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Education and Urban Society 2009; 41; 562 originally published online Apr
16, 2009;

DOI: 10.1177/0013124509333578

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The Re-Segregation of Public Education Now and After the End of *Brown v. Board of Education*

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Approximately 50 years ago, *Brown v. Board of Education* was viewed by many as a turning point in American history that crystallized a national movement to eliminate state-enforced racially segregated public education. However, in recent years many parents, educators, and policy makers in education have begun to question whether *Brown* has made a substantive or symbolic impact on racially desegregating or providing quality education equity. Growing concerns about the ability of *Brown* to bring about meaningful desegregation and equity in education are exacerbated by the 2007 Supreme Court decision in *Parents Involved in Community Schools v. Seattle School District No. 1*. This article examines the re-segregation of public education in the post-*Brown* era, the implications of the recent Supreme Court ruling on voluntary integration plans, and strategies school districts may employ to promote school integration within the parameters of this Court decision.

Keywords: *school desegregation; federal education policy; minority education*

Introduction

Approximately 50 years ago, *Brown v. Board of Education* (1954) was viewed by many as a turning point in American history that crystallized a national consensus for change in public schools. In this case, the Supreme Court unanimously held that the de jure segregation of public schools on the basis of race violated the Equal Protection Clause of the Fourteenth Amendment (Russo, Harris, & Sandidge, 1994). However, in recent years many parents, educators, policy makers, and stakeholders in education have

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begun to question whether *Brown* has made a substantive or symbolic impact on educational equity.

The growing concerns about the ability of *Brown* (1954) to bring about meaningful change in relation to access and equity in education are exacerbated by the recent Supreme Court decision in *Parents Involved in Community Schools v. Seattle School District No. 1* (2007). Ironically, the central legal issue before the Supreme Court justices 53 years ago in *Brown* addressed whether public schools could be “required” to integrate, whereas the legal issue in *Parents Involved* was whether public schools are permitted to “voluntarily” integrate. The striking dissonance between the central legal issues in the pre- and post-*Brown* judicial era illustrates the changing legal tools that are available to assist educators in promoting educational equity and averting increased segregation in public schools.

This article examines the re-segregation of public education in the post-*Brown* (1954) era. The first part highlights the current educational landscape in public schools and discusses whether *Brown* made a substantive or symbolic impact on school integration. The second part provides a legal analysis of *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) and discusses the implications for school integration. The final concludes with a myriad of strategies school leaders may utilize in addressing the re-segregation of our nation’s public schools.

***Brown*: Substantive or Symbolic Impact?**

The recent 50th anniversary of *Brown v. Board of Education* (1954) was overshadowed by the unsettling reality that the nation’s public schools are rapidly re-segregating. Despite the sense of optimism and hope brought forth by the *Brown* decision as a catalyst for change in America, current re-segregation trends suggest there is still much progress to be made to produce quality education for racial minorities. As a result, many policy makers and stakeholders in education are beginning to question whether *Brown* has made a symbolic or substantive impact on educational equity in America.

According to Fisher, Hartman, Cullen, and Turner (2002), “Laws serve two functions: (1) symbolic and (2) substantive. The symbolic function of law includes such goals as reaffirming cherished values and show that something positive is being done about a perceived social problem” (p. 61). Symbolic legislation is designed to satisfy those who advocated for the cause, regardless of its effectiveness in addressing the problem. However, the

substantive function of law is designed to promote changes that have practical utility, changes that directly help solve the issue the law was created to address (Fisher et al., 2002). Substantive legal reform makes a positive impact on the social problem the law was designed to solve. Thus, in applying this principle to *Brown v. Board of Education* (1954), the current educational milieu suggests that *Brown* has made more of a symbolic as opposed to substantive impact on school integration because many of the nation's school districts failed to desegregate following *Brown*; and schools that were once integrated are rapidly re-segregating (Orfield & Lee, 2005, 2007).

The lack of commitment by many school systems to integrate fully is evident by the large number of school systems still under court-ordered mandates to desegregate. Many racial and ethnic minorities expected *Brown* (1954) to bring about widespread substantive reform that would ensure the full integration of public schools (Bankston & Caldas, 2002; Jones & Hancock, 2005; Manning, 2005). Yet, five decades later, the promise of *Brown* has yet to be fulfilled. According to the U.S. Department of Justice (2008), in 2007 there were 70 school districts in Georgia still under court-supervised desegregation plans, 58 in Alabama, 55 in Mississippi, 31 in Louisiana, 17 in Texas, 13 in Tennessee, 12 in Florida, 7 in South Carolina, and 13 other states with at least one or more school districts that have yet to fulfill the 1954 court mandate ordering all racially segregated public schools to desegregate.

The harsh reality is that more than 250 school districts still operate dual school systems, which are not only separate but inherently unequal as well. The rapid growth of segregated minority schools is most evident in urban settings, which are characterized by high-poverty, high-minority student populations. For example, large urban school districts such as Atlanta Public Schools and Chicago Public Schools have student populations that consist of 92% students of color and 8% White, with more than half of the students eligible for free and reduced lunch (Table 1).

Segregated minority schools are also characterized by substandard academic achievement outcomes, low graduation rates, and poor teacher quality (Berliner, 2006; Hollins, 2006; Love & Kruger, 2005; Orfield & Lee, 2007; Yates & Collins, 2006). For instance, a 2006 research report funded by the Bill and Melinda Gates Foundation revealed that three of the largest segregated school districts, Detroit, Baltimore, and New York City, graduated fewer than 40% of students during the 2005-2006 academic year (Swanson, 2006). In addition, districts with high minority populations such as in Los Angeles exhibit tremendously low student academic achievement outcomes, as evident by the more than 324,000 students that were eligible to receive No Child Left Behind (NCLB) Supplemental Education Services for the 2007-2008 academic school year because they attended schools that

Table 1
Public School Student Enrollment Data in Schools With
High Minority Populations, 2007-2008 Academic Year

School District	% Black	% Latino	% Asian	% Native American	% White	Total % Students of Color	% Free and Reduced Lunch
Atlanta Public Schools	86	4	1	1	8	92	75
Boston Public Schools	41	35	9	1	14	86	71
Chicago Public Schools	49	39	3	1	8	92	85
Detroit Public Schools	90	5	1	1	3	97	70
Los Angeles Unified Schools	11	73	4	3	9	91	76
St. Louis Public Schools	82	2	2	0	14	86	82

Source: Individual State Department of Education annual reports.

failed to meet NCLB's student achievement benchmarks (Los Angeles Unified School District, 2008).

The current educational landscape appears to illustrate that substantively there is still much progress to be made toward achieving the promise of *Brown* (1954); but it is also important to highlight the symbolic benefits from *Brown* that have made positive impacts. For example, *Brown* sent a message to the nation's schools that all children should receive a quality education regardless of their race or ethnicity. This Court decision also reaffirmed cherished values embedded in the Declaration of Independence, which states that "all men are created equal," thus symbolically imparting a civic and moral responsibility upon school officials to dismantle segregated school systems. The role of courts has become increasingly influential in changing the institutional structures of public education and influencing the moral fabric within the education community and beyond.

The Role of Courts

Historically, the courts have played an integral role in protecting the rights of students who are denied a quality education because of a disability, poverty, race, or language deficiency (Walker, 2005). This is primarily

due to the unique position of courts; the courts may also enact widespread education reform through their judicial decisions. The degree to which courts are involved in education reform has varied throughout the years. During the first decade after *Brown* (1954), the Supreme Court remained silent on the issue of school desegregation. As a result, very little substantive progress was made toward integrating schools.

Many legal scholars assert that the slow progress toward fulfilling the promise of *Brown* (1954) is largely attributable to the limited role of courts in ensuring that desegregation mandates were followed. More specifically, many perceived the Court's initial role in the desegregation process as a *laissez-faire* approach, which failed to assert full enforcement power in the aftermath of the case (Guthrie & Springer, 2004). Meaningful school desegregation did not begin to occur until after the enactment of the 1964 Civil Rights Act under the Johnson administration, because it provided an effective enforcement tool through the denial of federal funds and the active pursuit of lawsuits against school districts that continued to intentionally segregate by race (Orfield & Lee, 2007). As a result, significant progress was made toward desegregating schools between 1964 and 1988. However, this wave of progress toward school integration was short-lived due to a series of anti-desegregation court rulings.

Ideally, the role of court decisions in the education milieu is to serve as a powerful impetus to ensure that all children receive high-quality public education and to generate substantive as opposed to symbolic educational reform (Hall, 2005; Walker, 2005). However, this has not always been the outcome in relation to school desegregation cases. In the 1990s, three Supreme Court cases significantly shaped and influenced the resegregation of public schools by relaxing desegregation standards. In the first case, *Board of Education of Oklahoma City v. Dowell* (1991), the Court ruled that court-ordered busing mandates could be eliminated when the re-segregation of school districts was due to private choices and a finding that those districts have made a good faith effort to attempt all practical measures to eliminate segregation. This case established that school districts could declare themselves unitary (fully racially desegregated), terminate desegregation mandates, and return control to local school boards even if it resulted in segregated schools. *Dowell* is significant because it diminished the notion of school district accountability for maintaining integrated schools once unitary status is achieved.

In *Freeman v. Pitts* (1992), the Supreme Court held,

Where re-segregation is a product not of state action but of private choices, it does not have constitutional implications. . . . It is beyond the authority and

beyond the practical ability of the federal courts to try to counteract these kinds of continuous and massive demographic shifts. (p. 491).

Finally, *Missouri v. Jenkins* (1995) significantly impacted school integration efforts because it further defined the point in which a school district may be released from a court desegregation order. This ruling also established that district courts cannot require a state government to fund educational improvement programs such as magnet schools for the purposes of remedying de facto racial inequality in schools.

Collectively, *Dowell* (1991), *Freeman* (1992), and *Missouri* (1995) demonstrated that the role of the courts in remedying intentional school segregation would be limited both substantively and temporally. These three Supreme Court cases established that it is permissible for desegregation orders to end when a school district has demonstrated that it has complied with the court mandate, even if removing the desegregation order results in re-segregation. As a result, legal scholars contend that *Dowell*, *Freeman*, and *Missouri* significantly contributed to the systematic re-segregation of public schools by ending the era of mandatory school desegregation (Orfield & Thronson, 1993). The next significant Supreme Court ruling regarding school desegregation emerged more than 10 years later in *Parents Involved* (2007). Although the Supreme Court ruled in *Brown* (1954) that school officials could not use race to “segregate” students, *Parents Involved* addressed whether schools boards are permitted to use race to “integrate” students.

Legal Analysis: *Parents Involved in Community Schools v. Seattle School District No. 1*

The central legal issue before the Supreme Court in *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) and *Meredith v. Jefferson County School Board* (2006) concerned whether school boards are permitted to consider race in student assignment plans in order to achieve or maintain racially integrated schools. These two districts, like many throughout the country, recognized the social and academic benefits of racially integrated schools and thus voluntarily created race-conscious student assignment plans to circumvent the re-segregation of their schools. Although both cases involve the same fundamental legal issue, there are salient differences in relation to the contexts in which each plan is situated.

The Louisville, Kentucky, Plan

In 1975, the federal court ruled that Jefferson County Public Schools maintained a segregated school system despite the mandate in *Brown v. Board of Education* (1954), which prohibited segregated schools. As a result, Jefferson County Schools operated under a court-ordered desegregation decree from 1975 to 2000. In 2000, the Jefferson County Public School District provided sufficient evidence to the District Court that it had achieved unitary status by eliminating all vestiges of past discrimination. As a result, the District Court lifted the court-ordered desegregation decree.

One year later, the school board voluntarily adopted a race-conscious student assignment plan in an effort to maintain a racially integrated schooling environment. Under the plan, students are grouped into attendance zones based on their home address, which dictate initial school assignments. Next, parents and students are provided with various school choice options among educational programs and schools (e.g., magnet schools) within their designated attendance zone. The primary goal of the attendance zones and school choice opportunities is to maintain a minimum of 15% and no more than 50% Black enrollment in each school. This school district's student assignment plan was designed to achieve this racial balance by assigning students based on available space within the schools and applying racial guidelines outlined in the district's assignment plan. Students denied the initial school of their choice may request a transfer to another school within or outside their attendance zone. According to the Jefferson County director of school assignment, 95% of students received their first or second school choice.

The Legal Conflict: Louisville, Kentucky

A year after the plan was implemented, a conflict arose when Crystal Meredith's son, a student attending Jefferson County Public Schools, was assigned to an elementary school 10 miles away from his home, as opposed to his neighborhood school located approximately 1 mile from his home. Crystal Meredith made additional transfer requests on behalf of her son, Joshua, but to no avail. According to the Jefferson County School Board, Meredith's school assignment requests were denied because her son's enrollment in both his neighborhood school and other requested schools would have adversely affected the racial balance of those schools. As a result, Meredith filed suit in the District Court alleging that the school district's denial of Joshua's school transfer requests based on his race constituted

discrimination, thus violating the Equal Protection Clause of the Fourteenth Amendment.

The federal trial court ruled in favor of the Jefferson County School District, finding that the student assignment plan was flexible and utilized a host of other characteristics (e.g., school and program popularity) as opposed to solely relying on race in selecting student assignments. Because race was not the sole selection criteria, the court reasoned that the plan withstood constitutional scrutiny and did not violate the Equal Protection Clause of the Fourteenth Amendment. The Sixth Circuit upheld the federal court decision in favor of Jefferson County. Meredith then appealed to the Supreme Court.

The Seattle, Washington, Plan

Seattle, unlike Louisville, has never operated a segregated school system or been subject to a court-ordered desegregation decree. However, Seattle Public Schools have struggled to maintain racially integrated schools for more than 40 years due to the emergence of *de jure* segregation as a result of Seattle's segregated housing patterns (Wilkinson, 2007). The majority of the school district's White students reside in the north, whereas the majority of non-White students are concentrated in the south. Thus, historically the demographic compositions of Seattle's neighborhoods have produced high-poverty, high-minority schools in the south and predominately affluent White schools in the north.

In 1998, the Seattle School District adopted an open choice student assignment plan as part of its ongoing efforts to dismantle their segregated school system. Under this plan, which was limited to high schools, students were allowed to rank their school choice in order of preference. Because some schools and specialized programs were more popular than others, the district's plan utilized a series of tiebreakers to determine which students were assigned to oversubscribed schools. The first tiebreaker gave preference to students with siblings currently enrolled in the particular school. The second tiebreaker considered the student's race in relation to the racial composition of the school. The race tiebreaker was utilized if the White enrollment of the school was not within 15 percentage points of the White enrollment districtwide, which was approximately 40%. If needed, the third tiebreaker assigned students based on the geographic location of the school in relation to the student's residence.

The Legal Conflict: Seattle

Andy Meeks, a ninth grader, applied to attend Ballard High School's Biotechnology Career Academy. Although Andy was accepted into the

selective biotechnology program, he was assigned to another high school through the school district's use of the racial tiebreaker component of the student assignment plan. As a result, *Parents Involved*, a nonprofit organization composed of Seattle Public School parents, filed suit in federal court on Andy's behalf alleging that the school district's use of race in student assignments violated the Equal Protection Clause of the Fourteenth Amendment. The federal trial court ruled in favor of the Seattle board. Andy's parents appealed all the way to the Supreme Court.

Conflict Resolved: Supreme Court Ruling

During the summer of 2007, the Supreme Court announced what many view as the most significant case addressing race in a decade. Both the Seattle and Louisville voluntary integration plans were struck down by the Court as a violation of the Equal Protection Clause of the Fourteenth Amendment, and thus unconstitutional. In a 5-4 decision, the U.S. Supreme Court held that school districts may not assign or deny students to schools on the basis of race, even if the intent is to achieve racial integration.

Parents Involved in Community Schools v. Seattle School District No. 1 (2007) is a daunting setback toward guaranteeing every child not only access to public education as mandated by *Brown* (1954) but a quality education as well. This is primarily because the decision drastically limits the tools available to school officials to address emergent re-segregation patterns. Furthermore, *Parents Involved* has strong implications for the future of affirmative action programs in public education contexts. Specifically, the Court's decision sends a symbolic message that is likely to end affirmative action programs in public education, which is problematic because it will hinder current efforts to prevent the continued trend of separate and unequal schooling systems.

School Integration Strategies

As school districts nationwide remain under court-ordered desegregation plans and public schools continue to re-segregate at alarming numbers, it is imperative that educational leaders develop innovative integration strategies that can withstand judicial scrutiny. Based on Justice Kennedy's concurring opinion in *Parents Involved* (2007), schools may employ race-conscious policies that do not take a student's individual race into account, such as site selection of new schools, resource allocation, student and faculty recruitment, and neighborhood demographics, when establishing district attendance lines.

In addition, many school systems such as the School District of La Crosse, Wisconsin, have implemented school assignment plans that assign students based on socioeconomic status as opposed to race (Kahlenberg, 2007). Surprisingly, assigning students based on socioeconomic status as opposed to race is not a new phenomenon. School districts such as La Crosse have utilized this integration tools since the late 1970s (Kahlenberg, 2007). This school integration strategy tends to be more effective in school districts with demographics similar to Seattle, Washington, in which the majority of White affluent students are concentrated in the north and the majority of high-poverty/high-minority schools are concentrated in the south. Other school districts such as Wake County Schools and the Charlotte-Mecklenburg Public Schools, North Carolina, have developed school integration plans that use a combination of socioeconomic status of students as a proxy for race (Godwin, Leland, Baxter, & Southworth, 2006; Mickelson & Southworth, 2005).

School integration strategies in urban school systems will require different approaches due to the high-poverty, high-minority student demographics and insufficient resources. Although student and faculty recruitment is an integration tool that may be used by urban districts, approaches such as the design of district attendance lines and use of the socioeconomic student placement model may not be as effective in those settings due to the lack of racial diversity among students. Another strategy that would be particularly effective in integrating suburban and urban schools systems involves the increased development of high-quality magnet schools for the purposes of attracting White students from neighboring suburbs. Due to current funding disparities in funding urban and suburban schools, there is a need for some type of governmental program to equip urban districts with sufficient resources to create attractive intradistrict magnet school programs. For example, the U.S. Department of Education could create an urban magnet school initiative that would grant additional funding to urban school districts for the purpose of developing magnet school programs.

Conclusion

The court has changed significantly since 1968. It was then more faithful to Brown and more respectful of our precedent than it is today.

Supreme Court Justice Breyer

More than 50 years after the landmark *Brown v. Board of Education* (1954), many public schools remain separate and unequal. The current disparities within K-12 schools between Black and White neighborhoods suggest that we still have a long way to go on the journey toward school integration and education equity within public schools. As indicated in the previous statement by Justice Stevens, we can no longer rely solely on the court system to remedy the continuous presence of segregated school systems. As history has shown us, one court decision or legislative mandate is not enough to sustain meaningful, systemic education reform. Achieving education equity in America will require changing the moral compass of citizens by instilling a strong sense of civic responsibility in ensuring that every child has access to a quality education. These educational goals and values must permeate at every level of society, transcending beyond race, gender, and class. This will ensure that policies and legislative mandates designed to foster school integration are successfully implemented.

As we continue to evolve into a more global society, it is imperative that stakeholders in education produce equal educational opportunities to produce citizens who have an appreciation for the racial and ethnic diversity that reflects our world. Furthermore, we need more in-depth social science research for the purpose of establishing a correlation between current patterns of residential segregation in segregated districts and prior acts of school segregation (Ryan, 2003). This would help bolster the argument that current high-poverty, high-minority demographics plaguing segregated school districts are vestiges of past discrimination that have yet to be removed.

Ultimately, the legacy of *Brown* (1954) must be fulfilled to ensure that every child has the opportunity to become productive citizens in this new age of economic globalization, where the nation needs to utilize all of its resources to remain competitive in this new environment. It must be remembered that because the fight for integrated public schools was designed to provide Black children with the same quality of education as their White peers, integrated schooling per se was merely a means toward that end, quality education. Therefore, if the legal system not the political system will eliminate segregation and buy into only neighborhood school attendance zone, then government must find the resources to equalize the quality of education in every neighborhood. This is not an argument against *Brown* or integrated schools; it is an argument that we can have integrated schools and quality education for Black and White children as is currently practiced in several school districts using the social-economic status of students.

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