

Supporting Schools That Prepare Children for the Real World

Legal & Policy Recommendations to Create & Sustain School Diversity

This brief offers concrete recommendations on how the federal government could support racially, culturally and economically diverse public schools. A growing body of scholarly research demonstrates that attendance at such schools is associated with reading and math gains, reduced racial prejudice and college success. Given these benefits and the well-documented harms of racial and economic isolation, it makes sense to provide more families the opportunity to send their children to schools that prepare them for life, learning and full membership in our rapidly changing democracy.

This CHHIRJ policy brief grows from the Institute's work on diverse schools, and from the recent work of two scholars who are also experienced civil rights lawyers, Chinh Le and Kimberly Jenkins Robinson. It is divided into three sections: 1) A Proactive Approach to the Desegregation Docket; 2) Reframing and Coordinating Existing Strategies in Support of School Integration; and 3) An Expanded Executive Role for Supporting School Diversity.

A Proactive Approach to the Desegregation Docket

About 250 school desegregation cases sit on the U.S. Department of Justice docket. The U.S. Department of Education's Office for Civil Rights oversees an unknown number of "voluntary desegregation" (441-B) orders. Meanwhile, in the last two decades, lower courts released hundreds of school systems from their court orders, declaring them "unitary." Many such districts abandoned desegregation efforts and their segregation rates increased accordingly. Vague court rulings related to unitary status and a lack of guidance from government, Le notes, led to an "*ad hoc*" approach to school desegregation litigation. Such inattention, Le suggests, could exacerbate already high levels of segregation and cause officials to miss opportunities to promote school diversity. To reverse this trend, Le recommends:

- Collaboration between the U.S. Department of Justice and the U.S. Department of Education to develop a comprehensive strategy on active cases and corresponding guidelines for government, school districts, and potential plaintiffs. Such guidelines should be clearly aimed at maximizing integration.
- Such guidelines should specify all areas in which "vestiges of discrimination" should be eliminated. This might include discipline and enrollment in advanced or remedial courses.

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- Such guidelines should emphasize that school districts (the defendants) bear the burden of demonstrating that racial disparities are not “proximately caused” by prior *de jure* segregation. Federal courts have not always been clear about this burden, possibly requiring a higher level of proof from plaintiffs.
- Given the vast demographic changes visited upon America’s communities, some court orders may seem irrelevant. Guidelines should address how such changes could be taken into account in revising court orders to reflect the communities’ current demographic makeup.
- Even if revival of a long dormant school desegregation order holds little promise of creating diversity, the government could, in tandem with other pro-integration initiatives, use it to raise awareness in local communities about enduring racial disparities or regional inequalities, thus building support for pro-integration efforts.

Reframing and Coordinating Existing Strategies in Support of School Integration

The vast majority of school districts are not under school desegregation orders. Thus, Le recommends, the Obama administration should put most of its resources into coordinating and strengthening federal agency activities that have the potential to reduce segregation and/or promote diversity. More generally, Le notes, the administration should look to regional efforts to support racially diverse schools. Since segregated schools grow from segregated housing patterns, housing officials must work in concert with education officials to combat worsening segregation. More specifically:

- The Obama administration should rescind OCR’s “Dear Colleague” letters issued during the Bush administration, which commented upon the use of race in K-12 student assignment plans. The Obama administration should issue guidance that actively encourages school districts’ exploration of legal strategies for achieving diversity.
- Related to the previous point, Robinson recommends that the Obama administration direct DOE to issue guidance that gives districts wide latitude to adopt *race-neutral* efforts to promote diverse schools under Title VI of the Civil Rights Act of 1964.
- In recent decades, the U.S. government encouraged a range of “choice” policies for public education, including charter schools. Diversity should be publicly encouraged in such efforts and charter school proponents should be encouraged through incentives to recruit and maintain a diverse student body. Similarly, charters should be encouraged to create diversity by drawing students from more than just one school district.
- Under No Child Left Behind, students are theoretically given the opportunity to transfer from “failing” schools. Government should work to ensure that families are aware of such options and that such transfers encourage integration. This may require *cross-district* transfers.

- The federal magnet school assistance program should be more explicitly presented as the desegregation effort that it is. Government officials should work more proactively to ensure that magnet schools fulfill their original mission of desegregation, again possibly encouraging *cross-district* enrollment.
- The Department of Housing and Urban Development should work with the DOJ's Civil Rights Division to more vigorously enforce fair housing laws. The federal government should join with civil rights lawyers to pursue remedies to long-standing segregation in housing, which may include providing children in segregated schools the opportunity to attend lower poverty institutions.

An Expanded Executive Role for Supporting School Diversity

The Executive Branch could play a far more powerful role in publicly making the case inside and outside of government for the contemporary relevance of racially and economically diverse public schools.

- Le and Robinson recommend that the President and the Education Secretary, in speeches and other public comments, emphasize that integrated public schools are important training grounds as our nation becomes more diverse. Such schools, they should emphasize, are critical elements in the health of our democracy.
- A substantial body of scholarly research demonstrates the benefits of racially diverse schools and the harms of racial and economic isolation. Education officials should educate the public about such research findings. This would enhance public discourse at the local and state levels and increase support for diversity efforts.
- Officials should stress that pro-diversity efforts are *voluntary* measures that simply provide families expanded educational choices. Currently, because of school district boundary lines, many children are forced to attend racially segregated, high-poverty schools, which are associated with a host of negative outcomes.
- Robinson suggests that after making the public case for diversity, the President should issue an Executive Order creating a plan for development of government policies that would reduce racial isolation and promote school diversity. Such an order, Robinson advises, should include a mechanism for public dialogue around these sensitive issues. Through the Executive Order, Robinson recommends that the Obama administration create a Commission to study how the federal government could promote diverse schools.
- Robinson also recommends that the Obama administration appoint a presidential advisor to focus on equal educational opportunity. The advisor would collaborate with the Commission and would continue after the Commission finishes its work.
- Strong executive leadership could promote coordination among existing federal programs and agencies. Ideally, the White House, perhaps through its Domestic Policy Council, could work with HUD, DOE and the new Office of Urban Affairs, to create proactive policies to support diversity and then champion such proposals in Congress.

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Featured Scholars

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About Chinh Le

Formerly with the NAACP Legal Defense Fund, Chinh Le is currently Director of the Division on Civil Rights of the Office of the Attorney General of New Jersey.

Chinh Q. Le, *Advancing the Integration Agenda Under the Obama Administration*, in *LOOKING TO THE FUTURE: LEGAL AND POLICY OPTIONS FOR RACIALLY INTEGRATED EDUCATION IN THE SOUTH AND THE NATION* (forthcoming 2010); Chinh Q. Le, *Racially Integrated Education and the Role of the Federal Government*, 88 N.C. L. REV. ___ (forthcoming 2010). The opinions expressed in these works are solely the author's, and do not represent the opinions of the Division on Civil Rights of the Office of the Attorney General of New Jersey.

About Kimberly Jenkins Robinson

Kimberly Jenkins Robinson is Associate Professor at Emory Law School and was previously a staff attorney for civil rights issues in the Office of the General Counsel for the U.S. Department of Education.

Kimberly Jenkins Robinson, *The Unspoken Theory of Optional Equality in School Desegregation Jurisprudence and a Proposed Response that Resurrects Brown*, 88 N.C. L. REV. ___ (forthcoming 2010); Kimberly Jenkins Robinson, *The Constitutional Future of Race-Neutral Efforts to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools*, 50 B.C. L. REV. 277 (2009).

CHHIRJ is dedicated to breaking down the structural barriers to social, political and economic membership for people who live in the United States. We place emphasis upon closing the opportunity gap for children who live in neighborhoods of concentrated disadvantage, redirecting the pipeline that funnels too many children of color into prison, and creating pathways home for people returning to their communities after incarceration. We produce briefs and presentations for wide audiences, issue reports and testimony and convene and connect diverse groups of people engaged in social justice work.