



The Federal Role and School Integration

Brown's Promise and Present Challenges

Janel George and Linda Darling-Hammond

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Acknowledgments

In 1951, a 16-year-old sophomore at Robert Russa Moton High School in Farmville, VA—Barbara Rose Johns—staged a student protest of the segregated school’s deplorable conditions and set in motion events that would change the course of history. Those events would culminate in the U.S. Supreme Court decision of *Brown v. Board of Education*, which signaled the death knell for Jim Crow education and the “separate but equal” doctrine. We thank her and the countless other students who demanded—and continue to demand—quality educational opportunities. We would like to acknowledge the educators, parents, families, and students who courageously stood—and continue to stand—on the front lines of integration efforts in service of securing access to quality educational opportunities for all children.

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Executive Summary

Rooted in the “separate but equal” doctrine upheld in *Plessy v. Ferguson*, the systematic denial of educational opportunities to African Americans and other students of color has marred the education landscape in the United States and subjected many students to an inferior education. The Supreme Court’s invalidation of separate but equal in *Brown v. Board of Education* (1954)—the cumulative legal effort to dismantle Jim Crow education—promised to expand access to quality educational opportunities to all students, regardless of race or ethnicity.

The federal role has frequently been significant in promoting equitable access to quality educational opportunities, although that role appears threatened today given recent rescission of federal guidance supporting voluntary integration in schools across the country. This report reviews that guidance, along with the educational inequities of segregated schools, the benefits of diverse schools, and examples of current district actions and strategies for voluntary integration that point to possibilities for creating diverse schools that serve all students well.

The Federal Government’s Role in School Integration

The federal government has a limited, but significant, role in promoting access to equal educational opportunities. Ensuring state and local compliance with desegregation orders following *Brown* required decades of federal enforcement, oversight, and litigation, including passage of the Civil Rights Act of 1964 and the Elementary and Secondary Education Act of 1965. Through such enforcement and oversight the federal government helped to expand access to equal educational opportunities and support districts in dismantling all vestiges of segregated education “root and branch.”

Some presidential administrations have played a key role in enforcing *Brown* and promoting school diversity using both the bully pulpit and enforcement powers. These powers include implementation and enforcement of federal civil rights law; use of investigative and oversight powers; data collection and dissemination; budgetary requests; and issuance of guidance, regulations, and statements of administration policy. These actions are consistent with evidence about the school conditions that are necessary for students to learn and thrive.

The Benefits of Diverse Schools

Although integrated education is not a panacea, the research of psychologists Kenneth and Mamie Clark, presented in a *Brown* amicus brief supported by more than 30 social scientists, is compelling and consistent: Integrated education can benefit all students. Over half a century later, in 2007, more than 550 social scientists submitted a similar amicus brief to the Supreme Court as it considered integration efforts advanced in Seattle and Louisville in the case of *Parents Involved in Community Schools v. Seattle School District No. 1*. That brief and other recent research reviews show that integrated schools contribute to

- promoting tolerance;
- developing cross-cultural understanding;
- eliminating bias and prejudice;
- increasing the likelihood of students living in integrated neighborhoods as adults and holding jobs in integrated workplaces later in life;

- improving academic achievement and critical thinking skills;
- improving educational attainment; and
- promoting civic participation in a diverse global economy.

As an example, one study of the effects of court-ordered desegregation on students born between 1945 and 1970 found that African American students' graduation rates climbed by 2 percentage points for every year students attended an integrated school, and exposure to court-ordered desegregation for 5 years was associated with a 15% increase in wages and an 11 percentage point decline in annual poverty rates, with no negative impact on White student outcomes.

The Dangers of Racial Isolation and Alternatives to Promote Integration

Despite well-established evidence demonstrating these benefits, public schools are today increasingly segregated along both racial and socioeconomic lines. Many racially isolated schools are also characterized by high percentages of students living in concentrated poverty and are known as institutions of “concentrated disadvantage.” Research underscores that racial isolation is often accompanied by other educational disparities that undermine educational experiences and outcomes, including inexperienced educators, lack of access to quality curriculum, and lack of quality facilities or access to technology.

These schools of concentrated disadvantage are reminiscent of the racially isolated schools established during the regime of the separate but equal doctrine and Jim Crow, which the *Brown* case sought to eradicate.

The Supreme Court's decision in *Parents Involved* slowed progress toward advancing racial diversity of elementary and secondary schools. The ruling struck down as unconstitutional programs adopted by the Seattle and Louisville public school systems that relied in part on student race in determining school assignments. This decision came despite the Court's holding that seeking diversity and avoiding racial isolation are compelling interests for school districts and that race can be a factor used for school assignments. However, misinterpretations of *Parents Involved* have led some districts to believe that race cannot be a factor in plans to promote school diversity, leading to a chilling effect on voluntary integration programs, with many school districts abandoning their desegregation efforts.

To address the confusion surrounding the decision in *Parents Involved* and to support voluntary and proactive school district efforts to advance racial diversity in schools, the Departments of Justice and Education under the Obama administration issued voluntary guidance to help districts achieve diversity and avoid racial isolation in ways consistent with existing law. The guidance suggests approaches that do not rely on the race of individual students (also called “race-neutral” approaches) and approaches that rely on individual racial classification only when narrowly tailored to meet a compelling interest. These include:

- **School and program siting decisions** that locate schools, such as magnet schools, and special programs in ways that help achieve diversity or avoid racial isolation.
- **Decisions about grade realignment and feeder patterns** based on examinations of available data to identify disparities and design school grade alignment or feeder patterns that help mitigate disparities.

- **School zoning decisions** that assign students to schools based on attendance zones in ways that promote diversity, rather than assigning students based solely on their geographic proximity to schools.
- **Choice and open enrollment decisions** that allow parents to choose (or rank by preference) schools within or across school districts. The district then assigns students based in part on parental choice in ways that help achieve diversity or avoid racial or economic isolation.
- **Admission to competitive schools and programs** that may give special consideration in admissions to students from neighborhoods selected specifically because of their racial composition and other factors (i.e., treating all students who live in the same neighborhood alike, regardless of their race).
- **Inter- and intradistrict transfers** that allow students to transfer among schools in ways that promote racial diversity and reduce racial isolation.

The diversity guidance also noted that if a school district finds any of these approaches unworkable or ineffective in achieving diversity or reducing racial isolation, it may consider a student’s race as one factor among others in considering how an individual student’s school assignment may help achieve diversity or avoid racial isolation consistent with the law.

Despite historic federal support for integration efforts, the Trump administration has rescinded this voluntary guidance, thereby reducing the resources districts have available to find strategies for effective voluntary integration.

Evidence-Based Strategies for Creating Diverse Schools

Several districts provide examples of how the Obama-era guidance can work in practice. For example:

In **Louisville–Jefferson County, KY**, early court orders mandated busing between the mostly African American city district and the mostly White suburban areas of the county. By the 1990s, Louisville–Jefferson County was the most integrated school district in the nation. The plan has evolved into a choice program in which parents rank their school preferences, and the district weighs factors such as socioeconomic status and educational level when determining school assignment to achieve diversity across schools. Parents can also choose special programs such as magnet programs or language immersion programs. The county’s actions represent sustained voluntary integration efforts using many of the tools detailed in the guidance.

The **San Antonio Independent School District** in Texas has also implemented a controlled choice program—known as Diversity by Design—that provides a wide range of education options, such as Montessori, college preparatory, and Expeditionary Learning schools, combining parental preference with data to ensure school diversity is achieved. It (1) reserves half the seats in in-district charter schools for students from economically disadvantaged backgrounds and leaves the other half open to all income levels, and (2) prioritizes seats for students from specific geographic areas (within “priority radii”) to ensure socioeconomic diversity. It also chooses school locations from which middle-class and historically disadvantaged families can be drawn, designs schools to meet the interests of diverse families, and ensures that families from disadvantaged communities can secure transportation to their chosen school.

In **Hartford, CT**, desegregation litigation in the 1990s led to a voluntary interdistrict Open Choice program featuring magnet schools that designed desegregated educational opportunities and supported transfers with both state and local funds. A 2013 analysis of the program found that students participating in the Magnet and Open Choice programs were outperforming Hartford students attending other public schools and performed well in comparison with the state's averages for all students. The analysis also found that more than 45% of Hartford's African American and Latino/a k–12 students attended schools in reduced-isolation settings.

These district strategies demonstrate that there are multiple pathways to promote school diversity in fulfillment of *Brown's* promise of access to quality educational opportunities for all students. Continued efforts to promote school integration show that realizing that aim is possible, even in light of current challenges and despite the current lack of federal guidance to assist districts in shaping solutions. The evidence is strong: Our children's civic engagement, educational experiences, and outcomes as well as our nation's future global competitiveness all stand to benefit from diverse schools and our continued commitment to integrating schools.

Introduction

Today’s education landscape is marred by pervasive and often deepening educational inequalities. The kind of public school system the U.S. Supreme Court sought to eradicate in *Brown v. Board of Education*—one stratified along racial lines—persists. Today’s educational landscape too often features “double segregation” along both racial and socioeconomic lines¹ and exclusionary discipline practices that disproportionately impact students of color and push them further away from educational opportunity.

The federal government plays a limited—yet significant—role in promoting students’ access to educational opportunity. Although the U.S. Supreme Court has held that there is no federal right to education specified in the U.S. Constitution,² the federal government has helped ensure access to equitable educational opportunities through enforcement of federal civil rights law. For example, the Civil Rights Act of 1964, particularly its Titles IV and VI,³ gives the federal government a mechanism to require recipients of federal funds to comply with civil rights laws. This also enables the Department of Justice to address violations of the law through investigation and litigation.⁴ Furthermore, the Equal Protection Clause of the Fourteenth Amendment, upon which the *Brown* ruling is predicated, has been interpreted to prohibit legal segregation of public schools, effectively ending de jure school segregation.⁵

The federal government has worked to implement the law related to school desegregation, including by promoting racial integration of public schools and actively ensuring that districts and school boards comply with federal orders to desegregate public schools. As one scholar has observed, “In the first two decades following *Brown*, the Court seemed to want to ensure that the decision functioned to integrate schools. Although school boards attempted to avoid the requirements of the Constitution sometimes openly and defiantly—the Court issued decision after decision that sought to make them comply.... Further, the executive branch was also on board, vigorously enforcing desegregation requirements.”⁶

Past federal administrations have recognized the importance of the federal platform and bully pulpit and often acted to address persistent educational inequities and ongoing violations of students’ civil rights that states and districts left unresolved. After the *Brown* ruling, President Eisenhower dispatched troops from the 101st Airborne Division to accompany African American students integrating Central High School in Little Rock, AR, when local authorities defied desegregation orders.⁷ And the Elementary and Secondary Education Act (ESEA) of 1965 significantly expanded federal funding of education, accompanied by requirements for recipients of those funds to comply with federal civil rights law.

Past federal administrations have recognized the importance of the federal platform and bully pulpit and often acted to address persistent educational inequities and ongoing violations of students’ civil rights that states and districts left unresolved.

In addition to working with Congress on legislation, presidential administrations have a number of other tools at their disposal for playing a significant role in ameliorating educational inequalities. These include issuing federal guidance, regulations, and statements of administration policy, as well as use of investigative powers, data collection and dissemination, and budgetary requests. The Obama administration took advantage of these tools by issuing guidance on racial diversity, transgender students' rights, resource equity, and the nondiscriminatory administration of school discipline, among others.⁸ These nonbinding guidance documents were based on extensive research on what works in closing educational opportunity gaps and for improving student outcomes.

However, in contravention of this limited but significant federal role in education, the Trump administration has begun to rescind much of this guidance, potentially stalling, and perhaps even reversing, progress toward achieving educational equity.

These actions began with an executive order by the administration directing Secretary of Education Betsy DeVos to conduct a review of the federal role in education, including addressing "whether and how the federal government has overstepped its legal authority in k–12 schools."⁹ Since taking office, the Trump administration has withdrawn nearly 600 policy documents regarding k–12 and higher education¹⁰ and has rescinded, is considering rescinding, or has delayed implementation of the following federal guidance or regulations issued under the Obama administration.¹¹

The rescinded guidance described in the first bullet below is the subject of this report.

- **Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools** issued by the Civil Rights Division of the U.S. Department of Justice and the Office for Civil Rights, U.S. Department of Education. This guidance was issued to "explain how, consistent with existing law, elementary and secondary schools can voluntarily consider race to further compelling interests in achieving diversity and avoiding racial isolation."¹² Social science research has demonstrated that diverse learning environments benefit both White students and students of color—including by preparing them for global citizenship and social interactions with diverse peers.¹³ The administration rescinded this guidance on July 3, 2018.
- **Guidance on civil rights and school discipline** issued by the U.S. Department of Education and the U.S. Department of Justice describing how schools can meet their legal obligations under federal law to administer student discipline without discriminating against students on the basis of race, color, or national origin.¹⁴ Research shows that discriminatory discipline practices have a significant negative impact on students of color, including compromised educational outcomes due to lost instruction time and higher likelihood of involvement with the juvenile justice system.¹⁵ The administration rescinded this guidance and all supporting resources on December 21, 2018.

- **Guidance on the treatment of transgender students** issued by the U.S. Department of Education and the U.S. Department of Justice asking schools to treat transgender students according to their gender identity, including with respect to names and pronouns, restrooms, and dress codes. Research shows that transgender students experience high rates of bullying by peers and adults, and the stress of harassment and discrimination, including implementation of policies that do not treat students according to their gender identity, can lead to lower attendance and grades as well as depression, anxiety, and suicidality.¹⁶ This guidance was rescinded by the current administration in February 2017, one month after the president took office.
- **Individuals with Disabilities Act regulations** issued by the U.S. Department of Education “aimed at promoting equity by targeting widespread disparities in the treatment of students of color with disabilities” and at addressing a number of issues related to significant disproportionality in the “identification, placement, and discipline of students with disabilities based on race or ethnicity.”¹⁷ Research has shown how misidentification of African American children for certain special education categories obscures their real educational needs and compromises their educational outcomes.¹⁸ The administration has delayed the implementation of this regulation until July 2020.¹⁹ Recently, the administration has indicated that it might replace these regulations in 2019.

While these executive actions do not change the law governing students’ equal protection rights as articulated in the U.S. Constitution, they may hinder the speed and effectiveness of implementation and signal to states and districts a lack of federal commitment to upholding students’ civil rights and increasing access to equal educational opportunity.

This paper examines how this shift in the federal support for voluntary school integration efforts could impact students’ rights to access equal educational opportunities. We discuss the underlying research that has been used to inform and identify best practices for protecting students’ civil rights, the progress that has been made using research-based best practices, and the consequences of rolling back these protections for historically underserved students.

The Federal Role and School Diversity

The federal government has played a key role in advancing racial diversity in public education, including by issuing federal guidance to clarify how states and localities can promote racial diversity and reduce racial isolation in compliance with federal law. Although guidance does not impact existing law, it does signal an administration's position on important issues, such as racial diversity in schools, and it helps advance administration policy in that area by offering tools to local agencies to help them achieve the goals of the law, offering technical assistance as localities implement new strategies, and enforcing the law.

The federal government—including the courts and the executive branch—plays a significant role in encouraging states to act to ensure that all students have access to equal educational opportunities. The issuance of federal guidance has been a tool utilized to clarify federal laws protecting students and to promote evidence-based best practices that states can use consistent with federal law. Like prior administrations, the Obama administration used this tool to clarify federal law.

The Obama administration issued guidance to districts on how to promote racial diversity in k–12 schools and in colleges and universities. In particular, following key U.S. Supreme Court cases that left districts unclear about how to promote racial diversity in k–12 schools without running afoul of federal law, the administration's guidance clarified how districts could design and implement policies and practices to foster racial diversity and avoid racial isolation without negative legal implications. After announcing its intent to withdraw a number of the Obama-era guidance documents, in July 2018 the Trump administration rescinded key Obama guidance documents that address racial diversity in education, including:

- December 2, 2011, Guidance on the Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools;
- December 2, 2011, Dear Colleague Letter Regarding the Use of Race by Educational Institutions;
- December 2, 2011, Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education;
- September 27, 2013, Dear Colleague Letter on the Voluntary Use of Race to Achieve Diversity in Higher Education After *Fisher v. University of Texas at Austin* [*Fisher I*];
- September 27, 2013, Questions and Answers About *Fisher v. University of Texas at Austin* [*Fisher I*];
- May 6, 2014, Dear Colleague Letter on the Supreme Court Ruling in *Schuetz v. Coalition to Defend Affirmative Action*; and
- September 30, 2016, Questions and Answers About *Fisher v. University of Texas at Austin* [*Fisher II*].²⁰

The Trump administration has also threatened to withdraw guidance and regulations that could have significant repercussions for students of color, including regulations related to the misidentification of African American students for certain categories for special education.²¹ And although neither the guidance on racial diversity nor its rescission modifies or diminishes existing federal civil rights law, the Trump administration's rescission of the guidance, along with threats

to rescind additional guidance and regulations, leaves states without clarity and direction—or confidence in the executive’s support—for crafting and implementing policies and practices to advance racial diversity and reduce racial isolation in public schools.

Historical Context

The *Brown v. Board of Education* (1954) case and its aftermath demonstrate the importance of the federal role in education and the significance of social science research in exposing the harms of segregation and inequity in education. In reaching its ruling invalidating the separate but equal doctrine upon which racial segregation in public spaces was predicated, the U.S. Supreme Court carefully considered the research of the husband-wife psychologist team of Drs. Kenneth and Mamie Clark. The Clarks began their research more than a decade before the *Brown* ruling, using four dolls, identical except for color, to test young African American children’s racial perceptions²² and to “communicate ... the influence of race and color and status on the self-esteem of children.”²³ The Clarks’ research proved instrumental in demonstrating to the justices the psychic injury that racially segregated education inflicted upon African American children.²⁴ They also testified in other cases that were consolidated to become the *Brown* case,²⁵ and they co-authored a summary of research for the Court supporting racial integration and demonstrating the harm of racially segregated schools, which was endorsed by 35 leading social scientists.²⁶

However, the *Brown* ruling striking down de jure racial segregation did not end it. One scholar notes:

Other progressive race scholars have asserted that *Brown* was a flawed decision not simply because subsequent iterations of the Court retreated from it, but rather because it reflected a limited vision of racial justice. The critique is that *Brown* did not endeavor to end white dominance and black subordination; it simply sought to dismantle racial hierarchy in the form that it took at the time of the decision. As a result, the case left open the door for racial inequality to be reconfigured in different form.²⁷

In the wake of the *Brown* ruling, de facto segregation persisted, and endured. An era of massive resistance followed the ruling, during which segregation proponents defied court orders, closed public schools, established publicly funded “white ‘Christian’ academies,” or fled to the suburbs to circumvent school integration mandates. Prince Edward County Public Schools in Virginia closed its public schools for 5 years rather than comply with federal desegregation orders.²⁸ As a result, many African American families sent their children to live with relatives in other states or covertly sent their children to schools in nearby counties, often separating and devastating families.²⁹

Such defiance of court desegregation orders—often accompanied by racial terrorism—forced the federal government to act. For example, federal troops accompanied nine African American students as they integrated Central High School in Little Rock, AR, under threats of racial violence.³⁰ Although subsequent litigation—including *Brown II*,³¹ *Cooper v. Aaron*,³² *Green v. County School Board*,³³ and *Swann v. Charlotte-Mecklenburg*³⁴—along with mandates to localities to eliminate all vestiges of segregation “root and branch,” helped finally end Jim Crow education and advance public school integration, the federal government played an extremely consequential role in efforts to implement the Court’s ruling in *Brown*, desegregate schools, and advance racially integrated education. Federal support and intervention ensured that states complied with desegregation orders and that integration strategies were implemented safely.

History has shown that many states are less inclined to promote students' educational rights proactively when the federal government fails to do so—as demonstrated by the step back on enforcement of desegregation orders in the decades after *Brown*. It is unlikely that progress toward integration would have occurred in some Southern states had the federal government not acted to enforce compliance. The federal government's oversight role has been vital to ensuring equal educational opportunity for all students.

History has shown that many states are less inclined to promote students' educational rights proactively when the federal government fails to do so—as demonstrated by the step back on enforcement of desegregation orders in the decades after *Brown*.

The Federal Influence on School Diversity Efforts

The federal government's actions to implement *Brown* helped to advance racially integrated schools through its protection of students seeking to integrate schools; its use of its litigation, investigative, and regulatory powers to ensure compliance with desegregation mandates; and its ongoing technical assistance and supports to states and districts seeking to promote racial diversity.

The U.S. Department of Education and its divisions are charged with protecting student civil rights, including supporting racially diverse schools and the goal of integration. The mission of the department's Office for Civil Rights is to “ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools.”⁵⁵ Historically, it has done this by responding to and investigating civil rights complaints filed by the public, monitoring educational institutions' compliance with prior agreements, issuing policy guidance to clarify responsibilities under relevant civil rights laws, responding to requests for information, providing technical assistance to states and districts, and updating and administering the Civil Rights Data Collection featuring key aspects of educational quality throughout the nation.

The Educational Opportunities Section of the Department of Justice's Civil Rights Division has also played a pivotal role in overseeing and ensuring efforts to promote racially diverse learning environments. The Educational Opportunities Section enforces Titles IV and VI of the Civil Rights Act of 1964 as well as other significant federal civil rights and education laws, including the Equal Educational Opportunities Act of 1974, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and Title IX of the Education Amendments Act of 1972.⁵⁶ In addition, the Section manages a docket of over 150 open desegregation cases to which it remains a party.⁵⁷

Federal efforts were critical in advancing integrated schools, starting in the 1960s. Whereas only 1% of African American children in the South attended schools with White children in 1963, approximately 90% of African American children attended desegregated schools in the early 1970s.⁵⁸ This number peaked in the late 1980s—when not only did most African American students attend desegregated schools, but 44% attended majority-White schools (where 90% to 100% of students were White).⁵⁹

However, just as it has played a pivotal role in advancing racially integrated schools, the federal government has also at times undermined that progress. Various administrations have worked to promote or to limit interdistrict remedies for integrating unconstitutionally segregated schools,⁴⁰ just as they have invested and disinvested in the Civil Rights Divisions of the Departments of Education and Justice.⁴¹ For example, Richard Nixon turned the tide of vigorous federal support for desegregation efforts when he assumed the presidency in 1968 and “stopped ‘administrative enforcement of desegregation requirements, shifted the position of the Justice Department from proactive enforcement to passive acceptance, appointed four conservative Justices to the Supreme Court and attacked desegregation rulings. Nixon’s judicial appointments produced the first divided desegregation decisions since *Brown*.’”⁴² Nixon’s administration also “ended the federal government’s cooperation with private advocacy groups like LDF [the NAACP Legal Defense and Educational Fund] and brought a swift end to many of the initiatives of the prior administration.”⁴³

Likewise, following the Supreme Court’s ruling in *Parents Involved in Community Schools v. Seattle School District* (2007) and on the eve of leaving office, the Bush administration issued a “Dear Colleague” letter narrowly interpreting the case; the letter resulted in confusion and affected district efforts in pursuing race-conscious student assignment programs.⁴⁴

Several factors have stalled or even reversed desegregation in many places. Some federal administrations have been reluctant to encourage voluntary state action to desegregate public schools. There have also been periodic step backs on enforcement of court desegregation orders, federal inaction in open desegregation cases, federal budget cuts—including an end to direct federal payments to districts to support desegregation efforts⁴⁵—and confusion or apathy at the state and district levels regarding advancing racial integration in schools.⁴⁶

The situation has been made worse by district requests to terminate court oversight of desegregation orders,⁴⁷ which are critical mechanisms for plaintiffs to ensure that school districts do not act in ways that lead to greater segregation or inequality. Courts have acceded to many of these requests and ended judicial oversight of desegregation efforts—not because districts had achieved school diversity but because districts no longer wished to respond to court guidance aimed at maintaining efforts to desegregate schools.⁴⁸

By reducing court oversight of desegregation orders, the federal government has furthered resegregation of public schools. As one journalist noted:

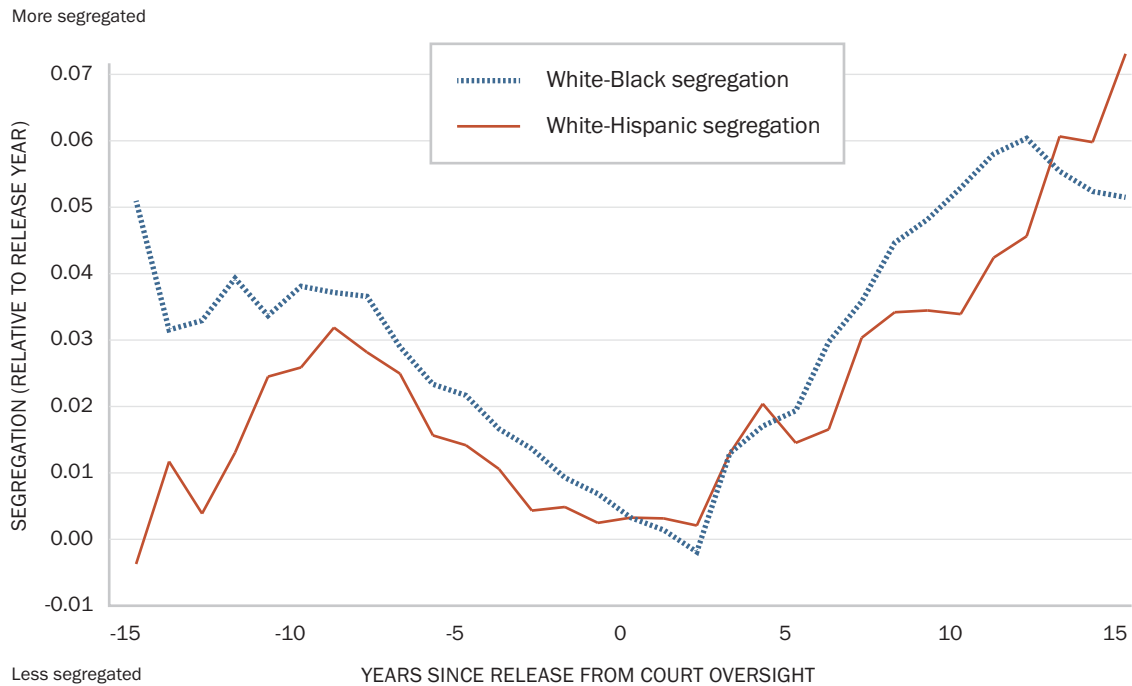
The federal government’s retreat is the main factor in the return of segregated schooling in the South. In 2000, there were 430 school districts under federal court order to desegregate, compared with 176 today. Without the feds watching, local school boards are prone to make decisions that end up separating kids by race.⁴⁹

For example,

During George W. Bush’s administration, almost 200 districts shed their court orders. With just 176 districts left, Trump’s Justice Department could bring an end to the 63-year-old effort to erase the legacy of Jim Crow in the American education system, at a time when nearly 8.4 million black and Latino children are learning in segregated and high-poverty schools.⁵⁰

As noted: “In essence, courts began ending judicial oversight of school boards on the finding that continuing efforts to desegregate schools would be tough—not on the finding that school boards actually had successfully desegregated their schools.”⁵¹ Data show that the degree of segregation declined significantly in districts under court oversight, but it rapidly climbed to even higher levels when court oversight was terminated.⁵² (See Figure 1.)

Figure 1
Degree of Segregation in Relation to Court-Ordered Desegregation Plans



Source: Darling-Hammond, L. (2018). *Education and the path to one nation, indivisible*. Palo Alto, CA: Learning Policy Institute.
 Data Source: Figure developed from data in Reardon, S., Grewal, E. T., Kalogrides, D., & Greenberg, E. (2012). *Brown fades: The end of court-ordered school desegregation and the resegregation of American public schools*. *Journal of Policy Analysis and Management*, 31(4), 876–904.

A 2016 report by the Government Accountability Office (GAO) underscores the importance of continuing federal vigilance to enforce and promote students’ civil rights. In fact, more than 550 social scientists joined an amicus brief supporting defendants’ student assignment policies designed to further racial integration and reduce racial isolation in the *Parents Involved* case.⁵³ The scientists noted:

Research has shown that without the enforced regulation of desegregation court orders or guidelines designed to attain racial desegregation, the implementation of uncontrolled school choice plans tends to foster racially homogeneous schools and lead to even greater segregation.⁵⁴

And, if the trends of increasing resegregation are any indication,⁵⁵ without the federal government actively exercising its oversight and accountability role to promote racially diverse learning environments, resegregation and its accompanying educational inequities will likely deepen, with potential negative consequences for all students who will be deprived of the benefits of learning in diverse schools, including building intercultural understanding and likelihood of civic participation.⁵⁶

Current Context

Today, data show that racial resegregation in public education is worsening, with many students attending racially isolated schools that serve disproportionate numbers of students living in poverty and offer inferior educational opportunities,⁵⁷ “including fewer qualified, experienced teachers, greater instability caused by rapid turnover of faculty, fewer educational resources, and limited exposure to peers who can positively influence academic learning.”⁵⁸ As one scholar notes:

The retreat from *Brown* continued ... with the Court creating precedent that released school boards that had committed constitutional violations from judicial oversight—relieving them of the obligation to continue attempts to achieve integrated schools *even when their schools remained incredibly segregated*.⁵⁹

In addition, as they were pre-*Brown*, race and class are often proxies for access to quality educational opportunities.

A 2016 report published by the GAO found a growing percentage of k–12 public schools in the nation that are hypersegregated, with student populations that are largely African American or Latino/a and have large numbers of students from low-income families. The report showed that these schools are plagued by challenges, such as resource inequities that undermine educational outcomes.⁶⁰ One scholar has concluded that

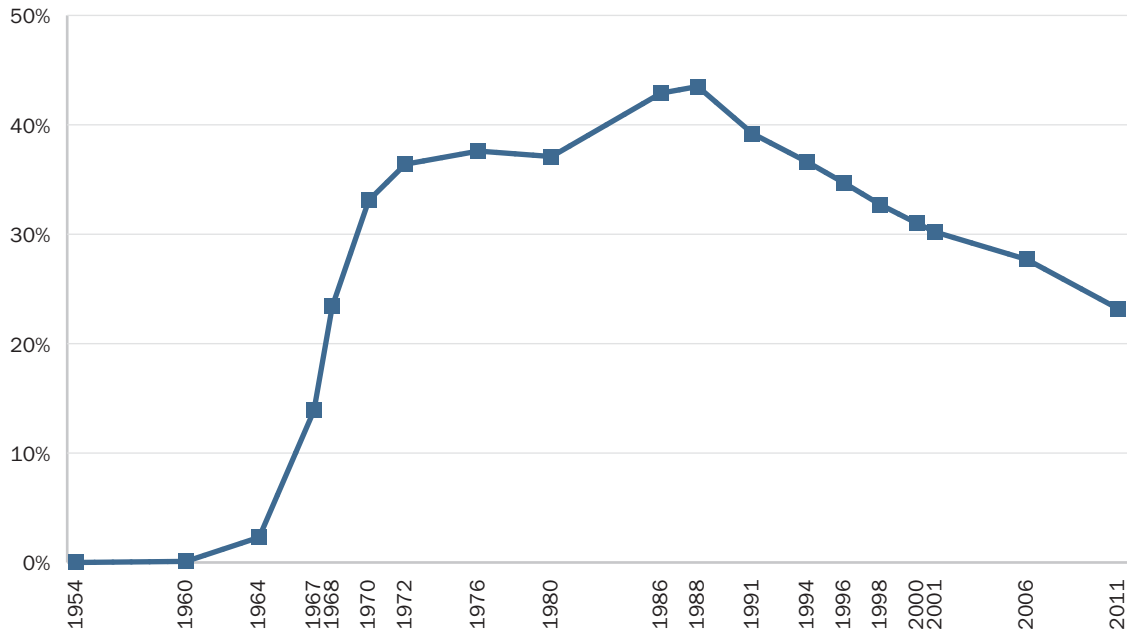
racially segregated schools tend to mean class segregated schools, and schools where racial minorities predominate tend to be sites of concentrated poverty.... This would not be so bad if schools attended by large proportions of poor kids still managed to provide decent educations to their students. Typically, they do not. “[T]he resources that are consistently linked to predominantly white and/or wealthy schools help foster real and serious educational advantages over minority segregated settings.”⁶¹

A national study found that “the typical black student is now in a school where almost two out of every three classmates (64%) are low-income, nearly double the level in schools of the typical white or Asian student (37% and 39%, respectively).”⁶² Another study found an example in Chicago and New York City schools, with more than 95% of African American and Latino/a students attending majority-poverty schools, most of which were also majority-minority.⁶³ Yet another national study of districts and charters pursuing socioeconomic diversity found that a large proportion of White students attended overwhelmingly racially isolated schools, with more than a third attending schools that are 90 to 100% White.⁶⁴

Resegregation was sparked by the discontinuation of desegregation assistance and court orders in many districts; by increasing residential segregation intentionally imposed upon African Americans through discriminatory housing practices, including redlining that relegated African American families to specific communities or geographic regions;⁶⁵ and by the loss of affordable

housing subsidies. As a result, about 40% of African American students nationwide—and more than 50% in the Northeast—attended intensely segregated schools (in which students of color constitute 90% or more of the total) in 2010. Meanwhile, only about 20% of African American students attended majority-White schools—less than half as many as in 1988, when about 44% did so, as illustrated in Figure 2.⁶⁶

Figure 2
Proportion of Black Students Attending Majority-White Schools



Source: Darling-Hammond, L. (2018). *Education and the path to one nation, indivisible*. Palo Alto, CA: Learning Policy Institute. <https://learningpolicyinstitute.org/product/education-path-one-nation-indivisible-brief> (accessed 10/13/18).

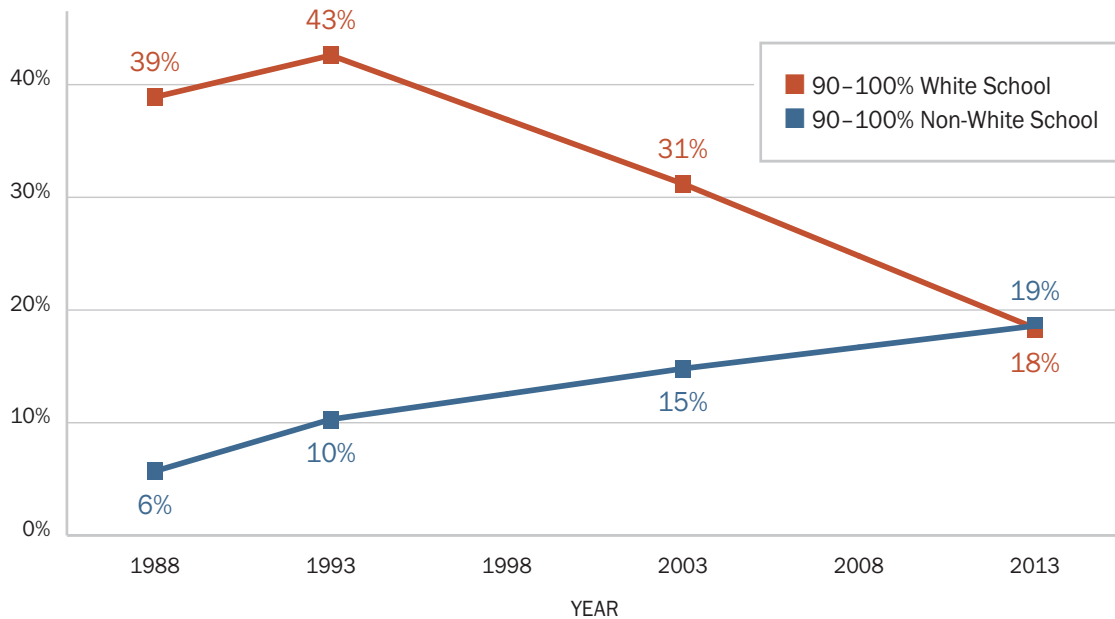
Data Source: Data before 1991 obtained from the analysis of the Office for Civil Rights data in Orfield, G. (1983). *Public School Desegregation in the United States, 1968–1980*. Washington, DC: Joint Center for Political Studies. https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/public-school-desegregation-in-the-united-states-1968-1980/orfield_american-desegregation-1983.pdf (accessed 10/21/18).

Furthermore, during the quarter century since the high point in 1988, the share of intensely segregated non-White schools (defined as those schools with only 0–10% White students) more than tripled, increasing from 6% to 19% of all public schools (Figure 3). Even as the resegregation was taking hold, there was a sharp decline in the percentage of segregated White U.S. schools that have a 10th or fewer non-White students, dropping from 39% to 18%. The result of these diverging trends is that Whites can perceive an increase in interracial contact even as African American and Latino/a students are increasingly isolated, often severely so.⁶⁷

Federal action is vital to reversing the trend of resegregation in public schools. In fact, the 2016 GAO report also found that the departments could do more, even though the Departments of Education and Justice employed a range of actions to identify and address racial discrimination against students, including analyzing data by student groups protected by federal civil rights law and investigating schools in which discriminatory outcomes were apparent.⁶⁸

The GAO report recommended that the Department of Education take further steps to leverage data, including analyzing it by type of school and by percentage of racial minorities, to obtain a better picture of educational disparities, such as access to advanced coursework.⁶⁹ It also recommended that the Department of Justice actively investigate its open desegregation cases, many of which had lain dormant for years, and monitor data, such as test scores, for the states and districts involved in the desegregation cases. According to the report, such action would help ensure that all students have access to the lifelong benefits that racially diverse learning environments offer.

Figure 3
Percentage of Intensely Segregated Schools, 1988–2013



Source: Orfield, G., Ee, J., Frankenberg, E., & Siegel-Hawley, G. (2016). *Brown at 62: School segregation by race, poverty and state*. Los Angeles, CA: Civil Rights Project. <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/brown-at-62-school-segregation-by-race-poverty-and-state/Brown-at-62-final-corrected-2.pdf> (accessed 02/21/19).
 Data Source: U.S. Department of Education, National Center for Education Statistics, Common Core of Data, Public Elementary/Secondary School Universe Survey Data.

Benefits of School Desegregation

Although diverse schools alone are not a panacea, and diversity by itself does not remedy all educational inequities,⁷⁰ a large body of research shows the benefits of racially, economically, and linguistically diverse learning environments on student outcomes. Dating back to the research the Court relied on in *Brown*, social science research has been particularly important in shaping federal strategy for advancing racially diverse schools. A substantial body of research summarized in an amicus curiae brief submitted by more than 500 social scientists in the *Parents Involved* case⁷¹ shows that integrated schools contribute to

- promoting tolerance;
- developing cross-cultural understanding;

- eliminating bias and prejudice;⁷²
- increasing the likelihood of students living in integrated neighborhoods as adults and holding jobs in integrated workplaces later in life;⁷³
- improving academic achievement and critical thinking skills;
- improving educational attainment; and
- promoting civic participation in a diverse global economy.

In a study of the effects of court-ordered desegregation on students born between 1945 and 1970, economist Rucker Johnson found that African American students' graduation rates climbed by 2 percentage points for every year students attended an integrated school, and exposure to court-ordered desegregation for 5 years was associated with a 15% increase in wages and an 11 percentage point decline in annual poverty rates.⁷⁴ There was no negative impact on White student outcomes.

Another review of 59 rigorous studies on the relationship between schools' socioeconomic and racial makeup and student outcomes showed that integrated education is associated with higher achievement in mathematics.⁷⁵ A more recent review concluded that the evidence about the positive academic benefits of diverse schools is “consistent and unambiguous”⁷⁶ and, further, that “students in racially diverse schools have improved critical thinking skills and reduced prejudice, and they are more likely to live in integrated neighborhoods and hold jobs in integrated workplaces later in life.”⁷⁷

This is not to posit that school integration efforts were immune to negative experiences or repercussions—some of which caused the very proponents of integration to question the goals of integration. For example:

For black children, desegregation meant being plucked out of all-black environments that, while underfunded relative to their white counterparts, were supportive and nurturing. Instead of learning in friendly and warm black schools, black children were being placed into unfriendly and unwelcoming white spaces [and] ... when black students were sent to white schools, the predominantly black schools that they previously had attended usually were closed. Black teachers, administrators, and principals—folks who had dedicated their lives to educating black children—lost their jobs and their livelihoods.⁷⁸

However, for many civil rights proponents, to advocate for equalization of resources within segregated schools was to cede to *Plessy v. Ferguson*'s separate but equal doctrine that relegated students of color to second-class citizenship and substandard resources.⁷⁹ Desegregation aimed to equalize access and resources while also asserting a common, equal humanity.

Federal Guidance Promoting Integration

The Supreme Court’s decision in *Parents Involved* slowed progress toward advancing racial diversity of elementary and secondary schools.⁸⁰ The ruling struck down as unconstitutional programs adopted by the Seattle and Louisville public school systems that relied in part on student race in determining school assignments.⁸¹ This decision came despite the Court’s holding that seeking diversity and avoiding racial isolation are compelling interests for school districts and that race can be a factor used for school assignments.⁸² However, misinterpretations of *Parents Involved* have led some districts to believe that race cannot be a factor in plans to promote school diversity.⁸³

Although the Court held that individualized racial classification could not be used in student assignments, it concluded that districts can adopt “race-neutral” school assignment plans that do not rely on individual student race to promote racial diversity in schools.⁸⁴ Despite the Court’s finding that race could be a factor in school assignments, misinterpretation of the ruling has had a chilling effect on voluntary integration programs, with many school districts abandoning their desegregation efforts.⁸⁵

To address the confusion surrounding the decision in *Parents Involved* and to support voluntary and proactive school district efforts to advance racial diversity in schools, the Departments of Justice and Education under the Obama administration issued voluntary guidance to help districts achieve diversity and avoid racial isolation in ways consistent with existing law.⁸⁶ The diversity guidance includes suggested approaches (although not an exhaustive list) and examples of strategies school districts can use to promote racial diversity and reduce racial isolation.⁸⁷ The diversity guidance also describes the harm of racial isolation—similar to that in the social scientists’ amicus brief—including

- failure to provide the full array of resources and benefits that k–12 schools can offer;
- lower academic achievement compared with students at more diverse schools;
- fewer effective teachers and higher teacher turnover rates; and
- less rigorous curriculum offerings.⁸⁸

Finally, consistent with the Court’s ruling, the diversity guidance outlines approaches that do not rely on the race of individual students (also called race-neutral approaches)⁸⁹ and approaches that rely on individual racial classification only when narrowly tailored to meet a compelling interest. The diversity guidance provides school districts with a range of approaches for maximum flexibility in choosing what works best in their particular contexts, including:

- **School and program siting decisions.** This approach includes making decisions about the siting of schools and special programs, such as noncompetitive magnet schools or specialized academic, athletic, or extracurricular programs, to help achieve diversity or avoid racial isolation.⁹⁰ It also recognizes the importance of considering racial demographics when promoting racial diversity and allows districts to make site decisions based on the racial characteristics of a geographic region and not on the race of an individual student. Districts may then consider the socioeconomic makeup of groups of students whom the school site may attract.

- **Decisions about grade realignment and feeder patterns.** This race-neutral approach suggests that school districts can examine available data to identify disparities and design school grade alignment or feeder patterns to help mitigate disparities. The diversity guidance provides examples, including feeding lower performing elementary schools into higher performing middle schools or mixing students along socioeconomic lines to ensure that different grade levels have a mix of students from different socioeconomic groups. Because students of color from low-income families are more likely to attend racially isolated schools, this approach may help promote racial diversity and reduce racial isolation.⁹¹ However, research shows that consideration of socioeconomic status alone does not always ensure racial diversity or mitigate racial isolation.⁹² In fact, “while race and class are often strongly correlated, they are not perfectly correlated. Class-based solutions typically do not consider patterns of white resistance to living in minority neighborhoods, regardless of income level, and are therefore unable to address the residential segregation that often fuels school segregation.”⁹³ However, research indicates that ensuring diverse socioeconomic makeup of schools may help to mitigate concentrated poverty within schools,⁹⁴ and “the policy implication of intertwined racial and economic segregation of public schools is that school integration strategies moving forward should address both racial and socioeconomic aspects of segregation.”⁹⁵
- **School zoning decisions.** Under this approach, school districts assign students to schools based on attendance zones, which are composed of students from geographically defined areas.⁹⁶ This approach is one of the most commonly used to promote socioeconomic integration.⁹⁷ One consideration with this approach is that assigning students based solely on their geographic proximity to schools can pose a risk of perpetuating racially isolated schools because of historically discriminatory housing policies that isolated people of color in certain geographic areas, establishing neighborhoods that remain largely segregated.⁹⁸ But some districts have successfully achieved socioeconomic diversity with this approach. One example highlighted in a recent study is the McKinney Independent School District (MISD), in McKinney, TX, which implemented a policy in 1995 requiring socioeconomic diversity to be a consideration in school zoning decisions.⁹⁹ Decades later, MISD schools remain relatively economically balanced.
- **Choice and open enrollment decisions.** Under open enrollment or school choice programs, parents are allowed to choose (or rank by preference) schools within or across school districts.¹⁰⁰ Currently, 22 states allow students to attend a non-assigned school within their district (intradistrict choice), and 25 states allow students to attend schools outside of their neighborhood district (interdistrict choice).¹⁰¹ The district then assigns students based in part on parental choice. Schools can design or modify such programs to achieve diversity or avoid racial isolation. In fact, under so-called controlled choice plans, the choice process is centrally managed to support racial and economic integration.¹⁰² For example, as the diversity guidance illustrated, a school district in which students of different races are concentrated in different attendance zones could implement a districtwide lottery system that allows parents to identify and rank a certain number of schools and then randomly assigns students based on parents’ choices.¹⁰³ However, research has found that, even under choice programs, parents are often inclined to choose schools within their geographic areas—which are often racially isolated—thereby leading to even more segregated schools.¹⁰⁴ Therefore, as research indicates, the design of the choice

program is vital in determining the likelihood of whether or not it may help to achieve diversity or reduce racial isolation. For example, a study of Jefferson County, KY, schools found that students were less segregated under the district’s managed-choice policy—which allows students to attend schools outside their neighborhoods—than under alternative assignment approaches.¹⁰⁵

- **Admission to competitive schools and programs.** The diversity guidance proposed that schools seeking to promote racial diversity could design admissions processes with that goal in mind. One proposed example is a district giving special consideration in admissions to students from neighborhoods selected specifically because of their racial composition and other factors (i.e., treating all students who live in the same neighborhood alike, regardless of their race). This race-conscious approach reflects the research showing that considering student racial composition is important to ensuring that integration approaches are effective.
- **Inter- and intradistrict transfers.** The diversity guidance highlighted the use of inter- and intradistrict transfers—allowing students to move between schools—as another approach used by many school districts to achieve diversity and avoid racial isolation. The diversity guidance provided the example of a transfer program that expressly relies upon the overall racial composition of geographic areas within the district to determine priorities for student transfers—with the goals of achieving racial diversity and reduction of racial isolation.¹⁰⁶ Due to racially segregated residential patterns, interdistrict programs are typically more likely to reduce racially isolated schools because “more than 80% of racial/ethnic segregation in U.S. public schools occurs between rather than within school districts, and income groups are also increasingly geographically divided.”¹⁰⁷

The diversity guidance also noted that if a school district finds any of these approaches unworkable or ineffective in achieving diversity or reducing racial isolation, it may consider a student’s race as one factor among others in considering how an individual student’s school assignment may help achieve diversity or avoid racial isolation consistent with the law.¹⁰⁸

Local Strategies to Promote Racial Diversity in Schools

Some school districts have worked to use the strategies noted above in ways that have promoted the compelling interests of seeking diversity and avoiding racial isolation. We review three of these below.

Jefferson County, KY

Jefferson County, KY, is one example of the legal progeny of *Brown v. Board of Education*, in which a local region acted to promote integration pursuant to court desegregation orders. The county illustrates the persistence of a voluntary desegregation program, which has continued even after withdrawal of court oversight. Jefferson County’s policy—along with that of Seattle School District No. 1—were the subjects of litigation in *Parents Involved in Community Schools v. Seattle School District No. 1* and were highlighted in the diversity guidance issued by the Obama administration addressing the Court’s 2007 ruling in the case. The diversity guidance clarified the Court’s ruling on

the program, specifically detailing the case’s holding that “to survive strict scrutiny, a school district that considers race in making individual student assignment decisions must show that the use of race is narrowly tailored to achieve a compelling governmental interest.”¹⁰⁹

The origins of the program began with litigation shortly before integration efforts were implemented per a court order in the Louisville–Jefferson County area.¹¹⁰ At the time, most students in the Louisville area who attended urban schools were African American, whereas the majority of students in the county’s suburban district were White.¹¹¹ Pursuant to the court’s order, the Jefferson County and Louisville districts began merging the two racially divergent districts by busing African American and White students to schools outside their neighborhoods.¹¹² Although desegregation efforts were undertaken reluctantly—with violent opposition to busing¹¹³—they continue today on a voluntary basis.

By the 1990s, Louisville–Jefferson County was the most integrated school district in the nation.¹¹⁴ The plan has evolved into a choice program in which parents rank their school preferences, and the district weighs factors such as socioeconomic status and educational level when determining school assignment to achieve diversity across schools. Parents can also choose special programs such as magnet programs or language immersion programs.¹¹⁵ Though not perfect, the county’s actions represent sustained voluntary integration efforts using many of the tools detailed in the guidance.

While there have been repeated legal challenges to the program, it has advanced.¹¹⁶ Explaining why the district continued its integration efforts following those court decisions, the superintendent said, “This community really values an integrated school system. It is a core value within Jefferson County.”¹¹⁷ In addition to Jefferson County, other districts, including in Cambridge, MA, and New York City, have implemented controlled choice programs to foster school diversity.¹¹⁸

Explaining why the district continued its integration efforts following those court decisions, the superintendent said, “This community really values an integrated school system. It is a core value within Jefferson County.”

San Antonio, TX

In the deeply segregated city of San Antonio, TX, the San Antonio Independent School District (SAISD) is leading the way in promoting school integration. The district is one of 14 districts in the city of San Antonio, and most of its students (90%) are categorized as economically disadvantaged.¹¹⁹ The district has implemented a controlled choice program—also known as Diversity by Design—to avoid creating what the district’s Chief Innovation Officer Mohammed Choudhury calls “islands of affluence.”¹²⁰ As Choudhury notes, “We can’t let housing dictate the educational opportunities for all students. If our children can’t go to school together, they’re not going to learn to live together.”¹²¹

The program is designed to ensure that parents learn about education options that they might not be aware of, from among a range of instructional models such as Montessori, college preparatory, and expeditionary learning.¹²² Administrators then consider parental choice and combine parental preference with data to ensure school diversity is achieved.¹²³ The program further fosters diversity with two other approaches: (1) half the seats for in-district charter schools are reserved for students from economically disadvantaged backgrounds and the other half are open to all income levels,¹²⁴ and (2) the “priority radii” approach prioritizes seats for students from specific geographic areas to ensure socioeconomic diversity.¹²⁵

As Choudhury notes, “You can see from how other cities’ school choice systems played out, especially with specialized schools, that choice will exacerbate segregation if it’s unregulated.”¹²⁶ Choudhury underscores essential components needed to ensure racial and socioeconomic diversity in controlled choice programs, including:

- **Location:** Specifically, a location from which middle-class and historically disadvantaged families can be drawn, such as near the city. As Choudhury notes, “Campuses located within the most economically segregated areas of the city have a more difficult time fulfilling a diversity by design school model. Unfortunately, one of the reasons for this is that families can succumb to false stereotypes and perceptions about schools within high-poverty communities.”¹²⁷
- **School design:** Intentionally following an assignment system that ensures diversity. Choudhury notes that a free market approach risks deepening segregation and inequities.¹²⁸
- **Transportation:** Particularly ensuring that families from disadvantaged communities can secure transportation to their chosen school.¹²⁹

Choudhury is committed to implementing these components, and the result is playing out in the form of racially diverse schools in SAISD. As Choudhury notes: “[T]his notion that we should keep recreating high poverty schools given the decades of research around the benefits of integrated environments is absurd. Integration isn’t everything, but it has effects. When’s the only time we cut the achievement gap almost in half in this country on the National Assessment of Educational Progress? At the height of desegregation.”¹³⁰

Hartford, CT

In 1989, litigation was filed on behalf of Elizabeth Horton Sheff, her son Milo, and other families alleging that Connecticut had failed to provide students in the majority–African American Hartford area with racially integrated education.¹³¹ Hartford not only was a racially isolated, majority–African American area, but also was characterized by concentrated poverty.¹³² The case made its way to the Connecticut Supreme Court, which in 1996 ruled that the racial, ethnic, and economic isolation in Hartford schools violated the state’s constitutional obligation to provide all children with racially integrated and substantially equal educational opportunities.¹³³

In response to the court’s ruling, Connecticut established a voluntary integration Open Choice program and designed desegregated educational opportunities, including a magnet school program.¹³⁴ A 2013 analysis of the program found that students participating in the Magnet and Open Choice programs were outperforming Hartford students attending other public schools and performed well in comparison with the state’s averages for all students.¹³⁵ The analysis also found that more than 45% of Hartford’s African American and Latino/a k–12 students attended schools in reduced-isolation settings.¹³⁶

Hartford’s desegregation efforts have faced considerable challenges, including ongoing waiting lists to attend area magnet schools, reluctance from some legislators to continue to fund the magnet program, legal challenges,¹³⁷ and rising housing costs and zoning laws that hinder efforts to provide students from low-income families and students of color access to high-performing, high-quality schools. However, the program continues with state and local funds, and there is still a commitment to find and maintain effective strategies that promote integration and reduce racial isolation.¹³⁸

Likely Effects of Rescinding the Guidance

Rescission of the diversity guidance could be interpreted as signaling federal apathy about racial diversity in public schools. This could reinforce or be used as a justification for district inaction, which could further reverse the progress made in reducing educational inequities that followed federal enforcement of desegregation. For example, educational inequities began to decrease once desegregation efforts took hold. As we have noted in other research, there was a noticeable reduction in educational inequity during the 1960s and 1970s when desegregation and school finance reform efforts were launched. At that time, substantial gains were made in equalizing both educational inputs and outcomes.¹³⁹ Further, as the Century Foundation has noted:

[T]he racial achievement gap in K-12 education closed more rapidly during the peak years of school desegregation in the 1970s and 1980s than it has overall in the decades that followed—when many desegregation policies were dismantled.¹⁴⁰

Rescission of the diversity guidance is a retreat from the vital role that the federal government can play in encouraging and clarifying permissible state action to advance racially diverse schools. It ultimately constitutes an endorsement of the educational inequities that research shows accompany racially segregated learning environments.

When court decisions create confusion about how to interpret federal civil rights law, absence of federal guidance can leave many states uncertain about whether their actions, practices, and policies are compliant with federal law as interpreted by the courts and whether they are vulnerable to litigation. As one scholar notes:

The decision has most obviously affected the desegregation efforts of the school districts pursuing existing integration plans fatally similar to those of Louisville and Jefferson County that were struck down by *Parents Involved*. While estimates on the actual number of such districts vary considerably (from “more than 1,000” to “possibly less than ten”), they still undoubtedly exist, and “the efforts of the ... school districts that presently pursue racial integration will undoubtedly impact the lives of a significant number of school children, even if only some of those districts continue their efforts after *Parents Involved*.”¹⁴¹

Particularly when there is confusion surrounding decisions in cases such as *Parents Involved*—confusion that can create a chilling effect on many existing voluntary desegregation plans, can discourage other districts from implementing such plans,¹⁴² and can leave districts fearful of legal challenges—federal guidance is vital for encouraging districts to promote racial diversity voluntarily and proactively.¹⁴³

Rescission of the diversity guidance is a retreat from the vital role that the federal government can play in encouraging and clarifying permissible state action to advance racially diverse schools.

Rescinding the diversity guidance can discourage proactive state and local efforts to diversify public schools, perpetuating the separate and unequal education system that *Brown* sought to eradicate. The result is that educational disparities associated with racial isolation can deepen, and educational disparities that result in negative educational outcomes, such as decreased employment opportunities, can persist and undermine our nation’s future. In fact, as the UCLA Civil Rights Project notes:

Research and industry spokespersons suggest that a diverse education is essential for “career readiness” ... and federal support for successful, stably integrated schools would pay large dividends in terms of social and economic success of communities.¹⁴⁴

Thus, rescinding the guidance can have repercussions that perpetuate educational inequities that undermine our nation’s current and future global competitiveness.

The Trump administration’s rescission of the Obama administration’s guidance returns districts to a state of uncertainty regarding whether their policies will be consistent with changing legal interpretations of federal law. The repercussions for many students in districts that fail to promote school diversity as a result of fear of litigation could be significant. Students in these districts could lose out on opportunities to attend diverse schools because of their district’s reluctance to act. Lack of these opportunities means they are also denied the benefits that evidence shows a diverse education bestows, including enhanced critical thinking skills, the ability to interact with others in a globally diverse economy, and stronger cross-cultural understanding.¹⁴⁵

As one scholar notes, “Districts are left with two choices: risk future litigation ... [and] craft desegregation plans that are centered around factors other than race or that consider race as only one of many factors, or simply abandon previous desegregation plans.”¹⁴⁶ Unfortunately, some districts have opted for the latter option.¹⁴⁷

Given this nation’s history of racial discrimination and the infusion of that discrimination into our institutions and systems, including the public school system, it is imperative—particularly in the face of confusion about court rulings—that the federal government continue to play an active and vigilant role in encouraging proactive local efforts to promote racial diversity and reduce racial isolation. This helps ensure that all students can access the benefits of racially diverse learning environments. History and evidence indicate that without an active federal role, our localities are likely to revert to racially isolated learning environments that undermine efforts to provide quality educational opportunities for all students.

Conclusion

Any administration's policy positions, actions, and interventions should be informed by evidence and the law. Failing to use such evidence in the case of voluntary integration is likely to perpetuate negative consequences for students of color and other historically underserved students. Rescission of the federal diversity guidance may have a chilling effect on proactive state and local efforts to promote racial diversity, reduce racial isolation in public schools, and create more inclusive and equitable learning environments for all students. It contravenes the well-established legal precedent and research, compiled over more than half a century, documenting the benefits of diverse and inclusive learning environments for all students. Continuation of such guidance—and the efforts of districts it supports—would strengthen the nation's ability to produce engaged citizens who can effectively compete in a diverse global workforce and recognize the dignity and potential in every student.

Endnotes

1. Orfield, G., Ee, J., Frankenberg, E., & Siegel-Hawley, G. (2016). *Brown at 62: School segregation by race, poverty, and state* (pp. 1–9). Los Angeles, CA: Civil Rights Project.
2. “Although the Court rejected education as a fundamental right in *San Antonio Independent School District v. Rodriguez*, the Court has gone out of its way to emphasize the importance of education.” Black, D. W. (2018). The constitutional compromise to guarantee education. *Stanford Law Review*, 70, 735–837. <https://review.law.stanford.edu/wp-content/uploads/sites/3/2018/03/70-Stan.-L.-Rev.-735.pdf>; “In *San Antonio Independent School District v. Rodriguez*, the Court held that inequalities in school funding do not deny equal protection, and the Court concluded that education is not a fundamental right under the Constitution.” Chemerinsky, E. (2014). Making schools more separate and unequal: *Parents Involved in Community Schools v. Seattle School District No. 1*. *Michigan State Law Review*, 633, 633–646.
3. P.L. 88-352, Stat. 241 (1964).
4. 42 U.S.C. § 2000d et seq. Title IV promotes the desegregation of public schools and authorizes the U.S. Attorney General to file litigation to enforce the statute. Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.
5. “In the Court’s assessment, ‘separate educational facilities are inherently unequal’ and, as a consequence, states that operated segregated school systems violated the Equal Protection Clause of the Fourteenth Amendment.” Bridges, K. (2018). *Critical Race Theory: A Primer (Concepts and Insights)* (p. 439). St. Paul, MN: Foundation Press.
6. Bridges, K. (2018). *Critical Race Theory: A Primer (Concepts and Insights)* (pp. 441–442). St. Paul, MN: Foundation Press.
7. Chadwick, A. (2007, September 24). *Little Rock remembers troops’ arrival* [Radio broadcast]. Washington, DC: National Public Radio, Special Series: Segregation Showdown at Little Rock. <https://www.npr.org/templates/story/story.php?storyId=14654126>.
8. U.S. Department of Justice & U.S. Department of Education. (2011). *Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools*. Washington, DC: Author. [Rescinded July 2, 2018, U.S. Department of Justice and U.S. Department of Education].
9. Exec. Order No. 13791, 82 Fed. Reg. 20427. (2017, April 26). Enforcing statutory prohibitions on federal control of education. <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-enforcing-statutory-prohibitions-federal-control-education> (accessed 09/13/18); Superville, D. (2017, April 27). Trump order seeks to limit federal role in K–12 education. *Associated Press*. <https://www.apnews.com/453f30f6d9a64071b3b4515c67354743>.
10. Strauss, V. (2017, October 27). Education Department withdrawing nearly 600 policy documents it says are outdated. *Washington Post*. https://www.washingtonpost.com/news/answer-sheet/wp/2017/10/27/education-department-withdrawing-nearly-600-policy-documents-it-says-are-outdated/?utm_term=.1653b421791d.
11. O’Hara, M. E. (2017, April 26). Trump signs executive order reviewing federal role in education. *NBC News*. <https://www.nbcnews.com/news/us-news/trump-signs-executive-order-reviewing-federal-role-education-n751476>.
12. U.S. Department of Justice & U.S. Department of Education. (2011). *Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools*. Washington, DC: Author. [Rescinded July 2, 2018, U.S. Department of Justice and U.S. Department of Education].
13. Killen, M., & McKown, C. (2005). How integrative approaches to intergroup attitudes advance the field. *Journal of Applied Developmental Psychology*, 26(6), 616–622; Kurlaender, M., & Yun, J. (2001). “Is Diversity a Compelling Educational Interest? Evidence from Louisville” in Orfield, G., & Kurlaender, M. (Eds.). *Diversity Challenged: Evidence on the Impact of Affirmative Action* (pp. 111–114). Cambridge, MA: Harvard Education Publishing Group; Perry, P. (2002). *Shades of White: White Kids and Racial Identities in High School*. Durham, NC: Duke University Press.

14. U.S. Department of Education & U.S. Department of Justice. (2014). *Laws and guidance: General. School climate and discipline: Federal efforts. Archived information.* Washington, DC: Authors. <https://www2.ed.gov/policy/gen/guid/school-discipline/fedefforts.html#guidance> (accessed 02/21/19).
15. Wald, J., & Losen, D. (2003). *Defining and redirecting a school-to-prison pipeline.* Boston, MA: Civil Rights Project at Harvard University and the Institute on Race and Justice at Northeastern University.
16. National Center for Transgender Equality. (2017). FAQ on the withdrawal of federal guidance on transgender students. <https://transequality.org/issues/resources/faq-on-the-withdrawal-of-federal-guidance-on-transgender-students> (accessed 09/13/18).
17. U.S. Department of Education. (2016). *Fact sheet: Equity in IDEA.* Washington, DC: Author.
18. Skiba, R., Poloni-Staudiner, L., Gallini, S., Simmons, A., & Feggins-Azziz, R. (2006). Disparate access: The disproportionality of African American students with disabilities across educational environments. *Exceptional Children*, 72(4), 411–424.
19. “The U.S. Department of Education is delaying, by two years, implementation of a rule that would require states to take a closer look at how school districts identify and serve minority students with disabilities. The ‘Equity in IDEA’ rule, issued by the Obama administration in December 2016, would have gone into effect for the 2018–19 school year,” Samuels, C. (2018, June 29). *Special education bias rule put on hold for two years by DeVos Team* [Blog post]. Bethesda, MD: Education Week. http://blogs.edweek.org/edweek/speced/2018/06/special_education_bias_rule_postponed.html.
20. These archived documents may be found at the website for the Office for Civil Rights, organized by date, here: <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/tr/policyguidance/raceorigin.html> (accessed 02/20/19).
21. Strauss, V. (2017, October 27). Education department withdrawing nearly 600 policy documents it says are outdated. *Washington Post*. https://www.washingtonpost.com/news/answer-sheet/wp/2017/10/27/education-department-withdrawing-nearly-600-policy-documents-it-says-are-outdated/?utm_term=.1653b421791d.
22. NAACP Legal Defense and Educational Fund Inc. (n.d.). *Brown at 60: The Doll Test*. <https://www.naacpldf.org/files/our-work/Brown%20Facts.pdf> (accessed 02/21/19).
23. NAACP Legal Defense and Educational Fund Inc. (n.d.). *Brown at 60: The Doll Test*. <https://www.naacpldf.org/files/our-work/Brown%20Facts.pdf> (accessed 02/21/19).
24. *Brown v. Board of Education*, 347 U.S. 483 (1954).
25. 347 U.S. 483 (1954).
26. “In this brief, scholars summarized an extensive body of research showing the educational and community benefits of integrated schools for both White and minority students, documenting the persisting inequalities of segregated minority schools, and examining evidence that schools will resegregate in the absence of race-conscious policies,” Darling-Hammond, L. (2010). *The Flat World and Education: How America’s Commitment to Equity Will Determine Our Future*. New York, NY: Teachers College Press.
27. Bridges, K. (2018). *Critical Race Theory: A Primer (Concepts and Insights)* (p. 448). St. Paul, MN: Foundation Press.
28. Green, K. (2015, August 1). Prince Edward County’s long shadow of segregation. *The Atlantic*. <https://www.theatlantic.com/national/archive/2015/08/segregation-prince-edward-county/400256/> (accessed 10/13/18).
29. Green, K. (2015, August 1). Prince Edward County’s long shadow of segregation. *The Atlantic*. <https://www.theatlantic.com/national/archive/2015/08/segregation-prince-edward-county/400256/> (accessed 10/13/18).
30. Smith, D. (2017, September 24). Little Rock Nine: The day young students shattered racial segregation. *The Guardian*. <https://www.theguardian.com/world/2017/sep/24/little-rock-arkansas-school-segregation-racism> (accessed 10/13/18).
31. 349 U.S. 294 (1955), in which the Court ordered states to desegregate “with all deliberate speed.”

32. 358 U.S. 1 (1958). Citing the Supremacy Clause of the U.S. Constitution, the U.S. Supreme Court ordered authorities in Little Rock, AR, to comply with federal orders to desegregate pursuant to the *Brown v. Board of Education* ruling.
33. 391 U.S. 430 (1968).
34. 402 U.S. 1 (1971).
35. U.S. Department of Education. (n.d.). Office for Civil Rights. <https://www2.ed.gov/about/offices/list/ocr/index.html> (accessed 09/11/18).
36. U.S. Department of Justice. (n.d.). Educational opportunities section. <https://www.justice.gov/crt/educational-opportunities-section> (accessed 09/11/18).
37. U.S. Government Accountability Office. (2016). *K–12 education: Better use of information could help agencies identify disparities and address racial discrimination*. Washington, DC: Author. <https://www.gao.gov/products/GAO-16-345>.
38. Hannah-Jones, N. (2014, May 1). Lack of order: The erosion of a once-great force for integration. *ProPublica*. <https://www.propublica.org/article/lack-of-order-the-erosion-of-a-once-great-force-for-integration> (accessed 10/13/18).
39. Millhiser, I. (2015, August 13). American schools are more segregated now than they were in 1968, and the Supreme Court doesn't care. *ThinkProgress*. <https://thinkprogress.org/american-schools-are-more-segregated-now-than-they-were-in-1968-and-the-supreme-court-doesnt-care-cc7abbf6651c/>.
40. Millhiser, I. (2015, August 13). American schools are more segregated now than they were in 1968, and the Supreme Court doesn't care. *ThinkProgress*. <https://thinkprogress.org/american-schools-are-more-segregated-now-than-they-were-in-1968-and-the-supreme-court-doesnt-care-cc7abbf6651c/> (accessed 09/13/18).
41. Asante-Muhammad, D. (2013, March 11). The Reagan era: Turning back racial equality gains. *Huffington Post*. https://www.huffingtonpost.com/dedrick-muhammad/the-reagan-ereturning-bac_b_2838625.html (accessed 09/12/18).
42. Bridges, K. (2018). *Critical Race Theory: A Primer (Concepts and Insights)* (p. 442). St. Paul, MN: Foundation Press.
43. Le, C. (2010). Racially integrated education and the role of the federal government. *North Carolina Law Review*, 88(3), 725–787.
44. The Bush administration's "Dear Colleague" letter following the *Parents Involved* decision "warned districts against the pursuit of any type of voluntary, race-conscious student assignment strategies. The goal of racially integrated education, according to the Bush-era Education Department, was to be realized without direct consideration of race," Chemerinsky, E. (2014). Making schools more separate and unequal: *Parents Involved in Community Schools v. Seattle School District No. 1*. *Michigan State Law Review*, 633, 633–646.
45. Pear, R. (1982, September 7). Desegregation plans in peril. *New York Times*. <https://www.nytimes.com/1982/09/07/us/desegregation-plans-in-peril.html>; "The federal desegregation aid program, which gave districts money to work on successful race relations and integration in schools, was canceled in President Reagan's first budget," Frankenberg, E., Hawley, G., Ee, J., & Orfield, G. (2017). *Southern schools: More than a half-century after the civil rights revolution* (pp. 1–18). Los Angeles, CA: Civil Rights Project.
46. Frankenberg, E., Hawley, G., Ee, J., & Orfield, G. (2017). *Southern schools: More than a half-century after the civil rights revolution* (pp. 1–18). Los Angeles, CA: Civil Rights Project.
47. Reardon, S. F., Grewal, E., Kalogrides, D., & Greenberg, E. (2012). *Brown* fades: The end of court-ordered school desegregation and the resegregation of American public schools. *Journal of Policy Analysis and Management*, 31(4), 876–904.
48. Bridges, K. (2018). *Critical Race Theory: A Primer (Concepts and Insights)* (p. 444). St. Paul, MN: Foundation Press.

49. Felton, E. (2017, September 8). How the federal government abandoned the *Brown v. Board of Education* decision. *AL.com*. https://www.al.com/news/index.ssf/2017/09/how_the_federal_government_aba.html (accessed 10/21/18).
50. Felton, E. (2017, September 6). The Department of Justice is overseeing the resegregation of American schools. *The Nation*. <https://www.thenation.com/article/the-department-of-justice-is-overseeing-the-resegregation-of-american-schools/> (accessed 10/13/18).
51. Bridges, K. (2018). *Critical Race Theory: A Primer (Concepts and Insights)* (p. 445). St. Paul, MN: Foundation Press.
52. Darling-Hammond, L. (2018). *Education and the path to one nation, indivisible*. Palo Alto, CA: Learning Policy Institute. <https://learningpolicyinstitute.org/product/education-path-one-nation-indivisible-brief> (accessed 10/13/18).
53. 551 U.S. 701 (2007). Brief of 553 Social Scientists as Amici Curiae Supporting Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*.
54. App. to Brief of 553 Social Scientists as Amici Curiae Supporting Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), 41 [citing Scott, J., ed. (2005). *School Choice and Diversity: What the Evidence Says*. New York, NY: Teachers College Press]; Frankenberg, E., & Lee, C. (2002). *Race in American public schools: Rapidly resegregating school districts*. Los Angeles, CA: Civil Rights Project; Carnoy, M., Jacobsen, R., Mischel, L., & Rothstein, R. (2005). *The Charter School Dust-Up: Examining the Evidence on Enrollment and Achievement*. New York, NY: Economic Policy Institute and Teachers College Press.
55. “Thus, with respect to school segregation, America stood at the gateway to the 21st century, almost exactly where it stood 30 years earlier—having lost in a giant tug-of-war much of the ground it gained during the 1970s,” Darling-Hammond, L. (2010). *The Flat World and Education: How America’s Commitment to Equity Will Determine Our Future*. New York, NY: Teachers College Press.
56. Brief of 553 Social Scientists as Amici Curiae Supporting Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007).
57. U.S. Government Accountability Office. (2016). *K–12 education: Better use of information could help agencies identify disparities and address racial discrimination*. Washington, DC: Author. <https://www.gao.gov/products/GAO-16-345>.
58. Darling-Hammond, L. (2018). *Education and the path to one nation, indivisible*. Palo Alto, CA: Learning Policy Institute. <https://learningpolicyinstitute.org/product/education-path-one-nation-indivisible-brief> (accessed 10/13/18).
59. Bridges, K. (2018). *Critical Race Theory: A Primer (Concepts and Insights)* (p. 440). St. Paul, MN: Foundation Press.
60. U.S. Government Accountability Office. (2016). *K–12 education: Better use of information could help agencies identify disparities and address racial discrimination*. Washington, DC: Author. <https://www.gao.gov/products/GAO-16-345>.
61. Bridges, K. (2018). *Critical Race Theory: A Primer (Concepts and Insights)* (p. 440). St. Paul, MN: Foundation Press.
62. Bridges, K. (2018). *Critical Race Theory: A Primer (Concepts and Insights)* (p. 444). St. Paul, MN: Foundation Press.
63. Darling-Hammond, L. (2018). *Education and the path to one nation, indivisible*. Palo Alto, CA: Learning Policy Institute. <https://learningpolicyinstitute.org/product/education-path-one-nation-indivisible-brief> (accessed 10/13/18).
64. Potter, H., Quick, K., & Davies, E. (2016). *A new wave of school integration: Districts and charters pursuing socioeconomic diversity*. New York, NY: Century Foundation. <https://tcf.org/content/report/a-new-wave-of-school-integration/?session=1> (accessed 09/12/18).

65. “Residential segregation, with people of color confined to urban centers and white people living in the outlying suburbs, is not the result of voluntary housing choices. Instead ... it is the product of present and past racism.” Bridges, K. (2018). *Critical Race Theory: A Primer (Concepts and Insights)* (p. 443). St. Paul, MN: Foundation Press.
66. Darling-Hammond, L. (2018). *Education and the path to one nation, indivisible*. Palo Alto, CA: Learning Policy Institute. <https://learningpolicyinstitute.org/product/education-path-one-nation-indivisible-brief> (accessed 10/13/18).
67. Orfield, G., Ee, J., Frankenberg, E., & Siegel-Hawley, G. (2016). *Brown at 62: School segregation by race, poverty and state*. Los Angeles, CA: Civil Rights Project. <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/brown-at-62-school-segregation-by-race-poverty-and-state/Brown-at-62-final-corrected-2.pdf> (accessed 02/21/19).
68. U.S. Government Accountability Office. (2016). *K–12 education: Better use of information could help agencies identify disparities and address racial discrimination*. Washington, DC: Author. <https://www.gao.gov/products/GAO-16-345>.
69. U.S. Government Accountability Office. (2016). *K–12 education: Better use of information could help agencies identify disparities and address racial discrimination*. Washington, DC: Author. <https://www.gao.gov/products/GAO-16-345>.
70. “Diverse schools are better schools. But it is worth acknowledging that not all diverse schools are great,” Quick, K., & Damante, R. (2016). *Louisville, Kentucky: A reflection on school integration*. New York, NY: Century Foundation. <https://tcf.org/content/report/louisville-kentucky-reflection-school-integration/>.
71. Brief of 553 Social Scientists as Amici Curiae Supporting Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007).
72. U.S. Department of Justice & U.S. Department of Education. (2011). *Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools*. Washington, DC: Author. [Rescinded July 2, 2018, U.S. Department of Justice and U.S. Department of Education]; “White students in integrated settings have been found to exhibit more racial tolerance and less fear of their black peers over time than their segregated peers,” App. to Brief of 553 Social Scientists as Amici Curiae Supporting Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), 6; “A recent meta-analysis of over 500 prior studies that collectively involved 250,000 participants shows that greater levels of contact among different groups are typically associated with lower levels of intergroup prejudice, and that these effects are consistent and significant for samples of children, adolescents, and adults,” App. to Brief of 553 Social Scientists as Amici Curiae Supporting Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), 9.
73. Potter, H., Quick, K., & Davies, E. (2016). *A new wave of school integration: Districts and charters pursuing socioeconomic diversity*. New York, NY: Century Foundation. <https://tcf.org/content/report/a-new-wave-of-school-integration/?session=1> (accessed 09/12/18).
74. Darling-Hammond, L. (2018). *Education and the path to one nation, indivisible*. Palo Alto, CA: Learning Policy Institute. <https://learningpolicyinstitute.org/product/education-path-one-nation-indivisible-brief> (accessed 10/13/18).
75. Mickelson, R. A., & Bottia, M. (2010). Integrated education and mathematics outcomes: A synthesis of social science research. *North Carolina Law Review*, 88(3), 993–1090. <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=4423&context=nclr> (accessed 10/13/18).
76. Potter, H., Quick, K., & Davies, E. (2016). *A new wave of school integration: Districts and charters pursuing socioeconomic diversity*. New York, NY: Century Foundation. <https://tcf.org/content/report/a-new-wave-of-school-integration/?session=1> (accessed 09/12/18).
77. Potter, H., Quick, K., & Davies, E. (2016). *A new wave of school integration: Districts and charters pursuing socioeconomic diversity*. New York, NY: Century Foundation. <https://tcf.org/content/report/a-new-wave-of-school-integration/?session=1> (accessed 09/12/18).
78. Bridges, K. (2018). *Critical Race Theory: A Primer (Concepts and Insights)* (pp. 444–446). St. Paul, MN: Foundation Press.

79. Bridges, K. (2018). *Critical Race Theory: A Primer (Concepts and Insights)* (p. 446). St. Paul, MN: Foundation Press.
80. “The *Parents Involved* decision operates to scare away schools from adopting desegregation measures and provides ammo to litigious parents.” Chemerinsky, E. (2014). Making schools more separate and unequal: *Parents Involved in Community Schools v. Seattle School District No. 1*. *Michigan State Law Review*, 633, 633–646.
81. “Chief Justice Roberts, writing for a plurality of four, found that Seattle and Louisville lacked a compelling interest for their desegregation efforts. Chief Justice Roberts stressed that the school systems were not seeking to remedy constitutional violations, and he rejected the argument that diversity in classrooms was an interest sufficient to meet strict scrutiny,” Chemerinsky, E. (2014). Making schools more separate and unequal: *Parents Involved in Community Schools v. Seattle School District No. 1*. *Michigan State Law Review*, 633, 633–646.
82. 551 U.S. 701, 783, and 797.
83. Chemerinsky, E. (2014). Making schools more separate and unequal: *Parents Involved in Community Schools v. Seattle School District No. 1*. *Michigan State Law Review*, 633, 633–646.
84. “*Parents Involved* thus limits the ability of school systems to adopt voluntary desegregation plans.... The decision has most obviously affected the desegregation efforts of the school districts pursuing existing integration plans fatally similar to those of Louisville and Jefferson County that were struck down by *Parents Involved*.” Chemerinsky, E. (2014). Making schools more separate and unequal: *Parents Involved in Community Schools v. Seattle School District No. 1*. *Michigan State Law Review*, 633, 633–646.
85. “The *Parents Involved* decision operates to scare away schools from adopting desegregation measures and provides ammo to litigious parents.” Chemerinsky, E. (2014). Making schools more separate and unequal: *Parents Involved in Community Schools v. Seattle School District No. 1*. *Michigan State Law Review*, 633, 633–646.
86. U.S. Department of Justice & U.S. Department of Education. (2011). *Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools*. Washington, DC: Author. [Rescinded July 2, 2018, U.S. Department of Justice and U.S. Department of Education].
87. U.S. Department of Justice & U.S. Department of Education. (2011). *Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools*. Washington, DC: Author. [Rescinded July 2, 2018, U.S. Department of Justice and U.S. Department of Education].
88. U.S. Department of Justice & U.S. Department of Education. (2011). *Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools*. Washington, DC: Author. [Rescinded July 2, 2018, U.S. Department of Justice and U.S. Department of Education].
89. “School districts are first required to consider whether workable race-neutral approaches exist for achieving their integration goals,” U.S. Department of Justice & U.S. Department of Education. (2011). *Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools*. Washington, DC: Author. [Rescinded July 2, 2018, U.S. Department of Justice and U.S. Department of Education].
90. U.S. Department of Justice & U.S. Department of Education. (2011). *Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools*. Washington, DC: Author. [Rescinded July 2, 2018, U.S. Department of Justice and U.S. Department of Education].
91. U.S. Department of Justice & U.S. Department of Education. (2011). *Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools*. Washington, DC: Author. [Rescinded July 2, 2018, U.S. Department of Justice and U.S. Department of Education].
92. “A statistical analysis investigating the racially integrative possibility of income-based integration plans in the nation’s largest school districts found, in fact, that in the great majority of districts such a plan would leave schools racially segregated. Thus, while such plans might create economic diversity or other forms of diversity that may benefit students, they do not provide the specific benefits of racial integration,” Brief of 553 Social Scientists as Amici Curiae Supporting Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007).

93. App. to Brief of 553 Social Scientists as Amici Curiae Supporting Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), 47. “Race-neutral policies that rely on socioeconomic status are not as effective in attaining racial diversity.... School districts that have eliminated race as a consideration in student assignment policies have experienced resegregation and the harmful consequences associated with racially isolated schools,” Brief of 553 Social Scientists as Amici Curiae Supporting Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), 3.
94. “Statistical analyses evaluating whether income-based integration plans in the nation’s largest school districts would create racially integrated schools found that income-based plans based on student school-lunch eligibility would have little or no effect in producing racial integration,” Brief of 553 Social Scientists as Amici Curiae Supporting Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), 13; “Of course, creating middle-class classrooms in itself would not likely produce the same gains in cross-racial understanding that occur in classrooms with racially diverse peers,” App. to Brief of 553 Social Scientists as Amici Curiae Supporting Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), 37.
95. Potter, H., Quick, K., & Davies, E. (2016). *A new wave of school integration: Districts and charters pursuing socioeconomic diversity*. New York, NY: Century Foundation. <https://tcf.org/content/report/a-new-wave-of-school-integration/?session=1> (accessed 09/12/18).
96. U.S. Department of Justice & U.S. Department of Education. (2011). *Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools*. Washington, DC: Author. [Rescinded July 2, 2018, U.S. Department of Justice and U.S. Department of Education].
97. One study of 91 school districts found redrawing school attendance boundaries to be the most common strategy for promoting socioeconomic integration; Potter, H., Quick, K., & Davies, E. (2016). *A new wave of school integration: Districts and charters pursuing socioeconomic diversity*. New York, NY: Century Foundation. <https://tcf.org/content/report/a-new-wave-of-school-integration/?session=1> (accessed 09/12/18).
98. Rothstein, R. (2014, March 25). Segregated housing, segregated schools. *Education Week*. https://www.edweek.org/ew/articles/2014/03/26/26rothstein_ep.h33.html (accessed 09/13/18).
99. Potter, H., Quick, K., & Davies, E. (2016). *A new wave of school integration: Districts and charters pursuing socioeconomic diversity*. New York, NY: Century Foundation. <https://tcf.org/content/report/a-new-wave-of-school-integration/?session=1> (accessed 09/12/18).
100. U.S. Department of Justice & U.S. Department of Education. (2011). *Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools*. Washington, DC: Author. [Rescinded July 2, 2018, U.S. Department of Justice and U.S. Department of Education].
101. Darling-Hammond, L., Rothman, R., & Cookson, P. W., Jr. (2017). *Expanding high-quality educational options for all students: How states can create a system of schools worth choosing*. Palo Alto, CA: Learning Policy Institute. <https://learningpolicyinstitute.org/product/expanding-high-quality-options-report>.
102. Darling-Hammond, L., Rothman, R., & Cookson, P. W., Jr. (2017). *Expanding high-quality educational options for all students: How states can create a system of schools worth choosing*. Palo Alto, CA: Learning Policy Institute. <https://learningpolicyinstitute.org/product/expanding-high-quality-options-report>.
103. U.S. Department of Justice & U.S. Department of Education. (2011). *Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools*. Washington, DC: Author. [Rescinded July 2, 2018, U.S. Department of Justice and U.S. Department of Education].
104. “The pattern of associations reported here is consistent with the hypothesis that school district policies that allow parents to easily choose a school for their children can lead to schools that are more segregated than would be the case if school assignment were based entirely on zip code.... The principal finding is a substantive positive correlation between how friendly districts are to school choice and the degree to which their high schools are racially imbalanced for blacks and whites.... Choice systems could be redesigned to produce more heterogeneous student bodies.” Whitehurst, G. J. (2017). *New evidence on school choice and racially segregated schools*. Washington, DC: Brookings Institution. <https://www.brookings.edu/research/new-evidence-on-school-choice-and-racially-segregated-schools/>.

105. Frankenberg, E., Diem, S., & Cleary, C. (2017). School desegregation after *Parents Involved*: The complications of pursuing diversity in a high-stakes accountability era. *Journal of Urban Affairs*, 39(2), 160–184.
106. U.S. Department of Justice & U.S. Department of Education. (2011). *Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools*. Washington, DC: Author. [Rescinded July 2, 2018, U.S. Department of Justice and U.S. Department of Education].
107. Darling-Hammond, L., Rothman, R., & Cookson, P. W., Jr. (2017). *Expanding high-quality educational options for all students: How states can create a system of schools worth choosing*. Palo Alto, CA: Learning Policy Institute. <https://learningpolicyinstitute.org/product/expanding-high-quality-options-report>.
108. U.S. Department of Justice & U.S. Department of Education. (2011). *Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools*. Washington, DC: Author. [Rescinded July 2, 2018, U.S. Department of Justice and U.S. Department of Education].
109. U.S. Department of Justice & U.S. Department of Education. (2011). *Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools*. Washington, DC: Author. [Rescinded July 2, 2018, U.S. Department of Justice and U.S. Department of Education].
110. *Carroll v. Board of Ed. of Jefferson County Kentucky et al.*, 561 F. 2d. 1 (1977), upholding a school desegregation plan approved in *Cunningham v. Grayson*, 541 F. 2d. 538 (1975).
111. Quick, K., & Damante, R. (2016). *Louisville, Kentucky: A reflection on school integration*. New York, NY: Century Foundation. <https://tcf.org/content/report/louisville-kentucky-reflection-school-integration/> (accessed 09/12/18).
112. Quick, K., & Damante, R. (2016). *Louisville, Kentucky: A reflection on school integration*. New York, NY: Century Foundation. <https://tcf.org/content/report/louisville-kentucky-reflection-school-integration/> (accessed 09/12/18).
113. Semuels, A. (2015, March 27). The city that believed in desegregation. *The Atlantic*. <https://www.theatlantic.com/business/archive/2015/03/the-city-that-believed-in-desegregation/388532/> (accessed 09/12/18).
114. Quick, K., & Damante, R. (2016). *Louisville, Kentucky: A reflection on school integration*. New York, NY: Century Foundation. <https://tcf.org/content/report/louisville-kentucky-reflection-school-integration/> (accessed 09/12/18).
115. Semuels, A. (2015, March 27). The city that believed in desegregation. *The Atlantic*. <https://www.theatlantic.com/business/archive/2015/03/the-city-that-believed-in-desegregation/388532/> (accessed 09/12/18).
116. 551 U.S. 701 (2007); “Jefferson County has a long history of integration. It is part of the Supreme Court’s legacy of *Brown vs. Board of Education* and the implementation of school desegregation. Although Jefferson County fiercely fought school desegregation in the 1970s, they voluntarily continued their integration plan once court oversight ended in 2000.” Auman-Bauer, K. (2017, May 22). School choice policies may impact segregation and diversity of public schools. *Penn State News*. <https://news.psu.edu/story/469109/2017/05/22/research/school-choice-policies-may-impact-segregation-and-diversity-public> (accessed 09/12/18); Bridges, K. (2016). *Jefferson County Public Schools: From legal enforcement to ongoing commitment*. New York, NY: Century Foundation. <https://tcf.org/content/report/jefferson-county-public-schools/> (accessed 09/12/18); Quick, K., & Damante, R. (2016). *Louisville, Kentucky: A reflection on school integration*. New York, NY: Century Foundation. <https://tcf.org/content/report/louisville-kentucky-reflection-school-integration/> (accessed 09/12/18); *Milliken v. Bradley*, 418 U.S. 717 (1974).
117. Semuels, A. (2015, March 27). The city that believed in desegregation. *The Atlantic*. <https://www.theatlantic.com/business/archive/2015/03/the-city-that-believed-in-desegregation/388532/> (accessed 09/12/18).
118. Cookson, P. W., Jr., Darling-Hammond, L., Rothman, R., & Shields, P. M. (2018). *The tapestry of American public education: How do we create a system of schools worth choosing for all?* https://learningpolicyinstitute.org/sites/default/files/product-files/Tapestry_American_Public_Education_REPORT.pdf (accessed 01/30/19).

119. Opalka, A., & Heyward, G. (2018, February 23). *Integrating schools in San Antonio: Start With One: An Interview with Mohammed Choudhury*. Seattle, WA: Center for Reinventing Public Education. <https://www.crpe.org/thelens/integrating-schools-san-antonio-interview-mohammed-choudhury>.
120. Opalka, A., & Heyward, G. (2018, February 23). *Integrating schools in San Antonio: Start With One: An Interview with Mohammed Choudhury*. Seattle, WA: Center for Reinventing Public Education. <https://www.crpe.org/thelens/integrating-schools-san-antonio-interview-mohammed-choudhury>.
121. Molnar, M. (2018, February 21). Giving families an ‘equal shot’ at finding the right school. *Education Week Leaders to Learn From*. <https://leaders.edweek.org/profile/mohammed-choudhury-chief-innovation-officer-expanding-school-choice/>.
122. Langhorne, E. (2018, June 22). Mohammed Choudhury on empowered educators, controlled choice and the third way for urban districts. *Forbes*. <https://www.forbes.com/sites/emilylanghorne/2018/06/22/mohammed-choudhury-on-empowered-educators-controlled-choice-and-the-third-way-for-urban-districts/#6727e4c34dbf>.
123. “Rather than depending solely on free and reduced-price lunch eligibility, Choudhury enlisted a district data scientist to dig deeper into the 320 U.S. Census blocks that make up the footprint of the San Antonio schools. Each block was evaluated for students’ family’s income, home-ownership, single-parent status, and the highest education level achieved by the head of the household.... Those groups were used to ensure that 25 percent of students with the highest needs would be assigned to balance the demographics for the 3,000 seats in choice schools and magnet programs available in 2018–19,” Molnar, M. (2018, February 21). Giving families an ‘equal shot’ at finding the right school. *Education Week Leaders to Learn From*. <https://leaders.edweek.org/profile/mohammed-choudhury-chief-innovation-officer-expanding-school-choice/>.
124. Opalka, A., & Heyward, G. (2018, February 23). *Integrating schools in San Antonio: Start With One: An Interview with Mohammed Choudhury*. Seattle, WA: Center for Reinventing Public Education. <https://www.crpe.org/thelens/integrating-schools-san-antonio-interview-mohammed-choudhury>.
125. Opalka, A., & Heyward, G. (2018, February 23). *Integrating schools in San Antonio: Start With One: An Interview with Mohammed Choudhury*. Seattle, WA: Center for Reinventing Public Education. <https://www.crpe.org/thelens/integrating-schools-san-antonio-interview-mohammed-choudhury>.
126. Opalka, A., & Heyward, G. (2018, February 23). *Integrating schools in San Antonio: Start With One: An Interview with Mohammed Choudhury*. Seattle, WA: Center for Reinventing Public Education. <https://www.crpe.org/thelens/integrating-schools-san-antonio-interview-mohammed-choudhury>.
127. Opalka, A., & Heyward, G. (2018, February 23). *Integrating schools in San Antonio: Start With One: An Interview with Mohammed Choudhury*. Seattle, WA: Center for Reinventing Public Education. <https://www.crpe.org/thelens/integrating-schools-san-antonio-interview-mohammed-choudhury>.
128. Opalka, A., & Heyward, G. (2018, February 23). *Integrating schools in San Antonio: Start With One: An Interview with Mohammed Choudhury*. Seattle, WA: Center for Reinventing Public Education. <https://www.crpe.org/thelens/integrating-schools-san-antonio-interview-mohammed-choudhury>.
129. Opalka, A., & Heyward, G. (2018, February 23). *Integrating schools in San Antonio: Start With One: An Interview with Mohammed Choudhury*. Seattle, WA: Center for Reinventing Public Education. <https://www.crpe.org/thelens/integrating-schools-san-antonio-interview-mohammed-choudhury>.
130. Langhorne, E. (2018, June 22). Mohammed Choudhury on empowered educators, controlled choice and the third way for urban districts. *Forbes*. <https://www.forbes.com/sites/emilylanghorne/2018/06/22/mohammed-choudhury-on-empowered-educators-controlled-choice-and-the-third-way-for-urban-districts/#6727e4c34dbf>.
131. *Sheff v. O’Neill*, 678 A.2d 1267.
132. NAACP Legal Defense and Educational Fund Inc. (2014). Case: *Sheff v. O’Neill*. <http://www.naacpldf.org/case-issue/sheff-v-oneill>.
133. NAACP Legal Defense and Educational Fund Inc. (2014). Case: *Sheff v. O’Neill*. <http://www.naacpldf.org/case-issue/sheff-v-oneill>.
134. Sheff Movement. (n.d.). Measuring progress. <https://sheffmovement.org/measuring-progress/> (accessed 02/21/19).

135. Sheff Movement. (n.d.). Measuring progress. <https://sheffmovement.org/measuring-progress/> (accessed 02/21/19).
136. Quick, K. (2016). *Hartford Public Schools: Striving for equity through interdistrict programs*. New York, NY: Century Foundation. <https://tcf.org/content/report/hartford-public-schools/> (accessed 09/13/18).
137. Thomas, J. R., & Silber, C. (2018, October 15). Do magnet schools need white students to be great? *Connecticut Mirror*. <https://ctmirror.org/2018/10/15/magnet-schools-need-white-students-great/> (accessed 10/21/18).
138. NAACP Legal Defense and Educational Fund Inc. (2014). Case: *Sheff v. O'Neill*. <http://www.naacpldf.org/case-issue/sheff-v-oneill>; NAACP Legal Defense and Educational Fund. (2017, June 17). *LDF statement on temporary restraining order to stop the lowering of desegregation standards in Hartford*. Washington, DC: Author. <https://www.naacpldf.org/press-release/ldf-statement-on-temporary-restraining-order-to-stop-the-lowering-of-desegregation-standards-in-hartford-2> (accessed 02/21/19); Peak, C. (2018, September 10). Anti-deseg plaintiff hunt resumes. *New Haven Independent*. https://www.newhavenindependent.org/index.php/archives/entry/pacific_legal_foundation_desegregation_plaintiffs/; Quick, K. (2016). *Hartford Public Schools: Striving for equity through interdistrict programs*. New York, NY: Century Foundation. <https://tcf.org/content/report/hartford-public-schools/> (accessed 09/13/18).
139. Darling-Hammond, L. (2018). *Education and the path to one nation, indivisible*. Palo Alto, CA: Learning Policy Institute. <https://learningpolicyinstitute.org/product/education-path-one-nation-indivisible-brief> (accessed 10/13/18).
140. Century Foundation. (2016). *The benefits of socioeconomically and racially integrated schools and classrooms*. New York, NY: Author. <https://tcf.org/content/facts/the-benefits-of-socioeconomically-and-racially-integrated-schools-and-classrooms/> (accessed 10/13/18).
141. Chemerinsky, E. (2014). Making schools more separate and unequal: *Parents Involved in Community Schools v. Seattle School District No. 1*. *Michigan State Law Review*, 633, 633–646.
142. Chemerinsky, E. (2014). Making schools more separate and unequal: *Parents Involved in Community Schools v. Seattle School District No. 1*. *Michigan State Law Review*, 633, 633–646.
143. Chemerinsky, E. (2014). Making schools more separate and unequal: *Parents Involved in Community Schools v. Seattle School District No. 1*. *Michigan State Law Review*, 633, 633–646.
144. UCLA Civil Rights Project. (2011). *Federal education policy should promote diversity*. Los Angeles, CA: Author. <https://civilrightsproject.ucla.edu/legal-developments/policy-papers/informing-the-debate-bringing-civil-rights-research-to-bear-on-the-reauthorization-of-the-esea/crp-diversity-brief-2011.pdf> (accessed 10/13/18).
145. “The school experiences of thousands of children have been adversely affected by the *Parents Involved* decision,” Chemerinsky, E. (2014). Making schools more separate and unequal: *Parents Involved in Community Schools v. Seattle School District No. 1*. *Michigan State Law Review*, 633, 633–646; Brief of 553 Social Scientists as Amici Curiae Supporting Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007).
146. Chemerinsky, E. (2014). Making schools more separate and unequal: *Parents Involved in Community Schools v. Seattle School District No. 1*. *Michigan State Law Review*, 633, 633–646.
147. “The decision has most obviously affected the desegregation efforts of the school districts pursuing existing integration plans fatally similar to those of Louisville and Jefferson County that were struck down by *Parents Involved*. While estimates on the actual number of such districts vary considerably (from “more than 1,000” to “possibly less than ten”), they still undoubtedly exist, and “the efforts of the ... school districts that presently pursue racial integration will undoubtedly impact the lives of a significant number of school children, even if only some of those districts continue their efforts after *Parents Involved*.” Chemerinsky, E. (2014). Making schools more separate and unequal: *Parents Involved in Community Schools v. Seattle School District No. 1*. *Michigan State Law Review*, 633, 633–646.

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