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ABSTRACT

This issue reviews national demographic trends in school segregation, summarizing research findings. Though the national debate on school segregation emphasizes blacks and whites, present-day school segregation includes segregation by socioeconomic level, ethnicity, and native language. The research study examined features of the ecology of schools, describing elementary schools attended by children who migrated from Puerto Rico to New Jersey with a focus on racial/ethnic composition, linguistic composition, socioeconomic characteristics, neighborhood type, school size and crowdedness, and interrelationships among these characteristics. Results found that school segregation by race/ethnicity and language closely related to segregation by poverty and parental education. Segregation was associated with crowded schools. A second article addresses policies and judicial trends regarding school desegregation, highlighting the segregation of Hispanic students. It examines the 1896 U.S. Supreme Court ruling in Plessy v. Ferguson which affirmed a vision of a rigidly segregated society, and the 1954 U.S. Supreme Court landmark decision in Brown v. Board of Education, which said that separate but equal facilities had no place in public education. Finally, it discusses segregation of Hispanics (questions for the courts), recent efforts against mandatory school desegregation, and the need for public awareness, policies, and leadership. (SM)

THE NEW SEGREGATION
Luis M. Laosa

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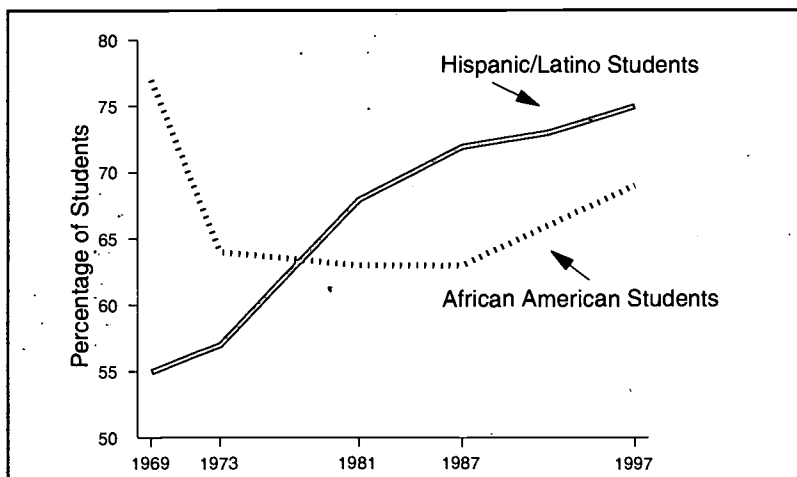
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The New Segregation by Luis M. Laosa

Few issues in American education have drawn more intense attention and controversy than school segregation. More than a century after the U.S. Supreme Court's decision in *Plessy v. Ferguson* made racial segregation the law of the land, and almost 50 years after the Court overturned that decision in *Brown v. Board of Education*, segregation still exists in U.S. schools. Furthermore, current trends point to a return to widespread segregated schooling. This article provides a brief overview of U.S. national demographic trends in school segregation and summarizes the results of one of my research studies on the topic. The second article in this issue addresses policies and judicial trends regarding school desegregation.

Figure 1: U.S. National Trends in the Percentage of Hispanic/Latino and African American Students Attending Predominantly Minority Schools



Note: A "predominantly minority school" is one in which more than half of the school's combined enrollment is African American, American Indian/Native American, Asian/Pacific Islander American, or Hispanic/Latino.

Source: U.S. Department of Education Office for Civil Rights data and data from the NCES Common Core of Data cited in Orfield, G., and Yun, J. T., *Resegregation in American Schools*, Harvard University, Civil Rights Project, June 1999.

This Issue—School Segregation: A Focus on Hispanic/Latino Children

- *The New Segregation*
- *School Desegregation Policies and Judicial Trends*

Editor's Note: This issue of *ETS Policy Notes* highlights some of the work of Dr. Luis M. Laosa, an ETS Principal Research Scientist, who is carrying out a long-term, longitudinal program of research focusing on school children who migrate to the United States from Puerto Rico. The two articles included here are based on the following ETS Research Report by Dr. Laosa:

School Segregation of Children Who Migrate to the United States from Puerto Rico (RR-98-25, July 1998).

That report is available free from ETS by writing to Research Reports, Mail Stop 05-R, Rosedale Road, Princeton, NJ 08541. The work was published in January 2001 in *Education Policy Analysis Archives*, a peer-refereed on-line journal, where it can be downloaded free at <http://epaa.asu.edu/epaa/v9n1.html>

Dr. Laosa's research described here was made possible in part by a research grant from the William T. Grant Foundation. All data presented, statements made, and views expressed are the responsibility of the author.

The national debate about school segregation has typically been framed exclusively in terms of *race*, and more specifically in terms of only two groups (i.e., Black and White). That view, however, overlooks other significant forms of present-day school segregation, including segregation by socioeconomic level, ethnicity or national origin, and native language. Moreover, as discussed in greater detail in the second article of this issue of *ETS Policy Notes*, the U.S. Supreme Court has recognized that Hispanics/Latinos have a special stake in these concerns. In *Keyes v. School District No. 1* (Denver, Colorado), the Court held that Hispanics/Latinos “constitute an identifiable class for purposes of the Fourteenth Amendment” of the U.S. Constitution, having agreed that Hispanic/Latino and African American students “in Denver suffer identical discrimination in treatment when compared with the treatment afforded Anglo students,” and concluded that schools with a predominant proportion of Hispanic/Latino students are classifiable as “*segregated* schools in their own right” (413 U.S. 195-198).

National statistics show, for example, that school segregation trends for Hispanics/Latinos differ from those for African Americans. School segregation of African American children declined dramatically from the mid 1960s through the early 1970s—as a result of the 1954 U.S. Supreme Court *Brown* decision and the ensuing struggles culminating in the 1964 Civil Rights Act—and then remained largely stable until the mid 1980s when, in a reversal of this trend, it began to rise. In sharp contrast, school segregation of Hispanic/Latino children has been steadily increasing since at least the mid 1960s, when national statistics on the subject were first collected.¹

In fact, national statistics now show higher levels of school segregation for Hispanics/Latinos than for African Americans. Since 1980, Hispanics/Latinos have been more likely than African Americans to attend predominantly minority schools: In the 1968-69 school year, 77 percent of African American and 55 percent of Hispanic/Latino children attended predominantly minority schools. By 1996-97, 69 percent of African American and 75 percent of Hispanic/Latino children were attending predominantly minority schools, as Figure 1 shows.

Although the level of school segregation of Hispanic/Latino students is high across the country, it is highest for the substantially Puerto Rican population of the Northeast U.S., but it is rapidly rising in other parts of the country with high concentrations of Hispanics/Latinos.²

As social institutions, schools are “ecologically” embedded in individual communities, part of a larger social, cultural, political, and economic environment. The characteristics of each school will be determined in part by this ecology. Particularly in the U.S., vast ecological differences exist among schools—differences that raise questions about the role of schools in creating or maintaining socioeconomic stratification and ethnocultural or linguistic isolation. These critical ecological attributes of schools include the student body’s racial/ethnic, linguistic, and socioeconomic composition. These considerations bear especially on children from immigrant and other ethnocultural and linguistic national minorities: For many of these children, the school is the first—and perhaps the only— influential point of direct experience with a “mainstream” socializing institution.

The research study summarized below examines certain features of the ecology of schools, describing the schools that children who migrate from Puerto Rico to the mainland U.S. (New Jersey) attend in this country. The study is guided by the view that to gain a better understanding of children’s development and adaptation, one must first describe the characteristics of the human environments they face.

Puerto Ricans constitute a large proportion of the Hispanic/Latino population of the Northeastern U.S. Because of the special sociopolitical relationship between Puerto Rico and the United States, Puerto Ricans are U.S. citizens by birth; therefore, they are not, technically speaking, “immigrants;” however, Puerto Ricans who migrate to the U.S. mainland possess all the characteristics of an immigrant group, including a distinct culture and a different language—Spanish.

The Study

The study addressed the following characteristics of the elementary schools that children who migrated from Puerto Rico to the U.S. (state of New Jersey) attended in this country during the first two years following their arrival.

- racial/ethnic composition
- linguistic composition
- socioeconomic characteristics
- types of neighborhoods
- school size and crowdedness
- interrelationships among these characteristics

Research Design

As part of a larger scientific investigation focusing longitudinally on preadolescent children who migrate to the Northeastern U.S. from Puerto Rico, I selected a sample of 241 public elementary schools in New Jersey, scientifically drawn to yield a sample as representative as possible of children who migrate from Puerto Rico to urban and suburban areas and small towns in New Jersey. I continually monitored the enrollment records of those schools over a two-year period in order to identify all the children who transferred in from Puerto Rico to the third and fourth grades (or the equivalent levels for ungraded classrooms). I will refer to such children as the study's **focal children**. The analysis results summarized below are based on data describing the schools wherein the focal children arrived, plus any other U.S. mainland schools they also attended during the following two years.

Racial/Ethnic Composition

Many of the schools the focal children attended have very high concentrations of Hispanic/Latino pupils and very few European American pupils (see Figure 2). Hispanics/Latinos are the majority of the student body in 43 percent of the schools that focal children attended. (The vast majority of the Hispanic/Latino

students in the schools that focal children attended are Puerto Rican.) In contrast, European Americans are the majority of the student body in only 12 percent of the schools that focal children attended. The data thus show considerable school segregation of students by race/ethnicity in many of the schools.

Figure 2: Racial/Ethnic Composition of Focal Children's Schools

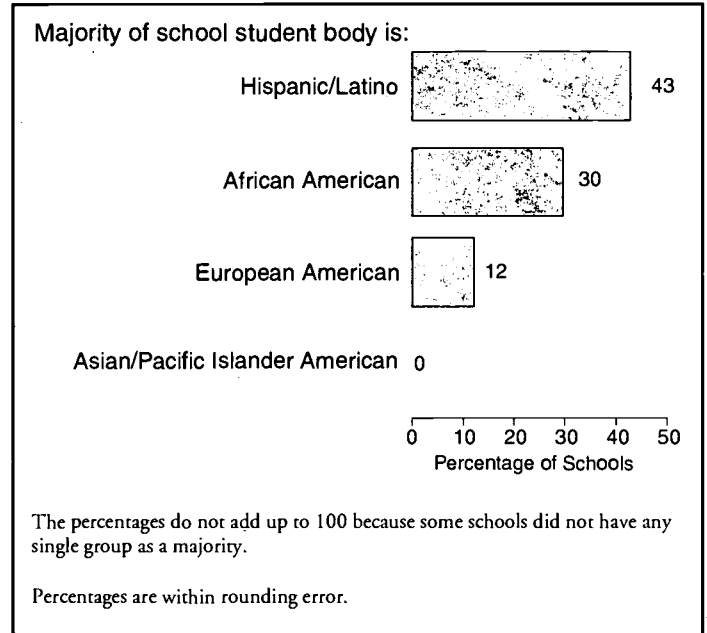
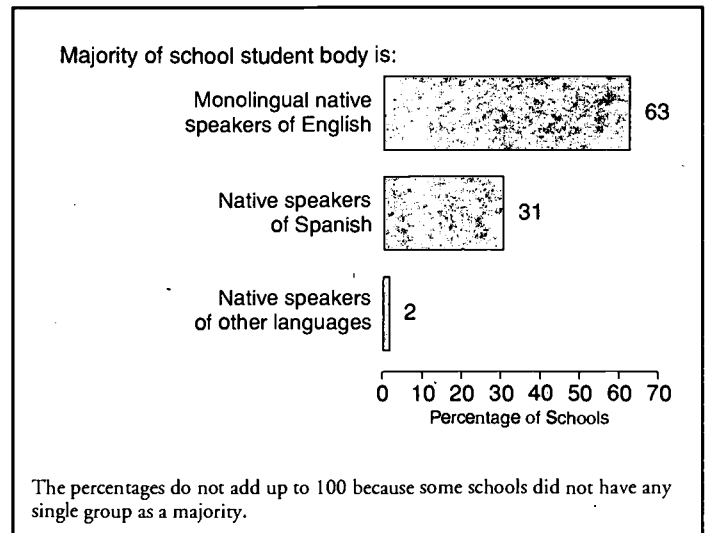


Figure 3: Linguistic Composition of Focal Children's Schools



Linguistic Composition

Similarly, there is considerable school segregation by native language. Figure 3 shows that native speakers of Spanish are the majority of the student body in 31 percent of the schools that focal children attended.

Socioeconomic Composition

Poverty and low parental education are also salient characteristics of the student body in many of the schools. As shown in Figure 4, in 65 percent of the schools that focal children attended, 50 percent or more of the student body is eligible for fully subsidized lunches. In 79 percent of the schools, the student body's average maternal education level is less than a high school diploma.

School Size and Crowdedness

Large size and crowdedness are additional characteristics of many of the schools. The schools attended by the focal children enrolled an average of 677 pupils—a much larger figure than the estimated U.S. national average for public elementary schools.³ Moreover, 44 percent of the schools enrolled pupils in excess of the number for which they were built.

Neighborhoods

Figures 5 and 6 illustrate some of the characteristics of the schools' neighborhoods. Many of the schools are located in highly urbanized and economically depressed areas. Sixty percent of the schools that focal children attended are in the inner core of cities, 28 percent in other urban parts of cities, and 10 percent in suburban neighborhoods.

Forty-six percent of the schools are in low-income areas, 44 percent in neighborhoods of a type characterized by a mix of low and middle income, and 7 percent in middle-income areas.

Differences Among Schools

It is also important to note the wide differences in the level of segregation among the schools. For example, the schools differ widely in student body racial/ethnic composition. In about one-fourth of the schools, Hispanics/Latinos constitute between 75 percent and 99 percent of the student body; yet at the other end of the distribution, in another one-fourth

Figure 4: Subsidized Lunch Eligibility of Focal Children's Schools

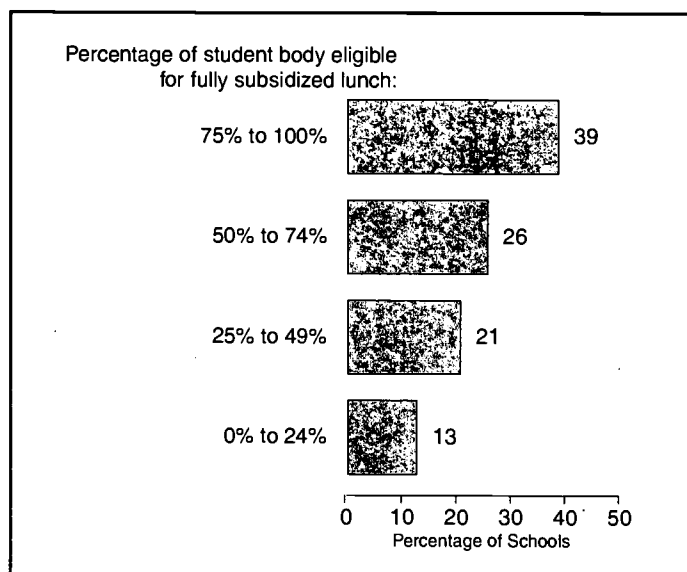


Figure 5: Location of Focal Children's Schools

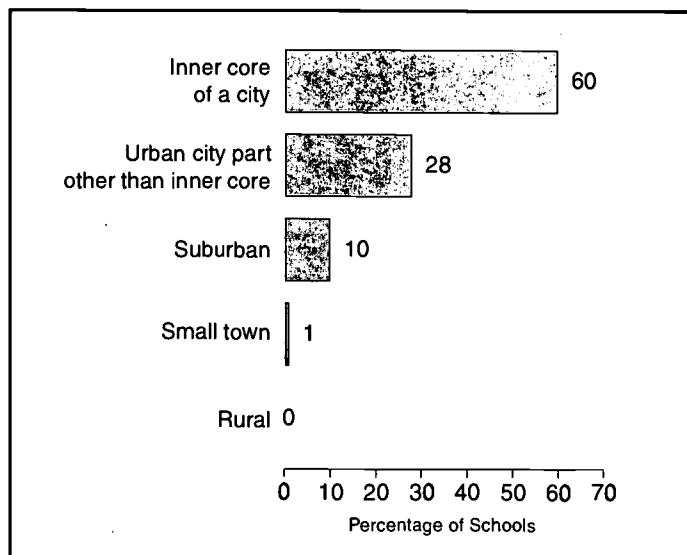
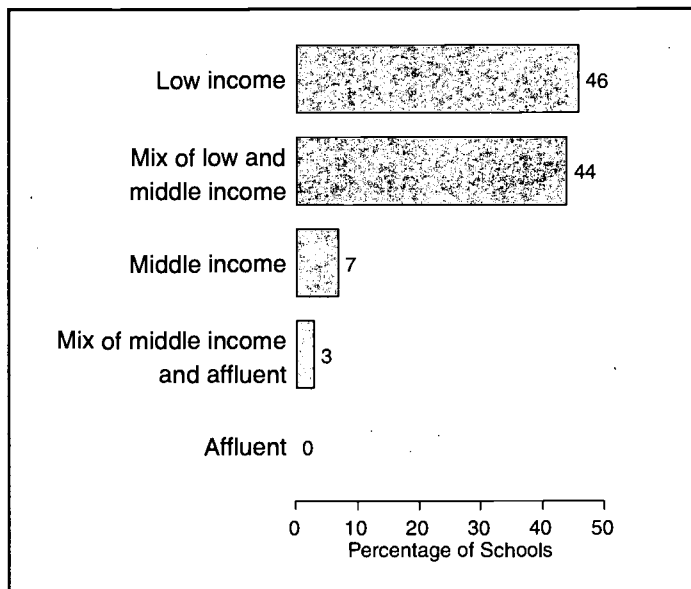


Figure 6: Neighborhood Economic Status of Focal Children's Schools



of the schools, they constitute less than 25 percent of the student body. In about one-tenth of the schools, European Americans constitute 50 percent to 98 percent of the student body, although in about three-quarters of the schools they are less than 25 percent of the student body.

Similarly, the schools differ widely in linguistic composition. In about one-third of the schools, native speakers of Spanish are the majority of the student body, but in about two-fifths of the schools they are less than 25 percent of the student body.

The schools also differ widely in student body socioeconomic characteristics, school size, and density-overcrowdedness. In addition, although to a lesser extent, the schools' neighborhoods differ.

Correlations

The larger a school's proportion of pupils who were Hispanic/Latino or native speakers of Spanish, the higher was the school's concentration of pupils from economically impoverished and poorly educated parents, and the higher its likelihood of being crowded and

of being located in an economically depressed and highly urbanized area. Similarly, the larger a school's proportion of African American pupils, the higher was its concentration of pupils from low-income families, and the higher its likelihood of being in a poor inner-city area. In contrast, the larger a school's proportion of European American pupils, the *lower* was its concentration of pupils from economically impoverished and poorly educated parents, and the *lower* its likelihood of being in an economically depressed and highly urbanized area.

Implications

The study's findings do not necessarily imply that school boards or other public school officials caused the noted school segregation. Indeed, the underlying causes are complex and in need of further research. Regardless of the causes, however, the observed patterns of segregation give cause for concern, for the following reasons.

□ *Separation and equality.* The correlations show that separate is *not* equal. School segregation by race/ethnicity and language is closely associated with school segregation by poverty and by parental education. Furthermore, racial/ethnic and linguistic segregation are associated with crowded schools. A focal child in a school with a relatively high concentration of pupils who are Hispanic/Latino or native speakers of Spanish is more likely to be in a school with a high concentration of pupils from economically impoverished and poorly educated families, and a crowded school located in a poor inner-city area. In contrast, a focal child in a school with a relatively high proportion of European American pupils is likely to be in a school with relatively few students from economically impoverished or poorly educated families, and a school that is not located in an economically depressed or highly urbanized area.

The relationship of school segregation with poverty takes on added significance in the light of previous research generally suggesting an influence of the student body's socioeconomic status (SES) on scholastic achievement. That is, the higher a school's concentration of economically impoverished students, the higher the incidence of low academic achievers

tends to be. Although SES typically refers to the background of individuals, a growing body of research suggests that the SES of a child's school's student body may be as critical an influence on the child's academic achievement as is the SES of the child's household.⁴

It is also likely that the ecology of schools can affect a child's long-term social development. For instance, a neighborhood with a high unemployment rate will likely provide limited exposure to successfully employed role models.⁵ Children in such schools are largely excluded from a range of options and opportunities commonly available in middle-class schools.

The findings raise crucial questions concerning equality of educational opportunity, fairness, and social justice—concerns that urgently need the attention of educators, parents, and policy makers. Equal educational opportunity is the fundamental American answer to social and economic inequality, but school segregation by race/ethnicity or language *de facto* concentrate poverty and low academic achievement in schools that are not equal—a historical and contemporary fact. Such schools are often vulnerable to becoming overwhelmed with problems of economically impoverished and poorly educated families isolated in neighborhoods lacking many of the opportunities typically available in other schools. High priority must be given to the challenging task of providing access for these children to appropriate and effective schooling so that every student can have a fair chance of becoming a full participant in American society.

☐ *Opportunities for interaction and exposure to diversity.* When students are isolated from peers of different racial/ethnic, linguistic, or socioeconomic backgrounds they are deprived of appropriate occasions for inter-group interactions. They are also deprived of the opportunity to develop the sociocultural knowledge, shared understandings, and behavior patterns that they will need as adults in order to function harmoniously and productively in ethnically heterogeneous settings—a serious problem for a society as increasingly diverse as ours.⁶

Viewed from a research perspective, the observed differences among the schools in levels of ethno-linguistic segregation constitute a series of naturally occurring experiments, which raise questions in need of study. For example, Will a Spanish-speaking child's

motivation to learn English be stronger in a school in which the majority of the pupils are monolingual speakers of English than in a school in which native speakers of Spanish preponderate? On the other hand, will the child's socio-emotional development and psychosocial adaptation be easier in the latter school? Are particular educational approaches more or less effective depending on the linguistic composition of the school's student body? Ongoing and planned studies address these and other issues concerning the increasing segregation of children in our nation's schools.

Notes

¹ Orfield, G., & Yun, J. T. (1999). *Resegregation in American Schools*. Cambridge, MA: Civil Rights Project, Harvard University.

² Orfield & Yun (1999).

³ U.S. Department of Education. (1993). *Digest of Education Statistics, 1993* (NCES 93-292). Washington, DC: National Center for Education Statistics, U.S. Government Printing Office.

⁴ Coleman, J. S. et al. (1966). *Equality of Educational Opportunity*. Washington, DC: U.S. Government Printing Office; Orland, M. E. (1994). Demographics of Disadvantage: Intensity of Childhood Poverty and Its Relationship to Educational Achievement. In J. I. Goodlad & P. Keating (Eds.), *Access to Knowledge: The Continuing Agenda for Our Nation's Schools* (Rev. ed., pp. 43-58). New York: College Entrance Examination Board; Puma, M., Jones, C. C., Rock, D., & Fernandez, R. (1993). *Prospects: The Congressionally Mandated Study of Educational Growth and Opportunity* (Interim report prepared for the U.S. Department of Education, Planning and Evaluation Service). Bethesda, MD: Abt Associates; U.S. Department of Education. (1996). *Urban Schools: The Challenge of Location and Poverty. Executive Summary* (NCES 96-864; by L. Lippman, S. Burns, & E. McArthur, with contributions by R. Burton, T. M. Smith, & P. Kaufman). Washington, DC: National Center for Education Statistics, U.S. Government Printing Office; U.S. Department of Education. (1997). *Findings from the Condition of Education 1997: No. 10. The Social Context of Education* (NCES 97-981, by B. A. Young & T. M. Smith). Washington, DC: National Center for Education Statistics, U.S. Government Printing Office.

⁵ Brooks-Gunn, J., Denner, J., & Klebanov, P. (1995). Families and Neighborhoods as Contexts for Education. In E. Flaxman & A. H. Passow (Eds.), *Changing Populations, Changing Schools. Ninety-fourth Yearbook of the National Society for the Study of Education* (Part 2, pp. 233-252). Chicago: University of Chicago Press; Wilson, W. J. (1995). Jobless Ghettos and the Social Outcome of Youngsters. In P. Moen, G. H. Elder, Jr., & K. Lüscher (Eds.), *Examining Lives in Context: Perspectives on the Ecology of Human Development* (pp. 527-543). Washington, DC: American Psychological Association.

⁶ Laosa, L. M. (1999). Intercultural Transitions in Human Development and Education. *Journal of Applied Developmental Psychology, 20*, 355-406.

School Desegregation Policies and Judicial Trends in the United States by Luis M. Laosa

This article is a brief historical overview, to the present, of policies and judicial decisions concerning school segregation in the United States, focusing particularly on segregation of Hispanic/Latino students. The article thus helps to place in historical context the current school segregation issues addressed in the preceding article in this issue of *ETS Policy Notes*.

***Plessy v. Ferguson*: Separate but “Equal”**

In 1896, the U.S. Supreme Court’s ruling in the case of *Plessy v. Ferguson* affirmed a vision of a rigidly segregated society. Homer Plessy—a man of mixed African and European ancestry—had taken an East Louisiana Railway train car seat reserved for Whites. Consequently, he was jailed for violating a segregation statute, which forbade members of either race to occupy accommodations set aside for the other.

Segregation statutes, or “Jim Crow” laws, constituted a strict code of racial ostracism that extended to virtually all aspects of life. In a nearly unanimous decision on *Plessy*, the U.S. Supreme Court declared that laws mandating “equal but separate” treatment of the races “do not necessarily imply the inferiority of either race,” and cited the widely accepted propriety of separate schools for White and “colored” children. In lone dissent, Justice John Harlan remarked, “The thin disguise of ‘equal’ accommodations . . . will not mislead anyone, nor atone for the wrong this day done.” From 1896 to 1954, policies and practices in many northern and southern parts of the country resulted in racial segregation of public schools and other facilities, confirming Justice Harlan’s prediction that the Court’s decision would, on the basis of race, “place in a condition of legal inferiority a large body of American citizens.”

The term *de jure segregation* generally refers to segregation that has had the sanction of law; that is, segregation directly intended by law or otherwise issuing from an official racial classification. The term comprehends situations in which the activities of school authorities have had a racially discriminatory impact contributing to the establishment or continuation of school segregation.

The term *de facto segregation* is limited to what is “inadvertent and without the assistance or collusion of school authorities” and not caused by state action.

(*Black’s Law Dictionary*)

***Brown v. Board of Education*: Separate Is Not Equal**

The thin disguise to which Justice Harlan referred endured for a half century, until African American plaintiffs in a series of court cases challenged the constitutionality of school segregation. These cases culminated in the 1954 U.S. Supreme Court landmark decision in the case of *Brown v. Board of Education*. The plaintiffs were African Americans who sought admission to the public schools of their community on a nonsegregated basis. These plaintiffs were attacking not only inequality, but also segregation itself.¹

In its decision in *Brown v. Board of Education*, the U.S. Supreme Court reversed a constitutional trend begun long before *Plessy*. The Chief Justice, Earl Warren, delivering the Court’s unanimous opinion in favor of the African American plaintiffs, stated, “We conclude that, in the field of public education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.” The plaintiffs had therefore been “deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment” of the U.S. Constitution; consequently, intentional segregation in public schools was unconstitutional. By thus

ruling that *de jure* segregation was unlawful, the *Brown* decision effectively reversed the *Plessy* decision, which rested on the principle that there could be “separate-but-equal” treatment of people.

Central to the promise inherent in the *Brown* decision is the belief that racial/ethnic segregation in public education has a detrimental effect on children and “may affect their hearts and minds in a way unlikely ever to be undone”—not because racially/ethnically segregated institutions are inherently inferior, but due to continuing structural inequities directly attributable to racial/ethnic prejudice and discrimination.²

Segregation of Hispanics/Latinos: Questions for the Courts

Although the Supreme Court’s decision in *Brown* greatly encouraged many Hispanics/Latinos, it did not offer definitive guidance on how to combat discrimination against them. Various judicial issues have arisen in desegregation litigation involving this racial/ethnic group, particularly including issues regarding the identifiability of the group and of its members. A central question the courts have asked in judging whether the isolation of Hispanic/Latino students violates the equal protection clause of the Fourteenth Amendment is whether Hispanics/Latinos constitute a group (i.e., a “class”) that should be legally treated in the same manner as African Americans. In other words, are Hispanics/Latinos a group such that discrimination against them violates the equal protection clause? Schools, courts, and policy makers were uncertain how to categorize Hispanics/Latinos for the purposes of civil rights.³

An important key to questions of how to combat discrimination against Hispanic/Latino students appeared in the Civil Rights Act of 1964, which required cutting off federal funds to school districts and other institutions that discriminate.⁴ This law established a legal basis to regulate matters pertaining to national-origin discrimination in addition to race. Title VI of the Act states, “No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination

under any program or activity receiving Federal financial assistance.”

Despite this country’s long history of persistent school segregation and other forms of discrimination against Hispanic/Latino students,⁵ the task of proving to the courts that these discriminatory practices are *de jure* rather than *de facto* was frequently more difficult for this racial/ethnic group than for African Americans. In cases involving discrimination against African Americans in the South, previous state statutes or constitutional provisions requiring segregation of this group had usually existed, and they were widely known and understood and could be readily documented. In order to establish a case of unlawful segregation, therefore, African American plaintiffs have needed merely to show the continued presence of school segregation in school systems formerly segregated by law. In contrast, Hispanic/Latino plaintiffs have frequently been hindered by a lack of systematic documentation concerning the magnitude of educational exclusion of their group and by unclear understandings of the policies underlying the group’s marginalization.⁶

In the absence of a statutory history of *de jure* segregation, Hispanic/Latino plaintiffs in segregation cases have been required to show that they are segregated and that the segregation is attributable to intentional action by school officials or other state authorities. In other words, proving to the courts that the isolation of Hispanic/Latino students constitutes a violation of the equal protection clause has required a showing of *de jure* segregation attributable not to statute but instead to the action of school officials. For example, in *United States v. Texas Education Agency* [1972], the circuit court found intentional segregative action by the school district, particularly in the choice of school sites, construction of schools, drawing of attendance zones, and student assignment and transfer policies. Thus, despite the absence of a previous statute requiring segregation of Hispanic/Latino students, the court found *de jure* segregation of this racial/ethnic group, and stated that discrimination in this case was “no different from any other school desegregation case.” Once the necessary intentional segregative actions were found, coupled with a high concentration of Hispanic/Latino students in some schools, a *prima facie* case of unlawful segregation was established.⁷

Cisneros v. Corpus Christi Independent School District [1970] is the first circuit court case to hold that Hispanics/Latinos must be considered an identifiable minority group for purposes of desegregation—that is to say, that the principles enunciated in *Brown v. Board of Education* apply to Hispanics/Latinos as well as to African Americans. This decision prevented school officials in Corpus Christi, Texas, from claiming that they had desegregated a school by placing in it only African American and Hispanic/Latino (i.e., Mexican American) students.⁸

The U.S. Supreme Court tried to untangle the problem of school segregation as it relates to Hispanics/Latinos in 1973, in the case of *Keyes v. School District No. 1* (Denver, Colorado). In *Keyes*, the Supreme Court recognized the problem but did not solve it entirely, seemingly saying that at least some Hispanics/Latinos, in some regions, under some conditions, should be recognized as a distinct class.⁹ Specifically, the Court recognized that Hispanics/Latinos and African Americans in Denver “suffer identical discrimination in treatment when compared with the treatment afforded Anglo students,” and held, therefore, that Hispanics/Latinos “constitute an identifiable class for purposes of the Fourteenth Amendment” of the U.S. Constitution, and that schools with a predominant proportion of Hispanic/Latino students are classifiable as “segregated schools in their own right” (413 U.S. 195-198).

Although a narrow reading of the *Keyes* decision could indeed limit applicability to Mexican Americans/Chicanos in the Southwest, in applying *Keyes* the courts have often “interpreted this aspect of the holding expansively, neither restricting application of the term Hispanic/Latino to Chicanos in the Southwest nor requiring a showing of ‘identical discrimination.’” Subsequent to *Keyes*, courts in school desegregation cases have typically treated children from other Hispanic/Latino groups as “minority” students. For example, federal judges in New York and Boston decided that desegregation could be extended to Hispanic/Latino groups that were primarily Puerto Rican.¹⁰

More broadly, *Keyes* is also significant because it expanded desegregation requirements to the North and West. Before 1970, legal developments had not affected racial segregation patterns outside the South. Because

the North and West lacked a history of racially discriminatory laws, segregation there had usually been characterized as *de facto*. In the 1970s, however, the courts were finding—as the Supreme Court did in the *Keyes* case in Denver—that much northern urban segregation was *de jure* segregation based not on statute but instead on specific acts or policies of school boards and other school officials.¹¹

Recent Efforts Against Mandatory School Desegregation

In the early 1970s, public protests intensified over the potential expansion of school desegregation and over forced transportation (i.e., busing) of students as a means to desegregate. Accordingly, the leadership that the executive and legislative branches of government were providing in desegregation efforts waned. Moreover, by this time, as a consequence of demographic alterations in the racial/ethnic composition of the U.S. population and shifts in residential patterns, many Northern urban school districts, which seldom extend beyond city limits, lacked sufficient numbers of European American children to desegregate. By the time of President Richard Nixon’s second term of office, significant progress toward school desegregation had largely stopped.¹²

In 1974, the Supreme Court began issuing a series of decisions limiting *Brown’s* reach. For example, in *Milliken v. Bradley* [1974] the Supreme Court erected serious barriers to interdistrict, city-suburban desegregation plans; such plans have aimed to desegregate racially isolated schools that are located in urban areas by drawing students from the surrounding suburban districts. In this Detroit metropolitan case, the Supreme Court prohibited such plans unless plaintiffs could demonstrate that the suburbs or the state took actions that contributed to segregation in the city. Because obtaining such legal proof is often difficult, *Milliken* seriously limits access to the option of drawing students from largely European American suburbs in order to desegregate urban districts that enroll high concentrations of students of color.¹³ That unconstitutional segregation existed in Detroit was not questioned in this case; in

question was the constitutionality of the court-ordered desegregation plan's extending to outlying districts with no history of segregative action on the part of their school boards or local governments.¹⁴ Throughout the country, large numbers of students of color are segregated in urban areas; hence, insofar as *Milliken* puts suburban schools out of reach of these students, it practically ensures their isolation in the cities.¹⁵

During the 1980s, the executive branch of the federal government worked actively against mandatory school desegregation; and Congress accepted a proposal from President Ronald Reagan's administration to slash the budget for federal desegregation assistance programs.¹⁶ In recent years, neither branch has made a significant school desegregation initiative.

In *Milliken v. Bradley II* [1977] the Supreme Court—facing the challenge of providing a remedy for the Detroit schools, where *Milliken I* had made long-term integration practically impossible—ruled that a court could order a state to pay for educational programs to repair the harms caused by segregation. More recently, however, *Missouri v. Jenkins* [1995] examined court-ordered programs designed to improve the quality of education in predominantly poor, predominantly non-White schools and to increase the attractiveness of schools in order to accomplish desegregation through voluntary choices; the Supreme Court ruled that such programs should be temporary, and that in order to justify continuation of the programs, it was not sufficient that the district's average academic test performance was still below national norms. Analyzing this court decision, Harvard University professor Gary Orfield and his colleagues concluded that the Supreme Court, by allowing for the dismantling of the special educational programming that the district had established, may have signaled that in the future the Court may not fully support enforcement of *Brown's* desegregation—or may even revert to *Plessy's* system of separate but not equal education.¹⁷

That is, it seems reasonable to conclude from the apparent underlying philosophy in the Supreme Court's rulings in *Jenkins* and in two other recent cases (i.e., *Board of Education of Oklahoma City v. Dowell* in 1991 and *Freeman v. Pitts* in 1992) that, in issues of school desegregation, the U.S. Supreme Court as

presently constituted is pursuing the twin goals of minimizing judicial involvement in education and quickly restoring authority to local and state government, "whatever the consequences."¹⁸

In sum, the urgent focus of public opinion on civil rights lasted only two years, from 1963 to 1965. Vigorous and effective enforcement of school desegregation by the executive branch of the federal government began in 1965 and lasted four years. The Supreme Court continued to provide strong leadership on desegregation for four more years, in a series of sweeping decisions from 1969 to 1973—decisions that launched busing as a remedy, extended desegregation requirements from the South to northern cities, established the right of Hispanic/Latino children to desegregated schools, and declared that it was no longer permissible to delay implementing the Court's mandate to desegregate. Congressional leadership on civil rights weakened after 1965 as public opinion changed. Efforts toward school desegregation then waned on the part of the three branches of government. Political and legal forces have converged in recent years to effect movement in a direction largely opposite to that of efforts to desegregate public education.¹⁹

Some favorable outcomes through litigation in recent years, however, demonstrate that some progress toward school desegregation can still be achieved through the courts. For example, in 1999, *Liddell v. Board of Education of the City of St. Louis* resulted in a settlement agreement that dismissed the case but required the continuation of a voluntary inter-district transfer of students. In this desegregation plan, African American students in the city of St. Louis, Missouri, are permitted to attend suburban schools, and White suburban students are permitted to attend city schools (magnet schools). As part of the agreement, the state of Missouri will fund this program for at least ten years. Although the case was dismissed, the court will retain jurisdiction to enforce the agreement.²⁰

Needed: Public Awareness, Policies, and Leadership

Heretofore, solutions to the problems of school segregation have been sought almost exclusively through the courts. Certainly, the most significant advances toward desegregation of African American students have been achieved with the considerable help of judicial decisions. At present, however, the problems of school segregation are even more complex and difficult than those of the past. There is also growing evidence that these problems affect multiple racial/ethnic and linguistic groups (perhaps in different ways), including Hispanics/Latinos, as shown in the previous article in this issue of *ETS Policy Notes*. Some observers have questioned whether the courts (particularly as they are presently constituted), and the adversarial system on which the judicial structure rests, are still the most effective and appropriate means possible for policy formation in an area as complex as school segregation. On the other hand, some favorable outcomes of litigation in recent years demonstrate that some progress toward school desegregation can still be achieved with the help of the courts. Nevertheless, it is now painfully evident that desegregation does not guarantee integration, nor ensure full equality of educational opportunity.

It seems clear, considering the statistical trends and the history of school desegregation efforts, that significant advances in solving problems of school segregation cannot in the foreseeable future be achieved through the courts *alone*. Urgently needed are creative, informed efforts toward the formulation of comprehensive solutions, and concerted leadership to implement them effectively. There is also a need for continued research on the potential consequences of school segregation—the impact on individuals and on the future of the society—as well as a need to inform parents, educators, and policy makers of the reality, the issues, the potential consequences, and the as-yet-unanswered questions about the existing segregation of ethnolinguistic minority children in our nation's schools.

Notes

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² Jones, E. R. (1996). Foreword. In G. Orfield, S. E. Eaton, & the Harvard Project on School Desegregation, *Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education* (pp. vii-ix). New York: The New Press/Norton.

³ González, J. M. (1982). *Hispanics, Bilingual Education and Desegregation: A Review of Major Issues and Policy Directions*. Unpublished Report to the U.S. Commission on Civil Rights; Laosa, L. M. (1984). Social Policies Toward Children of Diverse Ethnic, Racial, and Language Groups in the United States. In H. W. Stevenson & A. E. Siegel (Eds.), *Child Development Research and Social Policy* (pp. 1-109). Chicago: University of Chicago Press; Levin, B., Castaneda, S., & von Euler, M. (1977). Legal Issues Related to School Desegregation and the Educational Concerns of the Hispanic Community. *Desegregation and Education Concerns of the Hispanic Community. Conference Report* (pp. 75-89). Washington, DC: National Institute of Education, U.S. Department of Health, Education, and Welfare; Orfield, G. (1978). *Must We Bus? Segregated Schools and National Policy*. Washington, DC: Brookings Institution; Orfield et al. (1996); Roos, P. (1977). Issues in Desegregation Remedial Order for Hispanos. *Desegregation and Education Concerns of the Hispanic Community. Conference Report* (pp. 29-35). Washington, DC: National Institute of Education, U.S. Department of Health, Education, and Welfare.

⁴ González (1982).

⁵ See, e.g., Laosa (1984).

⁶ González (1982); Laosa (1984); Levin et al. (1977); Orfield (1978).

⁷ Levin et al. (1977); Roos (1977).

⁸ González (1982); Levin et al. (1977).

⁹ González (1982); Levin et al. (1977); Roos (1977).

¹⁰ Teitelbaum, H., & Hiller, R. J. (1977). Bilingual Education: The Legal Mandate. *Harvard Educational Review*, 47, 138-170.

¹¹ Brown, K. (1995). Revisiting the Supreme Court's Opinion in *Brown v. Board of Education* from a Multiculturalist Perspective. *Teachers College Record*, 96, 644-653; Orfield (1978); Orfield et al. (1996).

¹² Orfield (1978); Orfield et al. (1996).

¹³ Orfield et al. (1996).

¹⁴ Zirkel, P. A., Richardson, S. N., & Goldberg, S. S. (1995). *A Digest of Supreme Court Decisions Affecting Education* (3rd ed.). Bloomington, IN: Phi Delta Kappa Educational Foundation.

¹⁵ Orfield, G., Bachmeier, M., James, D. R., & Eitle, T. (1997). *Deepening Segregation in American Public Schools*. Cambridge, MA: Harvard Project on School Desegregation, Harvard University.

¹⁶ Orfield et al. (1996).

¹⁷ Orfield et al. (1996, 1997); Zirkel et al. (1995).

¹⁸ Orfield et al. (1996).

¹⁹ González (1982); Laosa (1984); Orfield et al. (1996, 1997); Orfield, G., & Yun, J. T. (1999). *Resegregation in American Schools*. Cambridge, MA: Civil Rights Project, Harvard University.

²⁰ William L. Taylor, personal communication, April 2, 2001; U.S. Department of Justice (January 6, 1999). *Settlement Reached in St. Louis School Desegregation Case* (Press Release; <http://www.usdoj.gov/opa/pr/1999/January/003cr.htm>); U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section (February, 2001). Overview. (<http://www.usdoj.gov/crt/edo/overview.htm>).

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