

**Written Statement of Dr. Linda Darling-Hammond  
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**Before the Committee on Education and Labor  
United States House of Representatives  
Full Committee Hearing:  
*Brown v. Board of Education at 65: A Promise Unfulfilled*  
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Chairman Scott, Ranking Member Foxx, and Members of the Committee, thank you for your invitation to participate in this hearing. My name is Linda Darling-Hammond. I am the Charles E. Ducommun Professor of Education Emeritus at Stanford University and the President and CEO of the Learning Policy Institute (LPI). The Institute conducts and communicates independent, high-quality research to improve education policy and practice. Working with policymakers, researchers, educators, community groups, and others, we seek to advance evidence-based policies that support empowering and equitable learning for each and every child.

I am honored to be here today to discuss the federal role in fulfilling the promise of *Brown v. Board of Education* to ensure that all children have access to quality educational opportunities regardless of race, ethnicity, class, or status.

The systematic denial of educational opportunities to African Americans and other students of color has long subjected many students to an inferior education. Rooted in the history of slavery, followed by the “separate but equal” doctrine upheld in *Plessy v. Ferguson*, and coupled with the unequal allocations of resources to segregated schools, unequal access to education is a long-standing fact of American life.

The Supreme Court’s validation in *Brown v. Board of Education* that separate cannot be equal promised to expand access to quality educational opportunities to all students, regardless of race or ethnicity. Although progress has been made, especially in the quarter century after *Brown*, this promise has not yet been fulfilled. The greatest strides were made when the federal government took an assertive role in promoting access to equal educational opportunities and protecting students’ civil rights. When the federal government stepped back from this role, many gains were lost and resegregation emerged, along with growing inequalities in access to resources for education in communities of color. Recent decisions by the Trump Administration to rescind civil rights guidance in many areas—including the area of school integration—are likely to result in another step backward, an outcome I explain in this testimony.

The federal role includes ensuring state and local compliance with desegregation orders following *Brown* and federal enforcement, oversight, litigation, and funding following the passage of the Civil Rights Act of 1964 and the Elementary and Secondary Education Act of 1965. Through such enforcement, oversight, funding, and other support, the federal government helps to expand access to equal educational opportunities and support districts in dismantling all vestiges of segregated education “root and branch.”

Today, I will discuss the federal role in supporting state and district efforts to advance school diversity and the many tools, resources, and obligations it has to do so. I will share evidence-based state and local efforts to create more diverse educational opportunities for students and ways the federal government can support these efforts, including through increased financial investments.

## **The Benefits of Diverse Schools**

Much of the k-12 research on the impact of school racial and socioeconomic composition on academic outcomes shows that racially segregated, high-poverty schools have a strong negative association with students' academic achievement (often measured through grade-level reading and math test scores), whereas racially diverse schools often report stronger results for historically underserved groups and positive or neutral results for other groups.<sup>1</sup>

In a case challenging school desegregation efforts in Jefferson County, Kentucky, and Seattle, Washington, more than 550 scholars signed onto a social science report filed as an amicus brief, which summarized extensive research showing the persisting inequalities of segregated minority schools. The scholars concluded that:

... [M]ore often than not, segregated minority schools offer profoundly unequal educational opportunities. This inequality is manifested in many ways, 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. No doubt as a result of these disparities, measures of educational outcomes, such as scores on standardized achievement tests and high school graduation rates, are lower in schools with high percentages of nonwhite students.<sup>2</sup>

Meanwhile, the evidence demonstrating academic, cognitive, and social benefits for students attending racially and socioeconomically integrated schools is well established.<sup>3</sup> Although diverse schools alone are not a panacea, and diversity by itself does not remedy all educational inequities, a large body of research pre- and post-*Brown* has shown the benefits of racially, economically, and linguistically diverse learning environments on student outcomes.<sup>4</sup>

In a study of the effects of court-ordered desegregation on students born between 1945 and 1970, economist Rucker Johnson found that graduation rates climbed by 2 percentage points for every year a Black student attended an integrated school. A Black student exposed to court-ordered desegregation for 5 years experiences a 15% increase in wages and an 11 percentage point decline in annual poverty rates. The difference is tied to the fact that schools under court supervision benefit from higher per-pupil spending and smaller student-teacher ratios, among other resources. While there were positive outcomes for Blacks, court-ordered desegregation caused no harm for Whites.

Other studies also show an association between school diversity and a range of short- and long-term benefits for all students, including gains in math, science, reading, and improvement in graduation rates.<sup>5</sup> Studies show that, beyond student achievement, integrated education also contributes to:

- Promoting tolerance;
- Developing cross-cultural understanding;
- Eliminating bias and prejudice;
- Increasing the likelihood that students will live in integrated neighborhoods and hold jobs in integrated workplaces as adults;
- Improving critical thinking skills;
- Improving educational attainment; and
- Promoting civic participation in a diverse global economy.<sup>6</sup>

It is also worth noting that school diversity and interracial contact should extend beyond students to include the educator workforce. A growing body of research shows that teachers of color bring benefits to all students, and especially to students of color, including by improving academic performance and attainment.<sup>7</sup> Recent research has found a positive impact of having a same-race teacher on the long-run achievement and attainment of students of color, particularly for African American students.<sup>8</sup>

For example, a 2017 study in North Carolina and Tennessee found that Black students who were assigned to a class with a Black teacher at least once in 3rd, 4th, or 5th grade were less likely to drop out of high school and more likely to aspire to go to college.<sup>9</sup> The North Carolina study showed that having at least one Black teacher in grades 3 to 5 cut the high school dropout rate in half for Black boys. For Black students identified as “persistently low-income,” having a Black teacher increased their intentions of going to college by 19%, and by 29% for Black boys specifically. Notably, Black teachers tended to have similar, though somewhat smaller, effects on non-Black students.

Scholars suggest a variety of reasons for these positive educational experiences, ranging from role-model effects, higher expectations, the ability to offset stereotype threat for students of color, cultural awareness, instructional supports, and advocacy for students.

Unfortunately, the current educator workforce is not reflective of the demographic makeup of our students. Although the percentage of teachers of color in the workforce has grown from 12% to 20% over the past 30 years, the teacher workforce still does not reflect the growing diversity of the nation, where people of color represent about 40% of the population and 50% of students.<sup>10</sup> And the share of Native American and Black teachers in the workforce is not growing like the populations of Latino/a and Asian American teachers but is actually in decline.<sup>11</sup> Therefore, increasing educator diversity should also be part of overall federal, state, and local efforts.

### **The Role of the Federal Government in Supporting School Diversity**

While the administration and oversight of education largely falls under state and local purview as articulated in most state constitutions, the federal government plays a limited, but important oversight and enforcement role, particularly in the area of civil rights. Further, the Federal government has a significant number of tools, resources and obligations at its disposal to support state and local efforts to increase school diversity. These include investigative and oversight

responsibilities. Specifically, the Office for Civil Rights (OCR) within the U.S. Department of Education can use its investigative, litigation, and regulatory powers, as well as the provision of technical assistance and guidance to states, districts, and schools, to help ensure compliance with desegregation orders and to help states and districts implement and sustain efforts to promote diverse schools. OCR can also respond to requests for information and updates and administers the Civil Rights Data Collection (CRDC), featuring key measures of educational equity. This critical data can be used to target interventions to support school diversity.

Further, the Department of Justice’s Civil Rights Division’s Educational Opportunities Section has enforcement power—particularly to enforce 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 of 1972, section 504 of the Rehabilitation Act, and Title IX of the Education Amendments Act of 1972.<sup>12</sup> The Section manages a docket of more than 150 desegregation cases to which it remains a party.<sup>13</sup>

Administrations can also issue nonbinding federal guidance. Guidance can include research-based strategies, activities, and approaches and other resources for states and districts to use when implementing federal law.

In addition to actions by federal agencies, Congress has a number of tools and resources that it can use to support state and local efforts. Historically Congress has enacted laws creating federal enforcement measures to ensure access to educational opportunities, including the Civil Rights Act of 1964 (its sections IV and VI focus on specific levers to advance school desegregation efforts), the 1965 Elementary and Secondary Education Act (ESEA) passed as part of President Johnson’s “War on Poverty,” and the Emergency School Aid Act that funded desegregation efforts. The Federal government has also promoted the development of magnet schools and other strategies to improve urban and poor rural schools.

Since the passage of *Brown*, the extent to which different administrations and Congress have taken advantage of these opportunities has varied dramatically. Whereas considerable progress was made in the decades following *Brown*, decades of gradual federal retreat from support of school desegregation efforts has resulted in a return to racially segregated schools. A 2016 report published by the Government Accountability Office (GAO) found that a growing percentage of k–12 public schools in the nation are hypersegregated, with student populations that are largely African American or Latino/a and have large numbers of students from low-income families.<sup>14</sup> About half as many African American students are in integrated schools as was true in the late 1980s.<sup>15</sup> There is much to be learned from the 65 years since *Brown*, and if its promise is to be fulfilled, we must recommit to the actions and investment that have been shown to increase school diversity and improve outcomes for all students.

## Learning from History

### *The Passage of Brown and Initial Resistance*

As this hearing's title recognizes, this year marks the sixty-fifth commemoration of the U.S. Supreme Court's ruling in the case of *Brown v. Board of Education*, in which the Court concluded, "In the field of public education, the doctrine of 'separate but equal' has no place."<sup>16</sup>

While *Brown* signaled the end of *de jure* (legal) segregation, it has been much harder to eliminate the insidious *de facto* segregation that still characterizes too many of our nation's public schools—a reality fueled by discriminatory practices that have resulted in segregated housing patterns, inequitable distribution of school resources, and the tacit acceptance of educational inequality.

Ten years of massive resistance followed the *Brown* ruling, resulting in little to no progress in desegregating public schools.<sup>17</sup> The following year's *Brown II* decision, which urged states to desegregate public schools with "all deliberate speed," did little to advance desegregation in the ensuing years. In 1956, "101 Southern congressmen and senators signed a 'Southern Manifesto,' decrying the Supreme Court's decision and pledging 'to use all lawful means to bring about [its] reversal.'"<sup>18</sup>

In response, Congress's passage of the Civil Rights Act of 1957, which created the U.S. Commission on Civil Rights and granted it investigatory and advisory functions, and its creation of the Civil Rights Division within the Department of Justice, helped to lay the foundation for a federal infrastructure that would provide support, oversight, aid, and accountability in efforts to dismantle the Jim Crow education system.

In Virginia, the Prince Edward County School District opted to shutter its public schools for 5 years after the state's school-closing law—a pushback to desegregation orders—was ruled unconstitutional in 1959. In response, the Virginia General Assembly repealed the compulsory school attendance law and made operation of the public schools a local option rather than comply with orders to desegregate, devastating the educational futures of many children.

### *Federal Investment and Support in Response to Ongoing Integration Resistance*

It was not until 1964, when the U.S. Supreme Court outlawed Virginia's tuition grants to private education, that the Prince Edward County public schools opened on an integrated basis.<sup>19</sup> By then, federal mechanisms were in place to ensure oversight and compliance with federal desegregation orders.

During that same year, Congress's passage of the 1964 Civil Rights Act created key mechanisms for securing state compliance with desegregation efforts. The law's Title IV authorized the Attorney General to initiate litigation against noncompliant school districts and states to enforce orders to desegregate and its Title VI prohibited discrimination based on race, color, and national origin in federally assisted programs.<sup>20</sup> The law's mechanism for withholding federal funds from noncompliant school districts added an economic incentive for districts to comply with

desegregation orders. Equipped with these legislative levers, the federal government brought over 600 administrative proceedings against noncomplying school districts and ordered more than 200 fund terminations against noncompliant districts under Title VI.<sup>21</sup>

Building on these efforts, during the 1960s and 1970s, many desegregation and school finance reform efforts were launched, and the Great Society's War on Poverty increased investments in urban and poor rural schools. At that time, the country made substantial gains in equalizing both educational inputs and outcomes.

Congress enacted the Elementary and Secondary Assistance Act of 1965, which supported desegregation, the development of magnet schools, and other strategies to improve urban and poor rural schools. The law targeted resources to communities with the most need, recognizing that where a child grows up should not determine where he or she ends up. Employment and welfare supports reduced childhood poverty to levels about 60% of what they are today<sup>22</sup> and greatly improved children's access to health care.

These efforts to level the playing field for children were supported by intensive investments in bringing and keeping talented individuals in teaching, improving teacher education, and investing in research and development.

In the early 1970s, the Emergency School Assistance Program (ESAP) was established and initiated with funds administered by the then Commissioner of Education, receiving about \$171 million over its two year existence.<sup>23</sup> Although the ESAP was then dismantled, in 1972, Congress passed the Emergency School Aid Act, which targeted federal aid to "encourage the voluntary reduction, elimination, or prevention of minority-group isolation."<sup>24</sup> To participate, districts had to prove that they had eliminated segregation, including having no racially identifiable school facilities, no discrimination in teacher or student assignment, no segregated extracurricular activities, and no "second generation" segregation, such as in-school tracking of students of color in lower-level courses.<sup>25</sup> In 1974, the overall program made \$250 million available, with about 250 districts receiving funds.<sup>26</sup>

In 1976, the law was amended to include grants to support the planning and implementation of magnet programs as a school desegregation strategy. The law also provided grants to nonprofit organizations to support school desegregation programs and reduce racial isolation.

These investments paid off in measurable ways. By the mid-1970s, urban schools spent as much as suburban schools and paid their teachers as well; perennial teacher shortages had nearly ended; and gaps in educational attainment had closed substantially. Federally funded curriculum investments transformed teaching in many schools. Innovative schools flourished in many cities. Financial aid for higher education was sharply increased, especially for need-based scholarships and loans. For a brief period in the mid-1970s, Black and Latino/a students attended college at the same rate as Whites, the only time this has occurred before or since.

Improvements in educational achievement for students of color followed. In reading, large gains in Black students' performance in the 1970s and early 1980s reduced the achievement gap considerably, cutting it by more than half for 13-year-olds (from 39 points to 18 points on the

National Assessment of Educational Progress) between 1971 and 1988. (See Figure 1.) The achievement gap in mathematics also narrowed by 20 points (about one third) over the same general period. (See Figure 2.)

Figure 1

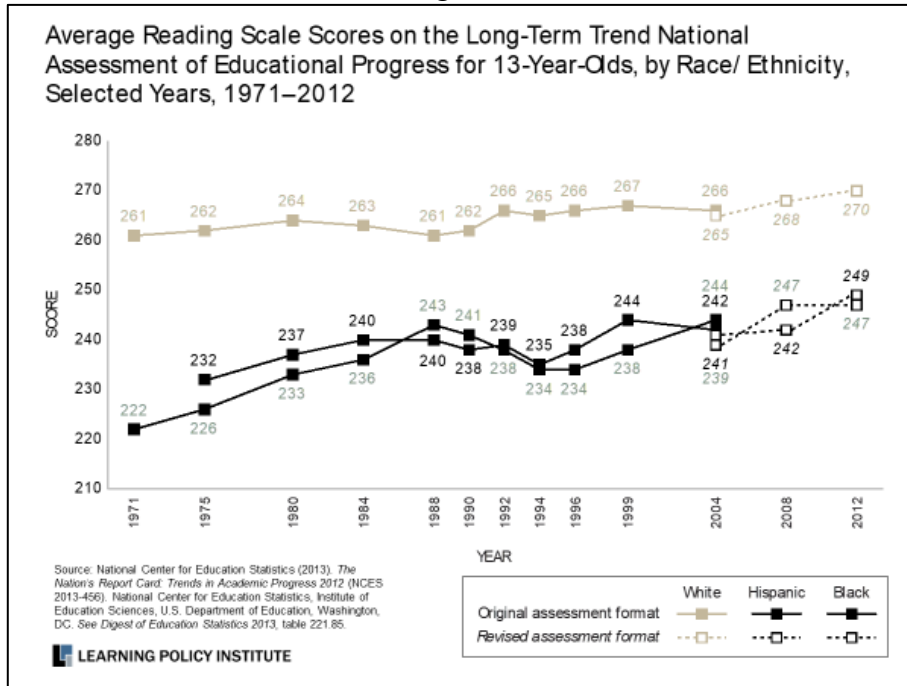
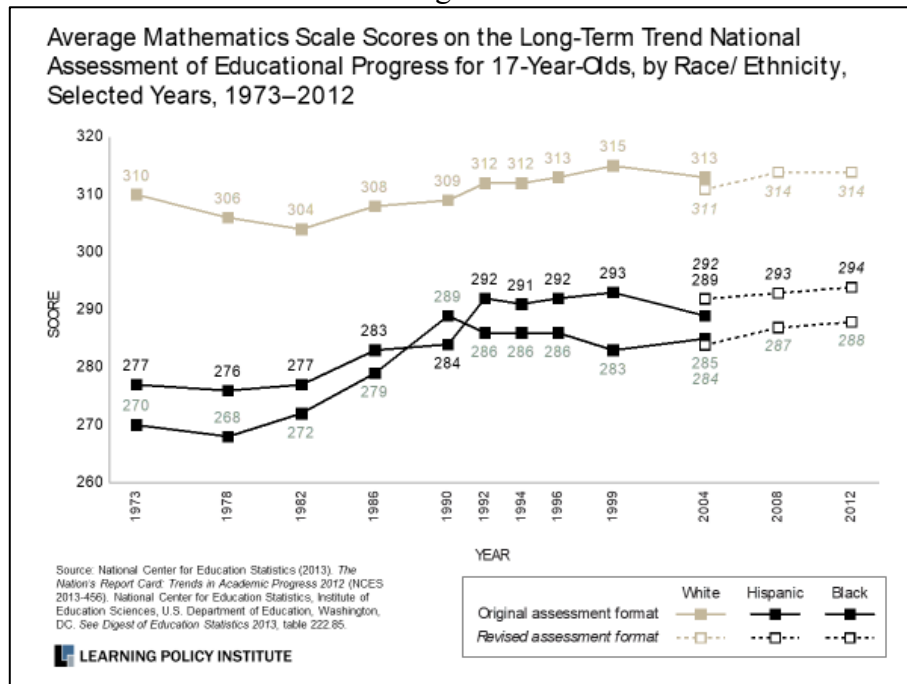


Figure 2



Despite these benefits, and after significant progress during the 1960s and 1970s tied to federal legal action and investments in desegregation, the Reagan Administration discontinued most investments in school desegregation as well as the Great Society investments of that era, which have never been fully reestablished in the years since.

### **Federal Retrenchment and Its Impact on School Diversity**

The Nixon Administration shifted the position of the Department of Justice from proactive enforcement of desegregation orders to a more passive acceptance of noncompliance and even attack of desegregation rulings. The Administration ended the federal government's cooperation with private advocacy groups, like the NAACP Legal Defense and Educational Fund, and Nixon's judicial appointments produced the first divided desegregation decisions since *Brown*. The Nixon Administration also supported passage of the Equal Educational Opportunities Act of 1974, which advanced a federal policy favoring neighborhood schools and "rejecting racial balance as the goal of school desegregation."<sup>27</sup>

Congress included language in the ESAA reauthorization that banned the use of federal funds for busing. In addition, between 1973 and 1976, funding for the program declined to only \$7.5 million in 1977.<sup>28</sup>

However, the Carter Administration increased the program funding by \$36.3 million in 1980,<sup>29</sup> and by 1981, ESAA provided school systems with \$149.2 million to support desegregation efforts.<sup>30</sup> Overall, between fiscal years 1973 and 1981, \$2.2 billion was provided to desegregating schools under ESAA, including for staff training, additional staff, curriculum development, community relations activities, and the financing of magnet schools.<sup>31</sup>

The ESAA program ended in 1981 when President Reagan signed the Omnibus Budget Reconciliation Act of 1981, which cut federal funding of desegregation and other federal programs, including the Emergency School Aid Act of 1972.<sup>32</sup> However, in 1984, the Elementary and Secondary Education Act provided funding to support school diversity under the Magnet Schools Assistance Program. The Reagan administration provided support in 1985 to provide grants to eligible local educational agencies to establish and operate magnet schools under court-ordered or federally approved voluntary desegregation plans.<sup>33</sup> The law noted that "Magnet schools are a significant part of the nation's effort to achieve voluntary desegregation in our nation's schools."<sup>34</sup>

Reductions in funding accompanied the consolidation of federal education programs into block grants to state education agencies under Chapter 2 of the Education Consolidation and Improvement Act. During the 1980s, the Administration and Congress cut federal aid to schools from 12% to 6% of a shrinking total. Meanwhile, childhood poverty rates, homelessness, and lack of access to health care grew alongside cuts in other federal programs that had supported housing subsidies, health care, and child welfare.

The impact of the cuts was immediate. A *New York Times* article noted that federal aid for desegregation in Buffalo, New York, for example, had been cut from \$7 million to \$1 million between 1981 and 1982, and that the city was laying off 325 of the 385 employees who



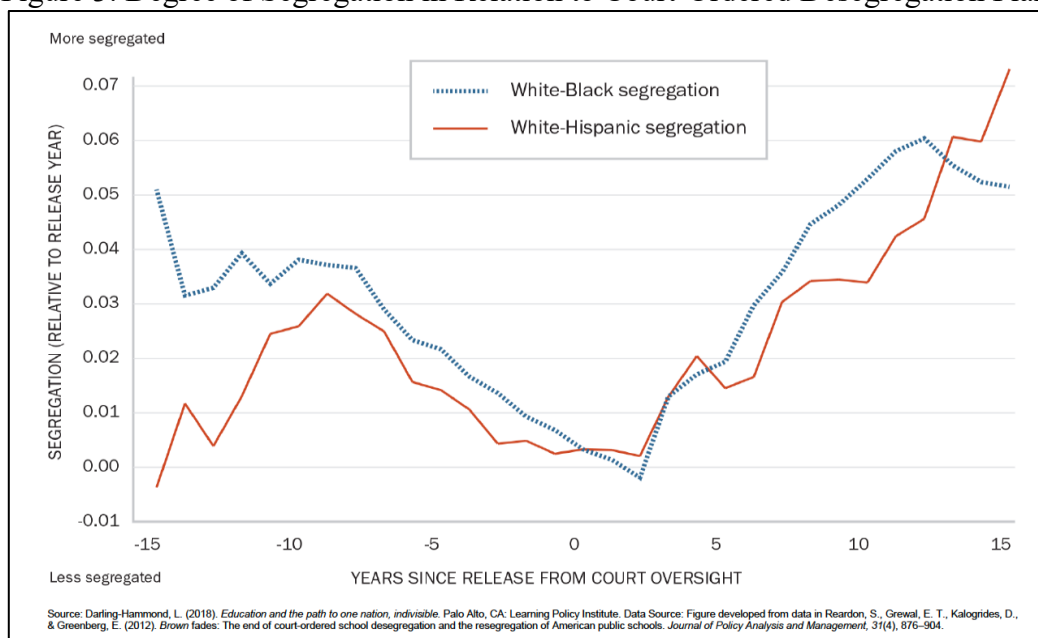
worked exclusively on desegregation.<sup>35</sup> According to one report, the ambiguity of the block grants undermined school desegregation efforts, with a school official noting, “The brevity of the statute, the limited scope of the regulations, the nonbinding characteristics of federal guidance, the extension of rule-making authority to state education agencies have resulted in confusion, contradiction, and a general lack of clarity at the district level.”<sup>36</sup> Confusion and ambiguity about how to spend the aid resulted in some districts using funds for books, computers, and other materials instead of desegregation efforts.<sup>37</sup>

The Reagan Administration also ushered in a new era in which the Department of Justice reversed its position in many school desegregation cases, siding with school districts who wanted to lift desegregation orders and against community advocacy groups who wanted the orders to remain in place. Although federal court oversight has been helpful in ensuring systemwide compliance with desegregation efforts – including adoption of nondiscriminatory discipline codes and access to more advanced courses for students of color – in recent decades many federal courts have terminated oversight of desegregation orders. This has often occurred not because districts have achieved successful desegregation but because continuing efforts to desegregate schools would require resources and will that are in short supply.<sup>38</sup>

These shifts in Department of Justice and judicial oversight in the decades following *Brown* reversed progress in school desegregations efforts. Although some federal administrations have encouraged and funded voluntary state and local action to desegregate public schools, others have eliminated funds and stepped back from enforcing court desegregation orders or pushing for resolution in open desegregation cases.<sup>39</sup>

The degree of segregation declined significantly in districts under court oversight, but it rapidly climbed to even higher levels when court oversight was terminated.<sup>40</sup> This has resulted in increasing trends of resegregation in schools. (See Figure 3.)

Figure 3: Degree of Segregation in Relation to Court-Ordered Desegregation Plans



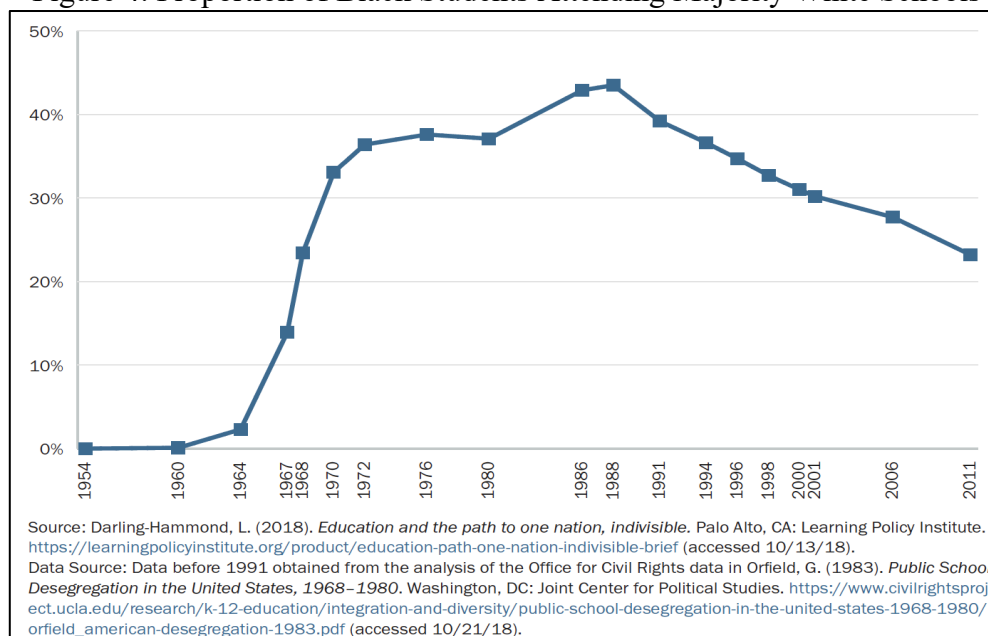
By 1991, stark differences had reemerged between segregated urban schools and their suburban counterparts, which generally spent twice as much. Achievement gaps began to grow once again, and while there have been small gains in the 30 years since, the gaps in achievement between Black and White students are larger today than they were then. (See previous Figures 1 and 2.) For example, Black 13-year-olds have gained only 4 points in reading since 1988, whereas White students have gained 9 points, leaving a gap that is nearly 30% larger today than it was 30 years ago. In mathematics, Black 13-year-olds actually score a point lower than they did when the gap was smallest in 1990, while White same-age students now score 5 points higher, increasing the gap in that subject by 30% as well.

The consequences of these diverging trends are that students are attending increasingly segregated schools and losing the benefits of school diversity while achievement gaps have grown. Ironically, had the rate of progress achieved in the 1970s and early 1980s continued, the achievement gap would have been fully closed by the beginning of the 21<sup>st</sup> century. That did not occur. Further, despite a single-minded focus on raising achievement and closing gaps during the No Child Left Behind era (from 2002 until 2015), many states focused on testing without investing in the resources needed to close the opportunity gap and achieve higher standards.

### Federal Efforts to Address Growing Segregation

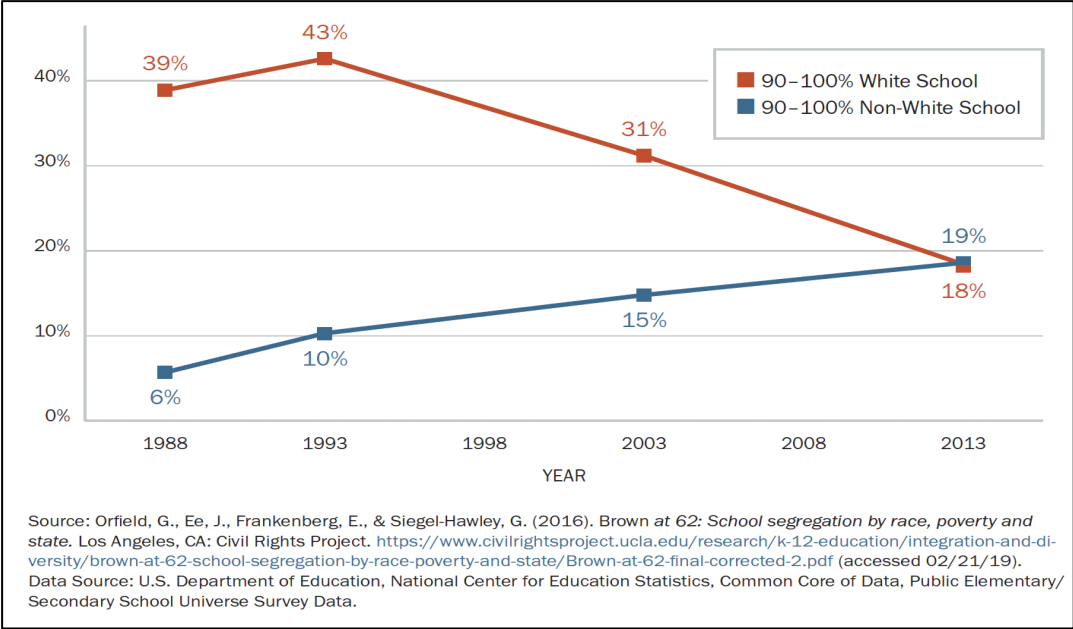
By the beginning of the Obama Administration, the gains made in the 1960s and 1970s had reversed course and schools were becoming increasingly segregated. In 2011, approximately 40% of African American students nationwide—and more than 50% in the Northeast—attended intensely segregated schools (in which students of color constitute 90% or more of the total). 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 Figure 4.<sup>41</sup> In 2014, 79% of Black students were in majority minority schools.<sup>42</sup>

Figure 4: Proportion of Black Students Attending Majority White Schools



Further, since 1988, the share of intensely segregated non-White schools (defined as those schools with only 0–10% White students) had more than tripled, increasing from 6% to 19% of all public schools. (See Figure 5.) At the same time, even as resegregation was taking hold, there was also a sharp decline in the percentage of segregated White schools with 10% or fewer non-White students, dropping from 39% to 18%.

Figure 5. Percentage of Intensely Segregated Schools, 1988-2013



Recognizing the pushback desegregation efforts were facing, the Obama Administration took a number of steps to support state and local efforts to create more diverse schools. For example, when the Supreme Court issued its decision in *Parents Involved in Community Schools v. Seattle School District No. 1*, there was confusion about what districts could legally do to promote racial diversity in schools. As a result, the Departments of Justice and Education issued voluntary guidance to help districts achieve diversity and avoid racial isolation in ways consistent with existing law.<sup>43</sup> In line with the Court’s ruling, the diversity guidance outlined approaches that do not rely on the race of individual students (also called race-neutral approaches) and approaches that rely on individual racial classification only when narrowly tailored to meet a compelling interest.<sup>44</sup> Instead, it offered specific, evidence-based approaches that school districts can use:

- *Making changes to 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.<sup>45</sup>
- *Making changes to grade realignment and feeder patterns.* Under this race-neutral approach, school districts examine available data to identify disparities and design school grade alignment or feeder patterns to help mitigate disparities.
- *Making changes to school zoning decisions.* Under this approach, school districts assign students to schools and make changes to school attendance zones which are composed of

students from geographically defined areas.<sup>46</sup> This approach is one of the most commonly used to promote socioeconomic integration.<sup>47</sup>

- *Allowing for open enrollment decisions.* Under open enrollment programs, parents are allowed to choose or rank by preference schools within or across school districts.<sup>48</sup> 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).<sup>49</sup>
- *Increasing admission to competitive schools and programs.* Schools seeking to promote racial diversity can 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.
- *Supporting inter- and intradistrict transfers.* This allows students to move between schools with the goals of achieving racial diversity and reduction of racial isolation.<sup>50</sup> 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 school districts, and income groups are also increasingly geographically divided.”<sup>51</sup>

In addition, although never funded, the Obama Administration proposed the Stronger Together Grants program. Funding under this program would have been used to encourage the development of innovative, ambitious plans to increase socioeconomic diversity through voluntary, community-supported strategies and expand existing efforts in states and communities. The Administration requested \$120 million in federal funds to support state and local efforts.

### **Current Retrenchment in Integration Efforts**

The Trump administration rescinded the Obama Administration guidance on school diversity in July 2018. Although this action does not change existing civil rights laws, it can serve to hinder the speed and effectiveness of implementation of these laws. Without this guidance, states and districts do not have a readily available set of resources grounded in research and may be uncertain about whether their actions, practices, and policies are compliant with federal law as interpreted by the courts.

The Administration’s efforts to roll back civil rights protections extend beyond school integration efforts and are likely to result in further challenges to realizing the promise of *Brown*.

In December 2018, the Trump Administration rescinded nonbinding guidance on civil rights and school discipline issued by the U.S. Department of Education and the U.S. Department of Justice that described 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. This action was taken despite the well-documented disparities in the application of school discipline policies and overuse of exclusionary disciplinary practices with historically underserved students.<sup>52</sup>

Guidance on the treatment of transgender students issued by the U.S. Department of Education and the U.S. Department of Justice was also rescinded by the Trump Administration in February 2017, one month after the President took office. This nonbinding guidance asked 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.<sup>53</sup>

The Administration attempted to delay implementation of 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 numerous issues related to significant disproportionality in the “identification, placement, and discipline of students with disabilities based on race or ethnicity.” This effort to delay implementation of the regulations was recently struck down by the courts.

The Trump administration is also considering directing the Department of Education and senior civil rights officials to examine how decades-old “disparate impact” regulations might be changed or removed, such that only cases that are proven to be motivated by discriminatory intent, regardless of discriminatory impact, will need to be addressed.<sup>54</sup> Such a change would impact the standards used in investigations of claims of discrimination, reducing the likelihood that even egregious cases will be investigated further.

This Administration, and other previous administrations, has failed to address the increasing residential segregation intentionally imposed upon African Americans through discriminatory housing practices, including redlining that relegated African American families to specific communities or geographic regions. The role of the Federal Housing Agency and other related agencies is critically important in these efforts.

Each of these actions makes the promise of *Brown* that much harder to fulfill. Efforts to create diverse, inclusive, and high-quality schools require a coordinated and comprehensive set of protections, strategies, activities, and resources across federal agencies

### **States and Districts Leading the Way to Increasing School Diversity**

Despite a federal retreat from supporting state and local school diversity efforts, a number of school districts are still implementing and advancing innovative desegregation programs, often using the practices outlined in the Obama-era guidance.

#### ***Diversity by Design in San Antonio, Texas***

In the deeply segregated city of San Antonio, Texas, the San Antonio Independent School District is leading the way in promoting school integration. The district is one of 14 in the city, and most of its students (90%) are categorized as economically disadvantaged. The district has implemented a controlled choice program—also known as Diversity by Design. The program is designed to ensure that parents learn about education options that they might not be aware of,

from among a range of instructional models such as Montessori, college preparatory, and expeditionary learning. Administrators then consider parental choice and combine parental preference with data to ensure school diversity is achieved. The program further fosters diversity with two other approaches: (1) half the seats for in-district charter schools are reserved for students from economically disadvantaged backgrounds and the other half are open to all income levels, and (2) the “priority radii” approach prioritizes seats for students from specific geographic areas to ensure socioeconomic diversity. Essential components of school diversity that the programs considers include location; school design; and transportation.

### ***Magnet Schools in 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. Hartford not only was a racially isolated, majority–African American area, but also was characterized by concentrated poverty. The Connecticut Supreme Court 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. 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 open to students across districts in the Hartford area.

A 2013 analysis of the program found that students participating in the Magnet and Open Choice programs were outperforming Hartford students attending other public schools and performed well in comparison with the state’s averages for all students. The analysis also found that, as a result of the program, more than 45% of Hartford’s African American and Latino/a k–12 students attended schools in reduced-isolation settings. 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 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, high-quality schools. However, the program continues with state and local funds, and there is still a commitment to find and maintain effective strategies that promote integration and reduce racial isolation.

### ***Interdistrict Funding and Desegregation Programs in Omaha, Nebraska***

The experiment with interdistrict student assignment plans in Omaha, Nebraska, represents another community’s concerted effort to provide all students in a metropolitan region with a quality education. The metropolitan area’s roughly 110,000 students are served by a jigsaw of 11 school districts across two counties.<sup>55</sup> Before 2007 legislative action that created a “learning community” between the Omaha Public Schools and 10 of its surrounding school districts, there was a resource discrepancy between the city of Omaha and its largest school district. The “Raikes Plan” established a regional governance system—the Learning Community Coordinating Council (LCCC)—for the 11 Omaha metro-area districts and granted it authority to distribute a common levy.<sup>56</sup> The legislation also included a two-part economic “diversity plan” for the Learning Community: The LCCC was tasked with creating Elementary Learning Centers

to support high-poverty districts and establishing a choice-based mobility program to deconcentrate high-poverty schools. The initial Open Enrollment plan funded districts to establish “focus” or magnet schools along with transportation to increase diversity, enrolling thousands of students each year and demonstrating wide appeal for many parents.

Three years of LCCC evaluations compared the performance of Open Enrollment students on 3rd- to 8th-grade reading and mathematics assessments to their resident counterparts.<sup>57</sup> In low-poverty schools, free and reduced-price lunch–eligible Open Enrollment students scored dramatically higher than peers in high-poverty schools in both reading and mathematics in all tested grades.<sup>58</sup>

### ***Choice Plans in Louisville-Jefferson County, Kentucky***

In Louisville–Jefferson County, Kentucky, early court orders mandated busing between the mostly African American city district and the mostly White suburban areas of the county. By the 1990s, Louisville–Jefferson County was the most integrated school district in the nation. 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 when determining school assignment to achieve diversity across schools. Parents can also choose special programs such as magnet programs or language immersion programs. The county’s actions represent sustained voluntary integration efforts using many of the tools detailed in the guidance.

### **Recommendations for Federal Support of Integration**

The federal government can support and expand these types of state and local efforts to increase school diversity in many ways. Among the actions it could take are the following:

- 1. Establish and provide funding for federal grant programs that support state and local efforts to create more diverse schools.*

The federal government can promote school diversity efforts like those described above through a number of policies. For example, it could provide funding to educational agencies to support voluntary, community-driven and designed efforts to improve diversity or eliminate racial or socioeconomic isolation in schools and close opportunity and achievement gaps. The federal government could also fund state efforts to increase diversity, including through studying current policies related to school diversity, revising school boundaries, expanding innovative programs to attract diverse students from outside a local area, and hiring and training diverse educators. Many of these types of policies are included in the Strength in Diversity Act, which would create a \$120 million federal grant program to support state and local efforts.

- 2. Eliminate the legislative prohibition against the use of federal funds for busing.*

Another legislative opportunity for supporting states and school districts to facilitate diversity programs is to clear the way for use of federal funds to support transportation, such as interdistrict magnet school or transfer programs, that attract students from outside the local area. Last year, successful advocacy efforts resulted in the removal of language prohibiting federal

funds for busing in sections 301 and 302 of annual federal appropriations bills.<sup>59</sup> However language remains in Section 426 of the General Education Provisions Act prohibiting federal funding for busing, effectively undermining district efforts to implement innovative voluntary programs to promote school diversity. Eliminating this legislative prohibition on federal funding for busing would remove a constraint on districts so that they can access federal funds for transportation to support school diversity efforts.

*3. Increase funding under ESSA in support of integration and school diversity, including for magnet schools.*

Funding under Title I of the Every Student Succeeds Act (ESSA), which is focused on funding programs for schools serving students living in concentrated poverty, can support desegregation efforts.<sup>60</sup> The law requires states to set aside 7% of Title I funds to implement evidence-based interventions for low-performing schools. These schools can use some of the funding under the 7% set-aside to support integration and school diversity via magnet schools. The benefits of integrated education, described above, are well established and meet the evidence-based criteria for support under ESSA.<sup>61</sup> Local districts are advancing school integration strategies: in 2016, 83 districts plus 9 charter schools or networks were advancing programs to create more diverse classrooms for up to a total of 4 million students.<sup>62</sup> Significant investments in Title I, which would also thereby increase funding available under the 7% set-aside, could support state and local efforts, particularly for low-performing schools, to increase student diversity.

In addition, Title IV of ESSA provides for magnet schools assistance. Magnet schools provide options for students to select school environments that meet their needs and have been explicitly designed to bring about voluntary desegregation while fostering innovative school models. The “magnets” that draw students are programs that appeal to various academic and career interests. They focus on specific subjects, follow specific themes, or operate according to certain models. Magnets are found at the elementary, middle, and high school levels and are designed to attract students from diverse social, economic, ethnic, and racial backgrounds.<sup>63</sup>

The U.S. Department of Education has provided federal support for magnet schools since 1976. First as grants under ESAA and then, starting in 1984, under the Magnet Schools Assistance Program (MSAP), these grants assist in the desegregation of public schools by supporting the elimination, reduction, and prevention of racial isolation. The MSAP supports innovative educational methods and practices that expose students to challenging curriculum while increasing diversity.<sup>64</sup> Today, there are roughly 3,400 magnet schools nationwide across more than 600 school districts, enrolling 2.6 million students.<sup>65</sup>

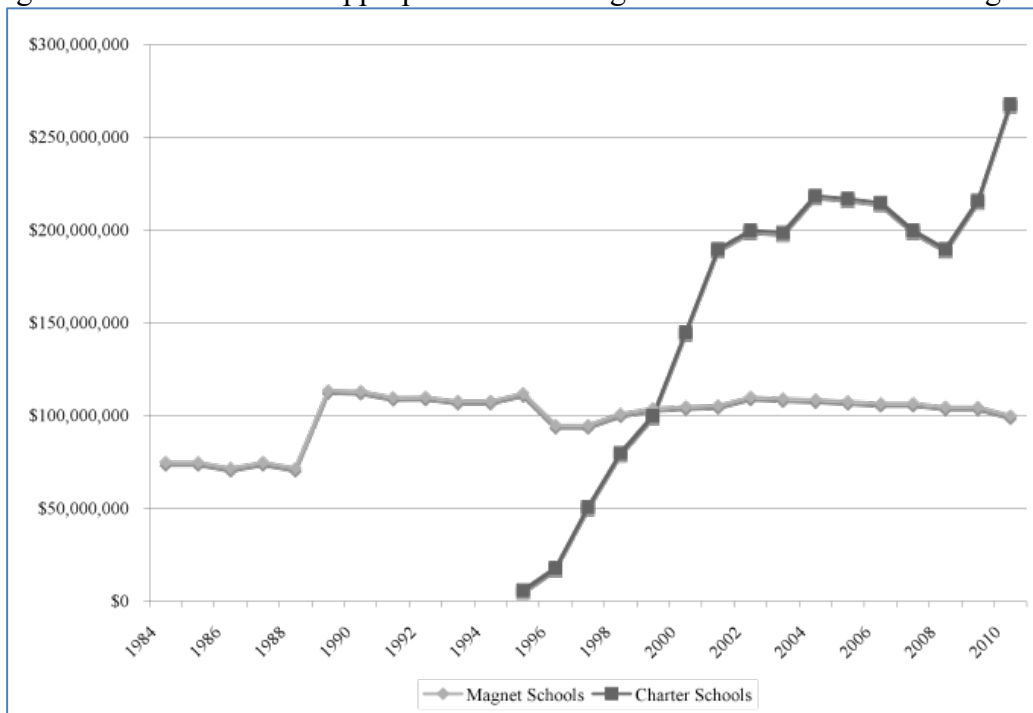
Most magnet schools are established by school districts, while others are founded on a statewide basis. Syntheses of the research on magnet schools have found positive effects on achievement, graduation rates, student motivation and satisfaction with school, teacher motivation and morale, parent satisfaction, intergroup relationships, and integration.<sup>66</sup> These findings cut across large-scale national studies,<sup>67</sup> studies of statewide programs,<sup>68</sup> and rigorous local analyses.<sup>69</sup>

Despite this success, funding for magnet schools has not kept pace with inflation or the growth in magnet schools, nor has it kept pace with other federal investments in education. In 1984, the



MSAP was funded at \$75 million, and in fiscal year 2019, the federal government appropriated just \$107 million for magnet schools, compared with \$440 million for charter schools.<sup>70</sup> Further, although federal investments in charter schools have significantly increased over the last several decades, investments in magnets schools have remained flat. (See Figure 6.)

Figure 6: Annual Federal Appropriations for Magnet Schools and Charter Programs



Source: Frankenberg, E., & Siegel-Hawley, G. (2011). Choosing Diversity: School Choice and Racial Integration in the Age of Obama. *Stanford Journal on Civil Rights and Civil Liberties*, 6(2), 219-252.

To support more diverse learning environments and reverse the trend toward resegregation, the federal government could significantly increase investment in magnet schools, at a minimum to the same level as funding for charter schools, while encouraging more diversity in other schools, as described below.

#### 4. Encourage greater diversity in charter schools.

While there is a group of charter schools working to enhance diversity, as a sector, charters have been more segregated than other public schools in their communities. Data from the UCLA Civil Rights Project show that:

Charter school enrollment patterns display high levels of minority segregation, trends that are particularly severe for black students. While segregation for blacks among all public schools has been increasing for nearly two decades, black students in charter schools are far more likely than their traditional public school counterparts to be educated in intensely segregated settings.... Patterns in the West and in a few areas in the South, the two most racially diverse regions of the country, also suggest that charters serve as havens for white flight from public schools.<sup>71</sup>

Given that charter schools in most states are even more segregated than district-run public schools—and that some have been established to enable white flight and prevent the admission of students of color—the federal government has a duty, at least with respect to the allocation of federal charter school funds, to look to states as well as schools to create expectations regarding fair, unbiased approaches to recruitment and retention of students. The Century Foundation has identified a set of policies that states could adopt to discourage racial segregation and encourage diversity in charter schools.<sup>72</sup>

The use of federal funds to support schools that result in more segregated learning environments should be a concern. Federal grant program requirements should be structured in ways that target resources to efforts and policies that further the goal of integration. For example, to receive federal funds, states might be required to follow the lead of states like Massachusetts that prevent charter schools from imposing admissions requirements, requiring that they admit students by lottery and that they serve special education students and English learners. In Massachusetts, charter school recruitment and retention plans are reviewed and approved, as are enrollment and attrition data, and other steps are taken to verify that students with high levels of need are provided with “equal and unfettered access to each school’s application and enrollment process.”<sup>73</sup>

5. *Ensure that states enforce ESSA’s integrative student assignment policies and comparability provisions for ensuring equally qualified teachers to schools serving different populations of students.*

ESSA requires that districts minimize segregation by race/ethnicity, language, economic disadvantage, and disability status in assigning students to schools and classrooms. States are expected to monitor these practices and ascertain if they are in fact minimizing segregation. The law also requires that states develop policies to balance the qualifications of teachers across schools serving more and less advantaged students, but this aspect of the law has been weakly enforced, and wide disparities continue. If the federal government were to take these requirements seriously and include oversight of these provisions in their monitoring of states, greater attention and progress would likely occur.

6. *Encourage states to report on opportunity indicators in district and school report cards.*

In addition to monitoring the requirement that districts minimize segregation in student assignment, indicators of diversity could join other equity indicators in State Report Cards. ESSA includes expectations for reporting of these indicators, but it does not currently articulate an expectation that these indicators should be in a readily accessible location, such as a State Report Card, where both the public and state officials can monitor local progress. These indicators should include, in addition to school academic progress, information that reflects the dollars spent; degree of diversity in student assignment (relative to the population in the district); availability of well-qualified teachers; strong curriculum opportunities; books, materials, and equipment (such as science labs and computers); and adequate facilities available to students. Evaluating school diversity efforts should be within efforts to evaluate progress on opportunity measures in state plans and evaluations under the law, including those that require states to meet a set of opportunity-to-learn standards for schools identified as failing.

7. *Re-establish the Department of Education’s guidance on school diversity to inform voluntary desegregation efforts.*

A straightforward means to support integration would be to re-establish the evidence-based strategies and resources included in the Obama diversity guidance, which provided ideas, clarifications, and support for state and local efforts to create more diverse schools.

## **Conclusion**

In order to reverse the trends of resegregation in our nation’s public schools, we must reinvigorate the federal commitment to school diversity. This can include legislative support for state and local diversity efforts—using existing federal legislative mechanisms and support for new legislation—as well as strong federal oversight, enforcement, and action.

Sixty-five years after the highest court declared that “separate but equal” has no place in our nation’s public school system, we still have considerable work to do to. Although public school enrollment today is “more racially and ethnically diverse than ever,” this diversity has yet to be reflected in our schools and classrooms.<sup>74</sup>

Realizing *Brown*’s promise does not have to remain elusive. Tremendous progress was made when the federal government focused on supporting gains in states and localities. We can once again make progress collectively with cooperation and collaboration between the federal government, states, school districts, and education stakeholders. That requires that all actors—including the federal government—persevere and remain faithful to fulfilling *Brown*’s promise.

Thank you for your focus on this issue and for the opportunity to discuss and share ideas for a path forward. I am happy to answer any questions that members of the Committee may have.

## Endnotes

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