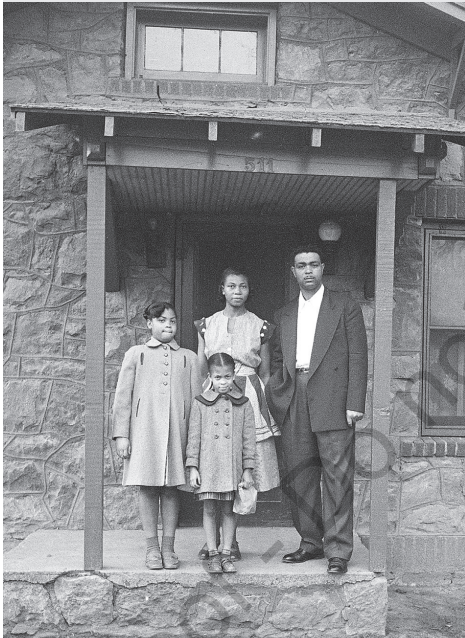


# 2

## Race and Education

Reed Karaim



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Linda Brown (left) with her parents, Leola and Oliver, and her little sister Terry Lynn stand in front of their house in Topeka, Kan., in 1954, the year the U.S. Supreme Court ruled in the *Brown v. Board of Education* case that separate schools for black and white children are “inherently unequal.” The Browns sued the Kansas Board of Education when Linda wasn’t allowed to attend a nearby school because she was black.

From *CQ Researcher*,  
June 13, 2014.

Central High School in Tuscaloosa, Ala., once was considered a national example of successful school desegregation. Created in 1979 after a federal judge ordered the city’s two segregated high schools to merge, Central High had an integrated student body that won state academic and athletic competitions.<sup>1</sup>

The court order, and others like it elsewhere, stemmed from the U.S. Supreme Court’s landmark 1954 *Brown v. Board of Education* ruling, which held unanimously that separate schools for blacks and whites are “inherently unequal.”

Central High was not without problems, partly because it was large and partly because of persistent claims that black and white students were held to different academic expectations.

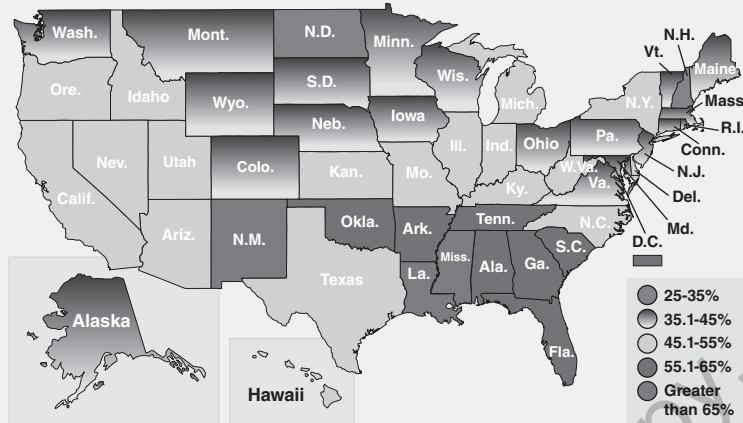
“But despite these challenges, large numbers of black students studied the same robust curriculum as white students, and students of both races mixed peacefully and thrived,” according to reporter Nikole Hannah-Jones, who wrote a lengthy study of Central High’s history for the nonprofit investigative journalism site *ProPublica*.<sup>2</sup>

However, after a federal judge released the school district from its desegregation order in 2000 — saying federal oversight no longer was deemed necessary — Tuscaloosa dramatically reorganized its school system, partly in an effort to keep white families from leaving, a phenomenon known as “white flight.” Two new high schools were created, and Central High’s attendance zone was redrawn to encompass just the city’s African-American west end. The student population, once about a third white, is now 99 percent black.<sup>3</sup>

## South Has High Concentration of Poor Students

The states with the highest proportions of low-income students — as measured by those receiving free or reduced-price school lunches — are primarily in the South. Civil rights advocates say schools often become segregated according to poverty rates as well as race.

**Percentage of Students Receiving Free/Reduced-Price Lunch (2010-2011, by State)**



Source: "Public Elementary/Secondary School Universe Survey," National Center for Education Statistics, Common Core of Data (CCD), U.S. Department of Education, 2010-11 and 2011-12, <http://tinyurl.com/lwuxfpf>

The changes in Central High and the Tuscaloosa school system are examples of what many education experts have described as the resegregation of U.S. public schools.

School integration peaked in 1988 and has been declining ever since, according to a study published in May by the Civil Rights Project at the University of California, Los Angeles (UCLA). In 2011, only 23.2 percent of black students attended schools in which a majority of students were white — a smaller percentage than in 1968.<sup>4</sup> Moreover, the study found that resegregation is occurring in schools across the country. Since 1991, "all regions have experienced an increase in the percentage of black students in 90-100 percent minority schools," a common definition of a highly segregated school.<sup>5</sup>

Some analysts have called U.S. public schools with overwhelming minority populations "apartheid schools," likening them to schools in South Africa in 1948-1994,

when racial segregation was officially mandated nationwide.<sup>6</sup> But other observers say the idea that U.S. schools are resegregating is overstated or that many of the changes are largely a reflection of the country's shifting demographics as the white population shrinks as a share of the whole.<sup>7</sup>

The increasing concentration of minorities in some schools also has spurred concern about the disparity in resources available to affluent and poor schools, which often have significant minority populations, and about the quality of education received by minority students.

The Civil Rights Project study also found that Latino students, particularly Mexican-Americans, are significantly more racially isolated than in the 1960s. This has been largely spurred by the rapid growth of the Latino population, according to scholars, which has dramatically affected public schools. From 1968 to 2011, white enrollment in public schools fell by 28 percent, while black

enrollment climbed 19 percent and Latino enrollment rose by a stunning 495 percent.<sup>8</sup>

Those students increasingly are concentrated in urban centers or largely Latino neighborhoods. The change has been most significant in the West, where integration of whites and Latinos had been substantial in the 1960s, but has declined significantly since.<sup>9</sup>

"There's no doubt school segregation is increasing in terms of declining contact between African-American and Latino students and white students — it's been happening for nearly a quarter of a century for black students, for half a century for Latino students," says Gary Orfield, co-director of the UCLA Civil Rights Project.

He and other scholars see a combination of factors at play, starting with the termination of many court-ordered desegregation plans that followed a conservative tilt in the federal courts in the 1980s and '90s.<sup>10</sup> They also cite the growth of charter schools and the school

choice movement, which they say leads to economic and racial separation.

Other analysts say Orfield and others have exaggerated the shift toward greater racial imbalance in schools, and that the imbalance may be reversing. In a 2013 study of trends in 350 metropolitan areas from 1993 to 2009, two university researchers found that “worsening segregation over the 1990s has given way to a period of modest integration among all racial/ethnic groups since 1998.”<sup>11</sup> However, they added, reintegration has been most modest in the South and in cities with large increases in racial or ethnic diversity.

Abigail and Stephan Thernstrom, conservative scholars who have written extensively on race relations, say characterizing schools with heavy black or Hispanic populations as segregated is “a gross misuse of the term.” Segregation referred to laws that set up separate school systems for white and black students during the so-called Jim Crow era — from the late 1800s until the 1960s — when African-Americans were restricted to separate restaurants, water fountains, bathrooms and schools — and to the back of public buses.<sup>12</sup>

Today’s public schools remain far more diverse than before integration, the Thernstroms say, and the growth in the percentage of schools with a mostly minority population is largely the result of the growth of U.S. minority populations. “The promise of *Brown v. Board of Education* has been fulfilled. Nothing resembling the Jim Crow South has re-emerged, and it never will,” the couple wrote in an article commemorating the 60th anniversary of the *Brown* decision.<sup>13</sup>

Most court-ordered desegregation occurred in the South, and Orfield and other analysts emphasize that the region’s schools are more integrated than before the process began. “You’re not moving back to pre-*Brown* levels where white kids and black kids aren’t allowed to go to the same schools, you’re moving back to something in between,” says Sean Reardon, an education professor specializing in poverty and inequality of education at California’s Stanford University.

In sharp contrast to the years before court-ordered school desegregation, the Northeast now has the highest concentration of black students in schools with a 90- to 100-percent minority population.<sup>14</sup> In fact, New York state now has the nation’s most segregated schools, led by

New York City, with its stark neighborhood disparities in race and income.<sup>15</sup>

“Segregation is typically segregation by both race and poverty,” the Civil Rights Project noted.<sup>16</sup>

Some critics blame teacher tenure rules, which can make it more difficult to fire underperforming teachers, for some of the educational disadvantages experienced by minority and poor students. But other analysts say the real problem is state and local school financing, which usually is based on property taxes, leaving schools in poorer neighborhoods underfunded.

The teacher tenure issue came before a California court in June when Students Matter, an educational reform group founded by Silicon Valley entrepreneur David Welch, backed a lawsuit on behalf of Beatriz Vergara and eight other California students against the state’s laws governing teacher job security. Los Angeles Superior Court Judge Rolf M. Treu ruled the laws unconstitutional, saying they unduly harm poor and minority students. Appeals are expected to continue for years.<sup>17</sup>

An underlying question concerning racial separation in schools is how much integration benefits students. Several studies have found educational benefits for minority students in mixed classrooms, but some conservative scholars dispute their methodology and consider the results mixed.

Orfield believes the results are clear. “Lots of data shows that there’s basically no risk for middle-class kids to go to integrated schools, but there is a gain for poorer kids,” he says. He and other educators say there are also less easily quantifiable benefits for all children.

“You understand each other better. You understand your society better. You understand how to think in a more complex way because you’re more exposed to alternative views,” he says. “All these things are related to diversity.”

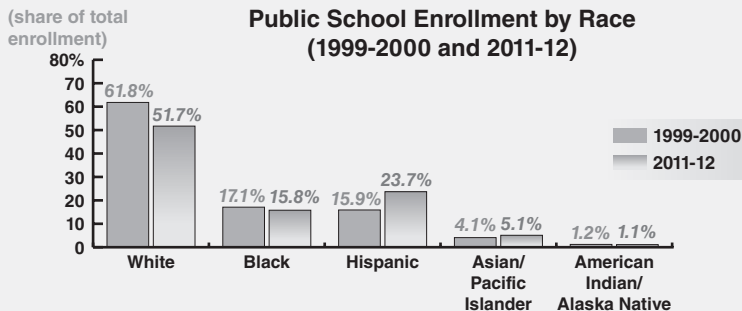
As scholars and analysts consider the impact of the changing racial composition of U.S. schools, here are some of the questions they are debating:

### **Was court-ordered school desegregation effective?**

Before the Supreme Court ruled in 1954 that separate schools were inherently unequal, segregation was the law throughout the South and in some Northern and Western states. No black children in the South were

## Percentage of Hispanic Students Rises

As a percentage of total public student enrollment — including charters — white and black enrollment fell between the 1999 and 2012 school years, while Hispanic enrollment rose by nearly 8 points.



Source: "Number and percentage distribution of public elementary and secondary students and schools, by traditional or charter school status and selected characteristics: Selected years, 1999-2000 through 2011-12," National Center for Education Statistics, U.S. Department of Education, <http://tinyurl.com/mzqay8l>

enrolled in predominantly white schools. But by 1988, nearly 44 percent of all African-American students attending Southern schools were in majority-white schools, and the region's schools had become the most integrated in the country.<sup>18</sup>

Despite the retreat over the last two decades, the region remains more integrated than the rest of the nation, and several analysts point to that as proof that court-ordered desegregation had a lasting impact. "For me, that's a huge legacy, particularly in the South," says Erica Frankenberg, an assistant professor of education policy studies at Pennsylvania State University in State College. "Still today, it's the most desegregated area. That's a great sign of progress."

But Richard Rothstein, an author and research associate at the Economic Policy Institute, a Washington think tank that studies issues affecting low- and middle-income people, says the retreat from the high point of desegregation was inevitable without an effort to address the underlying reasons black and white children went to different schools: housing discrimination and economic inequality.

*Brown* "changed things temporarily, but attempting to deal with school desegregation without addressing the segregation of neighborhoods in which schools are located

is bound to fail. It can't succeed," says Rothstein. He adds that after lawyer Thurgood Marshall, who would later join the Supreme Court, won the *Brown* case on behalf of the National Association for the Advancement of Colored People (NAACP), he said the group would turn its attention to housing. "Had they pursued housing desegregation, they would have accomplished more than they did by pursuing school desegregation," Rothstein concludes.

Dennis Parker, director of the Racial Justice Program at the American Civil Liberties Union (ACLU), shares others' frustration at what they see as the limited benefits of court-ordered desegregation. However, he says, "When people say desegregation didn't work because we

still have an achievement gap [between races] or because we didn't address economic or housing discrimination, I think that's an unfair burden to place on a single kind of litigation — the burden of addressing the whole range of racial problems that bedevil the United States. . . . *Brown* ended the system of apartheid that existed in the United States, and that is a huge thing. And for many students it created education opportunities that weren't there before, and that's a huge thing."

However, William Jelani Cobb, an associate professor of history and director of the Africana Studies Institute at the University of Connecticut in Storrs, views court-ordered desegregation as ultimately a failure. The idea that forcing schools to desegregate could permanently change the educational and social inequalities faced by African-American children was naïve, he says.

"When we talk segregation, we mistakenly think that it's one thing. It's not," Cobb says. "Segregation is more like a hydra, where you cut off one head and two more rise."

By inspiring white flight to suburbs or private schools, Cobb says, the ruling allowed racism and segregation to transmute into more complicated and insidious forms. "We look at it now, and the way it's operating is more sophisticated, such that a Supreme Court decision would



not change it,” he says. “It would have to be a much broader societal change.”

The academic performance of students — particularly minority students — in integrated schools is central to the debate on the effectiveness of desegregation. Many educators cite extensive research on the benefits of integration. According to a 2014 study published by the National Bureau of Economic Research, black students who attended a school under a court-ordered integration plan were more likely to graduate, attend college and earn more money than black students who attended segregated schools. They were even healthier, on average, the study found.<sup>19</sup> The achievement gap between black and white students also declined significantly during the height of court-ordered desegregation.<sup>20</sup>

Researchers point out that the results were not caused simply by mixing races but also were tied to the shift in resources that came with integrating students of different races and economic classes. “School systems that had spent a pittance on all-black schools were now obliged to invest considerably more on African-American students’ education after the schools became integrated,” wrote David L. Kirp, a professor of public policy at the University of California, Berkeley.<sup>21</sup>

But several conservative scholars have criticized such studies. “I think the benefits of racial and ethnic balancing are frequently exaggerated. . . . Just because a school has a lot of racial and ethnic minority students doesn’t mean it’s a bad school and doesn’t mean the kids there are incapable of learning just because they don’t have enough white kids sitting next to them,” says Roger Clegg, a former Justice Department official in the Ronald Reagan and George H. W. Bush administrations who heads the Center for Equal Opportunity, a conservative research and educational organization in Falls Church, Va.

Terry Stoops, director of education studies at the John Locke Foundation, a free market-oriented think tank in Raleigh, N.C., gives the Supreme Court credit for identifying a “very real problem in society” — the inequality of racially separate educational institutions. But he considers the educational benefits of integration to minority children unclear, although he says, “there probably is a larger societal benefit.”

More critically, he says the focus on racial numbers diverted energy from what should have been the primary

goal. “I think racial integration became an end unto itself, and there was a failure to focus on improving education, improving the quality of education available,” says Stoops. “So we’re left to wonder if the cost [through forced busing and the disruption of neighborhood schools] was justified.”

But Charles Clotfelter, an economist and professor of public policy and law at Duke University in Durham, N.C., examined the consequences of school desegregation in his book, *After Brown: The Rise and Retreat of School Desegregation*. He concluded it measurably increased inter-racial contact, preparing students of all races and ethnicities for living in a diverse society.

“In the light of the large declines in racial isolation, one is almost compelled to judge the policy a success, perhaps a great success, for the changes accomplished in its wake were undeniably significant,” he wrote. “Yet that judgment inevitably will be tempered by the failure of school desegregation to achieve *more*.”<sup>22</sup>

### **Have charter schools and school choice laws increased racial separation?**

The last 20 years have brought not only a decline in racial integration in schools but also another significant shift in public education: the rise of the charter school and school choice movement.

Charter schools, which can be started by individuals, groups or companies, are public schools that receive taxpayer funding but are generally not subject to the same rules and are freer to experiment with different approaches to education. The idea was developed by Massachusetts educator Ray Budde and first received significant attention when it was proposed by American Federation of Teachers President Albert Shanker in a 1988 speech at the National Press Club.<sup>23</sup>

Three years later, Minnesota became the first state to pass a charter school law.<sup>24</sup> Last school year, there were more than 6,000 charter schools in the United States, enrolling nearly 2.3 million students, according to the National Alliance for Public Charter Schools.<sup>25</sup>

The requirements for charter schools differ by state, and the schools take a wide range of approaches to education, so generalizations are difficult. But along the Eastern Seaboard, many charters have opened in urban cores where they enroll predominantly African-American students. A 2010 study by UCLA’s Civil Rights Project of



An old-fashioned tug of war energizes soon-to-be kindergarteners at a public school enrollment carnival at Garfield Elementary School in Washington, D.C., on June 5, 2014. With traditional public schools in Washington losing students to the growing number of local charter schools, schools officials are stepping up efforts to recruit new students.

charter schools in 40 states, the District of Columbia and several dozen metropolitan areas found significant racial isolation among students in charter schools.<sup>26</sup>

“We certainly see much higher rates of racial segregation than we see in traditional public schools,” says Penn State’s Frankenberg, the lead author of the study. “And the important context there is that segregation in traditional public schools has been increasing since the 1980s, so it’s not like that’s a low figure.”

Charter school advocates counter that studies have shown students in many charter schools with predominantly or exclusively minority enrollments are performing better than students in traditional public schools. A 2013 study covering 26 states and New York City by Stanford University’s Center for Research on Education Outcomes found that “students in poverty, black students and those who are English-language learners” who attend charter schools posted the most impressive gains compared with their peers in traditional public schools.<sup>27</sup>

Some supporters say these results render questions of racial isolation insignificant. “If the education that children get in those schools is better than if they had gone to one with a more politically correct racial and ethnic balance, if the school is more rigorous or offers the curriculum that students want, why does it matter that the racial makeup is different than [some civil rights

activists] would like?” asks the Center for Equal Opportunity’s Clegg.

But charter school critics say such results can be misleading because some charter schools cherry-pick their students, avoiding lower-achieving or problem students, an option not available to traditional public schools. “Some push out students who threaten their test averages,” wrote Diane Ravitch, a historian of education at New York University and outspoken critic of the charter school movement. “Last year [2012], the federal [Government] Accountability Office issued a report chastising charters for avoiding students with disabilities, and the ACLU is suing charters in New Orleans for that reason.”<sup>28</sup>

The Civil Rights Project also found that in the West and parts of the Midwest and South, charter schools were disproportionately white compared with traditional public schools, suggesting they may be expediting white flight from public schools where minority populations are growing.<sup>29</sup>

“Charters are either very white places or very non-white places,” said Myron Orfield, director of the Institute on Metropolitan Opportunity at the University of Minnesota in Minneapolis. Charters are “an accelerator to the normal segregation of public schools.”<sup>30</sup>

However, Andre Perry, dean of the College of Urban Education at Davenport University in Grand Rapids, Mich., a former chief executive of a small charter network in New Orleans, says charter schools simply reflect larger societal trends. “I just don’t see charter schools as this unique structure that causes resegregation,” Perry says. “If you ask why schools aren’t integrated, you have to look at housing policy, tax policy, culture, a number of factors. It’s not school type that drives our behaviors.”

The growth of charter schools is connected to a broader school choice movement that supports giving families greater freedom to choose what schools their children attend. Among other things, the movement supports tax credits or state-funded vouchers to help students pay for private schools and open-enrollment laws that allow parents to pick among public schools.

In 2006, Greg Forster, a senior researcher for the Friedman Foundation for School Choice, a think tank and advocacy group founded by Nobel Prize-winning free-market economist Milton Friedman and his wife, Rose, reviewed studies of school choice programs in

Cleveland, Milwaukee and Washington, D.C. He concluded that students were using vouchers to move to private schools that were more integrated than their public school counterparts.

“Private schools have a much greater potential to desegregate students because they break down geographic barriers, drawing students together across neighborhood boundaries,” he wrote. Without vouchers, many families cannot afford private schools, but “vouchers overcome the monetary barrier, enabling private schools to make desegregation a reality,” Forster concluded.<sup>31</sup>

However, a more recent 2013 study by the University of Minnesota found that the state’s open-enrollment program in public schools resulted in greater segregation in Minneapolis-St. Paul, the state’s major metropolitan area. Under the open-enrollment program, more white students than students of color were leaving racially diverse districts to enroll in predominantly white districts, the study found.<sup>32</sup>

UCLA’s Orfield says the evidence indicates that unless school choice plans incorporate provisions to encourage the economically disadvantaged and minority populations to participate, they will inevitably favor populations that have the resources to take better advantage of all their options, leading to disproportionately white student bodies.

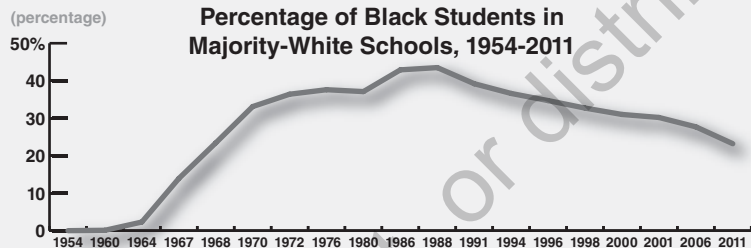
“We’ve learned what works in terms of school choice,” he says. “Getting out good information to parents, having a goal of including all the different racial and ethnic groups, free transportation, which is absolutely essential, welcoming the kids into the school, all these can make choice into an integrated approach. But if you just have choice, the only thing you provide kids is another segregated school.”

### Has teacher tenure contributed to racial disparities in education?

The *Vergara v. State of California* lawsuit focused national attention on the role that teacher tenure laws

## Public School Integration Peaked in 1988

The share of black students attending majority-white public schools grew rapidly after 1964 — when Congress passed the Civil Rights Act — peaking at 43.5 percent in 1988. The proportion has fallen steadily since then, including in 1991, when the Supreme Court ruled that courts could terminate successful desegregation plans.



Source: Gary Orfield, *et al.*, “Brown at 60: Great Progress, a Long Retreat and an Uncertain Future,” The Civil Rights Project, May 15, 2014, p. 10, <http://tinyurl.com/n9cok4e>

play in expanding disparities in educational opportunity and achievement between the races. Students Matter, the education reform and advocacy group, filed the suit on behalf of Beatriz Vergara and eight other California students, who claimed the state’s laws governing teacher retention and firing — tenure laws — violated the state constitution’s guarantee of equal educational opportunity.

Superior Court Judge Treu agreed, ruling that the laws “impose a real and appreciable impact on students’ fundamental right to equality of education and they impose a disproportionate burden on poor and minority students.”<sup>33</sup>

Treu’s ruling, however, has done little to quell the debate. California teachers’ unions, which strongly support tenure, vowed to continue the fight, and lengthy appeals are likely. Likewise, Students Matter and similar advocacy groups are planning more lawsuits in other states. For instance, the group recently joined a lawsuit in New York alleging that teacher job protections mean some students receive an inferior education.<sup>34</sup>

Felix Schein, a spokesperson for Students Matter, says the group was founded to improve public education through litigation but did not start out targeting teacher tenure. However, it soon became clear, Schein says, that the system placed some children at a severe disadvantage.

California's laws make it too difficult to dismiss underperforming teachers once they have been granted tenure, he says, so administrators resort to what has become known as "the dance of the lemons," bouncing the worst teachers from school to school. Because the poorest schools have difficulty retaining teachers, they too often end up with the teachers no one else wants.

"If you're a poor African-American or Latino, you're much more likely to get a chronically underperforming teacher," Schein says.

In addition, "first in, first out" rules for retaining teachers, he says, mean that younger, talented teachers are laid off before teachers with more seniority, even if the senior teachers are performing poorly. Because schools with large minority populations are often in neighborhoods with limited financial resources, this, too, affects them disproportionately, Schein says.

"When you look at who was receiving reduction-in-force notices, huge numbers were being sent to schools that were primarily majority minority," he says.

But Jim Finberg, the lead attorney in the *Vergara* case for the California Teachers Association, the state's largest teacher's union, says teachers are being unfairly blamed for problems over which they have no control. "There is an achievement gap in this country, but it is not caused by tenure statutes or the dismissal statutes, it's caused by the fact that poor, inner-city schools are under-resourced, and higher-crime schools and the teachers in those schools don't get support," he says.

Studies have shown that if a school district provides sufficient resources to poorer schools with high minority populations and supports its teachers, it can close the achievement gap, Finberg says. "You put your strongest principals in those schools and you will attract good teachers and keep them," he says. "Working conditions in schools are the single biggest factor when it comes to keeping teachers.

Jeff Seymour, a former school superintendent in El Monte, Calif., who testified on behalf of the state, told the court that administrators engaging in the "dance of the lemons" were not doing their job, and there were other ways to deal with subpar teachers, such as helping them find ways to succeed.

He defended teacher tenure, saying it gives teachers the job security to try creative ways to reach students. "It also protects teachers who are good teachers from

arbitrary behavior on the part of principals who come in and may have a very set view of how a school should be run and are not willing to look at the success of those teachers and make their judgments after that," Seymour said.<sup>35</sup>

But Bhavini Bhakta, an elementary teacher who lost positions in four schools over eight years, including a year she won a school's Golden Apple Teacher of the Year Award, testified on behalf of the plaintiffs that California's "first-in, first-out" retention rules discouraged young teachers. "I just felt like no matter what work I did in the classroom, or how hard I worked, none of it mattered because the seniority date mattered way more than how much I did for kids, or what principals would say about me, or what parents would say about me, [or] my love for it," Bhakta testified. "None of it mattered, nothing . . . all that mattered was my hire date."<sup>36</sup>

New York University's Ravitch, however, has questioned the logic behind eliminating rules that protect senior teachers. "Is there any evidence that firing experienced teachers raises student achievement? Well, actually, no," Ravitch wrote in her education blog.<sup>37</sup>

Yet a study by researchers at Stanford and the University of Virginia in Charlottesville found that when New York City established a more rigorous performance review before granting tenure, the less-effective teachers left the system. Fewer teachers at schools with a larger proportion of black students were granted tenure, prompting the authors to conclude that the change was likely to benefit black students. "[It's] likely replacement teachers will be more effective than . . . teachers who leave, leading to an improvement of teaching in these schools" said James H. Wyckoff, a co-author and education professor at the University of Virginia.<sup>38</sup>

Tenure rules also have been an issue in North Carolina, home to the John Locke Foundation. Director Stoops says reforming tenure law is "necessary, but insufficient."

He adds: "Even if you take away tenure, the number of low-performing teachers who will be taken out of poor-performing schools is probably rather low. We also need to look at teacher training, teacher recruitment, whether our [teacher licensing requirements] provide a barrier to individuals in the private sectors.

"All these issues are intertwined in raising the quality of our teachers."



## BACKGROUND

### Legal Segregation

The separate educational systems that existed for black children and white children across a swath of America before *Brown v. Board of Education* were part of a larger system of legal segregation. Following the post-Civil War Reconstruction Era, Southern states re-established a system of white privilege using laws that separated whites from people of color in schools, housing, businesses and public facilities.<sup>39</sup>

In 1892 blacks in New Orleans challenged a law that required railroads to provide “equal but separate accommodations for the white, and colored, races.”<sup>40</sup> Homer Plessy, a black shoemaker, agreed to be arrested for refusing to move from a seat reserved for whites. The case made its way to the Supreme Court in 1896, and in its infamous *Plessy v. Ferguson* ruling the court, with only one dissenting vote, held that “separate but equal” facilities were constitutional.<sup>41</sup>

Twenty states eventually passed laws separating students by race. They included the Southern states of the old Confederacy, several neighboring states as well as Wyoming, New Mexico and Arizona in the West.<sup>42</sup>

Most Northern states did not have laws requiring segregated schools, but the races remained largely segregated by custom and housing patterns. The Economic Policy Institute’s Rothstein says those housing patterns were in large part created, and continue to be affected, by government policies that encouraged segregation in housing, particularly after World War II. For example, when Levittown, N.Y.,



AP Photo/William P. Straeter



Getty Images/Raleigh News & Observer/Conroy Lowenstein

### Then and Now

White students at Central High School in Little Rock, Ark., try to stop African-American students from entering the school on Sept. 9, 1957 (top). That year Arkansas Gov. Orval Faubus forcibly resisted integration in the state in the wake of the Supreme court’s landmark *Brown v. Board of Education* ruling in 1954. President Dwight D. Eisenhower called in federal troops to enforce school integration in Little Rock. More recently, police officers in Raleigh, N.C., forcibly removed a pro-busing advocate from a Wake County school board meeting on school busing on March 23, 2010 (bottom). The board voted to stop busing students for diversity and took the first steps toward setting up a community-based system of student assignment.

## C H R O N O L O G Y

**1950s** *Supreme Court declares segregated schools unconstitutional, but Southern states resist integration.*

**1954** In *Brown v. Board of Education*, the Supreme Court rules segregated schools are “inherently unequal” but does not set a desegregation deadline.

**1957** After Arkansas Gov. Orval Faubus forcibly resists integration, President Dwight D. Eisenhower deploys federal troops to enforce the integration, by nine African-American students, of Little Rock’s Central High School.

**1960s** *Civil rights reform and school desegregation accelerate.*

**1963** An estimated 250,000 Americans rally for civil rights in the March on Washington, during which the Rev. Martin Luther King Jr. gives his “I have a dream” speech.

**1964** President Lyndon B. Johnson signs Civil Rights Act of 1964, which prohibits discrimination based on race, color, religion or national origin and empowers federal government to sue to desegregate schools.

**1969** In a case concerning Mississippi schools, the Supreme Court declares its previous desegregation standard — with “all deliberate speed” — is no longer permissible, and the schools must desegregate immediately (*Alexander v. Holmes County Bd. of Ed.*).

**1970s** *Student busing speeds desegregation, but later court rulings limit the reach of desegregation orders.*

**1971** In *Swann v. Charlotte-Mecklenburg Board of Education*, the Supreme Court upholds busing to integrate schools.

**1973** The Supreme Court finds that Denver intentionally segregated Mexican-American and black students from white students (*Keyes v. Denver School District No. 1*).

**1974** In a Detroit case, the Supreme Court blocks metropolitan-wide integration plans, limiting desegregation of racially isolated urban districts (*Milliken v. Bradley*).

**1980s** *School integration peaks.*

**1986** Federal court finds that once a school district meets certain conditions it can be released from its court-ordered desegregation plan and returned to local control.

**1988** School integration reaches all-time high; almost 44 percent of black students attend majority-white schools.

**1990s** *A more conservative Supreme Court makes it easier for school districts to exit desegregation orders.*

**1991** Emphasizing that court orders are not intended “to operate in perpetuity,” the Supreme Court, in a case concerning Oklahoma City, makes it easier for school systems to fulfill desegregation decrees. The Oklahoma City school system abandons desegregation and returns to neighborhood schools (*Board of Education of Oklahoma City v. Dowell*).

**1995** Supreme Court sets new goal for desegregation: the return of schools to local control, saying judicial remedies were intended to be “limited in time and extent.”

**2000-Present** *Studies indicate schools have become more segregated; Supreme Court changes integration rules.*

**2003** Harvard’s Civil Rights Project finds that schools were more segregated in 2000 than in 1970 when busing began.

**2004** Nation marks 50th anniversary of *Brown v. Board of Education*.

**2007** In a case concerning Seattle and Louisville, the Supreme Court rules that schools can no longer take a student’s race into explicit account for purposes of integration (*Parents Involved in Community Schools v. Seattle School District No. 1*).

**2014** California judge rules teacher tenure rules violate state constitution by denying minority and poorer children equal access to quality education.

the first modern suburb, was built on Long Island after World War II, many of the homes were sold to returning veterans — but only white veterans. At the time, he adds, the Federal Housing Administration would not insure mortgages to African-Americans.

“Most of the policy designed to segregate metropolitan areas came from the federal government,” says Rothstein. And segregated neighborhoods meant largely segregated schools.

### ***Brown v. Board of Education***

In the 1930s, the NAACP and the law school at Howard University, a leading historically black institution in Washington, D.C., began a campaign to bring down the idea of separate but equal facilities through a series of legal challenges.<sup>43</sup>

But the University of Connecticut’s Cobb says black leaders settled on overturning *Plessy v. Ferguson* only after repeated failures to get the United States to live up to the “equal” part of separate but equal.

“There was a lot of ambivalence. The extended narrative is that African-Americans were eager for desegregation, and that’s not entirely true,” Cobb says. “They spent years on cases trying to equalize [education]. They realized that was never going to get the results they wanted. The idea was that the only way you could prevent unequal education was to sit black kids next to the white kids, but [integration] wasn’t the first priority, it was equality.”

These challenges would finally lead to *Brown v. Board of Education*, which the Supreme Court decided in 1954. In a decision that would transform American society, the court ruled unanimously that segregated schools were unconstitutional. In his opinion, Chief Justice Earl Warren wrote, “We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”<sup>44</sup>

However, the court did not immediately set a timetable for desegregation. After more hearings, it declared in 1955 that desegregation was to proceed with “all deliberate speed.”<sup>45</sup> The ambiguity of that directive led to protracted battles over desegregation.

### **Desegregation**

Despite the *Brown* decision in 1954, there was little immediate change in the racial composition of school systems across the South or elsewhere. The year of the

ruling, zero percent of black students in the South were in majority-white schools. By 1960, only 0.1 percent were.<sup>46</sup>

With many Southern politicians vowing to preserve segregation, even small changes came with difficulty. In a particularly high-profile incident, when Arkansas Gov. Orval Faubus used National Guard troops to block integration of Central High School in Little Rock in 1957, President Dwight D. Eisenhower deployed federal troops to protect nine African-American students from an angry white crowd as they entered the school.<sup>47</sup>

The number of integrated schools began to climb in 1964, the year Congress passed the Civil Rights Act, which outlawed discrimination based on race, color, sex, religion or national origin in many facets of society, including public education.<sup>48</sup>

In 1969, the Supreme Court abandoned its previous “all deliberate speed” standard and declared that schools must desegregate immediately.<sup>49</sup>

Two years later, in *Swann v. Charlotte-Mecklenburg* [North Carolina] *Board of Education*, the court upheld the busing of students to schools outside of their neighborhoods as a tool of desegregation, along with other potential remedies.

By 1970, a third of African-American children in the South were attending schools with a majority of white students. That percentage would continue to climb until 1988, when nearly 44 percent of African-American children would be in majority-white schools.<sup>50</sup>

By then, further court rulings and a shift in the American political climate had set the stage for a slow retreat from school desegregation.

### **Integration Declines**

School busing for desegregation generated strong resistance, and not just in the South. Lengthy political and legal battles were fought over busing in Seattle, Denver, Detroit, Boston and other cities.<sup>51</sup>

In Detroit, the Ku Klux Klan blew up empty buses in the white suburb of Pontiac to prevent them from being used to integrate schools.<sup>52</sup> In Boston, African-American children arriving at newly integrated schools were greeted by angry white mobs that tried to block their entry.<sup>53</sup>

President Richard M. Nixon, elected in 1968, opposed forced school busing. While vowing to uphold the law, he ordered administration officials to work with school districts to minimize busing.<sup>54</sup> Nixon also would end up filling four

## Charter Schools' Performance Varies

*"Charter schools are benefiting low-income, disadvantaged students."*

Judged by their numbers, charter schools are one of the great educational success stories of the last 25 years. In 1990 there were no U.S. charter schools. Last school year, about 2.3 million students attended more than 6,000 charters, and they now account for nearly 6 percent of all public schools.<sup>1</sup>

But since the charter movement began, that growth has been accompanied by a heated debate about whether charter schools really do a better job of educating children than traditional public schools. With charter schools flourishing in minority, inner-city neighborhoods in Eastern cities and doing well in mostly white suburban communities in the West and Midwest, the debate has relevance to questions of racial balance in schools.

Charter schools, which receive taxpayer funding like traditional public schools but generally do not have to follow the same rules, were intended to encourage innovation in education. While outstanding charter schools have existed from the beginning, early studies found education quality varied widely. Some of the most credible studies found that charters performed no better or slightly worse, on average, than traditional schools, based on tests and other measures of academic progress.<sup>2</sup>

Two new studies indicate charters have been making gains, while another indicates their performance remains on a par with traditional schools.

The most comprehensive study, by Stanford University's Center for Research on Education Outcomes, compared the standardized test scores of charter school students in 25 states and the District of Columbia with the scores of similar students in the traditional public schools the students would have otherwise attended. "The results reveal that the charter school sector is getting better on average and that charter schools are benefiting low-income, disadvantaged, and special education students," said Margaret Raymond, center director.<sup>3</sup>

The study found results improved compared with 2009, when the center conducted a similar study of 16 states. The earlier study found that only 17 percent of charter schools showed academic gains significantly better than traditional schools, while 37 percent showed gains that were worse.<sup>4</sup> The other 46 percent performed about the same as their counterparts. "The issue of quality is the most pressing problem that the charter school movement faces," Raymond said at the time.

In the new study, however, 25 percent of the charters were better than traditional schools in reading and 29 percent in math. Nineteen percent of charters were worse for reading and 31 percent for math. The study also found that African-American students and those living in poverty or who are learning English made some of the most impressive gains.<sup>5</sup>

Critics were quick to point out the largest share of charters still performed no better than their traditional

Supreme Court vacancies by the end of 1971, making the court more conservative.

In 1974, the court established a limit on court-ordered busing that many analysts believe marked the beginning of the end of school desegregation in many metropolitan areas and increased white flight to the suburbs. In *Milliken v. Bradley*, the court ruled 5-4 against a Detroit desegregation plan that would have bused large numbers of black children between the city and 53 separate school districts in the largely white suburbs.<sup>55</sup> The ruling stated the suburbs

did not have to be part of a larger desegregation plan because there was no evidence that they had violated the law within their districts. It also emphasized the importance of local control of schools and said desegregation did not require "any particular racial balance in each school, grade or classroom."<sup>56</sup>

Civil rights lawyers continued to pursue school desegregation cases in the 1970s and '80s and won victories in several cities, but in some cases the federal government opposed those efforts.<sup>57</sup>



counterparts. “The message here, no matter how it is framed, is that 20 years after the start of the charter school movement, even with all the private energy and public policy cheerleading it has engendered, students in charter schools roughly perform the same as students in the rest of public education — not the leaps and bounds that were promised,” said Randi Weingarten, president of the American Federation of Teachers, whose 1.6 million members include about 8,000 charter school employees.<sup>6</sup>

Providing further support to critics, a comparison of test scores in Chicago conducted by the *Chicago Sun-Times* and the Medill Data Project at Northwestern University showed little difference in performance between the two kinds of schools.<sup>7</sup>

But a study of six major Boston charters found they were doing significantly better in important measures of post-high school academic success. Charters boosted the frequency of Advanced Placement test-taking, college entrance-exam scores and the chances that students qualified for exam-based college scholarships, the study found.<sup>8</sup>

In conjunction with the Stanford study, the results indicate successful charter schools are doing an above-average job of educating students, but vary greatly in student achievement. “As welcome as these changes are, more work remains to be done to ensure that all charter schools provide their students high-quality education,” said Raymond.<sup>9</sup>

— **Reed Karaim**

<sup>1</sup>“National Data on the Public Charter School Movement,” National Alliance for Public Charter Schools, <http://dashboard.publiccharters.org/dashboard/home>.

<sup>2</sup>“America’s Charter Schools: Results from the NAEP 2003 Study,” The National Assessment of Education Progress, U.S. Department of Education, December 2004, <http://tinyurl.com/3xark37>. Also see



Getty Images/The Christian Science Monitor/Melanie Stelson Freeman

Ninth-graders take a break between classes at Shasta charter public high school in Daly City, Calif., where the “blended learning model” lets students learn at their own pace in a big, open classroom.

<sup>3</sup>“Multiple Choice: Charter School Performance in 16 States,” Center for Research on Education Outcomes, Stanford University, June 2009, <http://tinyurl.com/lz8nrh>.

<sup>4</sup>“Charter Schools Make Gains, According to 26-State Study,” Center for Research on Education Outcomes, Stanford University, June 2013, <http://tinyurl.com/ox2p84b>.

<sup>5</sup>“Multiple Choice: Charter School Performance in 16 States,” *op. cit.*

<sup>6</sup>“Charter Schools Make Gains, According to 26-state study,” *op. cit.*

<sup>7</sup>“AFT Statement on CREDO Charter School Study,” American Federation of Teachers, June 25, 2013, <http://tinyurl.com/mzz75hj>.

<sup>8</sup>Darnell Little, “Charter schools show little difference in school performance,” *The Chicago Sun-Times*, April 7, 2014, <http://tinyurl.com/lpkamw8>.

<sup>9</sup>“Charter Schools and the Road to College Readiness: The Effects on College Preparation, Attendance and Choice,” The Boston Foundation and NewSchools Venture Fund, May 2013, <http://tinyurl.com/mz6v4qv>.

<sup>10</sup>“Charter Schools Make Gains, According to 26-state study,” *op. cit.*

In the 1980s and ’90s, federal judges began to release school districts from court-ordered desegregation plans, finding that they had achieved their objectives. “Under the Reagan administration, there was suddenly an effort to close down these cases,” says Rothstein of the Economic Policy Institute. “The Justice Department actually went around to school districts suggesting that they move to dismiss cases.”

More than 200 large and medium-sized school districts were released from desegregation orders from 1991 to

2010, according to a study by Stanford University’s School of Education.<sup>58</sup>

Once the schools were released from the plans, racial segregation rose, the study found. “There are some districts where you see a sudden jump in segregation after the release from the court order,” says Reardon, the lead researcher. “But the more common pattern is this sort of slow, gradual increase in segregation, in ways that are . . . consistent with a slow return to neighborhood schools and neighborhood levels of segregation.”

# Louisville Schools Strive to Integrate

*In 2007 the Supreme Court struck down the school system's desegregation plan.*

At a time when studies indicate U.S. schools are resegregating, the efforts of Kentucky's Jefferson County school district to preserve diversity reveal the challenges of maintaining an integrated school system in today's legal and political environment.

Jefferson County, which includes Louisville and its suburbs, has more than 101,000 students from a wide variety of ethnic, racial and socio-economic backgrounds.<sup>1</sup> For about 7,000 students, who speak 107 different languages at home, English is a second language, says Linda Duncan, a longtime school board member. About two-thirds of the students receive a free or subsidized lunch, and some 13,000 have no fixed address, she says.

School integration in the district began in 1975, when a federal judge ordered the largely white county school system and largely black city system to consolidate to achieve greater racial balance. Amid angry protests by white residents, Jefferson County began busing students to schools around the district to comply with the order.

By the 1990s, the system was considered the nation's most racially integrated.<sup>2</sup> But over time, white flight and other demographic shifts made it more difficult for the district to maintain racial balance. In 1998, a group of African-American families sued the district, frustrated that their children could not get into the historically black Central High because the school was struggling to maintain the required ratio of white students. Two years later a judge released the district from its desegregation plan.

A 2012 study of U.S. school districts by Stanford University's School of Education found that among the more than 200 districts that have been released from a court-ordered desegregation plan, there usually was a return to racial segregation.<sup>3</sup> But Louisville's civic leaders decided they did not want to turn back.

"The desegregation plan actually had a lot of support in the community," says Sheldon Berman, who would become

superintendent of the Jefferson County system a few years later. "It actually created an attitude . . . about addressing race in an effective way."

However, some families — still upset with the school choices available to their children — objected and filed another lawsuit. In 2007 the Supreme Court struck down the Louisville plan in a landmark 5-4 decision. Writing for the majority, Chief Justice John Roberts said schools that never segregated on the basis of race "or that have removed the vestiges of past segregation, such as Jefferson County" must stop assigning students to school explicitly on the basis of race.<sup>4</sup>

Berman became Jefferson County superintendent two days after the ruling. The decision, he notes, could have meant the end of 32 years of school desegregation. Instead, Berman says, the school board initiated an intense community discussion, utilizing public forums, opinion polling and online surveys. The dialogue established that most parents and community members favored a continuing commitment to diversity.

In a document titled "No Retreat," the district outlined a new plan that no longer assigned students explicitly based on race. Instead, it created six geographic subdivisions, each with 12 to 15 elementary schools, with diverse student populations based on race, household income and adult educational attainment. To attract a broad range of students from across socio-economic and racial lines, the plan called for converting several inner city schools into magnet schools.<sup>5</sup>

The plan won national recognition from scholars and the media for finding a way to maintain diversity that didn't violate the Supreme Court ruling. Daniel Kiel, a University of Memphis law professor who specializes in race and education, called the plan "a model for districts seeking to capture the educational benefits of diverse schools."<sup>6</sup>

But the plan had opponents, including a group of Jefferson County parents who sued to block it. Families

But some school districts worked to maintain their desegregation plans even after being released from the court orders.

In Kentucky, the Jefferson County School District, which includes Louisville and surrounding suburbs, was released

from its original court order in 2000. But civic leaders and school administrators remained committed to desegregation, despite opposition from some parents, and implemented a voluntary student-assignment plan in an effort to maintain school integration.

were upset with the distance some children still had to travel, Duncan says. “Time on the bus was a big problem,” she says. Berman contends that discontent came primarily from some families in the district’s wealthier east side, who were unhappy with how the plan connected their area to poorer, urban neighborhoods.

The plan became a political issue in both the next mayoral and gubernatorial elections. The board finally decided on a revised approach, which Berman says he felt would leave the district’s schools more segregated than he could accept. He took a job with an Oregon school district in 2011.

That revised plan, to be phased in over the next four years, creates smaller geographic clusters of elementary schools. It will allow more children to attend schools closer to home, Duncan says, but it will also leave schools in some poorer, minority neighborhoods with largely minority populations.

Berman credits the district for not abandoning its effort completely, but he is pessimistic about the future of integration in Jefferson County and the nation as a whole. “Without federal leadership we’re not going to make any changes . . .,” he says. “We’re back to a system that divides us.”

Duncan is more optimistic. “I think we’re maintaining the idea of having diverse schools,” she says. “I think we value diversity, and we’re committed to it. But I think diversity is a lot more these days than African-American diversity.”

Wilt Elementary School, in southern Jefferson County, could be considered an example of that new diversity. Its student body is 19 percent black, 60 percent white and 20 percent Hispanic, Asian or another race. The students speak 11 different languages.<sup>7</sup>

Jefferson County is using a variety of approaches, including specialized programs and high-achieving magnet schools, especially for middle and high school students, to maintain diversity. But the system is complicated, Duncan says, and depends more on personal choice. And while some schools are becoming less integrated, she says, “I do believe we’re going to maintain diverse schools. I do not see us going back to segregated schools. No way.”

— **Reed Karaim**



Eugene AJ School District

Louisville’s court-ordered desegregation plan “actually created an attitude . . . about addressing race in an effective way,” says former Jefferson County School superintendent Sheldon Berman.

<sup>1</sup>“Data Management and Research Department,” Jefferson County Public Schools, <http://tinyurl.com/m97vak7>.

<sup>2</sup>Sarah Garland, *Divided We Fail: The Story of the African American Community that Ended the Era of School Desegregation* (2013), p. 19.

<sup>3</sup>Daniel S. Levine, “Schools resegregate after being freed from judicial oversight, Stanford study shows,” *Stanford News*, Dec. 5, 2012, <http://tinyurl.com/a2a6ens>.

<sup>4</sup>*Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), <http://tinyurl.com/72nzlyk>.

<sup>5</sup>“No Retreat: The JCPS Commitment to School Integration,” Jefferson County Public Schools, <http://tinyurl.com/p3op4pw>.

<sup>6</sup>Sheldon Berman, “Student Assignment Under Louisville’s 2008 Plan,” *School Administrator*, December 2013, <http://tinyurl.com/k9g52qs>.

<sup>7</sup>Lesli A. Maxwell, “Ky. District ‘Keeps Faith’ on School Desegregation,” *Education Week*, May 13, 2014, <http://tinyurl.com/lzr5joo>.

That plan was struck down by a 2007 Supreme Court ruling that declared school districts could no longer explicitly take the race of students into account when attempting to integrate schools. “The way to stop discrimination on the basis of race is to stop discriminating

on the basis of race,” said Chief Justice John Roberts, who wrote the majority opinion.<sup>59</sup>

Roberts proclaimed the court’s decision true to the spirit of *Brown v. Board of Education*. Justice John Paul Stevens, who wrote a dissenting opinion, disagreed sharply,



Partnership for Educational Justice

Former CNN anchor Campbell Brown, founder of the Partnership for Educational Justice, announces the organization's legal challenge to New York City's teacher tenure laws on July 28, 2014. The group contends that tenure fosters weak teaching that is having a negative effect on minority and poor students. "Often, the teachers who are ineffective end up concentrated in the most disadvantaged neighborhoods in the poorest schools where the kids need the most help," she said.

saying Roberts' decision "rewrites the history of one of this court's most important decisions."<sup>60</sup>

Today, 60 years after the Supreme Court's 1954 ruling, many analysts see the country retreating from its commitment to desegregation. "The bottom line is that children of color are still far more likely to find themselves in schools that are segregated by race or ethnicity and are much more likely to be involved in schools with high poverty concentration," says the ACLU's Parker.

## CURRENT SITUATION

### Education Challenges

The debate about American public education no longer revolves around integration as it did in the 1960s and '70s. Instead it is focused largely on standardized testing, school and teacher accountability and the growing school choice movement.

Yet many of these issues continue to involve questions of racial equity, made more pressing by the changing U.S. student population. For the first time, the nation's 99,000 public schools this fall are projected to have more minority students than non-Hispanic

whites, according to the National Center for Education Statistics.<sup>61</sup> Non-Hispanic whites will still be the largest group in schools, but taken together, other groups will make up slightly more than 50 percent of the school population. The second-largest group will be Hispanic students, expected to make up nearly a quarter of the population, while African-Americans will make up about 15 percent.<sup>62</sup>

The challenge to teacher tenure laws also appears to be gaining strength. In July, the advocacy group Partnership for Educational Justice, founded by former CNN anchor Campbell Brown, announced it was challenging New York City's teacher tenure laws in court, citing the effect weak teaching was having on minority and poor students.

"Often the teachers who are ineffective end up concentrated in the most disadvantaged neighborhoods in the poorest schools where the kids need the most help," Brown said.<sup>63</sup>

Those comments echoed a key argument used by Students Matter, the advocacy group that pushed its successful case against teacher tenure laws in California. Students Matter recently joined the New York lawsuit and is considering initiating action in Minnesota, New Mexico and Washington state, says spokesperson Schein.

The National Education Association (NEA), the nation's largest teachers' union, has denounced the efforts as attempts by corporate interests working to privatize public education by undermining teachers' unions.<sup>64</sup> California's teachers' unions are appealing the *Vergara* ruling.

"This will not be the last word," said Weingarten, of the American Federation of Teachers.<sup>65</sup>

Students in poorer schools also face challenges due to fewer resources when it comes to taking standardized tests, which are used to determine both whether students are on track and whether schools are succeeding. State standardized achievement tests became a significant part of the American education landscape with passage of the No Child Left Behind Act in 2001. The Obama administration, which supports standardized testing to measure student progress and hold educators accountable for their performance, announced in June that it would expand the use of standardized testing for special-needs students and Native Americans.<sup>66</sup>



## A T I S S U E

## Are U.S. schools becoming resegregated?

**YES****Dennis Parker***Director, Racial Justice Program, American Civil Liberties Union*Written for *CQ Researcher*, August 2014

Looking at the persistent isolation of students of color in American schools, it is difficult to believe that six decades have passed since the U.S. Supreme Court condemned legally imposed racial segregation in *Brown v. Board of Education*.

After initial massive resistance to the court's mandate, there was a significant reduction in segregation, particularly in the South, where most school desegregation cases occurred. However, more recently, ongoing discrimination and the effects of complex institutional and structural bias have threatened those gains, leaving the nation more diverse overall but with more of its students confined to segregated schools.

In districts, primarily in the South, that experienced the greatest progress in desegregating because of legal action, release from court supervision has been accompanied by steadily increasing resegregation, beginning almost immediately after dismissal. In the North, housing segregation sustained racially segregated schools, resulting in a concentration of the nation's most segregated schools in Northern cities. As a result, an increasing percentage of blacks and Latinos attend racially and ethnically segregated schools. Particularly disturbing: These segregated schools are far more likely to have a high poverty concentration.

Arguments that segregated schools are the benign result of personal housing choices are wrong and dangerous. The legal ban on segregation does not change the powerful forces that continue to segregate students by race and ethnicity and isolate students of color from equal educational opportunity. Government and private enforcers of fair housing laws have demonstrated the continuing existence of housing discrimination and a range of other discriminatory factors, such as a long history of predatory lending, which have disproportionately limited the choices of people of color.

But regardless of the cause of segregation, its impact is often devastating. All students are deprived of the benefits of diversity in education. But the deprivations associated with segregation are most sharply felt by students who have been deprived of opportunity historically. Students in racially, ethnically and economically isolated schools are condemned to institutions with fewer resources, fewer experienced, certified teachers and more pressure on the schools due to the additional costs associated with educating disadvantaged students.

Passively allowing the resegregation of U.S. schools unfairly disadvantages the students who could benefit most from quality education and disservices the nation as a whole. We owe more to our children and to ourselves.

**NO****Roger Clegg***President and General Counsel, Center for Equal Opportunity*Written for *CQ Researcher*, August 2014

No child today attends a segregated public school. Not one. "Segregation" means telling children they cannot attend the same school as children of a different color. It does not mean a failure to have socially engineered racial balance.

It is true that there are educational disparities across racial lines, but racial imbalances in classrooms have little if anything to do with this. Black children do not need a certain number of white children in a classroom in order to learn.

The real reasons that racial disparities exist are ignored by those who complain about "resegregation."

When you think about it, a child's environment has three major components — parents, schools and peers — and in all three respects African-American children face more hurdles. They are more likely to grow up in single-parent homes, go to substandard schools and have peers who are, to put it mildly, unsupportive of academic achievement.

But the left is slow to acknowledge that out-of-wedlock births are a bad thing or that anti-"acting white" peer pressure exists. They will admit that substandard schools are a problem, but resist (partly because of recalcitrant teacher unions) the most promising reforms: competition among schools, merit pay for teachers and more choice for parents and children.

The only way to bring schools into the politically correct racial balance that the left wants is not by ignoring students' skin color, but by using it to sort, assign and bus them. This is flatly inconsistent with *Brown v. Board of Education*, which prohibited race-based student assignments.

In addition, there is no increase in racial imbalance in schools. In *No Excuses: Closing the Racial Gap in Learning*, Stephan and Abigail Thernstrom conclude that "minority students are not becoming more racially isolated; white students typically attend schools that are much more racially and ethnically diverse than 30 years ago, and the modest decline in the exposure of black and Hispanic children to whites is solely due to the declining share of white children in the school-age population." And race is no proxy for disadvantage.

Nor is there any validity in the left's premise that more racial balance means better education. To quote the Thernstroms again: "The most sophisticated research on the subject does not find that having white classmates notably improves the academic achievement of blacks and Hispanics."

So forget racial bean-counting and focus on improving our schools.

In a detailed analysis published in July in *The Atlantic*, Meredith Broussard, a data-journalism professor at Temple University in Philadelphia, examined the challenge faced by students in poorer schools taking standardized achievement tests. She found that the testing companies publish textbooks containing the answers and the wording to express them most likely to be judged correct. But many poorer schools cannot afford those texts, leaving their students and teachers at a significant disadvantage.<sup>67</sup>

Opposition to standardized testing is growing. Many opponents, such as Fairtest.org and other groups, say the tests are racially biased. The NEA stepped up its public disagreement with the Obama administration over testing in July, when it called on Education Secretary Arne Duncan to resign.<sup>68</sup>

NEA President Lily Eskelsen García harshly criticized the idea that teachers working in schools that can differ widely in resources and student demographics should be judged by the performance of their classes on standardized tests. “It’s stupid. It’s absurd. It’s non-defensible,” García said.<sup>69</sup>

Public schools are financed with federal, state and local funds. The federal government’s contribution is about 12 percent of expenditures, but the amount provided by state and local governments varies widely by state.<sup>70</sup> In states that depend largely on local property taxes, significant differences between wealthy and poorer school districts exist. Wealthier districts can spend three times as much per student as nearby poorer districts. Wealthier states also generally spend more per student.<sup>71</sup>

Opposition to standardized tests is also growing as some school districts reject the use of the Common Core, a set of math and English language standards for students in kindergarten through 12th grade. Contrary to widely held beliefs, the standards were not developed by the federal government, but rather by the bipartisan National Governors Association Center for Best Practices and the Council of Chief State School Officers. However, the Obama administration has supported them through its Race to the Top education initiative, which aims to improve achievement by providing points toward federal grants for states that adopt the Common Core.<sup>72</sup>

Many conservatives oppose Common Core because they believe it reduces local control of education, while other groups say the standards do not put the proper emphasis on certain topics or areas of learning.<sup>73</sup>

## Enforcing Civil Rights

The Obama administration gets mixed reviews on enforcement of existing school desegregation orders and addressing racial inequality in education.

The ACLU’s Parker says desegregation “has not been a priority” of the administration. “Criticism has been made that programs like Race to the Top do not sufficiently take desegregation and racial diversity into account,” he says. “It would be useful if the federal government made those [issues] part of their consideration, so the schools receiving grants actively encouraged integration.”

But Jim Eichner, managing director of the Advancement Project, a Washington-based civil rights organization, credits the administration for its work in areas important to the organization, specifically harsher punishments, including arrests, handed out to students of color compared to whites for minor school disciplinary infractions.

“I would certainly give them very high marks on school discipline,” Eichner says. “They’ve really done a lot on that.” The Justice Department has worked with school districts to reform disciplinary policies, he says, and earlier this year the Education and Justice departments issued guidance on the degree to which discrimination in discipline violates the Civil Rights Act.

“It made a huge difference to have the federal government say not only is discriminatory discipline a big deal, but it can be a violation of federal law,” says Eichner.<sup>74</sup>

On Aug. 19, the Los Angeles Unified School District announced it will arrest fewer students in school discipline cases. A report by a civil rights group last year found that Los Angeles students were more likely to receive a criminal citation for discipline infractions than students in Chicago, Philadelphia or New York. And other studies had found that black and Latino students were far more likely than whites to face harsh disciplinary procedures in Los Angeles.

“We’re talking about schoolyard fights that a couple of decades ago nobody would have ever thought would lead to arrest,” said Ruth Cusick, an education rights lawyer for Public Counsel, a nonprofit group that helped draft the new policies. “The criminalizing of this behavior only goes on in low-income communities.”<sup>75</sup>

In addition, the Advancement Project is mounting a campaign against school closings that the organization claims have disproportionately affected students of color.

“We’re also encouraged that [the administration] has recently agreed to look at the school closing issue,” Eichner says.

Although hundreds of school districts have been released from federal court desegregation orders, many orders are still in place. Approximately half the almost 500 school districts that were under court order to desegregate in 1990 had been released by 2012, according to a Stanford University study.<sup>76</sup>

The Justice and Education departments don’t actively track desegregation orders and are uncertain how many are still in force. “We didn’t even have records,” said Russlynn H. Ali, the Education Department’s assistant secretary for civil rights in President Obama’s first term. The department is now asking districts to report whether they are operating under an order or desegregation plan.<sup>77</sup>

An investigation by *Politico*, the political news website, found that the Justice Department used its authority to enforce desegregation orders to intervene in local decisions at least 43 times during Obama’s first term. In a case in Beaufort County, S.C., the department intervened when a nearly all-white charter school was about to open. A revised plan for student recruitment and enrollment significantly boosted minority attendance.<sup>78</sup>

The Justice Department also worked out an agreement with the Tucson, Ariz., school district to bring back a Mexican-American studies program last year as a step toward conforming with a court-ordered desegregation program. In a battle that attracted national attention, the district had eliminated the program after the state, which said the program violated a state law that prohibits ethnic studies, threatened to withhold funding.<sup>79</sup>

### State Action

The movement to encourage charters and choice continues unabated, despite debate over whether they are of benefit to minority groups.

An annual assessment released by the National Alliance for Public Charter Schools found that 12 states increased their support for charters in 2013, while three — Mississippi, New Hampshire and Texas — raised or removed caps on the number of charter schools allowed.<sup>80</sup>

States seem to be even more active this year. According to the National Council of State Legislatures’ online database, 28 states have already enacted 71 new bills

covering a wide range of charter school activities, including many that provide new financing options or make it easier for charters to open.<sup>81</sup>

Fifteen states also enacted laws governing other school choice measures, including several intended to expand the use of school vouchers. But states are not spending more on education overall. A study by *FiveThirtyEight*, statistician Nate Silver’s website, found that state spending per student fell sharply from 2007 to 2010 as a result of the recession and did not significantly recover from 2010 to 2012, the most recent year for which data are available.<sup>82</sup>

The reduced state education spending, when combined with reductions in federal support for public education that came as federal stimulus funds ran out, led total school spending to fall in 2012 for the first time since 1977. The study found that urban districts have been particularly hard hit, with nearly 90 percent spending less per student in 2012 than when the recession ended in 2009.<sup>83</sup>

## OUTLOOK

### Changes Coming?

Many experts believe the nation’s attitudes concerning race and education could be changing.

When it comes to school segregation, “if you draw a straight line from what’s happening, it’s going to get worse and worse,” says UCLA’s Orfield.

But the public mood could change, he says, noting that the Supreme Court is generally divided 5-4 on issues of racial integration, so a change in one member could return the court to its earlier stance supporting more aggressive school desegregation and “bring the issue back to life.”

Penn State’s Frankenberg is one of several education experts who believe a broader approach is needed to bring about lasting change. “If we really want to [desegregate] our schools, we need to make desegregation a more essential issue and not peripheral,” she says. “But we also need to think about desegregating other parts of our society.”

Also looking at segregation through a larger lens, the University of Connecticut’s Cobb says, “The most pernicious thing in our contemporary politics as it pertains to race is the ascendant culture of white grievance,” in which whites see themselves as victims of pro-minority laws. As

long as that remains a powerful force in contemporary politics, he says, “we’ll remain exactly where we are.”

However, Cobb notes, desegregation hit its stride during the era of civil rights reform in the 1960s, fed by protests and activism among young people determined to change the system. That mass movement occurred only after African-Americans reached a level of frustration in which they believed they had no choice but to upend the system. He believes the nation could be reaching a similar moment as minority groups face a level of unequal treatment that leads to large-scale social and political action.

But the Center for Equal Opportunity’s Clegg says that rather than focusing on race, the future of education depends on continuing to open the field to competition. “If we focus on improving education and we forget about racial and ethnic bean counting and we refuse to see the challenges through the distorting prism of race,” he says, “then I’m optimistic.”

On the other hand, the Advancement Project’s Eichner says changes in the U.S. population are likely to have a significant impact on the politics of public education in the next few decades as the nation’s white majority disappears before the middle of the century. Continuing high levels of immigration and the rapidly growing Latino population, which has so far been less attracted to charter schools, will result in dramatic shifts in the racial composition of the school-age population.<sup>84</sup>

In addition, says Schein of Students Matter, “Changes in demographics bring changes in policies. So there could be a dramatic change in the way public education looks in the next generation.”

The ACLU’s Parker is encouraged by the ongoing public debate about education. “I’ve been seeing more discussions about how you can educate kids. I’ve been seeing more programs that are designed to deal with issues.

“There’s more of a recognition that there is a real crisis in American education, and so I’m hopeful we will find a way to deal with some of the larger problems in our education system that affect everyone, but particularly the inequalities and the way they affect some students,” he says.

“There’s a lot going on,” he continues. “You have to be hopeful.”

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## For More Information

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**Center for Equal Opportunity**, 7700 Leesburg Pike, Suite 231, Falls Church, VA 22043; 703-442-0066; [www.ceousa.org](http://www.ceousa.org). Conservative think tank that promotes “a color-blind society.”

**The Civil Rights Project**, 8370 Math Sciences, Box 951521, Los Angeles, CA 90095; <http://civilrightsproject.ucla.edu>. Seeks to help renew the civil rights movement by deepening the understanding of issues related to racial and ethnic equity.

**National Alliance for Public Charter Schools**, 1101 15th St., N.W., Suite 1010, Washington, DC 20005; 202-289-2700; [www.publiccharters.org](http://www.publiccharters.org). Advocates for the quality, growth and sustainability of charter schools and maintains

a national database of charter school laws and related information.

**National Education Association**, 1201 16th St., N.W., Washington, DC 20036; 202-833-4000; [www.nea.org](http://www.nea.org). Labor union representing teachers and other education professionals; advocates for public education and teachers’ rights.

**Office for Civil Rights**, U.S. Department of Education, Lyndon Baines Johnson Department of Education Building, 400 Maryland Ave., S.W., Washington, DC 20202; 800-421-3481; [www2.ed.gov/about/offices/list/ocr/index.html](http://www2.ed.gov/about/offices/list/ocr/index.html). Works to ensure equal access to education and enforces civil rights laws.

**Students Matter**, 325 Sharon Park Drive, No. 521, Menlo Park, CA 94025; <http://studentsmatter.org>. Nonprofit founded by Silicon Valley entrepreneur David Welch; sponsors litigation to promote access to quality public education.