REKINDLING *BROWN*: 15 BERKELEY LA RAZA L.J. 99 | 6 AFR.-AM. L. & POL'Y REP. 226 | 19 BERKELEY WOMEN'S L.J. 427 | 11 ASIAN L.J. 308 | CALIF. L. REV.

Resegregation and Achievement Gap: Challenges to San Francisco School Desegregation*

Henry Der†

INTRODUCTION

In 1954, the U.S. Supreme Court in *Brown v. Board of Education* held racially segregated public schools to be unconstitutional and unequal.[1] The Court found that racially segregated schools denied African-American students access to educational opportunities, resources, and facilities provided to White students. Without defining what would constitute a racially integrated school, the Court's *Brown v. Board* decision called on the Board of Education to desegregate its schools with deliberate speed by abolishing racially identifiable schools. Because it was not in a position to oversee the desegregation of school districts across the nation, the Court looked to federal district courts to fashion remedies for school desegregation lawsuits filed against local school districts.

Twenty-four years after the *Brown* decision, San Francisco Unified School District (SFUSD) was the target of a lawsuit filed by the San Francisco NAACP for maintaining racially identifiable schools. School desegregation, the NAACP hoped, would give African-American and other racial minority students access to educational programs throughout the city and improve their achievement. In addition, the NAACP sought to improve schools in African-American neighborhoods by reconstituting faculty, staff, and adequate funding to establish quality educational programs. As defendants, SFUSD and state education officials[2] agreed to a court-approved consent decree that embraced NAACP's demands.

I will discuss the challenges SFUSD faces in desegregating its schools and the likelihood that its schools will stay desegregated. Further, I will address the impact of state fund allocation on student performance in schools in African-American and Latino neighborhoods. I will also explore whether schools located in these neighborhoods receive less funds per pupil than schools located in other San

---

* Cite as Henry Der, *Resegregation and Achievement Gap: Challenges to San Francisco School Desegregation, in* SYMPOSIUM, REKINDLING THE SPIRIT OF *BROWN V. BOARD OF EDUCATION*, 6 AFR.-AM. L. & POL'Y REP. 226; 11 ASIAN L.J. 308; 15 BERKELEY LA RAZA L.J. 99; 19 BERKELEY WOMEN'S L.J. 427; CALIF. L. REV. (2004). This is a footnoted version of a talk given on November 14, 2003, at University of California, Berkeley, School of Law (Boalt Hall), as part of the symposium, "Rekindling the Spirit of *Brown v. Board of Education:* A Call to Action."

† State Administrator of Emery Unified School District in the San Francisco Bay Area. My comments are informed by my experiences as a civil rights advocate for education equity and a San Francisco public school parent.

1. 347 U.S. 483 (1954).

2. State Board of Education, State Superintendent of Public Instruction, and California Department of Education.

Francisco neighborhoods. I will suggest that, in this era when state and federal accountability systems incentivize parental exercise of school choice, a school district with a status as problematic as SFUSD needs to go beyond school desegregation and support community schools.

I.
BACKGROUND: THE CONSENT DECREE—EFFORTS TO DESEGREGATE

For more than twenty years, SFUSD has been implementing the consent decree to desegregate its schools.[3] The consent decree requires the school district to abolish racially identifiable schools and improve the academic performance of African-American and Latino students. SFUSD's record of achieving these goals has been mixed.[4] Based on California standardized test results in recent years, east-side schools,[5] comprised primarily of African-American, Latino, and low-income Asian immigrant students, have performed consistently lower than west-side schools, comprised largely of White and middle-class Asian students.[6] The achievement gap between African-American and Latino students and White and Asian middle-class students has not diminished significantly over the life of the consent decree.[7]

At the outset of the consent decree, SFUSD desegregated its schools in a manner similar to that of other school districts across the country. The consent decree does not allow more than 45% representation of a specified racial group in a school, and it requires a minimum of four racial groups at each school site.[8] The consent decree recognizes nine racial groups of students: African-American, Latino, White, Chinese, Japanese, Korean, Filipino, American Indian, and other non-White. Other non-White generally includes Southeast Asians among others.

School districts receive substantial state funds for desegregation efforts. In terms of state dollars allocated to K-12 programs that go beyond general education, school desegregation is the largest, after class size reduction and special education.[9] However, no entity within the California Department of Education (CDE) monitors how these desegregation funds are spent or whether school districts are actually achieving their goals to desegregate and/or improve their respective schools. School

---

3. Consent Decree, San Francisco NAACP v. San Francisco Unified Sch. Dist., 576 F. Supp. 34 (N.D. Cal. 1983) (No. Civ. C-78-1445 WHO).

4. *See* Desegregation and Educational Change in San Francisco: Findings and Recommendations on Consent Decree Implementation, submitted by Gary Orfield to Judge William H. Orrick, July 1992 [hereinafter Orfield Submission]; Progress Made, Challenges Remaining in San Francisco School Desegregation: Report of the Consent Decree Advisory Committee to the Federal District Court, January 1999 [hereinafter Progress Made].

5. East-side schools are located in the Bayview, Hunter's Point, Potrero Hill, Mission, Tenderloin, and Chinatown neighborhoods.

6. West-side schools are located in the Sunset, West Portal, Lake Merced, and Richmond neighborhoods.

7. *See* Orfield Submission, *supra* note 4; Progress Made, *supra* note 4; POLICY & EVALUATION DIV., CAL. DEP'T OF EDUC., 2003 ACADEMIC PERFORMANCE INDEX (API) BASE REPORT—SCHOOL REPORT, http://api.cde.ca.gov/reports.html (last updated Mar. 9, 2004).

8. Consent Decree, 576 F. Supp. 34.

9. Ed-Data Education Data Partnership: Fiscal, Demographic, & Performance Data on California's K-12 Schools, *Financing Schools 2003-04* (Mar. 2004), *at* www.ed-data.k12.ca.us/Articles/Article.asp?title=Financing%20Schools.

districts that receive desegregation dollars only submit reports to CDE that are then filed away. No one at CDE reads them.[10] There is little, if any, accountability.

II.
RESEGREGATION

In 1992, the federal court-appointed Monitoring Advisory Committee, chaired by Gary Orfield, concluded that SFUSD had achieved one of the major consent decree goals of abolishing racially identifiable schools. Most SFUSD schools fell at the time within the racial guidelines mentioned above.[11] However, many public schools are now resegregating across the nation.[12] San Francisco public schools are no exception.[13] The number of racially identifiable San Francisco schools has increased in recent years. Contributing factors to resegregation include changing student demographics, parental choice in school assignment where race cannot be a factor, and parental avoidance of low performing schools as classified by the state and federal accountability systems. These factors will continue to contribute to the resegregation of San Francisco public schools in the future.

Changing student demographics have made it very difficult to desegregate San Francisco public schools. In 1983, when the consent decree was implemented, African Americans were the single largest racial group in San Francisco public schools.[14] In the last twenty years, the number of African-American students has declined by 40% and that of White students by 20%. In contrast, the number of Latino students has increased by nearly 20%, and that of Chinese students, exclusive of other Asian groups, by 55%.[15] Today, Chinese students constitute the largest racial group in San Francisco public schools. Unlike white students in San Francisco or other urban school districts, Chinese students have not abandoned San Francisco public schools.

There is every indication that San Francisco public schools will become even more racially identifiable as the African-American and White student populations decline and the Asian student population holds constant or declines at a lower rate.[16] Currently, Asian students—Chinese, Japanese, Korean, and Filipinos—comprise 50% of the total SFUSD student population; Latinos, 22%; African

---

10. From 1996 to 2001, I worked at the California Department of Education (CDE) as a deputy superintendent of public instruction. I explicitly asked the CDE staff member who received these desegregation reports whether he or anyone else in the Department reviewed these reports. He replied, "No."

11. Orfield Submission, *supra* note 4.

12. GARY ORFIELD & CHUNGMEI LEE, HARVARD UNIV. CIVIL RIGHTS PROJECT, *BROWN* AT 50: KING'S DREAM OR PLESSY'S NIGHTMARE (2004).

13. CONSENT DECREE MONITORING TEAM, SFUSD DESEGREGATION PARAGRAPH 44 INDEPENDENT REVIEW: ANNUAL REPORTS OF THE CONSENT DECREE MONITORING TEAM FOR THE YEARS 1997-2004, *available at* http://www.gseis.ucla.edu/courses/edlaw/sfrepts/htm. UCLA Professor Stewart Biegel submitted the reports to the U.S. District Court for the Northern District of California.

14. Consent Decree, 576 F. Supp. 34; Orfield Submission, *supra* note 4.

15. Consent Decree, 576 F. Supp. 34; Orfield Submission, *supra* note 4; SFUSD, School Information, SARC & School Profiles 2003-2004 (Fall 2003), http://portal.sfusd.edu/template/default.cfm?page=school_info.profiles [hereinafter SFUSD, School Information].

16. Consent Decree, 576 F. Supp. 34; Orfield Submission, *supra* note 4; SFUSD, School Information, *supra* note 15.

Americans, 15%; and Whites, 10%.[17] At some San Francisco public schools, Asian student representation reaches beyond 60%, and, at other schools, it exceeds 70%.[18]

In 1994, a group of Chinese families challenged the use of race in school assignment of students, especially when a parent wished to exercise school choice. The federal court agreed and ruled that race could not be factor in school assignment. Given the *Ho v. SFUSD*[19] ruling that race can no longer be used to determine student school assignment, SFUSD instituted a system of parental choice that abolishes school assignment based on a student's neighborhood residency. Instead, it requires every student to apply and indicate which five schools she would like to attend.. It is not uncommon, though, for some schools to receive an overwhelming number of enrollment requests from students belonging to one of the nine recognized racial groups, thereby increasing the racial identification of the school.

The state and federal school accountability systems are also having an impact on how parents make school choices for their children. California's school accountability system of ranking schools, which is based on student performance on standardized tests, motivates some San Francisco parents to avoid schools identified as low-performing, many of which are located on the east side of the city. With school choice and an aversion against low performing schools, many parents, especially Chinese ones, seek to enroll their children in high-performing west-side schools and protest vociferously when their children are not enrolled.[20]

The federal No Child Left Behind Act (NCLB)[21] requires every school to make "adequate yearly progress" (AYP) to increase the number of students who achieve "proficiency" on state standardized tests, with the goal that all students achieve proficiency by 2014. A school district must provide transportation so that a student, who is enrolled in a school that repeatedly fails to meet its AYP goals can attend another school of her choice in the district.[22] Because this federal law is relatively new, many parents have yet to exercise this right, although many may do so in the future. This NCLB requirement, imposed on school districts to address failing schools, gives San Francisco parents another way to exercise school choice and try to enroll and maintain their children in west-side schools.

The unintended consequence of the state and federal school accountability systems is an increase in racially identifiable San Francisco public schools. If resegregation is not already a fact in San Francisco public schools, it is inevitable, despite more than two decades of substantial state funding to support school desegregation efforts and compliance with the consent decree.

---

17. SFUSD, School Information, *supra* note 15.

18. *See* Ed-Data Education Data Partnership: Fiscal, Demographic, & Performance Data on California's K-12 Schools, *at* htttp://www.ed-data.k12.ca.us (last revised Mar. 15, 2004).

19. Ho v. San Francisco Unified Sch. Dist., No. C-94-2418, 2001 WL 1922333 (N.D. Cal. Oct. 24, 2001).

20. May Chow, *Parent Group Fights for Neighborhood Schools*, ASIAN WEEK, Sept. 19, 2003; Tiffany Maleshefski, *Parents Keep Kids Out of First Day of School*, SF INDEP., Aug. 29, 2003.

21. No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2001) (codified as amended in scattered sections of 20 U.S.C.).

22. 20 U.S.C. § 6316(b)(1)(E) (2003).

III.
CONSENT DECREE FUNDING FOR HIGHER STUDENT OUTCOMES

State officials agreed to the consent decree because the state legislature earmarked funds to support school desegregation efforts by district under court order. SFUSD has received more than $30 million in state funds annually to implement the provisions of the consent decree since year one. There is the common belief that west-side schools receive more funds per pupil than east-side schools. This image purportedly enables west-side school students to secure the resources necessary to have better teachers and outperform their east-side school counterparts who are largely African-American, Latino, and low-income Asian immigrants. A close examination of per pupil funding among San Francisco public schools at all grade levels, however, indicates that no such funding advantage exists for west-side schools.

Among San Francisco elementary schools, per pupil funding in the 2003-2004 school year ranged from $3,504 to $7,062.[23] Of the ten elementary schools that receive the highest per pupil funding, all are east-side schools. Of the ten that receive the lowest per pupil funding, eight are west-side schools. Compared to many west-side schools, east-side schools have relatively low student enrollment, ranging from the high 100s to high 200s. Student enrollment in west-side schools ranges from the high 300s to the low 700s. The declining African-American student population and the exercise of parental choice affect east-side schools and their ability to sustain a stable, diverse school community.

Among San Francisco middle schools, per pupil funding ranges from $3,186 to $6,447.[24] The middle schools that receive the highest per pupil funding are east-side schools.

Among San Francisco high schools, per pupil funding ranges from $3,332 to $4,571.[25] West-side high schools receive the lowest per pupil funding compared to east-side high schools.

High per pupil funding has not resulted in satisfactory student outcomes, as measured by the California school accountability system. San Francisco elementary schools receiving the highest per pupil funding rank the lowest on California's Academic Performance Index (API), based on standardized test results.[26] In contrast, San Francisco elementary schools receiving the lowest per pupil funding rank among the highest on the API. This seemingly inverse relationship between per pupil funding and API school rank also exists among San Francisco middle and high schools.

---

23. *See* appendix, *infra*; *see also* San Francisco Unified School District, Policy and Planning Department, Nov. 2003. Each school site—elementary, middle and high—receives additional funding to cover the cost of site administration, office support and custodial services.

24. *See* appendix, *infra*.

25. *See id.*

26. Each year, every California school gets an Academic Performance Index (API) score ranging from 200 to 1,000, based on a school's student performance on standardized tests. *See* Cal. Dep't of Educ., Explanatory Notes for 2003 API Base Report, *at* http://www.cde.ca.gov/ta/ac/ap/expnotes03b.asp (last modified Apr. 14, 2004). Each school then gets a statewide rank from a low of 1 to a high of 10. *Id.* When compared to 100 schools most similar to it demographically, each school receives a similar schools rank, ranging from a low of 1 to a high of 10. *Id.*

Unquestionably, student performance at east-side high schools is considerably lower than at west-side schools. African-American and Latino students attending west-side schools perform at a higher level than their racial counterparts attending east-side schools. The performance of west-side African-American and Latino students, however, is considerably lower than that of their White and Asian middle-class classmates.

The achievement gap is glaring under the NCLB school accountability system. At some high schools with the highest per pupil funding, fewer than one of every twenty African-American students has achieved proficiency in English and math. This is deplorable. Where have San Francisco public schools gone wrong, and/or what has the district failed to do with twenty years of consent decree funding? There is a dilemma in how best to serve African-American and Latino students. Should more African-American and Latino students be integrated into west-side high schools that have the lowest per pupil funding? If more African Americans and Latinos attend a low per-pupil funded west-side high school, will these students receive the level and quality of support and resources necessary to achieve at a much higher level? As a high-achieving school, Lowell High School has a reputation of having an unfriendly school culture where students are expected to sink or swim in a college-like environment. African-American and Latino parents face the dilemma of choosing a high-performing high school that may not be friendly or sensitive toward the needs of their children or a high school where few students are achieving proficiency in core academic subject areas.

IV.
COMPARISONS ACROSS THE BAY

There are efforts under way in East Bay schools to personalize and intensify teacher-student interactions to improve teaching and learning among students who choose the school they attend. I am the state administrator at Emery Unified School District, a very small school district sandwiched between Oakland and Berkeley. Currently, enrollment at Emery Unified is 804 students. In the 2000 census, there were no more than 600 persons aged five to seventeen years living in Emeryville. About 45% of enrolled Emery Unified students live in Oakland or another East Bay city. District student enrollment fluctuates from year to year because of this very high percentage of inter-district transfer students.

More than 70% of Emery Unified students are African Americans. Two years ago, Emery Unified faced fiscal bankruptcy and had to secure a state loan to keep its classrooms open. Under state law, as soon as a school district secures a state loan, the State Superintendent of Public Instruction appoints a state administrator to assume authority for the district until financial recovery is achieved. In my capacity as state administrator, I have authority for Emery Unified and the locally elected school board, which acts in an advisory capacity. After consultation with the advisory school board and stakeholder groups and individuals, I organized a meeting to determine and provide equal educational opportunities for district students. It is no easy task to close the achievement gap in a school district that is segregated by choice and where student achievement is low.

There is an unwritten but popularly held belief about the pecking order of

schools in the East Bay. Parents perceive Oakland schools to be "bad," "dangerous," and/or "low-performing." Some North and West Oakland parents perceive Emery Unified schools to be slightly better and safer, and they consequently enroll their children in Emery schools. Emeryville parents who feel that Emery schools are unsafe and/or academically inadequate tend to seek interdistrict transfer approvals to enroll their children in Berkeley or Albany schools, which have higher test scores and are perceived to be safer. Regardless of whether they are motivated by school safety or the desire to feel comfortable and accepted, African-American families have enrolled their children in Emery schools because they are small and accessible. Their exercise of choice has resulted in what could be considered segregated schools among East Bay public schools. No California school district has as high an African-American student enrollment as Emery Unified.

V.
SOLUTIONS

So what is the solution in educating African-American, Latino, and other racial minority students in school districts that are resegregating or where desegregation efforts have either failed or fallen short of their goals of improving student outcomes? There are many solutions worthy of consideration, but one certainly deserves mention. The increasing exercise of school choice by racial minority families, especially in urban school districts, suggests that school districts need to strongly and sincerely support the development and maintenance of "community schools"—schools not necessarily based on neighborhood residency but on a shared sense of value, vision, purpose, and goals of public schooling. Efforts are currently under way in Emery and other East Bay schools to create community schools, where a group of teachers gets to know a group of students very well to affect student learning positively. In selecting schools for their children, parents generally do not consider school desegregation efforts or other policies. Rather, they look for schools that make sense and meet the needs of their children. Equally important, parents' actual exercise of choice indicates that parents need to feel that they can access their children's schools and the teachers, site administrators, and staff who have a role in educating their students. Parental choice has the potential to play an active, powerful role in creating and maintaining a community school that nurtures shared values and common vision to support improved student learning.

SFUSD has not made any significant headway in creating community schools where the most disadvantaged parents and students feel they are empowered to challenge the schools. They do not feel that they can make demands on the schools or work with teachers and staff to implement effective educational strategies and programs that can transform students into effective and successful learners. The harsh lesson of school desegregation is that desegregation alone has not translated into equal outcomes for all students. The school district needs to be willing to help parents and students go beyond school desegregation and take true ownership of their schools, whether on the east or west side. The school district can do so by promoting highly personalized relationships among teachers, students, and parents that create shared values, commitments, visions, and plans of action for student success.

Furthermore, school site leadership needs to be strong and supported

enough to understand the legal, social, and educational dimensions of school desegregation and school accountability. The state and federal accountability systems are placing tremendous pressures on school site administrators to produce higher student test results. The district has the responsibility to support school site administrators so that they have the resources and the authority to create and lead community schools that engage students, parents, teachers, staff, and partners in supporting the learning and teaching process for higher student outcomes.

VI.
CONCLUSION

Over the last twenty years, SFUSD has worked to desegregate its schools and raise student achievement by African-American and Latino students. The district's successes have been limited. The forces of resegregation may be too difficult for SFUSD to overcome as it also brings implementation of the consent decree to an end in 2006. The allocation of additional state funds to support desegregation and improve schools located in African-American neighborhoods has not closed the achievement gap. If a school is racially identifiable but parents choose to have their children attend nonetheless, SFUSD needs to explore how parental choice can be leveraged to build strong community schools where, in cooperation with faculty and staff, parents and students take ownership of their learning, and where teachers are singularly focused on improved teaching because they know the needs of their students very well.

APPENDIX: SAN FRANCISCO UNIFIED SCHOOL DISTRICT PER PUPIL FUNDING[27]

Elementary School	**Enrollment**	**Per pupil funding**
Golden Gate	122	7062
De Avila	134	6698
Malcolm X	245	5893
Drew	238	5880
Parks	249	5797
Muir	273	5594
Carver	300	5554
Starr King	181	5434
Harte	324	5334
Marshall	225	5177
Longfellow	552	3999
Ulloa	529	3955
Sloat	359	3915
Stevenson	478	3873

27. *See generally* SAN FRANCISCO UNIFIED SCHOOL DISTRICT, http://portal/sfusd.edu/template/ default.cfm?page=school_info (last visited June 2, 2004).

Argonne	394	3806
Buena Vista	388	3765
West Portal	558	3613
Lakeshore	581	3578
Clarendon	601	3537
Alamo	726	3504

Middle School	**Enrollment**	**Per pupil funding**
Davis	201	6447
Maxwell	233	6057
Franklin	310	4601
Visitacion Valley	514	4530
Burbank	453	4502
MLK, Jr.	525	4452
Everett	618	4223
Mann	659	4200
Lick	581	4108
Denman	729	3950
Francisco	533	3838
Marina	1073	3570
Roosevelt	794	3467
Aptos	917	3228
Hoover	1246	3223
Giannini	1337	3206
Presidio	1192	3186

High School	**Enrollment**	**Per pupil funding**
Marshall	1027	4571
Mission	917	4176
Balboa	944	4159
Galileo	1950	4118
Burton	1920	4005
O'Connell	942	3958
ISA	500	4920
Wallenberg	671	3833
Lowell	2578	3731
Washington	2296	3458
Lincoln	2520	3332

Copyright of Berkeley Women's Law Journal is the property of University of California School of Law and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.