# The Struggle Of Blacks For Equal Educational Opportunity: An Overview

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## Introduction

Parents, educators, social scientists, legislatures, and the courts have long been concerned with ascertaining what factors will ensure equal educational opportunity for all students. Early studies postulated that educational quality was variously dependent on per pupil expenditures, institutional facilities, curriculum, and teachers. More recent studies, however, have focused on the freedom to attend the school of one's choice and the equitable distribution of society's resources, and have concluded that these factors may be the most significant which contribute to the attainment of equal educational opportunity.

Accessibility to the school of one's choice provides the individual with psychological and physical mobility within the academic milieu, removes the implications of a caste system within American society, and liberates the individual's mind for further intellectual exploration.[1] A more equitable distribution of society's resources makes it possible for each individual to maximize his or her innate capabilities.[2]

It is significant that Blacks seeking educational advantages traditionally have been deprived of both the freedom to attend the school of their choice and the opportunity to share equally in society's resources.[3] During the

* Member, third year class.

1. *See generally* Brown v. Board of Educ., 347 U.S. 483, 494 (1954). *See also* E. FRAZIER, THE NEGRO IN THE UNITED STATES (1957); K. CLARK, PREJUDICE AND YOUR CHILD (1955); H. WITMER & R. KOTINSKY, PERSONALITY IN THE MAKING (1952); Deutscher & Chein, *The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion*, 26 J. PYSCH. 259 (1948).

2. Cohen, *Defining Equal Educational Opportunity*, 61 GEO. L.J. 847, 847-49 (1973). *See also* Michelman, *The Supreme Court, 1968 Term, Foreword: On Protecting the Poor Through the Fourteenth Amendment*, 83 HARV. L. REV. 7 (1969). "One is poor not because he has no money, but because, possibly owing to lack of money, he lacks also access to the social instrumentalities that make humanly significant action possible. In part, it is a simple matter of not having the price of admission." *Id.* (quoting Haworth, *Deprivation and the Good City*, in POWER, POVERTY, AND URBAN POLICY at 27, 39 (W. Bloomberg & H. Schmandt eds. 1968)).

3. In the United States in 1865 there were 5 million Africans, 95% of whom were illiterate. A. BALLARD, THE EDUCATION OF BLACK FOLK 9 (1973). As late as 1963, Attorney General Robert F. Kennedy pronounced that over "2,000 school districts in the South still

American era of slavery it was a criminal offense in the southern region of the United States to teach Blacks to read and write.[4] Blacks were at that time regarded, by southern slave masters and northern abolitionists alike, as intellectually inferior to Whites.[5] After emancipation, the opposition to education for Blacks endured. White southerners feared circumvention of the system of serfdom they planned to impose on Blacks, while northerners had only a missionary interest in the ex-slaves. The attitude toward Black literacy was characterized by the phrase, "[a]n educated Black would be a dissatisfied Black."[6]

Blacks continued their efforts to receive an adequate education in the South, and with the assistance of White missionaries and philanthropic entities, a network of primary and higher educational institutions arose.[7] The source of funding, the faculties, and administrators, however, remained White.[8] Between 1865 and 1935 Black faculty and administrators sought to replace the White professors and presidents.[9] Although Blacks were largely successful in these efforts, the educational policies remained under the direction of Whites.[10] It was difficult for Blacks to receive the most minimal education, and when acquired it was laced with discriminatory sentiments.[11] Those racially discriminatory attitudes regarding Blacks and education constitute the foundation upon which the nation's segregated school system has been based.

This note presents an overview of judicial treatment of separate schools for Blacks. It focuses on the emergence and shaping of desegregation plans, desegregation and its effect on the learning process, and the social and educational ramifications of desegregation. The effect that court decisions

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[operate] totally segregated school systems." Fleming, *Brown and the Three R's: Race, Residence, and Resegregation*, in FROM BROWN TO BRADLEY 8, 11 (R. Browning ed. 1975).

4. L. BENNETT, BEFORE THE MAYFLOWER: A HISTORY OF THE NEGRO IN AMERICA (1619-1964) 70 (reprinted 1968).

5. An abolitionist once remarked: " '[W]e may concede it as a matter of fact that [the Negro race] is inferior; but does it follow therefore that it is right to enslave a man simply because he is inferior? This, to me, is a most abhorrent doctrine . . . [as] it would place those who are deficient in intellect at the mercy of those gifted in mental endowment.' " A. BALLARD, THE EDUCATION OF BLACK FOLK 10-11 (1973).

6. *Id.* at 12.

7. *Id.* at 13.

8. *Id.*

9. *Id.* at 13-14.

10. *Id.* One of the White missionaries responsible for the creation of Black industrial training colleges, General S.C. Armstrong, expressed the sentiments that the African "is capable of acquiring knowledge to any degree and, to a certain age, at least, with about the same facility as white children; but lacks the power to assimilate and digest it. . . . He is a child of the tropics, and the differential of race goes deeper than the skin." *Id.* at 13 (quoting H. BULLOCK, A HISTORY OF NEGRO EDUCATION IN THE SOUTH 76 (1967)). As Ballard states, Armstrong "regarded Blacks as childlike, lazy, slothful, and in need of the most rigid and civilizing discipline. Most of those who funded Black education in the South shared this assumption." *Id.* at 13.

11. *Id.*

have had on Blacks and their communities is analyzed with regard to disproportionate busing, closing of Black schools, ability tracking in desegregated schools, suspensions and expulsions in desegregated schools, and displacement of Black principals and teachers. Finally, the note appraises new, more logical, and equitable directions for the education of Blacks, emphasizing alternative schools and the restructuring of school finance plans.

## I. Judicial History of School Desegregation

### A. From *Roberts* (1850) to *Brown I* (1954)

One of the earliest school segregation controversies the courts were called upon to decide was *Roberts v. City of Boston*,[12] a case that involved a Black child's request to attend one of the several White schools close to her home. Boston was divided into twenty-one school districts, two of which were specifically designated for Black children of primary school age. One of the regulations governing the Boston school board's operations contained a provision that each applicant of suitable age and qualifications be admitted to the school nearest his or her residence. The plaintiff, accordingly, applied to the school nearest her home. She was refused admission, and her father brought suit under a state statute that permitted any child unlawfully excluded from the public schools to recover damages from the city that supported those schools.[13]

The Massachusetts Supreme Court focused on whether the child had in fact been "excluded." Since there were two Black schools available to her within the district, the court determined that she had not been excluded within the meaning of the statute even though it meant traveling past five White primary schools to reach the Black schools and even though the board's denial of admission was in violation of Boston's school admission regulations. The court explained that the board had the authority to classify and distribute pupils whenever it was in the best interests of those pupils and the welfare of society.[14] Hence, in the absence of an abuse of discretion, the board's decisions were conclusive and separate schools for Black children did not violate their constitutional rights.

The separation of the races, both in education and other areas of life, continued to exist and was in fact given legal authorization by the United States Supreme Court in *Plessy v. Ferguson*.[15] A Louisiana statute[16] provided that railway companies that furnished passenger transportation must supply separate but equal accommodations for Blacks and Whites. Plessy maintained that separate but equal accommodations were unconstitutional

12. 59 Mass. 198 (1849).
13. *Id.* at 199.
14. *Id.* at 208.
15. 163 U.S. 537 (1896).
16. LA. REV. STAT. ANN. § 45:528 (West 1950) (repealed 1972).

because: the railroad company was a common carrier incorporated under the laws of Louisiana, Louisiana was not authorized to distinguish between citizens according to their race, and the statute was in conflict with the Thirteenth and Fourteenth Amendments of the United States Constitution.

The Court held that if forced separation of the races "stamps the colored race with a badge of inferiority . . . it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it."[17] The Court, ignoring the congressional intent behind the Thirteenth and Fourteenth Amendments, concluded by saying that if both races have equal civil and political rights, the inferiority of one to the other is an impossibility; if one race is socially inferior, the Constitution cannot place them in parity.[18]

The constitutionality of the separate but equal doctrine was not challenged in *Cumming v. Board of Education*.[19] Instead, Blacks sought the closing of a high school for Whites because Blacks were being taxed but no high school was provided for their children.[20] The Court held that the plaintiffs' requested relief was improper. If the plaintiffs had sought organization of a Black high school and the board's refusal was alleged to be an abuse of discretion, a different issue would have been presented. The Court found, however, that closing of the White high school could confer no benefits upon the plaintiffs. Furthermore, public education via state taxation was a concern of the individual state, and federal interference with the management of those schools could only be justified when there was a clear and unmistakable disregard of constitutional rights.[21]

The Court had begun to deviate from its previous posture when in 1938 it ordered a Black woman admitted to the law school of a White Missouri university.[22] State law dictated that if a Black wished to study law he would have to seek his legal education outside the state and tuition would be paid by the state of Missouri.[23] The Supreme Court, rejecting this arrangement, held that it was "a denial of the equality of legal right to the enjoyment of the privilege which the State has set up, and the provision for the payment of tuition fees in another State does not remove the discrimination."[24]

17. 163 U.S. at 551.

18. *Id.* at 551-52.

19. 175 U.S. 528 (1899).

20. The board of education closed the Black high school attended by 60 students in order to provide funds for three primary schools necessary to educate 300 Black children of primary school age. *Id.* at 532.

21. *Id.* at 545.

22. Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337 (1938).

23. *Id.* at 342-44.

24. *Id.* at 349-50. Ten years later, again faced with an appeal by a Black to compel her admission to a White law school, the Court granted her request for a writ of mandamus, thus affirming her right to the legal education offered by the state. Sipuel v. Board of Regents, 332 U.S. 631 (1948).

A still more unusual set of circumstances was presented to the Court by *McLaurin v. Oklahoma State Regents*.[25] McLaurin was admitted to the graduate school of the University of Oklahoma as a doctoral candidate. In keeping with the state's policy to offer separate education for Blacks and Whites, McLaurin was forced to sit in a row of the classroom specifically designated for Blacks; he also was allowed to sit only at similarly assigned tables in the library and the cafeteria. The Court said that the restrictions placed upon McLaurin "impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession."[26] Thus McLaurin was being denied his right to equal protection of the laws, and had to receive the same treatment the state accorded to students of other races.[27]

The Supreme Court further eroded the concept of separate but equal facilities in *Sweatt v. Painter*,[28] which held that a Texas law school designated for Blacks was inferior to the one designated for Whites in size of faculty, scope of the library, and variety of course offerings.[29] The Court stated:

> The law school to which Texas is willing to admit petitioner excludes from its student body members of the racial group which number eighty-five percent of the population of the State and includes most of the lawyers, witnesses, jurors, judges and other officials with whom petitioner will inevitably be dealing when he becomes a member of the Texas bar.[30]

Accordingly, with such a significant portion of the state's legal community unrepresented in the Black school's population, Sweatt could not be accorded an education equal to the one offered at the University of Texas Law School.[31]

In *Brown v. Board of Education*,[32] marking the official demise of the "separate but equal doctrine," the Supreme Court held that segregated public schools were unconstitutional and ordered that the maintenance of dual school systems be ended. The Court refused to look only at the tangible characteristics of the educational institutions involved, and instead realized the necessity of scrutinizing the *effect* of forced separation of the races on public education.[33] Relying heavily upon the evidence tendered by social scientists,[34] the Court concluded that separate schools were "inherently

25. 339 U.S. 637 (1950).
26. *Id.* at 641.
27. *Id.* at 642.
28. 339 U.S. 629 (1950).
29. *Id.* at 633-34.
30. *Id.* at 634.
31. *Id.*
32. 347 U.S. 483 (1954).
33. *Id.* at 492.
34. *Id.* at 494 n.11.

unequal,"[35] and that the psychological implications of this practice had far-reaching and damaging consequences:

> To separate [Black children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.[36]

The substantive issues were decided by the Court in the first *Brown* decision (*Brown I*); the Court two years later in *Brown v. Board of Education* (*Brown II*)[37] placed the primary responsibility for devising plans to meet the desegregation decree on the school authorities themselves. The lower courts were then to analyze the efforts of those authorities to assure good faith compliance with the *Brown I* order.[38]

### B. From *Brown I* to the Present

After *Brown II*, the Supreme Court examined a myriad of novel issues ranging from delaying tactics by school authorities to the viability of inter-district remedies. In *Cooper v. Aaron*[39] the petitioners asked the Court to suspend a desegregation plan in Little Rock, Arkansas, for two and one-half years in light of the chaos and mob violence that resulted in the disruption of the educational process. In rejecting the appeal the Court recognized that the constitutional rights of the Black children were not to be sacrificed in an effort to preserve law and order; the desegregation plan would not be suspended.[40]

In 1963 the Court denied certiorari in *Board of School Commissioners v. Davis*,[41] thus permitting the lower court decision to stand. The lower court directed the board to cease segregation and submit a plan for its elimination without undue delay in view of the fact that *nine years* had elapsed since *Brown I* and yet the school board had not initiated any steps toward compliance.[42] In 1968 the Court made a dramatic change in its perusal of acceptable plans for the transition to unitary school systems. The school board in *Green v. County School Board*[43] devised a freedom-of-

35. *Id.* at 495.

36. *Id.* at 494.

37. Brown v. Board of Educ., 349 U.S. 294 (1955).

38. *Id.* at 299. State legislative and judicial footdragging was unfortunately permitted under the *Brown II* language of "all deliberate speed" as the time standard for enforcing the Court's desegregation order. *Id.* at 301.

39. 358 U.S. 1 (1958).

40. *Id.* at 16. The Court further observed that the violent situation had been exacerbated by the disruptive and evasive tactics of the governor and other state officials, in stating that the petitioner school board members stood "in this litigation as agents of the state" though they might be personally blameless. *Id.*

41. 375 U.S. 894 (1963).

42. 322 F.2d 356 (5th Cir.), *cert. denied*, 375 U.S. 894 (1963). *See also* Gilmore v. City of Montgomery, 417 U.S. 556 (1974); Keyes v. School Dist. No. 1, 413 U.S. 189 (1973); Hart v. Community School Bd. of Educ., 512 F.2d 37 (2d Cir. 1975).

43. 391 U.S. 430 (1968).

choice plan that permitted each student personally to select the school she would attend. During the three-year period the plan was in effect, no White students had chosen to attend the all-Black school, and only fifteen percent of the Black students had enrolled in the all-White school. The Court held that the efficiency of freedom-of-choice plans would be measured by how well they implemented the edict in *Brown I*, and where more expeditious methods for abolishing segregated school systems were available, such as zoning, freedom-of-choice plans would be unacceptable. The Court further stated that any plan which at such a late date "fails to provide meaningful assurance of prompt and effective disestablishment of a dual system" was intolerable.[44]

Examination of school desegregation plans created the need for specific boundaries within which federal courts could fashion remedies. In *Swann v. Board of Education*[45] the Court discussed several factors that lower courts and school boards might look to in evaluating desegregation plans. The Court held that: (1) the limited use of racial quotas was permissible because cognizance of the racial composition in an entire school system was a useful point of departure in forming a remedy to deal with past racial segregation in schools;[46] (2) one-race schools were not per se an indication that the school system still practiced segregation, but the school authorities would have the burden of convincing the court that the school's racial composition was not the product of past or present discriminatory actions;[47] (3) the pairing and grouping of noncontiguous attendance zones was an acceptable student assignment tool;[48] and (4) busing was a remedial technique within the court's power whenever a dual system could not be dismantled by allowing children to attend schools close to their homes.[49]

In 1974, however, the Court began to retreat from its unrestrained use of equitable relief in desegregation challenges. In *Milliken v. Bradley*[50] the

44. *Id.* at 438. The Court was greatly influenced by the views of the 1966 United States Commission on Civil Rights regarding why freedom-of-choice plans had proved to be non-productive in southern states. The commission found freedom-of-choice to require affirmative action by both Black and White parents and pupils. No affirmative action had been exercised primarily because: (1) Blacks had a fear of retaliation from hostile Whites in the classroom, as well as in the community; (2) poverty deterred many Black families from sending their children to all-White schools. Parents did not want their children to attend all-White schools without suitable clothing; and (3) improvements in facilities and equipment in all-Black schools had a tendency to discourage Blacks from selecting White schools. *Id.* at 440-41 n.5. *See also* Raney v. Board of Educ., 391 U.S. 443 (1968); Monroe v. Board of Comm'rs, 391 U.S. 450 (1968); and Georgia v. Mitchell, 450 F.2d 1317 (D.C. Cir. 1971), for the proposition that school boards have an "affirmative duty" to eliminate racial discrimination in public schools and, where the schools remain one-race institutions, free transfer plans do not meet that duty.

45. 402 U.S. 1 (1971).

46. *Id.* at 25.

47. *Id.* at 26.

48. *Id.* at 28.

49. *Id.* at 30. *See also* Drummond v. Acres, 409 U.S. 1228 (1972); Singleton v. Jackson Separate School Dist., 509 F.2d 820 (5th Cir. 1975).

50. 418 U.S. 717 (1974).

Court identified the extent to which busing would be permitted in order to achieve racial integration in the public schools. The district court found that the Detroit board of education had perpetuated racial separation in the local schools, and concluded that remedial measures limited in scope to the Detroit school district alone could not achieve a unitary system. The district court therefore ordered the board to submit a desegregation plan that would encompass a three-county area of eighty-five autonomous school districts. The submission of the desegregation plan was ordered despite the absence of any allegations or evidence that those separate districts had ever been guilty of intentional school segregation.[51] In abrogating the remedy, the Supreme Court emphasized that before the boundaries of autonomous school districts may be set aside for the purpose of effecting a cross-district remedy, there must appear to have been a constitutional violation in one school district that created substantial segregation in another district.[52]

Although racial separation in public education had been found to constitute innately unequal treatment under the laws of the United States, and although the nation's school authorities had been forced to move toward eradication of the traditional dual school system, Blacks had yet to experience the social and educational implications of *Brown I* and its progeny. No one could have foreseen the morass of exacting circumstances in which Blacks have found themselves in the continuing pursuit of equal educational opportunity.

## II. Social and Educational Results Since *Brown I*

### A. Purported Benefits of School Desegregation

Chief Justice Warren, delivering the opinion of the Court in *Brown I*, emphasized the stigma of inferiority that attaches to Black children who are forced to attend schools separate from their White counterparts solely because of their race.[53] The Court added that feelings of inferiority affect a child's motivation to learn, and consequently, " 'retard the educational and mental development of negro children.' "[54] Since the conclusion of the social scientists (in which the Supreme Court concurred) was that forced

51. 402 U.S. at 729-30. For the district court opinion ordering this broad desegregation plan see Bradley v. Milliken, 338 F. Supp. 582 (E.D. Mich. 1971). Similar to many school desegregation cases, Bradley v. Milliken has an extensive judicial history: 338 F. Supp. 582 (E.D. Mich. 1971), *appeal denied*, 468 F.2d 902 (6th Cir.), *cert. denied*, 409 U.S. 844 (1972), *aff'd in part, vacated in part and remanded*, 418 U.S. 717 (1973). The case continued, 402 F. Supp. 1096 (E.D. Mich. 1975), *aff'd as modified*, 509 F.2d 679 (6th Cir. 1975). A desegregation plan was ordered implemented, 411 F. Supp. 943 (E.D. Mich. 1975), *modified*, 540 F.2d 229 (6th Cir.), *aff'd*, 97 S. Ct. 2749 (1977).

52. 418 U.S. at 744-45. *Compare* United States v. Board of School Comm'rs, 541 F.2d 1211 (7th Cir. 1976) (inter-district remedy upheld) *with* Cunningham v. Grayson, 541 F.2d 1211 (6th Cir. 1976) (where the inter-district remedy not allowed).

53. 347 U.S. at 494.

54. *Id.*

segregation was psychologically detrimental,[55] it seemed obvious that the most effective and equitable remedy would be the abolition of separate schools for Black and White children.[56] It is from the holding in *Brown I* that the alleged benefits of desegregation arose.

It has been noted that social scientists in the 1950's postulated that desegregation would provide Black children with

> a greater sense of personal dignity; a rise in personal ambition; a greater confidence and respect for their own sub-group . . . . Negro youths are likely to attain higher standards of academic proficiency and exert their capacities more fully after desegregation, because of increased morale, decreased self-hatred, and a fuller sense of sharing the American Dream.[57]

Social scientists also believed that desegregation would increase the educational achievement of Black children merely because White schools had greater educational resources.[58] Still another basis for integrating schools was the "contact theory" advanced by social scientist Gordon Allport in 1954, which premised that greater contact between the races would result in mutual understanding and tolerance of cultural differences.[59]

Hence, there have been four distinct factors motivating school integration: (1) the removal of the Black inferiority stigma in order to heighten self-esteem, (2) access by Black pupils to superior resources at White institutions, (3) increasing the academic achievement of Black students, and (4) lessening racial prejudice. Among the factors motivating school integration, the scholastic performance of Black students in an integrated academic environment has received the most attention from social scientists.

### B. Educational Impact on Blacks

Since *Brown I* numerous studies have been undertaken in an attempt to measure the performance of integrated Black students in comparison to Whites, as well as to other Black students who had not entered the integrated school setting. One survey of the research discovered four disparate conclusions from the studies thus far conducted: (1) racial integration results in an increase in the school performance of minority youth, (2) racial integration has a mixed effect on minority students, (3) racial integration has no effect on the academic achievement of minority students, and (4) racial integration has negative effects on the scholastic achievement of minority students.[60]

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55. *Id.* at 495 n.11.

56. *Id.* at 495.

57. ST. JOHN, SCHOOL DESEGREGATION OUTCOMES FOR CHILDREN 43 (1975) [hereinafter cited as ST. JOHN].

58. Lines, *Race and Learning: A Perspective on the Research*, 11 INEQUALITY IN EDUC. 26 (1972).

59. Armor, *The Evidence on Busing*, in THE GREAT SCHOOL BUS CONTROVERSY 84-85 (N. Mills ed. 1973) [hereinafter cited as SCHOOL BUS CONTROVERSY].

60. Weinberg, *The Relationship Between School Desegregation and Academic Achievement: A Review of the Research*, 39 LAW & CONTEMP. PROB. 241, 243 (1975).

The only consensus among the social scientists whose studies were reviewed was that there is very little indication that desegregation might lower the rate of achievement for minority students; there also appears to be no evidence that desegregation lowers the achievement level of Whites.[61] Additional surveys of similar studies on desegregation and academic achievement report that over half of the studies conducted have found that no significant difference in educational achievement between segregated and desegregated Black children exists.[62]

As previously noted, one factor motivating the integration of public schools is the belief that a sense of inferiority attaches to Black children who are forced to attend schools separate from Whites. Accordingly, studies have been conducted with a view toward learning more about the self-esteem and aspirations of Black children in both integrated and nonintegrated school settings. One early study was undertaken by James S. Coleman pursuant to section 402 of the Civil Rights Act of 1964[63] for the purpose of determining the extent that equal educational opportunity was not available to various racial groups in the United States' public educational institutions. The Coleman Report recognized the importance of self-concept in school achievement and future success: "If a child's self-concept is low, if he feels he cannot succeed, then this will affect the effort he puts into the task and thus, his chance of success."[64]

To measure self-concept, the Coleman Report asked ninth and twelfth grade Black and White students three questions:

> (1) How bright do you think you are in comparison with the other students in your grade?
> (2) Agree or disagree: I sometimes feel that I just can't learn.
> (3) Agree or disagree: I would do better in schoolwork if teachers didn't go so fast.[65]

The result indicated no differences between Black and White students in their self-perceptions; both groups held themselves in high esteem.[66]

Another study examined the self-concepts of elementary school students, focusing upon how the student viewed herself, how the student would like to be, and how the student thought others viewed her.[67] The concluding

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61. *Id.* at 268-69.

62. ST. JOHN, *supra* note 57, at 39. *See also* SCHOOL BUS CONTROVERSY, *supra* note 59, at 95. *See* Kiesling, *The Value to Society of Integrated Education and Compensatory Education*, 61 GEO. L.J. 857 (1973), for findings that there are no substantial differences between the scholastic achievement of Black students bused to White schools and those Black students who were not.

63. 42 U.S.C. § 2000c-1 (1970).

64. J. COLEMAN, EQUALITY OF EDUCATIONAL OPPORTUNITY 281 (1966) [hereinafter cited as COLEMAN REPORT].

65. *Id.*

66. *Id.*

67. Soares & Soares, *Self-Perceptions of Culturally Disadvantaged Children*, 6 AM. EDUC. RES. J. 31 (1969).

comments of the researchers were: "It is most interesting to note that, not only did the [minority] group indicate positive self-perceptions, it also had higher self-perceptions than the [White] group."[68] A possible explanation for this outcome was the Black children attending neighborhood schools were isolated from the negative attitudes of American society toward their race and therefore did not have the opportunity to incorporate those negative sentiments while developing their self-concepts.[69]

A 1968 study in the city of Baltimore of children and self-esteem produced interesting findings regarding Black students in integrated schools and Black students who remained in predominantly Black neighborhood schools.[70] A sample of the questions asked the children is:

> 1. A kid told me: "There's a lot wrong with me." Do you ever feel like this?
>
> 2. Another kid said: "I'm not much good at anything." Do you ever feel like this?
>
> 3. Everybody has some things about him which are good and some things about him which are bad. Are more of the things about you good, bad, or are they both about the same?
>
> 4. Another kid said, "I am no good." Do you ever feel this?
>
> 5. How happy are you with the kind of person you are?[71]

The study found that Black children in predominantly White schools were more likely to have been exposed to overt racial prejudice, were more likely to learn that the Black race holds the lowest position in society, and scored lower in self-esteem.[72] Blacks attending Black neighborhood schools, however, did not exhibit these feelings. Due to their community isolation they did not tend to internalize the hostility directed toward their race.[73]

The data from research on desegregation and the aspirations of Black and White students have generated conclusions similar to those regarding self-concept. The Coleman Report[74] addressed itself to the aspirations and motivations of students and discovered that a high proportion of Blacks wanted to be among the best pupils in class.[75] Moreover, a recent survey of studies concerned with these issues reported:

> Most studies of student occupational and educational aspirations undertaken over the past twenty years have indicated that black students have aspirations equal to or higher than those of

68. *Id.* at 42.

69. *Id.* In contrast, the White student from a middle-class environment was likely to experience more pressure to succeed academically from parents and other adults. If the child did not meet their expectations he often experienced a lower sense of self-esteem. *Id.*

70. ROSENBERG & SIMMONS, BLACK AND WHITE SELF-ESTEEM: THE URBAN SCHOOL CHILD (1971).

71. *Id.* at 11-12.

72. *Id.* at 127.

73. *Id.* at 131.

74. *See* COLEMAN REPORT, *supra* note 64.

75. *Id.* at 278.

> white students of similar socioeconomic status. Black students are also somewhat more likely than white students of similar socioeconomic background to want to attend college.[76]

Additionally, a study of a Boston voluntary busing program, in which Black inner city students were bused to predominantly White suburban schools, showed no significant differences in occupational aspirations between the Black students bused and their peers remaining in the inner city schools.[77] Thus, it appears from the available research that not only do Black children have very positive feelings about themselves, but that desegregation may tend to negate that confidence.

## III. Broader Repercussions of School Desegregation on the Black Community

### A. Inequities Experienced by Black Children

#### *1. The Burden of Busing*

The efficacy of many desegregation plans necessitated transporting students from one racially-identifiable school to another. But as those plans became implemented Blacks, more often than Whites, found themselves being transported away from their schools. Consequently, Blacks returned to the courts to present a new issue in the desegregation controversy: Why should Blacks bear the burden of busing? In *Parris v. School Committee of Medford*,[78] community parents alleged that, in order to integrate the one racially-imbalanced grammar school in the city of Medford, the school committee had adopted a plan compelling Black students to be bused out of that district to grammar schools located elsewhere. The school committee's plan did not, however, require the busing of White students into the district containing the racially-imbalanced school, even though Whites were being transported to various school districts throughout the city for the purpose of eliminating overcrowded conditions. The district court refused to grant the declaratory and injunctive relief sought, explaining that where proposals for curing the situation had been actively discussed by the school committee and community groups, the court would not interfere with administrative attempts to solve limited racial imbalance.[79]

In *Norwalk CORE v. Norwalk Board of Education*,[80] the busing plan at issue provided for the busing of Black and Puerto Rican students to White

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76. Epps, *Impact of School Desegregation on Aspirations, Self-Concepts, and Other Aspects of Personality*, 39 LAW & CONTEMP. PROB. 300 (1975),

77. *Id.* at 301. However, there are studies that have concluded that "[b]oth the self-concept and the aspiration of black children tend to be stronger in segregated schools . . . ." ST. JOHN, *supra* note 57, at 59 (quoting Armor, *The Evidence on Busing*, 28 PUB. INTEREST 90, 101 (1972)).

78. 305 F. Supp. 356 (D. Mass. 1969).

79. *Id.* at 361.

80. 423 F.2d 121 (2d Cir. 1970).

neighborhood schools without reciprocal busing of White students into the Black and Puerto Rican neighborhood schools. The community participants seeking relief asked that the one-way busing be ceased, and again the request for judicial intervention was denied. The court found that the board had acted in good faith and in a nonarbitrary manner in providing racial balance.[81] Thus, judicial intervention was inappropriate.

A similar issue arose in *Kelly v. Metropolitan County Board of Education*.[82] The dispute arose over the lower court's adoption of the Department of Health, Education, and Welfare's (HEW) desegregation plan. Parents asserted that the plan should not have been selected over the one they proposed since the HEW plan placed a disproportionate burden of desegregation on Blacks. The court of appeals viewed the transportation of Black students from grades one through four and White students from grades five through six as not fatal to the HEW arrangement.[83]

Parental complaints in *Higgins v. Board of Education*[84] focused on the busing of Black students out of the central city area of Grand Rapids and into the suburban areas, while not requiring White students from the suburbs to be bused into the core of the city. The parents asserted that the school board's concern that massive bilateral busing might result in "white flight" was a manifestation of the board catering to the fears and prejudices of Whites. The court recognized that the burdens and inconveniences of desegregation should not be distributed discriminatorily; the court stated, however, that where there is no history of a school district practicing purposeful segregation, plans to improve racial balance in its schools should not be as restrictive as in those instances where a district has engaged in such a practice.[85] The court added that the possibility of "white flight" from a school district could not be used as a reason for noncompliance with an integration order; the school board was not compelled to ignore that possibility, however, when it was in the process of formulating a voluntary plan to achieve racial balance and desired not to lose the support of the public if lost support would thwart the plan.[86] One-way busing continued.

Recently, the United States Supreme Court reaffirmed the principle that official governmental acts that produce racially disproportionate effects are not per se unconstitutional. Petitioners in *Washington v. Davis*[87] alleged that an examination administered by the Washington, D.C., police department to persons applying for positions as police officers was discriminatory because it excluded a much higher percentage of Black applicants than

81. *Id.* at 124.

82. 463 F.2d 732 (6th Cir.), *cert. denied*, 409 U.S. 1001 (1972).

83. *Id.* at 746.

84. 508 F.2d 779 (6th Cir. 1974).

85. *Id.* at 793.

86. *Id.* at 794. *See also* Lee v. Chambers County Bd. of Educ., 533 F.2d 132 (5th Cir. 1976).

87. 426 U.S. 229 (1976).

White applicants. The Court held that "a law or other official act, without regard to whether it reflects a racially discriminatory purpose, is not unconstitutional *solely* because it has a racially disproportionate impact."[88] The Court held that intentional discrimination must be shown by evidence of systematic exclusion of racial group members.

The Court addressed the same issue in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*[89] when a developer of racially integrated housing, together with minority group prospective tenants, complained that a rezoning denial was racially motivated and in violation of the equal protection clause of the Fourteenth Amendment. The Court reiterated that a discriminatory result must be preceded by discriminatory intent before the governmental conduct can be said to violate the equal protection clause.[90]

### 2. *The Closing of Black Schools*

Another consequence of the implementation of desegregation plans has been the frequent closing of Black neighborhood schools. In making the transition from a dual school system to a unitary one, the two methods used most often have been (1) busing Black and White students to previously segregated schools, and (2) busing only Black students to White schools and closing the Black schools, thus making reciprocal busing unnecessary or impossible.[91] Many White parents prefer the second alternative because the White student will be spared the inconvenience of having to participate in any busing program. Moreover, the White student is relieved of confrontation with what is believed to be an inferior environment, and can also avoid contact with what is denigrated by many Whites as a "Negro institution."[92] Thus, the courts were called upon to address the issue of the closing of Black schools. The Court of Appeals for the Fifth Circuit in *Mims v. Duval County School Board*[93] warned that such closings are prohibited when based upon invidious racial discrimination.[94] The court found, however, that the school board's reasons for the closings were justified.[95] The discontinued schools were variously plagued by: (1) a small school site in a declining neighborhood; (2) location near a city incinerator, a polluted creek, and a meat and poultry company that resulted in stench and sewage at the school; (3) location in a hard narcotics area; and (4) incidents of vandalism and intrusion to such an extent that teachers and students locked

88. *Id.* at 239 (emphasis in original).

89. 97 S. Ct. 555 (1977).

90. *Id.* at 563.

91. *See generally* Note, *Inequality in Desegregation: Black School Closings*, 39 U. CHI. L. REV. 658 (1972).

92. *Id.*

93. 447 F.2d 1330 (5th Cir. 1971). *See also* Lee v. Macon County Bd. of Educ., 448 F.2d 746 (5th Cir. 1971).

94. 447 F.2d at 1331.

95. *Id.* at 1333.

their classrooms for safety.[96] In summary, the court reiterated that closing of a school must be grounded upon nonracial reasons: "That is the case here although appellants may no doubt and with justification question why these particular schools were not selected for closing prior to the conversion to a unitary system."[97]

In *Ellis v. Board of Public Instruction*[98] parents again requested judicial intervention in the closing of Black neighborhood schools. Because the schools were located in heavy traffic areas that had become very commercialized, and due to the increased property value of the schools, the board wanted to sell the land on which the schools were situated. The court found that these factors amply supported the board's decision to cease operation of the schools.[99]

The concerns prompting the Black community's desire to maintain its schools have not been addressed by the judiciary. Those concerns include: the disproportionate burden of busing that Blacks have had to bear; the availability of facilities for recreational, social, and civic functions that local schools often provide; the possible loss of an administration sensitive to community needs; and the implication of second-class citizenship—the feeling being "that black schools are not good enough for white students and that the cost of integration for the black community is the loss of its schools."[100] It has been suggested that the courts, whenever reviewing the closing of Black schools, should "place a heavier burden on school boards to justify closings; moreover, [the courts] should focus on discriminatory effect rather than intent."[101]

### 3. *Curriculum Tracking*

Once Black students are finally placed in desegregated schools, they often find themselves segregated in special classrooms through the use of curriculum tracking. Tracking is the method of identifying and grouping pupils who have similar learning abilities for the purpose of providing them with a particularized course of study. This method of labeling students is widely used in American schools.[102] Students are tested and assigned to classes and instructors in conformity with the school's evaluation of their

96. *Id.* at 1332.

97. *Id.* at 1333. Addressing the coincidental nature of the school closings at a time when desegregation efforts were underway, the court conjectured: "[P]erhaps their deterioration has been recent; but in any event, it would not be remedial to require their continued operation in the absence of a showing of racial discrimination in their closing." *Id.*

98. 465 F.2d 878 (5th Cir. 1972), *cert. denied*, 410 U.S. 966 (1973).

99. *Id.* at 880.

100. Note, *Inequality in Desegregation: Black School Closings*, 39 U. CHI. L. REV. 658, 659 (1972).

101. *Id.* at 668. *But see* Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 97 S. Ct. 555 (1977); Washington v. Davis, 426 U.S. 229 (1976).

102. Sorgen, *Testing and Tracking in Public Schools*, 24 HASTINGS L.J. 1129 (1973).

progress and potential.[103] These evaluations determine not only what the students will be taught, but also their roles and "status in life after [they have] completed [their] schooling."[104]

A study of eleven Missouri school districts revealed a disproportionate number of Black children in educable mentally retarded (EMR) programs.[105] Most schools use intelligence tests for labeling and assigning students to EMR classes.[106] The two tests most widely used are the Stanford-Binet Intelligence Scale and the Wechsler Intelligence Scale for children.[107] Both tests were standardized by examining only White children.[108] Additionally, any child whose father was unemployed or absent from the home was excluded from the standardization group. Consequently, "[i]n addition to a racial bias, these factors indicate probable economic bias in standardization, for poor children often come from families with absent or unemployed fathers."[109] It therefore appears that these intelligence tests are inappropriate for providing meaningful information about the learning abilities of minority students, especially in relation to as important a decision as placement in EMR classes.[110]

In *Larry P. v. Riles*[111] the students subjected to EMR placement in San Francisco schools sought a preliminary injunction to prevent the school district from administering I.Q. tests to Black students for the purpose of determining whether they should be placed in classes for the educable mentally retarded. These students were placed in EMR classes because they scored below seventy-five on the I.Q. tests. The children and their parents asserted that they were not mentally retarded and that they were placed in EMR classes on the basis of tests that were culturally biased against the experience of Black children and, therefore, the administration of the tests and classification pursuant thereto were in violation of their Fourteenth Amendment rights. The plaintiffs further averred that they had received irreparable injury from EMR placement because the curriculum was limited educationally, teacher expectation was low, EMR students were ridiculed by other students on the basis of this status, EMR students develop severe feelings of inferiority, and EMR placement "is noted on a student's perma-

103. *Id.* at 1133.

104. *Id.*

105. Comment, *Segregation of Poor and Minority Children into Classes for the Mentally Retarded by the Use of I.Q. Tests*, 71 MICH. L. REV. 1212 (1973).

106. *Id.* at 1212.

107. *Id.* at 1215.

108. *Id.*

109. *Id.* at 1216. It has been acknowledged that "[a] critical assumption is that the individual tested is fairly comparable with the norming group in terms of environmental background and psychological make-up; to the extent that the individual is not comparable, the test score may reflect those differences rather than the student's capabilities." *Id.*

110. *Id.* at 1215.

111. 343 F. Supp. 1306 (N.D. Cal. 1972), *aff'd*, 502 F.2d 963 (9th Cir. 1974).

nent school record, for colleges, prospective employers, and the armed forces to see."[112]

The court issued the preliminary injunction on the grounds that I.Q. tests were the primary tool for placing students in EMR classes. Racial imbalance clearly existed in the EMR classes, and the defendant school district had not satisfied its burden of proving that I.Q. tests were rationally related to the objective of separating students according to their learning capabilities.[113] The court elaborated:

> In fact, plaintiffs have presented evidence in the form of affidavits from certain black psychologists, that when they were given the same I.Q. tests but with special attempts by the psychologists to establish rapport with the test-takers, to overcome plaintiffs' defeatism and easy distraction, to reword items in terms more consistent with plaintiffs' cultural background, and to give credit for non-standard answers which nevertheless showed an intelligent approach to problems in the context of that background, plaintiffs scored significantly above the cutting-off point of 75.[114]

A less sophisticated method of ability grouping was involved in *McNeal v. Tate County School District*.[115] The school system utilized a pupil assignment plan at its elementary and junior high school levels. The plan consisted of the teacher evaluating the pupil's performance and recommending a program assignment for the next year to the principal, who then made the final decision. As a result of this evaluation program, in every elementary school there were from one to four all-Black sections and several all-White sections in the higher grades. Consequently, a parent brought suit to bar the maintenance of these segregated classrooms. The court, in invalidating this plan, explained that school authorities were free to use ability grouping only when its effect was not racially discriminatory.[116] Moreover, ability grouping was proscribed until the school district had functioned as a unitary school system for an adequate period of time to insure that the "under-achievement of the slower groups is not due to yesterday's educational disparities."[117]

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112. *Id.* at 1308.

113. *Id.* at 1314. The statistics demonstrating racial imbalance disclosed that while Blacks constituted 28.5% of the San Francisco Unified School District's student population, Blacks represented 66% of the students in San Francisco's EMR program. *Id.* at 1311. State-wide, Blacks comprised 9.1% of the student population; 27.5% of students in EMR classes, however, were Black. *Id.* "Certainly these statistics indicate that there is a significant disproportion of blacks in EMR classes in San Francisco and in California." *Id.*

114. *Id.* at 1308. The district court in Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967), denounced the use of the track system for the same reasons enunciated in *Larry P.*, concluding that use of the system denied the students equal educational opportunity. *Id.* at 492.

115. 508 F.2d 1017 (5th Cir. 1975).

116. *Id.* at 1020.

117. *Id.* at 1021. *See also* Boyd v. Pointe Coupee Parish School, 505 F.2d 632 (5th Cir. 1974).

*4. Suspensions and Expulsions*

The desegregation of public schools in the United States has also resulted in a higher rate of suspensions among Black students in contrast to their White contemporaries. In Little Rock, Arkansas, Blacks constitute twenty-eight percent of the high school population and thirty-five percent of the junior high school population, but nearly two-thirds of the students suspended are Black.[118] These statistics are mirrored in New Orleans, Louisiana; Columbus, Georgia; Charlotte-Mecklenburg County, Virginia; St. Petersburg, Florida; Akron, Ohio, and other newly desegregated school systems.[119] Suspensions and expulsions are often utilized even though the student misconduct is relatively trivial. Violations of institutional rules regarding adherence to time schedules, deference to school authorities, and silence at prescribed times frequently lead to banishment from the school.[120] It has been suggested that not only is the "penalty often . . . excessively punitive in light of the infraction,"[121] but that exclusion from the school "should be an extraordinary remedy employed only when other sanctions are unavailing"[122] or when the security of individuals and property is jeopardized.[123]

In *Hawkins v. Coleman*[124] a student brought suit on behalf of himself and other Black students in the Dallas school district. The plaintiff-student contested suspensions on the grounds of racial discrimination and denial of equal protection of the laws. Data accumulated by an expert in statistical analysis was introduced at trial establishing that Blacks were in fact being suspended from school in disproportional numbers to White students.[125] The

118. Yudhof, *Suspension and Expulsion of Black Students From the Public Schools: Academic Capital Punishment and the Constitution*, 39 LAW & CONTEMP. PROB. 374, 383 (1975).

119. *Id.* at 383-84.

120. *Id.* at 380.

121. *Id.*

122. *Id.* at 381.

123. *Id.* In Goss v. Lopez, 419 U.S. 565 (1975), high school students who had been suspended brought a class action suit against school authorities. The Court stated that a student's right to an education is a property interest that may not be confiscated in the absence of procedural safeguards as prescribed by the due process clause. *Id.* at 574. The Court also noted that where a student has been suspended from school, his reputation and integrity are at stake, and he thus has a liberty interest involved that is also protected by the due process clause. *Id.* at 574-75. The Court announced the procedure that must be followed whenever a suspension of ten days or less occurs: (1) the student must be given written or oral notice of the charges, and if the charges are denied the school authorities must present the student with the evidence upon which their proposed action is based, and give the student an opportunity to explain his version of the incident; and (2) a notice and hearing should be provided before the student is removed from school, except that when the student is a danger to property and persons or to the order of the academic process, the student may be immediately removed from school with the required notice and hearing following as soon as is feasible. *Id.* at 581-83.

124. 376 F. Supp. 1330 (N.D. Tex. 1974).

125. *Id.* at 1335.

expert, after visiting six schools that were predominantly White, was able to determine that within the Dallas school system the unequal administration of disciplinary procedures and policies was due to racial bias.[126]

An expert on institutional racism then examined the statistical data collected and concluded that the Dallas school system exhibited the national pattern of racial discrimination in operating as a White-controlled institution with racial preferences reflected in the administration of its disciplinary procedures.[127] The expert concluded that due to the existing racism Black students would continue to become frustrated because the institution remained unresponsive to their needs. As a result, the frustration would lead to increased hostility, which in turn caused more suspendable conduct.[128]

The court ordered the school board to reinstate the plaintiff and to devise an affirmative program for improving relations with the school and its community.[129] The court emphasized that the program should include: (1) schools holding their personnel accountable for reducing racism by making promotions and pay increases dependent upon the teacher's abilities effectively to control racist situations; (2) continuous training programs that require administrators and teachers to attend special classes in human relations designed to assist them in understanding their personal feelings toward minority students, as well as provide a cultural awareness of Black people; (3) helping Black students learn "to manage their way through the racist institution"; and (4) schools actively cooperating with community groups in developing an understanding of community problems.[130]

### B. Dispersion of the Largest Black Professional Group—Black Educators

The Black community has frequently seen its educators displaced once desegregation plans have been implemented.[131] With the transition to a unitary school system, sometimes accompanied by the closing of Black neighborhood schools, many Black principals either have not been rehired or have been demoted to positions requiring less responsibility. Some high school principals have been relegated to principalships at junior high or elementary schools,[132] where the Black principal has fewer students with which to work, experiences a reduction in salary, and suffers diminished status in the educational community.[133] Black teachers have found them-

126. *Id.*

127. *Id.* at 1336. The expert stated that " 'institutional racism' exists . . . when the standard operating procedures of an institution are prejudiced against, derogatory to, or unresponsive to the needs of a particular racial group." *Id.*

128. *Id.*

129. *Id.* at 1337-38.

130. *Id.*

131. Jefferson, *School Desegregation and the Black Teacher: A Search for Effective Remedies*, 48 TUL. L. REV. 55 (1973) [hereinafter cited as Jefferson]. *See also* Note, *Problems in Faculty Desegregation*, 43 MISS L.J. 363 (1972).

132. Jefferson, *supra* note 131, at 63-64.

133. *Id.* at 64.

selves in similar circumstances, and have repeatedly been displaced by White teachers. One Louisiana school district, during the 1969-70 school year, failed to renew the contracts of twenty Black teachers; those positions were filled primarily with Whites the following fall.[134] In another Louisiana school district, nineteen Black teachers and three Black principals were not rehired in 1970.[135] There appeared to be no rational basis for these displacements since both tenured and nontenured teachers were relieved, and many Black teachers with substantial teaching experience were discharged "in favor of whites not having demonstrably equal credentials."[136]

Black educators requested judicial intervention in these practices, and in *Singleton v. Jackson Municipal Separate School District*[137] the Court of Appeals for the Fifth Circuit promulgated guidelines for the hiring and firing of faculty and staff whenever a school district is undergoing conversion from a segregated to a unitary school system. The court outlined the procedure to be followed: (1) principals, teachers, teacher aides, and other staff are to be assigned so that the racial composition of a school staff in no way indicates that the school is intended primarily for Black or White students;[138] (2) staff members will be paid, hired, assigned, promoted, demoted, and dismissed without consideration of race;[139] (3) any reduction in staff members via dismissal or demotion must be on the basis of objective and nondiscriminatory standards applied to the entire district,[140] and when there is a dismissal or demotion no vacancy can be filled by the recruitment of persons of a different race than that of the staff member dismissed or demoted until that staff member has had an opportunity to "fill the vacancy and has failed to accept an offer to do so";[141] and (4) the school board must develop objective, nondiscriminatory criteria for selecting any staff member who might be dismissed or demoted, and these criteria must be retained by the school district and made available for public inspection.[142]

In 1974, two Black teachers sought injunctive relief in *Thompson v. Madison County Board of Education*[143] after the school board refused to rehire them. The court found that both teachers had had numerous years of teaching experience; that the school board had not determined that the teachers were objectively unqualified for rehiring; that the teachers were refused re-employment only two months after the order to desegregate; and that the board made no attempt to adopt the *Singleton* procedures. In light of

134. *Id.* at 63.
135. *Id.*
136. *Id.*
137. 419 F.2d 1211 (5th Cir. 1970).
138. *Id.* at 1218.
139. *Id.*
140. *Id.*
141. *Id.*
142. *Id.*
143. 496 F.2d 682 (5th Cir. 1974). *See also* McLaurin v. Columbia Mun. Separate School Dist., 478 F.2d 348 (5th Cir. 1973).

those factors, the court rejected the school board's argument that the plaintiffs' teaching positions were lost for reasons other than the implementation of the court-ordered integration.[144] Furthermore, the court stated that whenever faculty reduction is contemplated during the process of school desegregation, *Singleton* is applicable.[145] Hence, the "plaintiffs were improperly refused rehiring and [were] entitled to reinstatement."[146]

## IV. New Directions in Keeping With *Brown I*

### A. Freedom-of-Choice Revisited—Alternative Schools

The detrimental effects of desegregation that have been sustained by the Black community have resulted in a search for other options that might provide quality education within a favorable learning environment. Those options include a voluntary regional integrated school plan, local control of neighborhood schools, and distinctive schools designed for those special Black students who cannot benefit from the rigid, traditional approach to learning found within the American educational system. These alternative schools have and will continue to be met with tremendous opposition from some Blacks and Whites who desire integration at all costs, as well as by those who are wary of relinquishing the power that they have customarily held over the educational structure.[147]

#### *1. Voluntary Regional Integrated School Plan*

Some people, concerned with integration and equal educational opportunity, assert that an integrated education is a right protected by the United States Constitution.[148] It is argued that this right is found in three interests safeguarded by the due process clause:

> [A] fundamental interracial associational interest protected by the first, thirteenth, and fourteenth amendments, a fundamental mobility interest in not being confined to a specific region of a city or state, and the fundamental interest of a parent in shaping the education of his child. These interests separately and together create a right to an opportunity to an integrated education.[149]

The Voluntary Regional Integrated School Plan is designed to present a partial remedy for de facto segregation and an alternative to neighborhood

144. Thompson v. Madison County Bd. of Educ., 496 F.2d 682, 688 (5th Cir. 1974).

145. *Id.*

146. *Id.* at 689. *But see* Lee v. Chambers County Bd. of Educ., 533 F.2d 132 (5th Cir. 1976).

147. Hamilton, *The Nationalist vs. the Integrationist*, in SCHOOL BUS CONTROVERSY, *supra* note 59 at 300-01; Kirp, *Community Control, Public Policy, and the Limits of the Law*, 68 MICH. L. REV. 1355, 1356-57 (1970).

148. Calkins & Gorwon, *The Right to Choose an Integrated Education: Voluntary Regional Integrated Schools—A Partial Remedy for De Facto Segregation*, 9 HARV. C.R.-C.L. L. REV. 171 (1974).

149. *Id.* at 173.

schools.[150] A Voluntary Regional Integrated School (VRIS) has the following characteristics:

(1) It is situated in an urban area containing residential segregation that produces racially identifiable schools.[151]

(2) The school is "regional" in that it does not incorporate any specific vicinity of the urban area as its home or community, but, rather it attracts students from any or all school districts within a broad locality.[152]

(3) The school is "integrated" because it "enrolls a proportion of minority students not substantially less than the proportion of minority children in the region as a whole."[153]

(4) Minority group children would attend the regional school free of cost through financial arrangements with the school or school districts in which the children would normally be enrolled.[154]

Since the school is voluntary only children who want to attend will seek admission; racial tension thus should be reduced.[155] The plan requires a substantial financial grant from the state or federal government and "a sharing of local tax funds between the district operating the regional integrated school and the school district in which the student may reside, if the two districts are not the same."[156]

### 2. *Local Control of Neighborhood Schools*

Many Black parents have watched in despair as their children either drop out of school, or complete high school lacking the most rudimentary communicative skills. Many believe that if they had control over the hiring and dismissal of teachers and school administrators they could place dedicated and effective teachers in the responsible positions of teaching their children.[157] Moreover, there is a growing unwillingness on the part of Black parents to subject their children to daily abuse and hostility in desegregated settings.[158] Consequently, Black parents have experienced a sense of help-

150. *Id.* at 172.
151. *Id.*
152. *Id.*
153. *Id.* at 173.
154. *Id.*
155. *Id.* at 202.
156. *Id.* at 203.
157. Allen, *The Politics of Urban Education*, in BLACK MANIFESTO FOR EDUCATION 57, 64 (J. Haskins ed. 1973).
158. *See* Bell, *Waiting On the Promise of Brown*, 39 LAW & CONTEMP. PROB. 341, 349 (1975). The events responsible for the increased frustration of Black parents have been well illustrated: "The key to the disenchantment of black parents can be found in the desegregation orders themselves. In an effort to make school desegregation as palatable for whites as possible, courts have permitted school boards to close black schools, often over the vigorous protests of the black communities they served, and authorized 'one-way' busing in which black children do most or all of the bus riding while whites continue to attend schools in their neighborhoods. Black teachers and administrators . . . have been decimated by the desegrega-

lessness in not being able to affect the educational policy that shapes the future of their children.[159]

Evolving from this sense of despair is the desire for local control over Black neighborhood schools. The foundation upon which that objective is built involves a rejection of the theory that Black children must sit in classrooms next to White children in order to be accorded equal citizenship and furnished with a quality education.[160] These parents have decided that the racial composition of a school is insignificant for purposes of determining whether that school is inferior or superior, but "who *controls* that school and in whose best interest it is *controlled*" are of great importance.[161] Black parents want their community to have control over utilization of school resources, curriculum planning, and faculty accountability since school boards for too long have been unresponsive to the needs of the Black community.[162]

One Black community in Alabama, having struggled with the local board of education for a lengthy period of time and still finding it insensitive to the Black community's needs, sought to establish itself as a state school district under state law.[163] The new school district would be governed by a truly local school board elected by the residents of that particular community.[164] The community school board then would solicit the expertise of qualified community-oriented administrators and educators committed to finding new solutions to the traditional educational problems that have plagued the Black community's children.[165] Additionally, strong parent associations and the placement of persons from the community into the positions of teacher aides were encouraged, thereby providing every child with individual attention and freeing the teacher to instruct.[166]

### 3. *Special Black Schools*

Another form of the alternative school is the special school for Black youths who have complained that the traditional school system is too structured and the customary curriculum is too boring and meaningless.

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tion process despite herculean efforts by civil rights attorneys to protect their jobs. Even the percentages of black students assigned to white schools are determined less by the percentage of black students in the school district than by the number of blacks white parents will tolerate before withdrawing their children." *Id.* at 369 (footnotes omitted).

159. CORE, *A Proposal for Community School Districts*, in SCHOOL BUS CONTROVERSY, *supra* note 59, at 313. *See also* Dimond, *Reform of the Government of Education: A Resolution of the Conflict Between "Integration" and "Community Control,"* 16 WAYNE L. REV. 1005 (1970).

160. CORE, *A Proposal for Community School Districts*, in SCHOOL BUS CONTROVERSY, *supra* note 59, at 312.

161. *Id.* (emphasis in original).

162. *Id.* at 312-13.

163. *Id.* at 318.

164. *Id.* at 319.

165. *Id.*

166. *Id.* at 320.

Attempts have been made to develop a course of study that moves beyond cultivation of the cognitive skills, and embraces every aspect of the Black youth's experience including his language, cultural life style, history, and social and psychological goals.[167] This course of study emphasizes the possibility that "a characteristic which is rejected by one social class, one ethnoreligious group, or one race may be a value response in another to a different physical, economic, and or cultural reality and may be quite realistic and respectable."[168] This type of curriculum offers the Black youth an opportunity thoroughly to explore her environment while also developing her abilities in reading, writing, and mathematics.

One experimental program encompassing twenty-three alternative schools was initiated in California by the Berkeley Unified School District.[169] Two of the alternative schools, Black House and Casa de la Raza, were solely for Black and Chicano students. These schools were dismantled four years ago after the civil rights division of HEW announced that they were unconstitutional due to their racial selectivity.[170] Black House and Casa de la Raza endeavored to provide learning programs that were "free from the white, middle-class biases and pressures allegedly characteristic of an ordinary public school environment."[171] Due to the deficiencies of Black students in rudimentary educational skills, Black House accentuated such skills as reading and writing, but the faculty attempted to teach these subjects through the use of ethnically oriented materials in contrast to the more traditional approaches to learning.[172] Moreover, the school attempted critically to evaluate the role of democratic institutions in the United States:

> Traditional schooling, [asserted the Director], usually fails to reveal the interaction between politics and power or lack of power within these institutions. As a result, the traditional way of learning about such institutions is neither particularly relevant nor educationally beneficial for many black students.[173]

The entire faculty was Black because the director believed that Black teachers are particularly cognizant of the emotional and educational needs of Black students and, therefore, are able to establish a rapport with their pupils that other teachers cannot.[174]

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167. Sizemore, *Education for Liberation*, 81 SCHOOL REV. 389 (1973).

168. *Id.* at 398.

169. Comment, *Alternative Schools for Minority Students: The Constitution, the Civil Rights Act, and the Berkeley Experiment*, 61 CALIF. L. REV. 858 (1973).

170. Interview with Dr. Ball, Assistant Superintendent of the Berkeley School System (Mar. 10, 1977).

171. Comment, *Alternative Schools for Minority Students: The Constitution, the Civil Rights Act, and the Berkeley Experiment*, 61 CALIF. L. REV. 858 (1973).

172. *Id.* at 860.

173. *Id.*

174. *Id.* at 860-61. Unique features of Casa de la Raza are its governing body, which consists of parents, students, and staff members, and the significant role of community-related projects in the school's educational program. *Id.* at 863-64.

Although these alternative schools were organized for a legitimate objective—to teach the students how to read and write and to teach them about themselves and the socio-political environment in which they live—the schools' use of racial criteria in admitting students and selecting faculty made both schools targets for attack under the equal protection clause of the Fourteenth Amendment.[175] It is unfortunate that the *Brown I* decision, promulgated to protect the rights of third-world children, may eventually prevent this kind of restructuring within the educational system which, if allowed, would have the effect of promoting the same minority rights *Brown I* sought to protect.[176]

Judge John M. Wisdom of the Fifth Circuit Court of Appeals displayed a comprehension of the despair experienced by Black people which is created by low socioeconomic status, poor housing, and inferior schools when he stated:

> I can understand, therefore, the disillusionment black nationalists have with the progress and effectiveness of school desegregation. I can understand how separation of the races, if it means local control by blacks for blacks, may generate not the feeling of inferiority which the Supreme Court found in *Brown*, but a feeling of pride and respect—if the quality of education can be raised and economic opportunity increased.[177]

Thus, it is possible that the interests asserted in *Brown I* still may be advanced through innovative and nontraditional channels if the judiciary's growing empathy with the special problems experienced by Blacks in education continues.

Recently, however, the California Supreme Court in *Bakke v. Regents of the University of California*[178] invalidated a special admissions program for students of minority races due to the university's use of race as a criterion for admission to its medical school at Davis. In 1973 and 1974, Bakke applied for admission to the medical school at Davis. Of the 100 places available each year for new admittees, 16 were reserved for minority students entering under the special admissions program.[179] This program

175. *Id.* at 865. It is recognized that now "[r]acial classifications are advocated by groups who historically decried their use; educational differences are promoted by those who once demanded sameness of treatment; and restrictions on free association—once considered inimical to the notion of equality—are now advanced in the name of ethnic identity, community control, and alternative schooling." *Id.* at 869.

176. Kirp, *Community Control, Public Policy, and the Limits of Law*, 68 MICH. L. REV. 1356, 1374-88 (1970).

177. Wisdom, *Random Remarks on the Role of Social Sciences in the Judicial Decision-Making Process in School Desegregation Cases*, 39 LAW & CONTEMP. PROB. 134, 148 (1975).

178. 18 Cal. 3d 34, 553 P.2d 1152, 132 Cal. Rptr. 680 (1976).

179 . Although the program was designated for economically or educationally disadvantaged applicants seeking admission to the medical school, and even though Whites had applied to the program in 1973 and 1974, "only minority students had been admitted under the program since its inception [in 1969], and members of the white race were barred from participation." *Id.* at 44, 553 P.2d at 1159, 132 Cal. Rptr. at 687.

employed less rigid standards for evaluating the proficiencies of minority applicants than those used to appraise Whites applying through the regular admission procedure. Bakke was denied admission in both years. He subsequently brought suit against the university to compel his admission, alleging that he was qualified to attend the medical school, that preferential standards for admitting members of minority groups resulted in less qualified minority applicants being admitted over more qualified nonminority applicants, and that, as a consequence, he was the victim of invidious discrimination based upon his race in contravention of the equal protection clause of the Fourteenth Amendment.

The California Supreme Court noted that classification according to race is not inherently unconstitutional and that such a classification has been upheld within a number of contexts for the purpose of providing a benefit to racial minority groups.[180] The court explained, however, that those instances in which the classification has been allowed were distinguishable from "the special admissions program in at least one critical respect . . . . "[in that] [i]n none of them did the extension of a right or benefit to a minority have the effect of depriving persons who were not members of a minority group of benefits which they would otherwise have enjoyed."[181] Sustaining Bakke's allegations, the court concluded that as a result of the regular admissions program that summarily denied entrance to Whites with a grade point average below 2.5, while the special admissions program accepted members of various racial minorities with grade point averages considerably below 2.5, there were applicants who had been denied admission solely because they were not members of racial minority groups. Thus these applicants were deprived of a benefit they otherwise would have received.[182] The program was held to violate the equal protection clause.

Justice Tobriner, dissenting, stated that the difference between the racial classifications utilized by the special admissions program and the invidious racial classifications nullified in prior cases is that the former does not *prevent* any racial group from participating in the university's medical school process: "The great majority of students admitted by the medical school were, of course, White; the racial classifications were thus clearly not used to exclude any race but rather to assure that no race was excluded."[183] Furthermore, Justice Tobriner sought to refute the majority's

180. Instances cited by the court in which the classification had been deemed permissible were: (1) to achieve public school integration (Swann v. Board of Educ., 402 U.S. 1 (1971); San Francisco Unified School Dist. v. Johnson, 3 Cal. 3d 937, 479 P.2d 669, 92 Cal. Rptr. 309 (1971)); (2) to compel a school district to provide instruction in the English language to pupils of Chinese descent (Lau v. Nichols, 414 U.S. 563 (1974)); (3) to sustain the voting rights of non-English speaking persons (Katzenbach v. Morgan, 384 U.S. 641 (1966); Castro v. State of California, 2 Cal. 3d 223, 466 P.2d 244, 85 Cal. Rptr. 20 (1970)). Bakke v. Regents of the Univ. of California, 18 Cal. 3d 34, 46, 553 P.2d 1152, 1160, 132 Cal. Rptr. 680, 688 (1976).

181. 18 Cal. 3d at 46, 553 P.2d at 1160, 132 Cal. Rptr. at 688.

182. *Id.* at 48, 553 P.2d at 1161-62, 132 Cal. Rptr. at 689-90.

183. *Id.* at 68 n.1, 553 P.2d at 1175 n.1, 132 Cal. Rptr. at 703 n.1.

proposition that prior cases upholding preferential treatment to racial minority groups did not involve denial of a benefit or right to nonminorities. The justice explained that pursuant to Title VII,[184] employers have been required to hire a certain percentage of members of racial minority groups. As a consequence, some Whites, otherwise entitled to employment, may not be hired because the employer is compelled to hire minority group members.

The practice of using racial criteria for the purpose of bestowing a benefit upon minority groups while concomitantly denying that benefit to the majority group is under severe assault.[185] The impetus for that assault has been the equal protection clause of the Fourteenth Amendment, which provides that each state shall accord every person within its jurisdiction equality of treatment before the laws of that state and of the United States.[186] Whenever a class of people are denied the rights and privileges enjoyed by others similarly situated, the mode and purpose of that denial become suspect.[187] Courts will strictly scrutinize the governmental objective sought by the classifications based upon race; such classifications are inherently suspect.[188] For the suspect classification to withstand such scrutiny, the objective advanced by the government or one of its agencies must represent a compelling state interest.[189] *Bakke* holds that even though the university's interest in diversifying its student body, integrating the medical profession, and providing minority doctors for minority group communities may be a compelling governmental interest, the university did not demonstrate its

184. 42 U.S.C. § 2000e-1 to -15. The employment cases that Justice Tobriner cited as supporting authority were: United States v. Wood, Wire & Metal Workers Int'l, 471 F.2d 408 (2d Cir.), *cert. denied*, 412 U.S. 939 (1973); United States v. Ironworkers Local 86, 443 F.2d 544 (9th Cir.), *cert. denied*, 404 U.S. 984 (1971); Washington v. Davis, 426 U.S. 229 (1976). 18 Cal. 3d at 71 n.5, 533 P.2d at 1177 n.5, 132 Cal. Rptr. at 705 n.5.

185. *See, e.g.*, Bakke v. Regents of the Univ. of California, 18 Cal. 3d 34, 553 P.2d 1152, 132 Cal. Rptr. 680 (1976).

186. U.S. CONST. amend. XIV.

187. "Differences in race may not be made the basis of the way in which persons are treated by the law; the right to equal treatment may not depend upon a characteristic such as race or color." B. SCHWARTZ, CONSTITUTIONAL LAW 313 (1972).

188. "Normally, the widest discretion is allowed [a] legislative judgment . . . and normally that judgment is given the benefit of every conceivable circumstance which might suffice to characterize the classification as reasonable rather than arbitrary and invidious . . . . But we deal here with a classification based upon the race of the participants, which must be viewed in light of the historical fact that the central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States. This strong policy renders racial classifications 'constitutionally suspect,' Bolling v. Sharpe, 347 U.S. 497, 499; and subject to the 'most rigid scrutiny,' Korematsu v. United States, 323 U.S. 214, 216 . . . ." McLaughlin v. Florida, 379 U.S. 184, 191-92 (1964) (Florida statue prohibiting only interracial unmarried couples from habitually living in and occupying the same room in the nighttime) (citation omitted).

189. *See, e.g.*, De Funis v. Odegaard, 82 Wash. 2d 11, 507 P.2d 1169 (1973), *vacated and remanded as moot*, 416 U.S. 312 (1974).

inability to achieve those objectives by means less likely to abridge the rights of Whites.[190]

It therefore appears, at least insofar as educational institutions are concerned, that the use of racial criteria for determining whom is to be admitted and whom excluded may no longer be acceptable as a means necessary to accomplish any compelling governmental interest.[191] It is also apparent that alternative schools using racial exclusivity as a foundation for their existence may find it increasingly difficult to convince a court that all-Black or all-Chicano schools are necessary in order successfully to teach their students how to read, write, and examine their sociopolitical environments. There is no evidence that the enrollment of White students in this kind of alternative school would be fatal to the educational experiences specifically designed for minority group members. If the special admissions program in *Bakke* had accepted at least one disadvantaged White applicant per year, it might have been held constitutionally valid. Sacrificing complete racial exclusivity is a lesser burden than forfeiture of an entire program or school devised specifically for the benefit of racial minorities.

### B. School Finance Plans Revamped

The effort to provide quality education to all children in the United States has also focused on the manner in which public school systems are financed. Examination has revealed that a disparity in the number of dollars expended per child per school district results in unequal institutional resources and varying degrees of educational quality. California's method of school financing was invalidated by the state supreme court in *Serrano v. Priest* (*Serrano II*).[192] Parents of children enrolled in elementary and secondary schools brought a class action suit alleging that the public school system relied heavily on local property taxes and thereby created inequality among individual school districts in that the amount available to be spent per student in districts with smaller tax bases was less than that available to be spent per child in districts with higher assessed property valuations.

The court stated that:

> [t]he wealth of a school district, as measured by its assessed valuation, is the major determinant of educational expenditures. Although the amount of money raised locally is also a function of the rate at which residents of a district are willing to tax themselves, as a practical matter districts with small tax bases simply cannot levy taxes at a rate sufficient to produce the revenue that more affluent districts reap with minimal tax efforts.[193]

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190. Bakke v. Regents of the Univ. of California, 18 Cal. 3d at 52-53, 553 P.2d at 1165, 132 Cal. Rptr. at 693.

191. *But see* United Jewish Organizations v. Carey, 97 S. Ct. 996 (1977), in which the United States Supreme Court upheld the use of racial criteria for the purpose of restructuring legislative districts in New York, when past racial discrimination was noted by the New York legislature.

192. 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

193. *Id.* at 598, 487 P.2d at 1250, 96 Cal. Rptr. at 610. For an in-depth analysis of state

In finding the state's method of school financing unconstitutional, the court noted that the plaintiffs had made numerous contentions that the financing plan failed to meet the equal protection requirements of the Fourteenth Amendment of the United States Constitution and the equal protection provisions of the California Constitution in that: (1) the financing scheme made the quality of education for school children in California a direct corollary of the wealth of the children's parents and neighborhoods;[194] (2) the financing scheme made the quality of education dependent upon "the geographical accident of the school district in which said children reside";[195] (3) the financing scheme did not take into consideration any of the differing educational needs of the various school districts and the children residing in those districts;[196] (4) the financing scheme did not provide children of equal age, motivation, and aptitude with equal educational resources;[197] (5) the financing scheme perpetuated distinct differences in the quality of educational services, facilities, and equipment within the educational system;[198] (6) "the use of the 'school district' as a unit for the differential allocation of educational funds [bore] no reasonable relation to the California legislative purpose of providing equal educational opportunity for all school children within the State";[199] and (7) there was a disproportionate number of minority group children residing in school districts which were providing inferior educational opportunity.[200]

The *Serrano* opinion seems to have started a trend in the United States toward questioning the legitimacy of public school financing plans.[201] The 1973 decision of the United States Supreme Court in *San Antonio Independent School District v. Rodriguez*,[202] however, threatened to halt the progressive aims of many states when the Court held that the Texas method of disbursing monies to its school districts was not unconstitutional.[203] Surprisingly, however, individual states have continued to reform their methods of

financing schemes, *see generally* COONS, CLUNE, & SUGARMAN, PRIVATE WEALTH AND PUBLIC EDUCATION (1970). *See also* WISE, RICH SCHOOLS POOR SCHOOLS (1973).

194. 5 Cal. 3d at 590 n.1, 487 P.2d at 1244-45 n.1, 96 Cal. Rptr. at 604-05 n.1.

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id. Serrano* reached the court a second time in Serrano v. Priest, 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976), *cert. denied*, 45 U.S.L.W. 3822 (U.S. June 15, 1977).

201. *See, e.g.*, Van Dusartz v. Hatfield, 334 F. Supp. 870 (D. Minn. 1971); Sweetwater County Planning Comm. v. Hinkle, 491 P.2d 1234 (Wo. 1971); Robinson v. Cahill, 118 N.J. Super. 223, 287 A.2d 187 (1972).

202. 411 U.S. 1 (1973).

203. *Id.* at 55. The United States Supreme Court asserted that the appellee-parents had not established that a definable class of poor persons were being discriminated against via the State's method of public school financing (*id.* at 22-23); that education was not a fundamental right protected by the Constitution (*id.* at 35); and that the state's public school system assured a basic education for all Texas children (*id.* at 49).

financing public instruction, undeterred by *Rodriguez*.[204] The thrust forward toward equal educational opportunity has not subsided.

## Conclusion

This note presents a review of the experiences of Blacks in their struggle for equal educational opportunity. The *Brown I*[205] decision in 1954 was a sincere response to the ills produced by forced separation of the races within the public school system and was, at that time, an appropriate response. This is not to suggest that segregation in public schools as it was known during the era of *Brown I* should be reinstated. It must be understood, however, that flexibility in pursuing alternatives to complete desegregation is necessary if the goals of providing quality education and therefore providing a better future for all children in the United States are to be realized. The various forms of alternative schools promise to make those goals attainable in contradistinction to the ineffectuality of many desegregation efforts. To embrace these alternatives with renewed hope is logical and pragmatic, for we cannot resign ourselves to the unyielding concept that desegregation of the public schools is the only method of supplying quality education. Integration "at all costs" is not a laudable position to assume when the discovery of viable modes for promoting the educational progress of our children should be our primary concern.

The freedom-of-choice plan in *Green v. County School Board*,[206] which allowed students to attend the schools of their choice, was in conformity with the requests made by the school children plaintiffs in *Brown I*. The children merely sought admittance to schools not located in Black communities. Nullification of legally sanctioned segregated schools was the *sine qua non* that would permit realization of free choice in school attendance. The desegregation decrees that followed were an exaggerated response to the relief initially requested in *Brown I*. The desegregation fervor, manifest in the preoccupation of the courts with racial percentages in primary and secondary schools, restructuring of school districts, and busing of school children, has not reaped the substantial benefits for Black people that were once anticipated. Moreover, since the 1954 decision of *Brown I* there have been vast changes in the sociopolitical ideologies of the Black community. Those changes have resulted in the evolution of new avenues through which the struggle for equal educational opportunity should be directed. The alternative schools discussed earlier exemplify those new avenues.

Attendance at neighborhood schools should no longer be predicated upon the racial composition of those schools. Every community has a

204. *See* Berke, *Recent Adventures of State School Finance: A Saga of Rocket Ships and Glider Planes*, 82 SCHOOL REV. 183 (1974).

205. 347 U.S. 483 (1954).

206. 391 U.S. 430 (1968).

legitimate interest in preserving the effective utilization of its institutional units. To *compel* children of one neighborhood to attend schools in a foreign neighborhood is an unnatural phenomenon, and parents should continue vigorously to protest against this policy, advancing instead voluntary attendance at the school of one's choice. Directly related to the issue of race and neighborhood schools, and a much more logical target for school desegregationists, are discriminatory housing practices that result in one-race schools. The eradication of those practices will provide minorities unencumbered access to White residential districts and initiate the erosion of racial imbalance in public schools, thus eliminating not only existing segregated housing, but also one-race conditions at many schools. To demonstrate concern for segregated schools without an accompanying interest in segregated residential areas signifies a half-hearted and incomplete attempt to solve a broader problem.

Black parents should continue to focus upon the quality of the education their children receive. Their attention should be directed, however, toward upgrading the schools in their communities through participating in decisions that design and implement learning programs for their children, and developing effective methods that will insure a more responsive attitude from school authorities to the needs of children in those communities. Moreover, the allocation of additional resources, pursuant to reforms in school financing plans, will assist Black communities in improving the education their schools provide. These rechanneled efforts are sure to result in schools of which Black communities can be proud.

Unfortunately, with the advent of the special Black schools that preclude White participation, competing constitutional interests arise: the right to liberty and self-determination by one group versus the right of the other group not to be excluded from a governmental enterprise on the basis of race. These competing interests present a false issue in that any time a minority group is accorded special consideration in an attempt to overcome the discriminatory practices that have permeated American society for two hundred years, some members of the White group will be marginally and temporarily displaced. This displacement has been sanctioned by the United States Supreme Court in numerous instances.[207]

It is ironic to find minority admissions programs at universities and colleges being challenged when the scholastic achievement levels of Black students in primary and secondary schools remain inadequate for successful competition with their White counterparts. Yet educational programs devised by schools to improve the academic performance of Blacks where desegregation efforts have failed are also challenged as withholding yet another benefit from Whites. The methods employed to impede the struggle of Blacks for equal educational opportunity are endless.

207. Swann v. Board of Educ., 402 U.S. 1 (1971); United States v. Montgomery Bd. of Educ., 395 U.S. 225 (1969).