

## I. Introduction

### Nationally

A quality education is the foundation for a good job, income growth, and, in the words of the Supreme Court of California, “for the preservation of the rights and liberties of the people.”<sup>1</sup> During slavery, the government of the United States of America at all levels, including the government of the State of California, deprived 11 generations of African Americans of the benefits of a quality education.

After slavery, governments in the United States required nearly all Black children to attend segregated schools with far fewer resources and funding than the schools white children attended.<sup>2</sup> In many schools today, these separate and unequal education conditions continue for African American children. The benefits of a good education—a better job and higher income—build up over generations.<sup>3</sup> Just as benefits mount and increase, so too, do the harms. For hundreds of years, governments at all levels in America have inflicted compounding educational harm upon African American children, and they have never made sufficient amends.

During the slavery era, in order to control the African American enslaved people who toiled to build the wealth of this country, enslaving states denied education to nearly all enslaved people.<sup>4</sup> Free states of the North and Midwest segregated their schools and limited or denied freed African Americans access.<sup>5</sup> With rare exceptions, African Americans could not go to college.<sup>6</sup>

After the Civil War, southern states and others on the borders denied equal education to free Black people to maintain a servant class and prevent Black people from voting.<sup>7</sup> Until 1945, state governments legally segregated African American children in principally one room schoolhouses with fewer resources and funding than white schools. White terrorist groups, supported by government officials, destroyed African American schools.<sup>8</sup> In the rest of the nation, government supported housing segregation and neighborhood-based school assignment policies sent most African American children to schools that were separate from white students and unequal with respect to both funding and resources. Most state-funded and private white colleges and universities refused to admit African American students.



Black children on their way to school pass mothers protesting integration. (1965)

The Supreme Court's landmark 1954 case, *Brown v. Board of Education*, which outlawed school segregation on paper, did not mark the end of segregation, as some Americans believe.<sup>9</sup> Many white government actors throughout the country aggressively resisted integration—shutting down

number of white children in each county, and also allowed public school districts to refuse to teach African American children even in a segregated school under certain circumstances.<sup>12</sup> Although California law officially ended segregated schooling for African American students in 1890, as in the rest of the nation, government officials created less obvious, but equally effective policies to keep African American children in mostly African American, underfunded schools.<sup>13</sup>

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public schools, harassing, threatening, and terrorizing Black students and parents who sought to integrate schools, and providing vouchers for white students to attend newly created private schools.<sup>10</sup> In the rest of the country, government actors created and preserved school segregation through housing segregation and neighborhood-based school assignment policies.

Today, in America, the vast majority of African American children remain locked into unequal schools and classrooms, separate from their white peers. With regard to higher education, predominantly white colleges and universities slowly increased the number of African American students attending for about 40 years following the passage of the Civil Rights Act of 1964. However, in more recent years, the overall number of African American students attending college has declined.

### California

Before the Civil War, California also denied education to African Americans or forced them to attend segregated schools with far fewer resources and funding than the schools white children attended.<sup>11</sup> For a period of time, California law provided state funding only based on the

Today, in California many African American students continue to attend unequally funded, under-resourced, and highly segregated public schools due to government

policies that continue to segregate many schools and school funding by neighborhood. Recently, California has tried to provide a more equitable funding system by providing more state money to school districts that serve our poorest students. However, the system does not ensure that the money is actually spent on those students, many of whom are African American children, and there is some evidence that this is a reason that African American students continue to be the lowest performing sub-group in California.

Section II of this Chapter describes the laws, policies, and practices during slavery which denied education to African Americans. Section III focuses on the period after the Civil War until the present and the laws, policies, and practices that created the segregated and unequal primary and secondary schooling experienced by the vast majority of African American students to this day. Section IV describes how laws, policies, and practices denied African Americans equal access to higher education. Section V of this Chapter describes how our nation excludes the experience of African Americans when educating our children and the resulting negative impacts. Section VI summarizes the ongoing and compounding harms suffered by African Americans.

## II. Denial of Education During Slavery

Racist pseudo-scientific theories about the false inferiority of African Americans spread in the decades before the Civil War and justified prohibiting their education. Most enslaving states formally outlawed the education of enslaved African Americans, so enslaved people who sought to learn to read and write had no choice but to do so in secret, and at great risk to themselves. While African Americans were enslaved and banned from

schooling in the South, their labor helped pay for public schools in some states in the North. Schooling available to free African Americans in the North was mostly in segregated schools with fewer resources. At several schools that attempted to provide integrated education to African Americans, white Americans subjected teachers and students to threats, harassment, and terror.

In California, for a period of time, laws intended to enforce segregated schooling also withheld state money from schools that taught African American children and allowed school districts to deny education to African American children altogether, under certain circumstances. Even when local governments provided money and resources to support African American schools, white schools disproportionately received greater funding and resources.

### America's Leaders Promote Racist Pseudoscience

In *Notes on the State of Virginia*, Thomas Jefferson “proposed that black inferiority—in the endowment of both body and mind—might be an unchangeable law of nature.”<sup>14</sup> Some scholars argue that Jefferson’s statements became an important first document of racist scientific theories that were popular in the decades before the Civil War.<sup>15</sup> Some of the so-called “race scientists” graduated from elite northern colleges and claimed that African American people were subhuman and not descendants of Adam and Eve to support, as one scholar argues, “the self-image of the nation’s white supremacist majority.”<sup>16</sup>

Even Abraham Lincoln also believed that white people were superior to African American people, stating in his famous debate with Stephen Douglas: “I as much as any other man am in favor of having the superior position assigned to the white race.”<sup>17</sup> Other early leaders of America, including Thomas Jefferson, Abraham Lincoln, and Benjamin Rush, a Founding Father who has been called the father of American psychiatry, endorsed these false ideas about the inferiority of African Americans that served to justify education prohibitions.<sup>18</sup> Scientists later proved that these “race scientists” were wrong in the racist theories used by government officials and private citizens to justify slavery and discrimination.<sup>19</sup> See also Chapter 12, Mental and Physical Harm and Neglect, which

discusses studies finding no biological difference between African American and white people. A recent 2019 *Education Week* survey suggests that these racist theories live on among America’s teachers today.<sup>20</sup> The survey found that more than 40 percent of American teachers incorrectly believe that genetics is “a slight factor” in explaining why white students do better in school than African American students.<sup>21</sup>

### The South

During more than 250 years of slavery, state governments prohibited education of African Americans, except for certain religious education.<sup>22</sup> In fact, the institution of slavery depended, in part, on enslaved African American people remaining uneducated.<sup>23</sup> Frederick Douglass’ former enslaver forbade him from learning to read, as “[a] nigger should know nothing but to obey his master – to do as he is told to do.”<sup>24</sup>

Most enslaving states formally outlawed teaching an enslaved person to read or write as early as 1740.<sup>25</sup> Enslaved people caught learning to read or write in states where this was outlawed could face prison, public whipping, or be threatened with having a finger or arm cut off.<sup>26</sup> When religious education was permitted, it generally taught enslaved people basic reading but not writing, because learning to write could help an enslaved person escape.<sup>27</sup> Some enslaved African Americans sought out instruction provided in secret. For example, Douglass secretly taught other enslaved people how to read, and described “[t]he work of instructing my dear fellow-slaves” as “the sweetest engagement with which I was ever blessed. We loved each other, and to leave them at the close of the Sabbath was a severe cross indeed.”<sup>28</sup> As a result of such secret lessons taught by enslaved people, free African Americans, and some white Americans,<sup>29</sup> about 10 percent of African Americans in the South learned to read by 1865.<sup>30</sup>

# 40%

of American K-12 teachers today



believe that **genetics** is a “slight factor” in explaining why white students do better in school than African American students.

### The Rest of the Country

In the North, African Americans were more likely to have basic reading and writing skills. African Americans sometimes attended schools that were mostly segregated, either through government policy or local practice.<sup>31</sup> In some places, state and local officials prohibited African Americans from opening schools, and white Americans harassed and threatened teachers of African American students until they stopped teaching. In some places, white Americans also vandalized or destroyed schools that permitted African American students to attend.<sup>32</sup> For example, in 1832, when a white school master in Connecticut named Prudence Crandall, began



enrolling African American students in the small school that Crandall ran out of her home, white townspeople forced her out of her own home.<sup>33</sup> White parents withdrew their children.<sup>34</sup> Crandall eventually enrolled 20 African American students.<sup>35</sup>

On May 24, 1833, the Connecticut legislature passed a “Black Law,” prohibiting any school from teaching African American students from outside the state without permission.<sup>36</sup> Local officials arrested Crandall because she kept her school open. She spent the night in jail and charges were brought against her. Then, in January 1834, vandals set the school on fire.<sup>37</sup> Crandall finally closed the school in September 1834 after white townspeople broke 90 panes of glass on her home using iron bars.<sup>38</sup> This was the second unsuccessful attempt to establish a school for African American students in the state.<sup>39</sup>

While African Americans were enslaved and banned from schooling in the South, their labor helped pay for public schools in some states in the North.<sup>40</sup> Enslaved people worked for free in the South picking cotton, and their labor in the South created great wealth for the textile manufacturers in the North. By the early 1830s, New England mills consumed such large quantities of cotton from the South—78 million pounds of cotton fiber per year—that the United States became the second largest producer of textiles in the world.<sup>41</sup> This textile industry in the North paid taxes. These taxes helped to fund the public schools in New England. During slavery, due to government policies and local practices, very few African American students were permitted to attend these public schools, even though the labor of African Americans enslaved in the South helped fund them. During this time, the federal government also supported enslavers kidnapping African Americans in the North who had escaped from slavery to re-enslave them in the South, where they were again denied education.<sup>42</sup> See Chapter 2 Enslavement for further discussion of related issues.

During the 1800s, African American students generally could not receive an education beyond high school because it was legal for colleges and universities to refuse to admit African American students.<sup>43</sup> In response, free African Americans, often affiliated with African American churches, established the first African American colleges and universities.<sup>44</sup> Until the early 1900s, these schools mostly offered middle and high school level education to African Americans who had

been prohibited from attending school.<sup>45</sup> By the eve of the Civil War, only 28 of the nation's nearly four million newly freed enslaved people had received bachelor's degrees from American colleges.<sup>46</sup>

## California

California became a state in 1850, a decade before the onset of the Civil War. Despite the anti-enslavement clause in California's constitution, enslavers brought several hundred African American enslaved people to California and generally denied them education.<sup>47</sup> The early California legislature, dominated by white southerners from enslaving states, rev'd the school li-seaws to enforce segregated schooling.<sup>48</sup> See Chapter 2 Enslavement for further discussion of related issues. These state lawmakers successfully enforced segregated schools to deter racial intermixing.<sup>49</sup> California's State Superintendent of Public Instruction Andrew Jackson Moulder, who served from 1857 to 1862 stated: “[I]f this attempt to force Africans, Chinese, and the Diggers [Native Americans] into our schools is persisted in, it must result in the ruin of our school.”<sup>50</sup>

As early as 1855, California enacted a law calculating how much the State of California would fund a school “in proportion to the number of white children” in each county, so that local governments would not receive any extra money from the state when they taught an African American student.<sup>51</sup> Superintendent Moulder later influenced a California law in 1863 that withheld state funds from schools that taught African American

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and Chinese children.<sup>52</sup> So, although California taxed African American people to pay for the state's public schools, African American Californians' taxes only paid for the education of white children, and they had no right to education for their own children.

Because of both of these laws, local governments, instead of the state, paid to educate nonwhite students. Further, those local governments that ran schools for African American students generally provided less funding and resources for African American schools in comparison to white schools. For example, six years after the first

all-Black school was established in 1854 in the basement of a San Francisco church,<sup>53</sup> the San Francisco School Superintendent George Tait stated to his school board that: “[T]he room occupied by this school for the past few years is disgraceful to any civilized community” and was “squalid, dark, and unhealthy.”<sup>54</sup>

In 1864, the state changed the law to allow school districts to provide education to African American students in a

districts to refuse to teach African American children at all. In 1866, the state changed the law again to allow white parents to prevent African American students from attending their children’s schools, if a majority of parents objected in writing.<sup>56</sup>

Because of these state laws, African American children were forced into separate public schools or out of the public-school system altogether. In response, African

American women in Sacramento, Oakland, and San Francisco led efforts to organize church-based schools, private schools, and separate free-standing public schools.<sup>57</sup>

In the mid-1860s, African American students across California were also generally denied access to public middle and high schools. Few public middle and high schools existed at the time, and California refused to fund and provide separate public

middle and high schools for African American students, in part, because of the 1864 state law that permitted school districts not to provide a school where African American students were few in number.<sup>58</sup>

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segregated classroom or school if requested in writing by “the parents or guardians of 10 or more colored children.”<sup>55</sup> This meant that if fewer than 10 students lived in the district, California law also allowed public school

### III. Unequal Primary and Secondary Education

#### Nationally

Formerly enslaved African Americans had a fundamental belief in the value of literate culture and this belief was expressed through their efforts to secure education for themselves and for their children.<sup>59</sup> For the first decade after the Civil War, African Americans and the politicians they elected, successfully fought for and built the South’s public-school system, through a series of legislative and constitutional enactments.<sup>60</sup> Prior to the concerted leadership of freed African American leaders, none of the southern states had a universal public education system.<sup>61</sup> As African American political leaders passed laws and set aside funding to create a public education system for all children, African American students could attend schools in their communities.

However, government expansion of schooling for illiterate African Americans threatened white economic domination.<sup>62</sup> According to J.L.M. Curry, an Alabama state legislator in 1889, “[e]ducation would spoil a good plow hand.”<sup>63</sup> So, even as educational opportunities for Black people in former enslaving states expanded, after

reconstruction, white-led governments and organizations created a web of government-approved policies and tactics, including burning schools down, to continue to deny Black people education and maintain legalized school segregation.<sup>64</sup> So, even though African Americans led the creation of the public education system in the South, white students ultimately benefited far more than African American students.

Denying education or quality education to African Americans was also critical to denying African Americans political power and maintaining white political supremacy.<sup>65</sup> For example, most former enslaving states suppressed the African American vote by imposing a “literacy test” for voters and selectively enforcing it against African American people.<sup>66</sup> See Chapter 4, Political Disenfranchisement for a further discussion of this topic. The vast majority of the policies and practices that created unequal and segregated schools for African Americans in the South lasted another 100 years. Many continue to live on today in different forms.

### African Americans Led the Creation of the Southern Public Education System

In the immediate aftermath of the Civil War, the vast majority of African American people lived in the South. Formerly enslaved African Americans identified education as essential. Black-dominated Reconstruction-era legislatures in the South passed laws to create the public education system in the South. “The whites [in the South] had always regarded the public school system of the North with contempt. The [African American] freedman introduced and established it and it stands today a living testimony to his faith that education is necessary to social welfare,” said Colonel Richard P. Hallowell, Union Army and Pennsylvania Freedmen’s Relief Association.<sup>67</sup>

African American men, recently allowed to vote and hold political office, helped draft new state constitutions in the South that mandated public education.<sup>68</sup> During Reconstruction, they served on federal and state legislatures that passed the bills to provide funding to the new schools.<sup>69</sup> African American political leaders worked in interracial political coalitions with white Republicans (generally poor whites or Northern transplants) to establish the South’s universal public-school system, what historians have called “the crown of Reconstruction.”<sup>70</sup> The Freedmen’s Bureau Act of 1865 also helped set-up some schools for African American people who had been newly freed,<sup>71</sup> although the federal government ended the Freedmen’s Bureau Act after just seven years.<sup>72</sup>

Despite this setback and other obstacles and even after federal troops withdrew from the South in 1877, African Americans who already knew how to read and write, shared their knowledge with others in their communities.<sup>73</sup> When, as described further below, African American communities did not receive the necessary funding from post-reconstruction white government officials to afford to pay teacher salaries, African Americans sought financial assistance and teacher recruitment from federal agencies and benevolent organizations in the North.<sup>74</sup> Given the unwillingness of white property owners to rent or sell to African Americans and the refusal of white-led post-reconstruction governments to properly fund schools, African Americans also struggled to access buildings that they could use as schoolhouses.<sup>75</sup> Nonetheless, African American communities worked together to overcome these obstacles. Since most African American churches were owned by African American congregations, churches were often utilized as schoolhouses.<sup>76</sup> Local residents often gathered together to apply liquid slate to the side walls of the church to create chalkboards to also use these buildings for schooling.<sup>77</sup>

From 1908 to 1968, some of one-hundred-plus Black teachers in rural communities in 13 states (whose salaries were funded by a northern philanthropist) utilized their positions not only to teach Black students but to advocate for improvements to their schools, public health, living conditions, and teacher training.<sup>78</sup> Influential educators such as Nannie Helen Burroughs, an African American woman who was denied a teaching position at a public school in D.C., decided that if she could not get a job as a teacher, she would start her own school.<sup>79</sup> Burroughs refused to rely on white donors and instead relied on donations from community members, which enabled her to establish the Training School for Women and Girls in D.C. by 1909.<sup>80</sup> Although Burroughs’ school taught vocational skills as well, her school differed in that she assisted women in becoming politically and financially autonomous in order to empower Black women to be “public thinkers and not just public doers.”<sup>81</sup>

The persistence and enthusiasm of African Americans created schools for African Americans within their communities when white-led southern government refused to fund them.

### Racial Terror

As discussed in Chapter 3 Racial Terror, after federal troops withdrew from the South in 1877, for the next century, government officials supported private citizens who terrorized African Americans and African American institutions with impunity. White Americans burned a number of African American schools and churches housing African American schools to the ground.<sup>82</sup> White-American-led post-reconstruction governments closed African American public schools and fired African American teachers.<sup>83</sup> A unanimous Supreme Court effectively authorized the elimination of high school for African American students.<sup>84</sup> Hundreds of thousands of African American youth and adults were essentially re-enslaved on trumped up charges upheld by federal and local judges and police, and forced to labor for white-led U.S. companies and plantation owners under conditions that were as brutal, or even more so, than those endured during slavery.<sup>85</sup> A number of those re-enslaved were pre-teens and teenagers, some were children under the age of 10.<sup>86</sup> They were not enrolled in school. The unpaid labor of these re-enslaved African Americans also built wealth for white-led companies and plantation owners.<sup>87</sup> See Chapter 11, An Unjust Legal System for further discussion of related issues.

### Segregation by Law

From the mid-1860s to 1954, legal segregation laws operating in 17 former enslaving states forced African

Americans into segregated and unequal schools.<sup>88</sup> By the 1880s, a series of U.S. Supreme Court cases had severely limited the federal government's power to enforce Reconstruction civil rights legislation intended to protect African Americans, leaving enforcement in the hands of white-led state and local governments.<sup>89</sup> This cleared the way for the Supreme Court in 1896 to endorse the idea that requiring African Americans to be “separate” from whites in nearly every facet of life could be consistent with equality.<sup>90</sup> During the long period of segregation, African Americans attended schools that were intentionally under-resourced and structured for the purpose of maintaining a servant class.<sup>91</sup>

### Double-Taxation for African American Schools

After Reconstruction, white former enslavers created a state tax system designed to underfund education for African Americans. Some states ordered that schools for African American children be paid for exclusively by taxes on African American parents.<sup>92</sup> In these states, no white taxpayer paid for the education of an African American child, but African Americans paid for the education of both African American and white children.<sup>93</sup> This dual-tax system created huge differences in the amount of money spent to educate African American and white children.<sup>94</sup>

In practice, this meant that many African Americans in the early 1900s had to pay double to receive less in education.<sup>95</sup> In southern states, the disparity could be as high as 10 dollars per white student for a single dollar given to fund an African American student's education.<sup>96</sup> In the 1930s, a local school superintendent in Louisiana reported bluntly: “We have twice as many colored children

of school age as we have white, and we use their money. Colored children are mighty profitable to us.”<sup>97</sup>

The same African Americans were forced to donate additional land and money to support African American schools because the state did not send enough money

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for African American schools.<sup>98</sup> For example, when in the 1930s a fire destroyed classroom furniture and equipment in a Louisiana school, according to a local newspaper, the city refused to pay to replace any of the destroyed items. Instead, the tax dollars were given to the white school and African American parents would have to raise the money to repair the school.<sup>99</sup>

### Inferior Resources, Funding, and Time

By the late 1890s, African Americans in former slaveholding states had “been shunted into their own inferior . . . schools” through an “unfettered grab by white supremacists,” according to one historian.<sup>100</sup> The schools they attended were often in terrible condition and lacking in basic facilities, such as desks and chairs and working windows.<sup>101</sup> These schools generally included fewer grade levels of education.<sup>102</sup> White school authorities intentionally selected the least-qualified teaching applicants and pushed a curriculum focused on “industrial work,” e.g., canning, sewing, and woodworking.<sup>103</sup> In May 1911, after completing a study of the conditions African American schools across the South, W.E.B. Du Bois concluded that the state of segregated elementary schools for African Americans in the South and in border states is in “a deplorable condition,” worse off than 20 years prior “with poorer teaching, less supervision and comparatively few facilities.”<sup>104</sup>

The disparities in funding were also severe. White schools received on average five to eight times more government funding than African American schools in nearly all former enslaving states.<sup>105</sup> In the 1930s in Louisiana, African American teachers and principals made on average only 43% of what white teachers and principals made—\$499 a year compared to \$1,165.<sup>106</sup> Similarly, in Mississippi, African American teachers and principals made just \$215 a year, while white teachers and principals made

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Schoolhouse for Black students near Summerville, South Carolina. (1938)



\$630 a year.<sup>107</sup> For African American teachers, as Isabel Wilkerson writes in *The Warmth of Other Suns*, this meant “even the most promising of colored people, having received next to nothing in material assets from their slave foreparents, had to labor with the knowledge that they were now being underpaid by more than half, that they were so behind it would be all but impossible to accumulate the assets their white counterparts could, and that they would, by definition, have less to leave succeeding generations than similar white families.”<sup>108</sup>

**During segregation, compared to white students, African American students attended school**

**3-4 months LESS**  
than white students every year

In addition, the number of months African American students attended school was generally fewer than white students, e.g., four-to-five months in comparison to six-to-eight months for white students.<sup>109</sup> The causes included lack of sufficient funding for schools in rural communities, where many African Americans lived, white farm owners forcing African American children to work in the fields (or their sharecropping parents needing assistance), and government limits on the number of months that an African American school would be funded in comparison to a white school.<sup>110</sup>

Despite the inferior quality of African American schools, some prominent thinkers such as W.E.B. Du Bois, suggested that integrated schools would ultimately disadvantage African American students, because the discrimination they would inevitably continue to experience would prevent African Americans from receiving a proper education.<sup>111</sup> He wrote that separate schools were “necessary for the proper education of the Negro race.”<sup>112</sup> Moreover, he believed that race prejudice in the United States was such that “most Negroes cannot receive a proper education in white institutions” because the proper education of any group of people required sympathy, understanding, and social equality between teachers and their students.<sup>113</sup>

In his 2014 article in *The Atlantic*, Ta-Nehisi Coates recounts the story of Clyde Ross, a student who was encouraged to attend a more challenging African American school outside of his community built with funds from a philanthropist and resources amassed by African American community members, who also donated

physical labor to actually build the schools.<sup>114</sup> The school was too far away from Ross’ home for him to walk there and get back in time to work in the fields. Local white children had a school bus. But Ross and other African American children did not. Thus, Ross lost out on the opportunity for a better education.<sup>115</sup> For many African American students, the school that Ross was encouraged to attend was the first ever available to them in their community. In yet another way, African Americans paid twice. They devoted funds and their own labor to build a school for their children while also paying taxes that supported better schools for white students.

In spite of concerted state efforts to deny them equal educational opportunities, African American Southerners achieved a literacy rate of 43 percent by 1890, a rate of growth that far surpassed the rise of literacy in Spain and Italy during the same period and that continued to rise in nearly all southern states in the early 1900s.<sup>116</sup> Yet, researchers have found that the “legacies of slavery” compounded by the many obstacles that African American children faced in acquiring education show a correlation with high rates of illiteracy among African Americans nearly 80 years after slavery ended.<sup>117</sup>

### Resistance to Integration

In 1951, African American students led the fight for desegregation<sup>118</sup> and, in 1954, the Supreme Court declared race-based segregation in public schools unconstitutional in its *Brown v. Board of Education* decision.<sup>119</sup> Although many Americans believed that the Supreme Court’s *Brown* decision was the end of school segregation, it was not. After the *Brown* decision, all across the country, many white Americans and white state and local governments refused to implement the Court’s order, while the federal government failed to adequately

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African American boy watching a group of people, some carrying American flags, march past to protest the admission of the “Little Rock Nine” to Central High School. (c. 1958)



## 90% of the south's Congressional delegation



Signed the “Southern Manifesto” pledging to **fight integration** using any means at their disposal.

enforce the order and protect African American teachers, school administrators, and students.

In former enslaving states, white-controlled government school boards, and state and municipal governments almost universally refused to comply with *Brown* in what historians have called the “era of massive resistance.”<sup>120</sup> On May 12, 1956, 90 percent of the south's Congressional delegation signed the “Southern Manifesto” pledging to fight integration using any means at their disposal.<sup>121</sup> These lawmakers and others in southern states made good on their promise.

Some white Americans in the South used violence, harassment, and threats to stop integration. They attacked African American students and terrorized some African American families who dared to enroll their children in white public schools. For example, in Arkansas, on September 4, 1957, when nine African American students went to enroll in Little Rock's all-white Central High School, Arkansas Governor Orval Faubus ordered the Arkansas National Guard to form a blockade around the school's front door to keep the students out. The National Association for the Advancement of Colored People (NAACP) had to get a federal court order to make the National Guard stand down. But even with the court's order, the students were still not safe to enter because of the threat of white mob violence. Only after Dr. Martin Luther King, Jr. sent a plea for protection to President Eisenhower, did the federal government act. The federal government brought in 1,000 Army paratroopers and ordered the National Guard to provide an escort for the students as they entered the school. Twenty-one days after the nine African American students—now known as the “Little Rock Nine”—first tried to attend the high school, they were finally able to enter. As they walked in, angry white crowds of students and adults yelled racial insults and threw objects at them.

Rather than allow integration to go forward in other schools, Governor Faubus then closed all public high schools in Little Rock for the 1958 to 1959 school year.<sup>122</sup> Throughout their time in the school, the Little Rock Nine reported enduring severe harassment, including physical violence from some white students. Several years later on the eve of graduation, the home of Carlotta Walls, one of the Little Rock Nine was bombed by white supremacists.<sup>123</sup>

In Mississippi when then-NAACP civil rights attorney Derrick Bell filed a lawsuit to integrate one community's schools, he described how nightriders came through the community firing guns into African American homes.<sup>124</sup> African Americans who signed petitions to integrate the schools lost their jobs or had their credit cut off by merchants.<sup>125</sup> Because of the severe intimidation and harassment by the white community, only one African American family was ultimately willing to send their child to the white school.<sup>126</sup> When the child, Debra, arrived at school, a large crowd jeered and marshals had to escort her into the school.<sup>127</sup> Debra's father lost his job the same day, and white Americans attempted to burn their house down.<sup>128</sup>

**Rather than allow integration to go forward in other schools, Governor Faubus then closed all public high schools in Little Rock for the 1958 to 1959 school year.**

Southern states also passed laws to close both white and African American public schools, deny state money for any schools that integrated, and provided vouchers or “freedom-of-choice” to over 3,000 newly created private schools for white students.<sup>129</sup> For several years, African American students in certain areas in the South had no school to attend at all.<sup>130</sup> In Georgia, Governor Herman Talmadge, who fiercely opposed public school integration, told the public at a press conference that the only solution to a public school segregation ban was “abolition of the public school system.”<sup>131</sup>

The Supreme Court also contributed to the slow progress of desegregation. When asked to decide how quickly school districts across the country must desegregate, the Supreme Court answered that schools could do so with “all deliberate speed.”<sup>132</sup> One federal judge who heard cases filed by African Americans challenging the failure to desegregate schools for almost 10 years, concluded that the effect of the Supreme Court's decision was to “sacrifice[] individual and immediate vindication of the newly discovered right of [B]lack to a desegregated education in favor of a remedy more palatable to whites”<sup>133</sup>

Because of all of these government acts, legal school segregation in many places in the South continued into the 1960s and little desegregation of schools took place.<sup>134</sup> In five Deep South states, 1.4 million African American school children continued to attend a segregated school until the fall of 1960, when integration efforts finally began.<sup>135</sup>

### Mass Firings of African American Educators

Federal government and court failure to adequately enforce the *Brown v. Board of Education* decision had other negative consequences.<sup>136</sup> Southern states engaged in en masse firing of African American teachers and administrators without cause to prevent a white administrator and teacher with the same or overlapping position as a Black administrator or teacher at the newly integrated school from losing their job.<sup>137</sup> In 1955, a federal government staff attorney responded to the firing of Black teachers, stating that: “In a war, there must be some casualties, and perhaps the black teachers will be the casualties in the fight for equal education of black students.”<sup>138</sup>

One African American educator affected by the firings told researchers that in his community, the teachers’ college for African Americans was closed in the name of integration, and many of the professors who taught there were required to go teach in the high schools. The president of the Black college was “given a central office do-nothing position and then someone with a Master’s degree, a [White] high school principal, was named president of [the newly desegregated teachers college].”<sup>139</sup>

Mass firing of Black educators deeply affected the economic, social, and cultural structure of the Black community because many middle-class Black people served in education.<sup>140</sup> It is estimated that Black communities lost millions of dollars as a result. For example, in 1970–71, the Black community in 17 southern states lost an estimated \$240 million in salaries.<sup>141</sup>

The mass firings also have had long-standing repercussions, as the presence of Black principals and superintendents remain disproportionately low across America in relation to the number of Black public-school students.<sup>142</sup> Studies show that students who have teachers who look like them do better in school than those who do not. African American students with at least one African American teacher by third grade are 13 percent more likely to graduate high school and 19 percent more likely to enroll in college than African American students who had no African American teachers.<sup>143</sup> However,

about 80 percent of teachers and principals and 90 percent of superintendents nationwide are white.<sup>144</sup> African American teachers represent just seven percent and African American male teachers represent just two percent of the teaching force,<sup>145</sup> yet 15 percent of public school students are Black students.<sup>146</sup> Many African American students will go through their educational careers without having an African American teacher.

### Other Government-Implemented Tools to Segregate Schools

Whereas in the South, legal segregation laws prohibited African American students from attending schools with white students, in the rest of the country, government actors largely used different but nearly as effective tools

**Black students with at least one Black teacher by third grade are 13 percent more likely to graduate high school and 19 percent more likely to enroll in college than Black students who had no Black teachers.**

to create segregated schools for African American students with less funding and resources. First, federal, state and local housing segregation policies, including redlining and restrictive covenants as described in Chapter 5, Housing Segregation, forced the vast majority of African Americans to live in separate communities from white Americans.<sup>147</sup> School and government officials then assigned African American and white students to attend different schools based on where they lived. In this way, segregated schools were created and maintained.

The schools that African American students attended then received less funding and resources than the schools that white students attended. This occurred because public schools generally obtained a large portion of money from local property taxes raised within the city where the schools were located. As a result, the amount of funding for the school district and school depended on how much could be raised by taxes in each local, segregated community.

The more expensive the properties in a school district, the more money a school district receives. When the federal government along with private actors devalued Black-owned properties, through redlining, they also locked Black students into schools that received far less funding for their schools than the white families in nearby neighborhoods with a higher property tax base.<sup>148</sup>

Some cities' schools outside of the South were also segregated by law for a number of years after the Civil War. For example, segregated schools were not banned until 1920 in New York City.<sup>149</sup> In general, the quality of education received by African American students in these segregated schools was not equal to the quality of education received by white students, because schools largely attended by African American students were underfunded and provided with fewer resources.<sup>150</sup>

Even after the *Brown v. Board of Education* decision, highly segregated schools fostered through official actions—government implemented housing segregation and school district boundary and assignment policies—also remained largely the rule.<sup>151</sup> White protests against integration, including some that involved violence against African Americans integrating schools, occurred in different places across the country. For example, in February of 1964, after 460,000 African American and Puerto Rican students and their parents called on the New York City Board of Education to integrate majority-student of color schools that were so overcrowded they operated on split shifts—with the school day lasting only four hours for students, and so underfunded that they had inferior facilities and less experienced teachers—15,000 white New York parents staged a counter-protest.<sup>152</sup> Milton Galamison, a civil rights activist and pastor of Siloam Presbyterian Church in Bedford-Stuyvesant, who helped lead the protest to integrate the schools stated: “Nobody can do these children more harm than these children are being done every day in this public school system.”<sup>153</sup>

The United States Commission on Civil Rights 1967 study, *Racial Isolation in Public Schools*, confirmed the nation-wide problem, finding that “violence against

a result of “[w]hite racism” and white supremacist institutions.<sup>156</sup> After a short period of active coordinated federal effort to enforce desegregation rights from 1965 to 1969, the Nixon Administration curtailed enforcement of the 1964 Civil Rights Act.<sup>157</sup> By the 1980s, roughly half of the nation's children of color resided in the 20 or 30 largest school districts.<sup>158</sup> In urban areas, white Americans continued to fight vehemently against integration. For example, in Boston, schools that served African American children were poorly equipped and understaffed, and badly underfunded. They received about two-thirds the amount of funding received by schools in white neighborhoods.<sup>159</sup> In 1974, after African American families filed suit and a court ordered the city to desegregate its schools, white mobs threw bricks, bottles, and eggs at buses carrying African American students to majority-white schools, injuring nine children.<sup>160</sup>

As white Americans moved into the suburbs, redlining, restrictive covenants, and even violence prevented many African Americans from doing the same. Suburban school district officials drew their boundaries at the city and suburb line, which ensured that African American students living in the inner city would be required to attend inner-city schools, while white children living in the suburbs attended suburban schools. In larger school districts in cities, unless a court desegregation order was in place, districts continued to assign students to schools based on the schools in their neighborhoods. Because the neighborhoods remained segregated by race, the schools continued to be segregated, too.

Intentional segregation in housing by federal and local government actors and the drawing of school district boundaries to mirror school segregation and funding

inequities was well-known and documented. But, in 1974, when African American parents asked the Supreme Court to order 53 suburban school districts to participate in the desegregation of the predominantly African American and very under-resourced Detroit city school system, the Court said no.<sup>161</sup> Because the Supreme Court refused to address the government-supported

residential segregation that forced African Americans to attend a small subset of American schools, integration was stopped at the city-suburb line.<sup>162</sup> Today, the Detroit city school system remains segregated—approximately 80 percent African American—and severely underfunded and under-resourced.<sup>163</sup>

Then, in 1977, the Supreme Court made it difficult to challenge neighborhood zoning rules, which made it

**After actively enforcing desegregation from 1965 to 1969, the federal government reduced enforcement of the Civil Rights Act under President Nixon. By the 1980s, roughly half of the nation's children of color resided in the 20 or 30 largest school districts.**

[African American people] continues to be a deterrent to school desegregation.”<sup>154</sup> The report also found that African American children suffer serious harm when they must attend racially segregated schools, “whatever the source of that segregation might be.”<sup>155</sup>

In 1968, the Kerner Commission warned President Lyndon Johnson that the nation was “moving toward two societies, one black, one white—separate and unequal” as



difficult for African Americans to move into largely white residential areas.<sup>164</sup> Professor Derrick Bell noted that the federal government and local governments created

**On July 17, 2001, Harvard University's Civil Rights Project published a study concluding that school districts across the nation had re-segregated or were re-segregating at an alarming rate, particularly in the South. The study linked this re-segregation to a series of Supreme Court cases decided in the early 1990s, which made it easier for school districts to remain segregated.**

racially isolated communities, which in turn “created single-race schools” and then the Supreme Court “insulated these schools from court challenges.”<sup>165</sup> After these Supreme Court opinions, lower court judges began to declare school districts desegregated even when the percentage of African American students increased after white Americans moved to the suburbs aided by housing policies that continued to discriminate against African Americans.<sup>166</sup> In general, these federal courts would not find that it was against the law for African American students to attend schools that received far less funding and had far fewer resources than those schools attended mostly by white students.<sup>167</sup>

By the late 1980s, which was considered the peak of integration, schools remained or were returning to being predominantly white and predominantly non-white.<sup>168</sup> Ten years later things had gotten worse. On July 17, 2001, Harvard University's Civil Rights Project published a study concluding that school districts across the nation had re-segregated or were re-segregating at an alarming rate, particularly in the South.<sup>169</sup> The study linked this re-segregation to a series of Supreme Court cases decided in the early 1990s, which made it easier for school districts to remain segregated.<sup>170</sup>

In 2007, the Supreme Court eliminated school districts' ability to use certain types of voluntary local desegregation plans.<sup>171</sup> Five years later a study found that school segregation across the nation was substantially worse than at the high point of desegregation in 1988, and that the typical African American student was in a school where almost two out of every three classmates (64 percent) are low-income, nearly double the level of schools of the typical white or Asian student.<sup>172</sup>

Studies in the last five years continue to find that segregated and unequally resourced schools remain the reality for the vast majority of African American students

and other students of color.<sup>173</sup> However, they also note the extraordinary gains that African American students have made, in spite of remaining in segregated and unequally funded and resourced schools. Before the *Brown* decision, less than a fourth of Black students had graduated from high school; now about nine-tenths of Black students are graduating.<sup>174</sup> Nonetheless, for African Americans to ever attain academic justice, emphasis should be placed not just on the number of African Americans receiving an education, but rather on the quality and content of the education received. As stated by

Carter G. Woodson, if the education being provided to African Americans is “of the wrong kind, the increase in numbers [of “educated” African Americans] will be a disadvantage rather than an advantage.”<sup>175</sup>

## Tracking

After *Brown v. Board of Education*, in districts and schools that were marginally integrated, African American students faced segregation by other means. School officials were more likely to place African American students into special education programs and inferior vocational, non-diploma, and alternative school tracks than white students. And school officials were more likely to place white students into gifted or accelerated programs than African American students. This practice where educators group students by what they view as the student's abilities is commonly referred to as “tracking.”<sup>176</sup>

Studies have shown that tracking, which continues today, is correlated with race,<sup>177</sup> and eliminates the benefits of integration for African American students, like access to college classes and high-quality curriculum.<sup>178</sup>

Researchers explain that teachers, the vast majority of whom are white, function as primary gatekeepers in gifted and talented identification, and are less likely to refer African American students for gifted programs than white students with similar levels of academic achievement.<sup>179</sup> Black students tracked out of the mainstream program are often re-segregated in another classroom within the school or in a setting in another school location.<sup>180</sup> Those placed in “lower tracks” do not receive the same quality of education—they often receive less resources and opportunities.<sup>181</sup>

At the October 12, 2021 Task Force hearing, Professor Rucker Johnson testified to the harms of segregation within schools, including harm to student's health,

mental health, school success, and income growth, telling the panel “[t]oo often even when we see what look like diverse schools there are segregated classrooms” and “racialized tracking.”<sup>182</sup>

### Unequal and Segregated Schools Persist

As of the early 2000s and through today, the vast majority of African American children remain locked into schools separate from their white peers, and possibly more unequal than the schools that their grandparents had attended under legal segregation.<sup>183</sup> The U.S. Government Accountability Office found that, 60 years after *Brown v. Board of Education*, African American students are increasingly attending segregated, high-poverty schools where they face multiple educational disparities.<sup>184</sup> The U.S. Department of Education’s Office of Civil Rights data between 2014 through 2018 shows the same disparities—large and persistent opportunity gaps and fewer education resources for Black students.<sup>185</sup> African American students are less likely to attend schools that offer advanced coursework and math and science courses,<sup>186</sup> and less likely to be placed in gifted and talented programs. Another found that African American students who had been on an accelerated math track consistent with their white and Asian peers were disproportionately removed from that track, so that in high school they were no longer being placed with the highest achievers—thereby reinforcing racial inequality.<sup>187</sup> African American students are also more likely to attend schools with large class sizes and teachers with the least amount of experience and qualifications, and that employ law enforcement officers but no counselors.<sup>188</sup> This can partially be attributed to the fact that urban school districts often times have difficulty attracting and retaining teachers due to the low pay, substandard working conditions, and socioeconomic factors that affect such work environments.<sup>189</sup> Moreover, although many African American students deal with greater social and environmental pressures, schools mostly attended by African Americans fail to place greater emphasis on family counseling and community empowerment.<sup>190</sup>

In addition, because African American students more often have less qualified teachers than their white peers, they fall further behind in school, and some researchers believe this is one reason for their excess placement in classes that support students with disabilities. In other words, even though they have only fallen behind because they have not received high quality instruction, schools believe incorrectly that they may have a learning or other disability.<sup>191</sup> These school placement and resource allocation decisions matter for student achievement and post-K-12 school outcomes.<sup>192</sup>

Severe funding disparities between schools serving white students and those serving African American students persist as well.<sup>193</sup> Many school districts across the country today

**In addition, because Black students more often have less qualified teachers than their white peers, they fall further behind in school, and some researchers believe this is one reason for their excess placement in classes that support students with disabilities.**

continue to be funded primarily by property taxes raised from the school district’s local community, even though neighborhoods continue to be segregated by race and income. Federal and state governments have not filled the gaps between high- and low-income districts. According to a study by EdBuild, “[n]ationally, predominantly white school districts get \$23 billion more than their nonwhite peers, despite serving a similar number of children” and there is a “\$1,500 per student gap between white districts . . . and equally disadvantaged nonwhite districts.”<sup>194</sup> This funding differential matters: more school funding improves education quality.<sup>195</sup> In underfunded schools, students also face health and other risks because of the decrepit conditions of their school buildings.<sup>196</sup>

### Discriminatory Use of Discipline and the School-to-Prison Track

African American students are disproportionately subjected to exclusionary discipline with devastating consequences, which include significantly higher risk of dropout and juvenile justice involvement.<sup>197</sup> Over the last three decades, research has shown that African American students are far more likely than white students to be suspended, even when controlling for income level.<sup>198</sup> This disproportionate discipline also extends to preschool, where Department of Education data from the 2013-14 school year showed that Black preschoolers made up 18 percent of preschoolers, but nearly half of all

**Nationally, nonwhite school districts get**

**\$23 Billion LESS**  
than predominantly white districts

out-of-school suspensions.<sup>199</sup> Overall, African American students made up approximately 16 percent of enrollment, yet they accounted for 40 percent of suspensions nationally during the 2013-14 school year.<sup>200</sup> And African

by schools to law enforcement. Arrests of African American students are higher in schools with a police officer on campus, even when controlling for school-wide academic achievement, racial/ethnic composition, geography, and student misconduct.<sup>206</sup> In the 2015-16 school year, African American students made up 15 percent of students enrolled in America's public schools but 31 percent of referrals and arrests, and they were twice as likely to be referred or arrested than their white peers in 2018-19.<sup>207</sup> And Black girls are three times more likely than white girls to receive referrals to law enforcement.<sup>208</sup> There is also evidence that African American students are more likely to be subjected to excessive force by officers

in schools.<sup>209</sup> One arrest during school can have severe consequences for a student's future, as it doubles a high school student's likelihood of dropout and increases their likelihood of incarceration as adults.<sup>210</sup>

Disproportionality in discipline—and the school-to-prison pipeline such disproportionality begets—has been attributed to biases, implicit or otherwise, that school officials may carry into the schoolhouse. Research shows that these biases about African American students, which can result in discriminatory disciplinary decisions, may also exacerbate the achievement gap by decreasing expectations and opportunities.<sup>211</sup> In addition, when students perceive an unfair distribution of punishment, an environment of anxiety is created, with achievement outcomes decreasing and students reporting less of a sense of belonging.<sup>212</sup> Consistent research has identified alternatives to exclusionary discipline, such as School-Wide Positive Behavior Interventions

## PUBLIC PRESCHOOL RATE OF OUT-OF-SCHOOL SUSPENSIONS 2013-14



American students were four times more likely to be suspended than their white peers during the 2017-18 school year.<sup>201</sup> Some researchers have shown that even when you control for the type of student misbehavior, African American students are suspended and expelled at far higher rates than their white peers. In short, even when white students and African American students misbehave in the same or similar ways, African American students are more likely to be removed from school for the behavior than their white peers who do the same or similar things.<sup>202</sup> Researchers have also found that the difference in suspension rates between white and African American students accounts for as much as one-fifth of the achievement gap between African American and white students, so if African American students were suspended less then achievement levels should go up.<sup>203</sup>

In addition, African American students are more likely to attend schools with law enforcement on campus and significant security measures, such as metal detectors, random security sweeps and searches, security guards, and security cameras.<sup>204</sup> Having a large police presence and heightened surveillance measures on campus can cause students to feel less bonded to school adults, less engaged in school, more fearful and less trusting of school officials and police, and left with a feeling of alienation because they perceive that adults on campus inherently distrust them.<sup>205</sup>

That schools serving mostly African American students have more law enforcement and fewer counselors is one reason that African American students have more contact with and are also disproportionately referred

**Even when white students and Black students misbehave in similar ways, Black students are more likely to be removed from schools.**

and Supports and social emotional learning lessons for students that improve educational outcomes, faculty cohesion, school safety, and teacher morale, but many school districts have not implemented these alternatives.<sup>213</sup> Furthermore, intergenerational exposure to trauma related to racism has been linked to higher incidences of depression, anxiety, and other mental health conditions in African American communities compared with other groups, including African immigrants, who



have not experienced the same multigenerational slavery and institutionalized racism.<sup>214</sup> Schools have not consistently provided help, such as mental health services and a trauma-informed approach to education. Instead, schools with large numbers of African American students have increased security and police presence.

The impact of the school-to-prison pipeline is also reflected in data over decades showing that, nationally, Black youth and adults are incarcerated at a disproportionately high rate compared with white youth and adults.<sup>215</sup> See Chapter 11, *An Unjust Legal System* and Chapter 8, *Pathologizing the African American Family* for additional discussions of this topic. Once in the system, education provided to African American students in juvenile facilities is often substandard and youth in adult facilities may receive no education at all.<sup>216</sup> One of the many tragic consequences of the disproportionate incarceration of Black men is reflected in the academic struggles experienced by young Black boys.<sup>217</sup> The

### 2017-18 African American Students were

**4x**  
MORE LIKELY

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their white peers

incarceration of African American adult men contributes to the number of young African American students in fatherless homes. Moreover, research suggests that the lack of male models in the home has a significantly higher impact on African American male students than it does on African American female students.<sup>218</sup>

### California

From the Civil War until the present, African Americans attending school in California have been forced to endure the same segregated and unequal education conditions endured by African Americans in the rest of the nation. In the early years, school segregation was required by state law. Later, the methods to maintain segregated and unequal schools—which included housing segregation, how to draw school districts and where to build schools—have largely mirrored the methods employed in other states outside of the South.

### Segregated and Unequal Education Systems

In 1866, California law was amended to empower school districts to “allow ‘colored’ children to attend” school with white children in areas where there were not enough children of color to create a separate school,

unless the “majority of white parents objected in writing.”<sup>219</sup> However, this change was short-lived because a California Superintendent of Public Instruction who believed in segregation and a governor who refused to abide by the Fourteenth and Fifteenth Amendments won the subsequent election.<sup>220</sup>

In 1870, legislators amended California law to provide that every school shall be open for the admission of white children residing within the school district—and that the “education of children of African descent and Indian children shall be provided for in separate schools,” and that schools with “fewer than ten students of color” can “educate them in separate schools or in any other manner.”<sup>221</sup> The Oakland School Board interpreted state law as no longer requiring a school for African American children and, in 1871, abruptly closed its “colored school,” which had been operating since 1866.<sup>222</sup>

On September 22, 1872, after the principal of San Francisco’s white-only Broadway public school denied 11-year-old Mary Frances Ward entrance and told her to attend the separate, all-African American public school, she and her parents filed suit in California court.<sup>223</sup> The California Supreme Court upheld the system of segregated schools with a caveat.<sup>224</sup> Where no separate school existed, the Court concluded that African American children could attend white schools.<sup>225</sup> Soon after, state law was conformed to the *Ward* decision—“children of African descent, and Indian children” must be educated in separate schools but if districts “fail to provide such separate schools, then such children must be admitted into schools for white children.”<sup>226</sup>

Records reveal that in 1874, there were 23 “colored schools” in California, but “conditions had worsened for many of the state’s black youths,” because such schools were “poorly equipped.”<sup>227</sup> One year later in 1875, the San Francisco School Board ended school segregation, principally due to the cost of maintaining segregated schools.<sup>228</sup> Soon after, in 1880, the legislature removed school segregation for African American students from state education law. The amended law stated that schools “must be open” for “all children,” except “children of filthy or vicious habits, or children suffering from contagious or infectious diseases.”<sup>229</sup>

Nevertheless, 10 years later, in 1890, 12-year-old Arthur Wysinger was denied admission to Visalia’s “Little White” public school on account of race. The school for non-white Americans was manifestly unequal to the school for white Americans as illustrated by the fact that the Visalia School District built a new two-story school for white students and forced African American students to attend school in a barn.<sup>230</sup>

Arthur Wysinger's father, Edmond, both African American and Native American, had been brought to California as an enslaved person during the gold rush and eventually bought his freedom. Edmond became a part-time preacher and laborer and always stressed the value of education to his six children. Edmond wanted to send his son to Visalia's newly constructed school,

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however, officials said his son could only attend the one held in the barn. Edmond sued in response and the California Supreme Court ultimately held in favor of Edmond, but he died before he could see his son enroll in the “Little White” school. The Supreme Court found that the 1880 education law allowed an African American student to attend any local public school.<sup>231</sup> However, the Court also recognized the state legislature's right to re-impose segregated schools whenever it wished.<sup>232</sup>

Despite this decision, California continued to have racially segregated schools due to other discriminatory policies in housing and education. Just as education segregation existed in the North because of government-supported housing segregation, so too it existed in California. Government-supported housing discrimination in the form of restrictive covenants on properties, redlining, and white-only housing perpetuated school segregation. The federal government intentionally financed the creation of neighborhoods segregated by race—funding white-only public housing, redlining communities to deny homeownership loans to African Americans, and promoting racially-restrictive housing covenants. See Chapter 5, Housing Segregation, for a more detailed discussion of this topic.

Racially-restrictive covenants, enforced by California courts until 1948, were inserted into property titles as early as the 1890s and became rampant in the 1910s, “effectively turning neighborhoods across the state white-only.”<sup>233</sup> Districts then assigned students to schools based on the segregated neighborhood where they lived or gerrymandered district boundaries to create segregated schools. School districts also zoned and constructed schools and drew school attendance

boundaries in ways that created schools segregated by race.<sup>234</sup> In addition, in the 1940s and 1950s, when African American homeowners tried to break the color lines, they came under attack by the Ku Klux Klan.<sup>235</sup>

On March 2, 1945, five Mexican-American families on behalf of 5,000 other families sued the Westminster School

District in Orange County because the school district forced their children to attend a different set of schools with fewer resources than the children of white families.<sup>236</sup>

Two years later, the federal court of appeal in California ruled that California education law did not permit separate schools for Mexican children, so creation of segregated schools for Mexican children was arbitrary and not allowed under federal law.<sup>237</sup> This case is called the

*Mendez* case after the family who led the filing of the lawsuit. At the time of this lawsuit, most African American students in the state were also attending schools with all African American or nearly all African American children.

Because California law also did not permit the creation of separate schools for African American students, this case meant that where a school district had purposefully created a segregated school by, for example, creating school attendance boundaries around an African American neighborhood, this too was illegal. The lawyers who filed *Brown v. Board of Education* relied on the cases filed by Wysinger and Mendez and the other four Mexican-American families to help convince the Supreme Court to hold that separate schooling was unconstitutional. Also, as a result of the *Mendez* decision, on June 14, 1947, the last of California's school segregation laws, which applied to Asian American and Native American children, was repealed.<sup>238</sup>

Even after the Wysinger and Mendez decision, and the *Brown* decision in 1954, local cities and school boards refused to take proactive steps to desegregate schools. For example, they did not change the school-site attendance boundaries that had been drawn to reflect racially segregated neighborhoods and that created racially segregated schools. Many also did not take proactive steps to allow students to attend other schools outside their racially segregated neighborhoods. Moreover, those that did failed to provide African American students adequate transportation to get them to schools in the white neighborhood.

In the years after, California leaders and the state's school board acknowledged that local school segregation continued and was illegal, but the problem was not fixed. In

1962, California's Board of Education acknowledged the ongoing problem of highly segregated schools and directed local districts to "exert all effort to avoid and eliminate segregation . . ." <sup>239</sup> In 1964, prominent civil rights attorney, Loren Miller, confirmed that rampant segregation by race existed in California schools when he told an assembly of western governors, "[M]ore Negro children attend all-Negro schools in Los Angeles than in Jackson, Mississippi and Little Rock, Arkansas, combined." <sup>240</sup>

Statewide racial school census data taken in 1966 also confirmed the high levels of segregated schools: 85 percent of African Americans attended predominantly minority schools, whereas only 12 percent of African American students and 39 percent of white students attended racially balanced schools. <sup>241</sup> To address this segregation, California Attorney General Stanley Mosk advocated for explicit consideration of race in formulating a plan to eliminate it, because to ignore race one would have to "not merely conclude the Constitution is colorblind, but that it is totally blind." <sup>242</sup>

Many local school boards and districts did not take the necessary steps to integrate schools, and so African American and Latino families and their advocates filed lawsuits and asked California courts to order school districts to integrate. <sup>243</sup> In the 1960s and 70s, Los Angeles, San Francisco, Pasadena, San Diego, Inglewood, and Richmond school districts, among others, faced court desegregation orders. Berkeley and Riverside initiated busing programs. <sup>244</sup>

Despite these orders, the passage of Proposition 64 in November 1964 allowed majority-white California to undermine efforts to integrate schools through desegregation of communities. This proposition allowed property sellers, landlords, and agents to continue to segregate communities—and, thereby, schools—on racial grounds when selling or renting accommodations, as they had been permitted to do before 1963. <sup>245</sup> The highest courts ultimately struck the law down in 1967, but private racially restrictive covenants continued to be used by private owners to prevent African Americans from moving into white neighborhoods with better funded and resourced schools. <sup>246</sup> See Chapter 5, Housing Segregation for further discussion of related issues.

In addition, Californians successfully passed laws to limit the tools courts could use to order schools to desegregate. Because neighborhoods continued to be segregated by race, one of the main tools that courts used to desegregate schools was to have African American and white students attend schools outside of their neighborhoods via bus transportation to the new schools. But many white Californians strongly opposed integration plans, especially court-ordered ones that required African

American people or other students of color to be bused to attend their white schools or vice versa. And, in 1979, majority-white Californians passed Proposition 1, a law that stopped courts from ordering school desegregation plans, unless families or students suing to desegregate the schools could prove that intentional discrimination by school officials caused the segregation or a federal court could impose the same order. <sup>247</sup>

The law, upheld by the United States Supreme Court, limited the ability of California courts to integrate schools that were segregated in fact, for example due to racially segregated neighborhoods, but not by a California law. <sup>248</sup> Then, from the mid- to late-1970s through the 1990s, courts removed or limited desegregation orders in many California districts, as the Supreme Court and Congress further restricted the use of remedies like busing and school reassignment to integrate schools. <sup>249</sup> In a few cases, such as in Berkeley, schools remained relatively integrated because school districts continued busing students and using school-selection processes designed to achieve integration, even without a desegregation order. <sup>250</sup>

COURTESY OF FRANCES BENJAMIN JOHNSTON/LIBRARY OF CONGRESS



African American children and teacher in classroom studying corn and cotton, Annie Davis School, near Tuskegee, Alabama. (c. 1902)

But, in the vast majority of California school districts, schools either re-segregated or were never integrated, and so segregated schooling persists today. As of 2003, California was one of the four most segregated states for African American students. <sup>251</sup> As of 2014, California was identified as the third most segregated state for African American students, and a state where African American and Latino students are strongly concentrated in schools that have far lower quality and resources than their white and Asian peers. <sup>252</sup> As of 2020, California remained in the top 10 most segregated states for Black students. <sup>253</sup> Approximately 51 percent of African American students in California attend hyper-segregated, 90- to 100-percent nonwhite schools. <sup>254</sup>



In a recent case, the state found that the segregation that persisted in a Bay Area school district was by design. For example, the California Attorney General's office found in 2019 that the Sausalito Marin City school board had segregated its schools, leaving the vast majority of African American students in an underfunded and under-resourced school while providing a better-funded and resourced charter school for the majority of white students.<sup>255</sup>

### Separate and Unequal Education Conditions Persist

In California's highly segregated schools, schools mostly attended by white and Asian children receive more funding and resources than schools mostly attended by African American and Latino children. Throughout the 20th century, school districts in California, like those across the nation, financed their operations mainly with local property tax revenue and limited amounts of state and federal funding. This system allowed richer, white neighborhoods to better fund their schools districts than poorer, largely African American neighborhoods.<sup>256</sup> In 1971, the California Supreme Court decided that this education funding system was discriminatory because, according to the Supreme Court, it made "the quality of a child's education a function of the wealth of his parents and neighbors."<sup>257</sup>

In 1978, voters passed Proposition 13, which decreased the amount of local property tax revenues and increased the amount of state funding for K-12 education. In 1988, voters then approved Proposition 98, which requires the state to dedicate at least 40 percent of its General Fund to K-14 education each year.<sup>258</sup> These measures still did not solve the issue, and African American parents and students and other parents and students of color have continued to challenge funding inequities in court.

In late April 1991, the Richmond Unified School District, which served a high proportion of African American students, announced that it would close its schools six weeks early on May 1, 1991 due to a budget shortfall. As discussed in Chapter 5, Housing Segregation, federal housing policies, and local officials segregated Richmond and made it extremely difficult for African American residents to move to the suburbs after World War II.<sup>259</sup> Richmond parents sued, and the state Supreme Court decided that the closure did not meet the minimum level of education required by the state constitution.<sup>260</sup> In the late 1990s, in the Compton Unified School District, which served mostly African American and Latino students, a

teacher described the deplorable conditions in a temporary school building in Compton where she taught: "Because the wooden beams across the ceiling were being eaten by termites, a fine layer of wood dust covered the students desks every morning. Maggots crawled in a cracked and collapsing area of the floor near my desk . . . The blue metal window coverings on the outsides of the windows were shut permanently, blocking all sunlight."<sup>261</sup>

In 2000, students were part of a lawsuit, *Williams v. California*, again alleging that schools serving majority African American, Latino, and low-income students across the state failed to provide access to even the most rudimentary learning tools: school books, safe and decent

**As of 2020, California remained in the top 10 most segregated states in the country for Black students. Approximately 64 percent of Black students in California attend hyper-segregated, 90- to 100-percent nonwhite schools.**

facilities, and qualified teachers.<sup>262</sup> The lawsuit ultimately settled in 2004, with \$138 million in state funds to provide instructional materials to schools, \$800 million for facility repairs in low performing schools through establishment of the Emergency Repair Program (ERP), and \$50 million to create a complaint and oversight system to check to see if schools were providing the basics of an education.<sup>263</sup> According to the American Civil Liberties Union, which brought the lawsuit, the state has failed its obligation under the settlement to fund the ERP and, as of 2013, the state's cumulative net contribution to ERP for the five last years had been \$0.<sup>264</sup> Further, despite progress made as a result of the *Williams* settlement, persistent challenges remain, such as textbook distribution issues and insufficient monitoring of school districts that are new to the *Williams* process.<sup>265</sup> Without county oversight, school districts facing hard fiscal choices are often tempted to give textbooks less of a priority, despite the fact that, under *Williams*, students have a right to sufficient instructional materials.<sup>266</sup> California's unequal funding system continues to mean that African American and Latino students, and low-income students have far fewer school resources.

In 2013, the state tried to address the inequalities in school funding by giving more money to schools that have higher numbers of low-income, homeless, and foster youth. This change in the way funding was provided to school districts is referred to as the "equity index" and is part of the state's Local Control Funding Formula that provides approximately 58 percent of the funding that

California public schools receive each year.<sup>267</sup> The state's funding formula does not focus on African American students specifically or require schools to ensure that the funding is spent on the high-needs students within the district.<sup>268</sup> Because about 32 percent of the funding for California schools still comes from local property taxes, and wealthier communities with higher property values can more easily raise additional funds through local bonds and donations, rich and often more predominantly white neighborhoods continue to fund their schools at greater levels.<sup>269</sup>

At the October 2021 Task Force hearing, Kawika Smith, who graduated from Verbum Dei High School in Watts, a historic African American neighborhood of Los Angeles, testified about two high schools in Los Angeles. In the predominantly African American high school, African American students went without paper for three months simply because the school was underfunded. In contrast, the other school had access to extra funding, which allowed the school to purchase a fountain. Smith told the Task Force, "I strongly believe that we need to revisit the property tax laws and algorithms for how schools are funded . . . I can only imagine if that money was redirected into the Black school where they needed the money—what that could have meant for [those] Black students."<sup>270</sup>

As in the rest of the country, unequal funding translates to unequal opportunities. Schools with fewer resources mean fewer Advanced Placement and college preparation courses, which means that African American students attending those schools are less competi-

the rate of African American students nationwide.<sup>272</sup> "Where we failed is discontinuing those efforts to integrate our schools, to invest in them equitably, and to begin in the pre-K years," Dr. Rucker Johnson, Professor of Public Policy at Berkeley told the Task Force.<sup>273</sup>

Recent studies have shown the importance of having at least one teacher who looks like you.<sup>274</sup> But the percentage of African American teachers in California declined from 5.1 percent in 1997-98 to four percent in 2017-18, even though African American students made up 5.6 percent of California's student population.<sup>275</sup> African American men comprise one percent of California's teaching force.<sup>276</sup>

Furthermore, in California, while suspensions have decreased significantly statewide since 2013,<sup>277</sup> Black students continue to be suspended at three times the rate of white students,<sup>278</sup> and lose nearly four times the number of days of instruction to suspensions and expulsions as white students.<sup>279</sup> Suspensions for subjective offenses, such as willful defiance or disruption—which can include anything from failing to take a hat off in class to talking in class—are a persistent but declining source of disproportionate discipline due to recent legislation limiting use for these reasons.

In recent stipulated judgments reached with four different California school districts, the California Attorney General's office identified racial disparities in discipline for African American students with harmful negative impacts.<sup>280</sup> For example, the Attorney General's investigation of the Barstow Unified School District found that

African American middle and high school students were 79 and 78 percent, respectively, more likely, to be suspended out of school than similarly situated white students, and the rate of days African American students were punished was 168 percent greater in elementary, 37.9 percent greater in middle school, and 54.5 percent greater in high school than their white peers.<sup>281</sup>

**Because about 32 percent of the funding for California schools still comes from local property taxes, and wealthier communities with higher property values can more easily raise additional funds through local bonds and donations, rich and often more predominantly white neighborhoods continue to fund their schools at greater levels.**

tive for college and university admission and may not have taken the courses necessary—called A-G courses in California—to go to a four-year state University. Within districts and schools, Black students continue to be placed in vocational tracks and out of Science, Technology, Engineering, Mathematics, and Advanced Placement programs.<sup>271</sup> In addition, African American students in California are disproportionately likely to be identified as having a learning disability, at nearly twice

In California, African American students are also disproportionately referred by schools to law enforcement.<sup>282</sup> A case investigated by the California Attorney General's Office found that, since 1991, school resource officers in the Stockton Unified School District had arrested 34,000 students, including 1,600 under 10 years old, with many minor misbehaviors turned into criminal offenses, disproportionality impacting African American and Latino students, and students with disabilities.<sup>283</sup>

COURTESY OF NATIONAL ARCHIVE/NEWSMAKERS VIA GETTY IMAGES



Demonstrators picket in front of a school board office protesting segregation of students. (1963)

A number of high-profile reported cases have also raised concerns that African American children in California face increased risk of invasive searches and excessive use of force in schools. In one reported case, during school hours, a police officer handcuffed a five-year-old African American boy with zip ties and charged him with battery because he “resisted” being arrested.<sup>284</sup> The American Civil Liberties Union has also reported a number of incidents. In one, an African American student in a Los Angeles school was partially strip-searched in the presence of a male officer—a vice principal forced an “eighth grade girl to pull her bra away from her body and shake it” and when she “tried to cover her breast for modesty, the vice-principal pulled her hands away.”<sup>285</sup> In another filed case, school police were alleged to have handcuffed and placed a 13-year-old African American student on probation after he was playing a makeshift game of soccer with an orange.<sup>286</sup> In yet another, the American Civil Liberties Union reported that a school police officer who told an African American high school student that it was wrong to be gay and wear boy’s clothes, subsequently pushed her against the wall and handcuffed her for telling the officer that “it was also wrong that white people like the officer enslaved her people.”<sup>287</sup> Subsequent to the incident, the same officer “continued

to harass [her], routinely patting her down and demanding that she turn out her bag.”<sup>288</sup>

Jacob “Blacc” Jackson, the Los Angeles Youth Commissioner, explained to the Task Force during its October 2021 hearing how he was placed in an abusive adoptive home and lost his older brother in a police shooting but was focused on “finish[ing] high school [at Crenshaw High] and pass[ing] all of [his classes].”<sup>289</sup> When, at school, Jackson made a mistake in dealing with a substitute teacher, instead of the teacher, counselors, and school administrators trying to work with him, he was questioned, threatened, and handcuffed by school police for an incident he had already apologized for. The school police officer told Jackson that “they would always be watching me.

They said you’re just like everybody else at this school . . . I felt scared and anxious and unclear about what to do.” Jackson felt he could not stay at his high school and told the Task Force that, “What I wish the school [had] provided for me when I was there was real counselors, after-school programs, real nurses, Black people history, peace building, and [transformative justice] practice.”

In general, research shows that school officials are more likely to refer African American students like Jackson to law enforcement for minor behavior than white students.<sup>290</sup> Such contacts with law enforcement increase a student’s feeling of isolation, and contributes to the school-to-prison pipeline and the disproportionate rates of African American people in our criminal justice system.<sup>291</sup>

Once in the juvenile justice system, African American students face an increased likelihood of dropout due to inconsistent education access and adequacy of instruction.<sup>292</sup> See Chapter 11 An Unjust Legal System for a more detailed discussion of this topic. For African American students charged with offenses that result in a transfer to the state prison system, few can access and complete higher education.<sup>293</sup>

## IV. Unequal Higher Education

Until *Brown v. Board of Education*, white colleges and universities largely refused to admit African Americans.<sup>294</sup> In response, African Americans raised funding to develop

Historically Black Colleges and Universities (HBCUs). In the early 1900s, the federal government began to provide funding and land to open HBCUs, but it had to pass



through white-controlled state legislatures. However, these historically African American institutions have been unequally funded in comparison to similar historically white institutions throughout American history.

After World War II, the GI Bill paid for veterans to attend college, graduate school, and go through training programs.<sup>295</sup> Although the GI Bill should have helped African American and white veterans equally, due to African American veterans' exclusion from white colleges, the lack of African American Veterans Administration counselors and the tendency of white counselors to steer African American veterans into vocational programs, it actually increased the racial higher education gap between African American and white Americans.<sup>296</sup> Even today, African American military veterans continue to face discriminatory barriers that can result in unequal access to education benefits available to veterans. In addition, although the Civil Rights Act of 1964 again promised some relief through a prohibition on discrimination in higher education programs receiving federal funds and some colleges and universities took affirmative action to remedy prior-discrimination in college admissions, gains were short-lived due to Supreme Court decisions and, in California, passage of Proposition 209, which prohibited race from being used as a factor in admissions.

### Unequal Funding for Historically Black Colleges and Universities

Prior to the Civil War, a few colleges for free African Americans existed in the north, and none in the south.<sup>297</sup> In 1862, the federal government under the first Morrill Act granted federal land and funding to states to open colleges and universities, but African Americans were generally not allowed to attend.<sup>298</sup> After the Civil War ended in 1865, the Freedmen's Bureau began establishing Black colleges staffed by Civil War veterans with the support of white and Black religious missionaries.<sup>299</sup> White missionaries funded African American education in order to Christianize the "menace" of uneducated enslaved people.<sup>300</sup> These colleges were in name only and, like many white colleges at the time, generally provided only primary and secondary education.<sup>301</sup>

In 1890, Congress passed the second Morrill Act and required states to provide higher education to African American students as the states had for white students.<sup>302</sup> In the North, where African American students were allowed to attend colleges and universities in extremely limited numbers, they often were not allowed to fully participate in the way that white, male students participated.<sup>303</sup>

In order to continue receiving federal funding, former enslaving states, where the majority of African Americans lived, built segregated public African American colleges.<sup>304</sup> White-controlled legislatures underfunded African American colleges and universities, provided substandard facilities, and did not provide adequate resources to train faculty.<sup>305</sup> White-controlled southern legislatures limited curriculum to mechanical, agricultural, and industrial arts, helping maintain African Americans as a servant underclass to build white wealth.<sup>306</sup>

Few graduate programs admitted African American students, although after World War II, the NAACP successfully sued to expand graduate education opportunities for African American students.<sup>307</sup> Although a few African American people were allowed to attend predominantly white institutions, 90 percent of all African American degree-holders in the late 1940s had been educated at Historically Black Colleges and Universities. On the eve of the 1954 *Brown v. Board of Education* decision, African American people were less than one percent of entering first-year students at predominantly white institutions.<sup>308</sup>

Even after the *Brown* decision, white government officials in the south used state power to prohibit integration efforts, including in Mississippi.<sup>309</sup> In 1959, Clyde Kennard, a 31-year-old African American veteran of the Korean War, who ran a small poultry farm, applied to Mississippi Southern College, now the University of Southern Mississippi.<sup>310</sup> The university president reported Kennard's intention to apply to the Mississippi Sovereignty Commission, a state agency led by the governor of Mississippi, which was created in order to preserve segregation.<sup>311</sup> After refusing to back down from applying to the university, even after the Mississippi governor requested that he withdraw his application, Kennard's local cooperative foreclosed on his farm and local government officials arrested and falsely convicted him for stealing \$25 of chicken feed.<sup>312</sup> Kennard was sentenced to seven years in a chain gang where he picked cotton and was fed white prisoners' leftover food.<sup>313</sup> Kennard died of misdiagnosed and untreated colon cancer in 1963.<sup>314</sup>

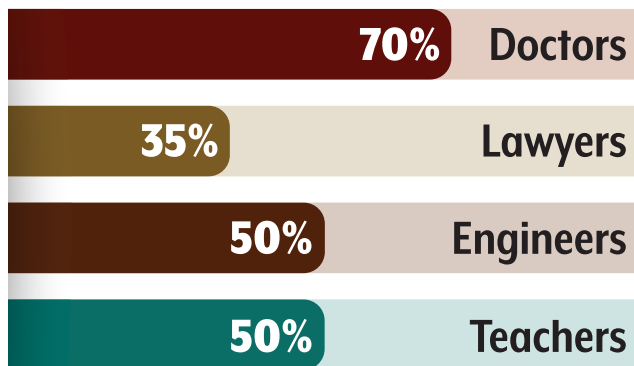
Segregated higher education continued into the 1970s. In 1969 and 1970, the federal Department of Education concluded that Louisiana, Mississippi, Oklahoma, North Carolina, Florida, Arkansas, Pennsylvania, Georgia, Maryland, and Virginia operated segregated colleges and universities and, in 1970, the NAACP sued the federal department of education for failing to force these institutions to desegregate.<sup>315</sup> By the late 1970s, many years after the Civil Rights Act of 1964, at least 17 southern states were still operating racially segregated higher education systems.<sup>316</sup> A number of public HBCUs closed

or merged with traditionally white institutions, but most African American college students continued to attend HBCUs.<sup>317</sup> HBCUs continued to struggle with poorer facilities and budgets compared to traditionally white institutions; some lacked adequate libraries and scientific and research equipment.<sup>318</sup>

Despite the underfunding, through the 1970s, private and public HBCUs educated a large proportion of the African American middle class.<sup>319</sup> In 2006, HBCUs made up three percent of higher education but enrolled 14 percent of Black undergraduates, and graduated 28 percent of all Black undergraduate students who earned a degree.<sup>320</sup> Seventy percent of America's African American doctors, 35 percent of African American lawyers, and 50 percent of African American engineers and teachers have a degree from an HBCU.<sup>321</sup> For African American students, HBCUs can provide an empowering, family-like environment of small classes and close relationships with faculty and students away from racial tensions experienced off campus.<sup>322</sup>

### AFRICAN AMERICAN PROFESSIONALS TODAY

Percent that graduated from HBCUs



Today, increased access for African American students to all colleges and universities has led to a relative decrease in enrollment to HBCUs.<sup>323</sup> While Black enrollment at HBCUs increased by 17 percent between 1976 and 2018, the total number of Black students enrolled in all degree-granting postsecondary institutions more than doubled during this period.<sup>324</sup> In 2018, there were 101 HBCUs located in 19 states, including one in Los Angeles, the Charles R. Drew University of Medicine and Science.<sup>325</sup> However, funding for HBCUs continues to be uneven and is tied to a state's fiscal health.<sup>326</sup> Reports in 2008 and 2014 concluded that state governments continue to deprioritize funding public HBCUs, leading to predominantly white universities receiving more funding per student than HBCUs.<sup>327</sup> In 2008, for example, the University of North Carolina at Chapel Hill received about \$15,700 in state funding per student.<sup>328</sup> But students at historically African American

North Carolina Agricultural and Technical State University received about \$7,800 in state funding per student.<sup>329</sup> In 2020, the federal government increased funding for HBCUs, but many HBCUs have closed in recent years due to financial issues, a trend that has worsened during the COVID-19 pandemic.<sup>330</sup>

### Unequal Access to the GI Bill

Due to expanded education opportunities and funding under the GI Bill, between 1950 and 1975, Black student college enrollment increased from 83,000 to 666,000 students.<sup>331</sup> However, in comparison to white veterans who used GI Bill benefits to go to college, state officials and the structure of the program generally prevented African American veterans from accessing the full education benefits available to them.<sup>332</sup>

At the end of World War II, the vast majority of African American veterans returned to their residence in the southern states.<sup>333</sup> Universities in the South did not accept African American students, and white state legislatures did not increase funding to Historically Black Colleges and Universities to meet increased demand from returning veterans.<sup>334</sup> Many HBCUs had huge waiting lists, and applicants might have to wait a year or more to learn whether they had been admitted; during the postwar period, approximately 55 percent of African American veteran applicants to HBCUs were rejected.<sup>335</sup> In the North, where less than a quarter of African Americans lived at the time, although public universities admitted African American students, many private colleges and universities continued to reject African American students, or only admitted them in small numbers.<sup>336</sup> Local Veterans Administration officials in the South were overwhelmingly white, and steered African American people to vocational programs that funneled them to menial jobs or prohibited use of the GI Bill to pay for college.<sup>337</sup> Only 12 percent of African American veterans were able to use the GI bill to enroll in college, compared to 26 percent for veterans as a whole.<sup>338</sup> Although African Americans used the educational benefits of the GI Bill more often than white Americans did, they could not use those benefits for college, like white Americans could, because they were denied entrance to white colleges and universities and often steered away from college degree programs and into vocational tracks.<sup>339</sup> As a result, the educational and economic gap between white and African Americans widened.<sup>340</sup> See Chapter 13 The Wealth Gap for further discussion of related issues.

Today, discrimination in access to healthcare, employment, and housing continues to limit access to education benefits in the GI Bill for African American veterans compared to white veterans.<sup>341</sup> While African Americans

make up 16.9 percent of the U.S. active duty force, studies show that African American veterans are not utilizing their benefits as much as white or Asian American veterans due to the aforementioned barriers.<sup>342</sup>

### Deficiencies of Affirmative Action

The idea of affirmative action began as a concept with President John F. Kennedy issuing an executive order in 1961 requiring that federal contractors “take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin,” and establishing the President’s Committee on Equal Employment Opportunity.<sup>343</sup> Three years later, Congress passed the Civil Rights Act of 1964 to ban discrimination on the basis of race, color, and national origin not only in employment, but also in education.<sup>344</sup> With respect to employment, the federal department of labor ordered all federal contractors to prepare affirmative action plans including goals and timetables to improve the employment standing of specific groups of people, including African Americans.<sup>345</sup>

In his 1965 commencement address at Howard University, President Lyndon Johnson stated that affirmative action should be approached as a moral and policy response to the material and psychological losses suffered by African Americans during and after the time of slavery.<sup>346</sup> He declared, “you do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, ‘you are free to compete with all the others,’ and still justly believe that you have been completely fair.”<sup>347</sup> Further, he emphasized the importance of African Americans’ humanity and stated that what African Americans sought was “not just freedom but opportunity—not just legal equity but human ability—not just equality as a right and a theory, but equality as a fact and as a result.”<sup>348</sup>

In the late 1960s and 1970s, some colleges and graduate schools began to develop similar affirmative action policies to increase the number of African American and other underrepresented students.<sup>349</sup> After the assassination of Dr. Martin Luther King, Jr. on April 4, 1968, civil rights leaders pushed for colleges to admit more African American students.<sup>350</sup> In 1969, the next school year, the number of African American students

admitted to America’s elite universities rose sharply, some by more than 100 percent.<sup>351</sup>

The lawsuits came quickly. In 1971, two years after schools adopted affirmative action policies, a white student sued the University of Washington Law School, citing reverse racism as the reason for his rejection.<sup>352</sup> Because of this case, Harvard alumni believed that “semiliterate blacks are being accepted at the expense of white geniuses[.]” said David L. Evans, associate dean of admissions at Harvard in 1975.

By 1978, when the former nearly all white colleges and universities were still admitting fewer African American students than African American high school graduates, the Supreme Court decided in the *Regents of the University of California v. Bakke*, to limit states’ and universities’ ability to take race-based affirmative actions to address education discrimination.<sup>353</sup> The Supreme Court declared that the policy of the University of California at Davis’s medical school to set aside 16 of 100 total seats for “minority groups” like African Americans was unconstitutional because it prevented white students from competing for the 16 seats set aside.<sup>354</sup> The Supreme Court declared in *Bakke* and subsequent cases that if a college or university wanted to have a more diverse class of students or make up for “societal” discrimination against African Americans in the United States then it could only consider race as a factor, among many other factors, and with limitations.<sup>355</sup>

In doing so, the Supreme Court rejected affirmative action programs, like Davis’s program, that were intended to compensate African American students (and other

COURTESY OF RONALD PARTRIDGE/NATIONAL ARCHIVES



A photograph taken by the Federal Security Agency, National Youth Administration. The original caption written by the federal agency stated: “Bakersfield, California. These Negro youth are returning to their squalid homes in the Sunset district of Bakersfield.” (1940)



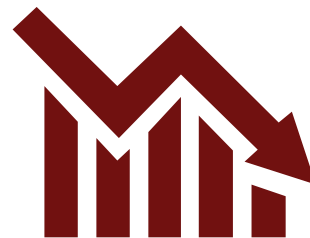
racial minority groups) for the ways that federal, state, and local government had discriminated against them in education for more than 200 years, solely on account of their race. Instead, the Supreme Court described the American history of discrimination as “societal discrimination” that is “amorphous and ageless into the past[,]” which colleges and universities could not fix through programs like the one at Davis.<sup>356</sup> At the same time, federal courts have not struck down university and college admissions policies, which provide a preference for legacy admissions, students whose parents, grandparents, and great grandparents attended the university or college.<sup>357</sup> The argument is that such preferences are not race-based, but this does not grapple with the fact that white legacies may have received a preference in admission because they did not need to compete with African American students who were excluded from the admissions pool for centuries.<sup>358</sup> Critics of the current way that colleges and universities practice affirmative action as sanctioned by the Supreme Court argue that using student diversity as a reason to include race as a factor does not address the original intention of desegregation or break down structural barriers for African American students.<sup>359</sup>

The percentage of African American college students has risen in the past 50 years, but it has fallen recently. The percentage of American college students who are African American increased from 10 percent in 1976 to 14 percent in 2017, but has dropped since from its high of 15 percent in 2011.<sup>360</sup> College enrollment rates for African American 18- to 24-year-old Americans still lag behind those for Asian and white Americans of the same age.<sup>361</sup> A 2020 study found that, since 2000, the percentage of Black students enrolled has decreased at nearly 60 percent of the 101 most selective public colleges and universities.<sup>362</sup> Researchers identify that one cause of declining enrollment is a focus on standardized testing as an admissions requirement because the scores from such testing do not reflect the potential or ability of African American students but rather the inequities that African American students experience throughout their education career, from less access to high-quality early education to a greater likelihood of attending schools with less funding, fewer experienced teachers, and fewer rigorous course options.<sup>363</sup> Other causes for declining enrollment include closure of for-profit colleges and declines at two-year public colleges due to unemployment. Black students are overrepresented at both types of colleges.<sup>364</sup>

### California

In 1996, California voters passed Proposition 209, which eliminated consideration of race in public education admissions, regardless of long-standing segregation and past discrimination.<sup>365</sup> This has had significant

## 60% decline in African American student enrollment



at America's **most selective** colleges  
and universities 2000-2020

impacts on African American and other students of color in California.<sup>366</sup> In 2020, a University of California, Berkeley study found that this affirmative action ban has harmed Black and Latino students by significantly reducing enrollment across the University of California campuses and lowering their graduation rates.<sup>367</sup>

An earlier 2006 study found that Black admissions had plummeted since the ban on affirmative action, particularly at the University of California Los Angeles and Berkeley campuses.<sup>368</sup> In 2020, the President of the University of California Student Association, Varsha Sarveshwar, commented that, “[t]he exclusion of Black and Latino students from selective colleges and universities is nothing short of a crisis. . . . 7 out of 9 UC undergraduate campuses receive D and F grades in access for Black and Latino students.”<sup>369</sup> Sarveshwar called on higher education leaders and policymakers to “move beyond public commitments to diversity – and act decisively to ensure that access is truly equitable.”<sup>370</sup>

The continued nature of the uneven playing field between African American and white students was highlighted in a recent legal settlement between student and community groups and the University of California.<sup>371</sup> The lawsuit, leading up to the settlement, was brought by then 19-year-old Kawika Smith, a high school student from South Los Angeles, who asserted that the use of SAT and ACT scores in admissions and university scholarship decisions may be discriminatory because they are proxies for wealth and race, and only exacerbate the gaps that exist due to unequal exam preparation between schools and based on whether parents can pay for private test tutors.<sup>372</sup> In addition, research has shown that African American students may perform poorly on standardized tests, not because of genetic or cultural differences, but because negative stereotypes raise doubts and high-pressure anxieties in a test-taker's mind.<sup>373</sup>



Kawika Smith told the Task Force at its October 2021 hearing that when he thought back to the day he took the SAT, he was “immediately met with this memory of feeling that I wasn’t worthy or capable of being in a collegiate environment, and this singular test determined that I would not be eligible for scholarship opportunities

despite my academic achievements and having been in need of financial support to afford college[.]”<sup>374</sup> The legal settlement with the University of California ensures that SAT and ACT scores will not be used in admission and scholarship decisions until spring 2025.<sup>375</sup>

## V. Teaching Inaccurate History

Researchers and historians have raised significant concerns that the American K-12 education system is failing to teach a complete and accurate history of slavery and structural racism, along with the significant role that African Americans had in developing this nation’s wealth without compensation. Dr. David Yacovone, a historian at Harvard University’s Hutchins Center for African & African American Research who has been studying United States history textbooks published from 1839 to the 1980s found that many textbooks taught that white people were superior to African American people and downplayed, minimized, or justified slavery based on a racial caste system, with African Americans appearing “only as a problem.”<sup>376</sup> Dr. Yacovone explained that in the older history textbooks “[w]hite supremacy is a toxin. . . . injected . . . into the mind of many generations of Americans.”<sup>377</sup>

In addition, a 2018 study, *Teaching Hard History: American Slavery*, surveyed social studies teachers in K-12 schools across the country and found that 97 percent agreed that learning about slavery is essential, but that there is a lack of deep coverage on the topic; 58 percent reported dissatisfaction with their textbooks; and 39 percent reported their state offered little or no support for teaching about slavery.<sup>378</sup> The study gave an

institution in America’s origins, as the cause of the Civil War, and about its legacy that still lives on.”<sup>380</sup>

In Texas, the state that uses the largest amount of textbooks, thereby shaping the K-12 textbook industry, the Board of Education, rather than historians, began changing the history books to refer to formerly enslaved people as workers.<sup>381</sup> In schools, students of color, including African American students, are less likely to see books with characters that share their cultural background and textbooks that reflect their experiences.<sup>382</sup> Many educators recognize that textbooks do not accurately and fully reflect experiences of people of color; only one in five educators, the vast majority of whom were white, in a June 2020 nationwide survey thought so.<sup>383</sup> Educators of color were more likely to find textbooks lacking.<sup>384</sup> In 2020, Connecticut became the first state in the nation to require high schools to offer African-American, Black, Puerto Rican, and Latino studies.<sup>385</sup>

There is continued opposition to discussing the truth about slavery in public K-12 schools. Republicans in multiple states and in Congress have introduced bills to cut funding from schools that choose to use curriculum derived from the New York Times’ Pulitzer Prize-winning

*1619* series of essays challenging readers to think about slavery as foundational to the nation’s origin story. They argue inclusion of this history delegitimizes the idea of the U.S. as a nation founded on principles of liberty and freedom and creates racial divisions.<sup>386</sup> In addition, the concept that schools may be teaching students critical race theory—which explains that race is

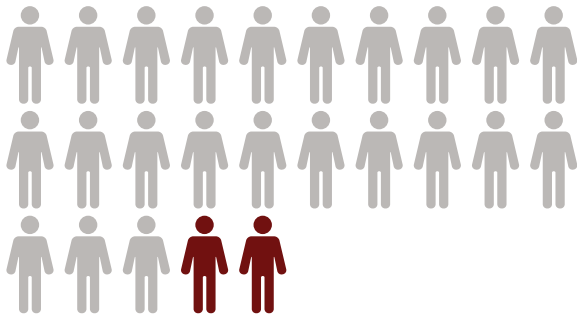
**Historians have found that United States history textbooks published from 1839 to the 1980s taught that white people were superior to Black people and downplayed, minimized, or justified slavery.**

average score of 46 percent with respect to whether 10 popular U.S. history textbooks provide comprehensive coverage of slavery and enslaved people. The study also found that only eight percent of 1,000 American high school seniors surveyed could identify slavery as the central cause of the Civil War.<sup>379</sup> To ensure that schools accurately teach American history, Dr. Yacovone recommends “teach[ing] the truth about slavery as a central

a social construct embedded in legal systems and policies—is under attack across the nation by groups that say it divides Americans and places the blame on white Americans for current and historical harm to African Americans and other nonwhite Americans.<sup>387</sup> But Randi Weingarten, the President of the American Federation of Teachers, one of the nation’s largest teaching unions, has said that teaching critical race theory is really about

teaching “the truth” and pledged to defend any teacher “who gets in trouble for teaching honest history . . . Teaching the truth is not radical or wrong. Distorting history and threatening educators for teaching the truth is what is truly radical and wrong.”<sup>388</sup> Weingarten publicly stated that those attacking critical race theory have other motives: “labeling any discussion of race, racism or discrimination as critical race theory to try to make it toxic” and “to deprive students of a robust understanding of our common history.”<sup>389</sup>

Only **8%** of American  
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As important as how schools shape their curriculum concerning the history of African American people in America is how schools teach the humanity of African American people before, during, and after enslavement. A curriculum that undoes the harmful narratives of African Americans that have historically been used to justify false conceptions of African American inferiority, requires schools to teach that African Americans' stories did not begin with enslavement.<sup>390</sup> Such a curriculum also requires schools to teach about humanity's origins in Africa thousands of years before either Arabs or Europeans encountered people of West and Central African ancestry.<sup>391</sup> Academics have also focused on the importance of teaching about the study of African lives and the African experience for true liberation.<sup>392</sup> In order to empower African American communities through the study of African American history, academics discuss the importance of challenging European perspectives of the African experience to prevent others from defining the African experience and to give African people control over the narrative that is told about their experiences.<sup>393</sup> Redefinition of school curriculum discussing Black experiences, including the narrative about the African experience, is particularly important

in California, a state which, as of 2015, was home to the fifth largest Black population in the country.<sup>394</sup>

The dehumanization inscribed in school textbooks causes miseducation and effectively contributes to African Americans' “cultural and social alienation from identity and existential belonging.”<sup>395</sup> In the 1960s, W.E.B Du Bois spoke out about the dangers posed by the deficiencies in school curriculums with regard to African American history and culture.<sup>396</sup> He warned that the intentional omission of these concepts from public school curriculums would ultimately cause African American history and culture to be lost, unless African American families and organizations actively and systematically impressed these fundamental principles upon subsequent generations of African Americans.<sup>397</sup>

In line with this same notion of education for liberation and cultural preservation, many activists specifically focused their efforts on the establishment and expansion of “Black Studies” on university and college campuses to further the ongoing movement for the liberation of African Americans. The majority of Black Studies programs began at predominantly white institutions and a handful of HBCUs.<sup>398</sup> Although the Black Studies Movement was initially faced with stiff opposition, by 1971 an estimated 500 courses and programs had been organized in the United States.<sup>399</sup>

## California

California student groups have long raised concerns that the complete history of racism and segregation in the state and across the nation has been left out of textbooks, and that leaders from diverse backgrounds who helped create this nation and California are not reflected.<sup>400</sup> “It isn't just white heroes like Christopher Columbus or folks like George Washington or Thomas Jefferson. There was a lot more history behind it and we don't learn a lot about the other important figures that contributed to making America[] into what it is,” Alvin Lee, President of Generation Up, a 4,000-member California student organization, shared with legislators considering how to change California's history textbooks to better reflect the contributions of its diverse people. One state legislator who has advocated to ensure that California's elementary and secondary schools teach a curriculum that reflects the history of African Americans and other people of color, explained that: “Knowledge of our history plays a critical role in showing who we become” and “students [are more engaged] when they [see] themselves reflected in the coursework.”<sup>401</sup>

Among other things, California's approach to teaching about slavery has been critiqued. In 2018, a classroom

teacher made headlines for staging a classroom simulation of conditions on a slave ship to provide a “unique learning experience.”<sup>402</sup> A study by Southern Poverty Law Center found that California did a better job than other states in teaching slavery, but highlighted concerns with the approach of teaching about Harriet Tubman in second grade two years before slavery is taught and failing to discuss how false ideas of white economic and political supremacy fueled and perpetuated slavery as an institution.<sup>403</sup>

In addition, research has shown that because school curricula often do not include content that reflects the experience, culture, and history of African American students, they and other students whose experience, culture, and history is not reflected, suffer.<sup>404</sup> When African American students do not see their experiences and history reflected in the school curricula, this leads to a feeling that they are not important and even invisible and voiceless in the classroom.<sup>405</sup> And while culturally responsive teacher training is one way to help African American students and other students of color feel welcomed, included, and valued in schools, teacher preparation is inadequate in training teachers to be culturally-responsive and to carry those practices into the classroom in both the way they teach and the materials they use when they teach.<sup>406</sup>

One other way to increase diversity in curriculum is by adding ethnic studies courses. “Ethnic studies” is a term used to encompass African American, Chicano, Latino, Native, and Asian American studies, and was developed in response to lack of representation of people from these groups in curricula taught in U.S. schools, colleges, and universities. Generally, ethnic studies is not taught in California elementary and secondary schools, despite known academic performance and attendance benefits.<sup>407</sup> In 2016–17, only a small number—17,354 K–12 students statewide—were enrolled in ethnic studies courses.<sup>408</sup> One reason for this: Only 51 percent of the 777 ethnic studies courses in social science in 2016–17 were approved as meeting A–G state university admissions requirements.<sup>409</sup>

This may be changing. In 2016, California state law mandated creation of a voluntary K–12 ethnic studies curriculum. Recently, on March 18, 2021, the State Board

of Education approved the model ethnic studies curriculum.<sup>410</sup> And while in 2019, a California bill to mandate ethnic studies in all K–12 schools was vetoed by Governor Newsom,<sup>411</sup> in October 2021, he signed a different bill, Assembly Bill 101, which will require California high school students to take ethnic studies as a graduation requirement commencing in 2030.<sup>412</sup> In the interim, several districts have recently made completion of a course in ethnic studies a graduation requirement, including Montebello, Sacramento City, and Coachella.<sup>413</sup> In 2020, San Francisco approved development of a K–12 Black studies curriculum.<sup>414</sup>

In California’s public colleges and universities, the movement for Ethnic Studies began in 1968. At that time, the Black Student Union, the Third World Liberation Front, select faculty and staff, and other activists from the larger San Francisco Bay Area, organized and led a series of protests at San Francisco State University.<sup>415</sup> Protestors denounced the deficiencies within the university’s curriculum, which neglected and misrepresented the experiences of people of color, including African Americans and Indigenous people.<sup>416</sup> On a mission to define and shape their own educational experiences, students drafted a list of demands for the university and protested for months until a deal was negotiated. Ultimately, the university agreed to establish a College of Ethnic Studies, the first in the nation, with classes geared toward communities of color.<sup>417</sup> Since that time, 22 of 23 CSU campuses have maintained some level of ethnic studies, but a recent legislative analysis suggested that 53 percent of CSU students had not taken a course between 2015 to 2018.<sup>418</sup>

In August 2020, Governor Newsom signed Assembly Bill 1460, which, beginning in 2024 to 2025, requires a three credit ethnic studies course for graduation from a CSU—the first change to the CSU’s general education curriculum in over 40 years.<sup>419</sup> Legislative findings in support of the bill’s passage included that white students and students of color benefit from taking ethnic studies courses, which “play an important role in building an inclusive multicultural democracy.”<sup>420</sup> In discussing the importance of the bill’s passage, Senator Steven Bradford, the bill’s co-author commented, “Ethnic studies is critical in learning our contributions to America and telling the true story of our rich history.”<sup>421</sup>

## VI. Conclusion

During the slavery era, enslaving states denied enslaved African Americans an education so that they could maintain control over the enslaved people they depended upon to build this nation’s wealth. However,

an understanding of how powerful knowledge can be emboldened enslaved African Americans to find ways to educate themselves, despite the great danger they risked in doing so. Following the Civil War, states adopted many

laws and policies continue denying education to free African Americans and to effectively maintain an illiterate servant class. In states where African American children were permitted to attend segregated schools, white-controlled legislatures severely underfunded these schools and subjected African American students to deplorable conditions. Aside from the inferior quality of these schools, African American communities also suffered from the ongoing racist attacks by white terrorist groups who committed themselves to destroying African American schools. Even after the Supreme Court outlawed school segregation in its 1954 *Brown v. Board of Education* decision, white policymakers and school boards adopted other policies to ensure the continued exclusion of African American students from their schools. Such policies and the incidents and effects of enslavement continue to have lasting effects on the educational opportunities and the quality of academic opportunities available to African Americans today.<sup>422</sup>

Because government acts have denied the vast majority of African Americans continued access to education and high quality and well-funded schools from enslavement until the present, they have suffered a number of harms, including lower levels of high school graduation, achievement, and college access and completion. These injuries widened the gap between African American and white wealth in America. The COVID-19 pandemic has made the education injuries even worse, because far more African American students than white students live in poverty, and students living in poverty have had less access to the technology needed to participate in remote schooling.<sup>423</sup> California and the nation have not adequately accounted for the harmful intergenerational effects of education discrimination and denial.

In recent years, the academic gap between all student groups has steadily narrowed, except for the gap

between African American and white students, which has widened, confirming the ongoing existence of deeply-rooted racial disparities in the nation's education system.<sup>424</sup> In California, over the past decade, average math and reading test scores rose for all student groups, except African American students. In districts where there was the least significant gap between the academic achievements of different student groups, data showed that this could be attributed to less socioeconomic inequality among students, more spending per pupil by the district, and fewer disparities in access to experienced teachers.<sup>425</sup> The gap also continues to exist in high school graduation rates, but it has reduced considerably nationwide and in California since the 1960s.<sup>426</sup> Nonetheless, the gap in college as well as graduate school admission and graduation rates has remained stagnant, with African Americans half as likely as white Americans to have a college degree.<sup>427</sup>

Due to intergenerational denials of equal educational opportunity, African Americans have also been denied a number of other benefits, including a positive link between one's own education and the education received by one's children.<sup>428</sup> More schooling is associated with higher earnings in one's own life and in subsequent generations.<sup>429</sup> However, white and African Americans with the same educational level do not have the same level of wealth.<sup>430</sup> White college graduates have seven times more wealth than their African American college graduate counterparts, even when it is assumed that the white and African American college graduates are in jobs making the same amount of money.<sup>431</sup> African American college graduates also have two-thirds of the net worth of white Americans who never finished high school.<sup>432</sup> And Black college graduates continue to suffer higher unemployment rates than white college graduates.<sup>433</sup> Centuries after slavery, white Americans continue to benefit from its effects, and African Americans continue to suffer its compounded harms.



## Endnotes

<sup>1</sup> *Piper v. Big Pine Sch. Dist. of Inyo Cty.* (1924) 193 Cal. 664, 668, 673-74.

<sup>2</sup> Orfield and Jarvie, [Black Segregation Matters: School Resegregation and Black Educational Opportunity](#), UCLA Civil Rights Project/Proyecto Derechos Civiles (Dec. 2020) pp. 4-6 (as of July 1, 2021) (hereafter *Black Segregation Matters*); Ladson-Billings, *From the Achievement Gap to the Education Debt: Understanding Achievement in U.S. Schools* (2006) 35 Ed. Researcher 3, 5 (hereafter *Achievement Gap to the Education Debt*).

<sup>3</sup> Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*; Tamborini et al., *Education and Lifetime Earnings in the United States* (2015) 54 Demography 1383, 1385-1386.

<sup>4</sup> Sambol-Tosco, [The Slave Experience: Education, Arts & Culture](#), Thirteen (2004) p. 2 (as of Mar. 5, 2021) (hereafter *The Slave Experience*).

<sup>5</sup> Sambol-Tosco, *The Slave Experience*, *supra*; Bell, *Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform* (2004) p. 52 (hereafter *Silent Covenants*).

<sup>6</sup> Woodson, [The Education of the Negro Prior to 1861](#) (1919) p. 15.

<sup>7</sup> Burnette II, [Do America's Public Schools Owe Black People Reparations?](#) (Sept. 23, 2020) 40 Education Week 4-7 (as of June 21, 2021) (hereafter *Do America's Public Schools?*); [Jim Crow Laws](#), History (Feb. 21, 2021) (as of June 21, 2021); see also *South Carolina v. Katzenbach* (1966) 383 U.S. 301, 310-13, 311, fn. 10 (noting that Southern states “rapidly instituted racial segregation in their public schools” following the Civil War and discussing the interplay between efforts to restrict literacy and efforts to restrict the vote); Du Bois, *The Souls of Black Folk: Essays and Sketches* (2d ed. 1903); Tyack and Lowe, *The Constitutional Moment: Reconstruction and Black Education in the South* (1986), 94 Am. J. Ed. 236, 238-239, 250-252; Anderson, *The Education of Blacks in the South, 1860-1935* (1988) pp. 95-96 (“From the vantage point of the southern white majority,

any system of universal education for blacks, even industrial education, would potentially lead to universal suffrage.”).

<sup>8</sup> Coates, [The Case for Reparations](#), The Atlantic (Jun. 2014) (as of June 21, 2021); Du Bois and Dill, *The Common School and the Negro American, Report Of A Social Study Made By Atlanta University Under The Patronage Of The Trustees Of The John F. Slater Fund, With The Proceedings Of The 16th Annual Conference For The Study Of The Negro Problems, Held At Atlanta University, On Tuesday, May 30th, 1911* (hereafter *The Common School*) p. 117 (in 1909 in one county in Georgia, “five school houses for colored children, with their contents, have been burned” and over the last few years “burning of Negro school houses . . . by white neighbors had been frequent in the gulf states.”).

<sup>9</sup> *Brown v. Board of Education* (1954) 347 U.S. 483, 495.

<sup>10</sup> Horsford and McKenzie, ‘Sometimes I feel like the Problems Started with Desegregation’: Exploring Black Superintendent Perspectives on Desegregation Policy (2008) 21 Int. J. of Qualitative Studies in Ed. 443, 444 (hereafter *Exploring Black Superintendent Perspectives*).

<sup>11</sup> *Don Wilson Builders v. Superior Ct. for Los Angeles County* (1963) 220 Cal. App. 2d 77, 89 (dis. opn. of Fourt, J.) (“California history indicates that at the time the state was organized in 1849 and for some several years thereafter many southerners were influential in the state government and otherwise and their influence is reflected in many statutes. The statutes of 1850, ch. 140, p. 424, set forth the law against miscegenation and such remained the law in one form or another until 1948 [].”); Smith, *Remaking Slavery in a Free State: Masters and Slaves in Gold Rush California* (2011) 80 Pacific Historical Rev. 28, 49-50.

<sup>12</sup> Hudson, *West of Jim Crow: The Fight Against California's Color Line* (2020) p. 32 (hereafter *West of Jim Crow*); Hendrick, *The Education of Non-Whites in California, 1849-1970* (1977) p. 7; Wollenberg, *All Deliberate Speed: Segregation and Exclusion*

*in California Schools, 1855-1975* (1976) p. 12, fn. 10 (hereafter *All Deliberate Speed*); see Stats. 1855, ch. 185, § 12, p. 232.

<sup>13</sup> One of these tactics was housing segregation, which government enforced in a variety of ways. See, e.g., Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017) (hereafter *The Color of Law*); Orfield and Jarvie, *Black Segregation Matters*, *supra*, pp. 12-13.

<sup>14</sup> Farrow et al., *Complicity: How the North Promoted, Prolonged, and Profited from Slavery* (2005) pp. 180-181 (hereafter *Complicity*).

<sup>15</sup> *Ibid.*

<sup>16</sup> *Id.* at pp. 181-182.

<sup>17</sup> *Id.* at p. 191.

<sup>18</sup> Ladson-Billings, *From the Achievement Gap to the Education Debt*, *supra*, p. 6 (hereafter *Achievement Gap to the Education Debt*); Warner, [Psychiatry Confronts its Racist Past, and Tries to Make Amends](#), N.Y. Times (Apr. 30, 2021) (as of Apr. 27, 2022).

<sup>19</sup> Farrow et al., *Complicity*, *supra*, p. 191.

<sup>20</sup> Burnette II, *Do America's Public Schools?*, *supra*, fn. 7.

<sup>21</sup> *Ibid.*

<sup>22</sup> Sambol-Tosco, *The Slave Experience*, *supra*, p. 2.

<sup>23</sup> Woodson, *The Education of the Negro Prior to 1861*, *supra*, pp. 7-10, 13; Albanese, *The Plantation School* (1976) pp. 131-138, 255-256 (“Moreover the presence of a large mass of semi-civilized slaves made possible the concentration of large tracts of lands in a few hands, and helped perpetuate a society with aristocratic institutions and tendencies.”).

<sup>24</sup> Douglass, *Narrative of the Life of Frederick Douglass, an American Slave* (1845) Electronic Edition, p. 33.

<sup>25</sup> Span, *Learning in Spite of Opposition: African Americans and their History of Educational Exclusion in Antebellum America* (2005) 131 Counterpoints 26, 27-28; Woodson, *The Education of the*

*Negro Prior to 1861*, *supra*, pp. 151-178; Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, p. 5.

<sup>26</sup>Span, *supra*, pp. 27-28; Cornelius, “We Slipped and Learned to Read:” *Slave Accounts of the Literacy Process, 1830-1865* (1983) 44 *Phylon* 171, 174.

<sup>27</sup>Woodson, *The Education of the Negro Prior to 1861*, *supra*, pp. 70-92.

<sup>28</sup>Douglass, *Narrative of the Life of Frederick Douglass, an American Slave* (1845) Electronic Edition, pp. 49.

<sup>29</sup>Langhorne, *The African American Community: Circumventing the Compulsory Education System* (2000) 33 *Beverly Hills Bar Assn. J.* 12, 13.

<sup>30</sup>Bracey, *The Significance of Historically Black Colleges and Universities (HBCUs) in the 21st Century: Will Such Institutions of Higher Learning Survive?* (2017) 76 *Am. J. Econ. & Socio.* 670, 671 (hereafter *Significance of HBCUs*).

<sup>31</sup>Sambol-Tosco, *The Slave Experience*, *supra*, p. 2; Bell, *Silent Covenants*, *supra*, at p. 52.

<sup>32</sup>Woodson, *The Education of the Negro Prior to 1861*, *supra*, pp. 10-11; Sambol-Tosco, *The Slave Experience*, *supra*, p. 2. In 1857, the Supreme Court held in *Dred Scott* that Black people were not citizens and, as such, gave the states express permission to deny Black people equal rights, including to education. *Scott v. Sandford* (1857) 60 U.S. 393.

<sup>33</sup>May, *Some Recollections of Our Antislavery Conflict* (1869) pp. 52-53 (as of June 24, 2021).

<sup>34</sup>*Ibid.*

<sup>35</sup>*Id.* at p. 50.

<sup>36</sup>*Id.* at p. 52.

<sup>37</sup>*Id.* at pp. 70-71.

<sup>38</sup>*Id.* at p. 71.

<sup>39</sup>*Id.* at pp. 71-72.

<sup>40</sup>See Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, p. 6 (noting that by 1860, New England was home to 472 cotton mills and between 1830 and 1840, Northern mills consumed more than 100 million pounds of Southern cotton).

<sup>41</sup>Encyclopedia.com, *Impact of Slavery on the Northern Economy* (as of Jan. 26, 2022).

<sup>42</sup>Farrow et al., *Complicity*, *supra*, p. 141.

<sup>43</sup>Woodson, *The Education of the Negro Prior to 1861*, *supra*, p. 15.

<sup>44</sup>Bracey, *Significance of HBCUs*, *supra*, p. 675; Office for Civil Rights, *Historically Black Colleges and Universities and Higher Education Desegregation*, U.S. Dept. of Ed. (Mar. 1991) (as of June 21, 2021) (hereafter *HBCUs and Desegregation*).

<sup>45</sup>Bracey, *Significance of HBCUs*, *supra*, p. 676; Office for Civil Rights, *HBCUs and Desegregation*, *supra*.

<sup>46</sup>Harper et al., *Access and Equity for African American Students in Higher Education: A Critical Race Historical Analysis of Policy Efforts* (2009) 80 *J. of Higher Ed.* 389, 393 (hereafter *Access and Equity*); Roebuck and Murty, *Historically Black Colleges and Universities: Their Place in American Higher Education* (1993) p. 22 (“[O]nly twenty-eight blacks received baccalaureate degrees . . . prior to the Civil War.”)

<sup>47</sup>Hudson, *West of Jim Crow*, *supra*, pp. 22-23; see, e.g., *In re Perkins* (1852) 2 Cal. 424, 437-441, 454-457 (upholding 1852 Fugitive Slave Act, affirming that enslavers who brought enslaved persons from other states were not affected by the anti-slavery clause in the constitution); *Gold Chains: The Hidden History of Slavery in California*, ACLU (as of June 24, 2021).

<sup>48</sup>E.g., *Don Wilson Builders v. Superior Ct. for Los Angeles County* (1963) 220 Cal.App.2d 77, 89 (dis. opn. of Fourt, J.) (“California history indicates that at the time the state was organized in 1849 and for some several years thereafter many southerners were influential in the state government and otherwise and their influence is reflected in many statutes. The statutes of 1850, ch. 140, p. 424, set forth the law against miscegenation and such remained the law in one form or another until 1948 [ ].”); Smith, *Remaking Slavery in a Free State: Masters and Slaves in Gold Rush California* (2011) 80 *Pacific Historical Rev.* 28, 49-50.

<sup>49</sup>Hudson, *West of Jim Crow*, *supra*, pp. 19, 31.

<sup>50</sup>*Id.* at p. 32 (citing Moulder, *Annual Report of the State Superintendent of Public Instruction (1858)* S.F. Public Library Archives, p. 14).

<sup>51</sup>Hendrick, *The Education of Non-Whites in California*, *supra*, p. 7; see also Hudson, *West of Jim Crow*, *supra*, p. 32; Wollenberg, *All Deliberate Speed*, *supra*, p. 12; see Stats. 1855, ch. 185, § 12, p. 232.

<sup>52</sup>*Ibid.*; see also Hendrick, *The Education of Non-Whites in California*, *supra*, pp. 7-8; Wollenberg, *All Deliberate Speed*, *supra*, p. 12, fn. 10; see Stats. 1855, ch. 185, § 12, p. 232.

<sup>53</sup>Wollenberg, *All Deliberate Speed*, *supra*, p. 10.

<sup>54</sup>*Id.* at p. 11.

<sup>55</sup>*Id.* at p. 14.

<sup>56</sup>*Id.* at pp. 14, 17.

<sup>57</sup>Hudson, *West of Jim Crow*, *supra*, pp. 31-32.

<sup>58</sup>Wollenberg, *All Deliberate Speed*, *supra*, p. 16.

<sup>59</sup>Anderson, *supra*, at p. 5.

<sup>60</sup>Du Bois and Dill, *The Common School*, *supra*, pp. 19-22; John Hope Franklin, *Reconstruction after the Civil War* (2d ed., 1994) pp. 107-113; Burnette II, *Do America's Public Schools?*, *supra*.

<sup>61</sup>See Franklin, *Reconstruction after the Civil War*, *supra*, pp. 107-113; Tyack and Lowe, *The Constitutional Moment: Reconstruction and Black Education in the South* (1986) 94 *Am. J. Ed.* 236, 238; Gershon, *Bringing Universal Education to the South* (Jan. 24, 2018) JSTOR Daily (as of May 3, 2022).

<sup>62</sup>Burnette II, *Do America's Public Schools?*, *supra*; *Jim Crow Laws* (Feb. 21, 2021) History (as of June 21, 2021); see also *South Carolina*, *supra*, 383 U.S. at p. 301, 310-13, 311 (noting that Southern states “rapidly instituted racial segregation in their public schools” following the Civil War and discussing the interplay between efforts to restrict literacy and efforts to restrict the vote).

<sup>63</sup>Blackmon, *Slavery by Another Name: The Re-Enslavement of African Americans from the Civil War to World War II*

(2008) pp. 105 & fn. 40 (hereafter *Slavery by Another Name*).

<sup>64</sup> See National Geographic, [The Black Codes and Jim Crow Laws](#) (as of June 24, 2021).

<sup>65</sup> Du Bois, *The Souls of Black Folk: Essays and Sketches* (2d ed. 1903); Tyack & Lowe, *supra*, pp. 238-239, 250-252; Anderson, *supra*, at pp. 95-96 (“From the vantage point of the southern white majority, any system of universal education for blacks, even industrial education, would potentially lead to universal suffrage.”).

<sup>66</sup> Kendi, *Stamped from the Beginning: The Definitive History of Racist Ideas in America* (2017) p. 273; Blackmon, *Slavery by Another Name*, *supra*, at fn. 63, pp. 121-122; Greenblatt, [The Racial History of the ‘Grandfather Clause’](#), NPR (Oct. 22, 2013) (as of July 15, 2020).

<sup>67</sup> Du Bois, et al., *The Common School and the Negro American: Report of a Social Study*, Atlanta University (May 30, 1911) p. 22.

<sup>68</sup> Du Bois and Dill, *The Common School*, *supra*, p. 21; Franklin, *Reconstruction after the Civil War*, *supra*, at fn. 60, pp. 107-113; Burnette II, *Do America’s Public Schools?*, *supra*.

<sup>69</sup> Du Bois and Dill, *The Common School*, *supra*, pp. 19-21; Tyack & Lowe, *supra*, at pp. 238-239, 243-249.

<sup>70</sup> Burnette II, *Do America’s Public Schools?*, *supra*.

<sup>71</sup> United States Senate, [Freedmen’s Bureau Acts \(1865 And 1868\)](#) (as of June 18, 2021); Du Bois and Dill, *The Common School*, *supra*, p. 19.

<sup>72</sup> Nat. Archives, [The Freedmen’s Bureau](#) (as of Apr. 26, 2022).

<sup>73</sup> Antietam National Battlefield, [African Americans and Education During Reconstruction: The Tolson’s Chapel Schools](#) (as of Mar. 11, 2022).

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> The North Carolina Collection – Durham County Library, [The Women Who Ran the Schools: The Jeanes Teachers and Durham County’s Rural Black Schools](#) (As of March 10, 2022).

<sup>79</sup> McHugh, [Denied a Teaching Job for Being “too Black,” She Started Her Own School – and a Movement](#), The Wash. Post (February 2021).

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> Coates, [The Case for Reparations](#), The Atlantic (Jun. 2014) (as of June 21, 2021); Du Bois and Dill, *The Common School*, *supra*, p. 117 (in 1909 in one county in Georgia, “five school houses for colored children, with their contents, have been burned” and over the last few years “burning of Negro school houses . . . by white neighbors had been frequent in the gulf states”).

<sup>83</sup> Bell, *Silent Covenants*, *supra*, p. 91; Darity Jr. and Mullen, *From Here to Equality: Reparations for African Americans in the Twenty-First Century* (2020) p. 210 (hereafter *From Here to Equality*).

<sup>84</sup> *Cummings v. Board of Ed. of Richmond County* (1899) 175 U.S. 528, 530, 542 (court will not intervene in case where county closed a Black high school and used the “funds in hand”, including tax dollars from Black residents, to support a white high school to which Black students were denied entry).

<sup>85</sup> See Blackmon, *Slavery by Another Name*, *supra*, p. 93.

<sup>86</sup> *Id.* at pp. 93, 97.

<sup>87</sup> *Id.* at pp. 100-102.

<sup>88</sup> Orfield and Jarvie, *Black Segregation Matters*, *supra*, pp. 4-6.

<sup>89</sup> E.g., *United States v. Stanley* (Civil Rights Cases) (1883) 109 U.S. 3, 13, 25.

<sup>90</sup> *Plessy v. Ferguson* (1896) 163 U.S. 537, 546-548, 550-552.

<sup>91</sup> Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, p. 5.

<sup>92</sup> Foner, *Reconstruction: America’s Unfinished Revolution, 1863-1877* (2014 ed.) p. 422.

<sup>93</sup> See *Ibid.*

<sup>94</sup> See *Ibid.*; cf. generally Du Bois and Dill, *The Common School*, *supra*.

<sup>95</sup> See Foner, *supra*, p. 422; Wilkerson, *The Warmth of Other Suns: The Epic Story of America’s Great Migration*, pp. 85-86 (2010) (hereafter *The Warmth of Other Suns*).

<sup>96</sup> Wilkerson, *The Warmth of Other Suns*, *supra*.

<sup>97</sup> *Id.* at p. 86.

<sup>98</sup> Anderson, *supra*, at pp. 183-184; Du Bois and Dill, *The Common School*, *supra*, pp. 7-8 (African American people “themselves have purchased school sites, school houses and school furniture, thus being a peculiar way double taxed” and are “paying into the school fund” in taxes much more than they are receiving in “actual appropriations for school facilities.”).

<sup>99</sup> Wilkerson, *The Warmth of Other Suns*, *supra*, pp. 84-86.

<sup>100</sup> Blackmon, *Slavery by Another Name*, *supra*, p. 157.

<sup>101</sup> See, e.g., Du Bois and Dill, *The Common School*, *supra*, p. 136.

<sup>102</sup> See, e.g., *id.* at pp. 40, 52-53, 57, 59, 63, 65, 78-79.

<sup>103</sup> *Id.* at pp. 100-107.

<sup>104</sup> *Id.* at p. 3.

<sup>105</sup> Bell, *Silent Covenants*, *supra*, p. 15 (citing Tushnet, *The NAACP’s Legal Strategy Against Segregated Education, 1925-1950* (Chapel Hill: University of North Carolina Press, 1987), pp. 5-6); Darity Jr. and Mullen, *From Here to Equality*, *supra*, p. 230 (citing Bond, *The Education of the Negro in the American Social Order*, 46); Du Bois and Dill, *The Common School*, *supra*, pp. 29-31; 118 (report that in Mississippi counties draw their share of funding according to the number of white and African American children but spend the money almost exclusively on the white children).

<sup>106</sup> Wilkerson, *The Warmth of Other Suns: The Epic Story of America’s Great Migration*, p. 88 (2010).

<sup>107</sup> *Ibid.*



<sup>108</sup> *Ibid.*

<sup>109</sup> See, e.g., Du Bois and Dill, *The Common School*, *supra*, pp. 52; see also *Ibid.* at pp. 57, 59–60, 101 (describing differences in months of operation for African American and white schools in Georgia and South Carolina); Brooker, [The Education of Black Children in the Jim Crow South](#), America's Black Holocaust Museum: Bringing Our History to Light (as of June 18, 2021); Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, p. 5.

<sup>110</sup> Brooker, *supra*; Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, p. 5; see, e.g., Du Bois and Dill, *The Common School*, *supra*, pp. 52–54, 58, 101.

<sup>111</sup> Du Bois, *Does the Negro Need Separate Schools?* (1935) 4 *The J. of Negro Education*, p. 328.

<sup>112</sup> *Ibid.*

<sup>113</sup> *Id.* at pp. 328–329.

<sup>114</sup> Coates, [The Case for Reparations](#), *The Atlantic* (June 2014) (as of Nov. 19, 2021).

<sup>115</sup> *Ibid.*

<sup>116</sup> Compare Du Bois and Dill, *The Common School*, *supra*, p. 16 with Tapia et al., *The Uneven Transition Toward Universal Literacy in Spain, 1860–1930* (2021) 50 *Hist. of Educ.* 605, 609; Nat. Bureau of Economic Research (Working Paper No. 173) p. 26 (Spain's literacy rate was 38.1% in 1887 and 44.8% in 1990); Tapia et al., *Two Stories, One Fate: Age-Heaping and Literacy in Spain, 1877–1930* (2018) National Bureau of Economic Research (Working Paper No. 139) p. 5 (literacy rate in Italy was similarly poor as Spain and was below 50% in the nineteenth century); see also National Center for Education Statistics, [National Assessment of Adult Literacy, 120 Years of American Education: A Statistical Portrait](#) (as of Jan. 26, 2022) (African American literacy rose from 20 percent in 1870 to 70 percent by 1910, close to 80 percent by 1920).

<sup>117</sup> Bertocchi and Dimico, *The Racial Gap in Education and the Legacy of Slavery* (2012) 40 *J. Comp. Econ.* 581, 581–582. (hereafter *The Racial Gap in Education*)

<sup>118</sup> Burnette II, *Do America's Public Schools?*, *supra*.

<sup>119</sup> *Brown*, *supra*, 347 U.S. at p. 495. The idea that segregated schools were “equal” was unfounded—segregated public schools for African American students provided unequal education in nearly every category when compared to public schools for white students. See Margo, *Race and Schooling in the South 1880–1950: An Economic History* (1990) pp. 18–20.

<sup>120</sup> Horsford and McKenzie, *Exploring Black Superintendent Perspectives*, *supra*, p. 444; see, e.g., *Griffin v. County School Bd.* (1964) 377 U.S. 218, 221 (school districts closed public schools rather than integrate, cut off funding for public schools and instead provided private vouchers for private schools, then delayed adoption of integration plan); *Green v. County School Bd.* (1968) 391 U.S. 430, 433 (*Green*) (school board automatically reassigned children to schools they had attended the prior year, preventing integration); *Goss v. Bd. of Ed. of City of Knoxville* (1963) 373 U.S. 683, 686–687 (school board allowed students to request to be transferred if they had been assigned to a school previously attended only by members of a different race).

<sup>121</sup> Driver, *Supremacies and the Southern Manifesto* (2014) 92 *Tex. L. Rev.* 1053, 1054, 1066–1067, 1079 (nineteen out of the twenty-two Southern senators signed the Manifesto and declared their aim to reverse *Brown* using all lawful means); see Ogletree, *Tulsa Reparations: The Survivor's Story* (2004) 24 *B.C. Third World L.J.* 13, 22 (noting that “[s]ince the end of slavery, whites have resisted the challenge of integration and found more or less sophisticated ways by which to resist the efforts of African Americans to participate on equal terms in American society”).

<sup>122</sup> Equal Justice Initiative, [Supreme Court Bans School Segregation, Sparking Massive White Resistance](#) (as of May 5, 2021); Bennett, [Little Rock Nine: Decades-long Battle for School Equity Began with Nine Black Students Facing Angry White Mob](#) (Sept. 25, 2020) Southern Poverty Law Center

(as of Nov. 19, 2021); Zinn Education Project, [Sept 12, 1958: Little Rock Public Schools Closed](#), (as of Apr. 27, 2022).

<sup>123</sup> Ross and Key, [In the Wake of Central High Crisis, Crime and Injustice](#), *Arkansas Times* (Oct. 27, 2020) (as of Nov. 19, 2021).

<sup>124</sup> Bell, *Silent Covenants*, *supra*, p. 100.

<sup>125</sup> *Ibid.*

<sup>126</sup> *Id.* at pp. 100–102.

<sup>127</sup> *Ibid.*

<sup>128</sup> *Ibid.*

<sup>129</sup> Schofield, *School Desegregation and Intergroup Relations: A Review of the Literature* (1991) 17 *Rev. of Research in Education* 335, 335; Horsford and McKenzie, *Exploring Black Superintendent Perspectives*, *supra*, pp. 448–49; Bell, *Silent Covenants*, *supra*, p. 100.

<sup>130</sup> E.g., Equal Justice Initiative, [Georgia Governor Proposes Abolition of Public School System to Avoid Integration](#) (as of Nov. 19, 2021).

<sup>131</sup> E.g., *Ibid.*

<sup>132</sup> *Brown v. Board of Educ. of Topeka, Kan.* (1955) 349 U.S. 294, 300.

<sup>133</sup> Bell, *Silent Covenants*, *supra*, p. 95; see also Carter, *The Warren Court and Desegregation* (1968) 67 *Mich. L. Rev.* 237, 243.

<sup>134</sup> See *Alexander v. Holmes County Bd. of Ed.* (1969) 396 U.S. 19, 20–21.

<sup>135</sup> Equal Justice Initiative, [Supreme Court Bans School Segregation, Sparking Massive White Resistance](#) (as of May 5, 2021).

<sup>136</sup> See Tate et al., *The Brown Decision Revisited: Mathematizing a Social Problem* (1993) 7 *Educational Policy* 255, 259–268; Ladson-Billings, *Landing on the Wrong Note: The Price We Paid for Brown* (2004) 33 *Education Researcher* 3, 6 (noting that one of consequences of *Brown* included the “job loss and demotions for Black teachers and administrators”).

<sup>137</sup> Horsford and McKenzie, *Exploring Black Superintendent Perspectives*, *supra*, p. 447; Toppo, [Thousands of Black Teachers Lost Jobs](#), *USA Today* (Apr. 28, 2004) (as of June 21, 2021).

<sup>138</sup> *Ibid.*



<sup>139</sup> Horsford and McKenzie, *Exploring Black Superintendent Perspectives*, *supra*, p. 449.

<sup>140</sup> *Ibid.*; Tillman, (Un)Intended Consequences?: The Impact of the Brown v. Board of Education Decision on the Employment Status of Black Educators (2004) 36 Educ. & Urban Soc. 280, 287-288; Will, [65 Years After 'Brown v. Board,' Where Are All the Black Educators?](#), Education Week (May 14, 2019) (as of June 23, 2021); Ethridge, *Impact of the 1954 Brown vs. Topeka Board of Education Decision on Black Educators* (1979) 30 Negro Ed. Rev. 217, 223.

<sup>141</sup> Fultz, *The Displacement of Black Educators Post-Brown: An Overview and Analysis* (2004) 44 Hist. Ed. Q. 11, 37; see Tillman, *supra*, p. 288 (noting that firing of African American educators affected their communities economically); Ethridge, *supra*, p. 224.

<sup>142</sup> Fultz, *supra*, pp. 28-29; Tillman, *supra*, p. 294; Toppo, [Thousands of Black Teachers Lost Jobs](#), *supra*; see Jones-Wilson, *Race, Realities, and American Educators: Two Sides of the Coin* (1990) 59 J. of Negro Ed. 119, 121; Walker, *The Architects of Black Schooling in the Segregated South: The Case of One Principal Leader* (2003) 19 J. of Curriculum & Supervision 54, 56.

<sup>143</sup> Gershenson et al., *The Long-Run Impacts of Same-Race Teachers* (Nov. 2018) National Bureau of Economic Research (Working Paper No. 25254) pp. 1-2, 33 (finding that African American students with at least one African American teacher in K-3 are 13% more likely to graduate high school and 19% more likely to enroll in college than their African American peers who had no African American teachers).

<sup>144</sup> Will, [Still Mostly White and Female: New Federal Data on the Teaching Profession](#), Education Week (Apr. 14, 2020) (as of June 21, 2021); Gewertz, [Survey of Mostly-White Educators Finds 1 in 5 Think Textbooks Accurately Reflect People of Color](#), Education Week (June 29, 2020) (as of June 22, 2021) (hereafter *Survey of Mostly-White Educators*); U.S. Dept. of Ed., [The State of Racial Diversity in the Educator Workforce](#) (2016) pp. 2, 6, 7, 9 (as of June

21, 2021); Modan, *Survey: Superintendents still overwhelmingly white, male, K-12 Dive* (Feb. 11, 2020) (as of May 6, 2022).

<sup>145</sup> Will, [Still Mostly White and Female: New Federal Data on the Teaching Profession](#), Education Week (Apr. 14, 2020) (as of June 21, 2021); U.S. Dept. of Ed., [The State of Racial Diversity in the Educator Workforce](#) (2016) pp. 2, 6 (as of June 21, 2021).

<sup>146</sup> Nat. School Boards Assn., [Black Students in the Condition of Education 2020](#) (June 23, 2020) (as of Jan. 26, 2022).

<sup>147</sup> Rothstein, *The Color of Law*, *supra*, at fn. 13, preface.

<sup>148</sup> See Burnette II, [As Districts Seek Revenue Due to Pandemic, Black Homeowners May Feel the Biggest Hit](#), Education Week (July 23, 2020) (as of June 22, 2021); Oliver and Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality* (1995) pp. 8-9, 19-20; Guastaferrro, [Why Racial Inequities in America's Schools are Rooted in Housing Policies of the Past](#), USA Today (Nov. 2, 2020) (as of June 23, 2021) (hereafter *Why Racial Inequities are Rooted in Housing Policies*).

<sup>149</sup> [Demand for School Integration Leads to Massive 1964 Boycott – in New York City](#), N.Y. Public Radio (Feb. 3, 2016) (as of Nov. 19, 2021).

<sup>150</sup> *Ibid.*; Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, at fn. 2, p. 5; see generally Du Bois & Dill, *The Common School*, *supra*, at fn. 8.

<sup>151</sup> Bell, *Silent Covenants*, *supra*, at fn. 5, pp. 109-112; Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, pp. 142, 146.

<sup>152</sup> [Demand for School Integration Leads to Massive 1964 Boycott – in New York City](#), N.Y. Public Radio (Feb. 3, 2016) (as of Nov. 19, 2021).

<sup>153</sup> *Ibid.*

<sup>154</sup> Equal Justice Initiative, [Resistance to School Desegregation](#) (March 1, 2014) (as of June 21, 2021).

<sup>155</sup> Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, pp. 147-148.

<sup>156</sup> Kerner, [Report of the National Advisory Commission on Civil Disorders: Summary of Report](#) (1968) pp. 1, 5-6 (as of June 21, 2021).

<sup>157</sup> Graham, *Richard Nixon and Civil Rights: Explaining an Enigma* (1996) 26 Presidential Studies Quarterly 93, 94, 101.

<sup>158</sup> Orfield and Jarvie, *Black Segregation Matters*, *supra*, at fn. 2, p. 22; see also Orfield, [Schools More Separate: Consequences of A Decade of Resegregation](#), The Civil Rights Project, Harvard University (July, 2001) p. 25 (as of July 1, 2021) (hereafter *Schools More Separate*) (26 central cities house districts which enroll 1/10 of the nation's students, but only a minute fraction of the nation's white student; five school districts were more than 90% nonwhite, while a large majority of the others had less than one-fifth white students).

<sup>159</sup> Boston Research Center, *Encyclopedia of Boston*, [Desegregation Busing](#) (as of Jan. 26, 2022.)

<sup>160</sup> History, *This Day in History*, [Violence erupts in Boston over Desegregation Busing](#) (as of Jan. 26, 2022); Bubar, [The Jim Crow North](#), Upfront: The N.Y. Times (March 9 2020) (as of Jan. 26, 2022).

<sup>161</sup> *Milliken v. Bradley* (1974) 418 U.S. 717, 752.

<sup>162</sup> See e.g., Bell, *Silent Covenants*, *supra*, at fn. 5, p. 112.

<sup>163</sup> Goldstein, [Detroit Students Have a Constitutional Right to Literacy. Court Rules](#), The N.Y. Times (April 27, 2020) (as of June 22, 2021); see Bell, *supra*, at fn. 5, pp. 111-112;

<sup>164</sup> *Village of Arlington Heights v. Metropolitan Housing Development Corp.* (1977) 429 U.S. 252.

<sup>165</sup> Bell, *Silent Covenants*, *supra*, at fn. 5, p. 110.

<sup>166</sup> *Id.* at p. 114; Orfield and Jarvie, *Black Segregation Matters*, *supra*, at fn. 2, pp. 12-13.

<sup>167</sup> Bell, *Silent Covenants*, *supra*, at fn. 5, p. 114.

<sup>168</sup> See *id.* at pp. 110-113; Orfield, *Schools More Separate*, *supra*, pp. 1-2; see also Orfield and Jarvie, *Black Segregation Matters*, *supra*, at fn. 2, p. 6 ("Intense segregation, in 90-100% non-White schools, fell very sharply from 78% of Black students in 1968 to 24% in the

South states by 1988, but [by 2020] has now risen back to 37%[.]”).

<sup>169</sup> Orfield, *Schools More Separate*, *supra*, pp. 15–44.

<sup>170</sup> *Ibid.* (citing *Board of Education of Oklahoma City vs. Dowell* (1991), *Freeman v. Pitts* (1992), and *Missouri v. Jenkins* (1995)).

<sup>171</sup> *Parents Involved in Community Schools v. Seattle School Dist. No. 1* (2007) 551 U.S. 701.

<sup>172</sup> Orfield and Siegel-Hawley, [E Pluribus . . . Separation, Deepening Double Segregation for More Students](#), UCLA Civil Rights Project/Proyecto Derechos Civiles (Sept. 2012) p. 7 (as of Apr. 29, 2022).

<sup>173</sup> Meatto, [Still Separate, Still Unequal: Teaching about School Segregation and Educational Inequality](#), N.Y. Times (May 2, 2019) (as of June 21, 2021) (“More than half of the nation’s schoolchildren are in racially concentrated districts, where over 75 percent of students are either white or nonwhite.”); Bracey, *Significance of HBCUs*, *supra*, p. 687; Toppo, [GAO Study: Segregation Worsening in U.S. Schools](#), USA Today (May 17, 2016) (as of June 22, 2021); Guastafarro, *Why Racial Inequities are Rooted in Housing Policies*, *supra* (discussing study showing that predominantly nonwhite school districts received \$23 billion less in state and local funding than majority white school districts in 2016); Orfield and Jarvie, *Black Segregation Matters*, *supra*, pp. 6, 28.

<sup>174</sup> Orfield and Jarvie, *Black Segregation Matters*, *supra*, at fn. 2, p. 28.

<sup>175</sup> Woodson, *The Mis-Education of the Negro* (1933).

<sup>176</sup> Ed. Week, [Tracking](#) (Sept. 21, 2004) (as of June 24, 2021); Oakes et al., *Multiplying Inequalities: The Effects of Race, Social Class, and Tracking on Opportunities to Learn Mathematics and Science* (1990) pp. 18–19 & fn. 6 (“[W]e are dealing with teachers’ perceptions of ability—we cannot assume that ability means the same thing from teacher to teacher, or from school to school.”) (hereafter *Multiplying Inequalities*); Anderson and Oakes, *The Truth About Tracking in The Big Lies of School Reform: Finding Better Solutions for the Futile Public Education* (2014) pp. 113–114

(describing the arbitrary nature of tracking) (hereafter *The Truth About Tracking*).

<sup>177</sup> Horsford and McKenzie, *Exploring Black Superintendent Perspectives*, *supra*, at fn. 10, p. 452; Oakes, [Two Cities’ Tracking and Within-School Segregation](#) (1995) 96 Teachers College Record 681 (as of June 24, 2021); Oakes, *Keeping Track: How Schools Structure Inequality* (2005) pp. 11–12, 40, 64–65; Oakes et al., *Detracking: The Social Construction of Ability, Cultural Politics, and Resistance to Reform* (1997) 98 Teachers College Record 482, 490–491, 496–500; Artiles et al., *Culturally Diverse Students in Special Education: Legacies and Prospects*, in *Handbook of Research on Multicultural Education* (2d ed. 2004) p. 716 (finding that many students because of factors including race are disproportionately referred and placed in special education programs); Conger, *Within-School Segregation in an Urban School District* (2005) 27 Ed. Eval. & Policy Analysis 225, 237–238; Saddler, *The Impact of Brown on African American Students: A Critical Race Theoretical Perspective* (2005) 37 Ed. Studies 41, 44 (observing that African American students are three times more likely to be placed in special education classes and more likely to be placed in vocational tracks); Oakes et al., *Multiplying Inequalities*, *supra*, pp. 18–25.

<sup>178</sup> Bell, *Silent Covenants*, *supra*, at fn. 5, p. 112; see Kohli and Quartz, *Modern-Day Segregation in Public Schools*, *The Atlantic*, (Nov. 18, 2014); Mathis, [Moving Beyond Tracking](#), National Education Policy Center (May 2013) (“[Tracking] generally plays out in a discriminatory way, segregating students by race and socio-economic status.”) (as of June 25, 2021).

<sup>179</sup> Darity Jr. and Mullen, *From Here to Equality*, *supra*, p. 220; Oakes et al., *Multiplying Inequalities*, *supra*, pp. 18, 23; Anderson & Oakes, *The Truth About Tracking*, *supra*, pp. 118 (discussing their research finding that “African American and Latino students were much less likely than White or Asian students with the same test scores to be placed in high-ability classes”) (hereafter *The Truth About Tracking*).

<sup>180</sup> Horsford and McKenzie, *Exploring Black Superintendent Perspectives*, *supra*, at fn. 10, pp. 451–452.

<sup>181</sup> Anderson and Oakes, *The Truth About Tracking*, *supra*, pp. 114–118 (“in every aspect of what makes for a quality education, kids in lower tracks typically get less than those in higher tracks and gifted programs”); Mathis, *supra*, (“Low-track classes tend to have watered-down curriculum, less experienced teachers, lowered expectations, more discipline problems, and less engaging lessons.”) (as of June 25, 2021); Oakes et al., *Multiplying Inequalities*, *supra*, pp. 104–105 (“Students judged to have low ability may get less because they are thought to need less (they are considered unable to benefit) or deserve less (they are considered unwilling to benefit).”).

<sup>182</sup> California Task Force to Study and Develop Reparation Proposals for African Americans (October 12, 2021) [Testimony of Dr. Rucker Johnson](#) (as of Jan. 28, 2022).

<sup>183</sup> Bell, *Silent Covenants*, *supra*, at fn. 5, pp. 127–129; Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, at fn. 2, p. 9 (“If we are unwilling to desegregate our schools and unwilling to fund them equitably, we find ourselves not only backing away from the promise of the *Brown* decision but literally refusing even to take *Plessy* seriously. At least a serious consideration of *Plessy* would make us look at funding inequities.”); Kozol, *Savage Inequalities: Children in American Schools* (1991) pp. 3–6; Kozol, *The Shame of the Nation: The Restoration of Apartheid Schooling in America* (2005) pp. 18–21.

<sup>184</sup> U.S. Government Accountability Office, GAO-20-494, [K-12 Education: School Districts Frequently Identified Multiple Building Systems Needing Updates or Replacement](#) (June 2020) (as of July 1, 2021).

<sup>185</sup> Shores et al., [Categorical Inequalities Between Black and White Students are Common in US Schools—But They Don’t Have to Be](#), Brookings Institute (Feb. 21, 2020) (as of June 21, 2021).

<sup>186</sup> Bracey, *Significance of HBCUs*, *supra*, pp. 687–688; Kerr, [Report Finds Segregation](#)

in *Education on the Rise*, AP News (May 17, 2016) (as of June 23, 2021); Office for Civil Rights, [2015-16 Civil Rights Data Collection: Stem Course Taking](#), U.S. Dept. of Ed. (2018) at p. 5 fig.4 (as of July 1, 2021); compare College Board, [AP Cohort Data Report: Graduating Class of 2020](#) (2020) p. 20 with Handwerk et al., [Access to Success: Patterns of Advanced Placement Participation in U.S. High Schools](#) (July 2008) p. 7 (as of July 1, 2021) (African American students were 14.2% of all public high school seniors in 2020, but only 8.3% of students nationwide who took an AP exam—an increase of only 1.3% since 2006).

<sup>187</sup> Irizarry, [On Track or Derailed? Race, Advanced Math, and the Transition to High School](#) (2021) 7 Socius 1, 12-13 (as of Jan. 28, 2022).

<sup>188</sup> Hammond, *Inequality in Teaching and Schooling: How Opportunity is Rationed to Students of Color in America*, in *The Right Thing to Do, The Smart Thing to Do: Enhancing Diversity in Health Professions*, Summary of the Symposium on Diversity in Health Professions in Honor of Herbert W. Nickens, M.D., National Academies Press (2001) pp. 208-209; Grissom and Redding, *Discretion and Disproportionality: Explaining the Underrepresentation of High-Achieving Students of Color in Gifted Programs* (2016) 2 Aera Open 1, 1-2; The Education Trust, *Inequities in Advanced Coursework: What's Driving Them and What Leaders Can Do* (2019), at p. 8 (“Our analysis [of the 2015-16 CRDC data] shows that although Black students make up 16% of elementary schoolers, they make up only 9% of students in gifted and talented programs.”); Llahamon, Office for Civil Rights, [Dear Colleague Letter: Resource Comparability](#), U.S. Dept. of Ed. (Oct. 1, 2014), p. 4 (as of July 1, 2021); Office for Civil Rights, [2011-12 Civil Rights Data Collection, Data Snapshot: Teacher Equity](#), U.S. Dept. of Ed. (2014) (as of July 1, 2021); Adamson and Darling-Hammond, *Funding Disparities and the Inequitable Distribution of Teachers: Evaluating Sources and Solutions* (2012) 20 Ed. Policy Analysis Archives 1, 30-32; Whitaker et al., [Cops and No Counselors: How the Lack of School Mental Health Staff is](#)

[Harming Students](#), ACLU (2019) p. 7 (finding that students of color are more likely to attend schools with law enforcement officers, be referred to law enforcement, and be arrested, and “students who attend schools with high percentages of Black students . . . are more likely to attend schools with tough security measures like metal detectors, random ‘contraband’ sweeps, security guards, and security cameras”) (as of June 23, 2021) (hereafter *Cops and No Counselors*).

<sup>189</sup> Toldson, *Breaking Barriers: Plotting the Path to Academic Success for School-Age African American Males*, Congressional Black Caucus Foundation, Inc. p. 46 (2008).

<sup>190</sup> *Id.* at p. 23.

<sup>191</sup> Powers et al., *Twenty-five Years after Larry P.: The California Response to Overrepresentation of African Americans in Special Education* (2004) 9 The California School Psychologist 145, 155 (hereafter *Twenty-five Years after Larry P.*).

<sup>192</sup> E.g., Office for Civil Rights, *Education in a Pandemic: The Disparate Impacts of COVID-19 on America's Students*, U.S. Dept. of Ed. (2021) p. 10 (citing Shores et al., *Categorical Inequality in Black and White: Linking Disproportionality across Multiple Educational Outcomes*, 57 Am. Ed. Research J. 2089, 2097 (2020)).

<sup>193</sup> Bellan, [\\$23 Billion: Education Funding Report Reveals Less Money for City Kids](#), Bloomberg.com (March 27, 2019) (as of June 21, 2021); Mervosh, [How Much Wealthier Are White School Districts than Nonwhite Ones? \\$23 Billion, Report Says](#), The N.Y. Times (Feb. 27, 2019) (as of June 21, 2021); Carey, [Rich Schools, Poor Schools and a Biden Plan](#), The N.Y. Times (June 9, 2021) (reporting that “districts where more than 75 percent of students are white receive \$23 billion more per year than districts where more than 75 percent of students are not white — even though there are more students in predominantly nonwhite districts”) (as of June 25, 2021).

<sup>194</sup> EdBuild, [\\$23 Billion](#) (Feb. 2019) pp. 4-5 (as of June 25, 2021).

<sup>195</sup> Carey, *supra*; Carey and Harris, [It Turns Out Spending More Probably Does Improve Education](#), The N.Y. Times (Dec. 12, 2016) (as of June 25, 2021); Lafortune et al., *School Finance Reform and the Distribution of Student Achievement* (2018) 10 Am. Econ. J.: Applied Econs. 1, 24 (finding that “money can and does matter in education”).

<sup>196</sup> Reparations 4 Slavery, [The Movement for Black Lives](#) (as of June 21, 2021); Vazquez-Martinez et al., [Unsafe School Facilities Reinforce Educational Inequities Among Marginalized Students](#), Brookings Institute (Sept. 1, 2020) (as of July 1, 2021); U.S. Government Accountability Office, GAO-20-494, [K-12 Education: School Districts Frequently Identified Multiple Building Systems Needing Updates or Replacement](#) (June 2020) (as of July 1, 2021); Kelley, [Study Unlocks Why Decrepit Schools Mean Poor Test Scores](#), Cornell Chronicle (July 20, 2016) (as of Apr. 29, 2022).

<sup>197</sup> Rosenbaum, *Educational and Criminal Justice Outcomes 12 Years After School Suspension*, Youth & Soc’y (Jan. 17, 2018) (finding that suspended youth were less likely to have graduated from college or high school, and were more likely to have been arrested and on probation); Gordon, [Disproportionality in Student Discipline: Connecting Policy to Research](#), Brookings Institute (Jan. 18, 2018) (as of June 21, 2021) (hereafter *Disproportionality in Student Discipline*); Losen and Martin, *The Unequal Impact of Suspension on the Opportunity to Learn in California: What the 2016-2017 Rates Tell Us about Progress*, The Center for Civil Rights Remedies (2018) pp. 7-9, 12; Losen and Whitaker, *Lost Instruction: The Disparate Impact of the School Discipline Gap in California*, The Center for Civil Rights Remedies (2017) pp. 8-9; The Council on State Gov. & Pub. Policy Research Inst. at Tex. A&M Univ., [Breaking Schools' Rules: A Statewide Study on How School Discipline Relates to Students' Success and Juvenile Justice Involvement](#) (July 2011) (as of July 1, 2021).

<sup>198</sup> Gordon, *Disproportionality in Student Discipline*, *supra*, p. 6; Skiba et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment* (2002) 34 Urban Rev. 317,



318-319, 333 (finding that “[c]ontrary to the socioeconomic hypothesis, the current investigation demonstrates that significant racial disparities in school discipline remain even after controlling for socioeconomic status”); see CADRE et al., *Redefining Dignity in Our Schools: A Shadow Report on School-Wide Positive Behavior Support Implementation in South Los Angeles, 2007-2010* (June, 2010) pp. 6-7, 12; [Into New Rules for Schools: Remote Learning Means Remote School Discipline. But Not All Kids Are Treated Equally](#), MSNBC (Sept. 14, 2020) (as of June 25, 2021).

<sup>199</sup> National Public Radio, *Code Switch, Black Preschoolers Far More Likely to Be Suspended* (March 21, 2014) ([as of Jan. 26, 2022](#)).

<sup>200</sup> Gordon, *Disproportionality in Student Discipline*, *supra*; U.S. Government Accountability Office, GAO 18-258, *K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities* (Mar. 2018).

<sup>201</sup> Office for Civil Rights, *Civil Rights Data Collection (for 2017-18 School Year)*, U.S. Dept. of Ed. (Oct. 14, 2020) (as of July 1, 2021); see also Green et al., *A Battle for the Souls of Black Girls*, *The N.Y. Times* (Oct. 1, 2020) (“The disproportionate discipline rates among girls indicate what researchers have long said about all Black children: It is not that they misbehave more than their peers, but their behaviors may be judged more harshly.”) (as of June 25, 2021).

<sup>202</sup> Rocque and Paternoster, *Understanding the Antecedents of the ‘School-to-Jail’ Link: The Relationship Between Race and School Discipline* (2011) 101 *The J. of Crim. L. & Criminology* 633, 653-54.

<sup>203</sup> Morris and Perry, *The Punishment Gap: School Suspension and Racial Disparities in Achievement* (2016) 63 *J. Social Problems* 68, 68-69.

<sup>204</sup> Whitaker et al., *Cops and No Counselors*, *supra*, p. 7.

<sup>205</sup> E.g., ACLU, *The Right to Remain A Student: How California School Policies Fail to Protect and Serve*, p. 14 (Oct. 2016) (as of Jan. 28, 2022).

<sup>206</sup> Servoss and Finn, *Security in American Schools: Are Schools Safer?*

Presentation to Alberti Center for Bullying Abuse Prevention Colloquium Series (Nov. 8, 2015).

<sup>207</sup> Office for Civil Rights, *2015-16 Civil Rights Data Collection: School Climate and Safety*, U.S. Dept. of Ed. (2018) ([as of June 22, 2021](#)); Robles-Ramamurthy and Watson, *Examining Racial Disparities in Juvenile Justice* (2019) 47 *J. Am. Academy of Psych. & L.* 48 (hereafter *Examining Racial Disparities*); U.S. Dept. of Ed., *Civil Rights Data Collection (for 2017-18 School Year)* (Oct. 14, 2020) (as of July 1, 2021).

<sup>208</sup> Green et al., *A Battle for the Souls of Black Girls*, *supra*.

<sup>209</sup> E.g., Cal. Dept. of Justice, *Stockton Unified School District Enter into Agreement to Address Discriminatory Treatment of Minority Students and Students with Disabilities*, *Press Release* (Jan. 22, 2019) (as of June 22, 2021).

<sup>210</sup> E.g., ACLU, *The Right to Remain A Student: How California School Policies Fail to Protect and Serve*, p. 14 (Oct. 2016) (as of Jan. 28, 2022).

<sup>211</sup> See, e.g., Gilliam et al., *Do Early Educators’ Implicit Biases Regarding Sex and Race Relate to Behavior Expectations and Recommendations of Preschool Expulsions and Suspensions?*, *Yale Child Study Center*, p. 14 (Sept. 28, 2016) (as of June 22, 2021); Dee, *A Teacher Like Me: Does Race, Ethnicity, or Gender Matter?* (2005) 95 *Am. Econ. Rev.* 158, 160-163; Banks et al., *Discrimination and Implicit Bias in a Racially Unequal Society* (2006) 94 *Cal. L.Rev.* 1169; Eberhardt et al., *Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes* (2006) 17 *Psychological Sci.* 383; Greenwald and Krieger, *Implicit Bias: Scientific Foundations* (2006) 94 *Cal. L.Rev.* 945; see also Dasgupta, *Implicit In Group Favoritism, Outgroup Favoritism, and Their Behavioral Manifestations* (2004) 17 *Soc. Justice Research* 146, 155 (discussing “[a]lmost a hundred studies” verifying the existence and importance of implicit bias in understanding racial stereotyping that results in different treatment

on the basis of race or other protected categories); Gordon, *Disproportionality in Student Discipline*, *supra*.

<sup>212</sup> Bottiani et al., *A Multilevel Examination of Racial Disparities in High School Discipline: Black and White Adolescents’ Perceived Equity, School Belonging, and Adjustment Problems* (2017) 109 *J. Ed. Psych.* 532, 532-533; Bottiani et al., *Inequality in Black and White High School Students’ Perceptions of School Support: An Examination of Race in Context* (2016) 45 *J. Youth Adolescence* 1176, 1176-1177; Perry and Morris, *Suspending Progress: Collateral Consequences of Exclusionary Punishment in Public Schools* (2014) 79 *Am. Sociological Rev.* 1067, 1070, 1084.

<sup>213</sup> Gordon, *Disproportionality in Student Discipline*, *supra*; Results From a Randomized Controlled Effectiveness Trial in Elementary Schools (2010) 12 *J. Positive Behavior Interventions* 133, 133-135; Luiselli et al., *Longitudinal Evaluation of Behavior Support Intervention in a Public Middle School* (2002) 4 *J. Positive Behavior Interventions* 184; OSI Baltimore, *Restorative Practices in Baltimore City Schools: Research Updates and Implementation Guide* (Sept. 2020) pp. 6-8 (finding that studies are continuing to confirm that restorative approaches result in positive outcomes and are associated with “decreases in harmful exclusionary discipline and improvements in school climate”) (as of Apr. 29, 2022).

<sup>214</sup> Jackson et al., *Intergenerational Resilience in Response to the Stress and Trauma of Enslavement and Chronic Exposure to Institutionalized Racism* (2018) 4 *J. of Clinical Epigenetics* 1, 4.

<sup>215</sup> Lu, *Michelle Alexander: More Black Men in Prison Than Were Enslaved in 1850: Clearly, Colorblindness Hasn’t Gotten Us Very Far*, *Colorlines* (Mar. 30, 2011) (as of June 22, 2021); Robles-Ramamurthy, *Examining Racial Disparities*, *supra*, see generally Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010) (hereafter, *The New Jim Crow*).

<sup>216</sup> The Sentencing Project, *Youth Reentry* (June 14, 2012) (as of June 22, 2021); cf. Alexander, *The New Jim Crow*, *supra*, pp. 8, 94-96.

<sup>217</sup>Toldson, *Breaking Barriers: Plotting the Path to Academic Success for School-Age African American Males*, Congressional Black Caucus Foundation, Inc. p. 29 (2008).

<sup>218</sup>*Ibid.*

<sup>219</sup>Hudson, *West of Jim Crow*, *supra*, at fn. 12, p. 34; An Act to Provide for a System of Common Schools, Stats. 1866, ch. 342, §§ 57-58, p. 18.

<sup>220</sup>Hudson, *West of Jim Crow*, *supra*, at fn. 12, pp. 34-36.

<sup>221</sup>*Ibid.*; Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, pp. 14, 18, 20; see also *Don Wilson Builders v. Superior Court of Los Angeles County* (1963) 220 Cal. App.2d 77, 90 (dis. opn. of Fourt, J.) (describing statutes and regulation stating that children of African or Indian descent shall not be admitted into schools for white children).

<sup>222</sup>Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, p. 17.

<sup>223</sup>Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, p. 8.

<sup>224</sup>*Ward v. Flood* (1874) 48 Cal. 36, 54-57.

<sup>225</sup>Hudson, *West of Jim Crow*, *supra*, p. 38; Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, pp. 23-24.

<sup>226</sup>Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, p. 24.

<sup>227</sup>Hudson, *West of Jim Crow*, *supra*, p. 34.

<sup>228</sup>Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, pp. 25-26.

<sup>229</sup>*Ibid.*

<sup>230</sup>Bailey, *Hidden History: Edmond Wysinger*, YourCentralValley.com (Feb. 14, 2017) (as of June 22, 2021).

<sup>231</sup>Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, p. 25 (citing *Wysinger v. Crookshank* (1890) 82 Cal. 588, 592-93).

<sup>232</sup>*Id.* at p. 26. The state legislature did so later in its history to re-create for separates schools for Asians and Native Americans; also some legislators attempted to do so again for African American children, but the legislation failed. *Id.*

<sup>233</sup>Hudson, *West of Jim Crow*, *supra*, p. 61; see also *id.* at p. 168.

<sup>234</sup>Rothstein, *The Color of Law*, *supra*, pp. 122, 132-137; Orfield and Jarvie, *Black Segregation Matters*, *supra*, at fn. 2, pp. 12-13.

<sup>235</sup>Hudson, *West of Jim Crow*, *supra*, at fn. 12, pp. 167, 199.

<sup>236</sup>Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, pp. 125-126.

<sup>237</sup>*Id.* at pp. 129-130; *Westminster Sch. Dist. of Orange County v. Mendez* (9th Cir. 1947) 161 F.2d 774, 777-781.

<sup>238</sup>Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, pp. 108-109.

<sup>239</sup>*Id.* at p. 143.

<sup>240</sup>Hudson, *West of Jim Crow*, *supra*, at p. 255 (citing Miller, *Address to Western Governors* (1964) Civil Rights and State's Rights).

<sup>241</sup>Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, p. 143.

<sup>242</sup>*Ibid.*

<sup>243</sup>E.g., *Crawford v. Bd. of Educ.* (1976) 17 Cal.3d 280, 284-285 (Los Angeles); *Jackson v. Pasadena City School Dist.* (1963) 59 Cal.2d 876, 881-882 (Pasadena).

<sup>244</sup>See e.g., Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, pp. 148-164.

<sup>245</sup>Cal. Const. art. I, § 26 (November 3, 1964).

<sup>246</sup>Reft, *How Prop 14 Shaped California's Racial Covenants*, KCET (as of June 30, 2021).

<sup>247</sup>See Cal. Const., art. I, § 7; School Assignment and Transportation of Pupils, California Proposition 1 (1979).

<sup>248</sup>*Crawford v. Board. of Educ. of City of Los Angeles* (1982) 458 U.S. 527, 535-536.

<sup>249</sup>Orfield and Ee, *Segregating California's Future: Inequality and Its Alternative 60 Years after Brown v. Board of Education* (May 14, 2014) The Civil Rights Project, UCLA p. 3, 12-18 (hereafter *Segregating California's Future*); *Butt v. State of California* (1992) 4 Cal. 4th 668, 684-685.

<sup>250</sup>Bowles, *Kamala Harris and Classmates Were Bused Across Berkeley. The Experience*

*Changed Them*, N.Y. Times (June 30, 2019) (as of Apr. 29, 2022).

<sup>251</sup>Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, at fn. 2, p. 9.

<sup>252</sup>Orfield and Ee, *Segregating California's Future*, *supra*, pp. 3, 27.

<sup>253</sup>Orfield and Jarvie, *Black Segregation Matters*, *supra*, at fn. 2, pp. 30-31, Tables 13 and 14.

<sup>254</sup>*Id.* at p. 31, Table 13.

<sup>255</sup>Cal. Dept. of Justice, *Attorney General Becerra: Sausalito Marin City School District Agrees to End Segregation in Its Schools*, Press Release (Aug. 9, 2019) (as of June 22, 2021).

<sup>256</sup>Murphy and Paluch, *Financing California's Public Schools*, Public Policy Institute of California (Nov. 2018) (as of June 18, 2021).

<sup>257</sup>*Serrano v. Priest* (1971) 5 Cal.3d 584, 589.

<sup>258</sup>Murphy and Paluch, *Financing California's Public Schools*, *supra*.

<sup>259</sup>Rothstein, *The Color of Law*, *supra*, at fn. 13, pp. 6-10.

<sup>260</sup>*Butt*, *supra*, 4 Cal.4th 668, 4 Cal.4th 668 (1992).

<sup>261</sup>*Sentilles Taught by America: A Story of Struggle and Hope in Compton* (2005) pp. 72-73.

<sup>262</sup>Cal. Dept. of Ed., *The Williams Case – An Explanation* (as of July 1, 2021).

<sup>263</sup>*Ibid.*

<sup>264</sup>Chung, *Williams v. California: Lessons from Nine Years of Implementation*, ACLU Foundation of Southern California, p. 11 (2013).

<sup>265</sup>*Id.* at p. 19.

<sup>266</sup>*Id.* at pp. 19-20.

<sup>267</sup>See Murphy and Paluch, *Financing California's Public Schools*, *supra*, p. 3.

<sup>268</sup>California State Auditor, *K-12 Local Control Funding: The State's Approach Has Not Ensured that Significant Funding Is Benefiting Students as Intended to Close Achievement Gaps* (Nov. 2019) p. 15 (finding that the implementation of the Local Control Funding Formula “has not yet proven effective at increasing

transparency and accountability” and noting that “state law does not explicitly require districts to use unspent supplemental and concentration funds in the following year to benefit intended student groups”).

<sup>269</sup> Murphy and Paluch, *Financing California's Public Schools*, *supra*, at fn. 169; Cano, [Data Exclusive: With California School Bonds, the Rich Get Richer and the Poor, Not So Much](#), Cal Matters (June 23, 2020) (districts with the highest concentrations of wealthier students average more than twice as many local bond dollars per student since 1998 as most impoverished district and can benefit from as much as \$270,000 per pupil in local bond money over the last 20 years) (as of Jan. 28, 2022).

<sup>270</sup> California Task Force to Study and Develop Reparation Proposals for African Americans (Oct. 12, 2021) [Testimony of Kawika Smith](#) (as of Jan. 28, 2022).

<sup>271</sup> The Education Trust West, *Black Minds Matter: Supporting the Educational Success of Black Children in California* (Oct. 2015) pp. 14-16.

<sup>272</sup> Powers et al., *Twenty-five Years after Larry P.*, *supra*, pp. 153-154.

<sup>273</sup> California Task Force to Study and Develop Reparation Proposals for African Americans (October 12, 2021) [Testimony of Dr. Rucker Johnson](#) (as of Jan. 28, 2022).

<sup>274</sup> Assem. Com. on Ed., Analysis of Assem. Bill 520 (2021-2022 Reg. Sess.) as amended March 25, 2021, p. 6-7 (research shows that “[t]eachers of color boost the academic performance of students of color”); Freedburg, [Despite Progress, California's Teaching Force Far From Reflecting Diversity of Students](#), EdSource.org (April 25, 2018) (as of Jan. 28, 2022).

<sup>275</sup> Cal. Dept. of Ed., [Fingertip Facts on Education in California](#) (2019-2020) (as of Jan. 28, 2022); Assem. Com. on Ed., Analysis of Assem. Bill 520 (2021-2022 Reg. Sess.) as amended March 25, 2021, p. 6; Cal. Dept. of Ed., [State Superintendent Tony Thurmond, Assemblymember Mike Gipson, Educators and Scholars Urge](#)

[Support for First-of-its-Kind Legislation to Diversify the Teaching Workforce](#) (Apr. 13, 2021) (as of June 25, 2021);

<sup>276</sup> Sentinel News Service, [Gipson Bill Supports Male Educators of Color: AB 520 Diversifies Teaching Workforce](#), Los Angeles Sentinel (Apr. 15, 2021) (as of June 22, 2021).

<sup>277</sup> Cal. Dept. of Ed., [State Superintendent Torlakson Announces 2018 Rates for High School Graduation, Suspension and Chronic Absenteeism](#) (Nov. 19, 2018) (as of June 22, 2021).

<sup>278</sup> Davis, “Why Are the Black Kids Being Suspended?” *An Examination of a School District's Efforts to Reform a Faulty Suspension Policy Through Community Conversations* (2017) 27 School Community J. 159, 161.

<sup>279</sup> Losen and Martin, [The Unequal Impact of Suspension on the Opportunity to Learn in California](#), The Civil Rights Project (Sept. 18, 2018) p. 5 (as of June 22, 2021); see also Office for Civil Rights, [An Overview of Exclusionary Discipline Practices in Public Schools for the 2017-2018 School Year](#), U.S. Dept. of Ed. (June 2021) (as of June 24, 2021) (finding that “Black pre-school students were expelled at rates that were more than twice their share (38.2%) of total pre-school enrollment (18.2%)”).

<sup>280</sup> Cal. Dept. of Justice, [California Department of Justice, Stockton Unified School District Enter into Agreement to Address Discriminatory Treatment of Minority Students and Students with Disabilities](#), Press Release (Jan. 22, 2019) (as of June 24, 2021); Cal. Dept. of Justice, [Attorney General Becerra Secures Settlements with Barstow and Oroville School Districts to Address Discriminatory Treatment of Students Based on Race and Disability Status](#), Press Release (Aug. 25, 2020) (as of June 24, 2021).

<sup>281</sup> *People of the State of California v. Barstow Unified School District*, No. 20STCV3228, Complaint filed Aug. 25, 2020, p. 6-7.

<sup>282</sup> U.S. Commission on Civil Rights, *Beyond Suspension: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities*, Briefing Report (2019) pp. 10-11, 49, 66; Whitaker, et

al., *Cops and No Counselors*, *supra*, pp. 5, 35 (analyzing 2015-16 academic year data collected by U.S. Department of Education and finding that California had a 44 percent increase in referral to law enforcement from 2013-14 to 2015-16); Black Organizing Project et al., *From Report Card to Criminal Record: The Impact of Policing Oakland Youth* (Aug. 2013) p. 17 (“While Blacks make up only 30.5 percent of the student population, they make up more than 70 percent of all Oakland School Police arrests.”).

<sup>283</sup> Cal. Dept. of Justice, [California Department of Justice, Unified School District Enter into Agreement to Address Discriminatory Treatment of Minority Students and Students with Disabilities](#), Press Release (Jan. 22, 2019) (as of June 24, 2021); Males, [California Decision Aims to End Aggressive Policing in Schools](#), Yes! Magazine (Feb. 14, 2019) (as of Apr. 29, 2022).

<sup>284</sup> Manoucheri, [5-Year-Old Handcuffed, Charged With Battery On Officer](#), KCRA (Feb. 9, 2012) (as of June 25, 2021); see Males, [California Decision Aims to End Aggressive Policing in Schools](#), Yes! Magazine (Feb. 14, 2019) (as of June 25, 2021); Nelson et al., *The Right to Remain a Student: How California School Police Fail to Protect and Serve*, ACLU of California (Oct. 2016) p. 13 (hereafter *The Right To Remain a Student*).

<sup>285</sup> Nelson et al., *The Right to Remain a Student*, *supra*, at fn. 284, p. 15.

<sup>286</sup> *Sigma Beta Xi, Inc. v. County of Riverside* (July 1, 2018) Case No. 5:18-cv-01399, at ¶ 83.

<sup>287</sup> Nelson et al., *The Right to Remain a Student*, *supra*, at fn. 284, p. 13.

<sup>288</sup> *Ibid*.

<sup>289</sup> California Task Force to Study and Develop Reparation Proposals for African Americans (Oct. 12, 2021) [Testimony of Jacob Jackson](#) (as of Jan. 28, 2022).

<sup>290</sup> See, *supra*, at fn. 196.

<sup>291</sup> See, *supra*, at fn. 196; Hayes et al., [California's Prison Population](#), Public Policy Institute of California (July 2019) (as of July 24, 2020) (California numbers



reflecting disproportionate representation of African American people).

<sup>292</sup> See, *supra*, at fn. 196; see also Ferriss, [Black Oakland Youth Arrested, but Not Charged, in Stunning Numbers, Report Says](#), The Center for Public Integrity (Aug. 28, 2013) (reporting that “between 2008 and 2012, [B]lack children represented 29 percent of Oakland’s school-age population but 78 percent of the more than 13,680 juveniles arrested”) (as of June 25, 2021).

<sup>293</sup> Murillo, [The Possibility Report, From Prison to College Degrees in California](#), p. 4 (Feb. 5, 2021) (as of June 22, 2021).

<sup>294</sup> Allen, et. al, *Historically Black Colleges and Universities: Honoring the Past, Engaging the Present, Touching the Future* (2007) 76 The J. of Negro Education 263, 264.

<sup>295</sup> History.com, [G.I. Bill](#) (June 7, 2019) (as of Jan. 28, 2022).

<sup>296</sup> JBHE Foundation, *How the GI Bill Widened the Racial Higher Education Gap* (2003) J. Blacks in Higher Ed. 36, 36-37; see also Turner and Bound, *Closing the Gap or Widening the Divide: The Effects of the GI Bill and World War II on the Educational Outcomes of African Americans* (2003) 63 J. Econ. History 145.

<sup>297</sup> Gasman, *Envisioning Black Colleges: A History of the United Negro College Fund* (2007) p. 11 (hereafter *Envisioning Black Colleges*).

<sup>298</sup> Harper et al., *Access and Equity*, *supra*, at fn. 46, p. 395; Office for Civil Rights, *HBCUs and Desegregation*, *supra*, at fn. 44, p. 2; see also Croft, *The U.S. Land-Grant University System: An Overview*, Congressional Research Services (2019) p. 3.

<sup>299</sup> Gasman, *Envisioning Black Colleges*, *supra*, at fn. 297, p. 11.

<sup>300</sup> *Id.* at pp. 11-12.

<sup>301</sup> *Id.* at p. 11.

<sup>302</sup> Harper et al., *Access and Equity*, *supra*, at fn. 46, p. 395; Office for Civil Rights, *HBCUs and Desegregation*, *supra*, at fn. 44, p. 2; see also Croft, *The U.S. Land-Grant University System: An Overview*, Congressional Research Services (2019) p. 3.

<sup>303</sup> See Synnott, *The Half-Opened Door: Researching Admissions Discrimination at Harvard, Yale, and Princeton* (1979) 45 The Am. Archivist 175, 187; Horowitz, *Campus life: Undergraduate Cultures from the End of the Eighteenth Century to the Present* (1987) pp. 8, 145.

<sup>304</sup> Bracey, *Significance of HBCUs*, *supra*, p. 673; Harper et al., *Access and Equity*, *supra*, at fn. 46, p. 395; Gasman, *Envisioning Black Colleges*, *supra*, at fn. 297, p. 12.

<sup>305</sup> Harper et al., *Access and Equity*, *supra*, at fn. 46, pp. 395-396; Bracey, *Significance of HBCUs*, *supra*, at fn. 30, p. 674.

<sup>306</sup> *Id.* at p. 394; Allen and Jewell, *A Backward Glance Forward: Past, Present and Future Perspectives on Historically Black Colleges and Universities* (2002) 25 Rev. Higher Ed. 241, 244-245; Anderson, *supra*, at p. 122; Gasman, *Envisioning Black Colleges*, *supra*, at fn. 297, p. 13.

<sup>307</sup> *Sipuel v. Board of Regents of University of Okl.* (1948) 332 U.S. 631 (state must offer schooling for African American students as soon as it provided it for white students); *McLaurin v. Oklahoma State Regents for Higher Ed.* (1950) 339 U.S. 637 (African American students must receive the same treatment as white students); *Sweatt v. Painter* (1950) 339 U.S. 629 (state must provide facilities of comparable quality for African American and white students).

<sup>308</sup> Harper et al., *Access and Equity*, *supra*, at fn. 46, p. 396.

<sup>309</sup> Bracey, *Significance of HBCUs*, *supra*, p. 685 (citing Harper et al., *Access and Equity*, *supra*, at fn. 46, p. 397).

<sup>310</sup> Tierney, *The Parameters of Affirmative Action: Equity and Excellence in the Academy* (1997) 67 Rev. of Ed. Research, 165, 168.

<sup>311</sup> Blackmon, [Silent Partner: How the South’s Fight to Uphold Segregation Was Funded up North](#) (June 1999) (as of Apr. 29, 2022); Minchin, [Clyde Kennard: A Little-Known Civil Rights Pioneer](#), Mississippi History Now (2010) (as of Apr. 29, 2022).

<sup>312</sup> Tierney, *supra*, at p. 168.

<sup>313</sup> Mitchell, *Story of False Arrest Called Civil Rights Movement’s Saddest*, Clarion Ledger (Dec. 31, 2005).

<sup>314</sup> Bluhm Legal Clinic: Center on Wrongful Convictions, [Clyde Kennard: The Clyde Kennard Story](#) (as of Apr. 29, 2022).

<sup>315</sup> See Office for Civil Rights, *HBCUs and Desegregation*, *supra*, at fn. 44; *Adams v. Richardson* (D.D.C. 1973) 356 F.Supp. 92, 94, modified (D.C. Cir. 1973) 480 F.2d 1159; Egerton, *Adams v. Richardson: Can Separate Be Equal?*, 6 Change, No. 10 29.

<sup>316</sup> Office for Civil Rights, *HBCUs and Desegregation*, *supra*, at fn. 44, p. 3.

<sup>317</sup> *Ibid.*

<sup>318</sup> *Ibid.*

<sup>319</sup> Gasman, [Historically Black Colleges and Universities in a Time of Economic Crisis](#), Am. Assn. of University Professors (as of Apr. 29, 2022) (hereafter *HBCUs in a Time of Economic Crisis*).

<sup>320</sup> Johnson et al., *Historically Black Colleges and Universities (HBCUs) in the Twenty First Century: An Exploratory Case Study Analysis of Their Mission* (2017) 24 Race, Gender & Class 44, 47-48.

<sup>321</sup> *Id.* at p. 48.

<sup>322</sup> *Ibid.*; see also Gasman, *HBCUs in a Time of Economic Crisis*, *supra*, at fn. 319.

<sup>323</sup> Guy-Sheftall and Jackson, [Challenges and Possibilities at HBCUs after the COVID-19 Pandemic](#), Am. Assn. of University Professors (as of Apr. 29, 2022).

<sup>324</sup> National Center for Education Statistics, [Historically Black Colleges and Universities](#) (as of July 2, 2021).

<sup>325</sup> *Ibid.*

<sup>326</sup> Orteg and Swinton, *Business Cycles and HBCU Appropriations* (2018) 1 J. Econ. Race Policy 176, 176-195.

<sup>327</sup> Boland and Gasman, [America’s Public HBCUs: A Four State Comparison of Institutional Capacity and State Funding Priorities](#) (2014) Penn Center for Minority Serving Institutions, p. 3 (as of Apr. 29, 2022); Belkin, [Maryland to Pay Four Black Colleges \\$577 Million](#), Wall Street Journal (Mar. 24, 2021) (as of June 22, 2021).

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<sup>335</sup> *Ibid.*

<sup>336</sup> *Id.* at p. 37.

<sup>337</sup> Turner and Bound, *Closing the Gap or Widening the Divide: The Effects of the G.I. Bill and World War II on the Educational Outcomes of African Americans* (2003) 63 J. of Econ. Hist. 145, 151-154, 172.

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<sup>352</sup> *Ibid.*

<sup>353</sup> *Regents of University of California v. Bakke* (1978) 438 U.S. 265, 307.

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<sup>355</sup> E.g., *Grutter v. Bollinger* (2003) 539 U.S. 306; *Gratz v. Bollinger* (2003) 539 U.S. 244.

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