



May 2014

Governance Brief

Brown v. Board of Education

The 60th Anniversary of the Landmark Supreme Court Case

May 17, 2014 marks the 60th anniversary of the seminal 1954 Supreme Court decision in *Brown v. Board of Education Topeka*. The California School Boards Association would like to acknowledge this important equal protection decision which determined that “in the case of public schooling, separate is inherently unequal.” To tell the story of *Brown*, this brief provides a short history of the precursors to the case, its immediate and longer-term impacts, the current status of desegregation, and some thoughts about ongoing education challenges and goals.

The long road to Brown—from abolition to desegregation: What led to Brown?

Desegregation did not begin with the *Brown v. Board* Supreme Court decision. It resulted from more than a half century of legal challenges that sought to undo discriminatory laws and practices that continued after the Civil War.

The efforts of Southern leaders to limit the rights of freed slaves immediately after the 13th Amendment abolished slavery, led to the 14th Amendment, which provided a clear definition of citizenship that included former slaves, and equal treatment for all citizens. This was followed by a brief period of Reconstruction during which the U.S. Army enforced the 14th Amendment. Once the army withdrew, white-dominated state legislatures in the South reacted with the infamous Jim Crow laws, severely curtailing the rights of African Americans.

It is hard to imagine today that such discriminatory practices could be the law of the land. Jim Crow laws in the South mandated the complete segregation of all public places including schools, transportation, restaurants, and drinking fountains.

Events leading to Brown

1865: 13th Amendment abolished slavery

1865: Immediate reaction to 13th Amendment were the Black Codes restricting property rights

1866: Civil Rights Act “All who are born in the United States are citizens and all citizens of every race and color have the full and equal benefit of all laws”

1868: 14th Amendment ensuring rights guaranteed by the 1866 Civil Rights Act “no state shall deny to any person within its jurisdiction the equal protection of the laws”

1877: End of federal enforcement of 14th amendment in the South, followed by first Jim Crow laws

In 1896, the first case challenging the constitutionality of Jim Crow laws was brought to the Supreme Court in *Plessy v. Ferguson*. The plaintiff, Homer Plessy, an African American, argued that the Louisiana law segregating train cars violated the equal protection clause of the 14th Amendment. The Supreme Court did not agree, ruling that segregation based on race was not a violation of the U.S. Constitution, thus establishing the doctrine of separate but equal.¹

The *Plessy* decision gave rise to more than fifty years of legal challenges regarding equal access to the nation’s public schools. African Americans were not the only targets of segregation: the practice was also widely applied to Asians, Latinos, and other minorities, including those who were American born. A legal challenge after *Plessy* that illustrates the breadth and depth of this segre-

gation is the 1927 U.S. Supreme Court case *Lum v. Rice* in which the Court found that a nine-year-old American girl could be denied entry to a white school in Mississippi because she was of Chinese descent.²

Public school segregation was not limited to the South and in fact was widespread across the U.S. For example, in San Francisco, California, Chinese students were banned from attending public schools. "A racially segregated, Chinese-only public school opened in 1859 in San Francisco, but it was ordered closed in 1871 by the school board, after which no ethnic Chinese student was permitted to attend a San Francisco public school of any kind."³ Additionally, segregation of Latino students in Southern California led to the 1947 legal challenge that ended public school segregation in the state. In that case, *Mendez v. Westminster*, five Mexican American families challenged the constitutionality of the segregated public schools in four Orange County school districts.⁴ The 9th U.S. Circuit Court of Appeals agreed with the families and held that the segregation policy in these school districts was unconstitutional. As a result, in 1947, California Governor Earl Warren signed legislation that repealed all laws allowing segregation of school children by race, ethnicity, or language, foreshadowing Warren's decision a few years later when he was Chief Justice of the Supreme Court that heard *Brown*.⁵

Beginning in the early 1900s, the National Association for the Advancement of Colored People (NAACP) became the prime mover of the legal strategy that established the foundation for the *Brown v. Board* challenge to segregation in U.S. public schools. Three prominent cases: *Murray v. Maryland* (1936), *Missouri ex rel. Gaines v. Canada* (1938), and *Sweatt v. Painter* (1950) all challenged the separate but equal doctrine in higher education and demonstrate this long-view legal strategy. All argued that "white only" law schools violated the equal protection clause and in all three cases the Court ruled in favor of the African American plaintiffs, establishing the precedent that separate but equal is inherently unequal.⁶

The case, decision, implementation, and results: What happened as a result of Brown?

In 1953, *Brown v. Board of Education* reached the Supreme Court. The actual *Brown* case was a consolidation of five separate cases⁷ all arguing that public school segregation was a violation of students' 14th Amendment right to equal protection under the law. Combin-

Cases consolidated in Brown

- 1 *Brown v. Board of Education Topeka*
- 2 *Briggs v. Elliot*
- 3 *Davis v. Board of Education of Prince Edward County*
- 4 *Boiling v. Sharpe*
- 5 *Belton v. Gebhart*

ing the cases was significant because it demonstrated that the issue of segregation was not limited to southern districts. Thurgood Marshall and the NAACP Legal Defense and Education Fund represented the plaintiffs in all five cases. In all but one of the five *Brown* cases, the lower courts upheld the constitutionality of separate but equal. The single exception was the decision in the case from Delaware (*Belton v. Gebhart*), requiring the immediate admission of the eleven plaintiffs to an all-white school.

The *Brown* case was argued before the Supreme Court in 1953, but by the end of the Court's term the justices remained divided and adjourned without reaching a decision. When the Court re-convened, it had a new Chief Justice, Earl Warren, the former governor of California. Warren was able to guide the justices to a unanimous decision and on May 17, 1954 he delivered the Court's opinion: "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal..."⁸

The decision declaring that segregation in public schools violates students' constitutional rights was and is immensely important, yet the decision did not address how to implement desegregation. As a result, the Court heard a second case, known as *Brown II*, which focused on implementing public school desegregation. The *Brown II* decision held that desegregation of schools was best handled by local school systems and that these school systems should move forward "with all deliberate speed" to dismantle segregation practices. This ruling was problematic because "all deliberate speed" sometimes meant no speed at all. In fact, during the first ten years after *Brown*, very little public school desegregation took place. While *Brown* eventually led to significant desegregation of public schools, particularly in the South, the ruling was also confronted by extensive resistance.

Although the *Brown* decision itself was not an explicit focus of the Civil Rights Movement, it is seen by many as one of the catalysts of the ensuing ten years of equal rights activities that culminated with the Civil Rights Act of 1964. The Act empowered the Department of Justice to initiate desegregation lawsuits independent of private plaintiffs, which resulted in a number of Supreme Court decisions that supported efforts to implement public school desegregation around the country.⁹

Current status of segregation: The 1990s forward and reversals of desegregation orders

The *Brown* decision and the civil rights movement resulted in significant school desegregation. “In 1964, 99% of black students in the South attended all-black schools; by 1971 only about 20% attended such schools, and schools in the South were more integrated than elsewhere in the country.”¹⁰

Nonetheless, while many districts are much more integrated than they were in the 1950s, the integration achieved after *Brown* is waning and many districts are re-segregating. A recent study reports that:

- » After several Supreme Court decisions in the 1990s¹¹ over half of the districts that had court-ordered desegregation were released from court oversight
- » In these released districts, segregation grew steadily as compared to non-released districts
- » The extent to which districts had integrated did not affect whether or not they were released from desegregation orders: districts that were and were not released had essentially the same average racial composition and average levels of racial segregation
- » Re-segregation after release from court order is occurring in districts both in and outside of the South¹²

It is of note that while some areas of the South are re-segregating, the South also has some of the most integrated schools in the country and the North has some of most segregated. In 2001 the four most segregated states for African American students were New York, Michigan, Illinois, and California. At that time in California and New York, most African American students were in a school that was 75% or more non-white students. California, New York, and Texas were also the least integrated states for Latinos in 2001. In all three states, less than 17% of Latinos were in a majority-white school.¹³

Integration varies by community size in ways that might seem unexpected. Data from 2001 show that integration for African American and Latino students in public schools was greatest in rural areas—perhaps because such regions tend to have a single school for a large geographic area. The next most integrated communities for both groups were towns and small cities. The most segregated public schools in the country were in areas where the majority of African American and Latinos live—central cities and suburbs of large metropolitan areas.¹⁴

Desegregation and its effects: Do students benefit?

A fundamental question raised by *Brown* and the subsequent desegregation cases is: “Does desegregation work, that is, does it result in improvements for students?” The answer, according to education studies is “yes.” These studies find that desegregation has resulted in:

- » Improved academic achievement for African American students and no effect on white students’ attainment¹⁵
- » An increase in the number of years of school completed (and a decreased dropout rate) and the probability of attending college for African American students
- » A higher likelihood that both white and minority students will function well as adults in desegregated settings, including colleges, universities, and the workplace
- » A greater degree of comfort with those of different ethnic and cultural backgrounds than their own, an increased sense of civic engagement, and a greater desire to live and work in settings with diverse neighbors and colleagues for both white and minority students¹⁶

These findings affirm that integrated schools attended by students of diverse economic, linguistic, and cultural backgrounds can foster improved outcomes of all kinds, including higher achievement for minority students.

2014 and Brown: Where do we go from here?

Clearly there is a need to address a range of issues in order to achieve equity and see significant gains for all students: no one would argue that integration alone

will address the many contributors to poor student outcomes. No matter where students attend school, it is essential that we provide them the opportunities that they need in order to thrive. This equity of opportunity is a fundamental premise of the new approach to funding education in California, the Local Control Funding Formula (LCFF). A guiding principle of LCFF is the importance of providing students the range of supports they need in order to function well physically, mentally, and academically.

African American and Latino students are disproportionately from low-income families and many of the challenges that we must address—if more of these students are to do well in school and in life—are related to these economic circumstances. A few of the many examples of these challenges include limited access to physical, mental, and dental health services; food insecurity; fewer opportunities for the kinds of extracurricular experiences—e.g., museum visits, trips, and lessons—that are available to higher-income students; and poor access to quality preschool. While these challenges are most often outside of the purview of public schools, they do not have to be. The full service community schools model provides an example of how schools can be a hub for a range of supports to help students and their families meet the multiple challenges they face.

There are also, of course, issues directly related to education that must be addressed in order to improve outcomes for many African American and Latino students. These issues include greater access to rigorous curricula and the supports to meet this rigor; well-trained teachers who have the skills, knowledge, and desire to work with these students as well as a belief in their ability to learn and high expectations for their achievement; quality preschool programs; and well-designed out-of-school-time programs to provide some of the extra services and experiences to which higher income students have access at home.

Nonetheless, if we seek to achieve equity and improve outcomes for many African American and Latino students, integration both within and across schools remains a valuable strategy. Just as no one would argue that integration *alone* will address the many contributors to poor student outcomes, the evidence supporting the positive effects of desegregation cannot be dismissed. This evidence affirms that integrated schools in which students of diverse economic, linguistic, and cultural backgrounds work, learn, and play together on an equal footing and under equitable conditions can foster improved outcomes and remain a goal worth pursuing.

Questions for school board members:

To initiate a governance conversation regarding the integration of diverse students in the district, boards might ask the following questions:

1. Who are our students and how are they distributed across our schools?
2. How are students distributed within our schools (e.g., in a-g and special education)?
3. What programs/efforts do we have to increase diversity and integrate students from diverse ethnic, linguistic, and socioeconomic backgrounds:
 - a. across schools in the district?
 - b. within schools and classrooms?
 - c. in extracurricular activities?
4. What have been the results of these programs and efforts?
5. What and how much professional development do we offer our teachers to help them gain expertise for teaching diverse students including integrating students from diverse backgrounds within the classroom?
6. Do we offer similar professional development for administrators?
7. How many teachers/administrators take part in this professional development?
8. How are we measuring the success of this professional development?

Endnotes

- 1 *Plessy v. Ferguson* (163 U.S. 537, 1896)
- 2 *Gong Lum v. Rice* (275 U.S. 78, 1927)³ Beyond black and white: API students and school desegregation. (2008). *NEA Human and Civil Rights*, p. 1. Retrieved from www.nea.org/assets/docs/HE/mf_apifocus08.pdf
- 4 Westminster, Garden Grove, Santa Ana and El Modena
- 5 *Westminster et al. v. Mendez et al.* (161 F.2d 774; U.S. App. 1947)
- 6 *Sweat v. Painter* (339 U.S. 629, 1950), *University v. Murray*, 169 Md. 478 (1936), *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938). Retrieved from <http://1.usa.gov/1jfUm7H>
- 7 *Freeman v. Pitts* (503 U.S., 467, 1952); *Briggs v. Elliot* (98F. Supp., 529, 1951); *Davis v. Board of Education Prince Edward County* (149 F. Supp., 431, 1957); *Boiling v. Sharpe* (347 U.S., 497, 1954); *Belton v. Gebhart* (33 Del. Ch. 144, 87 A.2d 862, 1952)
- 8 *Brown v. Board of Education Topeka* (347 U.S. 483, 1954)

- 9 Still looking to the future: Voluntary K-12 school integration. A manual for parents, educators, and advocates (2008). NAACP Legal Defense Fund, Inc., The Civil Rights Project/Proyecto Derechos Civiles.
- 10 Reardon, S.F., Grewal, E., Kalogrides, D. and 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. p. 1.
- 11 *Board of Education v. Dowell* (498 U.S. 237, 1991); *Freeman v. Pitts* (503 U.S., 467, 1992); *Missouri v. Jenkins* (515 U.S., 79, 1995).
- 12 Reardon, S.F., Grewal, E., Kalogrides, D. and 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. pp. 21-26.
- 13 Orfield, G. and Lee, C. (2004). *Brown* at 50: King's dream or Plessy's nightmare? The Civil Rights Project 2004 p. 26
- 14 Orfield, G. and Lee, C. (2004). *Brown* at 50: King's dream or Plessy's nightmare? The Civil Rights Project 2004 pp. 33-34
- 15 Reardon, S.F., Grewal, E., Kalogrides, D. and Greenberg, E. (2011). *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. p.36
- 16 Orfield, G. and Lee, C. (2004). *Brown* at 50: King's dream or Plessy's nightmare? The Civil Rights Project 2004 pp. 23-25

Additional resources

For sample board policy on nondiscrimination in district programs and activities visit CSBA Gamut online at www.csba.org/GamutOnline.

For further information

1. Ladson-Billings, G. (2004). Landing on the wrong note: The price we paid for *Brown*. 2004 *DeWitt Wallace-Reader's Digest Distinguished Lecture*.
2. Rothstien, R. (2013). For public schools, segregation then, segregation since: Education and the unfinished march. Economic Policy Institute.
3. Hannah-Jones, N. (2014). Segregation now...sixty years after *Brown v. Board of Education*, the schools in Tuscaloosa, Alabama, show how separate and unequal education is coming back. *The Atlantic*.