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Understanding the Federal Role in Protecting Student Civil Rights

A Focus on School Diversity

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Introduction

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

Past federal administrations, recognizing the importance of the federal platform and bully pulpit, often took action to address persistent educational inequities and ongoing violations of students’ civil rights left unresolved by states and districts. After the *Brown* ruling, President Eisenhower dispatched troops from the 101st Airborne Division to accompany African American students integrating Central High School in Little Rock, AR, when local authorities defied desegregation orders.² The Civil Rights Act of 1964, particularly its Titles IV and VI,³ gave the federal government a mechanism to enforce school integration from recipients of federal funds, enabling the Department of Justice to address violations of the law through investigation and litigation. And the following year’s passage of the Elementary and Secondary Education Act (ESEA), in 1965, significantly expanded federal funding of education, accompanied by requirements for recipients of those funds to comply with federal civil rights law.

In addition to working with Congress on legislation, presidential administrations have a number of other tools at their disposal that allow them to play a significant role in ameliorating educational inequalities. These include issuing federal guidance, regulations, and statements of administration policy, as well as use of an administration’s investigative powers, data collection and dissemination, and budgetary requests. The Obama administration took advantage of these opportunities, issuing guidance on racial diversity, transgender students’ rights, resource equity, and the nondiscriminatory administration of school discipline, among others.⁴ These nonbinding guidance documents were based on extensive research on what works in closing educational opportunity gaps and for improving student outcomes.

However, in contravention of this limited but significant federal role in education, the Trump administration has begun to take actions that undermine students’ civil rights and contradict research on how to support positive educational outcomes. At minimum, this administration could stall progress toward achieving educational equity and may, in fact, reverse progress.

The actions in question began with an executive order by the administration directing Secretary of Education Betsy DeVos to conduct a review of the federal role in education, including addressing “whether and how the federal government has overstepped its legal authority in k–12 schools.”⁵ Since taking office, the Trump administration has withdrawn nearly 600 policy documents regarding k–12 and higher education⁶ and has rescinded, is considering rescinding, or has delayed implementation of the following federal guidance or regulations issued under the Obama administration:⁷

- **Guidance on civil rights and school discipline** issued by the U.S. Department of Education and the U.S. Department of Justice describing how schools can meet their legal obligations under federal law to administer student discipline without discriminating against students on the basis of race, color, or national origin.⁸ Research shows that discriminatory discipline practices have a significant negative impact on students of color, including compromised educational outcomes due to lost instruction time and higher likelihood of involvement with the juvenile justice system.⁹ The administration is considering rescinding this guidance.
- **Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools** issued by the Civil Rights Division of the U.S. Department of Justice and the Office for Civil Rights, U.S. Department of Education. This guidance was issued to “explain how, consistent with existing law, elementary and secondary schools can voluntarily consider race to further compelling interests in achieving diversity and avoiding racial isolation.”¹⁰ Social science research has demonstrated that diverse learning environments benefit both White students and students of color—including by preparing them for global citizenship and social interactions with diverse peers.¹¹ The administration rescinded this guidance on July 3, 2018.
- **Guidance on the treatment of transgender students** issued by the U.S. Department of Education and the U.S. Department of Justice asking schools to treat transgender students according to their gender identity, including with respect to names and pronouns, restrooms, and dress codes. Research shows that transgender students experience high rates of bullying by peers and adults, and the stress of harassment and discrimination, including implementation of policies that do not treat students according to their gender identity, can lead to lower attendance and grades as well as depression, anxiety, and suicidality.¹² This guidance was rescinded by the current administration in February 2017, one month after the president took office.
- **Individuals with Disabilities Act regulations** issued by the U.S. Department of Education “aimed at promoting equity by targeting widespread disparities in the treatment of students of color with disabilities” and at addressing a number of issues related to significant disproportionality in the “identification, placement, and discipline of students with disabilities based on race or ethnicity.”¹³ Research has shown how misidentification of African American children for certain special education categories obscures their real educational needs and compromises their educational outcomes.¹⁴ The administration has delayed the implementation of this regulation until July 2020. Recently, the administration has also indicated that it might take another approach and replace these regulations with new regulations in 2019.

While these actions do not change the underlying federal civil rights law and students’ rights to equal protection under the law, they serve to hinder the speed and effectiveness of implementation and signal to states and districts a lack of federal commitment to upholding students’ civil rights and increasing access to equal educational opportunity. The Trump administration’s actions are not only a departure from the federal oversight, but also a renunciation of the social science research that has shaped policy, practice, and law protecting students’ civil rights in education.

This paper examines how this shift in the federal role in education could affect protections of students' civil rights. We focus on one of the numerous areas under threat by the current administration that will have significant repercussions for students' educational experiences and outcomes: voluntary school integration. We discuss the underlying research that has been used to inform and identify best practices for protecting students' civil rights; the progress that has been made using research-based best practices; and the consequences of rolling back these protections for historically underserved students.

Why Federal Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools Is Needed

The federal government has played a key role in advancing racial diversity in public education, including through the issuance of federal guidance clarifying how states and localities can act to promote racial diversity and reduce racial isolation in compliance with federal law. Although it does not have the force of law, federal guidance signals an administration's position on important issues, such as racial diversity in schools, and helps to advance administration policy in that area. Like prior administrations, the Obama administration issued guidance documents to clarify federal law.

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

- December 2, 2011 Dear Colleague Letter Regarding the Use of Race by Educational Institutions;
- December 2, 2011 Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education;
- December 2, 2011 Guidance on the Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools;
- September 27, 2013 Dear Colleague Letter on the Voluntary Use of Race to Achieve Diversity in Higher Education After *Fisher v. University of Texas at Austin* [*Fisher I*];
- September 27, 2013 Questions and Answers About *Fisher v. University of Texas at Austin* [*Fisher I*];
- May 6, 2014 Dear Colleague Letter on the Supreme Court Ruling in *Schuetz v. Coalition to Defend Affirmative Action*; and
- September 30, 2016 Questions and Answers About *Fisher v. University of Texas at Austin* [*Fisher II*].¹⁵

In addition to the guidance it has already rescinded, the Trump administration has threatened to withdraw guidance and regulations that could also have significant repercussions for students of color, including guidance related to the misidentification of African American students for certain categories for special education.¹⁶ And while the guidance on racial diversity or its rescission does not modify or diminish existing federal civil rights law, the Trump administration's rescission of the guidance, along with threats to rescind additional guidance and regulations, leaves states without clarity and direction to help them craft and implement policies and practices to advance racial diversity and reduce racial isolation in public schools.

Historical context

The *Brown v. Board of Education* case and its aftermath demonstrate both the importance of the federal role in education and the significance of social science research in exposing the harms of segregation and inequity in education. In reaching its ruling invalidating the “separate but equal” doctrine upon which racial segregation in public spaces was predicated, the U.S. Supreme Court carefully considered the research of the husband-wife psychologist team of Drs. Kenneth and Mamie Clark. The Clarks began their research over a decade before the U.S. Supreme Court’s ruling in *Brown*, using four dolls, identical except for color, to test young African American children’s racial perceptions¹⁷ and to “communicate . . . the influence of race and color and status on the self-esteem of children.”¹⁸ The Clarks’ research proved instrumental in demonstrating to the justices the psychic injury that racially segregated education inflicted upon African American children.¹⁹ They also testified in other cases that would be consolidated to become the *Brown* case,²⁰ and they co-authored a summary of research for the Court supporting racial integration and demonstrating the harm of racially segregated schools, which was endorsed by 35 leading social scientists.²¹

However, the *Brown* ruling striking down de jure racial segregation did not end it. In its wake, de facto segregation persisted, and endured, with an era of massive resistance following the ruling, during which proponents of segregation defied court orders and opted to close public schools, establish publicly funded “white ‘Christian’ academies,” or flee to the suburbs to circumvent school integration mandates. Prince Edward County Public Schools in Virginia opted to close its public schools for 5 years rather than comply with federal desegregation orders.²² As a result, many African American families sent their children to live with relatives in other states (separating and devastating families) or covertly sent their children to schools in nearby counties.²³

Such defiance of court desegregation orders—often accompanied by acts of racial terrorism—forced the federal government to take action. For example, federal troops accompanied nine African American students as they integrated Central High School in Little Rock, AR, under threats of racial violence.²⁴ While subsequent litigation—including *Brown II*,²⁵ *Cooper v. Aaron*,²⁶ *Green v. County School Board*,²⁷ and *Swann v. Charlotte Mecklenberg*,²⁸ along with mandates to localities to eliminate all vestiges of segregation “root and branch”—helped to finally end Jim Crow education and advance the integration of public schools, the federal government played an extremely consequential role in efforts to implement the Court’s ruling in *Brown*, desegregate schools, and advance racially integrated education. Federal support and intervention ensured that states complied with desegregation orders and that integration strategies were implemented safely.

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

The federal role in promoting racial diversity in elementary and secondary education

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

Current federal responsibilities for education, although narrow, also have supported racially diverse schools and the goal of integration. The mission of the U.S. Department of Education's Office for Civil Rights is to "ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools."²⁹ Historically, it has done this by responding to and investigating civil rights complaints filed by the public, monitoring educational institutions' compliance with prior agreements, issuing policy guidance to clarify responsibilities under relevant civil rights laws, responding to requests for information, providing technical assistance to states and districts, and updating and administering the Civil Rights Data Collection featuring key aspects of educational quality throughout the nation.

The Educational Opportunities Section of the Department of Justice's Civil Rights Division has also played a pivotal role in overseeing and ensuring efforts to promote racially diverse learning environments. The Educational Opportunities Section enforces Titles IV and VI of the Civil Rights Act of 1964, as well as other significant federal civil rights and education laws, including the Equal Educational Opportunities Act of 1974, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and Title IX of the Education Amendments Act of 1972.³⁰ In addition, the Section manages a docket of more than 100 open desegregation cases to which it remains a party.

However, just as it has played a pivotal role in advancing racially integrated schools, the federal government has also at times undermined that progress. Various administrations have worked to promote, and later to limit, interdistrict remedies for integrating unconstitutionally segregated schools,³¹ just as they have invested and disinvested in the Civil Rights Divisions of the Departments of Education and Justice.³² Following the Supreme Court's ruling in *Parents Involved in Community Schools v. Seattle School District* (2007), the federal administration issued a "Dear Colleague" letter discouraging districts from pursuing race-conscious student assignment programs without providing viable alternative strategies for integrating schools.³³

Desegregation has been stalled and even reversed in many places due to a variety of factors, including a step-back on enforcement of desegregation orders from the courts, federal inaction in open desegregation cases, federal budget cuts—including an end to direct federal payments to districts to support desegregation efforts³⁴—and confusion or apathy at the state and district levels regarding advancing racial integration in schools.³⁵ The situation has been made worse by requests to terminate court oversight of desegregation orders,³⁶ which are critical mechanisms for plaintiffs to ensure that school districts do not take actions that lead to greater segregation or inequality, as "districts not under court orders are largely prohibited from considering race to balance schools."³⁷

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

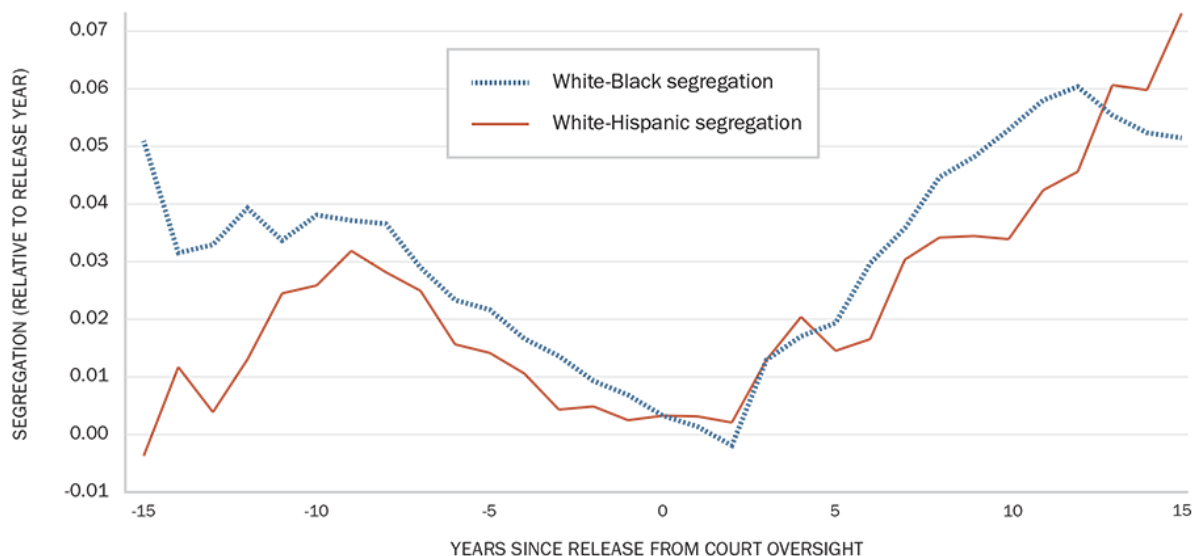
The federal government's retreat is the main factor in the return of segregated schooling in the South. In 2000, there were 430 school districts under federal court order to desegregate, compared with 176 today. Without the feds watching, local school boards are prone to make decisions that end up separating kids by race."³⁸

For example,

During George W. Bush's administration, almost 200 districts shed their court orders. With just 176 districts left, Trump's Justice Department could bring an end to the 63-year-old effort to erase the legacy of Jim Crow in the American education system, at a time when nearly 8.4 million black and Latino children are learning in segregated and high-poverty schools.³⁹

Data show that the degree of segregation declined significantly in districts under court oversight, but it rapidly climbed to even higher levels when court oversight was terminated.⁴⁰ (See Figure 1.)

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



Source: Darling-Hammond, L. (2018). *Education and the path to one nation, indivisible*. Palo Alto, CA: Learning Policy Institute. <https://learningpolicyinstitute.org/product/education-path-one-nation-indivisible-brief> (accessed 10/13/18). Data Source: Figure developed from data in Reardon, S., Grewal, E. T., Kalogrides, D., & Greenberg, E. (2012). *Brown fades: The end of court-ordered school desegregation and the resegregation of American public schools*. *Journal of Policy Analysis and Management*, 31(4), 876–904. <https://cepa.stanford.edu/sites/default/files/reardon%20brown%20fades%20jpam%20final%20jan%202011.pdf> (accessed 10/21/18).

These federal actions (along with strategic federal inaction) have contributed to the reversal of progress toward racially integrated schools—which increased from about 1% of African American children in the South attending schools with White children in 1963, to approximately 90% of African American children attending desegregated schools in the early 1970s,⁴¹ peaking in the late 1980s, when 44% of African American students attended majority-White schools.”⁴²

A 2016 report by the Government Accountability Office (GAO) underscores the importance of continuing federal vigilance to enforce and promote students’ civil rights. In fact, more than 550 social scientists joined an amicus brief supporting defendants’ student assignment policies designed to further racial integration and reduce racial isolation in the *Parents Involved* case.⁴³ The scientists noted:

Research has shown that without the enforced regulation of desegregation court orders or guidelines designed to attain racial desegregation, the implementation of uncontrolled school choice plans tends to foster racially homogenous schools and lead to even greater segregation.⁴⁴

And, if the trends of increasing resegregation are any indication,⁴⁵ without the federal government actively exercising its oversight and accountability role to promote racially diverse learning environments, resegregation and its accompanying educational inequities will likely continue to deepen, with potential negative consequences for the nation’s most vulnerable students.⁴⁶

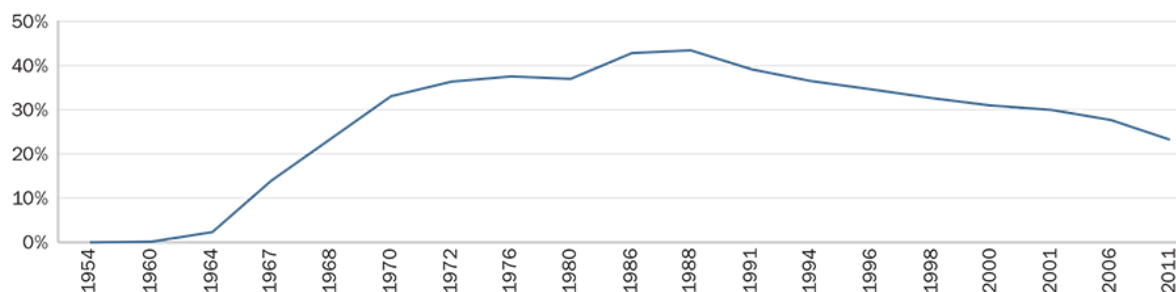
Current context

Today, data show that racial resegregation in public education is worsening, with many students attending racially isolated schools that serve disproportionate numbers of students living in poverty and offer inferior educational opportunities,⁴⁷ “including fewer qualified, experienced teachers, greater instability caused by rapid turnover of faculty, fewer educational resources, and limited exposure to peers who can positively influence academic learning.”⁴⁸ As they were pre-*Brown*, race and class continue often to be proxies for access to quality educational opportunities.

A 2016 report published by the GAO found that the percentage of k–12 public schools in the nation that are hyper-segregated, with student populations that are largely African American or Latinx and have large numbers of students from low-income families, is growing, and that these schools are plagued by challenges, such as resource inequities that undermine educational outcomes.⁴⁹ According to the report’s analysis of federal Department of Education data, the percentage of all k–12 public schools that had high percentages of students from low-income families and African American or Latinx students grew from 9% to 16%.⁵⁰ Another study found an example in Chicago and New York City schools, with more than 95% of African American and Latinx students attending majority-poverty schools, most of which were also majority-minority.⁵¹ Another study found that a large proportion of White students attend overwhelmingly racially isolated schools, with more than a third attending schools that are 90 to 100% White.⁵²

Resegregation was sparked by the discontinuation of desegregation assistance and court orders in many districts, coupled with increasing residential segregation that was exacerbated by the loss of affordable housing subsidies. As a result, about 40% of African American students nationwide—and more than 50% in the Northeast—attended intensely segregated schools (in which students of color constitute 90% or more of the total) in 2010. Meanwhile, only about 20% of African American students attended majority-White schools—less than half as many as in 1988, when about 44% did so, as illustrated in the figure below.⁵³

Figure 2.
Proportion of Black Students Attending Majority White Schools



Source: Darling-Hammond, L. (2018). *Education and the path to one nation, indivisible*. Palo Alto, CA: Learning Policy Institute. <https://learningpolicyinstitute.org/product/education-path-one-nation-indivisible-brief> (accessed 10/13/18). Data Source: Data before 1991 obtained from the analysis of the Office for Civil Rights data in Orfield, G. (1983). *Public School Desegregation in the United States, 1968–1980*. Washington, DC: Joint Center for Political Studies. https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/public-school-desegregation-in-the-united-states-1968-1980/orfield_american-desegregation-1983.pdf (accessed 10/21/18).

Federal action is vital to reversing the trend of resegregation in public schools. In fact, the GAO report also found that, although the Departments of Education and Justice employed a range of actions to identify and address racial discrimination against students, including analyzing data by student groups protected by federal civil rights law and investigating schools in which discriminatory outcomes were apparent, the departments could do more.⁵⁴

The GAO report recommends that the Department of Education take further steps to leverage data, including analyzing it by type of school and by percentage of racial minorities, to obtain a better picture of educational disparities, such as access to advanced coursework.⁵⁵ It also recommends that the Department of Justice actively investigate its open desegregation cases, many of which have lain dormant for years, and monitor data, such as test scores, for the states and districts involved in the desegregation cases. Such action would help to ensure that all students have access to the lifelong benefits that racially diverse learning environments offer.

Benefits of school desegregation

While diverse schools alone are not a panacea, and diversity by itself does not remedy all educational inequities,⁵⁶ a large body of research shows the benefits of racially, economically, and linguistically diverse learning environments on student outcomes. Dating back to the research relied upon by the U.S. Supreme Court in *Brown*, social science research has been particularly important in shaping federal strategy related to advancing racially diverse schools. Research into the effects of integrated schools consistently shows that they contribute to:⁵⁷

- promoting tolerance;
- developing cross-cultural understanding;
- eliminating bias and prejudice;
- improving academic achievement and critical thinking skills;⁵⁸
- improving educational attainment;
- increasing the likelihood of students living in integrated neighborhoods as adults and holding jobs in integrated workplaces later in life; and⁵⁹
- promoting civic participation in a diverse global economy.⁶⁰

In a study of the effects of court-ordered desegregation on students born between 1945 and 1970, economist Rucker Johnson found that, with no negative impact on White student outcomes, African American students' graduation rates climbed by 2 percentage points for every year students attended an integrated school, and exposure to court-ordered desegregation for 5 years was associated with a 15% increase in wages and an 11 percentage point decline in annual poverty rates.⁶¹ Another review of 59 rigorous studies on the relationship between schools' socioeconomic and racial makeup and student outcomes showed that integrated education is associated with higher achievement in mathematics.⁶² A more recent review concluded that the evidence about the positive academic benefits of diverse schools is “consistent and unambiguous”⁶³ and, further, that “students in racially diverse schools have improved critical thinking skills and reduced prejudice, and they are more likely to live in integrated neighborhoods and hold jobs in integrated workplaces later in life.”⁶⁴

The Supreme Court's decision in *Parents Involved*—which struck down as unconstitutional two programs adopted by public school systems in Seattle and in Louisville that relied in part on student race in determining school assignments⁶⁵—slowed progress toward increasing the diversity of elementary and secondary schools. The Court did acknowledge, however, that seeking diversity and avoiding racial isolation are compelling interests for school districts.⁶⁶

Although the Court held that individualized racial classification could not be used in student assignments, it concluded that districts can adopt “race-neutral” school assignment plans that do not rely on individual student race to promote racial diversity in schools.⁶⁷ Despite the Court's finding that race could be a factor in school assignments, the ruling has had a chilling effect on voluntary integration programs, with many school districts abandoning their desegregation efforts. As one analyst noted, the effect has been that “the *Parents Involved* decision operates to scare away schools from adopting desegregation measures and provides ammo to litigious parents.”⁶⁸

Federal Guidance Promoting Integration

To ensure that the decision would not have a chilling effect on voluntary and proactive school district efforts to advance racial diversity in schools, the Departments of Justice and Education issued voluntary guidance to help districts achieve diversity and avoid racial isolation in ways consistent with existing law.⁶⁹ The diversity guidance includes suggested approaches (although not an exhaustive list), and examples of strategies school districts can use to promote racial diversity and reduce racial isolation.⁷⁰ The diversity guidance also describes the harm of racial isolation—similar to that in the social scientists’ amicus brief—including

- failure to provide the full array of resources and benefits that k–12 schools can offer;
- lower academic achievement compared with students at more diverse schools;
- fewer effective teachers and higher teacher turnover rates; and
- less rigorous curriculum offerings.⁷¹

Finally, consistent with the Court’s ruling and in order to provide flexibility to districts, the diversity guidance outlines approaches that do not rely on the race of individual students (also called “race-neutral” approaches)⁷² and approaches that rely on individual racial classification only when narrowly tailored to meet a compelling interest. The diversity guidance includes a range of approaches to provide school districts with maximum flexibility to implement efforts that work best for their particular contexts, including:

- **School and program siting decisions.** This approach includes making decisions about the siting of schools and special programs, such as noncompetitive magnet schools or specialized academic, athletic, or extracurricular programs, to help achieve diversity or avoid racial isolation.⁷³ This approach, recognizing the importance of considering racial demographics when seeking to promote racial diversity, allows districts to make site decisions based upon the racial characteristics of a geographic region, and not the race of an individual student. It also allows districts to consider the socioeconomic makeup of groups of students whom the school site may attract.
- **Making decisions about grade realignment and feeder patterns.** This “race-neutral” approach suggests that school districts can examine available data to identify disparities and design school grade alignment or feeder patterns to help mitigate disparities. The diversity guidance provides examples, including feeding lower performing elementary schools into higher performing middle schools or mixing students along socioeconomic lines to ensure that different grade levels have a mix of students from different socioeconomic groups. Because students of color from low-income families are more likely to attend racially isolated schools, this approach may help promote racial diversity and reduce racial isolation.⁷⁴ However, research shows that consideration of socioeconomic status alone does not always ensure racial diversity or mitigate racial isolation.⁷⁵ In fact, “while race and class are often strongly correlated, they are not perfectly correlated. Class-based solutions typically do not consider patterns of white resistance to living in minority neighborhoods, regardless of income level, and are therefore unable to address the residential segregation that often fuels school segregation.”⁷⁶ However, research indicates that ensuring diverse socioeconomic

makeup of schools may help to mitigate concentrated poverty within schools,⁷⁷ and “the policy implication of intertwined racial and economic segregation of public schools is that school integration strategies moving forward should address both racial and socioeconomic aspects of segregation.”⁷⁸

- **School zoning decisions.** Under this approach, school districts assign students to schools based on attendance zones, which are composed of students from geographically defined areas.⁷⁹ This approach is one of the most commonly used to promote socioeconomic integration.⁸⁰ One consideration with this approach is that assigning students based solely on their geographic proximity to schools can pose a risk of perpetuating racially isolated schools because of historically discriminatory housing policies that isolated people of color in certain geographic areas, establishing neighborhoods that remain largely segregated.⁸¹ But some districts have successfully achieved socioeconomic diversity with this approach. One example highlighted in a recent study is the McKinney Independent School District (MISD), in McKinney, TX, which implemented a policy requiring socioeconomic diversity to be a consideration in school zoning decisions in 1995.⁸² Decades later, MISD schools remain relatively economically balanced.
- **Choice and open enrollment decisions.** Under open enrollment or school choice programs, parents are allowed to choose (or rank by preference) schools within or across school districts.⁸³ Currently, 22 states allow students to attend a non-assigned school within their district (intradistrict choice), and 25 states allow students to attend schools outside of their neighborhood district (interdistrict choice).⁸⁴ The district then assigns students based in part on parental choice. Schools can design or modify such programs to achieve diversity or avoid racial isolation. In fact, under so-called “controlled choice” plans, the choice process is centrally managed to support racial and economic integration.⁸⁵ For example, as the diversity guidance illustrated, a school district in which students of different races are concentrated in different attendance zones could implement a districtwide lottery system that allows parents to identify and rank a certain number of schools and then randomly assigns students based on parents’ choices.⁸⁶ However, research has found that, even under choice programs, parents are often inclined to choose schools within their geographic areas—which are often racially isolated—and therefore can lead to even more segregated schools.⁸⁷ Therefore, as research indicates, the design of the choice program is vital in determining the likelihood of whether or not it may help to achieve diversity or reduce racial isolation. For example, a study of Jefferson County, KY, schools found that students were less segregated under the district’s managed-choice policy—a policy challenged before the U.S. Supreme Court along with Seattle’s desegregation strategy⁸⁸—which allows students to attend schools outside their neighborhoods, than under alternative assignment approaches.⁸⁹
- **Admission to competitive schools and programs.** The diversity guidance proposed that schools seeking to promote racial diversity could design admissions processes with that goal in mind. One proposed example is a district giving special consideration in admissions to students from neighborhoods selected specifically because of their racial composition and other factors (i.e., treating all students who live in the same neighborhood alike regardless of their race). This race-conscious approach reflects the research showing that considering student racial composition is important to ensuring that integration approaches are effective.

- **Inter- and intradistrict transfers.** The diversity guidance highlighted the use of inter- and intradistrict transfers—allowing students to move between schools—as another approach used by many school districts to achieve diversity and avoid racial isolation. The diversity guidance provided the example of a transfer program that expressly relies upon the overall racial composition of geographic areas within the district to determine priorities for student transfers—with the goals of achieving racial diversity and reduction of racial isolation.⁹⁰ Due to racially segregated residential patterns, interdistrict programs are typically more likely to reduce racially isolated schools, because “more than 80% of racial/ethnic segregation in U.S. public schools occurs between rather than within schools districts, and income groups are also increasingly geographically divided.”⁹¹

The diversity guidance also noted that if a school district finds any of these approaches unworkable or ineffective in achieving diversity or reducing racial isolation, it may consider a student’s race as one factor among others in considering how an individual student’s school assignment may help achieve diversity or avoid racial isolation consistent with the law.⁹²

Examples of state and district implementation of evidence-based practices for promoting racial diversity in schools

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

Jefferson County, Kentucky

Jefferson County, KY, is one example of the legal progeny of *Brown v. Board of Education*, in which a local region acted to promote integration pursuant to court desegregation orders. The county’s policy was the subject of litigation in the case of *Parents Involved in Community Schools v. Seattle School District No. 1*, along with Seattle School District No. 1, and was highlighted in the diversity guidance issued by the Obama administration addressing the Court’s 2007 ruling in the case. The county illustrates the persistence of a voluntary desegregation program, which continues even after withdrawal of court oversight. The Obama administration’s diversity guidance clarified the Court’s ruling on the program, specifically detailing the case’s holding: “to survive strict scrutiny, a school district that considers race in making individual student assignment decisions must show that the use of race is narrowly tailored to achieve a compelling governmental interest.”⁹³

The origins of the program begin with litigation shortly before integration efforts were implemented per a court order in the Louisville-Jefferson County area of Kentucky.⁹⁴ At the time, the majority of students attending the city schools near Louisville were African American, and the majority of students in the county’s suburban district in Jefferson County were White.⁹⁵ Pursuant to the court’s order, the Jefferson County and Louisville districts began merging the two racially divergent districts by busing African American and White students to schools outside their neighborhoods.⁹⁶ Although desegregation efforts were undertaken reluctantly—with violent opposition to busing⁹⁷—they continued and persist on a voluntary basis.

The integration efforts have advanced, despite legal challenges, including two successful challenges to busing programs.⁹⁸ Explaining why the district continued its integration efforts following those court decisions, the superintendent said, “This community really values an integrated school system. It is a core value within Jefferson County.”⁹⁹

By the 1990s, Louisville-Jefferson County was the most integrated school district in the nation.¹⁰⁰ The plan has evolved into a choice program in which parents rank their school preferences, and the district weighs factors, such as socioeconomic status and educational level, in determining school assignment and places students to achieve diversity across schools. Parents can also choose special programs such as magnet programs or language immersion programs.¹⁰¹ While not perfect, the county’s efforts represent sustained voluntary integration efforts using many of the tools detailed in the guidance.

Hartford, Connecticut

In 1989, litigation was filed on behalf of Elizabeth Horton Sheff, her son Milo, and other families alleging that Connecticut had failed to provide students in the majority-African American Hartford area with racially integrated education.¹⁰² Hartford was not only a racially isolated, majority-African American area, but one characterized by concentrated poverty.¹⁰³ The case made its way to the U.S. Supreme Court, which in 1996 ruled that the racial, ethnic, and economic isolation in Hartford schools violated the state’s constitutional obligation to provide all children with racially integrated and substantially equal educational opportunities.¹⁰⁴ In response to the Court’s ruling, Connecticut established a voluntary-integration “Open Choice” program and designed desegregated educational opportunities, including a magnet school program.¹⁰⁵ A 2013 analysis of the program found that students participating in the Magnet and Open Choice program were outperforming Hartford students attending other public schools and performed well in comparison with the state’s averages for all students.¹⁰⁶ The analysis also found that more than 45% of Hartford’s African American and Latinx k–12 students attended schools in reduced-isolation settings.¹⁰⁷ Hartford’s desegregation efforts have faced considerable challenges, including ongoing waiting lists to attend area magnet schools, reluctance from some legislators to continue to fund the magnet program, legal challenges,¹⁰⁸ and rising housing costs and zoning laws that hinder efforts to provide students from low-income families and students of color access to high-performing quality schools. However, there is still a commitment to find and maintain effective strategies that promote integration and reduce racial isolation.¹⁰⁹

Likely Effects of Rescinding the Guidance

Rescission of the diversity guidance signals federal apathy about racial diversity in public schools. The resulting district inaction could further reverse the progress made in reducing educational inequities that followed federal enforcement of desegregation. For example, educational inequities began to decrease once desegregation efforts took hold. As we have noted in other research, there was a noticeable reduction in educational inequity during the 1960s and 1970s when desegregation and school finance reform efforts were launched. At that time, substantial gains were made in equalizing both educational inputs and outcomes.¹¹⁰ Further, as the Century Foundation has noted:

the racial achievement gap in K-12 education closed more rapidly during the peak years of school desegregation in the 1970s and 1980s than it has overall in the decades that followed—when many desegregation policies were dismantled.¹¹¹

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

When court decisions leave open questions about how to interpret federal civil rights law, absence of federal guidance can leave many states uncertain about whether their actions, practices, and policies are compliant with federal law as interpreted by the courts and whether they are vulnerable to litigation. Particularly with the decisions in cases such as *Parents Involved* (which effectively ended many voluntary desegregation plans and discouraged others)¹¹² that leave districts in legal limbo, federal guidance is vital to encouraging districts to act to voluntarily and proactively promote racial diversity.

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

Research and industry spokespersons suggest that a diverse education is essential for 'career readiness' . . . and federal support for successful, stably integrated schools would pay large dividends in terms of social and economic success of communities.¹¹³

Therefore, the rescission of the guidance can have repercussions that perpetuate educational inequities that undermine our nation's current and future global competitiveness.

The Trump administration's rescission of the Obama administration's guidance returns districts to a state of uncertainty regarding whether their policies will be consistent with changing legal interpretations of federal law. The repercussions for many students—some of whom will lose out

on opportunities to attend diverse schools as a result of their district’s reluctance to take action that might be challenged in court—include loss of the benefits that evidence shows a diverse education bestows, including enhanced critical thinking skills, the ability to interact with others in a globally diverse economy, and stronger cross-cultural understanding.¹¹⁴

As one scholar notes, “Districts are left with two choices: risk future litigation by relying on the Kennedy concurrence to craft desegregation plans that are centered around factors other than race or that consider race as only one of many factors, or simply abandon previous desegregation plans.”¹¹⁵ Unfortunately, many districts have opted for the latter option.

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

Conclusion

Any administration's policy positions, actions, and interventions should be informed by evidence. Failing to use such evidence will likely either result in or perpetuate negative consequences for students of color and other historically underserved students. Rescission of the federal diversity and discipline guidance documents threatens progress and may have a chilling effect on proactive state and local efforts to promote racial diversity, reduce racial isolation in public schools, and create more inclusive and equitable learning environments for all students. It contravenes the well-established research, compiled over more than half a century, documenting the benefits of diverse and inclusive learning environments for all students. Further, it not only threatens the nation's ability to produce engaged citizens able to effectively compete in a diverse global workforce, it also fails to recognize the dignity and potential in each and every student.

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