

The Return to Neighborhood Schools, Concentrated Poverty, and Educational Opportunity: An Agenda for Reform

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I. Introduction

Throughout the United States, school systems that once faced federally-mandated desegregation plans have been declared “unitary.” Courts ruled that these districts had removed any vestiges of overt segregation. For courts to do more would be to overstep their appropriate role.¹ In Denver, Colorado federal courts declared the city school system unitary in 1996 after busing students for over twenty years. Busing was halted for elementary schools that year and for secondary schools the following year.

In most of these cases, including Denver, the return to neighborhood schools has meant a concurrent return to more racially segregated schools.² Given the strong correlation between race/ethnicity and socioeconomic status (SES) in American urban centers, the return to neighborhood schools has created conditions of concentrated poverty in certain schools.³ Concentrated poverty can

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1. See GARY ORFIELD ET AL., *DISMANTLING DESEGREGATION: THE QUIET REVERSAL OF BROWN VS. BOARD OF EDUCATION* (1996).

2. The return to neighborhood schools did not impact Denver secondary schools as much as elementary schools. Of the ten schools in this study, only four experienced noticeable changes in their student populations. Nonetheless, we don't believe this has any significant impact on our main assertions regarding concentrated poverty.

3. Speaking to this issue, Gary Orfield and his colleagues noted:

have a powerful impact on educational opportunity and we maintain that many lower-income students in the Denver Public School System (DPS) face a situation of educational inequity. In our view a wide range of data from DPS' ten comprehensive high schools⁴ suggests that what constitutes educational opportunity for students in the city's more affluent high schools is notably superior to that experienced in less affluent schools.⁵ In essence, a condition of educational inequity exists in DPS, which is precisely what *Brown v. Board of Education* sought to redress. (We base the socioeconomic status of each school on the percentage of students who participated in free or reduced price lunch programs).

Although issues of race and ethnicity have been the traditional foundation to civil rights legislation, we believe many goals civil rights legislation has sought to achieve — including the realization of genuine educational opportunity for all US students — might be achieved by adopting legal strategies that put SES factors at the forefront of litigation. Our data reveal a clear common sense rationale for this argument. The challenge is to translate this rationale into effective legal strategies.

In constructing our argument we first examine the reasons behind our nation's efforts at public school integration and then consider the benefits and drawbacks of returning to neighborhood, segregated schools. To explore developments within DPS, we present data on socioeconomic conditions and student achievement in ten

The relationship between segregation by race and segregation by poverty in public schools across the nation is exceptionally strong. The correlation between the percentage of black and Latino enrollments and the percentage of students receiving free lunches is an extremely high .72. This means racially segregated schools are very likely to be segregated by poverty as well.

See Gary Orfield et al., *Deepening Segregation in American Public Schools: A Special Report from the Harvard Project on School Desegregation*, 30 EQUITY AND EXCELLENCE IN EDUCATION, 5, 11 (1997).† See also John Powell, *A Historical Overview of School Desegregation*, Paper Presented at The End of School Desegregation? Conference, University of Colorado School of Law (Oct. 2000).

4. Supporting evidence can be found in other urban districts. Commenting on findings from the National Assessment of Educational Progress, the United States Department of Education observed that, “[s]tudent achievement data reveal a large and longstanding gap in academic performance between students in high and low-poverty schools at all grade levels [I]n high-poverty schools (where more than 75 percent of students come from low-income families) achievement is, on average, two to four grade levels behind that in low-poverty schools (where fewer than 25 percent of students are from low-income families).” U.S. DEPT. OF EDUC., *SCHOOL POVERTY AND ACADEMIC PERFORMANCE: NAEP ACHIEVEMENT IN HIGH-POVERTY SCHOOLS* 1 (Sept. 1998).†

5. Denver has more than ten high schools but the others are magnet-type schools that enroll a small portion of DPS students. We do not include them in our analysis.

DPS high schools and offer a series of policy proposals for remedying what we consider to be unfair structural arrangements within the system. This includes a discussion of legal strategies that might be used to leverage judicial support for our policy proposals.

II. The Benefits of Integrated Schooling

The United States' public school systems have sought for varied reasons to create racially integrated schools, often under court order, as a means to greater educational opportunity. One rationale has been overtly political. Gary Orfield addressed this matter:

The . . . struggle for desegregation did not arise because anyone believed there was something magical about sitting next to whites in a classroom. It was, however, based on a belief that the dominant group would keep control of the most successful schools and the only way to get a full range of opportunities for a minority child was to get access to those schools.⁶

Thus, students of color should attend school with White students because political power resides largely with White people and attending school with White students would ensure the mutual well-being of all students.

A second assumption underlying efforts to integrate schools derived from the anticipated benefits of increasing the number of high-achieving and high-aspiring students at low-performing schools. James Coleman and his colleagues, whose massive national survey shaped school integration policy, drew on findings from that survey to connect integration with greater educational opportunity:

[T]he apparent beneficial effect of a student body with a high proportion of white students comes not from racial composition per se, but from the better educational background and higher educational aspirations that are, on average, found among white students. *The effects of the student body environment upon a student's achievement appear to lie in the educational proficiency possessed by that student body, whatever its racial or ethnic composition.*⁷

The authors went on to say: "[T]he social composition of the student body is more highly related to achievement, independently of the

6. Gary Orfield, *School Desegregation After Two Generations: Race, Schools, and Opportunity in Urban Society*, in *RACE IN AMERICA: THE STRUGGLE FOR EQUALITY* 242 (Herbert Hill & James E. Jones, Jr. eds., 1993).

7. JAMES S. COLEMAN, *EQUALITY AND ACHIEVEMENT IN EDUCATION* 93 (1990) (emphasis added).

student's own social background, than is any school factor."⁸ The presence of White students, most importantly their abilities and aspirations, would raise expectations and achievement for all students.

A third benefit of integrated schooling would emerge after students had left school: By promoting greater social interaction between Whites and students of color, the social connections Whites typically experience because of their ties with the power structure would be experienced by students of color as well. Orfield explained: "In contemporary America, moving from a minority school to a white school usually means moving to a school with . . . a much better connection with the opportunity structure of society."⁹ In studying the long-term effects of school integration efforts, Amy Stuart Wells and Robert Crain found that "when occupational attainment is dependent on knowing the right people and being in the right place at the right time, school desegregation assists black students in gaining access to traditionally 'white' jobs."¹⁰

A final benefit commonly attributed to school integration accrues to society at-large as well as individual students. Racially diverse schools increase the development of positive relationships among all students. In turn, this promotes greater mutual respect and understanding between People of color and White people throughout society, a development that some research suggests has been realized for students who have attended integrated schools.¹¹

III. The Appeal of Neighborhood Schools

When community leaders debate dismantling their desegregation plan and returning to neighborhood schools, the proposed policy changes often appear to promise nothing but benefits. With busing and court oversight ended, neighborhood school advocates believe that educators and students will finally be able to concentrate on teaching and learning. . . . Resegregation usually carries other tempting promises.¹²

Many different groups in Denver, including people of color, White people, educators, parents, politicians and at least one

8. *Id.* at 119.

9. Orfield, *supra* note 6, at 243.

10. Amy Stuart Wells & Robert L. Crain, *Perpetuation Theory and the Long-Term Effects of School Desegregation*, 64 REV. OF EDUC. RESEARCH 531, 552 (1994).

11. See ORFIELD ET AL., *supra* note 1.

12. *Id.* at 73.

prominent jurist have welcomed the return to neighborhood schools, despite the associated segregation, often because of perceived shortcomings with busing.¹³ To a degree, public support for neighborhood schools stems from the very nature and complexity of busing and the school desegregation process. As Orfield explained: "School desegregation is a particularly difficult issue for public understanding in the television age, since, when it is successful, it is a massive, complex set of slow changes working out in very routine and non-dramatic ways. . . ."¹⁴ Phrased differently, the benefits of busing are subtle and long-term, while the drawbacks tend to be immediate and readily apparent.

In Denver, White parents and African American parents worried about having their children bused to unfamiliar neighborhoods. Their insecurity was often heightened by the inaccessibility of these schools and the sense some parents felt of not really belonging at their school. Many expect parents will feel more at home in neighborhood schools and they will find it easier to become involved in their child's education, consequently improving student achievement.¹⁵

A second drawback to busing was identified by teachers. Some educators felt their schools lacked a sense of community because many students, both bused and non-bused, were ambivalent about desegregation. A middle school bilingual teacher recalled the busing era:

At my school there was a strong sense of territoriality among students from that neighborhood. These students did not know why others were bused to their school. They would say to other students, "Why are you here?" They tended to distrust each other. And these students only saw one another in the context of the school. They seldom socialized outside of school because they lived in different neighborhoods.¹⁶

13. Wendy Parker, *The Future of School Desegregation*, 94 NW. U.L. REV. 1157 (2000).

14. Orfield, *supra* note 6, at 236.

15. Kevin Brown, *Has the Supreme Court Allowed the Cure for De Jure Segregation to Replicate the Disease*, 78 CORNELL L. REV. 1, 1-83 (1992). Challenging this notion, Orfield et al., maintain that merely putting schools near students' homes does not guarantee increased parental involvement. ORFIELD ET AL., *supra* note 1, at 136-37.

16. Telephone Interview with middle school teacher, Denver Public Schools (Nov. 18, 1997). This article contains many comments from telephone interviewees. Because of the critical nature of some comments and the sensitive nature of the topics discussed—for instance, the Office of Civil Rights continues to monitor the District's treatment of non-native-English-speaking students—we told those who participated in our research that we would only identify them by their title and level of school (elementary, middle, or high).

An elementary school administrator who taught during this time said the prejudice bused students experienced, in her case Latinos, could be severe: "Other students would say, 'Where's your green card?' 'You people eat dog food.' 'Go back to Mexico.' It was hard on the kids who were bused."¹⁷

In addition to parents and teachers, administrators had concerns with busing as well. One DPS elementary principal, for instance, said his work was complicated because he had to serve two different sets of clientele: "When students were bused, I had to try and keep two neighborhoods happy. By returning to neighborhood schools I think you can meet the needs of kids better than by trying to do everything for everybody."¹⁸ A second DPS administrator shared this view:

I don't have to spend so much of my time monitoring what's going on fifteen miles down the road, worrying about tardy students and parents' concerns. We can now tailor our time to the students' needs. We can do counseling rather than having to deal with bus issues. . . . We really had to do double-duty with our paired school.¹⁹

With the return to neighborhood schools, administrators no longer face such concerns.

Opposition to busing also arose because some people believed busing undercut the viability of local neighborhoods; a not-so-subtle message was sent to minority communities regarding their ability to meet their own needs. Supreme Court Justice Clarence Thomas, for instance, has argued that busing and integration efforts are inherently insulting to African Americans (and by association other minority groups) because they suggest students of color can achieve a quality education only in predominately White schools.²⁰ In effect, desegregation rulings are "based on a theory of black inferiority." He went on to say, "black schools can function as the center and symbol of black communities, and provide examples of independent black leadership, success, and achievement."²¹ In line with this reasoning, a

17. Telephone Interview with elementary school administrator, Denver Public Schools (Nov. 18, 1997).

18. Telephone Interview with elementary principal, Denver Public Schools (Nov. 17, 1997).

19. In DPS, elementary school integration was achieved by pairing schools so some students went to neighborhood schools for K-2, for instance, and then were bused for grades 3-5 to their paired schools. Students from the other school's feeder pattern did just the opposite. Telephone Interview with elementary principal, Denver Public Schools (Nov. 18, 1997).

20. See ORFIELD ET AL., *supra* note 1, at 37-38.

21. *Id.* at 38.

Latino elementary school principal in DPS observed, "I'm a proponent of integration but now we're looking at the community more as an asset. Busing was taking people out of the community, so ownership in the community was not there. So how was that an asset?"²²

In addition to concerns linked to busing, there was a growing sense in Denver that the political climate was changing. People of color were not going to be silenced. United States District Court Judge Richard Matsch, the judge who lifted the court order on DPS schools, noted, "The Denver now before the court is very different People of color . . . are active players in the political, economic, social and cultural life of the community. . . . There is little danger they will permit the public schools to deny them full participation."²³ Denver's African American mayor, Wellington Webb, had the same message: "This cloud has been hanging over the city for too long. We're living in different times."²⁴ Pierre Jimenez, a spokesperson for Hispanics of Colorado stated, "Busing has outlived its usefulness. Neighborhood schools would help rebuild community pride and revitalize some of our poorer parts of town."²⁵ A Latino DPS graduate and liaison between the mayor's office and school system concurred:

When we first had busing the school administration was more in control of the schools. Now they've given that power to the schools and the CDM's [collaborative decision-making teams] If you have the right personnel at the schools, they won't let that happen.²⁶

Overall, two trends have converged to produce broad support for neighborhood schools: first, a growing perception that the drawbacks to busing outweigh the benefits, and second, a sense that the political climate has changed; courts do not need to protect people of color in Denver.

22 . Telephone Interview with Latino elementary school principal, Denver Public Schools (Nov. 18, 1997).

23. Guy Kelly, *Matsch Wins High Praise for Toting Heavy Load*, ROCKY MTN. NEWS, Sept. 13, 1995, at 10A.

24. Romel Hernandez, *Emancipating the Schools*, ROCKY MTN. NEWS, Aug. 21, 1994, at 38A.

25. Romel Hernandez, *Minorities Push Neighborhood Schools*, ROCKY MTN. NEWS, Aug. 19, 1994, at 6A.

26. Telephone Interview with Latino DPS graduate and liaison between mayor's office and the school system, Denver Mayor's office (Nov. 15, 1997).

IV. The Downside to Neighborhood Schools

Although considerable optimism surrounded the decision in Denver and other cities to return to neighborhood schools, one should keep in mind that *Brown v. Board of Education* ruled that segregated schools (an outcome of returning to neighborhood schools) were “inherently unequal.”²⁷ In fact, American public schools are more segregated now than they were when our federal courts first took a proactive stance to support school integration.²⁸ This development reflects various factors. As Orfield and his colleagues argued, rulings by judges appointed during the Reagan-Bush era have had a notable effect:

Brown has been stripped of much of its power and reach by . . . Supreme Court decisions, by political maneuvers, and by the cumulative effects of uninformed, but often intense public debate. The Supreme Court decisions of the 1990s offer instruction not about how to further desegregation but about how to dismantle it. By allowing for the dismantling of special programming for segregated schools, the 1995 Supreme Court decision, *Missouri v. Jenkins*, suggests that the Supreme Court will not even support enforcement of the “separate but equal” doctrine that *Brown* overturned.²⁹

Consequently, there is limited judicial support for integration-related school/education policies.

Demographic trends also contributed to increased segregation. In the seventies and eighties, many American cities experienced an influx of low-income people of color, while many middle-income residents left American cities for surrounding suburbs — what Thomas and Mary Edsall termed the “suburbanization process.”³⁰ The socioeconomic and geographic polarization engendered by this demographic shift was clear by the 1990s: on average, White residents earned higher incomes, they had more formal schooling, and they were more likely to live in the suburbs. People of color had disproportionately low incomes, they had less formal schooling, and they lived in the inner cities.³¹

27. *Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954).

28. See, e.g., ORFIELD ET AL., *supra* note 1 and Orfield et al., *supra* note 3.

29. ORFIELD ET AL., *supra* note 1, at xiv-xv.

30. Thomas Edsall & Mary Edsall, *Race*, ATLANTIC MONTHLY, May 1991, at 53-86; see also THOMAS EDSALL & MARY EDSALL, CHAIN REACTION: THE IMPACT OF RACE, RIGHTS, AND TAXES ON AMERICAN POLITICS (1991).

31. See, e.g., J. ANYON, GHETTO SCHOOLING: A POLITICAL ECONOMY OF URBAN EDUCATIONAL REFORM (1997)†; P.J. MCQUILLAN, EDUCATIONAL OPPORTUNITY IN

The consequences for public education have been notable. Of greatest importance for this article is the fact that those students with the least cultural capital — cultural capital being the income, resources, knowledge, skills, attitudes, and social ties that are valued and linked with success and influence in society³² — now tend to be concentrated in particular schools. This concentration, in particular, the degree of poverty, disproportionately affects students of color as “only a twentieth of the nation’s segregated white schools face conditions of concentrated poverty among their children, but more than 80 percent of segregated black and Latino schools do.”³³ Assessing the impact of concentrated poverty on educational opportunity Orfield and his co-authors wrote:

High poverty schools have to devote far more time and resources to family and health crises, security, children who come to school not speaking standard English, seriously disturbed children, children with no educational materials in their homes, and many children with very weak educational preparation. These schools tend to draw less qualified teachers and to hold them for shorter periods of time. They tend to have to invest much more heavily in remediation and much less adequately in advanced and gifted classes and demanding materials. The levels of competition and peer group support for educational achievement are much lower in high poverty schools. Such schools are viewed much more negatively in the community and by the schools and colleges at the next level of education as well as by potential employers. . . . Students attending high poverty schools face a much lower level of competition regardless of their own interests and abilities.³⁴

We maintain that such conditions undermine educational opportunity for these students to the extent that their rights are violated. To provide empirical support for this argument we next review developments in DPS.

AN URBAN AMERICAN HIGH SCHOOL: A CULTURAL ANALYSIS (1998).

32. See P. BOURDIEU, *OUTLINE OF A THEORY OF PRACTICE* (Richard Nice trans., 1977); J.S. COLEMAN, *EQUALITY AND ACHIEVEMENT IN EDUCATION* (1990); J.S. COLEMAN ET AL., *EQUALITY OF EDUCATIONAL OPPORTUNITY* (1966); R. Stanton-Salazar, *A Social Capital Framework for Understanding the Socialization of Ethnic Minority Children and Youths*, Paper Presented at the Annual Meeting of the American Educational Research Association, New York, NY (1996).

33. Orfield et al., *supra* note 3, at 5.

34. *Id.* at 11; see also U.S. DEPT. OF EDUC., *SCHOOL POVERTY AND ACADEMIC PERFORMANCE: NAEP ACHIEVEMENT IN HIGH POVERTY SCHOOLS* (Sept. 1998).†

V. DPS Secondary Schools, Concentrated Poverty, and Educational Opportunity

To understand how concentrated poverty can influence educational opportunity we grouped DPS secondary schools into two cohorts. The first represents the six high schools with the most students who received free/reduced price lunch. The second group included the four schools with the fewest students who received free/reduced price lunch. In looking at data for the 1997-98 and 1998-99 academic years, the first two years of the return to neighborhood schools for DPS secondary schools, we found that the first cohort averaged 62.4 percent of its students who were registered for free/reduced price lunch; the range extended from a high of 75.4 percent to a low of 44.0 percent. The second cohort averaged 31.2 percent of students who were registered for free/reduced price lunch; that is half of what the cohort-of-six averaged. The second cohort ranged from a high of 37.2 percent to a low of 23.3 percent, less than a third of the average at the school with the most free/reduced price lunch students. In the district, 49.9 percent of all students received free/reduced price lunch.³⁵

We applied this two-cohort lens to various student data sources: the attrition rate (i.e., the degree of student turnover during the school year), student attendance, dropout rates, the percent of “acceptable” grades (C-minus or better) earned by a school’s students, the percent of students taking AP (advanced placement) courses, average scores on Iowa tests, and the percent of the student population that received special education services. We also looked at which schools offered English Language Acquisition (ELA) programs.³⁶ In conceptualizing the interrelationship among these data sources, we considered the attrition rate to be a factor that stems from lower socioeconomic circumstances and which directly influences educational opportunity because it is more difficult to serve a mobile student population than to work with a stable population. The collective impact of concentrated poverty, including student mobility, then reverberates throughout a school to undermine educational opportunity in many ways. To support this claim, we present the additional indices of student performance noted above (i.e.,

35. *Report of Free and Reduced-Priced Lunch, 1994-99* (DPS Dept. of Planning and Research, Denver, CO), 2000.

36. As with many districts, how to best serve non-native-English-speakers is a matter of controversy. The term “English Language Acquisition” highlights district commitment to having students learn English.

attendance, dropout rates, etc.), all of which suggest educational opportunity in these two sets of schools differed markedly, and that socioeconomic factors played a pivotal role in this development.

Specifically, for the two years since the end of busing, the attrition rate, the degree of student turnover in the course of a school year, for the six-school cohort averaged 89.86 percent of the total school enrollment. The schools ranged from a high of 111.7 to a low of 83.5 percent. The average attrition rate for the cohort-of-four was 64.58 percent, ranging from a low of 48.1 to a high of 82.6 percent. The district average was 79.75 percent.³⁷

In terms of dropout rates, one school from the cohort-of-six broke from the overall pattern (and this occurs two other times). Even so, the six-school cohort had a higher average dropout rate of 6.11 percent. The schools ranged from a high of 8.8 to a low of 3.2 percent, the outlier. The four-school cohort had an average dropout rate of 3.33 percent and ranged from a high of 4.5 to a low of 2.5 percent.³⁸ Attendance rates looked much the same, as the same school from the cohort-of-six disrupted the pattern. Nonetheless, the six-school cohort had a lower average attendance rate, 82.7 percent; it ranged from a high of 90.3 (the outlier) to a low of 74.0 percent. The other cohort had an average attendance rate of 87.6 percent and ranged between 84.4 and 90.0 percent.³⁹

Looking at the number of acceptable grades students earned (C- or better) revealed that 61.9 percent of students in the six-school cohort received acceptable grades, ranging from a high of 65.1 percent to a low of 57.0 percent. The four-school cohort averaged 71.35 percent, with a high of 74.6 percent and a low of 66.0 percent. In DPS, 65.7 percent of students earned acceptable grades.⁴⁰ These schools also differed in terms of the percentage of students taking advanced placement courses. Overall, 27 percent of all high school students took at least one AP course. In the cohort-of-six, the average was 19.7 percent, with a high of 27.3 and a low of 8.9 percent.

37. *Attrition/Stability*, 1994-99 (DPS Dept. of Planning and Research, Denver, CO), 2000. These figures offer a means to standardize comparisons of student turnover. That is, relative to the schools' total enrollment, the attrition rate reflects the number of students who enrolled and disenrolled at that school in the course of the year.

38. *Report of Dropouts and Graduates*, 1995/96-1999/00 (DPS Dept. of Planning and Research, Denver, CO), 2000.

39. *Report of Attendance*, 1994-99 (DPS Dept. of Planning and Research, Denver, CO), 2000.

40. *Grade Analysis*, 1994-99 (DPS Dept. of Planning and Research, Denver, CO), 2000.

In the four-school cohort, the average was 37.6 percent, ranging from a high of 47.8 to a low of 27.4 percent.⁴¹

The results from the Iowa Test of Basic Skills provided further evidence of the differences in performance between the two cohorts. For the 1997-98 and 1998-99 school years the cohort-of-six consistently scored below the cohort-of-four. This held true for all grade levels, i.e., 9th through 11th (12th graders don't take the exams) and all subjects tested for both years. Over these two years, in 11th grade reading, the cohort-of-six averaged a mean percentile of 46.2 while the cohort-of-four scored 67.9. In language arts the mean percentile scores were 45.5 and 59.7 for the cohort-of-six and cohort-of-four respectively. In math the results were 42.6 and 57.9 percent. For the 10th grade, the cohort-of-six scored 38.8 for reading, 39.4 for language arts, and 42.2 math. The cohort-of-four scored 61.2, 58.2, and 57.9 in reading, language arts and math, respectively. Similar differences in achievement were found in the 9th grade. The cohort-of-six averaged 42.1, 42.9, and 37.8 in reading, language arts and math while the cohort-of-four scored 60.6, 58.3, and 53.5 in the same subjects.⁴²

Similar divisions appeared between the two cohorts when we considered the percent of students enrolled in special education classes.⁴³ Again, there was a single exception — one school from the cohort-of-four had a greater percentage (11.4 percent) than did one school from the cohort-of-six (9.35 percent). Nonetheless, the cohort-of-six averaged 13.3 percent of its students enrolled in at least one special education course, with a high of 18.1 percent and a low of 9.35. The cohort-of-four averaged 10.3 percent of its students enrolled in special education classes, with a high of 11.4 percent and a low of 8.6 percent.⁴⁴

Thus, the six schools with the higher percentage of free/reduced price lunch students had higher rates of student mobility and higher average dropout rates. They had lower average rates of attendance and lower rates of students passing courses with acceptable grades.

41. *Advanced Placement Exam, 1995/96-1999/00* (DPS Dept. of Planning and Research, Denver, CO), 2001.

42. *Iowa Tests of Basic Skills and Iowa Tests of Educational Development: Mean Percentile Scores, 1995/96-1999/00* (DPS Dept. of Planning and Research, Denver, CO), 2001.

43. Special education designation included students judged to be cognitively disabled, emotionally disabled, and learning disabled.

44. *Special Education Report, 1994-2000* (DPS Dept. of Planning and Research, Denver, CO), 2000.

They also had lower Iowa test scores, fewer students enrolled in AP courses, and a greater average percentage of special education students. Moreover, only five DPS schools have ELA programs. All are in the six-school cohort.⁴⁵ In contrast, the city's more affluent high schools had lower rates of student mobility and lower dropout rates. They had higher rates of student attendance, higher rates of students passing courses with acceptable grades, and higher Iowa test scores. They also had more students enrolled in AP courses, fewer special education students, and no ELA programs.

In our view, the academic performance of the schools in these two cohorts suggests something of the challenge DPS and similar districts face in promoting educational equity. Schools that enroll many low-income students serve a challenging population. This was apparent in the outcomes we described, as the six-school cohort consistently underperformed in areas linked to educational opportunity and achievement. Furthermore, these schools are asked to do more than those serving more affluent students. No school in the four-school cohort, for example, has an ELA program and these schools had proportionately fewer special education students. Most American schools struggle to serve both populations effectively.

45. *English Language Learners by Year* (DPS Dept. of English Language Acquisition, Denver, CO), Oct. 2000. A DPS representative from the Department of English Language Acquisition told us the school most likely to be the next to offer an ELA program would be the sixth member of the six-school cohort. Interview with M. Lake, Dept. of English Language Acquisition, Denver Public Schools, in Denver, CO (2000).

**How Concentrated Poverty Can Influence Educational Opportunity:
1997-98 and 1998-99 Academic Years⁴⁶**

	6-School Cohort 1	4-School Cohort 2	DPS
% Registered to Receive Free Lunch	62.4	31.2	49.9
% Attrition	89.86	64.58	79.75
% Attendance	82.7	87.6	
% Dropouts	6.11	3.33	
% Acceptable Grades Earned	61.9	71.35	65.7
% Students Taking AP Courses	19.7	37.6	27.0
Iowa Test- Grade 11			
Reading	46.2	67.9	
Language Arts	45.5	59.7	
Math	42.6	57.9	
Iowa Test- Grade 10			
Reading	38.8	61.2	
Language Arts	39.4	58.2	
Math	42.2	57.9	
Iowa Test- Grade 9			
Reading	42.1	60.6	
Language Arts	42.9	58.3	
Math	37.8	53.5	
% Enrolled in Special Education	13.3	10.3	
# ELA Programs	5	0	5

VI. A Broader Look at DPS

In conjunction with the return to neighborhood schools, and even before the decision was enacted, DPS undertook various actions to make this change a positive development. The district put five million dollars into literacy programs in elementary schools, half of it was earmarked for 241 reading aides in all first grade classrooms.⁴⁷ DPS instituted more comprehensive standardized testing in the first weeks of school so teachers could establish a baseline of students' reading competencies, and work to improve them in the course of the school year.⁴⁸ At least one high school organized a bilingual parents advisory committee to increase access to and input from monolingual Spanish-speaking parents. Moreover, there has been an ongoing

46. See *supra* footnotes 35-45.

47. Brian Weber & Burt Hubbard, *Poverty Teaches Schools a Lesson*, DENVER ROCKY MTN. NEWS, Apr. 3, 2000, at 18A.

48. Brian Weber, *DPS Launches Neighborhood Schools*, DENVER ROCKY MTN. NEWS, Aug. 25, 1996, at 18A.

effort by DPS schools to bring parents and the local community into their governance process, often through collaborative decision-making teams.

While these efforts may represent a step in the right direction, a look at student performance on the Colorado Student Assessment Program (CSAP)⁴⁹ — the centerpiece to the state's high-stakes accountability system — reveals a similar relationship between concentrated poverty and student achievement as we found at the high school level.⁵⁰ There is a marked relationship between the percentage of DPS students on free/reduced price lunch and CSAP performance.⁵¹

When we ran correlational analyses to assess the impact of school poverty on achievement, the poverty variable being the percentage of students who receive free/reduced price lunch and achievement being the percent reaching the CSAP proficient or advanced level, we found the correlations to be significant and negative. For the 1998-99 school year, the correlations between free/reduced lunch and percent proficient and advanced were -0.907 for 7th grade reading, -0.855 for 7th grade writing, -0.862 for 4th grade reading, -0.855 for 4th grade writing, and -0.838 for 3rd grade reading. In 1999-2000, the correlations between free/reduced price

49. The Colorado Student Assessment Program (CSAP) was initiated by the State Legislature in 1993. In the 2001-02 school year the program will be fully implemented. Tests will be given in reading, writing, and science for 5th and 10th grade. Grades 3 and 4 will take reading and writing, and 8th graders will take a science assessment. All 11th grade students will take the ACT. Based on a weighted percentage of students at each proficiency level (advanced, proficient, partially proficient, unsatisfactory, and no-score-reported) schools receive descriptor grades ranging from "excellent" to "unsatisfactory." These weighted scores are standardized and schools in the top eight percent receive a monetary award. Those consistently scoring poorly may be converted to charter schools. In future years, low-scoring schools will receive an "improvement grade" based on the degree their score increases year-to-year. There are three exclusion categories: students who moved to Colorado after the October student count, second language learners who have been in the state less than two years for 3rd graders and less than three years for other grades, and students on an IEP who qualify to take the CSAP alternate.

50. To appreciate the link between concentrated poverty and student underachievement, see R. Balfanz & N. Legters, *How Many Central High Schools Have a Severe Dropout Problem, Where are They Located, and Who Attends?*, CENTER FOR SOCIAL ORGANIZATION OF SCHOOLS REPORT (Center for Social Organization of Schools, Johns Hopkins University, Baltimore, MD), 2001. Although this study only looks at dropout statistics, it offers a testament to the impact of concentrated poverty.

51. We offer no CSAP data on the ten comprehensive high schools because they will not take this exam until after this article has been completed.

lunch and percent proficient and advanced were -0.817 for 8th grade math, -0.864 for 8th grade science⁵², -0.883 for 7th grade reading, -0.867 for 7th grade writing, -0.823 for 4th grade writing, -0.846 for 4th grade reading, and -0.842 for 3rd grade reading.⁵³ The correlations for both years, for all grade levels and all subject areas, were significant at the .01 level, indicating a strong negative relationship between achievement and poverty; the higher number of low income students correlated with lower student achievement on CSAP.

Correlations Between Free/Reduced Price Lunch and Achievement⁵⁴

	Reading		Writing		Math		Science	
	98-99	99-00	98-99	99-00	98-99	99-00	98-99	99-00
3rd Grade	-0.838	-0.842						
4th Grade	-0.862	-0.846	-0.855	-0.823				
7th Grade	-0.907	-0.883	-0.855	-0.867				
8th Grade						-0.817		-0.864

VII. Policy Implications

The conditions of concentrated poverty experienced at some DPS schools promote markedly different educational experiences for students. To counteract this trend we propose a series of reforms aimed at remedying the inequities associated with concentrated poverty. In laying out a reform agenda one assumption should be kept in mind: School systems are by nature resistant to change for systemic reasons. Therefore, the reforms we propose, in particular those directly related to the schooling experience, are interrelated and complementary.⁵⁵ Otherwise, they would be overwhelmed by the status quo.

52. There were no tests administered to 8th graders until the 1999-2000 school year.

53. Colorado Dept. of Educ. Home Index Page (2001), at http://www.cde.state.co.us/index_assess.htm.

54. *Id.*

55. See, e.g., ANDY HARGREAVES ET AL., *SCHOOLING FOR CHANGE: REINVENTING EDUCATION FOR EARLY ADOLESCENTS* (1996); S.B. SARASON, *REVISITING "THE CULTURE OF THE SCHOOLS AND THE PROBLEM OF CHANGE"* (1996); KENNETH G. WILSON & BENNETT DAVIS, *REDESIGNING EDUCATION* (1994).[‡]

A. Acknowledge the collective nature of educational opportunity

First of all, society, including our courts, must acknowledge the collective nature of educational opportunity. In essence, looking at educational opportunity as a collective matter reveals that the need is greater in some schools; therefore, these schools should receive more resources. While Americans often view educational achievement as an individual phenomenon, largely a reflection of personal effort, in some cases the collective can overwhelm the individual. The United States Department of Education spoke to this matter:

[T]he effects of poverty on student achievement are not isolated only to individual students who are poor. Research shows that school-wide poverty affects student performance, independent of the students' own family background. The achievement levels of both poor and non-poor students decline as school poverty rates increase.⁵⁶

Currently, school districts tend to assume all students are created equal and dispense resources on a per capita basis. Yet concentrated poverty puts greater demands on some schools and these schools, having greater need, should receive more resources. Questioning traditional logic, the director of a Denver-based educational coalition addressed this matter:

The key issue . . . is how boards of education in districts like this need to really think about what "equity" means. In the busing days, equity meant standardization across the board — standardized racial balances and standardized inputs all along the line. Schools tried to keep everything "equal." Now that we've gone back to neighborhood schools we have to focus on standards and outcomes. . . . The definition of equity is what we really need to think about.⁵⁷

A veteran DPS elementary teacher who had taught in low-income as well as more affluent schools offered a similar assessment:

[Our district] has approached this matter as though "all schools are created equal." They allocate personnel by population, not need. The nurse, social worker, and psychologist and support services are allocated on an equal basis, even though the need for these professionals can be quite different at different schools. . . . The needs of our schools reflect the economic level of the

56. U.S. DEPT. OF EDUC., *SCHOOL POVERTY AND ACADEMIC PERFORMANCE: NAEP ACHIEVEMENT IN HIGH-POVERTY SCHOOLS* 3 (1998).

57. Telephone Interview with Director of Denver-based educational coalition, Public Education Business Coalition (Nov. 18, 1997).

populations they serve. We have to have professionals meet those needs in a compassionate, not frantic, manner.⁵⁸

Thus, school funds should be allocated not on a per pupil basis, but with an understanding of the collective needs of individual schools.

Collective socioeconomic factors also intertwine with parental involvement in schools to impact the education students experience. Lower-income families, for example, are more likely to be single-parent families with less time and fewer resources to invest in schools.⁵⁹ The impact this may have on educational opportunity can be glimpsed by briefly examining the success of fund raising in DPS elementary schools. At one school, a parent fund-raiser allowed the school to hire a librarian, art teacher, and computer teacher to lower student:teacher ratios in the classrooms. Another school's parent/teacher association provided teachers with \$100 per semester for classroom needs. At a third school the parent/teacher association was described as "largely non-existent."⁶⁰

High attrition rates are another collective factor that influence educational opportunity in lower-income schools. At schools where substantial numbers of students transfer in and out, guidance counselors must dedicate more time to processing students into and out of the school. These administrative duties are time consuming because they usually entail sending and receiving transcripts, matching students with appropriate and available classes, and establishing course credits. There is less time to disseminate information about college admissions, financial aid, vocational opportunities or to discuss students' educational plans or available programs. And all students, even those who do not move, are

58. Telephone Interview with veteran elementary school teacher, Denver Public Schools (Nov. 18, 1997).

59. See Orfield et al., *supra* note 3.

60. Although parent groups at more affluent schools may raise more money, any differential may be balanced somewhat by federal Title 1 funds that schools serving low-income populations can access. An elementary school administrator explained Title 1 funds do balance this out in terms of funding:

Our school has been able to hire a reading specialist, to create a music program, to hire paraprofessionals for our ECE [early childhood education] program and for grades three through five. We have been able to create a 20:1 student:teacher ratio. But what people fail to realize is that our children don't go home to things that more affluent students do Economics always figures into the equation no matter how hard you try.

Telephone Interview with elementary school administrator, Denver Public Schools (Nov. 15, 1997).

consequently less likely to connect with this key institutional representative. Guidance counselors are particularly important to low income students because their relatives and friends, the adults who young people typically rely on for direction, lack understanding of public education and college admissions. Therefore, limiting the time these students spend with guidance counselors may be especially damaging to them.⁶¹

High attrition rates also affect classroom teachers, because they must deal with students regularly leaving their classes and with introducing new students to their classes, all while teaching everyone else. This can undermine course goals and encourage teachers to focus on unambitious, short-term projects, rather than encouraging in-depth learning.⁶² High student mobility also hinders administrators in their efforts to plan class enrollments. When estimates are inaccurate, students are disadvantaged because their classes can be overcrowded. High mobility can also affect the sense of school community. Given substantial turnover, creating common bonds, a sense of shared purpose, and mutual respect becomes difficult. At one DPS high school from our cohort-of-six, guidance counselors estimated that fewer than one-third of all graduating students had spent all four of their high school years at that school. These are only a few ways in which collective factors can undermine educational opportunity.

B. Initiate lawsuits based on concentrated poverty

Overall, we maintain that because schools facing conditions of concentrated poverty have greater need than more affluent schools, they should receive a greater proportion of funds earmarked for education. We therefore encourage school districts to initiate lawsuits based on the educational inequities promoted by concentrated poverty. This seems a reasonable strategy for various reasons. First of all, there currently seems to be less commitment to promoting school integration through our courts. As Kevin Brown observed, courts have found “no compelling state interest for maintenance of integration policies. . . . [And] recent federal court

61. See, e.g., P. McDonough, *Who Gets to College: Social Class and Organizational and Context Effects*, Paper Presented at the Annual Meetings of the American Educational Research Association (1991); PATRICK JAMES MCQUILLAN, *EDUCATIONAL OPPORTUNITY IN AN URBAN AMERICAN HIGH SCHOOL* (1998).

62. See LINDA MCNEIL, *CONTRADICTIONS OF CONTROL: SCHOOL STRUCTURE AND SCHOOL KNOWLEDGE* (1986).

decisions seriously constrain the ability of public schools to foster an integrated student body and. . . even voluntary [integration] efforts are likely to be struck down.”⁶³ Similar thinking seemingly underlies the trend by our courts to declare increasing numbers of school districts unitary.⁶⁴

While the goal of integration may be of lesser importance in current judicial thinking, there seems to be increased support for the assertion that education is a fundamental right. Some state constitutions, for instance, present educational opportunity as a fundamental guarantee for all citizens. As Kevin Welner and Jeannie Oakes wrote:

Serrano v. Priest (1976) and *Butt v. State of California* (1992) together maintain that education is a fundamental interest in California and that denial of education provides an independent basis on which to make an equal protection claim. Strict scrutiny is triggered under the California equal protection guarantee if the state discriminates on the basis of race or wealth *or if* the fundamental interest in education is denied or infringed.⁶⁵

Expressing the same line of thinking, John Powell noted, “Thirty-eight states have taken up school financing issues. . . [because] they see education as a fundamental right.”⁶⁶ A New York state judge, for instance, recently declared the state’s system of educational funding unjust, saying it deprives students of the “sound, basic education guaranteed by the State Constitution.”⁶⁷

Complementing this development is an increased judicial focus on quality of education issues (e.g., achievement, discipline, and special education). Citing developments in the Middle District of Alabama, Wendy Parker found:

[S]chool desegregation litigation can reach into *quality* of education issues . . . , namely, how school children are treated once they enroll in a school [Consequently,]

63. K. Brown, Voluntary Desegregation, Paper Presented at the End of School Desegregation? Conference, University of Colorado School of Law (Oct. 2000).

64. ORFIELD ET AL., *supra* note 1, at 19-21.

65. Kevin G. Welner & Jeannie Oakes, *(Li)ability Grouping: The New Susceptibility of School Tracking Systems to Legal Challenges*, 66 HARV. EDUC. REV. 451, 453-54 (1996).

66. John Powell, An Historical Overview of School Desegregation, Paper Presented at The End of School Desegregation? Conference, University of Colorado School of Law (Oct. 2000).

67. A. Goodnough, *New York is Shortchanged in School Aid, State Judge Rules*, N.Y. TIMES, Jan. 11, 2001, available at <http://www.nytimes.com>.

this shift . . . may foster greater inter-party cooperation. Plaintiffs and defendants may disagree on responsibility for outcomes in achievement and the like, but the parties still often share common goals in fostering quality of education.⁶⁸

In this same vein, school districts might use the following to support their arguments: The “disparate impact” of “equal” funding creates a distinct difference in the nature of educational opportunity experienced by less affluent students, or they might invoke the notion of “rights maximizing,” a situation in which “the only question a court asks once it finds a violation is which remedy will be the most effective for the victims, where ‘effectiveness’ means success in eliminating the adverse consequences of violations suffered by victims.”⁶⁹ Such rulings allow courts

to determine whether students were being disadvantaged in ways that require the formulation of new and greater remedies to ensure full compliance with the court’s decree . . . [thereby] increas[ing] opportunities to inquire into and cure any defects in the education afforded minority schoolchildren.⁷⁰

Both of these matters could even be addressed in “show cause” hearings because such settings can allow for informal discussions of a range of case-related issues.⁷¹

For districts interested in pursuing such an overall strategy we encourage them to collect data that will support a strong case in our courts. To begin, plaintiffs might collect richer data on the socioeconomic circumstances of a school’s students rather than merely relying on free/reduced price lunch figures. In talking with many school counselors, they acknowledge that free/reduced price lunch statistics can be underestimated because some students don’t enroll in the program because of the associated stigma. Further, schools should link this SES data with other collective student characteristics, student mobility rates being one prominent factor to consider. As our research suggests, student mobility can impact the quality of educational opportunity experienced by students in myriad ways. In turn, schools should assess just how SES and student mobility impact educational opportunity, taking into account such

68. Wendy Parker, *The Future of School Desegregation*, 94 NW. L. REV. 1157, 1206 (2000).

69. *Id.* at 1176.

70. *Id.* at 1171-72.

71. *Id.* at 1218-20.

traditional measures of achievement as dropout rates, standardized test scores, grade distribution summaries, etc. They might also consider some qualitative measures of educational opportunity, perhaps creating a means to assess school climate via a student survey or even to consider the “neighborhood” impact on educational opportunity.⁷² It will be critical that districts examine such data for as long a time as possible to substantiate that such developments are long-term and even self-replicating.

In making this argument, we realize that redistributing resources will be difficult, in part, because the communities served by the neediest schools (i.e., low-income, minority populations) have historically been the most politically uninvolved and disenfranchised. For these populations, authentic involvement in the politics of education will be challenging — given language issues, the generally lower levels of educational attainment, and the mistrust and lack of understanding about schools and school systems held by many lower-income people. As Gary Orfield and his colleagues observed:

To try to provide equal opportunities within segregated schools and districts, school officials would have to set up mechanisms to provide the most resources to the most disadvantaged, who happen to be the most powerless. Given the operation of local and state school politics there is no probability that such money, resources, or special programs would stay in place. The depth and severity of the inequalities and their self-perpetuating character help explain why desegregation cases continue to seek ways to reconstruct the basic structures of educational segregation.⁷³

72. C.L. Garner & S.W. Raudenbush, *Neighborhood Effects on Educational Attainment*, 64 SOC. OF EDUC. 251, 251-62 (Oct. 1991).

73. ORFIELD ET AL., *supra* note 1, at 70-71. In addition to the relative lack of political power held by many low-income persons of color, the divisions engendered by the suburbanization process make it increasingly less likely that low-income residents will interact with those more affluent in communities-at-large as well as in schools. Edsall & Edsall alluded to the consequences of such pronounced divisions:

The contact between whites and black underclass [and we would argue, most persons of color] has routinely violated every standard necessary for the breakdown of racial stereotypes. Most white contact with the underclass is through personal experience of crime and urban squalor, through such experience related by friends and family, or through the daily reports about crime, drugs, and violence which appear on television and in newspapers. The news includes, as well, periodic reports on out-of-wedlock births, welfare fraud, drug-related AIDs, crack babies, and inner-city joblessness.

Thomas Byrne Edsall & Mary D. Edsall, *Race*, ATLANTIC MONTHLY, May 1991, at 53, 56. Seeing how interaction, and therefore understanding and empathy, decreased between those more affluent and persons of color and low-income residents, it becomes apparent

However, such conditions are precisely why we encourage districts to address the issue of concentrated poverty and educational opportunity through our courts. While there are no guarantees, courts have the potential to evaluate the impact of concentrated poverty from perhaps a more objective viewpoint. Their thinking is not so preoccupied with district concerns. They can evaluate educational opportunity across all districts in a state and enact policies that put the interests of the general populace above those of local districts. Assuming districts are successful with this legal strategy, the following proposals all aim to use additional state funding to enhance student achievement in high poverty schools.

C. Create smaller schools⁷⁴

What we see as the most valuable structural innovation school districts could adopt and an appropriate way to honor the collective nature of educational opportunity is for urban districts to make schools smaller,⁷⁵ mainly to promote a more personal context, in particular, enriched student-teacher relations. Present school structures do little to foster learning, trust, or understanding. Most urban teachers see 120 to 140 or more students a day, undermining teacher efforts to understand students as learners and as people.⁷⁶ Work can be superficial because it fits with the schools' priorities, which often reflect greater concern for control and order than

that the suburbanization process has implications for issues of educational opportunity for urban students. Alluding to what he termed America's "residential apartheid," Andrew Hacker offered a similar reaction:

[F]ew white Americans feel an obligation to make further sacrifices on behalf of the nation's black minority. They see themselves as already overtaxed; feel the fault is not theirs; and that money cannot achieve a cure. About the only funding the public approves is for more police and prisons.

A. HACKER, TWO NATIONS, BLACK AND WHITE: SEPARATE, HOSTILE, UNEQUAL 214 (1992).

74. While this proposal may be most appropriate at the secondary level, research conducted by the *Rocky Mountain News* reveals its relevance at the elementary level as well: "Among elementary schools with 500 students or more, the larger the school, the lower the [CSAP] test scores." Brian Weber & Burt Hubbard, *Poverty Teaches Schools a Lesson*, ROCKY MTN. NEWS, Apr. 3, 2000, at 4A.

75. We contend smaller schools are more effective and equitable but a smaller size does not guarantee positive outcomes. See M.A. Raywid, *Alternatives and Marginal Students*, in MAKING A DIFFERENCE FOR STUDENTS AT RISK 119-155 (M.C. Wang & M.C. Reynolds eds., 1995).

76. See N. NODDINGS, THE CHALLENGE TO CARE IN SCHOOLS: AN ALTERNATIVE APPROACH TO EDUCATION (1992).

learning and growth.⁷⁷ In fact, many researchers explain minority student failure (and, by association, poor achievement by low-income students) to an active rejection by students of an institution and society that has historically oppressed them. This argument is compelling and is validated historically, as one merely needs to look at the treatment of African Americans, Indians, and Mexican Americans by White American society to understand why an oppositional culture would be so prominent among these groups.⁷⁸

Schools therefore should explicitly attend to interpersonal relations. Respect, trust, and understanding between students, teachers and administrators must be commonplace. When this occurs, educational opportunity is enhanced. Working with urban Hispanics, for instance, Walter Secada and his co-authors maintained that personal relations were key because “[those] students who stayed in school . . . often pointed to someone in that school — a teacher, coach, some other school staff member, someone from the larger community — whose personal interest in their finishing school nurtured their sense of individual self-worth and supported their efforts to stay in school.”⁷⁹ Gary Wehlage and his colleagues described similar developments: “The key finding from our research is that effective schools provide at-risk students with a community of support.”⁸⁰ The Panel on High-Risk Youth of the National Research Council validated the same claim by looking at large schools:

The large size of many high schools is seen as a strong institutional barrier to a positive school climate. In large schools, teachers are most likely to form close supervisory relations with only the most accomplished students, while others (most often minority students and low achievers) remain isolated from ongoing adult attention.⁸¹

77. See MCNEIL, *supra* note 62.

78. See, e.g., S. FORDHAM, *BLACKED OUT: DILEMMAS OF RACE, IDEOLOGY, AND SUCCESS AT CAPITOL HIGH* (1996); R.P. McDermott, *Achieving School Failure: An Anthropological Approach to Illiteracy and Social Stratification*, in *EDUC. & CULTURAL PROCESS* 173-209 (G.D. Spindler ed., 1987); J. Ogbu, *Variability in Minority School Performance: A Problem in Search of an Explanation*, 18 *ANTHROPOLOGY & EDUC. Q.* 312-34 (1987).†

79. W.G. Secada et al., *No More Excuses: The Final Report of the Hispanic Dropout Project*, *HISPANIC DROPOUT PROJECT* 16 (1998), available at http://www.senate.gov/~bingaman/bingaman/hispanic_dropout_prevention.html.

80. GARY G. WEHLAGE ET AL., *REDUCING THE RISK: SCHOOLS AS COMMUNITIES OF SUPPORT* 223 (1989).

81. PANEL ON HIGH-RISK YOUTH, NATIONAL RESEARCH COUNCIL, *LOSING GENERATIONS: ADOLESCENTS IN HIGH-RISK SETTINGS* 207 (1993).

A smaller school size allows schools to attend to interpersonal relations. In smaller schools, disruptions and disturbances are lessened simply because adults and students know each other better. In less disruptive environments, faculty and administrators can focus on teaching and learning, and less on control and order.⁸² Administrators can be educational leaders. And these factors link to academic achievement. As Valerie Lee and her colleagues found in their study of restructured schools, “[s]tudents learn more, and learning is distributed more equitably, in smaller schools.”⁸³ Mary Ann Raywid’s study of alternative schools also highlighted the value of smaller schools, as all schools judged “successful” by the study were small.⁸⁴ Kathleen Cotton’s synthesis of 103 studies that examined the relationship of school size to various school-related outcomes offered further validation. As she found, in small schools:

- Academic achievement was at least comparable to — and often better than — that of large schools.
- Student views of school life in general and toward particular subjects were more positive.
- Student behavior — including truancy, discipline problems, violence, theft, substance abuse, and gang participation — was more positive.
- Levels of extracurricular participation were higher and students described their involvement as more fulfilling.
- Attendance was better and dropout rates were lower.
- Students had a greater sense of belonging.
- Relationships among students, teachers, and administrators were more positive.
- Students from small schools performed as well as students from large schools in such areas as college board scores, grade point averages, and college completion rates.⁸⁵

The benefits of a smaller size also emerged in studies of educational change. In research with the Coalition of Essential Schools (CES), McQuillan and Muncey found size to be a key factor. Large, comprehensive high schools were divided into magnet

82. DEBORAH MEIER, *THE POWER OF THEIR IDEAS: LESSONS FOR AMERICA FROM A SMALL SCHOOL IN HARLEM* 107-18 (1995).

83. V. Lee & R. Croninger, *Another Look at High School Restructuring*, in *ISSUES IN RESTRUCTURING SCHOOLS* 1 (1995)†; See also William H. Clune, *Accelerated Education as a Remedy for High-Poverty Schools*, 28 U. MICH. J.L. REFORM 665, 666-80 (1995).

84. Raywid, *supra* note 75, at 119-55.

85. Kathleen Cotton, *School Size, School Climate, and Student Performance*, in *SCHOOL IMPROVEMENT RESEARCH SERIES, Close-Up Series #20*, 13-15 (1996).

programs, AP and honors courses, multiple tracks, and numerous autonomous departments. In their structure and in practice, faculty saw their work differently, which commonly led to more resistance and confusion than reform. Furthermore, smaller schools could involve a sizable percentage of faculty in reform and thereby enhance faculty understanding of proposed changes and the likelihood of generating consensus.⁸⁶ Reflecting on her work at Central Park East, a CES school, Principal Deborah Meier explained:

Only in a small school can deep ongoing discussion take place in ways that produce change and involve the entire faculty — even there, it's tough to sustain. For teachers to start thinking through the task before them, collectively and collaboratively, schools must be so small that governance does not become the topic of discussion but issues of education do, so small that the faculty as a whole becomes the decision-making body regarding questions of teaching and learning.⁸⁷

In small schools administrators accorded faculty greater power, perhaps because it was easier to know how teachers used their autonomy.⁸⁸ When administrators supervise a hundred-plus teachers or more, there is little chance of knowing what happens in classrooms, in particular, what teachers are doing.⁸⁹ Trust often becomes contentious and reform is slowed as administrators micro-manage reform rather than entrusting power to teachers.

The potential of smaller school size to address inequities seems considerable. As students, teachers, and administrators come to know one another better by interacting more regularly, they have more opportunities to display respect and understanding. Ideally, this engenders greater trust and lays a foundation for student achievement and more productive relations throughout the school.

D. Restructure the school year

Since many urban schools face greater challenges than suburban

86. Patrick J. McQuillan & Donna E. Muncey, 'Change Takes Time': *A Look at the Growth and Development of the Coalition of Essential Schools*, 26 J. OF CURRICULUM STUD. 265, 267-79 (1994); DONNA E. MUNCEY & PATRICK J. MCQUILLAN, REFORM AND RESISTANCE IN SCHOOLS AND CLASSROOMS: AN ETHNOGRAPHIC LOOK AT THE COALITION OF ESSENTIAL SCHOOLS (1996).

87. MEIER, *supra* note 82, at 108.

88. MUNCEY & MCQUILLAN, REFORM AND RESISTANCE IN SCHOOLS AND CLASSROOMS, *supra* note 86.

89. See, e.g., PHILIP CUSIK, THE EGALITARIAN IDEAL AND THE AMERICAN HIGH SCHOOL 9, 43 (1983); MCNEIL, *supra* note 62.

schools, urban districts should consider changing this taken-for-granted structure. In particular, we encourage them to extend the school year. (*But not to do more of the same!*) A longer school year would make it easier for teachers to experiment with active research, learning outside the classroom, project-based instruction, and work that is collaborative and interdisciplinary. Students might be given more responsibility and could work outside the school building. There could be collaborative projects. Time might be set aside for individual student-teacher conferences, an unheard of luxury in most inner-city schools. Teachers and students might come to know one another in contexts other than classrooms. And students might realize that most teachers are concerned with their well-being and that learning can actually be fun and engaging.

Even if districts choose not to extend the school year, it makes little sense to give students twelve weeks to forget too much of what they learned, and then spend the first weeks of school reviewing what was forgotten. While the academic skills of low-income students may decrease during the summer, for those with higher levels of cultural capital, the opposite is likely true. Family vacations, summer schools, and camps represent wonderful educational opportunities for students who can afford them.⁹⁰ To make opportunity available for more urban students, summer school should at least be an option.

E. Make time for teachers

If schools are to be systematic about change, there must be time for teachers to do their job well. The logic behind this proposal is compelling: Improve educational achievement by directly improving the quality of classroom teaching and giving teachers time to learn, reflect, and grow. The low standards that afflict many urban schools are, in part, a reflection of the demands put on teachers. There is little room allowed for teachers' growth, as opposed to making professional growth a standard part of educational practice. Seymour Sarason put the matter bluntly: "Teachers cannot create and sustain contexts for productive learning unless those conditions exist for them."⁹¹

90. JAMES S. COLEMAN, *EQUALITY AND ACHIEVEMENT IN EDUCATION 5-7* (Marta Tienda & David B. Grusky eds., 1990); H. Cooper et al., *The Effects of Summer Vacation on Achievement Test Scores: A Narrative and Metaanalytic Review*, 66 *REV. OF EDUC. RES.* 227, 227-268 (1996).

91. S.B. SARASON, *REVISITING "THE CULTURE OF THE SCHOOLS AND THE PROBLEM OF CHANGE"* 367 (1996) (emphasis in the original).

To provide teachers with this time on a regular basis, schools could simply have them teach fewer classes. Of course, to do this, beliefs must shift. People cannot assume, "a teacher not teaching is a teacher not working."⁹² For instance, students could take the same number of courses but have fewer classes. What other strategy could so directly influence instruction? The present system of inundating teachers with students and responsibilities does little but exhaust some and force others to compromise their professional ideals. Allowing teachers greater time, either individually or collectively, to plan their work, could translate into more productive learning for students and improved working conditions for teachers. In addition, this would allow schools to shift greater responsibility to students, a logical move if schools are to help create informed and responsible citizens capable of educating themselves as adults.

A second way to create time for teachers would be to decrease the number of credits required to graduate. Although many policy makers and legislators believe the remedy for low expectations and poor achievement among urban schools is to increase the number of required courses, this seems pointless if nothing is done to alter the nature of the courses themselves. When the standards are low, what benefits derive from more-of-the-same? What happens in classrooms needs to change and freeing teachers to plan, reflect, and collaborate can be an impetus for such change.

F. Include students in the reform process

In too many American schools students receive inauthentic, unengaging, and mediocre educations.⁹³ Learning is commonly a passive experience of little importance or perceived relevance and most students have little power or responsibility for shaping their education.⁹⁴ Too often, schools are anonymous, demeaning institutions in which students are easily lost or lose themselves. The degree to which students are excluded from defining or even understanding their educational experience became poignantly clear while one author, Patrick McQuillan and a colleague, did a guest presentation in a history class at the high school most heavily impacted by the return to neighborhood schools in the fall of 1997. The class included roughly one-third White, one-third Latino, and

92. WILSON & DAVIS, *supra* note 55, at 123.

93. See, e.g., ARTHUR G. POWELL ET AL., THE SHOPPING MALL HIGH SCHOOL 173-184 (1985); THEODOR R. SIZER, HORACE'S COMPROMISE (1984).†

94. MCQUILLAN, *supra* note 61.

one-third African American students. The topic was integration in Denver schools. In talking with students it was clear the majority had little idea why DPS had returned to a policy of neighborhood schools, let alone why students had been bused in the first place.⁹⁵ At best, a few students alluded to “improving race relations.” Most admitted, “I don’t know.”

So what success would such a policy have if the key actors in implementing change, the students, have little understanding for the rationale behind the policies? If we expect students to be fully participating democratic citizens upon graduation, we miss a great opportunity to have them practice active citizenship by excluding them from critical decision-making processes linked to their educational opportunity. As a general guide, we suggest the following:

- When policies intended to significantly affect students are enacted, such as busing or CSAP, students should be informed of the rationale behind these decisions;
- Students should serve on boards or committees that enact such decisions, even if only in an advisory capacity, as it would likely be a valuable lesson in democratic governance; and
- Student opinions should be solicited as to the effectiveness of reforms after they have been implemented so policy is made from an informed perspective, rather than assuming student views are self-evident or unimportant.

G. Reconsider high-stakes testing and accountability

In the present political climate it is almost taken-for-granted that greater educational achievement can be secured by imposing various forms of accountability on schools, mainly through standardized testing.⁹⁶ Yet our analysis highlights the fact that certain DPS high schools face greater challenges than others. The cohort-of-six included the only schools with ELA programs and served proportionately more special education students. These populations will bring down their CSAP scores. To put all schools in the same testing competition, to assume they have an equal chance at success, and to dispense rewards and punishments accordingly, is to deny

95. The creation of CSAP was similar: Students had no voice in deciding whether a testing program should be adopted, creating the test, or assessing its effectiveness.

96. Harvard Civil Rights Project, *Testing: The Needs and Dangers* (2001) at <http://www.law.harvard.edu/groups/civilrights/alerts/testing.html>; Orfield et al., *supra* note 3, at 5-24.

reality. Though CSAP will eventually judge schools on improvement over time, rather than remedying the situation, we fear this test will have the opposite effect: failing schools will become even more socioeconomically segregated and educational opportunity for low-income students will be further undermined.⁹⁷ For instance, what parent with adequate resources will not avoid sending her/his child to a failing school, even if the school has ostensibly improved? What capable student will choose to attend a failing school? Which teachers, besides those young and/or desperate for work, will teach there? What administrator would work at these schools? And what will educational opportunity look like?

Moreover, merely implementing high-stakes tests by no means guarantees improved achievement. When confronted with high-stakes tests, schools often end up merely “teaching to the test,” with no appreciable impact on genuine student achievement.⁹⁸ As Robert Linn recently wrote:

As someone who has spent his entire career doing research, writing, and thinking about educational testing and assessment issues, I would like to conclude by summarizing a compelling case showing the major uses of tests for student and school accountability during the past 50 years have improved education and student learning in dramatic ways. Unfortunately, this is not my conclusion. . . . [Instead,] the unintended negative effects of the high-stakes accountability uses often outweigh the intended positive effects.⁹⁹

In Texas, for instance, scores on the Texas Assessment of Academic Skills have consistently improved over a ten-year period, with notable improvements for African American and Latino students.¹⁰⁰ Yet scores on the National Assessment of Educational Progress and the SAT have not shown comparable growth, suggesting that schools have narrowed the curriculum and merely taught to the test, without enhancing student achievement.

97. See, e.g., K. HOWE & M. EISENHART, *A STUDY OF BOULDER VALLEY SCHOOL DISTRICT'S OPEN ENROLLMENT SYSTEM* (2000).

98. W. Haney, *The Texas Miracle in Education*, 8 EDUCATIONAL POLICY ANALYSES ARCHIVES, 41 (2000), available at <http://www.epaa.asu.edu/epaa/v8n41part8.html>; Harvard Civil Rights Project, at <http://www.law.harvard.edu/groups/civilrights/alerts/testing.html>; ACCOUNTABILITY, ASSESSMENT AND TEACHER COMMITMENT (Betty Lou Whitford & Ken Jones eds., 2000).

99. Robert Linn, *Assessments and Accountability*, 29 EDUC. RESEARCHER 4, 14 (2000).

100. Haney, *supra* note 98, at 41.

Further, although concern with achievement and accountability pervade discussions of high-stakes testing, research suggests the outcomes may be otherwise. Low achievement can reflect factors outside the control of individual students and schools. As the Harvard Civil Rights Project found:

[a] student's performance . . . is significantly tied to the level of their teacher's experience. Minority and low-income students tend to have teachers with the lowest amounts of experience and are therefore likely to perform less well . . . than their White counterparts—and to be unfairly hurt by the test's consequences.¹⁰¹

Teacher turnover can also impact educational achievement, and turnover is consistently higher in low-income schools. At one Colorado elementary school with 75 percent of its students being low-income, 45 teachers have come and gone in the past six years. A more affluent school in the district lost only one teacher over the same period.¹⁰² The National Research Council described similar developments, writing that “group differences in test performance. . . may be due to a lack of access to a high-quality curriculum and instruction. Thus, a finding of group differences calls for a careful effort to determine their cause.”¹⁰³ This was apparent in our analysis of DPS secondary schools as schools in the cohort-of-four had over twice as many students enrolled in advanced placement courses as did the cohort-of-six. All of these developments reflect factors outside the control of individual students and schools. Yet most accountability systems treat students and schools that face such conditions just the same as those more fortunate.

While we endorse the State's commitment to high expectations and high achievement for all, we encourage the State to assess whether the estimable goals it has set are being realized through CSAP. Specifically, as part of the CSAP plan the State should address the following questions:

- Is CSAP encouraging greater concentrations of poverty at low-performing schools? How does this affect educational opportunity? Should the State provide additional support for these schools?
- Are schools with disproportionate numbers of low-income, non-native-English-speaking, and special education students being unfairly stigmatized, which in turn undermines the education students

101. Harvard Civil Rights Project, *supra* note 96, at 2.

102. Weber & Hubbard, *supra* note 47, at 39A.

103. Harvard Civil Rights Project, *supra* note 96, at 2.

experience?

- Do CSAP scores correlate with per pupil funding such that the State will be essentially subsidizing wealthier districts?
- As genuine improvement in student achievement should be broadly generalizable, how do improvements (or lack thereof) in CSAP scores compare with student performance on other standardized tests, such as SAT, ACT, Iowa tests, and NAEP?

VIII. A Final Thought: So What About Integration?

Given the emphasis of this article, one might infer that we either oppose efforts aimed at creating an integrated society or that we have abandoned any hope of doing so. Quite to the contrary, we believe American schools should continue to work toward creating a truly integrated society, as such a society is likely to be a more just, respectful, and healthy environment. However, in seeking this end it may be wise to sidestep the myriad logistical, legal, and political constraints on making school integration work. Indeed, we find it ironic that American society would have placed so much responsibility for creating an integrated society and addressing the ills perpetuated by centuries of racism on students. These are people, who in most cases, must ask permission to go to the bathroom. How are they going to reverse the segregation and remedy racist attitudes that have afflicted the United States since its very conception?

Instead, to promote a more just and integrated society, we maintain that American society should begin by first providing all Americans with a quality education. To do this, our courts and school systems cannot continue to assume “all students are created equal.” They aren’t. Some schools clearly face greater challenges than others. They should therefore receive more attention and more resources. If this occurs, we believe the students who graduate from these schools will have a greater chance of entering society with the skills and self-confidence needed to enter the top universities and compete for the most desirable jobs. In turn, our workplaces might become more integrated and eventually our neighborhoods. In any case, this would place the main responsibility for integrating society on adults, where it belongs, rather than on school children.