



# The Beacon

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## ***De Facto Segregation: The Hidden, Pervasive, & Prevalent Danger to Schools***

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### Introduction

In 1954, The Supreme Court of the United States provided a watershed ruling against the notion of schools being “separate but equal,” in the landmark case *Brown v. Board of Education of Topeka*. While the notion of school segregation received unprecedented attention due to the superficiality of differing skin colors, the underlying theme being addressed by the U.S. Supreme Court and of many educators was that of children in the minority-ethnic groups (i.e. African-Americans) not receiving equal educational opportunities in comparison to that of majority-ethnic (Non-Hispanic white) children. This discrepancy highlighted an immediate narrow focus on what became known as “*de jure* segregation,” which is typically defined as “governmentally promulgated and enforced discrimination” (Alexander, 2005). While *de jure* segregation received unbridled legal and journalistic attention, another form of segregation lay dormant and under the radar of many legal experts, educators, and citizens...namely *de facto* segregation.

*De facto* segregation, commonly defined as segregation that “results from residential housing patterns and does not violate the Constitution” (Alexander, 2005), became somewhat trickier to address due to its unapparent intent with regards to school segregation. Essentially, *de jure* segregation was purposeful and obvious with the intent to separate students based on ethnicity/skin color; *de facto* segregation seemingly lacked purpose and the mere fact that neighborhoods were comprised in such a way as to support segregation was coincidence. While *de facto* segregation took a major blow in the U.S. Supreme Court’s 1973 ruling against the Denver school system (*Keyes v. School District No. 1, Denver*), the issue of *de facto* segregation continued to transform and remain a present threat to the academic and social structures of the school system. From school boards to residential zoning, *de facto* segregation quietly lingered.

Over the last 50 years, academic, government, and psycho-social analysts have theorized and postulated about the effects of segregation on academic achievement. Be it academic standards; testing; or matriculation into higher education, the debate on segregation has been proliferated with countless perspectives ultimately agreeing that such practices are counterproductive and counter-cultural to the changing of the times in this ever-changing global information age. Gaining momentum has been the viewpoint that segregation has greatly affected the social structure of schools,

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rendering schools devoid of multiculturalism and diversity-awareness that is essential to academic achievement. With social development and a solid foundation of social structures within the school considered paramount, the issue of *de facto* segregation has taken to task the mission of restoring antiquated academic and social ideals to a modern environment filled with students brimming to embrace a capacity to connect and learn. Thus, *de facto* segregation remains an unresolved issue that currently plagues the school itself; the social structure of schools and the surrounding communities; and education altogether.

### Literature Review

Current research detailing the effects of *de facto* segregation on academic and social achievement have stemmed from multiple angles, but perhaps there are no greater angles in discussing *de facto* segregation than to approach the subject with a clear knowledge of the locations that are experiencing *de facto* segregation first-hand. From the initial U.S. Supreme Court cases (*Swann v. Charlotte-Mecklenburg Board of Education*, 1971; and *Keyes v. School District No. 1, Denver*, 1973) to cases becoming more demonstrative against such practices (including but not limited to *Washington v. Davis*, 1976, in which the court declared that *de facto* segregation had to be the product of a “racially discriminatory purpose”), witnessing the various measures implemented to harbor *de facto* segregation helped to clue-in journalistic, academic, and legal experts as to the pervasive nature of *de facto* segregation.

In a 2006 radio interview on National Public Radio, Mr. Gary Orfield (Professor of Education & Director of the Civil Rights Project at Harvard University) stated, “Separate but equal isn’t really possible on any scale in a society where almost everything is related to race in quite powerful ways.” Orfield continued on to say that “there’s no school district that’s ever achieved separate but equal schools on any significant scale; and that’s because...in more than three-quarters of the cases, segregated minority schools have concentrated poverty” (2006). In an August 2, 1963, edition of *Time*, a tactic to sidestep *de facto* segregation was addressed when it was written that a concept known as “open enrollment” was “the most widely used method so far, it modifies the neighborhood-school concept enough to let students of mostly [African American] schools transfer to mostly white schools that have sufficient room. Usually only a fraction of the eligible [African American] students take advantage of it.” Essentially, efforts to curb *de facto* segregation “failed to address the underlying structural relationships among housing, education, and family income” (Smith, 2004). Many times, districts and school boards themselves were guilty of having “engaged in discriminatory practices and policies that produced segregation, such as gerrymandering boundaries of some schools and closing some others” (Smith, 2004). Trying to corral the problem of *de facto* segregation seemed like catching the proverbial “greased pig.”

Various legal, academic, and social authorities have mightily examined *de facto* segregation and the results from these observations seem to be staunchly uniform:

- California Law Review: “Though *Brown* left the legal issue of *de facto* segregation undecided...the Court may have supplied the central empirical premise for the argument that *de facto* segregation amounts to a constitutional denial of equal educational opportunity” (Goodman, 1972).
  - Michigan Law Review: “As a consequence of the futility of attack on a reasonable classification which has the collateral effect of achieving racial distinction, many such enactments resulting in *de facto* segregation have been upheld” (Milchen, 1965).
  - Journal of Negro Education: “As the federal judiciary withdraws from public school desegregation, civil rights organizations are beginning to use state constitutional provisions to desegregate public schools that are experiencing *de facto* segregation” (Green, 1999).
  - American Sociological Association: “Segregation experience in early years would have a depressing effect on the formal participation and status and informal interracial association of Negro students” (St. John, 1964).
  - University of Wisconsin Press: “Racial integration of schools is the most effective route to the equalization of educational resources across racial and ethnic groups...students who attend desegregated schools have access to social networks and personal friendships that may have both economic and social influence in the lives of young people” (Clotfelter, 1999).
  - University of North Carolina Press: “The pursuit of integration, ironically, has arguably led to the exacerbation of another form of segregation: residential segregation”; “*de facto* segregation, understood as the concentration and isolation of African Americans, is a problem in itself that must be addressed by greater racial diversity in schools” (Bankston, 1996).
- American Educational Research Association: “Research on long-term consequences has provided evidence that attending a desegregated school is associated with obtaining employment in desegregated occupational work groups and attending desegregated colleges” (Borman, 2004).

As these aforementioned literary citations indicate, the idea of segregation itself is counterproductive to the academic and social advancement of minority students. Subsequently, the specific topic of *de facto* segregation becomes a slippery subject to tackle, but a subject nonetheless that is imperative to address in order to repel the assault on academic and social development and success in the modern-age school room all the way up to the educational governing system on-the-whole.

The growing concern over *de facto* segregation is more over the subtle nature in which it can exist. From purposeful residential zoning techniques; to economic classification and the isolation of impoverished neighborhoods; to manipulation of school districting and school board decisions, *de facto* segregation has infiltrated mainstream educational practices. With *de facto* segregation most visible in the residential make-up surrounding the school in question, research has pinpointed this as the signal of *de*

*facto*'s presence and (as research suggests), "social justice would be best served by dispersing minority students among schools with majority white populations, redistributing the 'social capital' of the racial majority" (Bankston, 1996). In summation, unlike *de jure* segregation, *de facto* segregation may escape the magnifying glass of state governments due to its clever, often hidden, agendas and given that "if a legislature chooses to act in this manner [desegregating public schools], it will have to show that such measures do not violate the Fourteenth Amendment's Equal Protection Clause" (Green, 1999). For the states, the burden of proof for the courts is just that...a burden.

### Methodology

The methodology infused into this analysis will be a policy analysis examined through the lens of critical social science theory. The policy analysis, with a particular method of document analysis, focuses on case law pertaining to *de facto* segregation and the psycho-social analyses of said case law in relation to academic achievement and social development within the structure of the school system. The following court cases will receive particular focus with regards to a critical social science theoretical examination in connection with psycho-social research addressing *de facto* segregation:

- *Keyes v. School District No. 1, Denver* – Supreme Court of the United States, 1973. 413 U.S. 189, 93 S. Ct. 2686.
- *Swann v. Charlotte-Mecklenburg Board of Education* – Supreme Court of the United States, 1971. 402 U.S. 1, 91 S. Ct. 1267.
- *Washington v. Davis* – Supreme Court of the United States, 1976. 426 U.S. 229, 96 S. Ct. 2040.

Using critical social science theory as the lens for examination over these aforementioned court cases, a critique will be offered which "challenges belief systems and social relations not by comparing them to some set of external belief systems and social relations but by comparing them to some set of external standards but by showing that these practices do not measure up to their own standards and are internally inconsistent, hypocritical, incoherent, and hence comprise a false consciousness" (Schwandt, 2007). By intertwining independent research, originating primarily from academia and the psycho-social arena, this analysis intends to demonstrate that the underlying presence of *de facto* segregation poses as great a risk to academic and social development as did/does *de jure* segregation once did in the Jim Crow era of U.S. history.

### The Significance of Case Law

There are numerous state and federal court cases that have attempted to address and remedy the overarching issue of segregation in the school system. While the majority of these cases have addressed specific forms and mutations of *de jure* segregation itself (i.e. the blatant closing of public schools in order to encourage private segregated schools found in *Griffin v. County School Board of Prince Edward County* (1964), and the "freedom of choice" plan failing to create integration as addressed in *Green v. County School Board of New Kent County* (1968)), a handful of cases have significantly touched upon *de facto* segregation. There are perhaps no greater court cases addressing *de facto* segregation and the foundational elements of *de facto* segregation than these landmark decisions rendered by the U.S. Supreme Court:

1. *Keyes v. School District No. 1, Denver* (1973)
2. *Swann v. Charlotte-Mecklenburg Board of Education* (1971)
- Washington v. Davis* (1976)

In the *Keyes* case, the Denver, Colorado, school system was found to not possess a constitutional mandate to operate segregated schools; however, due to the creative and excessive intrusiveness from the School Board, tactics such as school attendance zoning and neighborhood school site placement/policy resulted in segregated schools within one particular school district. The ethnic concentrations within this one district arose from *de facto* segregation. While subtle, the efforts to segregate were no less intentional and thus actions to generate districts equivalent to "educational gerrymandering" were deemed unconstitutional.

*Swann v. Charlotte-Mecklenburg* provided the U.S. Supreme Court with a case regarding the issue of busing students to circumvent segregation in areas where *de jure* segregation was present. With the suggestion of busing to overcome segregation, the *Swann* case demonstrated that such actions were "judicially acceptable" so long as they did not contribute to racial imbalances; the fostering of one-race schools; or the creation of school attendance zones that over time would revert into *de facto* segregation.

Finally, *Washington v. Davis* allowed the U.S. Supreme Court to draw a correlation between segregation and racial discrimination with respect to the impetus by which a body establishes merit based on disproportional and, in many instances, discriminatory means. While the case itself was not related to a particular school or school district, the sheer magnitude of resemblance with regards to discrimination and racial disproportionality did allow the Court to condemn segregation (particularly with respect to *Washington* and the central issue in question of a possible Due Process Clause violation).

### Findings

After examining the court cases listed in the methodology section, it is clear that the legal system first and foremost identifies the quandary that *de facto* segregation creates. *De jure* segregation can be regulated and dismantled at-will through efforts of legal recourse; *de facto* segregation is harder to identify and address due to the superficial absence of proof. In other words, in order to correctly identify and treat the issue of *de facto* segregation, a direct connection between such practices and violations of state and

or constitutional laws much be firmly established. Given that the burden of proof wholly lies in establishing the connection, many courts are hesitant to immediately brand a certain practice as “*de facto*” in scope. While the *Keyes* case and the *Swann* case were able to address specific connections (i.e. school board actions creating segregation, and bussing to overcome segregation... respectively), perhaps the definitive case to broadly take a stance against *de facto* segregation was *Washington v. Davis* in which the court (in responding to a case involving the Due Process Clause) stated that racial discrimination and to some degree segregation must contain a racially disproportionate influence and discriminatory motivation on the part of the municipality.

In relation to the court cases, research stemming from the academic and psycho-social arenas in connection to *de facto* segregation all point to several common themes:

- Courts are more difficult to work with in regards to proving *de facto* segregation – “they require intent; they impose large burdens; and the federal government, particularly the Department of Education, that once was a champion of school integration, how now abandoned the effort” (Brittain, 2006).
  - Challenges to The Constitution of the United States & The Supreme Court of the United States are failing – “In the 1990s, the Supreme Court has used the distinction between *de facto* and *de jure* segregation to signal the withdrawal of the federal judiciary’s involvement with school desegregation” (Green, 1999).
  - Segregation, of *de jure* or *de facto* distinction, creates a major social disadvantage for students – “School segregation also denies Negro children practice in interracial association” (St. John, 1964).
  - Desegregation is at the crux of the case for overall diversity – “school desegregation is arguably the most important policy of American government to encourage racial integration” (Clotfelter, 1999).
- Socio-economic trends and history is a much greater factor in segregation, particularly *de facto* segregation, than previously thought – “a history of oppression and deprivation has attached disadvantages to race over and above socioeconomic disadvantages, and has therefore made minority concentration in and of itself an inhibitor of academic achievement” (Bankston, 1996). From these themes, and the insight that legal precedence has produced, it is clearly obvious that segregation itself is destructive to the educational structure. With respect to *de facto* segregation however, it is even more obvious that this type of segregation is able to subtly infiltrate society on the whole and education most certainly. When *de facto* segregation has been discovered, it has already spread its volatile seeds of anti-diversity and socio-economic stratification; at this point in the analysis, drumming up a cure to the disease is often viewed as “too little, too late.”

### Recommendations

First and foremost, a recommendation from this overall analysis of *de facto* segregation must include a thorough review of the case law. While *Keyes* and *Swann* address *de facto* segregation directly, other cases such as *Washington v. Davis* indirectly cut at the heart of the segregation issue and directly at the issue of racial discrimination. By reviewing the case law in such a meticulous fashion, the recognition of *de facto* segregation within the overall scope of society can take shape. Additionally, understanding the boundaries of what the case law established is useful in that interpretations can be made as to the limits of what the judiciary system can address, adequately diagnose, and treat as to instances of *de facto* segregation.

Another recommendation from this overall analysis is the credence that should be given to psycho-social research relating to academic achievement; social development; and the overall structure of schools in relation to the effects of *de facto* segregation. Many times, government and judiciary bodies disregard research from the social sciences as intangible and “pie-in-the-sky” hypotheticals. Instead of disregarding research that is psychological, sociological, and political in nature, the judiciary and legislative bodies in charge of legally addressing *de facto* segregation should allow such research to become part of the debate and part of the solution. Too many times, psycho-social research becomes hyped and publicized through the media, and often “the state of journalism today and the state of policy in political spectacle suggest that this medium distorts, glosses, and obscures the signal and prevents the public from obtaining the information it needs to participate effectively” (Smith, 2004). Despite these overall feelings towards the media, coverage of such events (namely *de facto* segregation) is crucial in spurring involvement from the public and pressure towards action against such heinous measures.

A third, but certainly not final, recommendation from this analytical project would be that legislators and, in particular, school boards not sway from “what’s right” to “what’s easy.” It is no surprise that the political piece to the puzzle of education and society-like many realms-is laden with corruption, greed, and distrust against the unknown. Many legislators and school board members must adhere to a principle of acting in the best interests of all constituents and not just a few constituents with the financial backings to make things happen or reward others for selfish action. Addressing the corruption and greed in politics and education is as difficult a task as highlighting *de facto* segregation; in many ways, the mere suggestion of such will surely illicit a smile from the reader and an internal thought of, “yeah, right.” Ideally, the American political and academic systems operate from a mission to serve the public. If the legislators and the school boards greedily operate to serve each other’s benefit and, in the course of scratching each other’s backs, create racially discriminatory and segregated pockets of constituents, the ethical mission set forth by legal precedent is all for naught. Thus, there must be a sense of social justice intertwined with the mission of constituent service at the academic and political levels.

## Implications of De Facto Segregation on Educational Practice

*De facto* segregation, like *de jure* segregation, cuts at the heart of one of education's most central themes—namely diversity. In the scope of education, there is no greater benefit than from students learning from one another. Be it academic knowledge; cultural knowledge; or social knowledge, students learn from each other as profound as learning from an instructor or a textbook. Peer learning and group learning, trends that have caught fire in the last 20 years, are based upon many qualities that comprise the antithesis of segregation. Qualities such as an awareness of diversity; an appreciation of multicultural backgrounds; mutual respect; and compassion are central to students learning from one another.

The implications of *de facto* segregation in the school system are detrimental to the aforementioned characteristics upon which peer and group learning are founded. Not only does *de facto* segregation strike at the heart of diversity, but *de facto* segregation creates psychological and socio-economic divisions within the neighborhood of the affected school or district. Often, *de facto* segregation subtly isolates neighborhoods based on ethnic, economic, and/or social bases. While the efforts to zone districts and manipulate school policies are easy to conjure in the eyes of many, these efforts if seen to fruition slowly pervade the societal foundations and after some time, the lingering effects begin to bear fruit. Superficial efforts to clean the nastiness, much like an oil spill, do not end in an effective quick fix; nor does the initial counterstrike completely absorb the hazardous effects in a disposable container. While time is the greatest ally in *de facto* segregation's infiltration into the societal framework, time is also the greatest enemy in that the remedy to reverse *de facto*'s effects requires efforts, mentalities, and monies being doubled to revert a school, district, and neighborhood back to an ethical medium.

## Conclusion

*De facto* segregation is a hidden, pervasive, and prevalent danger to the American school. Through superficial means such as intentional residential zoning in order to populate certain ethnic groups into one area, or subtle means such as districting school zones in order to reflect socio-economic trends and commonalities, *de facto* segregation corrodes the very foundation of academic achievement; social development; and an appreciation for diverse and different peoples in the structure of a school as well as within the scope of the modern-day American educational system. Consistence, persistence, and vigilance are vital traits when combating *de facto* tactics.

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