

Emerging Themes in Civil Rights: The Shifting Conversation about Race in Schools in the U.S. Supreme Court

From an analysis of the equal protection laws, to an examination of diversity as a compelling governmental interest, the U.S. Supreme Court has changed the focus of their conversation regarding the role of race in the nation's schools since 1896. Below is a brief overview of key U.S. Supreme Court cases which address issues related to the segregation and desegregation of U.S. public schools.

An Equal Protection Analysis

Back in 1896, in the case *Plessy v. Ferguson*, the Supreme Court held that "separate but equal" facilities for blacks and whites did not deny any person equal protection under the law. This maxim of "separate but equal" became settled law. However, over fifty years later in 1954, in the landmark case *Brown v. Board of Education*, the Supreme Court unanimously struck down as unconstitutional "separate but equal" public education facilities. The Court applied an "equal protection" analysis to the case and found that "separate educational facilities are inherently unequal" and so do violate the Equal Protection Clause of the Fourteenth Amendment.

Desegregating Our Nation's Schools

Many in the country were slow to accept the *Brown* decision, and nationwide there was organized public resistance, many times by public officials. Thus, throughout the forty-plus years following *Brown*, the concentration of Supreme Court cases dealing with race in education was focused on compelling public schools to desegregate. For instance, in 1955, in *Brown v. Board of Education II*, the Court compelled schools to desegregate "with all deliberate speed" and in 1968, in *Green v. County School Board*, the Supreme Court held that a weak "freedom of choice" plan was insufficient and mandated that schools initiate plans that could realistically desegregate the system so that "racial discrimination would be eliminated root and branch."

The mandate in *Green* led schools to search for proactive options for the placement of students. In the 1970's, the Supreme Court heard a series of cases involving the use of busing, including 1971's *Swann v. Charlotte-Mecklenburg Board of Education* which held that busing was an appropriate remedy for the problem of racial imbalance. However, three years later, in *Milliken v. Bradley*, the Court held that districts could bus students only in districts where there was actual evidence the school had deliberately engaged in a policy of segregation. In short, the Court limited *Brown's* holding to the banning of *de jure* coercive segregation, while allowing *de facto* segregation resulting from voluntary residential segregation.

Diversity as a Compelling Interest

As time went on, schools that had been segregated by law were desegregated. However, there was - and is - still *de facto* segregation in schools resulting mostly from voluntary residential segregation. Some school boards continue desegregation efforts, even voluntarily after they had fulfilled the mandates of the Court, in order to promote diversity among their student bodies.

As recently as June 2007, the Court moved the legal conversation in desegregation cases away from compelling integration because of *Brown's* mandate, and focused instead on the government's compelling interest in educational benefits of an ethnically diverse student body. In *Parents Involved in Community Schools v. Seattle School District*, a divided Supreme Court struck down voluntary desegregation plans which used race as a factor in assigning students to schools. However, although the particular plans in

question were held to be unconstitutional, Justice Kennedy's concurrence, which was the controlling opinion, preserved the important principle that government has a compelling interest in promoting racial diversity and avoiding racial isolation in U.S. public schools.

For more information about the U.S. Supreme Court decisions regarding race and school, and ADL's position on these cases, including amicus briefs, go to ADL's Civil Rights Web page on discrimination cases at www.adl.org/civil_rights/ab/Discrimination.asp.