

Historical & Legal Context for Integration in New Jersey

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de jure vs. de facto

Brown v. Board of Education (1954)

Did *Brown* prohibit “de facto” segregation?

“We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”

Federal courts were split.

Northern segregation (all the tricks)

gerrymandering attendance boundaries

optional attendance zones

selective transfer policies

site selection and construction

overcrowded black schools and underenrolled white schools

14 states, 42 cities

1962 Report of the U.S. Commission on Civil Rights

“460,000 students and thousands of teachers”

Walkout in New York City
to protest school segregation
February 3, 1964

NAACP shifts focus to segregation in the North
and the West

(NAACP Legal Defense Fund, separated in 1957,
focuses on the South)

And then came
Milliken v. Bradley (1974)

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Federal court cannot order outlying suburbs to participate in multi-district remedy for intentional school segregation in Detroit absent a showing that suburbs were complicit.

Kills northern school desegregation in the federal courts.

New Jersey

“De jure” (intent-based) segregation in New Jersey

- *Patterson v. Board of Education of City of Trenton* (1933) (swimming at Central High School in Trenton)
- *Hedgepeth v. Board of Education of City of Trenton* (1944) (black children sent to a single junior high school regardless of residence; only school in the district where black students were segregated)

Robert L. Carter

General Counsel, NAACP

Lead lawyer on *Brown*, NAACP LDF

“the swimming pool” (East Orange)

New Jersey cases shift to
focus on *de facto* segregation

Morean v. Board of Education of Town of Montclair
(1964) (no meaningful difference between de jure and
de facto segregation)

“Nor need [the Board of Education] close its eyes to racial imbalance in its schools which, though fortuitous in origin, presents much the same disadvantages as are presented by segregated schools.”

Booker v. Board of Education (1965)
(Plainfield)

Booker v. Board of Education (1965)
(a broad vision for public education)

social-emotional

citizenship

participatory democracy

disadvantages of homogeneity

Booker v. Board of Education (1965)

“In a society such as ours, it is not enough that the 3 R's are being taught properly for there are other vital considerations. ***The children must learn to respect and live with one another in multiracial and multi-cultural communities and the earlier they do so the better.*** It is during their formative school years that firm foundations may be laid for ***good citizenship and broad participation in the mainstream of affairs.*** Recognizing this, leading educators ***stress the democratic and educational advantages of heterogeneous student populations*** and point to the disadvantages of homogeneous student populations, particularly when they are composed of a racial minority whose separation generates feelings of inferiority.

Booker v. Board of Education (1965)

(We can't wait until we fix housing and poverty...)

“It may well be...that when current attacks against housing and economic discriminations bear fruition, strict neighborhood school districting will present no problem. But in the meantime the states may not justly deprive the oncoming generation of the educational advantages which are its due, and indeed, as a nation we cannot afford standing by.” (quoting 1963 Report of the United States Commission on Civil Rights)

Architecture of anti-segregation law in NJ

- Article 1, Par. 5, of the New Jersey Constitution prohibits the segregation of any person “in the **public schools** because of religious principles, race, color, ancestry or national origin.”
- *De facto* segregation of public school students also violates the Thorough and Efficient Clause of the New Jersey Constitution (N.J. Const., art. VIII, §4, ¶1).
- *Morean v. Board of Education of Town of Montclair* (1964); *Jenkins v. The Township of Morris School District*, 58 N.J. 483, 500-01 (1971); *Board of Education of the Borough of Englewood Cliffs, Bergen County. v. Board of Education of City of Englewood v. Bd. of Education of Borough of Tenafly* 257 N.J. Super., Appellate Division (1992), *aff'd* 132 N.J. 327 (1993) ; *In re North Haledon School District*, 181 N.J. 161, 177 (2004).
- A statute initially adopted in 1881, currently codified at N.J.S.A. 18A:38-5.1, prohibits exclusion of any child from public school on account of his or her “race, creed, color, national origin, or ancestry...”

Reimagining Integration
(doing better and avoiding the trapdoors...)

“desegregation”

vs.

“equitable integration”

Lessons from *Green v. New Kent County* (1968)
(school segregation as a *system*; vestiges must be
eliminated “root and branch”)

- Facilities
- Staff
- Faculty/teaching staff
- Extracurricular activities
- Transportation
- Student assignment
- Quality of the educational environment (catchall)

Abbott II (1990)

Role of funding?

“We realize our remedy here may fail to achieve the constitutional object, that no amount of money may be able to erase the impact of the socioeconomic factors that define and cause these pupils' disadvantages. We realize that perhaps nothing short of substantial social and economic change affecting housing, employment, child care, taxation, welfare will make the difference for these students; and that this kind of change is far beyond the power or responsibility of school districts. We have concluded, however, that even if not a cure, money will help, and that these students are constitutionally entitled to that help.”

Problematic framing/language

“inferiority”

“dispersal”

Tracking, Tracking, Tracking

Excessive Discipline

Singular focus on harms to Black and Latinx students while ignoring harms of segregation to White and Asian students

Brief of social scientists
filed in *Brown v. Board of Education*

White children who “learn the prejudices of our society...are being taught to gain personal status in an unrealistic and non-adaptive way. When comparing themselves to members of the minority group, they are not required to evaluate themselves in terms of the more basic standards of actual personal ability and achievement. The culture permits and, at times, encourages them to direct their feelings of hostility and aggression against whole groups of people the members of which are perceived as weaker than themselves. They often develop patterns of guilt feelings, rationalizations and other mechanisms which they must use in an attempt to protect themselves from recognizing the essential injustice of their unrealistic fears and hatreds of minority groups.”

*Latino Action Network, et.al v.
State of New Jersey, et al.
(filed May 17, 2018)*

LAN v. State of New Jersey
(challenges segregation by race & poverty)

- 371,243 (63% of all Black and Latinx students) attend schools that are more than 75% “non-White”
- 270,755 (46.2% of all Black and Latinx students) attend schools that more than 90% “non-White”

Segregation is statewide (8 counties)

Essex, Hudson, Union, Passaic, Middlesex, Camden, Mercer, Monmouth
includes public schools and charter schools

Legal claims

- Violation of NJ Constitution, Art. I, para 5 (anti-segregation clause); Art. I, para 1 (equal protection); Art. VIII, para 4 (thorough and efficient); jointly constructed each of these provisions “constitute[s] a clear and unequivocal condemnation of racial and socioeconomic segregation in NJ public schools)
- Statutory violations: state law that requires state COE to ensure non-exclusion from public school on racial grounds; Charter School Program Act (same); CSPA regulations (charter schools may not have a “segregative effect”

Prayers for relief

(challenges requirements that students must go to school where they live)

- Declaration that NJ's "longstanding and intensive segregation of Black and Latino public school students" is unlawful and violates the NJ Constitution
- Declaration that state law is unconstitutional "insofar as it compels New Jersey school children to attend public schools in the municipality in which they reside *and* insofar as such residency requirement furthers racial segregation in NJ's public schools" (emphasis added)
- Declaration that state charter law is unconstitutional in so far as it requires charter schools to prioritize student enrollment from the district where they live
- Enjoins continued assignment of public school students (including charter students) solely on basis of municipal attendance boundaries and mandates that state legislature, Commissioner of Education, and State DoE adopt a replacement assignment methodology that remedies segregation
- Orders Commissioner to prepare and submit a detailed remediation plan within 3 months that is "designed to achieve comprehensive desegregation and diversification of NJ's public schools within and among school districts"