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Information Brief

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School Desegregation

School desegregation raises a number of difficult factual, legal and public policy issues. These issues include the nature and scope of appropriate desegregation remedies, the extent of state and local liability for school desegregation, and the allocation of resources needed to implement a desegregation plan.

This information brief provides an overview of the theory and financing of school desegregation.

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A Brief Introduction to School Desegregation

Comprehensive desegregation plans often involve

- pupil reassignment through voluntary or mandatory programs requiring transportation services
- remedial education that improves the quality of education programs and provides academic support services
- preparation for education organizations and others to adjust to desegregation policies
- financing mechanisms to implement desegregation plans.

Local school boards generally are responsible for designing and implementing acceptable desegregation plans. State officials may also be responsible if they contributed to unlawful segregation or discrimination. Implementing school desegregation plans can require intergovernmental coordination of resources, including spreading the plans' cost among governmental entities. However, unless racially segregated schools result from intentional official governmental action, there is no legal basis for requiring desegregation of a school system.

School Desegregation Theory

Segregated Housing Patterns

The patterns of residential racial segregation interact with geographic attendance zones to create racially segregated public school populations that are overwhelmingly white or minority in composition.

Segregated housing patterns often lead to racially imbalanced enrollment patterns in schools. Most minority populations concentrate in the urban communities of large metropolitan areas; proportionally few members of minority populations live in suburban or rural communities. Racial segregation in housing fosters racial segregation in education because attendance zones for schools within a school district are generally drawn on a geographic basis to produce neighborhood schools. Federal courts have been asked to correct these inequities in many school districts by linking the causes of and the remedies for racial segregation in education and housing.

In U.S. v. Yonkers Board of Education and City of Yonkers v. U.S., a federal appeals court affirmed a landmark ruling that held both housing and school authorities liable for segregation in education and housing. (The court found that the city's policy of constructing subsidized housing projects only in areas that already had minority concentrations, combined with the Board of Education's neighborhood school policy, contributed to racially identifiable schools.) The federal court ruling orders the City of Yonkers to construct subsidized housing in predominantly white residential areas and orders school officials to begin magnet schools and redraw attendance zones to ensure racial balance in the schools. The United States Supreme Court declined to hear the appeal.

Patterns of Racial Discrimination in Education

Since racial segregation in schools is believed to produce an inferior educational experience for racial minorities, racial segregation is equated with racial discrimination in education.

The operation of racially segregated public schools is integrally related to racial discrimination. The great majority of American children attend public school. White schools have often received favorable treatment compared to minority schools - more resources, better qualified teachers, superior curricula. Compounding the inequity, many experts argue, is the fact that academic achievement is tied to the social class composition of a child's school; disadvantaged children do better in schools and classrooms made up largely of advantaged students rather than being isolated with others of the same background. The effects of segregation across socioeconomic and race lines suggest that minority children attending middle-income, racially integrated schools generally attain higher levels of academic achievement than minority children attending low-income, racially segregated schools (in most situations the achievement level of white students remains unchanged). In addition, experts argue, racially segregated schools deny minority children the opportunity to prepare to live in a white-dominated society.

Inequality in public education imposed by school segregation can be remedied through voluntary or court ordered integration.

Voluntary Integration

Voluntary or affirmative integration refers to actions by a local school district or the state to bring about racially integrated schools in the absence of judicial compulsion.

Under federal law, race conscious criteria may be used to advance a "valid and substantial" governmental interest such as the voluntary integration of a public school system. School districts may assign students on a racial basis to achieve racially integrated schools using a variety of methods.

- The district can split attendance zones so that the attendance zone for a particular school consists of both minority and white residential areas.
- The district can pair a predominantly minority school with a predominantly white school whereby all students in both schools attend one school for certain grades and the other school for the remaining grades.
- The district can cluster schools so that all the schools in the cluster are racially integrated.

Segregated housing patterns often make busing of students necessary in order to achieve voluntary racial integration.

Court Ordered Integration

Past or present intentional racial segregation provides the constitutional basis for court ordered integration of an entire school system. If no intentional racial segregation can be found within a school system, there is no legal basis for requiring integration of that system.

In 1896 the United States Supreme Court sustained in Plessy v. Ferguson a state statute requiring separate but equal accommodations for white and black railway passengers, finding that segregation implied no racial inferiority. Throughout the first half of the twentieth century, many school districts, with the complicity of the state, operated racially segregated schools. In spite of early court cases challenging the constitutionality of state laws governing the operation of such schools, Plessy v. Ferguson continued to have a profound effect upon the law of equal protection until 1954 when the Supreme Court decided Brown v. Board of Education. In Brown, the Court concluded that because segregation of school children by race was taken to denote the inferiority of blacks and to impede the motivation of black children to learn, racially segregated schools were inherently unequal and black children attending separate black schools were being deprived of the equal protection of the laws guaranteed under the fourteenth amendment to the federal constitution.

School districts often were not willing to comply with the mandate in Brown; some districts developed policy options designed to undermine the Court's directive to desegregate with "all deliberate speed." During the 1950's and 1960's school districts argued that school segregation was due entirely to residential racial segregation and that the racial composition of the school merely reflected the racial composition of the neighborhood the school served.

In 1969 the Court declared in Alexander v. Holmes County Board of Education that the obligation of every school district was to abolish the "dual school system" of segregated education in favor of a "unitary school system."

Two Court decisions in 1971, Swann v. Charlotte-Mecklenburg Board of Education and Davis v. Board of School Commissioners of Mobile County, held that a deliberately segregated school district had a duty to achieve the greatest possible degree of actual desegregation. The Court clarified the list of available remedies to achieve significant actual desegregation including use of mathematical ratios, remedial altering of attendance zones and transportation of students. Subsequently, courts held that discretionary decisions by school authorities about how attendance zones should be drawn, where new schools should be located and which schools should be closed, with the intent of maximizing racial segregation, were subject to redress as well. School districts were required to bus black children to schools in white neighborhoods and white children to schools in black neighborhoods to achieve equal educational opportunity and racial balance.

The Supreme Court has never held that the operation of racially segregated schools is per se unconstitutional. The Court considers school operations unconstitutional only if the racially segregated character of the schools is a result of "intentional official governmental action", called de jure segregation; a small number of homogeneous schools within a district is not necessarily a mark of de jure segregation but calls for close scrutiny. In southern states, de jure segregation is evidenced by state laws mandating racial segregation in the schools. In northern states, de jure segregation is evidenced by intentional actions on the part of school authorities and other public officials causing racial segregation in the school system.

In 1979, in Columbus Board of Education v. Penick and Dayton Board of Education v. Brinkman, the Court blurred the distinction between de facto (segregation not resulting from deliberate governmental action) and de jure segregation and ruled that once de jure segregation was found in even a small part of a school system, either at the present time or at any time in the past, that school system was a de jure segregated school system for constitutional purposes. The Court's rulings required that until the existing de jure segregation was eliminated, school authorities were under an affirmative and continuing duty to prevent any other school in the system from becoming racially segregated.

In large urban areas such as Detroit or Atlanta, where there are relatively few white students enrolled in a school system, effective integration of de jure segregated schools is difficult to achieve. In Milliken v. Bradley I, the Supreme Court approved the use of court-ordered remedial and compensatory programs in Detroit to alleviate the effects of racial isolation, and allowed the district court to retain authority to order relief so long as the need for compensatory educational programs could be linked to prior unconstitutional actions. However, the Court rejected an order that the Detroit city school district, which had been found guilty of de jure segregation, be treated as a unit with 53 suburban school districts, not found guilty of de jure segregation, in fashioning a desegregation remedy; the Detroit-only desegregation plan left the school district with many predominantly black schools. In some limited circumstances, where governmental action contributes to school segregation between urban and suburban districts, courts are able to order an interdistrict desegregation remedy if plaintiffs can prove that a constitutional violation in one district significantly affected segregation in another district.

School Desegregation Financing

Federal Court Authority to Hold States and School Districts Liable for Desegregation Costs

Federal courts disagree about how much equitable power they have to increase local tax levies to fund a comprehensive desegregation plan.

In Griffin v. School Board of Prince Edward County, Prince Edward County supervisors refused to levy taxes to operate integrated public schools. Instead they passed an ordinance that transferred Virginia state educational grants to private white schools. The Supreme Court held that because the supervisors refused to exercise the county board's power to levy taxes solely in order to prevent racial integration of Prince Edward County schools, the federal court would compel the supervisors to reinstate property taxes to reopen and operate the schools on an educational basis equal to that of other Virginia school districts.

The Griffin decision suggests that, in fashioning a remedy in a desegregation case, a tax increase is within the bounds of a federal court's equitable powers. However, federal courts interpret the decision in three different ways:

1. In United States v. Board of Commissioners of Indianapolis, the Court of Appeals for the Seventh Circuit construes the Griffin decision narrowly. It reads the decision as allowing a district court to require only that a state legislature allocate unappropriated funds for the implementation of a desegregation plan.

2. In Evans v. Buchanan, Plaquemines Parish School Board v. United States, and National City Bank v. Battisti, respectively, the Courts of Appeal for the Third, Fifth, and Sixth Circuits construe the decision more broadly. They say the decision allows a district court to exercise the power to increase taxes in those instances in which the state or local government has affirmatively perpetuated school segregation by altering tax policies to frustrate a court ordered desegregation plan.

3. In Liddell v. Missouri, the Court of Appeals for the Eighth Circuit (which includes Minnesota) construes the decision most broadly. It is read as authorization for a district court to increase local taxes above existing, approved levels to meet the costs of implementing a desegregation plan, if a tax increase is the only available or sufficient means of providing funds for a desegregation plan.

Courts' recognition that complete desegregation cannot be achieved without substantial commitment to compensatory and education programs and student reassignment policies often requires states to share with local school districts the responsibility for and the costs of achieving desegregation. Courts have frequently ordered states to share the costs of programs:

(1) that provide equal educational opportunity to children who remain in one race schools;

(2) that facilitate the transition of students from one race schools to integrated schools; and

(3) that improve the conditions of formerly segregated schools designed and maintained as inferior facilities.

In Milliken v. Bradley II, the Supreme Court recognized the state as the ultimate educational authority and therefore a source of liability. The Court ordered the state to pay half the cost for remedial education programs to combat the effects of prior de jure segregation in Detroit. The order made the state and the school district partners in paying the costs of a court imposed desegregation decree.

A state is not held liable for the costs of desegregating a school district in every instance. In Kelly v. Metropolitan Board of Education of Nashville and Davidson County, a unanimous three-judge panel of the Court of Appeals for the Sixth Circuit recently overturned a district court order requiring the state of Tennessee to reimburse the Nashville-Davidson County school district for 60 percent of the desegregation costs the district has incurred since March 1981. The appeals court ruled that although federal courts have the power to prohibit segregation, the eleventh amendment sovereign immunity clause of the federal constitution imposes restrictions on courts' power to order states to help school districts pay for the desegregation of school districts, including a restriction on courts' authority to dictate the specific financial arrangements under which school integration is handled.

The sovereign immunity clause protects states from lawsuits filed by "citizens of another state, or by citizens or subjects of any foreign state." In some instances, it has been interpreted to bar the federal judiciary from hearing suits against a state filed by its own citizens or political subdivisions. However, in Milliken v. Bradley, the Supreme Court ruled that the sovereign immunity clause may be abridged under an exception that "permits federal courts to enjoin state officials to conform their conduct to requirements of federal law, notwithstanding a direct and substantial impact on the state treasury."

The Court of Appeals for the Sixth Circuit panel ruled that because desegregation remedies were already in place in Nashville, the dispute between district and state officials was a contest not about desegregation, but about money. The panel observed that courts were never intended to become the final arbiters in the budgetary process at any level of government; the budgetary process belonged to the people's elected representatives. While the decision is binding only on states within the Sixth Circuit (Kentucky, Michigan, Ohio and Tennessee), the refusal of the Supreme Court to hear the case may have a negative impact upon other school districts around the country seeking to force states to share the financial burden of desegregation costs.

Contents and Costs of School District Desegregation Plans

The costs of implementing a desegregation plan have increased substantially over time. They often require significant increases in governmental revenues, and have a direct impact upon a district's annual budget.

It can be difficult to establish the program parameters of a desegregation plan. In Milliken v. Bradley, the Supreme Court ruled that a federal court may order a school board to institute comprehensive programs for reading and communication skills, in-service training, testing, counseling and career guidance as part of a school desegregation decree. It also ruled that neither the tenth nor the eleventh amendment to the federal constitution prevented a federal court from ordering state officials found responsible for constitutional violations to pay an appropriate share of the costs of a remedy. Whether intended or not, Milliken v. Bradley has become a blueprint for fashioning desegregation remedies, with the result that a state may be required to provide resources for a wide variety of programs considered as desegregation-related.

Within the last decade, compensatory and remedial education programs have been the cornerstones of desegregation plans in many cities, including Buffalo, Chicago, Cleveland, Dallas, Indianapolis and Nashville. These desegregation plans include programs for

- capital improvements designed to renovate existing facilities and construct new facilities
- increasing student achievement through effective schools
- reductions in the student-teacher ratio
- early childhood education
- remedial reading and general communications skills
- general curriculum development
- student testing
- counseling and career guidance
- staff development

- modification of student behavior
- increased parental involvement
- improved school/community relations

In a city such as Indianapolis, where discriminatory actions by the state had a significant segregative impact across district lines, the court ordered mandatory transfers of students among nine school districts within the city limits.

The uniqueness of each city and disagreements about what constitutes a desegregation cost can create tremendous variation among school district budgets. A lack of standardization for reporting desegregation costs, differences in plan design and competing definitions of "desegregation" and "cost" can also cause variation. Advocates of desegregation tend to minimize costs, while opponents tend to maximize them. If desegregation is conceived of as an ongoing process composed of distinct stages, costs can vary by stage: a design phase that includes anticipated capital, staff training and facilities remodeling costs is distinct from an implementation phase that includes the possibility (with its political implications) of imposing a local tax levy or having the state, either voluntarily or under court order, assume some portion of the cost burden. Finally, costs are affected by whether desegregation is defined as a racial balance reducing racial isolation, as an assurance of equal treatment and opportunity, or as compensatory remedial programs emphasizing learner outcomes.

The Court of Appeals for the Eighth Circuit has approved many types of desegregation plans in its desegregation/integration directives to lower courts and school districts. Desegregation plans approved or ordered by the federal court include

- freedom of choice plans
- faculty desegregation
- development of compensatory and remedial programs
- establishment of magnet schools
- improvement of school facilities
- adjustment of school district lines
- student assignment plans
- interdistrict and intradistrict transportation of students.

The following is a brief description of desegregation plans implemented in three cities located within the purview of the Eighth Circuit.

Minneapolis

To date, only one school district in Minnesota has come under a court ordered school desegregation decree. In 1971, black students brought a class action school integration suit on behalf of identifiable minority groups residing in the Minneapolis school district.

A federal district court in Booker v. Special School District No. 1 found that the Minneapolis school board, through discretionary decisions, "had acted intentionally to maintain or increase racial segregation in the schools." The court ordered the district to implement a desegregation/integration plan. The desegregation/integration plan:

(1) established guidelines for allowable percentages of minority students that might be enrolled in the district's schools (the court stipulated that minority enrollment in any school was not to exceed 35 percent of the total population, although the court raised the allowable minority percentages later);

(2) addressed faculty integration in both elementary and secondary schools;

(3) forbade further school construction without judicial approval; and

(4) required the school board to submit semi-annual status and progress reports to the court.

In 1977, the school board asked the court to modify its desegregation order by increasing the number of minority students allowed in any one school and by granting a variance from the district's desegregation plan to permit a high concentration of American Indian students in one or a limited number of schools. The court agreed to change the minority population enrollment guidelines but denied the board's request to permit a high concentration of Indian students. The court held that the request, if granted, would "condemn whites and Negroes and members of other minority groups to attend public schools . . . devoted primarily to the education of minority students." The court dissolved its injunction and released its jurisdiction in June 1983 when it determined that the desegregation/integration plan for the district had been successfully implemented.

Kansas City

Over the past 30 years, Kansas City has made a number of unsuccessful attempts to desegregate its schools.

The city adopted a neighborhood school plan, a busing program to mitigate school overcrowding, and optional attendance zones combined with a liberal transfer policy. The federal district court considered all of these ineffective in changing the development of segregative patterns or balancing the racial population of students. Factors including white flight and state and federal housing policies ultimately led the federal court to order the Kansas City school district and the state of Missouri to provide additional education programs and to fund needed improvements in various school plants. Initially, the projected cost of the implementation of the intradistrict plan over a three year period was $87 million, the state share was $67 million. (For a description of the city's desegregation costs, see endnote 1 on page 11.)

St. Louis

In 1972, a group of black parents brought a class action suit against the City Board of St. Louis. The group alleged that racial discrimination in the St. Louis schools violated the fourteenth amendment to the federal constitution.

A federal district court held the state of Missouri and the city of St. Louis jointly liable for the city's racially segregated schools. The court ordered the state and local governments to submit a desegregation proposal. The court could not order 23 adjacent county school districts to participate in the city's desegregation plan since the counties were not constitutional violators. It did, however, order the state to reimburse the county governments for costs incurred by county school districts voluntarily participating in the city's desegregation plan, including transportation costs.

The resulting 1983 consent agreement called for a comprehensive voluntary desegregation/integration plan using economic and educational incentives to encourage student transfers. The agreement required the city to expand school facilities, realign students' allocations and hire a limited number of new teachers to eradicate segregation. In approving the desegregation plan, the court observed that it's high cost would require the St. Louis City school districts to substantially increase revenues. Therefore it ordered the city to submit a bond referendum to St. Louis voters; the court reserved the authority to increase the city's tax levies if the referendum failed. The city challenged the court ruling. It argued that the court did not have the authority to increase a municipality's tax rate in order to assure funding of a court ordered desegregation plan. The Eighth Circuit held that a district court may order a tax increase to fund a desegregation plan if other funding alternatives have been exhausted. (For a description of the city's desegregation costs, see endnote 2 on page 11.)

ENDNOTES

1. To fund a massive school desegregation plan, a federal district judge ordered the tax levy for the Kansas City school district increased by 95 percent, from $2.05 to $4 for each $100 of assessed valuation. The increased levy was designed to wipe out the school district's estimated budget deficit of $27 million resulting from a broad array of court ordered school improvements. The judge imposed the levy because voters had turned down repeated attempts by the city to raise desegregation funds. The judge noted that the district "[had] not had a bond passage or a levy increase since 1969" and, as a result, the district's "physical facilities [had] literally rotted." While only half the Kansas City population is black, the city's public school population is predominantly black, and white residents in the city had consistently voted down tax increases to secure desegregation funds. The judge approved $7.1 million for teacher pay raises, but left the schedule for the increases to the school board's discretion. The state's $61 million alternative desegregation proposal was ruled inadequate. The Eighth Circuit Court of Appeals upheld the property tax levy on the ground that property taxes were the sole source of school financing under Missouri law.

   The district judge also imposed a 1.5 percent surcharge on the incomes of residents and nonresidents working within the Kansas City school district that would have raised the state income tax rate from 6 percent to 7.5 percent. On appeal, the surcharge was overruled as an invasion of the province of the legislature and beyond the scope of the district court's power. Revenue from the income tax surcharge was to have been used to finance $50 million in bonds over a 20 year period to pay for capital improvements in the district, including conversion of all middle and high schools into magnet schools to attract suburban and private school students, construction of 17 new schools, renovation of many facilities and the closing of 18 schools. Instead, the appellate court ordered the state to pay any desegregation related revenue shortfall experienced by the school district in accordance with the joint and several liability imposed by the district court.

2. The 1986-1987 desegregation budget ordered for the St. Louis public schools totals approximately $57 million, 40 percent less than the amount sought by the school board. Taxpayers statewide are responsible for $33,455,852. The desegregation budget does not include about $20 million in transportation costs the state is expected to pay under an interdistrict plan. The budget includes: $33,922,093 for the city school board to spend on items such as smaller class sizes, magnet school site preparation and handicapped education; $23,078,551 for the intradistrict desegregation plan; and $928,516 for four intradistrict programs the board had sought to discontinue.

3. Alexander v. Holmes County Board of Education, 402 U.S. 1 (1971).

   Booker v. Special School District No. 1, 351 F. Supp. 799 (D. Minn. 1972).

   Brown v. Board of Education, 347 U.S. 483 (1954).

   City of Yonkers v. U.S., 837 F.2d 1181 (2nd Cir. 1987).

   Columbus Board of Education v. Penick, 443 U.S. 449 (1979).

   Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33 (1971).

   Dayton Board of Education v. Brinkman, 433 U.S. 406 (1977).

Evans v. Buchanan, 582 F.2d 750 (3rd Cir. 1978) (en banc).

Griffin v. School Board of Prince Edward County, 377 U.S. 218 (1964).

Kelly v. Metropolitan Board of Education of Nashville and Davidson County, 836 F.2d 986 (6th Cir. 1987).

Liddell v. Missouri, 731 F.2d 1294 (8th Cir. 1984) (en banc).

Milliken v. Bradley I, 418 U.S. 717 (1974).

Milliken v. Bradley II, 433 U.S. 267 (1977).

National City Bank v. Battisti, 581 F.2d 565 (6th Cir. 1977).

Plaquemines Parish School Board v. U.S., 415 F.2d 817 (5th Cir. 1969).

Plessy v. Ferguson, 163 U.S. 537 (1896).

Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

U.S. v. Board of Commissioners of Indianapolis, 456 F. Supp. 183 (S.D. Ind. 1978).

Yonkers Board of Education v. U.S., 837 F.2d 1181 (2nd Cir. 1987).