with racial inequality, never mentioning segregation, but has usually ended up, so far, documenting in vast detail the systematic inequality of high poverty minority schools and has ended up not providing the promised resources to those schools but directing a very disproportionate share of the policy’s harsh sanctions at this group” (Sunderman, Orfield, and Corwin, 1995).

Currently, Anne Arundel County has an outstanding lawsuit brought about by the NAACP on behalf of the African American citizens in the community. Like the Native Americans in South Dakota, some parents feel that school administration only seeks to punish African American students with severe consequences like suspension and consequences like suspension and expulsion. We have, thereby, been informed that we are exempt from suspending or expelling a large number of black students, regardless of the fact that they make

up the majority of our student population and are the main discipline and/or attendance problems.

Overall, post *Brown v. Board of Education* and the enactment of the 1964 Civil Rights Act, schools began to work towards becoming largely desegregated. Where the 1970's and 1980's focused on geographical boundaries and eliminating physical segregation, the 1990's focused on within-school equality working to ensure all students regardless of race, color, or creed receive the same high level of education. Today, the focus of desegregation is on fair and equal treatment of minority students by school districts in relation to their white counterparts. It is also important to note that as trends have shown a shift from "separate but equal" to "inclusive and just" desegregation has become an issue relative to not only black students, but also other cultures of students, gender-related equalities, testing requirements, and ESOL and special education inclusion students.

In light of the 50th anniversary of *Brown v. Board of Education*, the NAACP is strongly focused upon advocating for Fourteenth Amendment rights of all African American students and other students of color, be them Asian, Latino, or other. They are focused upon three main areas including resource equity, teacher quality, and testing disparities. Specifically, the commission agreed to "address local resource equity issues by undertaking a study to evaluate alternatives to local property-based school funding formulas which have historically created resource inequities. The commission also agreed to impact teacher quality by developing and launching a campaign to reform the teacher preparation and in-service training process. Under testing disparities, the commission agreed to evaluate and ensure that curriculums are adequately aligned with the state's assessment test in all areas" (NAACP Contact, 2005). It is imperative that schools, and the state and local governments allow these recommendations to come to fruition. Otherwise,

this country will too easily return to a pre-civil rights era of whites versus minorities. As an NAACP representative states, “Without the legal protection afforded under *Brown v Board of Education*, there will be no structure to keep public education from returning to a *Plessy v. Ferguson* “separate and unequal” state. History and law tell us that segregation is a certain path to inequality” (NAACP Representative, 2005).

Specifically, we need to ask ourselves “How will race as a social practice evolve in the United States over the next few decades?” (Lopez, 1). Throughout Lopez’s article *Colorblind to the Reality of Race in America*, he argues that lately it seems the laws previously established to protect against racial inequality are the very laws that are currently promoting racial inequality and prejudice. Specifically, he cites the idea of “colorblind white dominance” where he explains the focus upon maintaining America’s status quo (Lopez, 1). Unfortunately, seeing as how historically the status quo was white America, minority students continue to fall through the educational system of equality, thereby, being continually subjected to a life of poverty and/or crime.

Anne Arundel County, for example, is a school system with a growing multi-cultural student population which does not appear to be recognized. Specifically, I am referring to the fact that we have two middle schools and two high schools in the county with a large African American population, and Annapolis High School which also houses the county’s entire ESOL population. Anytime I watch the AACPS television channel, I see the Superintendent speaking about how a plethora of resources are being implemented to promote and ensure student achievement or recognizing the success of the International Baccalaureate Program. If one pays close attention to his advertisements and endorsement, they will notice the minority student population is not addressed or included it almost seems as if such a population does not exist.

Also, the only schools in the county that receive proper resources and/or building attention are the white schools. This is clearly an example of colorblindness because, as a South Carolina federal court declared in 1965, it “preserves segregation” (Lopez, 3).

In conclusion, the educational community needs to maintain a consciousness about issues of equality in educating its youth. It should be obvious at this point that, the more America has attempted to move away from school desegregation, the more it has either maintained such a system or returned to it. For example, because of a large return to neighborhood schools, more educational systems have by default reinstated segregation in their districts. Also, an influx of immigrants to low-income areas have forced upon them unequal education as has the voucher system because only middle- to upper-class whites can afford to attend private schools. And, given the rise in immigration and, thereby, large ESOL populations in our school, educators need to be cognizant of the potential return to issues brought about by the landmark cases Plessy v. Ferguson and Brown v. Board of Education, and the ruling “separate but equal.”

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