

***AN "INTEGRATED" THEORY OF INTEGRATED EDUCATION***  
***By john a. powell***

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## **Introduction**

*A successful multiethnic society is a rare and wondrous achievement in the world.*

Diane Ravitch<sup>1</sup>

Democracy requires full participation of all citizens in the pursuit of a just society. An educated citizenry is symbiotically linked to this pursuit. The goal of education, in general, is to enable individuals to constitute their selves as full human beings. The goal of public education, in particular, is to provide children with the skills and knowledge necessary for effective, meaningful participation in all aspects of society, from access to adequate housing and employment, to engagement in and transformation of the political process.

Too often, however, our society falls short in meeting the goals of education and democracy where race is concerned. The racial hierarchy that exists makes it difficult, if not impossible, for non-whites to fully constitute their selves and to participate in society. It also systematically excludes non-whites from opportunity structures and access to adequate schools, healthcare, employment, housing and meaningful political participation.<sup>2</sup> This is especially true when majoritarian views are secured through ballot initiatives and referenda.<sup>3</sup> Professor Liebman describes the situation this way:

... in our pluralistic society, treatment as an equal requires political actors to render equal respect and concern...to all other people based on [their] capacity...to generate their own equally worthy visions of the good...[D]eviations from the principle of equal concern fundamentally corrupt the political process...[R]acial segregation – in schools and in other public settings – is perhaps the most virulent form of this polity-threatening corruption.<sup>4</sup>

As America grows more and more diverse, there are many uncertainties, particularly after September 11. But one thing that *is* certain is that racially segregated education negatively impacts all citizens and undermines the goal of constructing a multi-racial and multi-ethnic democracy. Though our schools today are more equitable than during the pre-*Brown* era, they have never been truly integrated and are currently resegregating at alarming rates, both racially and economically. In fact, each minority group's exposure to

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<sup>1</sup> Ravitch, *Our Pluralist Common Culture*, in CIVIL RIGHTS AND SOCIAL WRONGS, ED. JOHN HIGHAM 136 (1997).

<sup>2</sup> See john a. powell, *The Tensions Between Integration and School Reform*, 28 HASTINGS CON'L L. QUARTERLY 655, 750 (2001).

<sup>3</sup> See, e.g., California's Proposition 227, the initiative statute entitled "English Language in Public Schools essentially ends all methods of bilingual education.

<sup>4</sup> James S. Liebman, *Desegregating Politics: "All-Out" School Desegregation Explained*, 90 COLUM. L. REV. 1463, 1475 (1990).

white children is declining.<sup>5</sup> When we consign students to these apartheid-like conditions we make a mockery of democracy.

Many would have us believe, however, that as long as this arrangement is voluntary – or the result of "choice" – it is ok. This reflects the rhetoric behind the current push for "neighborhood schools" and vouchers. Of course, we know that racial and socioeconomic segregation is never really voluntary. What is apparently voluntary for one group constrains the choices of another. We also know that choice will never overcome this severe racial and economic segregation that persists in our nation.

Emphasis on voluntary choice also implies that *involuntary* efforts at integrating schools have not yielded results. And although this rationale is used to justify the dismantling of desegregation efforts, it is not true. The vast majority of effective school desegregation – including a reduction in the achievement gap – has resulted from court order or legislative mandate. It must be acknowledged, however, that these efforts are limited in most cases and lead to student, parent, and educators experiencing something far short of true integration.

To complicate matters, educational reforms are focusing on accountability measures often to the exclusion of integration. Yet, the harmful consequences for students attending less competitive schools are steadily increasing, particularly in a globalized economy. Integration, not merely in terms of parity, but in terms of the creation of a just space for the constitution of the self, education, and democracy must be the measure for the success of our schools, not merely standardized test scores.<sup>6</sup>

It is essential at this juncture, therefore, to initiate a discussion of what true integration means and what it will take to achieve it. To do this, we need to clarify our terminology. As referred to here, *segregation* refers to situations in which a disproportionate number of white students or students of color attend a school or school system. Segregated schools, therefore, are prohibitive. *Desegregation* refers to efforts at remedying racial imbalances. It traditionally means removing formal legal barriers or simply placing students of different races in proximity to each other. Efforts are often limited to moving and mixing racial populations to end racial isolation. As it has played out in most of America's educational settings, desegregation requires students of the non-dominant group (most often non-white) to assimilate into the school and culture created for and controlled by

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<sup>5</sup> JOHN R. LOGAN, CHOOSING SEGREGATION: RACIAL IMBALANCE IN AMERICAN PUBLIC SCHOOLS LEWIS MUMFORD CENTER FOR COMPARATIVE URBAN AND REGIONAL RESEARCH. In 1989-90, 32% of the average black child's schoolmates were white; that has dropped to 28% in 1999-2000. Similar drops were experienced by Hispanics (from 30% to 25%) and Asians (52% to 46%).

<sup>6</sup> POWELL, *supra* note 2, at 655, citing Molly Townes O'Brien, Private School Tuition Vouchers and the Realities of Racial Politics, 64 TENN. L. REV. 359, 394-95 (1997) (citing JAMES S. COLEMAN & THOMAS HOFFER, PUBLIC AND PRIVATE SCHOOLS (1987); RAY MARSHALL & MARC TUCKER, THINKING FOR A LIVING: EDUCATION AND THE WEALTH OF NATIONS (1992); SOUTHERN EDUCATION FOUNDATION, REDEEMING THE AMERICAN PROMISE: REPORT OF THE PANEL ON EDUCATIONAL OPPORTUNITY AND POST-SECONDARY DESEGREGATION (1995)).

the dominant group (most often white). Structures are not altered to meet the needs of the new and different students.<sup>7</sup> Desegregated schools, therefore, are limited.

*True integration* moves beyond desegregation -- beyond removing legal barriers and simply placing students of different races together. Because segregation creates a culture of racial hierarchy and subordination, true integration requires community-wide systemic efforts to dismantle this culture and create a more inclusive educational system and a more inclusive society-- a society in which all individuals and groups have equal opportunities to fashion and participate in the democratic process. True integration in our schools, then, is not assimilative but transformative. It requires different types of educational reforms that implicate everything from district restructuring to refashioning classroom dynamics in an effort to carry forward the ongoing efforts of desegregation.

True integration, however, also requires metropolitan strategies that will integrate our neighborhoods and equalize wealth and opportunity. Instead of shrugging our shoulders at regional remedies that involve fair-share housing and tax-base sharing, we must pursue educational and housing solutions together and must aggressively articulate the need for them in our legislatures. In the meantime, we must rely upon retooled mandatory, metropolitan-wide desegregation plans -- not simply the good will of parents and districts. Only then can we move beyond voluntary choices toward the transformative task of truly integrating.

Education is perhaps the most important crucible for remedying disparities, enhancing life opportunities, developing citizens, and promoting a genuine multi-racial and multi-ethnic democracy. Yet we have never fully democratized education. To do so, we need to provide all students with a truly integrated education. After briefly discussing what we know already about segregation, resegregation, and desegregation, this paper will explore several reasons why we refuse to accept what we know, namely that we are frustrated with the limitations of desegregation and prefer to adopt a "colorblind" position that emphasizes "choice." The remainder of the paper will focus largely on remedying the first of these impediments by defining "true integration," explaining how it is critical for both students and the larger society, and outlining "integrated" strategies for its achievement.

## **I. What We Know (But Refuse to Accept) About Segregation, Resegregation, and Desegregation**

### **A. Segregation**

Segregation negatively affects not only our students but also our very democratic structure, "reifying racial subordination in employment, health, wealth access, and political participation."<sup>8</sup> Yet we find ourselves today having to defend the principles of *Brown* against those who argue that segregation has been disestablished or that its

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<sup>7</sup> See generally, Leland and Melva L. Ware, *Plessy's Legacy: Desegregating the Eurocentric Curriculum*, 12 GA. ST. U. L. REV. 1151 (1996).

<sup>8</sup> powell, *supra* note 2, at 666.

persistence is merely a matter of choice. It is important to counter both of these arguments by reemphasizing the reality and harms of segregation.

## 1. Residential and Educational Segregation

Despite our nation's increasing diversity, new data from the 2000 Census shows that intense racial separation persists in our metropolitan areas. Residential segregation remains high in both cities and their suburbs, with little change from 1990. And although persons of color are moving from the cities to the suburbs in increasing numbers, and although Hispanics and Asians now live in neighborhoods with much higher co-ethnic proportions,<sup>9</sup> they remain in largely nonwhite neighborhoods.<sup>10</sup> These realities make prospects for true integration by demographic shifts alone unlikely, particularly for blacks.

We have also experienced a five-fold increase in communities of concentrated poverty over the last several decades, primarily in our racially segregated communities of color.<sup>11</sup> Of those living in concentrated poverty, one-half are black, and one-fourth are Hispanic.<sup>12</sup> In fact, 33% of all blacks in the United States live in neighborhoods of concentrated poverty.<sup>13</sup> It is important to note two things here. First, these segregated neighborhoods did not come about by accident but were constructed and are perpetuated through governmental housing policies, institutional practices and private behaviors.<sup>14</sup> And second, research clearly demonstrates that this level of neighborhood poverty functions differently and much more destructively than individual poverty – and results in a multi-faceted harm to entire communities.

Suburban sprawl and metropolitan fragmentation are the counterparts to segregation and concentrated poverty and present perhaps the greatest obstacles to achieving a more integrated nation. As people and businesses with the economic means sprawl away from central cities, they settle into developing suburban jurisdictions. They leave behind low-

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<sup>9</sup> LEWIS MUMFORD CENTER FOR COMPARATIVE URBAN AND REGIONAL RESEARCH, *The New Ethnic Enclaves in America's Suburbs*, at <http://mumford1.dyndns.org/cen2000/suburban/SuburbanReport/page1.html> (July 9, 2001).

<sup>10</sup> HARVARD CIVIL RIGHTS PROJECT, 2000 SEGREGATION LEVELS FOR U.S. NATIONAL PRESS CLUB, April 3, 2001.

<sup>11</sup> The federal government defines concentrated poverty as a census tract with 40 percent or greater of its residents living below poverty level. As of 1990, close to 2800 of the nation's 45,000 census tracts experienced concentrated poverty compared with only 1000 of them in 1970. Although we are unable to update these statistics because poverty rates by the 2000 census tract are only starting to be released, there are some reasons to believe concentrated poverty is still a major issue especially in urban areas. The Lewis Mumford Center reports that the 2000 poverty rate is over twice as high in the cities (18.2%) than in the suburbs (8.6%). The disparity between city and suburban poverty rates have remained unchanged since 1990. LEWIS MUMFORD CENTER FOR COMPARATIVE URBAN AND REGIONAL RESEARCH, *THE SUBURBAN ADVANTAGE: NEW CENSUS DATA SHOW UNYIELDING CITY-SUBURB ECONOMIC GAP AND SUPRISING SHIFTS IN SOME PLACES* (June 24, 2002).

<sup>12</sup> Paul Jargowski, *Ghetto Poverty Among Blacks in the 1980s*, 13 J. POL'Y ANALYSIS & MGMT. 288 (1994).

<sup>13</sup> *Id.*

<sup>14</sup> DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 19 (1993).

income minorities in high-need, resource-depleted central cities. Home values are lower, employment opportunities are limited, and the ability to move into stable areas is hindered by lack of accumulated assets.<sup>15</sup>

Because of these realities, and because education is funded largely through local taxes, segregated areas of concentrated poverty offer significantly limited educational opportunities. And although the Supreme Court has declared housing off-limits in fashioning desegregation remedies,<sup>16</sup> researchers have gathered extensive evidence showing that current school segregation is directly attributable to residential segregation.<sup>17</sup> Unfortunately our society has not effectively addressed this inextricable link.

## 2. The Harms of Segregation

### a. And Concentrated Poverty

As a result of residential segregation and concentrated poverty, students of color are far more likely than whites to attend a school with larger populations of students in poverty. The average white student attends a school in which 19.6 percent of students are impoverished, while the average Latino student attends a school in which 44.0 percent of students are impoverished.<sup>18</sup>

Educational disadvantage is closely linked to poverty, both poverty of the individual student and of the school he or she attends.<sup>19</sup> This effect is particularly pronounced where poverty is concentrated. In fact, impoverished students do better if they live in middle-class neighborhoods or attend more affluent schools.<sup>20</sup> Resource disparities also persist in public education, tracking this concentration of poverty.<sup>21</sup>

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<sup>15</sup> See generally, MELVIN OLIVER & THOMAS SHAPIRO, *BLACK WEALTH, WHITE WEALTH* (1995).

<sup>16</sup> *Keyes v. School Dist. No. 1*, 413 U.S. 189 (1973). However, in *United States v. Yonkers*, 837 F.2d 1181 (2d. Cir. 1987)(*cert. denied* 486 U.S. 1055 (1988)), the Second Circuit Court of Appeals found such a link between discriminatory practices in housing and education and ordered remedies for desegregation in both areas. The City of Yonkers was ordered to construct public housing in white neighborhoods and the school board was directed to implement a large-scale desegregation program that included teacher integration, mandatory student reassignment involving busing, as well as voluntary school integration. *Id.* at 1236-38. See also Julius Menacher, *Public Housing Policy and School Segregation*, 50 ED. LAW REP. 925 (1989).

<sup>17</sup> See Nancy A. Denton, *The Persistence of Segregation: Links Between Residential Segregation and School Segregation*, 80 MINN. L. REV. 795, 818 (1996). For a detailed discussion of the link between housing and education, see John A. Powell, *Living and Learning: Linking Housing and Education*, 80 MINN. L. REV. 749 (1996).

<sup>18</sup> See GARY ORFIELD, *SCHOOLS MORE SEPARATE: CONSEQUENCE OF A DECADE OF RESEGREGATION* 39 (July 2001)(report of the Civil Rights Project of Harvard University).

<sup>19</sup> *Id.*

<sup>20</sup> Stephen J. Schellenberg, *Concentration of Poverty and the Ongoing Need for Title I*, in *HARD WORK FOR GOOD SCHOOLS: FACTS NOT FADS IN TITLE I REFORM* 130, 137 (Gary Orfield & Elizabeth H. DeBray eds., 1999).

<sup>21</sup> See THE EDUCATION TRUST, *THE OTHER GAP: POOR STUDENTS RECEIVE FEWER DOLLARS*, EDUCATION TRUST DATA BULLETIN (March 6, 2001).

Given these inequalities, it is inevitable that racial segregation in the public schools has devastating implications for the educational environment. Schools with predominantly students of color are, on average, more than twice as large as predominantly white schools, have 15 percent larger class sizes overall, maintain lower quality, remedial curriculum, offerings and materials, and attract less qualified, often transitory teachers.<sup>22</sup> Consequently, racially segregated schools experience higher rates of tardiness and unexcused absence, and lower rates of extracurricular involvement.<sup>23</sup> Moreover, schools with the highest concentrations of poverty have limited technological resources, confounding the digital divide that exists at the familial level.<sup>24</sup>

### **b. In Perpetuating the Achievement Gap**

Segregation and concentrated poverty also produce devastating effects on student achievement. In Chicago, for example, the 178 of the 179 failing schools identified by the state in 2002 have predominantly black or Hispanic enrollments and are concentrated on the West and South Sides.<sup>25</sup>

As such, rather than functioning as an equalizer among citizens, educational achievement is highly racialized. By the end of 4<sup>th</sup> grade, African American, Latino, and low-income students are already two years behind other students; by 8<sup>th</sup> grade, three years behind; and by 12<sup>th</sup> grade, four years behind.<sup>26</sup>

According to Christopher Jencks and Meredith Phillips, both of the Harvard University Kennedy School of Government,<sup>27</sup> blacks score lower than whites on vocabulary, reading, and math tests, as well as on tests that claim to measure scholastic aptitude and intelligence. This achievement gap begins before kindergarten and persists into adulthood. And although a Department of Education study found that the test score gap between black and white students narrowed during the 1980s, it has widened from 1990-1999. The typical black still scores below 75 percent of whites on standardized tests.<sup>28</sup>

“Conservative” explanations for this achievement gap tend to attribute these differences to genes, the “culture of poverty,” single parenthood, or a lack of will -- all of which,

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<sup>22</sup> Linda Darling-Hammond, *Unequal Opportunity: Race and Education*, BROOKINGS REVIEW, Spring 1998, at 30.

<sup>23</sup> See WHAT MATTERS MOST: TEACHING FOR AMERICA’S FUTURE, A REPORT OF THE NATIONAL COMMISSION ON TEACHING AMERICA’S FUTURE, SUMMARY REPORT, (Spring 1996).

<sup>24</sup> See COUNCIL OF CHIEF STATE SCHOOL OFFICERS, HELPING STUDENTS TO BE FIRST IN THE WORLD: RECOMMENDATIONS FOR FEDERAL ACTION ON LEGISLATION, 107<sup>TH</sup> CONGRESS. One study found that schools with the highest concentration of poverty had 16 students per computer with internet access, while schools with the lowest concentrations of poverty averaged seven students per computer. *Id.*

<sup>25</sup> Michael Martinez, Stephanie Banchemo & Darnell Little, *Race, Poverty Define Failing Schools*, CHIC. TRIB., July 21, 2002, at 1.

<sup>26</sup> See KATI HAYCOCK, CRAIG JERALD, & SANDRA HUANG, “CLOSING THE GAP: DONE IN A DECADE,” THINKING K-16, from Education Trust (Spring 2001) at 3, available on line at <[http://www.edtrust.org/main/documents/k16\\_spring01.pdf](http://www.edtrust.org/main/documents/k16_spring01.pdf)>.

<sup>27</sup> Christopher Jencks & Meredith Phillips, *The Black White Test Score Gap*, BROOKINGS REVIEW, Spring 1998, 24.

<sup>28</sup> *Id.* at 26.

argue Jencks and Phillips fail to reconcile with available evidence.<sup>29</sup> A more viable explanation, documents Linda Darling-Hammond of Columbia University Teachers College, is unequal access to key educational resources as described above.<sup>30</sup>

Unequal access to educational opportunity also manifests itself in student placements. Nationally, black and Latino students are underrepresented in Gifted and Talented and Advanced Placement programs, and blacks are over-represented in Special Education programs.<sup>31</sup> Moreover, black and Latino students obtain college degrees at half the rate of white students nationally.<sup>32</sup>

The generational nature of segregation and concentrated poverty affects student achievement as well. The most recent analysis of 1999 S.A.T. scores showed that students of all races did better if their parents had more education.<sup>33</sup>

## **B. Resegregation**

Unfortunately, segregation has not been eliminated in our schools. Despite increased diversity in the student population in this nation, particularly from the surge of Latinos, public schools are actually more racially segregated than they were in 1980.<sup>34</sup> According to Gary Orfield, greater than 70 percent of black students in the nation attend predominantly minority schools. Educational segregation rates are currently even higher for Latino students, 75.6 percent of who attend predominantly minority schools.<sup>35</sup> In fact, our largest city school systems now serve only a tiny minority of white students. Several have 85% or more non-white enrollments, serve virtually no middle class white families, and very few have more than one-third whites.<sup>36</sup>

Orfield and John T. Yun have also found three other important trends. First, the American South is resegregating after two and a half decades of having the highest levels of integration in its schools. Second, an increasing number of black and Latino students are enrolled in suburban schools, but serious segregation persists within these communities, particularly in the nation's large metropolitan areas. And third, there is a rapid increase in schools with three or more racial groups. While all nonwhite racial groups may be experiencing more diversity in their schools, whites are remaining in overwhelmingly white schools even in regions with very large non-white enrollments.<sup>37</sup> Despite these trends, we do not seem to value desegregation efforts any longer.

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<sup>29</sup> Id. at 26.

<sup>30</sup> Linda Darling-Hammond, *Unequal Opportunity: Race and Education*, BROOKINGS REVIEW, Spring 1998, at 30.

<sup>31</sup> See, The Education Trust, available online at <edtrust.org>.

<sup>32</sup> See HAYCOCK ET.AL., *supra* note \_\_\_ at 3.

<sup>33</sup> Pam Belluck, *Reason is Sought for Lag by Blacks in School Effort*, N.Y. TIMES ABSTRACTS, July 4, 1999, at 1.

<sup>34</sup> See generally ORFIELD, *supra* note 18, (2001).

<sup>35</sup> *Id.*

<sup>36</sup> GARY ORFIELD & JOHN T. YUN, RESEGREGATION IN AMERICAN SCHOOLS (June 1999).

<sup>37</sup> *Id.*

## C. Desegregation

### 1. Reemphasizing Benefits Of

As Amy Stuart Wells has argued recently that "one of the many reasons why we, as a society, have given up on school desegregation as a solution to racial inequality is that...we have greatly ignored the small but growing body of literature that addresses both the long-term and institutional effects of school desegregation."<sup>38</sup> One of the first steps in achieving true integration is to reemphasize these beneficial effects within the larger community.

Research shows that students of color who attend more integrated schools enjoy increased academic achievement levels and higher test scores especially if students attend desegregated schools at an early age.<sup>39</sup> In fact, the desegregation era (roughly the 60s through the mid-80s) is largely credited for reducing the achievement gap, despite the fact that poverty, single-parent families, and unemployment worsened during the same period.

Intergeneration gains also ensue from the higher quality educational opportunities for students of color who attend desegregated schools.<sup>40</sup> From his analysis of longitudinal studies tracking students after high school, with special attention to black and Hispanic youth, Trent concludes that "improving economic and educational opportunities for one generation of minority individuals raises the socioeconomic status of the next generation, so that those who follow are more apt to begin school at the same starting point as their nonminority classmates."<sup>41</sup>

Consequently, attending a more desegregated school translates into higher goals for future educational attainment and career choices,<sup>42</sup> increased awareness of the steps needed to obtain these goals,<sup>43</sup> and enhanced social networks.<sup>44</sup> Attending a desegregated school can also improve the likelihood of attending an elite institution later in life, and being able to access more sustaining and meaningful employment.<sup>45</sup>

Furthermore, both blacks and whites from desegregated elementary schools are more likely than their counterparts from segregated schools to attend a desegregated college,

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<sup>38</sup> Amy Stuart Wells, *The "Consequences" of School Desegregation: The Mismatch Between the Research and the Rationale*, 28 HASTINGS CONST'L L. QUART'LY 771, 772-3 (2001). Yun argues, therefore, that "diversity" can therefore justify desegregation plans being challenged in court.

<sup>39</sup> See MICHAL KURLAENDER & JOHN T. YUN, IS DIVERSITY A COMPELLING EDUCATIONAL INTEREST? EVIDENCE FROM METROPOLITAN LOUISVILLE, available at the Harvard Civil Rights Project web page, at < <http://www.law.harvard.edu/groups/civilrights/publications/Louisville.html> >

<sup>40</sup> See William T. Trent, *Outcomes of School Desegregation: Findings from Longitudinal Research*, 66 J. OF NEGRO ED. 255-257 (1997).

<sup>41</sup> *Id.* at 257. (Trent)

<sup>42</sup> See KURLAENDER & YUN, *supra* note 39.

<sup>43</sup> Wells, *supra* note 38, at 794.

<sup>44</sup> Wells, *supra* note 38, at 773.

<sup>45</sup> ORFIELD, *supra* note 18, at 10 (citing Eric M. Camburn, *College Completion Among Students from High Schools Located in Large Metropolitan Areas*, 98(4) AM. J. ED. 551-69 (August 1990).

live in a desegregated neighborhood, and work in a desegregated environment.<sup>46</sup> Chicago's Gautreaux Program is often cited in support of this.<sup>47</sup>

Desegregation can also lead to friendship and, later in life, social and political collaboration.<sup>48</sup> As Braddock and McPartland suggest, blacks who had a desegregated school experiences tend to evaluate white co-workers and employers more positively than blacks with segregated educational backgrounds.

As such, school desegregation has important implications beyond the schoolyard and employment contexts, touching the larger society. Improved interaction across racial lines can lead to more integrated communities. In fact, districts that have experienced desegregation over the longest period of time have the lowest levels of housing segregation as well.<sup>49</sup>

It is important to acknowledge, as well, that desegregation does not limit white/majority students' academic success. William Taylor relates that "in most cases where courts have ordered desegregation and the process has begun early in a child's school career, the achievement levels of minority students have risen modestly or significantly while those of white students have remained unchanged or have risen slightly."<sup>50</sup> In fact, a 2000 study by the Harvard Civil Rights Project explicitly shows that the "diversity" of a desegregated school greatly benefits students of *all races*.<sup>51</sup>

## **II. Why We Refuse to Accept What We Know**

Despite what we know about the harms of segregation and resegregation and the benefits of desegregation, we are struggling to justify and implement current desegregation plans. One reason is that we don't do desegregation very well. The very limitations that give desegregation a bad name also prevent us from achieving true integration. As a result, educational reforms in the form of school choice and greater accountability forge stubbornly ahead, often without integration as a goal. At the heart of this struggle lies the colorblind position which, along with its assimilationist underbelly, permeates our public discourse and policies, masks as justice, and prevents us from constructing a more equitable and multi-racial educational system.

### **A. We Don't Do Desegregation Well Enough**

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<sup>46</sup> Robert Crain and Amy Stuart Wells, *Perpetuation Theory and the Long-Term Effects of Schools Desegregation*, REV. OF EDUC'L RESEARCH, Winter 1994 at 531; M. Dawkins and J.H. Braddock, *The Continuing Significance of Desegregation: School Racial Composition and African American Inclusion in American Society*, 53 J. OF NEGRO ED. 394 (1994).

<sup>47</sup> James E. Rosenbaum, et al., *Can the Kerner Commission's Housing Strategy Improve Employment, Education and Social Integration for Low-Income Blacks?* 71 N.C. L. Rev. 1519 (1993).

<sup>48</sup> MARK CHESLER, CARL JORGENSEN, PHYLLIS ERENBERG, PLANNING EDUCATIONAL CHANGE: INTEGRATING THE DESEGREGATED SCHOOL (Center for Research on Utilization of Scientific Knowledge, The University of Michigan) 2-3.

<sup>49</sup> powell, *supra* note 2, at 685.

<sup>50</sup> See William L. Taylor, *The Continuing Struggle for Equal Educational Opportunity*, in RACE, POVERTY, AND AMERICAN CITIES 466 (J.C. BOGER & J.M. WEGNER, EDS., 1996).

<sup>51</sup> See KURLAENDER & YUN, *supra* note 39.

## 1. Our Current Efforts Assimilate and Discriminate not Integrate

Even where desegregation efforts remain, they are severely limited.<sup>52</sup> Numerical balance does not guarantee that racial equality will prevail. Instead, students of color and white students are treated differently within schools.

Ability grouping and tracking reinforces inequalities by segregating many low-income and students of color within schools. Indeed, research indicates that students tend to be tracked according to their race, ethnicity, or socioeconomic status rather than their ability; that the use of tracking increases when there are sizable enrollments of black and Hispanic students;<sup>53</sup> and that low-income students of color outnumber middle-class white students in lower track classes by as many as seven times.<sup>54</sup> Not surprisingly, black students are also disproportionately over-represented in vocation or general tracts and underrepresented in college preparatory tracks.<sup>55</sup> Furthermore, lower-track classes tend to be assigned to the least qualified teachers and receive fewer resources.<sup>56</sup>

It is important to note that, while introduced in the 1920s, tracking was almost obsolete by the 1950s. Immediately after *Brown*, however, schools recommenced tracking to perpetuate white supremacy. Tracking ostensibly operates today to reduce the disparity in student ability levels, so that the initial low achievers can ultimately join their classmates at the more challenging levels.<sup>57</sup> However, research has shown that ability grouping has little effect on the scholastic achievement of either minority or non-minority children.<sup>58</sup> Rather, it continues to produce short- and long-term educational disparities by race and class.<sup>59</sup> Indeed, students tend to internalize the negative surroundings and lower teacher expectations, which in turn reifies the racialized system itself.<sup>60</sup>

Add to this discriminatory use of suspensions,<sup>61</sup> a lack of teachers and administrators of color,<sup>62</sup> and a Eurocentric bias in the curricula and desegregation efforts are sure to be

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<sup>52</sup> See, e.g., Arlin Mickelson, *Subverting Swann: First- and Second-Generation Segregation in the Charlotte-Mecklenburg Schools*, 38(2) AM. ED. RESEARCH J. 239 (2001).

<sup>53</sup> J.H. Braddock, *Tracking: Implications for Student Race-Ethnic Groups*, in REPORT NO. 1, CENTER FOR RESEARCH ON EFFECTIVE SCHOOLING FOR DISADVANTAGED STUDENTS, (1990).

<sup>54</sup> Rose Sanders and Wythe Holt, *Still Separate and Unequal: Public Education More Than Forty Years After Brown*, in MOTION MAGAZINE, October 20, 1997.

<sup>55</sup> See Annegret Harnischfeger & David E. Wiley, *High School Learning, Vocational Tracking and What Then*, Contractor Report (1980).

<sup>56</sup> Dominic J. Brewer, Daniel I. Rees, and Laura M. Argys, *Detracking America's Schools: The Reform Without Cost*, 77 PHI DELTA KAPPA 210 (1995).

<sup>57</sup> GRIPP, ADDRESSING RACISM IN EDUCATION 8, citing Florence Fredman, *Getting back on Track: Challenging Racially Discriminatory Effects of Educational Tracking*, 20 COLUMBIA J. OF L. & SOC. PROBLEMS 283,308-309 (1986).

<sup>58</sup> GRIPP, *supra* note 57, citing James A. & Chen Kulik, *Meta-analytic Findings on Grouping Programs*, GIFTED CHILD QUARTERLY, v. 36, (1992) at 73.

<sup>59</sup> Powell, *supra* note 2, at 691.

<sup>60</sup> *Id.*, citing Terry Kershaw, *The Effects of Educational Tracking on the Social Mobility of African Americans*, J. OF BLACK STUDIES, Vol. 23, No. 1, September 1992.

<sup>61</sup> Mark G. Yudof, *Suspension and Expulsion of Black Students From the Public Schools: Academic Capital Punishment and the Constitution*, 39 LAW & COMTEMP. PROBS. 374 (1975).

limited. Research also suggests that in desegregated schools, while diversity is given lip service, policy decisions relating to academic achievement rely instead on a semi-essentialist understanding of race that ignores the racial inequalities in the immediate school environment and wider society.<sup>63</sup>

As a result, student experiences are diminished under limited desegregation efforts. Assimilation rather than integration most often prevails.<sup>64</sup> As described by Amy Stuart Wells, black students under the St. Louis inter-district transfer plan...

had to endure the racial and cultural insensitivity of whites in the suburbs in order to succeed there. Many of the white teachers, administrators and students of suburbia regularly made the transfer students feel unwanted and unwelcome. These educators often failed to consider the perspective of black students who traveled many miles each day in search of a better education. ... Although the degree of racial insensitivity appeared to be diminishing over time, the prejudice found in the white suburbs forced many transfer students to make difficult choices. Basically, they could either suppress their anger and frustration, re-create their own racial attitudes and distance themselves from people of their own color, or search for a difficult balance between their critique of white racism and their need to survive in a predominantly white society.<sup>65</sup>

## 2. So We Are Ambivalent Toward Them

Given these limitations of desegregation efforts, it is no small wonder that Americans are ambivalent toward school desegregation and integration. Polls show that we believe that integrated schools are worthwhile, that blacks and whites benefit from them, and that the more schools resegregate, the more we favor integration.<sup>66</sup> At the same time, however, we believe that blacks already have as much of an opportunity to receive a quality education as do whites.<sup>67</sup> We do not support busing to achieve integration, and we prefer neighborhood schools even if they are only composed of one race.<sup>68</sup> Moreover, the majority of the current debate on education now focuses on neighborhood schools,

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<sup>62</sup> Wendy Schwartz, *Opportunity To Learn Standards: Their Impact on Urban Students*, ERIC Clearinghouse on Urban Education, <<http://eric-web.tc.columbia.edu/digests/dig110.html>>..

<sup>63</sup> See, Mica Pollock, *How the Question We Ask Most about Race in Education is the Question We Suppress*, forthcoming.

<sup>64</sup> See, Diana C. Chiu, *The Cultural Defense: Beyond Exclusion, Assimilation, and Guilty Liberalism*, 82 CALIF. L. REV. 1053, 1125 n.152 (1994) (stating that "the salient features of assimilation are that the members of ethnic groups ... adopt the characteristics of the dominant culture and gain entry to its social institutions").

<sup>65</sup> Wells, *supra* note 38, at 787. Similar findings were made by Roslyn Arlin Mickelson in the Charlotte-Mecklenburg school district, where desegregation has been enforced through mandatory busing since 1971. Although numerically desegregated, the system has yet to eliminate segregation. Arlin Mickelson, *supra* note 52, at 239.

<sup>66</sup> See *Sad Lessons for Diversity*, MILWAUKEE J. SENTINEL, July 23, 2001, at 6A.

<sup>67</sup> See JACK LUDWIG, PERCEPTIONS OF BLACK AND WHITE AMERICANS CONTINUE TO DIVERGE WIDELY ON ISSUES OF RACE RELATIONS IN THE U.S., The Gallup Organization (2000).

<sup>68</sup> See LOWELL C. ROSE & ALEC M. GALLUP, 31<sup>ST</sup> ANNUAL PHI DELTA KAPPA/GALLUP POLL OF THE PUBLIC'S ATTITUDES TOWARD THE PUBLIC SCHOOLS (1999).

vouchers, and standards.<sup>69</sup> In other words, while we support the idea of integration in principle, we do not support it in practice – which is the only way that true integration can be achieved. It is predictable, therefore, that entire metropolitan areas are backing away from desegregation efforts.

### **B. We Favor the "Colorblind Position" in our Discourse and Policies**

As our ambivalence toward desegregation efforts illustrates, we favor the "colorblind" position in our public discourse and policies. The colorblind position is driven by a legal skepticism of racial categories and classifications. It claims that all persons should be treated equally without reference to context, history, or culture. It assumes that the law only recognizes individuals, not groups, and should not take race into account because it is irrelevant. The goal is to end *all* discrimination, rather than to eradicate racism or racial hierarchy. As such, the colorblind position allows conservatives to attack, and renders liberals unable to defend, race-conscious strategies, even in post-*Brown* public education. More dangerously, it legitimates and maintains the social, economic, and political advantages whites hold over others.<sup>70</sup>

The rhetorical force wielded by the colorblind position is derived from several sources, among them the notion that to talk about race is to perpetuate racism. Indeed, the improvement of the socio-economic status of persons of color in the U.S. over the last 100 years is heralded as proof of the end of racial subordination, despite increased concentrated poverty and resegregation.

In addition, the courts are eager to end the use of race as a legal category. In the past several decades they have stripped "race" of its historical meaning and divorced it from its economic, cultural and political contexts. Any race-conscious policies, even if they would help racial minorities, are now suspect, even in the context of school desegregation.

In particular, several recent cases in the 1st<sup>71</sup> and 4th<sup>72</sup> Circuits have prohibited the consideration of race in student assignments in grades K-12. This new and inflexible

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<sup>69</sup> See CNN/Gallup Poll, USA Today (August 20, 1999) < <http://www.usatoday.com/news/poll024.htm> >. A 1999 CNN/Gallup poll found that 87% whites and 48% blacks think neighborhoods schools are best regardless of racial composition of those schools. Recent polls also show that the percentage of blacks supporting vouchers has increased from 48% to 60% between 1998 and 1999. Whites, too, are increasingly supportive of them as well as 53% supported them in 1999 up from 42% in 1998. However, in another sample, when asked whether they supported improving the existing schools or providing vouchers, 68% of parents with children in public schools supported improving the existing schools but only 30% preferred vouchers. And as for statewide standards, whites are far more supportive of them than blacks (71% vs. 55%). See DAVID A. BOSITIS, 1999 NATIONAL OPINION POLL, Joint Center for Political and Economic Studies (1999).

<sup>70</sup> Neil Gotunda, *A Critique of Our Constitution in Color Blind*, 44 STAN. L. REV. 1 (1991).

<sup>71</sup> *Wessmann v. Gittens*, 160 F.3d 790 (1st Cir. 1998), ruling that Boston Latin School policy of "flexible facial guidelines in admissions" was designed to redress past discrimination but rather was simply a method for achieving the constitutionally impermissible goal of racial and ethnic balance. *Id.* at 800, 807.

<sup>72</sup> *Tuttle v. Arlington Board*, 195 F.2d 698 (4<sup>th</sup> Cir. 1999) (per curiam), cert. dismissed, 120 S.Ct. 1552 (2000); *Eisenberg v. Montgomery County Public Schools*, 197 F.3d 123 (4<sup>th</sup> Cir. 1999), cert. denied, 120

extension of "colorblind" jurisprudence to the public school context, argues Professor John Charles Boger, is unwarranted by the Supreme Court's specific holdings.<sup>73</sup> In fact, the Court has previously ruled in *Bakke*<sup>74</sup> that diversity in educational settings is one goal sufficiently compelling to survive strict judicial scrutiny, and that race-conscious student assignments should constitute acceptable means toward that end. Moreover, Boger claims, these rulings invite a new era of de facto school segregation and mandate greater social change in public schools than any judicial actions taken in the past 30 years. As he puts it, this development could be deeply injurious to the long-term interests of a nation presently growing more racially and ethnically diverse.<sup>75</sup>

Despite the courts endorsement of it, we must realize that the colorblind position is highly pernicious. First, it erases race from the analysis by claiming that racism is a thing of the past. White privilege is completely ignored and a sense of moral innocence allowed to prevail.

Furthermore, the colorblind position undermines attempts at eradicating persistent racial disparities – which are widening in nearly every social and economic indicator including school resegregation. Instead, the colorblind position conveys the message that racial inequality is natural, or caused by legitimate, “neutral” forces. Worse yet, racially charged explanations for these disparities, such as the existence of a “culture of poverty,” or the unwillingness of blacks to pull their own weight persist.

The colorblind position also focuses too heavily on *intentional* discrimination rather than institutional, structural and systemic racism. Most recently, the Supreme Court ruled in the *Sandoval*<sup>76</sup> case that private suits under Title VI – a provision prohibiting discrimination by recipients of federal funding – can now be brought only for *intentional* discrimination. If plaintiffs cannot prove intentional discrimination, they can no longer sue under Title VI, even if they can prove that the challenged action has a discriminatory impact for which no justification can be shown. The Supreme Court's decision in *Sandoval* abruptly reverses nearly three decades of precedent, including the unanimous views of all nine federal appeals courts.

As a result of this colorblind position, racism is trivialized as nothing more than personal relations. According to Makani Themba, by ignoring institutions, laws and systems that

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S.Ct. 1420 (2000); and a federal district court in Charlotte rendered *Capacchione v. Charlotte-Mecklenburg Schools*, 57 F. Supp. 2d 228 (W.D.N.C. 1999); see also *Capacchione v. Charlotte-Mecklenburg Sch.*, 190 F.R.D. 170-172 (W.D.N.C. 1999) Compare these with *Hunter ex rel. Brandt v. Regents of University of California*, 190 F.3d 1061 (9th Cir. 1999), upholding the use of racial classifications in determining the student make up at Corinne A. Seeds University Elementary School. *Id.* at 1067.

<sup>73</sup> John Charles Boger, *Willful Colorblindness: The New Racial Piety and the Resegregation of Public Schools*, 78 N.C.L.REV. 1719, 1719-25 (2000). See *City of Richmond v. Croson*, 488 U.S. 469 (1989), *Adarand Contractors, Inc v. Pena*, 115 S.Ct. 2097 (1995), and *Miller v. Johnson*, 115 S.Ct. 2475 (1995).

<sup>74</sup> *Regents of the Univ. of Cal. V. Bakke*, 438 U.S. 265, 312 (1978).

<sup>75</sup> Boger, *supra* note 73, at 1719.

<sup>76</sup> *Alexander v. Sandoval*, 121 S. Ct. 1511 (2001).

provide the context for race relations, we let these structures – and whites – off the hook.<sup>77</sup>

### C. We Focus on Educational Reform Without Addressing Integration

Educational reform movements often parallel public discourse on race, or the lack thereof. That is, many educational reformers attempt to achieve parity without addressing the racial or economic consequences of segregated schools. While accepting *Brown* on a theoretical level, many of them embrace the colorblind position on an educational level. Focusing on race and integration distracts from the work of reform, some claim. Efforts concentrate on fixing the schools, and maybe the families, but rarely the structural forces that impact access to educational opportunity in racist ways. Some even argue that desegregation efforts harm students of color and contribute to the failing performance of schools.<sup>78</sup> As discussed above, ignoring the negative effects of segregation and the benefits of desegregation is a mistake. And as discussed below, placing all of our faith in these types of reforms, without a commitment to achieving true integration, will compromise the role of education in our increasingly diverse nation.

#### 1. Choice

On a most basic level, there are severe limits to what school choice can accomplish. While it may not be the goal of reformers, it is certainly true that school choice cannot achieve true integration. A 1992 analysis of 20 school districts shows that segregation is most likely reduced and a racial balance maintained, when desegregation efforts are mandatory.<sup>79</sup> And even where the goal is to provide parents with a choice of schools, choice fails. For example, under the "No Child Left Behind Act of 2001"<sup>80</sup> the transfer options that must be made available to students in low achieving schools are severely limited because so few schools will accept them.<sup>81</sup> In New Jersey, for example, not a single district reported the existence of transfer openings in the coming year due to limitations on space, class sizes and other factors.<sup>82</sup> These "other factors" are not surprising, but stem from already highly racialized housing and education systems.

On another level, choice is problematic because it is not always as it seems. For starters, parents do not always make "rational" choices as to what might be the best education for their children. One study shows that given the choice to attend either segregated urban or predominantly white suburban schools, black urban parents do not necessarily choose the white school even when transportation is free. Many parents actively choose an all-black and under-resourced school, sometimes out of a sense of powerlessness. In fact,

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<sup>77</sup> Makani N. Themba, *How Race is Lived in the Media: The New York Times Misses the Mark*, BRC-NEWS, July 26, 2000.

<sup>78</sup> Powell, *supra* note 2, at 656-659.

<sup>79</sup> B. FIFE, DESEGREGATION IN AMERICAN SCHOOLS: COMPARATIVE INTERVENTION STRATEGIES (1992).

<sup>80</sup> Pub.L. 107-110; Jan. 8 2002, 2001; 115 Stat. 1425.

<sup>81</sup> Stephanie Banchemo, Diane Rado and Ana Beatriz Cholo, *Options to Failing Schools Limited; Law Allows Moves, But Choices Few*, CHIC. TRIB., JULY 17, 2002 at 1.

<sup>82</sup> John Monney, *Despite New Bush Law, Students are Stuck at Failing N.J. Schools*, STAR-LEDGER NEWARK, Friday, July 5, 2002, at 17.

according to Wells, only a small percentage of black families choose to be involved in voluntary desegregation.<sup>83</sup> This may be partly due to the disparities in information, resources, and other elements impacting the capacity to choose.<sup>84</sup>

And for those middle-class blacks who move to the suburbs to capture the "suburban ideal", their choice is often frustrated and illusory. For example, Professor Sheryll D. Cashin of Georgetown Law School found that Prince Georges' County Maryland (a majority-white county turned majority-black) struggles with a limited commercial tax base, meager job growth, white flight, and the influx of lower-income persons of color. Consequently, school quality has been negatively affected. Although blacks fair better in integrated settings, at least in terms of access to economic and educational opportunity, the psychic benefits of "being with one's own," often seem worth the costs of segregation.<sup>85</sup> As such, the choice model fails persons of color of all income levels.

Unfortunately, we continue to misconstrue education as a private commodity that we can purchase or "choose" in a "neutral" unfettered manner. In reality, however, the highest bidders (i.e., parents with the greatest resources to investigate and select schools, or parents who live in suburbs that can attract the tax base) get to "choose" the best schools. The lowest bidders (i.e., parents with little time, education, and resources, or parents who live in inner cities) get to "choose" the struggling schools. As a result, the current public discourse on choice oils the machinery of supremacy and makes a mockery of equal opportunity.<sup>86</sup>

Examining the particular forms of school choice within this larger context illustrates these deficiencies.

### **a. Neighborhood Schools**

The most common form of choice allows students and parents to attend their neighborhood school. The appeal of involving the local community in the education of its children, all of whom walk or take short bus rides to their school, is obvious. Moreover, proponents claim increased parental involvement can improve educational achievement for all students, including low-income students of color.

Neighborhood schools, however, are problematic for several reasons. First of all, they do not always increase parental involvement in communities and families where poverty is high. And second of all, they perpetuate the colorblind position, by claiming to offer parents a natural and neutral choice of attending the closest school while masking the fact that their choices are skewed because of residential segregation. In reality, neighborhood

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<sup>83</sup> Amy Stuart Wells, *The Sociology of School Choice: A Study of Black Students' Participation in a Voluntary Transfer Program*, unpublished doctoral dissertation, Teachers College, Columbia University, N.Y. (1991).

<sup>84</sup> powell, *supra* note 2, at 692.

<sup>85</sup> See Sheryll D. Cashin, *Middle-Class Black Suburbs and the State of Integration: A Post-Integration Vision for Metropolitan America*, 729 CORN. L. REV. 733, 734 (2001).

<sup>86</sup> powell, *supra* note 2, at 679.

schools, by themselves, reinforce racial and economic isolation in both housing and education.<sup>87</sup>

Indeed, the resegregation of our schools is often the result of a "return" to neighborhood schools. And while some form of neighborhood schools may remain part of a viable metropolitan-wide desegregation plan, they are largely antagonistic to the goal of racial and economic integration. Rather, they signal a "return to pre- Brown isolation of students of color from democracy- promoting structures."<sup>88</sup> For example, in Norfolk, Virginia, school officials ended integration attempts and opted instead for community schools which were expected to minimize the learning gap. Conversely, white students did not return, racial segregation and poverty increased, achievement decreased and the gap between white and black students grew, despite increased spending.<sup>89</sup>

### **b. Vouchers**

Vouchers constitute another form of school choice. Under voucher programs, parents are given a certain amount of money with which they pay tuition at the school of their *choice*. Open or unrestricted voucher plans impose no restrictions on where the voucher can be used. Controlled voucher plans restrict selections sometimes based on desegregation plans and equal access opportunities.

Educational reformers, and now even Chief Justice Rehnquist, claim vouchers can "address the root of the problem with failing urban poor schools" by improving student achievement.<sup>90</sup> In fact, little empirical evidence of this exists.<sup>91</sup> A recent, study by Dr. Kim K. Metcalf of Ohio University of the Cleveland voucher program showed that voucher students did only slightly better in language arts than students who couldn't get vouchers (the number available was limited), but did the same in math and other reading skills.<sup>92</sup>

Moreover, without safeguards, vouchers fail to address the more subtle realities of racial and economic disparities that accompany school choice. For example, one study found that white parents with higher incomes benefited from greater information levels about voucher programs.<sup>93</sup> Also, the funding granted under voucher programs is often insufficient for more needy families and the transportation inadequate for families

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<sup>87</sup> powell, *supra* note 2, at 692.

<sup>88</sup> *Id.*

<sup>89</sup> Report to the McKnight Foundation, *Examining the Relationship Between Housing, Education, and Persistent Segregation*, The Institute on Race & Poverty, 40 (June 1997)(*hereinafter* McKnight Report). In addition, ten elementary schools became 90% African-American and five of them had 100% of the students eligible for free and reduced lunch.

<sup>90</sup> *Zelman v. Simmons-Harris*, 122 S.Ct. 2460, 2484 (2002).

<sup>91</sup> Alex Molnar, *School 'Choice,' Wisconsin Education Association*, Educational Issues Series, available at <<http://www.weac.org/resource/nor96/vouchers.htm>> (1996); *see also* Kim K. Metcalf & Polly A. Tait, *Free Market Policies and Public Education: What is the Cost of Choice?* PHI DELTA KAPPAN (September 1999), available at <<http://www.pdkintl.org/kappan/kmet9909.htm>>.

<sup>92</sup> Richard Rothstein, *Defining Failed Schools Is Harder Than It Sounds*, N.Y. TIMES, July 3, 2002, at B9.

<sup>93</sup> powell, *supra* note 2, at 693.

without cars. And because private schools are free to deny admission to students, special needs students may become even more concentrated in the public schools and the disparity between thriving and struggling districts compounded.<sup>94</sup> This appears to be the case under the Cleveland program, where suburban schools are refusing to accept voucher students from the city out of fear of becoming failing schools themselves.<sup>95</sup> Indeed, a 2000 study by the Applied Research Center shows that California's voucher proposition will increase racial inequality, give false hope to those in need of education reform, and allow practices that have a racist impact to persist.<sup>96</sup>

Within a larger context, vouchers also exacerbate the tensions between viewing education as a commodity or as a social good. As, Peter W. Cookson, Jr., argues in his 1994 book, *School Choice: The Struggle for the Soul of American Education*, if America moves to a system of publicly financed private education, it will further the development of the cult of individualism.<sup>97</sup> When viewed from this perspective, it is not surprising, to learn that vouchers first emerged as a tool for racial subordination in southern states for white families to escape desegregated schools.<sup>98</sup> As such, vouchers are unlikely to become part of a racially just school reform.

### c. Charter Schools

Like vouchers, charter schools provide more educational choices but remain problematic. They appear race neutral while having the potential to perpetuate racial hierarchies. Because of their regulatory freedom which allows them to admit students selectively, and because their admissions practices are not race conscious,<sup>99</sup> charter schools increase segregation at the school level and may even provide school officials with the means to resegregate.<sup>100</sup> While some charter schools will attract a large proportion of high achieving students (partly because parents with resources have more choices), others will enroll disproportionate numbers of students of color, low-income, Special Education, and LEP students. As with vouchers, charter schools produce self-segregation along racial lines and raise the question of the viability of choice.

Whether in the form of neighborhood schools, vouchers, or charters, the viability of choice is also questionable in light of the current dismantling of school desegregation efforts across the country. As Kevin D. Brown of the University of Indiana Law School puts it,

The growing realization that there are no longer any significant institutional forces pushing and maintaining integration is likely to have a profound impact on the discussion of school choice and the cultural context of that discussion... The

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<sup>94</sup> *Id.* at 693-94.

<sup>95</sup> Rothstein, *supra* note 92.

<sup>96</sup> Applied Research Center, *Vouchers Exacerbate Existing Inequalities: Vouchers: A Trap, Not a Choice* (12 March, 2002), available at <<http://www.arc.org/erase/vouchers/voucher02.html>>.

<sup>97</sup> As, Peter W. Cookson, Jr., *SCHOOL CHOICE: THE STRUGGLE FOR THE SOUL OF AMERICAN EDUCATION* 103-7 (1994).

<sup>98</sup> *Id.* at 693

<sup>99</sup> Powell, *supra* note 2, at 694.

<sup>100</sup> GRIPP, *supra* note 57, at 6.

elimination of school desegregation decrees is likely to further the cult of individualism [and]...further attenuate the conception of community obligations upon which the democratic metaphor is based.<sup>101</sup>

It is important to acknowledge, however, that for many impoverished persons of color, reforms that embrace choice may be their only option where schools are failing and school integration is being abandoned.

## 2. Accountability and High Stakes Testing

Increased accountability measures – in the form of state-wide standards and high stakes standardized tests – have also gained momentum as desegregation efforts wane.<sup>102</sup>

Proponents claim that standards increase teacher and student motivation, eliminate tracking by standardizing expectations of students, and target low-performing schools for improvement. But little evidence exists to support these claims.<sup>103</sup> Indeed, we do not really know what effect standards based reform has on student achievement or on impoverished students of color. While a few studies directly support a positive correlation between higher standards and student achievement,<sup>104</sup> one recent study conducted by the Education Trust showed that white students are gaining faster than black and Latino students.<sup>105</sup> A common finding in all of the research, however, is that standards alone are not enough. And like choice, they have the potential to work out of a colorblind position that leaves a highly racialized educational system untouched.

In particular, standardized tests are often biased, giving undue advantage to those from higher socio-economic backgrounds.<sup>106</sup> The 1980s experienced a surge of standardized testing and assessment. It was found that these tests offer little to no reliability or generalizability, seldom take into account the variety of learning styles, and are often racially and culturally biased.<sup>107</sup> Beyond this, research has shown that students of color, low income students, and those with disabilities, tend to have lower passage rates on the standardized tests that determine grade advancement and graduation.<sup>108</sup>

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<sup>101</sup> Kevin D. Brown, *Normative and Going Nowhere*, 21 N.Y.U. REV. L. & SOC. CHANGE 791, 800-801 (1994-1995).

<sup>102</sup> Since 1994, receipt of Title I funds is conditioned on states setting high standards. Title I of the Elementary and Secondary Education Act, 20 U.S.C. §§ 6301-6514 (West 2000). For a discussion of achieving equality under Title I see, William L. Taylor, *Assessment As a Means to a Quality Education*, 8 Geo. J. on Poverty L. & Pol'y 311 (2001).

<sup>103</sup> Powell, *supra* note 2, at 690, citing Jay P. Heubert, *Graduation and Promotion Testing: Potential Benefits and Risks for Minority Students, English Language Learners and Students with Disabilities*, 9 POVERTY & RACE No. 5, Sept./Oct. 2000 at 1-2, 5.

<sup>104</sup> See, e.g., NATIONAL COUNCIL ON EDUCATION STANDARDS AND TESTING, *RAISING STANDARDS FOR AMERICAN EDUCATION* (1992).

<sup>105</sup> Judith Monsaas, Janine A. Kaste, Jan S. Kettlewell, Dorothy D. Zinsmeister and Sheila A. Jones, *Georgia P-16 Initiative: Creating Change Through Higher Standards for Students and Teachers*, 6 VIRG. J. OF SOCIAL POL'Y & THE LAW 179, 183 (1998).

<sup>106</sup> Powell, *supra* note 2, at 690. For a review of outcome disparities in different states, see Heubert, *supra* note \_\_\_\_, at 1-2, 5.

<sup>107</sup> Powell, *supra* note 2, \_\_\_\_, at 690.

<sup>108</sup> Susan Sturm and Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 CALIF. L.REV. 953 (1996).

From a pedagogical standpoint, making a promotion decision based on the results of a single high stakes test is always a bad idea – especially at young ages.<sup>109</sup> Misuse of high stakes tests may also lead students to drop out under self-imposed pressure or under pressure from administrations eager to present a positive portrait of testing results.<sup>110</sup> A further concern for students of color attending schools in urban settings is that the pressures associated with poor outcomes may lead to a hollow education, heavy on superficial drills, practice sessions and "teaching to the test" which may, in turn, result in experienced teachers leaving.<sup>111</sup>

Unfortunately, it is not enough to talk about outputs – such as how to increase test scores and avoid socially promoting students – without also talking about inputs – such as how to overcome segregation, concentrated poverty and lack of resources.

### **III. What True Integration Requires of Our Districts and Schools**

The word segregation represents a system that is prohibitive; it denies the Negro equal access to schools, parks, restaurants, libraries and the like. Desegregation is eliminative and negative, for it simply removes these legal and social prohibitions. Integration is creative, and is therefore more profound and far-reaching than desegregation. Integration is the positive acceptance of desegregation and the welcomed participation of Negroes in the total range of human activities. Integration is genuine intergroup, interpersonal doing. Desegregation then, rightly is only a short-range goal. Integration is the ultimate goal of our national community. Thus as America pursues the important task of respecting the letter of the law, i.e., compliance with desegregation decisions, she must be equally concerned with the spirit of the law, i.e., commitment to the democratic dream of integration.

Martin Luther King, Jr., *The Ethical Demands for Integration*.<sup>112</sup>

As Martin Luther King, Jr. argues, desegregation is only the first step in eradicating segregation. It must be followed with the transformative and inclusive goal of true integration. Never is the task more essential than in our nation's public schools. And never is the timing more urgent as our schools resegregate at alarming rates, and as we abandon what are admittedly limited desegregation efforts, donning the colorblind mask of school choice and accountability in their place.

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<sup>109</sup> See Diane Loupe, *Focus on Social Promotion: Stricter Standards Evident; Retentions Rates Soar with End of Social Promotion in High School*, ATL. J. & CONST., Feb. 25, 1999 at 01; powell, *supra* note 2, at 690, citing Elizabeth Spalding, *Performance Assessment and the New Standards Project: A Story of Serendipitous Success*, PHI DELTA KAPPAN, (June 2000), available at <http://www.pdkintl.org/kappan/kspa0006.htm>.

<sup>111</sup> Spalding, *supra* note 109.

<sup>112</sup> Martin Luther King, Jr. "Ethical Demands for Integration" (1963), in James M. Washington, *Testament of Hope: Essential Writings and Speeches of Martin Luther King* New York: Harper at 118.

True integration has a much broader meaning than desegregation. It is transformative rather than assimilative. That is, while desegregation assimilates minorities into the mainstream, integration transforms the mainstream. It does not assume that blacks will benefit if they sit next to whites and some of their whiteness rubs off on them. Rather it recognizes that cultures are not static but are constantly evolving and that all students benefit from a truly equal and just system of education. Integration is inclusive, placing value on the historical, intellectual, and cultural contributions of all groups. As a result, truly integrated schools, are creative and best equipped to prepare students in our changing multi-racial and multi-ethnic democracy.

To achieve this effect, true integration addresses the issues of achievement, opportunity, community, and relevancy at a systemic level.<sup>113</sup> In this process, institutions, communities and individuals are fundamentally changed to foster multi-racial and ethnic social interaction and to provide equal opportunities for students of all colors. Mandatory, inter-district desegregation or consolidation is just an initial and temporary step in this structural transformation. Regional planning is also required to link housing, school, economic, political and cultural opportunities and spread accountability throughout entire metropolitan areas.<sup>114</sup> Only then can the changes we make between districts and within schools take on new and lasting meaning for students.

If a school adopts a colorblind position to try to avoid conflict in the short run, it will lead to complacency regarding resegregation and inhibit awareness of and accountability for practices that disadvantage students of color. Instead, a truly integrated school must employ teaching techniques that address the multitude of student learning styles, and utilize materials fashioned by and about people of diverse racial and ethnic backgrounds in more than an "add-on" fashion. Additionally, a truly integrated school must create an inclusive, supportive atmosphere to improve student self-esteem and motivation, and encourage positive interactions both in the school and beyond. This requires transforming accountability measures, tracking, discipline policies, curricula and the entire school environment, including extracurricular activities. The goal of truly integrated schools must go beyond educating students in an inclusive and multicultural environment; the desired result is to integrate the minds of students and to prepare them to prosper in a pluralistic society.<sup>115</sup> The following section outlines these possible educational measures.

We have to admit, however, that there is very little momentum behind true integration, because we don't understand what it entails, or because we find it more practical to reform education without addressing it, or because the courts are acquiescing in the rapid resegregation of our schools. As such, true integration cannot be achieved without holistic, community-wide or "integrated" efforts. That is, any educational reform efforts, however integrative in nature, must be accompanied by a reconfiguration of our

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<sup>113</sup> powell, *supra* note 2, at 692.

<sup>114</sup> john a. powell, *Is Racial Integration Essential to Achieving Quality Education for Low-Income Minority Students, in the Short Term? In the Long Term?*, 5 (5) POVERTY AND RACE 7 (September/October, 1996).

<sup>115</sup> Student Voices Across the Spectrum: Educational Integration Initiatives Project, Report to the Joyce Foundation, Institute on Race & Poverty 16 (2000).

collective understanding of the role of education in our democracy, as well as of our political will to effect the common good. The last section, then, attempts to map out other types of integrative measures required of us as a larger community.

## **A. Inter-District Initiatives**

### **1. Establishing Equal Racial Group Representation**

At a minimum, to enable optimal interracial interaction, integration requires equal racial group representation among students. If students of any one race find themselves a distinct minority within a school, they can withdraw or be excluded. Conversely, if one race exists in a large percentage (over 70%) it establishes the behaviors by which *in-school* status is achieved. According to Bankston and Caldas, status can have powerful positive or negative effects on student achievement, depending on what “capital” the majority group brings.<sup>116</sup> As a result, teachers may not respond to the needs of the minority students.

Therefore the goal would be to find the optimal school percentage of students of color and white students – between 10-20% – so that the benefits of a racially integrated school environment contribute most to academic achievement of all groups.<sup>117</sup> Approximately equal proportions maximize contact and friendship formation between group members<sup>118</sup> and eradicate in-groups and out-groups. Attention should also be paid to linguistic background, and income levels.<sup>119</sup> Although it is unrealistic to think that all schools can meet these racial balance criteria, research clearly supports their necessity when structuring inter-district, district, and school enrollment procedures.<sup>120</sup>

### **2. Mandating Metropolitan-Wide Desegregation**

A metropolitan-wide school desegregation plan is the most effective means of establishing equal racial group representation as well as of achieving racial and economic equality. A desegregation plan that extends only to the district boundaries is not likely to alleviate segregation. This is mainly because the nonwhite population is extremely concentrated in the metropolitan areas and all-white developments are continuously constructed on the outer peripheries. As a result, metropolitan-wide (inter-district)

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<sup>116</sup> Carl L. Bankston, III & Stephen J. Caldas, *Majority African American Schools and Social Injustice: The Influence of De Facto Segregation on Academic Achievement*, SOCIAL FORCES 752: 535-55 (1996).

<sup>117</sup> *Id.*

<sup>118</sup> J. McConahay *Reducing Racial Prejudice in Desegregated School*, in EFFECTIVE SCHOOL DESEGREGATION: EQUITY, QUALITY, AND FEASIBILITY 311 (W.D. Hawley, ed. 1981)(*hereinafter* EFFECTIVE DESEGREGATION).

<sup>119</sup> Institute on Race & Poverty, *Draft for KRC Research – Data on Desegregation*, Internal document (2002).

<sup>120</sup> See EVAN MCKENZIE, THE POLITICS OF SCHOOL DESEGREGATION IN OAK PAK, ILLINOIS (2000). Some have found that in desegregated schools there should be a critical mass of no fewer than 14-20% nonwhite students<sup>120</sup> while other initiatives use policies that ensure that the racial balance in the schools mirrors the racial composition of the entire city within 10 or 15 percentage points. *Id.*

desegregation efforts are more successful and stable.<sup>121</sup> And except in extremely large districts where 60% or more students are of color, such as Chicago, Los Angeles, and New York, regional desegregation plans can provide improved education for minority students.<sup>122</sup> They are also more likely to be effected in the South where less fragmented, often countywide districts already capture more diverse communities than districts in the North.

Looking at the areas that have metropolitan plans, Orfield notes that they are among the nation's most educationally integrated communities and the most rapidly growing metropolitan economies.<sup>123</sup> For example, In Raleigh, North Carolina, in the mid-70s, city and suburban school district boundaries were dissolved, inner-city magnet schools were put in place and 15% of mostly black students were bused to the suburbs. By the mid-80s, the racial mix had leveled, achievement scores had increased among blacks, and core neighborhoods remained stable. Durham, the twin city to Raleigh, did not follow Raleigh's lead and by the 80s its schools had become 90% black and mostly low-income. Educational achievement also declined markedly. When Durham finally initiated integrative policies in the 90s, the area's racial mix leveled, dropout rates decreased, and test scores improved.<sup>124</sup>

Orfield cites other data supporting the effectiveness of inter-district efforts. For example, money invested in segregated schools yields far fewer results than the same money invested in metro-wide desegregation. In Kansas City, a \$1.4 billion court ordered renovation of the city's severely deteriorated schools, lowered the class size, and initiated the most extensive magnet school plan in the nation. The court-appointed monitoring committee disclosed very limited gains.<sup>125</sup> More importantly, among states with the largest average size of school districts, none report much more than one-third of its black students in intensely segregated schools, whereas states with the highest levels of segregation for black students had relatively small school districts and fragmented district patterns.<sup>126</sup>

Mandatory metropolitan-wide plans are also more effective than voluntary. For example, under St. Louis' voluntary metropolitan desegregation plan many African-American

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<sup>121</sup> See GARY ORFIELD, FRANKLIN MONFORT & NATIONAL SCHOOL BOARDS ASS'N, *RACIAL CHANGE AND DESEGREGATION IN LARGE SCHOOL DISTRICTS* (1988); Gary Orfield, *Metropolitan School Desegregation: Impacts on Metropolitan Society*, 80 MINN. L. REV. 825 (1996) ("The most extensive desegregation plans, covering entire urbanized counties, have shown by far the highest levels of desegregation and have produced the nation's most stable districts in their percentage of white enrollment.") *Id.* at 825. Some of the larger school districts with metropolitan school desegregation include Broward County (Ft. Lauderdale), Clark County (Las Vegas), Nashville-Davidson County, Tampa, St. Petersburg, Jacksonville (Duval County, FLA), Orlando (Orange County), and Palm Beach County.

<sup>122</sup> See Daniel U. Levine and Eugene E. Eubanks, *The Promise and Limits of Regional Desegregation Plans for Central City School Districts*, 1 METROPOLITAN EDUCATION (Spring 1986) at 45.

<sup>123</sup> See Orfield, *supra* note 121, at 833.

<sup>124</sup> Executive Summary of Report to the McKnight Foundation, *Examining the Relationship Between Housing, Education, and Persistent Segregation*, The Institute on Race & Poverty, 20 (June, 1997).

<sup>125</sup> Gary Orfield & David Thronson, *Dismantling Desegregation: Uncertain Gains, Unexpected Costs*, 42 EMORY L. J. 759, 782 (1993).

<sup>126</sup> See Orfield, *supra* note 121, at 839-42.

students continued to attend schools that were 95-99% students of color even though the court emphasized that refusal to participate could result in inter-district mergers.<sup>127</sup> Moreover, the number of students participating in inter-district choice is miniscule: as of 1993, only one-half of one percent of all public school children were taking advantage of it.<sup>128</sup> Conversely, segregation declined dramatically in Wilmington, Delaware and Charlotte-Mecklenburg once mandatory desegregation was ordered.<sup>129</sup> Indeed, according to one 1980 study, cities with metropolitan-wide school desegregation plans experienced decreased residential segregation.<sup>130</sup>

Metropolitan-wide plans can involve either inter-district transfers or district consolidation. Inter-district transfers preserve city and suburban school districts but permit or require student transfers among these districts. For example, Indianapolis and St. Louis utilize interdistrict transfers. District consolidation combines urban and suburban districts. Given that division of areas into many separate school districts exacerbates segregation, consolidation is preferred. Districts are creatures of the state, and, where there is the political will, can be dissolved or consolidated by the state. For example, Wilmington-New Castle County, Delaware, and Louisville-Jefferson County, Kentucky utilize district consolidation.

If district boundaries are redrawn within a metropolitan area, several approaches can be taken. The area can be redrawn into fewer, larger, more racially balanced districts; the inner-ring suburban districts can be merged with those in the inner city; or the entire metropolitan area can be consolidated into city; or the entire metropolitan area can be consolidated into one district. For example, the phased-in closings of 22 schools in Buffalo combined with school boundary realignments resulted in significant desegregation involving both minority and non-minority students.<sup>131</sup>

Many school districts in the South already encompass both cities and the surrounding suburbs. "These metropolitan districts tend to be much more racially stable, have higher achievement levels, and have much higher approval ratings among parents than do urban-only districts, and they serve as examples of relatively successful urban-suburban integration."<sup>132</sup> Even where achievement gaps remain, as is the case with Jefferson County public schools, the largest and most integrated district in the country, there has been progress in raising overall student achievement.<sup>133</sup>

Busing is often required to support mandatory, metropolitan-wide desegregation efforts. Charlotte-Mecklenburg County was the first large school system to desegregate its

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<sup>127</sup> Levine and Eubanks, *supra* note 122, at 45.

<sup>128</sup> James E. Ryan and Michael Heise, *The Political Economy of School Choice*, 111 YALE L.J. 2043, 2067-68 (2002).

<sup>129</sup> Gary Orfield, STATUS OF SCHOOL DESEGREGATION, 1968-1986, COUNCIL OF URBAN BOARDS OF EDUCATION (1986).

<sup>130</sup> McKnight Report, *supra* note 89, at 33.

<sup>131</sup> Levine and Eubanks, *supra* note 122, at 37, 39.

<sup>132</sup> Ryan and Heise, *supra* note 128, at 2072-73.

<sup>133</sup> BEYOND MERGER: A COMPETITIVE VISION FOR THE REGIONAL CITY OF LOUISVILLE, at 38, available at <[http://www.brookings.edu/dybdocroot/es/urban/louisville\\_38\\_80.pdf](http://www.brookings.edu/dybdocroot/es/urban/louisville_38_80.pdf)> (July 2002).

schools using busing. As a result, the average number of black children in the suburban tracts is much closer to that in the city and both areas continue to attract black and white families, thus providing a sound basis for further residential desegregation.<sup>134</sup>

When busing utilized, a choice is required between one-way or two-way, the latter being more effective. Children in central cities should not have to bear the burden of integrating white schools. Instead, urban schools should be improved in order to become more attractive to white families.

Unfortunately, opponents to busing, including minority groups, want to reduce its use and even back off on desegregation. They claim that it causes white flight, has not improved the lives or education of students of color, and hinders neighborhood schools, parental involvement and community building.<sup>135</sup> Busing, by itself, is not the problem, however. Many students bus for other reasons already. State and school district policies actually “force” some suburban district students to bus for over half an hour to attend far-flung suburban schools when they could be taking a five-minute ride to their “neighborhood” school in the nearby urban district. That is, suburban students choose to bus for segregative purposes.<sup>136</sup>

It is important to emphasize that busing is only an interim solution – as one step toward integrated housing and schools. Although most school desegregation plans do not include an extensive housing component, one policy option that has been implemented is the exclusion of integrated neighborhoods from busing requirements. Again, in the Charlotte-Mecklenburg school district, busing exemptions for integrated neighborhoods have been credited for encouraging residential desegregation. Similarly, in Louisville-Jefferson County busing exemptions were credited for the lowest levels of residential segregation in fifty years. When busing began in Louisville in 1978, 23,000 students were bused for desegregation purposes. By 1992, with slightly different racial balance requirements, only 8200 students were bused.<sup>137</sup> In other words, the more housing is integrated, the less a school desegregation plan needs to rely on busing.

In order to ensure more support for busing, Leonard B. Stevens, a Consultant on Racial Equity, suggests that the federal government pay for busing rather than the local school districts.<sup>138</sup> Other suggestions for improving support for integration initiatives include making federal funds available to state education departments to develop metropolitan integration plans and furnishing competitive grants to researchers who engage in applied research on integration. However, most of these presume a federal government committed to integration.<sup>139</sup> However, for reasons cited earlier in this paper, we seem to be short on political, legal and policy levers to achieve mandatory, metropolitan

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<sup>134</sup> Diana Pearce, *Beyond Busing*, in METROPOLITAN DESEGREGATION 110, 114 (Robert Green ed. 1985).

<sup>135</sup> MYRON ORFIELD, METROPOLITICS (1997).

<sup>136</sup> Daniel R. Shulman, John G. Shulman and Jeanne-Marie Almonor, *NAACP Still Standing Firm Against School Segregation*, STAR TRIB., Saturday, August 2, 1997 at A19.

<sup>137</sup> KENTUCKY COMMISSION ON HUMAN RIGHTS, HOUSING SEGREGATION LOWEST IN FIFTY YEARS (1993).

<sup>138</sup> Leonard B. Stevens, *The Dilemma of Metropolitan School Desegregation*, 23 ED. & URBAN SOCIETY 69 (November 1990).

<sup>139</sup> *Id.* at 69-70.

desegregation. Our colorblind visors, attraction to choice, and infatuation with accountability measures are reflected in the waning usefulness of federally mandated desegregation and the hostility of the courts toward even voluntary race-conscious remedies. For this reason, many are seeking to substitute class based solutions in place of race-based ones.

### **3. Approaching Class-Based Desegregation Efforts in Place of Race-Based Ones with Caution**

Because persons of color are disproportionately numbered among the poor, proponents of class-based desegregation believe it can achieve racial diversity by restricting preferences to those who have to overcome economic disadvantage.<sup>140</sup> Richard D. Kahlenberg, adopting the colorblind position, argues that defining education reform "through the lens of race" is an "increasingly frustrating uphill battle."<sup>141</sup> Rather, he advocates the more "politically palatable" strategy of integrating students by economic status since the factors that drive the quality of a school, such as high expectations, active parental involvement, and motivated peers, "have much more to do with class than with race."<sup>142</sup> A fair measure of racial integration will emerge as a byproduct, concludes Kahlenberg.<sup>143</sup>

Boger agrees, claiming that the class and test score student assignment policy employed in Wake County, North Carolina, will integrate along racial lines because of the disproportionately high percentage of black African-American children who reside in low-income families or who perform poorly on state standardized tests. Boger admits, however, that about 38 percent of the county's students of color will no longer be automatically targeted for integration because they did well on the states' standardized tests and are ineligible for free or reduced-price lunches.<sup>144</sup>

Orfield also points out, that while desegregation by class is a good idea, it is not the same as and cannot provide the advantages of desegregation by race. Race functions in a related, but different, way to class, argues Orfield. "Middle-class blacks and Latinos face discrimination on racial grounds, poor blacks and Latinos face dual discrimination, and even upper-class blacks tend to live in segregated patterns and experience differential treatment on the basis of race."<sup>145</sup> Orfield argues further that without something very specific like Chicago's Gautreaux remedy, addressing class without race will only meet with equal resistance, intensify white flight, and increase housing segregation. Moreover, socioeconomic remedies are not enforceable by law, leaving persons of color without civil rights remedies.<sup>146</sup> In her analysis of strategies to integrate housing, Florence

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<sup>140</sup> RICHARD D. KAHLENBERG, *THE REMEDY: CLASS, RACE, AND AFFIRMATIVE ACTION* (1996).

<sup>141</sup> Richard D. Kahlenberg, *Socioeconomic School Integration*, Poverty & Race Research Action Council, at 4 (Sept./ Oct. 2001).

<sup>142</sup> *Id.* at 4,5.

<sup>143</sup> *Id.* at 1.

<sup>144</sup> Boger, *supra* note 73, at 1792.

<sup>145</sup> Gary Orfield, Response to Richard D. Kahlenberg, *Socioeconomic School Integration*, Poverty & Race Research Action Council, at 1 (Sept./ Oct. 2001).

<sup>146</sup> *Id.*

Wagman Roisman concurs that economic remedies cannot be used to solve racial problems, and that steps in addition to the economic remedies are required.<sup>147</sup>

#### **4. Integrating Students Early On and Taking Time**

Because racial attitudes are formed early, the younger the student participates in the above described inter-district efforts, the more likely true integration will be achieved.<sup>148</sup> To delay because parents fear most for their youngest children is only to invite more resistance in the higher grades, especially junior high.<sup>149</sup>

True integration also takes time. It is an ongoing process rather than an event. Consequently, it is too soon to decide that desegregation efforts have failed or can never be transformed. Initial desegregation efforts are strongly influenced by the positions taken by the community. When the community supports the efforts and the means by which to bring about true integration, schools and classrooms are positively affected. When the community is uncertain or opposes the efforts, schools and classrooms are negatively affected. Hostile contacts and intolerance increase. Time must pass before these effects weaken. Furthermore, the short-term effects of integrative initiatives may differ from the long-term effects. For example, teaching the history of communities of color may at first lead to hostility, but over time it may lead to more fruitful results. Lastly, since it is necessary to affect housing integration and foster regional approaches along side education efforts, taking enough time is essential.

### **C. In-School Initiatives**

School sites tend to be mono-cultural and assimilative. In order to foster true integration, it is best to undertake efforts to transform them into more pluralistic cultures. This requires structural, organizational, and procedural changes.<sup>150</sup> Some scholars such as Schofield, advocate a school-based governance to foster a more positive and localized sense of interracial collaboration by placing teachers, administrators and staff in control of their own schools.<sup>151</sup>

#### **1. Leading, Planning, and Monitoring**

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<sup>147</sup> Florence Wagman Roisman, *Opening the Suburbs to Racial Integration: Lessons for the 21st Century*, 23 W. NEW. ENG. L. REV. 65, 67 (2001).

<sup>148</sup> T.D. Cook, *What Have Black Children Gained Academically for School Integration? Examination of the Meta-Analytic Evidence*, & Robert L. Crain, *Is Nineteen Really better than Ninety-Three in SCHOOL DESEGREGATION AND BLACK ACHIEVEMENT* 73 (T.D. Cook et al. eds. 1984); Robert L. Crain & R.E. Mahard, *Research on Minority Achievement in Desegregation Schools*, in *THE CONSEQUENCES OF SCHOOL DESEGREGATION* 103 (Christine H. Rossell & Willis D. Hawley, eds. 1983); McConahay, *supra* note \_\_\_, at 311; N. ST. JOHN, *SCHOOL DESEGREGATION: OUTCOMES FOR CHILDREN* (1975).

<sup>149</sup> W.D. HAWLEY, *EFFECTIVE SCHOOL DESEGREGATION: EQUITY, QUALITY, AND FEASIBILITY* 42 (1981).

<sup>150</sup> Crowfoot and M. Chesler, *Implementing 'Attractive Ideas': Problems and Perspectives*, in *EFFECTIVE DESEGREGATION* *supra* note 118.

<sup>151</sup> Janet Ward Schofield, *Promoting Positive Intergroup Relations in School Settings*, in *TOWARD A COMMON DESTINY: IMPROVING RACE AND ETHNIC RELATIONS IN AMERICA*, 257-90 (W.D. Hawley & A.W. Jackson, eds. 1995)(*hereinafter* TOWARD A COMMON DESTINY).

Administrators that exhibit leadership, spirit and foresight can more successfully foster true integration.<sup>152</sup> First, they can publicly support integrative efforts and pursue community partnerships to harness resources and positive public sentiment. Second, they can strategically plan any structural or procedural changes needed to affect true integration.<sup>153</sup> This will include active recruitment, hiring, and retention of racially diverse staff who are insistent on high performance and racial equality. It will also include involving teachers, students and parents in planning.<sup>154</sup> Third, administrators can support the school personnel involved in integration efforts by providing extra funding, training and expertise. Even bus drivers and custodians can be trained and supported in implementing integrative methods. And last, administrators can monitor and follow up on integrative efforts. This process might review not only student achievement, but race relations and student-staff interactions as well. Principles or staff unwilling to implement truly integrative strategies might be removed.<sup>155</sup>

## **2. Transforming Student Assessment, Placement and Evaluation**

The transformation of the ways school systems assess and place whites and students of color on differential paths with unequal outcomes is essential to the achievement of true integration.

### **a. Taking Differential Circumstances of Students into Account**

To begin with, it is important to explore the agency of students of color in the process of assessment and placement. Perhaps the most well known perspective on culture and agency among students of color is John Ogbu's theory of oppositional culture – the argument that black resistance to assimilating to white culture on white terms has entailed rejecting the path of academic achievement.<sup>156</sup> This theory has been important for contesting social perceptions that differential achievement is related to race per se. But it has met with criticism both for the explanation and for inadequate attention to the power dynamics.

Prudence Carter contests Ogbu's theory that blacks see academic achievement as “white” and therefore don't wish to “act white.”<sup>157</sup> Her survey and interviews with black and

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<sup>152</sup> Janet Ward Schofield, *Review of Research on School Desegregation's Impact on Elementary and Secondary School Students*, in HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION, 597 (James A. Banks, ed. 1995).

<sup>153</sup> Crowfoot and Chesler, *supra* note 150.

<sup>154</sup> Hawley, *supra* note 149.

<sup>155</sup> Crowfoot and Chesler, *supra* note 150.

<sup>156</sup> See, e.g., James Ainsworth-Darnell & Douglas Downey, *Assessing the Oppositional Culture Explanation for Racial/Ethnic Differences in School Performance*, 63 AM. SOCIOLOGICAL REV. 536 (1998); JOHN OGBU, *MINORITY EDUCATION AND CASTE* (1978); John Ogbu, *Low Performance as an Adaptation: The Case of Blacks in Stockton, California*, in *MINORITY STATUS AND SCHOOLING*, (M.A. Gibson & J.U. Ogbu, eds 1991).

<sup>157</sup> See, generally, Prudence Carter, *Low Income Black and Latino Youths' Mobility Orientation: Aspirations, Culture and Resistance to 'Acting White'*, unpublished manuscript, on file at the Institute on Race & Poverty.

Latino students from high schools in Yonkers, New York suggested that for them, acting white was not related to a set of beliefs about school or academic achievement. Rather, it referred to an attitude of superiority that minority students associate with whites and students of color who perform well academically.<sup>158</sup> According to her sources, because many black and Latino students refuse to adopt mainstream modes of speech, dress and attitudes, teacher prejudice is generated against them, with the result that these students are not privy to the information or support needed to perform well academically.<sup>159</sup> Also, because of the pretentious airs these students associate with whiteness and/or white circles, many may actively avoid the higher track classes or niches heavily populated with white students.<sup>160</sup>

The differential teaching practices and the often inexplicit racial judgments that support them as well as the cultural dynamics at play indicate the need for conscious attention in pedagogy to counteract inequalities and to work proactively with diverse students. Gordon argues that equitable education and social justice are necessarily linked and require the development of pedagogical praxis.<sup>161</sup> Whereas equality requires the “same” treatment, equity requires that treatment be contextual, or appropriate to the needs of the particular social group.<sup>162</sup>

True integration requires that students’ differential circumstances be taken into account, especially those denied access to “human capital” (physical health, educated parents, financial security, skills, social networks, access to mainstream institutions). Children who occupy the “back of the educational bus” (e.g. low-income, student of color) need the institutional and pedagogical resources to meet their physical, mental, and emotional needs. Schools should also provide for their intellectual development rather than focusing predominantly upon the vocational, compensatory, or remedial that has characterized their curriculum to date.<sup>163</sup>

### **b. Eliminating Ability Grouping and Tracking**

Because academic competition, rigid forms of ability grouping, and tracking most often draw negative attention to racial differences, undermine self-esteem, limit mobility, contribute to the continuing gaps in achievement between students, and compromise the quality of education of those in lower tracks while doing little for those in higher tracks, true integration requires that they be eliminated.<sup>164</sup>

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<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *See, generally*, EDMUND GORDON, *EDUCATION AND JUSTICE: A VIEW FROM THE BACK OF THE BUS* (1999).

<sup>162</sup> *Id.* at xiv.

<sup>163</sup> *Id.*

<sup>164</sup> J. P. HEUBERT & R.M. HAUSER, EDS., *HIGH STAKES: TESTING FOR TRACKING, PROMOTION, AND GRADUATION* (1999). JANET WARD SCHOFIELD & H. A. SAGER, *CLASSROOM INTERACTION PATTERNS AMONG BLACK AND WHITE BOYS AND GIRLS* (1980) Jeannie Oakes, *Can Tracking Research Inform Practice? Technical, Normative, and Political Considerations*, 21 *EDUCATIONAL RESEARCHER* 21 (1992); D.J. Brewer & D. I. Rees, et al. *Detracking America's schools: the reform without cost?* *Phi Delta Kappan* 77 (1995); J. H. Braddock J.H. & R.E. Slavin, *Why Ability Grouping Must End: Achieving Excellence and*

Some claim that homogeneous ability grouping maximizes learning by eliminating boredom among high achievers and frustration among low achievers. Oakes, however, has shown that these increases in learning do not result from the homogeneity of the group, but from the enriched curriculum which benefits lower achievers as well -- if given adequate support.<sup>165</sup> Despite ambivalent research, criticism of tracking is increasing and schools are beginning to eliminate its use.<sup>166</sup> One 1993 survey reported that half the schools surveyed were modifying their use of ability grouping. Only 15% were still using traditional tracking methods.<sup>167</sup>

Some schools have avoided this problem by eliminating low-level classes as a part of their detracking strategy.<sup>168</sup> It is necessary to encourage in their place, competition between *goals*, rather than between fellow students and to create heterogeneous groups. Other detracking strategies include cooperative learning, individualized learning through personalized assignments, learning centers, and peer tutoring.<sup>169</sup> Accelerated Schools, developed by Henry Levin of Stanford, provide another approach to detracking. In such schools, all students receive enriched curriculum and problem-solving techniques most often used in gifted and talented programs.<sup>170</sup> Other schools have adopted nontraditional classroom strategies such as doing away with textbooks and relying primarily on field trips and group projects that allow students unique access to mathematical, engineering, and scientific concepts.<sup>171</sup>

In order for detracking to succeed, however, significant changes in schools are needed.<sup>172</sup> More specifically, six traits have been shown to exist in schools that are successfully detracked:<sup>173</sup> First, a culture of detracking and a commitment to inclusivity ensures that students from every background are given the opportunity to learn from the best curriculum and to learn together from each other. Second, family involvement that encourages parents to abandon competitive, individualistic ways of viewing education transforms learning into a shared experience with challenging curricula for all students. Third, professional development and support allows teachers to commit to detracking and

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*Equity in American Education*, JOURNAL OF INTERGROUP RELATIONS 20(10): 51-64 (1993); NATIONAL ACADEMY OF EDUCATION, RECOMMENDATIONS REGARDING RESEARCH PRIORITIES (Washington, DC: Office of Education Research and Improvements & The Educational Research Policy and Priorities Board, 1999).

<sup>165</sup> Oakes, *supra* note 164, at 12-21.

<sup>166</sup> G. Burnett, *Alternatives to Ability Grouping: Still Unanswered Questions*, ERIC Clearinghouse on Urban Education, (1995).

<sup>167</sup> N. Carry, E. Farris, and J. Carpenter, *Curricular Differentiation in Public High Schools*. Washington D.C: Office of Educational Research and Improvement, US Department of Education (1994).

<sup>168</sup> Jeannie Oakes and Amy Stuart Wells, *Detracking for High Student Achievement*, 55 EDUCATIONAL LEADERSHIP (1998).

<sup>169</sup> R.E. Slavin, *Achievement Effects of Ability Grouping in Secondary Schools: A Best-Evidence Synthesis with Discussion*, 3 REVIEW OF EDUCATIONAL RESEARCH 471- 99 (1990).

<sup>170</sup> H.M. Levin, *New Schools for the Disadvantaged*, TEACHER EDUCATION QUARTERLY 134, 60-83 (1987).

<sup>171</sup> Oakes and Wells, *supra* note 168.

<sup>172</sup> See, generally, A. WHEELOCK, CROSSING THE TRACKS: HOW 'UNTRACKING' CAN SAVE AMERICA'S SCHOOLS (1992).

<sup>173</sup> Carol Ascher, *Successful Detracking in Middle and Senior High Schools*, 82 ERIC CLEARINGHOUSE ON URBAN EDUCATION DIGEST (1992).

secure the necessary training to achieve it.<sup>174</sup> Fourth, phase-in processes enable schools to detrack slowly and adjust accordingly. Fifth, the rethinking of *all* routines reconfigures areas of school life from playground to pullouts. And sixth, support for detracking efforts exists at district and state levels.

### **c. Rethinking Accountability Measures**

True integration also requires that standards and standardized testing be used to equalize educational opportunity and improve achievement, not to punish students of color who attend inferior segregated schools. Instead, test scores should be used to end social promotions only in combination with other sources of information, such as grades and teacher recommendations. Monitoring processes can be implemented to evaluate the effect of accountability measures on all students in general, and on impoverished students of color, ELL, and other students at risk of retention in particular. Schools should be given front-end resources and training, before being held accountable for systemic inequalities beyond their control. And, ultimately, accountability should be extended to the entire metropolitan community as discussed below.

### **3. Fostering Positive Interracial Contact among Students**

Race relations improve with increased interracial contact. In fact, studies show that racial prejudice can be reduced by bringing students together under conditions of equal status that emphasize common goals and de-emphasize individual and intergroup competition.<sup>175</sup> The process of addressing perspectives different from their own also fosters the development of higher level analytical skills among students. Opportunities for developing these cognitive capabilities do not necessarily exist in racially isolated schools.<sup>176</sup> And, according to Caldas and Bankston, more diverse schools benefit disadvantaged students if they are structured in such a way that students interact equitably as peers.<sup>177</sup>

Cultural differences, however, are often used by students to self-select into distinct groups which limits interracial contact. While students should be encouraged to celebrate differences, differences can also be used to stereotype or conversely to retaliate against being stereotyped. For example, those who don't speak "good" English might be

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<sup>174</sup> See also, R. Cooper, *Report Number 12: Detracking in a Racially Mixed Urban High School*. Baltimore, MD and Washington, DC: Center for Research on the Education of Students Placed at Risk, Johns Hopkins and Howard University (1997).

<sup>175</sup> See generally, G. W. ALLPORT, *THE NATURE OF PREJUDICE* (1979); S. W. Cook, *Social Science and School Desegregation: Did We Mislead the Supreme Court*, *PERSONALITY AND SOCIAL PSYCHOLOGY BULLETIN* 5:410-437 (1979).

<sup>176</sup> See; X. LIN & J.D. BRANSFORD, *PEOPLE KNOWLEDGE: A MISSING INGREDIENT IN MANY OF OUR EDUCATIONAL DESIGNS* (in press); W.D. Hawley and A. Wayne, *Re-visioning the Education of Teachers* (forthcoming); and Pamela Perry, *White Means Never Having to Say You're Ethnic: White Youth and the Construction of Cultureless Identities*, *JOURNAL OF CONTEMPORARY ETHNOGRAPHY* 30(1) (Feb. 2001).

<sup>177</sup> Stephen J. Caldas and Carl L. Bankston, *Effect of School Population Socioeconomic Status on Individual*, 90 *ACADEMIC J. OF ED'L RESEARCH* 269 (1997).

shunned by middle-class whites, while these shunned students might continue to speak “bad” English just to offend.

That researchers tend to focus on differences from a white perspective rather than from a nonwhite one suggests that dealing positively with differences can be quite complex. Blalock suggests we positively exploit cultural differences “that are only of minor relevance with the school setting” such as native costumes, religious beliefs, and dietary customs. But differences such as familial norms and ways of communicating he argues, might become too problematic to encourage because students tend to rely on them more as they select contact partners.<sup>178</sup> This bifurcation of minority differences, however, leaves the white students intact. The familial norms and ways of communicating of students of color are just as worth acknowledging as their “native costume.” True integration requires that we address all differences respectfully and tutor each other in them.

The value of programs designed to improve race relations through classroom discussions is limited. One study shows that there is no relationship between class discussions and various measures of prejudice among black students.<sup>179</sup> As for white students, some programs have led to improved interracial interaction rates and attitudes, while others have had just short-term impact or no significant effects.<sup>180</sup>

Rather, resegregation can be avoided by shaping students’ experiences into positive intergroup relations within cooperative environments.<sup>181</sup> Careful planning and structuring of interracial contact is, therefore, required.

### **a. Having Faculty Commit to It**

A school is also more likely to foster positive interracial contact when the principal is ideologically committed to it. For example, one study found that black and white children were more likely to interact in the lunchroom and at recess in schools in which the principal valued such contact, than in schools in which the principal was less committed.<sup>182</sup> The principal’s behavior can affect the students’ interactions in several ways. First, principals can set policies that foster positive interracial contact. For example, in one school the principal would not allow academic tracking or racially homogeneous classes despite teachers’ requests.<sup>183</sup> Principals can also create a climate in

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<sup>178</sup> H.M. Blalock, *A Model for Racial Contact in School*, in *SCHOOL DESEGREGATION RESEARCH: NEW DIRECTIONS IN SITUATIONAL ANALYSIS* 134 (Jeffery Prager, Douglas Longshore, & Melvin Seeman, eds., 1986).

<sup>179</sup> R.E. Slavin and A. Madden, *School Practices that Improve Race Relations*, *AMERICAN EDUCATIONAL RESEARCH JOURNAL* 162: 169-80 (1979).

<sup>180</sup> Janet Ward Schofield and H. A. Sager, *Peer Interaction Patterns in an Integrated Middle School*, *SOCIOMETRY* 402: 130-138 (1977).

<sup>181</sup> Janet Ward Schofield, *Social Relations in Desegregation*, 4 *EQUITY AND CHOICE* 15 (1988); Janet Ward Schofield, *Promoting Positive Peer Relations in Desegregated Schools*, *ED’L POL’Y* 73: 297-317 (1993).

<sup>182</sup> JANET WARD WELLISCH, J. A. MARCUS, A. MACQUEEN & G. DUCK, *AN IN-DEPTH STUDY OF EMERGENCY SCHOOL AID ACT*, U.S. Office of Education (1976).

<sup>183</sup> Janet Ward Schofield et al., *Social Process and Peer Relations in a “Nearly Integrated” Middle School*, Washington, DC: National Institute of Education (1977).

which teachers attitudes are transformed. One study of a large number of schools showed that the principals' racial views directly influenced those of the teachers.<sup>184</sup> Lastly, principals can foster a humane and disciplined school environment that minimizes interracial aggressiveness. One comparative study found that low levels of conflict in one school was the result of a skilled campaign on the part of the principal working closely with his staff.<sup>185</sup> Furthermore, if students are aware that problem solving procedures are in place, their attitudes toward their peers of a different race are more positive.<sup>186</sup>

A teacher's attitudes, behaviors and skills also provide a model for the students. Positive relations and equal-status among teachers is essential. Special interracial teaching teams can even be formed to model competence and positive racial relations.<sup>187</sup>

But mixing students and teachers of different races does not necessarily ensure positive outcomes.<sup>188</sup> Rather, teachers that are free of racism and refrain from making assumptions or judgments about competence, probable success, or behavior patterns about both white and minority students are more likely to increase positive relations between students.<sup>189</sup> Indeed, racial fairness among teachers has been found to be strongly related to white students' racial attitudes and interracial contacts.<sup>190</sup> This pattern is stronger among high school teachers and students than among elementary. And, as can be expected, teachers who are prejudiced lead to less acceptance of minority group friends by white students.<sup>191</sup> As such, a procedure can be initiated to discover any racism on the part of teachers or other staff members and to confront it quickly.<sup>192</sup> However, it is much easier to avoid negative stereotyping of students of color than it is to realize how white students are viewed as the norm by which others are gauged.

It is also essential to train teachers to understand the differences in the experiences and backgrounds of a diverse classroom and then utilize these differences to draw students into active learning.<sup>193</sup> However, there is mixed evidence as to whether teachers' workshops improve interracial contacts in the schools. At the very least workshops can

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<sup>184</sup> G.A. FOREHAND ET AL., CONDITIONS AND PROCESSES OF EFFECTIVE SCHOOL DESEGREGATION; FINAL REPORT (1976).

<sup>185</sup> Schofield and Sagar, *supra* note 179; J.W. SCHOFIELD & H. A. SAGER, CLASSROOM INTERACTION PATTERNS AMONG BLACK AND WHITE BOYS AND GIRLS (1980).

<sup>186</sup> *Id.*

<sup>187</sup> Crowfoot and Chesler, *supra* note 150.

<sup>188</sup> K.P. Schultz, P. Buck, & T. Niesz, *Democratizing Conversations, Racialized Talk in a Post-Desegregated Middle School*, AMERICAN EDUCATIONAL RESEARCH JOURNAL 37(1): 33-65 (2000).

<sup>189</sup> Crowfoot and Chesler, *supra* note 150.

<sup>190</sup> FOREHAND ET AL., *supra* note 184.

<sup>191</sup> H. Gerard, H., D. Jackson and E. Conolley, *Social Contact in the Desegregated Classroom*. in SCHOOL DESEGREGATION: A LONG TERM STUDY (H. Gerard & N. Miller, eds. 1975).

<sup>192</sup> Crowfoot and Chesler, *supra* note 150. This could be done through monthly assessments of teachers' discipline records and curriculum, student reporting, in-class evaluations of the teachers by administrators in which they sit on the class unexpectedly etc....

<sup>193</sup> G. Hatano and Miyaki, *Commentaries: What Does a Cultural Approach Offer to Research on Learning?*, LEARNING AND INSTRUCTION 1: 237-81 (1991);

L.C. Moll, et al., *Funds of Knowledge for Teaching: Using a Qualitative Approach to Connect Homes and Classroom*, THEORY INTO PRACTICE 31(1): 132-41 (1992).

communicate the commitment of administrators to achieving true integration. This may lead to a modification of teacher behavior, if not beliefs. Care must be taken, however, not to reinforce the stereotypes teachers hold of students of color. Therefore it is important in these training sessions to force white teachers to examine white privilege and to “construct an ongoing process of learning from and connecting with people of color.”<sup>194</sup>

In addition, true integration requires that counselors model positive interracial contact and attempt to improve the inclusive nature of the school's community. Stereotyping or tracking of students into certain programs is detrimental and hinders the ability to take the needs and interest of all students into account in an equitable manner as discussed above.<sup>195</sup>

### **b. Racially Balancing Classrooms**

Although there is disagreement as to whether classrooms should numerically reflect the makeup of the school or grade, research shows that racially balanced classes are more likely to produce positive interracial attitudes and behaviors. According to one study of seventh and eighth grades, students who were in tracked, racially homogeneous classes were more likely to eat lunch in same-race clusters than those who were in untracked, racially heterogeneous classes.<sup>196</sup> A follow up study also found that the positive interracial behavior was undone once the detracked students were rigidly retracked the following year.<sup>197</sup> As such, detracking can be useful in the creation of heterogeneous grouping within the classroom.<sup>198</sup>

And because students who are allowed to choose their own seats tend to sit with those of the same race, teachers can foster increased interracial contact through seating assignments rather than letting students resegregate themselves.<sup>199</sup> One study has shown that elementary students of different races who were assigned to sit next to each other were more likely to mix in such informal settings as lunch and playground.<sup>200</sup> This contact can be further facilitated by reassigning seats occasionally, as studies have found this to increase the number of friends students make during the year.<sup>201</sup>

Avoiding resegregation within the classroom is not enough in itself, however. Efforts to promote crosscutting group memberships and to heighten a sense of connection to

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<sup>194</sup> See Christine E. Sleeter, *How White Teachers Construct Race*, in RACE, IDENTITY, AND REPRESENTATION IN EDUCATION 164, 168-9 (Cameron McCarthy and Warren Chrichlow, eds., 1993).

<sup>195</sup> Crowfoot and Chesler, *supra* note 150.

<sup>196</sup> Schofield and Sager *supra* note 179.

<sup>197</sup> Schofield and Sager, *supra* note 184.

<sup>198</sup> Jeannie Oakes and A.S. Wells, *Beyond the Technicalities of School Reform: Policy Lessons from Detracking Schools*. Los Angeles, CA: Research for Democratic School Communities, University of California, Los Angeles Graduate School of Education and Information Studies (1996).

<sup>199</sup> Janet Ward Schofield, *supra* note 152; JANET WARD SCHOFIELD, BLACK AND WHITE IN SCHOOL: TRUST, TENSION OR TOLERANCE? (1989)

<sup>200</sup> Wellisch et al, *supra* note 182.

<sup>201</sup> Schofield, *supra* note 151.

superordinate group identities that include members of the various groups represented in a situation are likely to be beneficial, as are practices that encourage individuals to participate with out-group members in experiences that allow them to know one another as individuals.<sup>202</sup>

### **c. Ensuring Smaller Schools and Classes**

Whenever fiscally possible, smaller schools and classrooms are to be encouraged. This minimizes the scale of students' experiences and creates a more personal sense of community -- even among teachers.<sup>203</sup> In smaller environments it is more likely that stereotypes are broken down, common values are identified and pursued, friendships are formed, and uncertainties and anxieties with which students and teachers deal are minimized.<sup>204</sup> Studies have also shown that all students learn better in small classes -- especially students of color.<sup>205</sup>

### **d. Adopting Appropriate Teaching Techniques**

Research also shows that the classroom techniques employed by teachers immediately impact how students' interact and how they perceive group differences in performance levels. In addition to the teaching techniques that enable detracking to succeed, several others foster positive racial relations.

Quality teaching in diverse classrooms reflects high expectations for all students, is academically rigorous, encourages critical thinking, utilizes the experiences of diverse students in the classroom, teaches subject matter in depth using a variety of examples for a strong factual base, and explicitly develops students' metacognitive skills.<sup>206</sup>

In cases where students of color come to school with fewer academic skills, openly displaying such deficiencies can lead to self-sorting. However, when a student's performance is not made public through posting of grades, spelling bees and so forth, there is some evidence that friendship patterns are less likely to form along performance lines. Some suggest that "basing students' evaluation on improvement relative to curriculum goals as well as their absolute improvement" would help to equalize students' status across racial and ethnic lines.<sup>207</sup> Rather than employing reward systems that feed

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<sup>202</sup> Janet Ward Schofield, *Improving Intergroup Relations among Students* in HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION 635-46 (James A. Banks, ed., 1995).

<sup>203</sup> J.E. Bruno and E. Negrete, *Analysis of Teacher Wage Incentive Programs for Promoting Staff Stability in Large Urban School District*, THE URBAN REVIEW, 139-149 (1983); A. W. Jackson, *Toward a Common Destiny: An Agenda for Future Research*, in TOWARD A COMMON DESTINY, *supra* note 151, at 435-54.

<sup>204</sup> Hawley, *supra* note 149.

<sup>205</sup> E. R. WORD, ET AL., THE STATE OF TENNESSEE'S STUDENT/TEACHER ACHIEVEMENT RATIO STAR PROJECT: TECHNICAL REPORT 1985-1990, Tennessee State Dept. of Education & Tennessee State Univ., Nashville (1990).

<sup>206</sup> J.D. BRANSFORD, A.L. BROWN & R.R. COCKING, EDs., HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL (1999).

<sup>207</sup> Schofield, *supra* note 151.

into the academic status system, teachers can attempt to diminish competitiveness and reward cooperative interracial endeavors.<sup>208</sup>

More importantly, a great deal of evidence also suggests that when teachers utilize team learning projects that encourage students to cooperate in achieving a common goal,<sup>209</sup> positive interracial contacts are actuarially increased and prejudices decreased.<sup>210</sup> Researchers have found that these intergroup projects also improve academic achievement.<sup>211</sup> One study of 51 desegregated high schools showed that programs involving cooperative learning among students of different tracks were most likely to lead to positive race relations.<sup>212</sup>

For example, interracial and interethnic learning groups can be assigned work in what is called the “jigsaw technique.” Each of the members in the group can be given one part of a paragraph to master and to teach to the other students in the group until the material is mastered by all.<sup>213</sup> This approach is not only able to eliminate competition and bring about positive interracial contact, but is able to overcome the “interracial interaction disability” which makes true equal status among members of interracial groups difficult to achieve.<sup>214</sup> Class committees and teams can be initiated to develop joint projects as well.<sup>215</sup>

Teachers can also attempt to provide a broad range of classroom tasks so all students will have expertise in some area. Students can be involved in the design of these tasks and other activities and can respond to different racial and cultural learning styles including linguistic and verbal/nonverbal preferences. Constant student feedback should be sought as to their experiences in the classroom.<sup>216</sup>

## 5. Transforming Curricula and Programming

In addition to the above changes, “equal status” among students can be achieved through the transformation of curricula to reflect the culture, history and experiences of all

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<sup>208</sup> Crowfoot and Chesler, *supra* note 150.

<sup>209</sup> Blalock, *supra* note 178.

<sup>210</sup> E.B. ARONSON, ET AL. THE JIGSAW CLASSROOM (1978); E.G. Cohen, *Design and Redesign of the Desegregation School: Problems of Status, Power and Conflict*, in W.J. STEPHEN & J.R. FEAGIN (EDS). SCHOOL DESEGREGATION: PAST, PRESENT, AND FUTURE 251-58 (1980); M.T. Hallinan & S. Aage, *Student Diversity and Instructional Grouping*, RESEARCH IN SOCIOLOGY OF ED. & SOCIALIZATION 5: 59-81 (1985); R.E. SLAVIN, USING STUDENT TEAM LEARNING (1985); Slavin and Madden, *supra* note 178.

<sup>211</sup> David W. Johnson et al., *Effects of Cooperative, Competitive, and Individualistic Goal Structures on Achievement: A Meta-Analysis*, PSYCHOLOGICAL BULLETIN 89(1): 47-62 (1981).

<sup>212</sup> R.E. Slavin, *Effects of Biracial Learning Teams on Cross-racial Friendships*, Journal of Educational Psychology 713: 381- 387 (1979).

<sup>213</sup> E. Aronson and D. Bridgeman, *Jigsaw Groups and the Desegregated Classroom: In Pursuit of Common Goals*, PERSONALITY AND SOCIAL PSYCHOLOGY BULLETIN 5:438-446 (1979).

<sup>214</sup> E.D. Cohen, *The Effects of Desegregation on Race Relations*, LAW & CONTEMPORARY PROBLEMS, 39:271-299 (1975).

<sup>215</sup> Schofield, *supra* note 151.

<sup>216</sup> Crowfoot and Chesler, *supra* note 150.

students, including local cultures and their roles in the school and community.<sup>217</sup> Although the demographics have changed dramatically in many schools, few have made fundamental changes in organization and programs to address the differing needs on incoming student populations. Many schools continue presenting curricula that is biased against nonwhite students.<sup>218</sup>

According to a Slavin and Madden study, however, the use of such materials does not necessarily relate to any measurable change in racial attitude or behavior in either blacks or whites.<sup>219</sup> Nonetheless, multiracial texts are an integral part of the curricula because they are more accurate and because they dismantle the assumption that white is normal. Successful multicultural programs also engage students with little interest in traditional curriculum and allow low-achieving students of color to display their culturally specific knowledge.<sup>220</sup> Without them, an inclusion of all voices will never be accomplished.

It is equally important for curricula to explicitly address racism in the United States including current discussions of integration, affirmative action, welfare reform and concentrated poverty etc... Students can also be given opportunities to work within different racial communities themselves.<sup>221</sup> Ideally, educators can maximize “the capacity of the curriculum to help all groups understand the meaning and impact of racial and ethnic status and to equip them with skills to address inequities.”<sup>222</sup>

## **6. Implementing Fair Rules**

True integration also requires that rules and procedures governing schools be clear, fair, consistent, and responsive to various racial and ethnic needs. In addition to providing greater personal security and effective learning, fair rules produce a positive, democratic, interracial environment in which students and teachers can pursue shared goals and in which mutual respect and support is expected and rewarded.<sup>223</sup> Students can be included in the process of rule or decision-making in such a way as to ensure their equal status, regardless of racial or ethnic background.<sup>224</sup>

## **7. Creating Inclusive Spaces and Activities**

Because dominant groups take over choice locations within schools or on school grounds, attention to spatial layouts that are not uniform in quality, convenience or other aspects is essential. While often students divide into groups according to age – which actually fosters interracial contact – this is not always the case. Recess and lunch periods,

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<sup>217</sup> Crowfoot and Chesler, *supra* note 150; Cooper, *supra* note 174; Oakes and Wells, *supra* note 168.

<sup>218</sup> Ware and Ware, *supra* note 7, at 12.

<sup>219</sup> Slavin and Madden, *supra* note 179.

<sup>220</sup> Oakes and Wells, *supra* note 168.

<sup>221</sup> Crowfoot and Chesler, *supra* note 150.

<sup>222</sup> A.W. Jackson, *Toward a Common Destiny: An Agenda for Future Research*, in TOWARD A COMMON DESTINY, *supra* note 151, at 445.

<sup>223</sup> Hawley, *supra* note 149.

<sup>224</sup> Crowfoot and Chesler, *supra* note 150; R.E. Slavin, *Cooperative Learning and Intergroup Relations*, in HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION 628 (James A. Banks. Ed., 1995)

patterns of facility use, and conditions of facilities are best monitored by administrators in order to maximize interracial contacts.<sup>225</sup>

One of the most effective avenues through which schools can interracial friendships and cooperative involvement, is by promoting extracurricular activities that encourage equitable interracial contact.<sup>226</sup> Typically, participation in integrated athletic teams leads to positive intergroup attitudes and reduced prejudice.<sup>227</sup> Winning athletic teams can also improve relations between blacks and whites who are not themselves athletes.<sup>228</sup>

However, studies also suggest that strictly voluntary, unstructured activities lead to spatial segregation and very low levels of racial contact. Interracial contact is more likely to occur when activities are structured and made attractive to a diverse body of students and when adult supervisors are aware of the goal. Schools that consciously attempt to improve representation in activities beyond music and sports encourage underrepresented groups to join and over-represented groups to be accepting.

For example, Schofield reported that to achieve greater racial balance one school official monitored club lists and actively recruited students, or groups of students who were friends (to ease the fear of being the only white or black participant).<sup>229</sup> The official also encouraged students who had dropped out to rejoin with some of their friends. Efforts were also made to distribute positions of status within clubs and teams equally between whites and blacks. Similarly in Minnesota, a recent settlement agreement in a class-action discrimination suit brought by Latino/a parents resulted in local school officials acknowledging the need to increase Latino/a students' participation in extracurricular activities.

A favorable school atmosphere can also be fostered through the creation of special clubs or interracial committees made up of principals, faculty, staff, and students representing the various racial groups within the school. Such committees can hear grievances and consider policies to promote racial harmony.<sup>230</sup> Mediation groups, such as those implemented successfully in schools in New Mexico, and Poughkeepsie are also helpful.<sup>231</sup> They work to identify and clarify ethnic assumptions, intervene in

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<sup>225</sup> Blalock, *supra* note 178.

<sup>226</sup> M. Patchen, and J. D. Davidson, et al., *Determinants of Students' Interracial Behavior and Opinion Change*, SOCIOLOGY OF ED.501: 55-75 (1977).

<sup>227</sup> J.H. Braddock, M.P. Dawkins and G. Wilson, *Intercultural Contact and Race Relations Among Youth*, in TOWARD A COMMON DESTINY, *supra* note 151, at 237-56; R.L. CRAIN, R. MAHARD, & R. NAROT, MAKING DESEGREGATION WORK (1982). H.J. WALBERG, PROMOTING STUDENT INTEGRATION IN CITY HIGH SCHOOLS: A RESEARCH STUDY AND IMPROVEMENT GUIDELINES FOR PRACTITIONERS. FINAL REPORT (1979); Schofield, *supra* note 151; Slavin, *supra*, note 212, at 387.

<sup>228</sup> Schofield et al., *supra* note 183.

<sup>229</sup> Janet Ward Schofield, *When Does a Magnet School Lose Its Magnetism*, paper presented at the annual meeting of the American Educational Research Association (Toronto, Canada)(1978).

<sup>230</sup> McConahay, *supra* note 118.

<sup>231</sup> J.A. LAM, THE IMPACT OF CONFLICT RESOLUTION PROGRAMS ON SCHOOLS: A REVIEW AND SYNTHESIS OF THE EVIDENCE (1989).

ethnocentrism, avoid stereotypes address the issues, apply pressure for settlement and ensure implementation of agreements.<sup>232</sup>

Lastly, it is essential to eliminate school symbols that stereotype, discriminate, or exclude. Instead, student initiatives can be fostered to institute multiracial, multicultural traditions and symbols such as flags, songs, and banners.<sup>233</sup>

## **8. Increasing Parental Involvement**

Fostering interracial parental involvement and making explicit the schools integrative goals are also necessary tools for achieving true integration. Since researchers have found that negative parent relations toward certain groups fosters similar attitudes among children,<sup>234</sup> parental support of successful integration is crucial. Conversely, it has been found that positive relations between minority and majority groups is increased through parental involvement in programming, school activities, and monitoring integrative efforts on buses, playgrounds, hallways, classrooms and administrative meetings.<sup>235</sup> Parents can also plan in-school and community-wide multiethnic committees.<sup>236</sup>

It is vital to such efforts, however, that attention be paid to how parental involvement is solicited, supported, and structured. Low-income parents need added means by which to become involved, including assistance with transportation and childcare. It is equally essential to include parents of color in the structuring of involvement so as to avoid reifying white patterns.

## **IV. What True Integration Requires of Us as a Larger Community**

After laboring through this description of all that is required to truly integrate schools from an educational standpoint, it is hard to imagine that we will succeed on any large scale. Rather than giving up, however, I argue that our frustration can only be remedied by undertaking an even larger task – engaging the entire community in integrative efforts. I choose to feature three aspects of this leveraging task: renewing legal strategies, adopting regional strategies that include housing elements, and transforming our public discourse on race and choice.

### **1. Renewing Legal Strategies**

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<sup>232</sup> P.T. Coleman & M. Deutch, *The Mediation of Interethnic Conflict in Schools*, in TOWARD A COMMON DESTINY, *supra* note 151, at 371-96.

<sup>233</sup> Crowfoot and Chesler, *supra* note 150.

<sup>234</sup> M. PATCHEN, BLACK-WHITE CONTACT IN SCHOOLS: ITS SOCIAL AND ACADEMIC EFFECTS (1982).

<sup>235</sup> W.J. DOHERTY, J. CALDWELL, N.A. RUSSO, V. MANDEL & D. LONGSHORE, HUMAN RELATIONS STUDY: INVESTIGATIONS OF EFFECTIVE HUMAN RELATIONS STRATEGIES, Volume 2 (1981), Santa Monica, CA: System Development Corporation.

<sup>236</sup> W. D. HAWLEY ET. AL. , STRATEGIES FOR EFFECTIVE DESEGREGATION: LESSONS FROM RESEARCH (1983).

Since *Brown* we have held out hope that legal action could eradicate segregation, increase desegregation, and maybe even foster true integration. The disappointment experienced soon after legitimizing inaction<sup>237</sup> is mirrored today in a myriad of recent decisions described already discussed. But rather than allowing the judiciary to turn its back on integration, we can ensure its pursuit by renewing our legal strategies in the following ways.

**a. Under Federal Law**  
**i. Desegregation Suits**

In endorsing class rather than race-based desegregation, Kahlenberg bluntly asserts that, from a legal standpoint, *Brown* has run its course.<sup>238</sup> With a conservative president in office, he argues, the Supreme Court will eventually rule, as has the 1st and 4th Circuits, that race-neutrality is required in K-12 student assignments except where race is used as a remedy to past discrimination. Professors James Liebman and Kevin Brown disagree, provided we adopt new strategies for achieving *Brown*'s unmet educational goals.

To be sure, there is a basis for Kahlenberg's claim. As of 1990, almost 700 school districts, or 60% of our largest 150 nationwide, had formal desegregation plans, the majority of which were either court-ordered or mandated by a state or federal agency. Most of the court orders were at least twenty years old, and many far older.<sup>239</sup> During the past decade, however, courts have been rapidly declaring that school districts have achieved unitary status, effectively reversing the twenty-five year old standard requiring affirmative behavior to eliminate racially segregated schools.<sup>240</sup> As of 2000, the federal government monitored desegregation plans in only 440 schools districts across the nation.<sup>241</sup>

Indeed, current federal jurisprudence provides limited avenues for affecting positive change in the racial makeup of schools or school districts. Since *Washington v. Davis*,<sup>242</sup> to prove that a school policy or practice violates the 14<sup>th</sup> Amendment, one must demonstrate that the policy was enacted with the specific intent to discriminate against a class of students based on their race, ethnicity or national origin. This is an extremely

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<sup>237</sup> *E.g.*, "With all deliberate speed." *Brown v. Board of Education* (No. II), 349 U.S. 294, 301 (1955).

<sup>238</sup> Richard D. Kahlenberg, *supra* note 141, at 4.

<sup>239</sup> See David J. Armor, Testimony to the House of Representatives Committee on the Judiciary, Subcommittee on the Constitution (April 16, 1996) (reporting results from study on which he served as co-principal researcher).

<sup>240</sup> See Melva L. Ware, *School Desegregation in the New Millenium: The Racial Balance Standard Is an Inadequate Approach to Achieving Equality in Education*, 18 ST. LOUIS U. PUB. L. REV. 465, 465-66 (1999). As Orfield and Yun document, school districts recently ending or phasing out their desegregation plans are Buffalo, NY; Broward County (Fort Lauderdale) FL; Clark County (Las Vegas) NV; Nashville-Davidson County; TN; Duval County (Jacksonville) FL; Mobile, AL; Minneapolis, MN; Cleveland, OH; San Jose, CA; Seattle, WA; and Wilmington, DE. A number of other major districts are now in litigation over the issue, with some of them struggling to be permitted to continue their desegregation plans. See ORFIELD & YUN, *supra* note 36.

<sup>241</sup> See Catalogue of Federal Domestic Assistance, Desegregation of Public Education, available at <<http://aspe.os.dhhs.gov/cfda/p16100.htm>>.

<sup>242</sup> 426 U.S. 229 (1976).

difficult standard to meet.<sup>243</sup> And as stated earlier, private suits under Title VI can now be brought only for *intentional* discrimination. Equally disturbing, are the cases described earlier in which federal courts have struck down racial preferences in student assignments.

Because of these limitations, Liebman proposes a theoretical reorientation of the arguments in favor of desegregation, emphasizing the communal nature of our rights under the equal protection clause. With such a reorientation, argues Liebman, education is viewed less as a private right that desegregation dislocates, than as a public good that is fit for governmental and constitutional distribution. Given the important role that education plays in our democracy and given that, unlike public-employment, the government already has its distributive hands on a good portion of public education, the courts, as well as the general population, should be more open to this ethical and legal shift.

Rather than being portrayed or vilified... as the redistribution of resources from "innocent" whites to "unjustly enriched" blacks...[a]n effective remedy... induces...empathy by making each person recognize the interests she potentially shares with all other persons... Once advocates give up arguing that desegregation corrects imbalances in the distribution of private rights when it palpably does not, they are free to point out that the rearrangement of private rights that Brown incidentally does effect is relatively inconsequential and clearly worth the politically reconstructive candle.<sup>244</sup>

Kevin D. Brown also advocates an understanding of education as a public good in his defense of racial preferences in student assignments. Although the Supreme Court subjects all racial classifications to strict scrutiny, Brown argues that desegregation efforts should be viewed in light of their socializing function, their role in inculcating "fundamental values necessary to the transmission of our democratic society..." Since "education must both foster individual self-determination, but at the same time attempt to constrain the choices individuals make in order to allow others the same ability for self-determination..." and since desegregation clearly furthers the values of tolerance of racial and ethnic diversity, it should survive strict scrutiny analysis when examined from a value inculcating perspective.<sup>245</sup>

Whether the public or the courts will adopt either Liebman or Brown's transformative approach is questionable. In the interim, additional research such as that conducted by

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<sup>243</sup> Courts look less favorably on school systems that are still under a desegregation order. For example, 14<sup>th</sup> Amendment challenges to tracking policies that negatively impact students of color have been successful against school districts that already have been ordered to remedy the effects of past discrimination. GRIPP, *supra* note 57.

<sup>244</sup> James S. Liebman, *Implementing Brown in the Nineties: Reconstruction, Liberal Recollection, and Litigatively Enforced Legislative Reform*, 76 VA. L. REV. 349, 362-363 (1990).

<sup>245</sup> Kevin Brown, *Implications of the Equal Protection Clause for the Mandatory Integration of Public School Students*, 29 CONN. L. REV. 999, 1002,3 (1997). Brown also argues that, as long as the use of racial classifications to bring about integrated student bodies furthers the internalization of the importance of treating all as individuals, then their use is also narrowly tailored enough to meet that compelling interest. *Id.* at 6.

the Civil Rights Project on the importance of racial diversity as a compelling state interest should continue. Boger also describes of a way to bypass strict scrutiny by utilizing socioeconomic status and academic skills in place of race when assigning students. Neither classification is "inherently suspect" and their use might result in some racial desegregation, argues Boger.<sup>246</sup> Recall that Orfield and others, however, caution against relying solely on this approach.

## ii. Other Suits

Federal suits can also be brought to secure Limited English Proficiency (LEP) rights,<sup>247</sup> eliminate racially biased disciplinary policies,<sup>248</sup> and challenge the segregative effect of tracking, although intent to discriminate must now be shown under both the 14th amendment and Title VI.<sup>249</sup>

Unfortunately, this requirement now makes challenging high stakes testing practically futile.<sup>250</sup> However, according to Kevin G. Welner, the new standards and accountability legislation may actually expand potential liability to all school districts and even to states. While past challenges focused on the fairness of exit exams (as a violation of substantive due process) and sought a diploma as a remedy, future challenges might embrace the standards movement and contend that the plaintiffs' schooling itself is unfair. Welner argues that, such claims could build on states' own adopted standards, and their clear obligation to provide all students with the opportunity to learn the curriculum designated and assessed by them.<sup>251</sup>

Similar challenges might be brought under the Bush administration's "No Child Left Behind Act."<sup>252</sup> As a group of Harlem parents have claimed, under this Act, school board,

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<sup>246</sup> Boger, *supra* note 73, at 1793.

<sup>247</sup> See, GRIPP, *supra* note 57, *citing*, Lau v. Nichols, 94 S.Ct. 786 (U.S. Cal. 1974); Idaho Migrant Council v. Board of Education, 647 F.2d 69 (9<sup>th</sup> Cir. 1981); Gomez v. Illinois State Bd. Of Educ, 811 F.2d 1030 (7<sup>th</sup> Cir. 1987); U.S. v. Texas, 680 F.2d 356 (5<sup>th</sup> Cir. 1982); Castaneda v. Pickard, 648 F.2d 989 (5<sup>th</sup> Cir. 1981).

<sup>248</sup> Patrick Pauken and Philip T.K. Daniel, *Race Discrimination And Disability Discrimination In School Discipline: A Legal And Statistical Analysis*, 139 WELR 759 (2000), *citing*, Pamela W. Dill, *Education Law Abstract: A Survey of Prominent Issues in Mississippi's Public Schools*, 13 MISS. C. L. REV. 337, 345 (1993).

<sup>249</sup> See, GRIPP, *supra* note 57, at 6, *citing* Daniel J. Losen, *Silent Segregation in our Nation's Schools*, 34 HARV. CIV. RTS. CON. L. REV. 517, 518 (1999), *citing* U.S. Comm'n on Civil Rights, 1 EQUAL EDUCATION OPPORTUNITY PROJECT SERIES 218 (1996). According to GRIPP, an increasing awareness of the negative implications of tracking has resulted in a more conciliatory judiciary, although courts frequently defer to educators on issues of what constitutes sound educational policy. *Id.* *citing* Kevin G. Welner & Jeannie Oakes, *(Li)Ability Grouping: The New Susceptibility of School Tracking Systems to Legal Challenges*, HARV. EDUC. REV., Vol. 66, No.3, 1996.

<sup>250</sup> See, GRIPP, *supra* note 57, at 6, *citing* HEUBERT & HAUSER, *supra* note 164, AT 37. For a discussion of pre-Sandoval challenges, see Judith A. Monsaas, Janine A. Kaste, Jan S. Kettlewell, Dorothy D. Zinsmeister & Sheila A. Jones, *Georgia P-16 Initiative: Creating Change Through Higher Standards for Students and Teachers*, 6 VA. J. SOC. POL'Y & LAW 179, 183 (1998).

<sup>251</sup> Kevin G. Welner, *Ability Tracking: what Role for the Courts?*, 163 ED. LAW REP. 2 at nt. 22 (2001).

<sup>252</sup> Pub.L. 107-110; Jan. 8 2002, 2001; 115 Stat. 1425.

district and state officials are obliged to help parents transfer their children from low-performing schools or to provide "intervention" services for students trapped in them.<sup>253</sup>

### **b. Under State Law**

Although still somewhat limited, there are also possibilities for fostering true integration by challenging discriminatory policies or practices under state law. All state constitutions guarantee protections similar to those of the 14<sup>th</sup> Amendment and the state courts have the authority to interpret them more broadly than the protections under the federal Constitution. For example, the California Supreme Court has held that the state equal protection clauses allow actions based on racial disparate impact.<sup>254</sup> In addition, all state constitutions recognize education as a function of the state. Some constitutions explicitly prohibit discrimination or the implementation of educational policies with discriminatory effects<sup>255</sup> and others guarantee a certain minimum level of education to all students. For example, New Jersey's constitution requires the state to provide a "thorough and efficient education."<sup>256</sup>

State court litigation to date has largely challenged the *equity* or *adequacy* of the state's public school funding mechanism. Equity suits assert that the constitution (through the 14<sup>th</sup> Amendment-like provision and/or the education clause) guarantees some degree of equality in school funding across districts.

Adequacy suits assert that these provisions require the state to provide some minimum quality of education to all students and that this presumes a basic level of funding. As of last year, high courts in forty-three states had considered the constitutionality of their public school funding systems.<sup>257</sup> Twenty-six found them constitutional;<sup>258</sup> five states held that education is a right of all students and that inequitable education funding violates this right;<sup>259</sup> six states held that, while education is a right, the state need only supply a minimally adequate level of funding, not an equally funded education.<sup>260</sup>

Remedies beyond funding under adequacy suits vary greatly. In *McDuffy v. Secretary of Education*,<sup>261</sup> for example, the Massachusetts court merely defined educational

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<sup>253</sup> Their complaint says, "Rather than notifying parents of their rights under the law and assisting parents those children attend [failing] schools to place their children in non-failing schools, they have left everything to chance." Carl Campanile, *Parents Threaten Suit Over Harlem's Failing Schools*, N.Y. POST, JULY 16, 2002, at 12.

<sup>254</sup> *Jackson v. Pasadena City School District*, 382 P.2d 878 (Cal. 1963).

<sup>255</sup> *McDuffy v. Secretary of Education*, 415 Mass 545 (1933), *Rose v. Council for Better Education*, 790 S.W. 2d 186 (Ky. 1989).

<sup>256</sup> N.J. Const. art. VIII, § 4.

<sup>257</sup> See Christine M. Durham, Speech, *The Judicial Branch in State Government: Parables of Law, Politics, and Power*, 76 N.Y.U. L. REV. 1601, 1619 (2001).

<sup>258</sup> *See, id.*

<sup>259</sup> Comment, *Potential Federal and State Constitutional Barriers to the Success of School Vouchers*, 49 U. KAN. L. REV. 889, 919-20 (2001).

<sup>260</sup> *Id.* at 920.

<sup>261</sup> 615 N.E. 2d 516 (Mass. 1993). Adequacy included: oral and written communication skills sufficient to function in a complex and rapidly changing world; knowledge of economic, social, and political systems

adequacy. And in *Rose v. Council for Better Education*,<sup>262</sup> the court invalidated the entire public school system and gave sole responsibility for the implementation of a detailed instructional plan that included accountability to the state.

In *Sheff v. O'Neil*,<sup>263</sup> however, the state court required that the state remedy the extreme racial and ethnic isolation in the public schools that had resulted from a voluntary interdistrict desegregation effort. Affirmative responsibility was placed on the legislature to remedy segregation, regardless of whether it was de jure or de facto. A similar adequacy suit was also settled in Minnesota after Minneapolis' decade-long open enrollment plan resulted in de facto racial and socioeconomic segregation between the city and the surrounding suburbs.<sup>264</sup> While multiple remedies were sought, including requiring the state to adopt integrative housing policies, the settlement merely required eight suburban districts collectively to make 500 seats available for low-income city students each year for the next four years. Although still limited in their ability to produce effective remedies, these types of adequacy suits hold the most promise.

### **c. Under International Human Rights Law**

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sufficient to make informed choices; understanding of governmental processes sufficient to understand local and national issues; self-knowledge and knowledge of mental and physical wellness; grounding in the arts sufficient to appreciate culture;- preparation in vocational or academic fields sufficient to choose and pursue life work intelligently; and academic or vocational skills sufficient to compete favorably in academics or job markets.

<sup>262</sup> 790 S.W. 2d 186 (Ky. 1989).

<sup>263</sup> 238 Conn. 1, 678 A.2d 1267 (1996).

<sup>264</sup> Ryan and Heise, *supra* note 128, at 2069. The settlement also requires the state to pay for transportation costs. The settlement achieves only a modest increase in open enrollment, but community members still compared it to “forced busing” and protested the fact that local school revenues would be spent on outsiders. *Id.*

Finally, there are several international human rights standards that relate to racial equality in education,<sup>265</sup> including *The Convention against Discrimination in Education*.<sup>266</sup> Although these standards are not binding upon our courts and cannot be the basis for legal action, our courts do turn to them for guidance in defining rights provided under U.S. law. For example, the West Virginia court in the adequacy suit case *Pauley v. Kelly* cited the importance of education in international human rights documents, recognizing “education to be a fundamental right of everyone.”<sup>267</sup>

## 2. Pursuing Regionalism

### a. Regional Government and Regional Strategies

While litigation provides relief from discriminatory policies, it rarely requires the systemic changes necessary to foster true integration. Regionalism – and related legislative strategies pursuant to it – provide greater potential for such lasting changes. And while in-place strategies of reinvestment in inner cities are meritorious, in order to reduce polarization, stabilize urban cores, and equalize educational opportunity throughout metropolitan areas, a regional approach to policy making must be undertaken.<sup>268</sup>

Regionalism offers policy makers a way to reconceptualize metropolitan areas for the common good of all residents. Instead of calling upon each part of the region to take responsibility for itself, regionalism conceptualizes the entire region as an organic system of interdependent parts. The whole will prosper only if all parts are able to function. Conversely, where one part dysfunctions the entire system is compromised.

Because the real city is the total metropolitan area – city and suburb – the surest way to avoid or reverse patterns of racial and economic segregation is to create effective, visionary metropolitan governments or, if the metro area is too large, to ensure that all local government are pursuing common policies that will foster integration. Myron Orfield, a Minnesota legislator, calls this process of achieving regionalism “metropolitics.”<sup>269</sup>

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<sup>265</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), adopted by the U.N. Doc. A/810, arts.1, 26, §1 (Dec. 10, 1948) [UDHR]; International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, arts. 3, 13, § 1 [ICESCR]; International Covenant on Civil and Political Rights, adopted and opened for signature Dec. 16, 1966, 999 U.N.T.S. 171, art. 2, § 1 [ICCPR]; see also Convention on the Rights of the Child, G.A. res. 44/25, Annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989) art. 28, *entered into force* Sept. 2, 1990 (187 States parties); see also, International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969, *for the U.S.* Nov. 20, 1994.

<sup>266</sup> Convention against Discrimination in Education, 429 U.N.T.S. 93, art. 1(1)(1962), art. 4; see also, United Nations Declaration on the Elimination of All Forms of Racial Discrimination, Proclaimed by General Assembly resolution 1904 (XVIII) of 20 November 1963, art 3.

<sup>267</sup> *Id.* citing *Pauley v. Kelly*, 255 S.E.2d 859, 863-64 n.5 (W. Va. 1979).

<sup>268</sup> ORFIELD, *supra* note 135.

<sup>269</sup> See generally, ORFIELD, *supra* note 135, at 104-155.

Effective regional governments require the building of enduring political coalitions.<sup>270</sup> These coalitions are best formed between the urban core and the inner-ring suburbs. More effective yet, business leaders like those in Chicago who formed CHICAGO METROPOLIS 2020, can frame regionalism as the most effective strategy for maintaining economic viability. This argument persuades those in positions of privilege, as well as those that have adopted a colorblind position, that it is in the best interest of all to pursue regional strategies to integrate.

A regionalist approach traditionally fosters several policies, many of which deal with achieving equity in housing, including:<sup>271</sup>

1. land-use reform that stems urban sprawl and provides adequate funding to older areas saddled with old infrastructures;
2. “fair share” housing policies that encourage, or better yet, *require* the construction and maintenance of low- and moderate-income housing in all jurisdictions;
3. housing assistance policies to disperse low-income families to small-unit, scattered-site housing projects and to rent-subsidized private rental housing throughout a diversified metro housing market;
4. fair employment and fair housing policies that ensure full access by persons of color to the job and housing markets;
5. tax-sharing arrangements that will offset tax-base disparities between the central city and its suburbs;
6. welfare reform that goes beyond the recent federal measures by focusing on job readiness and creation in core poverty neighborhoods -- as well as tackling such related issues as transportation, child and health care;
7. and until affordable housing is available, lawsuits calling for mandatory metropolitan-wide desegregation and adequate education in the inner ring schools.

The Federal and State Governments also have roles to play in fostering reform through regionalism.<sup>272</sup> The federal government can provide incentives to promote the formation of visionary metropolitan governments and provide these governments with bonuses in grants-in-aid formulas. State governments can facilitate city-county consolidation, require all local governments to have “fair share” affordable housing laws, utilize state aid as a revenue-equalizing mechanism, and require a minimum guaranteed income or minimum living wage.

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<sup>270</sup> *Id.*

<sup>271</sup> *Id.* at 11, 87-90; RUSK, CITIES WITHOUT SUBURBS 85-87(1995).

<sup>272</sup> *Id.* at 90-115.

Regionalism, however, often meets resistance from persons of color because it is perceived as having the ability to fragment their communities. As Cornel West argues, the dispersion of black professionals and entrepreneurs into predominantly white communities does little to change the culture and values of the white opportunity structure.<sup>273</sup> Instead, the argument goes, deconcentration of persons of color results in both their assimilation into more affluent areas and the dilution of their culture and political power<sup>274</sup> in areas where white flight and poverty persists.

As such, Orfield argues that proponents of regionalism must carefully communicate to minorities the hopelessness of the present course of action and the patterns of polarization it produces.<sup>275</sup> Metropolitan efforts should not be presented as alternatives to existing programs or as competition for resources and power. Instead they should be presented as complementary efforts that reduce problems in the center cities to a manageable size and provide more resources for development through such programs as tax revenue sharing. Furthermore, persons of color can be convinced that regional fair housing opportunities and metropolitan-wide desegregation efforts do not force their communities to disperse but allow individuals a *real* choice to remain or seek opportunity elsewhere. Although the difficulty of fostering a regional approach cannot be underestimated, it must be undertaken or any attempts at truly integrating schools will fail and conditions throughout a metropolitan area worsen.

### **b. Community Coalitions**

To aid in the adoption of effective regional strategies, community leaders can coordinate efforts among those fostering integration and those dealing with transportation, housing, tax policy, metropolitan planning and anti-discrimination policies. They can also form connections with influential foundations, institutes, corporations and government agencies to increase support and resources of local programs. Interracial grassroots organizations can exert pressure on administrators to affect innovative changes and punish non-changes in local schools. Active monitoring groups or blue-ribbon committees can educate the public about true integration and prevent incomplete knowledge from resting in the hands of educators. Clergy can mobilize to support racial equality and interracial contact within their congregations as well as throughout the community. Local universities and businesses can adopt particular schools and provide a link to equal educational and employment opportunities. And all community members can work toward neutralizing those groups who resist desegregation much less true integration.<sup>276</sup>

## **A. Transforming Public Discourse**

### **1. On Race**

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<sup>273</sup> CORNEL WEST, *KEEPING FAITH: PHILOSOPHY AND RACE IN AMERICA* 282 (1993).

<sup>274</sup> *See generally*, Lani Guinier, *More Democracy*, 1995 U. CHI. LEGAL F. 1, 6 (1995).

<sup>275</sup> M. ORFIELD, *supra* note 135, at 169.

<sup>276</sup> Crowfoot and Chesler, *supra* note 150.

Moving to an even bigger task in this "integrated" approach to true integration, the importance of eradicating "colorblindness" from our public discourse can not be over-emphasized. To quote Oscar H. Gandy, Jr., in his 1998 book *Communication and Race: A Structural Perspective*, "There is little doubt that it is through communication that the structural influence of racism is maintained and power distributed." It is necessary, therefore, to challenge the public story that racism is a thing of the past, and that other battles have been or are being won – the "war on drugs", welfare reform, equal opportunity in employment, and of course, integrated housing and education.

The first step we must take in achieving this transformation of public discourse is to recognize race as a social construct. As we know today, race has little scientific reality; but it does have a powerful social reality – it orders and affects our real-life experiences. White America has always signified who is entitled to privilege, as we see so clearly in the case of educational disparities.

The second step we must take in achieving this transformation of public discourse is to expose the institutional, structural and systemic nature of racism. Laws and institutions need not be explicitly racist in order to disempower communities of color; they need only to perpetuate unequal historical conditions.<sup>277</sup> In the context of education, while de jure segregation has disappeared, de facto segregation and resegregation persist, fueled by the maintenance of residential segregation. As such, while neutral on its face, the entire education system functions in racist ways.

Unfortunately, this type of racism often goes unacknowledged in our public discourse, allowing whites to retain their over-subscription to resources and opportunities.<sup>278</sup> For this reason we must transform our discourse and acknowledge publicly that institutional, structural and systemic racism implicates us all.

While this transformation might seem improbable, especially after September 11 (which has functioned to limit public discourse on many levels), and while this transformation will only occur over time – we have experienced glimpses of it recently. Racial profiling, for example, was not part of our national discourse until a massive public education campaign and coalition building effort, undertaken largely by the ACLU, managed to shift legislatures into high gear over the past several years. Now close to half of the states have or are considering data collection legislation. Even more recently, we have seen a shift in discourse surrounding welfare reform. Since "welfare as we know it" was ended under the Clinton administration (which meant a shifting away from federal entitlements to state-driven, work first, time-limited programs with severe sanctions for non-compliant users) we have seen a counter-discourse emerge stressing the long term goal of "poverty-reduction" rather than the short term goal of welfare roll reduction.

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<sup>277</sup> Richard Thompson Ford, *The Boundaries of Race and Political Geography in Legal Analysis*, in CRITICAL RACE THEORY 449-450 (Kimberle Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas, eds., 1995).

<sup>278</sup> *Id.*

Unfortunately, our inability to embrace integration in our educational reform efforts suggests we have not yet begun a transformation of public discourse when it comes to education.

## 2. On Choice

Transforming school choice discourse would require us to view education as a social good rather than a private commodity. As argued earlier, education is the site of the constitution of the self and the basis for the creation of a more equitable multi-racial and multi-ethnic democracy. Because of the collective persistence of segregation and concentrated poverty, effective remedies cannot be furnished by purely individualistic solutions such as letting students choose their schools one-by-one. The rights of our children to a truly integrated education cannot be fully achieved in isolation from what happens to other children. Rather, we need a coordinated systemic action that safeguards against white supremacy and forces choices that foster segregation.<sup>279</sup> This requires talking about how racism compromises real choice. If students and parents of color were allowed to meaningfully participate in the creation of school and educational goals and practices, all students and parents would have a different set of choices.<sup>280</sup>

If we transform our discourse about choice, it may result in more educational decision making on the part of individuals. Again, while this has yet to happen when it comes to integration in education, we have seen glimpses of it in other areas. In fact, choice discourse can even be couched in economic terms. The viability of the entire community, whether metropolitan or global, requires an educated citizenry, not a perpetual underclass. It is in our own self-interest, if you will, to choose what is good for the whole, rather than just for our individual selves.

## IV. Conclusion

The myriad of initiatives required to achieve true integration in our communities and schools must not deter us from the task. Rather, we must undertake a massive campaign to educate the public as to their necessity. Armed with the knowledge that segregation harms our children as well as our democracy, and ready to admit that we have not done desegregation well enough, we can combat the colorblind position and the predominance of school choice and accountability measures by advocating a transformation of our educational system into a multi-racial and multi-ethnic one. To achieve such a transformation, however, we must first take off our individualistic blinders and see the connections between who we are and where we live and what we want for our kids and our nation. That is, we must integrate our lives with our efforts. Only then will we be able to truly integrate our schools.

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<sup>279</sup> powell, *supra* note 2, at 680, *citing* Paul Gewirtz, *Choice in the Transition: Desegregation and the Corrective Ideal*, 86 COLUM. L. REV. 728, 751 (1986).

<sup>280</sup> *Id.* at 681.