SCHOOL INTEGRATION MATTERS

Research-Based Strategies to Advance Equity

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Predicting School Diversity Impacts of State and Local Education Policy

The Role of Title VI

Philip Tegeler

The growing use of prospective equity assessments to track the racial impacts of government policies and programs marks an important step forward in civil rights practice. At the federal level, these equity assessments, or "equality directives," derive primarily from Title VI of the Civil Rights Act of 1964 (referred to as Title VI), which bars racial discrimination in federally funded programs. Title VI equity assessments represent a branch of the longstanding field of social impact assessment, but are more explicitly focused on issues of *racial* impact. As a branch of social impact assessment, Title VI equity assessments must be closely tied to the history, context, and goals of the particular agency for which the assessment is conducted.

This chapter suggests that the U.S. Department of Education should take advantage of its untapped legal authority under Title VI to develop a proactive equity assessment tool that can be used by states and local school districts to predict the likely racial impacts of major policy changes or investments. In the legal context and history of the Department of Education, under both Title I of the Elementary and Secondary Education Act (ESEA) and Title VI of the Civil Rights Act, such an assessment would need to include a detailed analysis of anticipated segregation impacts of major agency actions affecting children in constitutionally protected classes.

THE EXPANSION OF EQUITY ASSESSMENTS AT THE FEDERAL AGENCY LEVEL

When Title VI was initially implemented, its regulations established a basic administrative complaint process within each federal agency. This legal

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model was essentially passive, with compliance dependent upon the filing of an administrative complaint by an outside party (as opposed to affirmative compliance reviews by the agency or self-assessments by state and local grantees). The filing of a Title VI complaint generally leads to an investigation, conciliation, and eventual adjudication (U.S. Department of Justice, Civil Rights Division, 1998).

Until recently, this complaint-driven approach to Title VI was the norm at most federal agencies, including the Department of Education. But in the last decade, several federal agencies have taken a more proactive approach and have required state and local governments to assess the racial impacts of their policies in advance and evaluate less discriminatory alternatives (O. Johnson, 2012). Title VI regulations and guidance at the Federal Transit Administration and the Department of Agriculture exemplify this new approach (U.S. Department of Agriculture, 2003; U.S. Department of Transportation, 2012). A similar prospective equity assessment is included in the Department of Housing and Urban Development's proposed Affirmatively Furthering Fair Housing rule (U.S. Department of Housing and Urban Development, 2015). Olatunde Johnson has termed these new, affirmative regulations "equality directives," opening up a new, nontraditional advocacy front in civil rights enforcement (O. Johnson, 2012).

The best example of these new proactive rules is the Federal Transit Administration's 2012 Title VI Guidance. The FTA Guidance requires a Title VI "equity analysis" for the siting of new transit facilities, proposed fare changes, and some other actions by larger transit systems, requiring detailed assessments of racial impacts. If the transit provider forecasts a potential disparate impact associated with a proposed action, it must "determine whether alternatives exist that would serve the same legitimate objectives but with less of a disparate effect on the basis of race, color or national origin." If alternatives exist, "the transit provider must revisit the service changes and make adjustments that will eliminate unnecessary disparate effects" (USDOT, 2012, Chap. IV-16).

The Department of Education has the authority to adopt a similar Title VI assessment tool to help its grantees assess the racial impacts of major policy and spending decisions, but it has so far refrained from doing so.

Equity Assessments as a Branch of Social Impact Assessment

Social impact assessment has been defined as "the process of identifying the future consequences of a current or proposed action, which are related to individuals, organizations and social macro-systems" (Becker, 2001, p. 312). Modern social impact assessment, at least in the United States, traces its roots to the 1970 National Environmental Policy Act (NEPA), with its required "Environmental Impact Statements" (EIS) for major government action. NEPA included social issues within the definition of environment,

and social impact assessment emerged as a significant feature of the act during the Alaska oil pipeline controversy in the early 1970s (Vanclay, 2005).

State environmental laws further refined the practice of social impact assessment, notably in New York's State Environmental Quality Review Act (SEQRA), which defines environment to include "existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character" (NY Environmental Conservation Law, 1975). For example, in an early social impact case under SEQRA, the court considered (and ultimately dismissed) a claim that the Times Square redevelopment plan had failed to adequately address residential displacement in its environmental review (In the Matter of Fannie Mae Jackson, 1985).

In the context of Title VI, social impact assessment is concerned with predicting and ameliorating adverse impacts on individuals or groups on the basis of race, resulting from major new projects or policies. Racial impact assessment is an important subset of the field of social impact assessment, with a particular focus on assessing disproportionate future racial impacts of major public policies and actions.

Racial impact analysis has long been a staple of civil rights advocacy, generally in the context of establishing liability for past or ongoing discriminatory policies under federal civil rights laws. A number of federal and state civil rights laws have imposed liability for policies and practices that have a disproportionate and unjustified discriminatory impact on the basis of race or ethnicity—including the Title VI regulations (government-funded programs), Title VII (employment), and Title VIII (housing). Disparate impact analysis is also applied in other civil rights contexts involving discrimination on the basis of age, gender, disability, sexual orientation, and so on.

National civil rights organizations have also asked the government to establish prospective racial impact assessments of agency decisions before they are made (Kennedy, Sonnad, & Hing, 2013). For example, in 2008, the Applied Research Center (now known as "Race Forward") assisted a community-based education organization in Minneapolis with a racial impact assessment of proposed school closings and changes in student transportation routes (Toney & Keleher, 2013). Additionally, the Opportunity Agenda has called on federal agencies to adopt broad "Opportunity Impact Statements" that incorporate a full range of civil rights protections (Jenkins, Thukral, Hsu, & Kunakemakorn, 2012). Municipal leaders in Seattle and King County, WA, have also used racial equity assessment as a planning tool (Kennedy, Sonnad, & Hing, 2013; Nelson, Harris, Ciske, & Valenzuela, 2009).

A prospective racial equity assessment should align with the substantive goals of the agency and the agency's underlying legal authority. As discussed below, at the Department of Education, "racial impact" necessarily encompasses the causes and consequences of racial and economic segregation and the agency's mandate to promote equal and integrated educational opportunities.

The Central Role of School Integration at the Department of Education

Although leadership at the Department of Education prior to 2014 did not prioritize school diversity (National Coalition on School Diversity, 2014), school segregation and integration are nonetheless closely related to all of the issues in K–12 education that the Department of Education cares about. Attendance in racially isolated schools is linked to a wide range of negative educational outcomes, including lower student achievement results, higher dropout rates, lower college completion rates, less qualified teachers, high rates of teacher turnover, less challenging curriculum, and higher rates of student discipline (Harris, 2006; Mickelson, 2003; Orfield, Kucsera, & Siegel-Hawley, 2012). Conversely, school integration is associated with a broad range of positive education outcomes (R. Johnson, 2014). The relationship between disparities in education resources, outcomes, and segregation is acknowledged directly in the two key federal statutes used to oversee K–12 education, Title VI and the ESEA.

The History and Purpose of Title VI as Applied to the Department of Education. Title VI of the Civil Rights Act of 1964 was designed to end racial discrimination and segregation in federally funded programs and facilities—with a special focus on segregated schools and hospitals. But the framers of Title VI did not limit their vision to intentional or de jure segregation. For example, in his address to the American people introducing the civil rights bill in 1963 that would later become the Civil Rights Act of 1964, President Kennedy noted that "difficulties over segregation and discrimination exist in every city, in every State of the Union, producing in many cities a rising tide of discontent that threatens the public safety" (Kennedy, 1963). Consistent with the president's statement, amendments in 1969 to Title VI made it clear that addressing "de facto" school segregation was a key goal of the statute:

> It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 and section 182 of the Elementary and Secondary Education Amendments of 1966 dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation (42 U.S.C. § 2000d–6).

The legislative history of Title VI is replete with references to segregation policies and practices, and it was understood that the new statute would eliminate perennial disputes over segregation in every federal program that came up for reauthorization or annual funding (Tegeler, 2014). In addition, Section 102 of Title VI "authorizes and directs" the

Department of Education to advance Title VI's nondiscrimination goals in a manner consistent with the goals of its education programs, which are embodied primarily in the Elementary and Secondary Education Act, as discussed below.

School Integration and Title I of the ESEA. The Elementary and Secondary Education Act of 1965 is the federal government's primary authority for funding and intervening in state and local educational matters. The ESEA was designed to address unequal educational conditions and funding needs. Title I of the act provides supplemental funding to schools with substantial numbers of poor children. Consistent with the mandate to assist low-income children concentrated in poor schools, the ESEA recognized the importance of school integration, and the original statute directly tied funding to compliance with Title VI desegregation requirements (Tegeler, 2014).

In addition to its original links to school desegregation compliance, the ESEA also includes support for magnet schools and interdistrict school integration programs. The Magnet Schools Assistance Program (MSAP) was originally passed as part of the Emergency School Aid Act of 1972 to assist school districts implementing court-ordered desegregation plans and was later incorporated into the ESEA in 1984. In the section of the ESEA authorizing the MSAP, Congress declared that "it is in the best interests of the United States" to "ensure that all students have equitable access to a high quality education that will prepare all students to function well in a technologically oriented and a highly competitive economy comprised of people from many different racial and ethnic backgrounds." One of the MSAP's purposes is described as "the elimination, reduction, or prevention of minority group isolation in elementary schools and secondary schools with substantial proportions of minority students" (20 U.S.C. §§ 7231(a)(4) &(b)(1), 2006).

The most recently reauthorized version of the ESEA, the Every Student Succeeds Act (ESSA), continues the ESEA's historical focus on racial, socioeconomic and other achievement gaps, but it allows states increased flexibility in accountability and testing. The ESEA's primary method to address racial disparities in education is through targeted funding to high-poverty schools under Title I of the Act. The latest version of the ESEA also continues to recognize the important link between the achievement gap and economic segregation. For example, the section of Title I authorizing grants to high-poverty schools states that "studies have found that the poverty of a child's family is much more likely to be associated with educational disadvantage if the family lives in an area with large concentrations of poor families" (20 U.S.C. §6336(a)(7)). This finding is consistent with decades of research demonstrating that racial and socioeconomic segregation and isolation is a primary contributor to the achievement gap and that the socioeconomic status of a student's peers has an educational impact that is roughly as significant as the child's own socioeconomic status (Black, 2012).

The Every Student Succeeds Act also retains the school transfer option for students in persistently failing schools (a provision added to the ESEA by the 2001 No Child Left Behind Act). While this provision does not expressly mention school integration, it recognizes the severe resource and opportunity disparities that are associated with economic and racial segregation and adopts a classic desegregation remedy: voluntary transfer to a higher-performing school (Taylor, 2003).

The ESEA provisions that connect most directly to issues of racial and economic segregation include the sections on substantial comparability in resources and teachers between Title I and non–Title I schools. Because resource inequity—including financial support, physical facilities, teacher quality, and curriculum—is related to school racial and economic composition, it would make little sense for the Department of Education to launch a prospective equity assessment that does not include consideration of the impacts of proposed policies and actions on school racial isolation and diversity (Black, 2012).

The Supreme Court's "Compelling Government Interest" in School Integration and the Department's K–12 School Diversity Guidance. These statutory foundations for promoting racial and economic integration at the Department of Education were strengthened by the U.S. Supreme Court's constitutional pronouncement in *Parents Involved in Community Schools v. Seattle School District No. 1* (2007). Although a majority of the Court in that case struck down the individual racial preferences used by two school districts to create diverse schools, a separate 5–4 majority announced for the first time that school diversity and reduction of racial isolation are "compelling government interests" that justify the use of nondiscriminatory measures to achieve racial integration:

> This Nation has a moral and ethical obligation to fulfill its historic commitment to creating an integrated society that ensures equal opportunity for all of its children. A compelling interest exists in avoiding racial isolation, an interest that a school district, in its discretion and expertise, may choose to pursue. Likewise, a district may consider it a compelling interest to achieve a diverse student population. (*Parents Involved*, 2007, p. 797)

Four years later, in an effort to clarify that the *Parents Involved* decision was consistent with federal government policy, the secretary of education and the attorney general issued a high-level joint K–12 guidance document about the use of race-conscious policies to pursue integration. The 2011 guidance explained that "providing students with diverse, inclusive educational opportunities from an early age is crucial to achieving the nation's educational and civic goals. . . . Racially diverse schools provide incalculable educational and

civic benefits by promoting cross-racial understanding, breaking down racial and other stereotypes, and eliminating bias and prejudice" (U.S. Department of Justice and U.S. Department of Education, 2011).

The Parameters of a Prospective Assessment Tool at the Department of Education. The Federal Transit Administration's 2012 Title VI Guidance provides a good starting point to consider the types of state and local actions that could trigger a prospective equity assessment by a state or local education agency. The primary types of actions covered by the FTA guidance are major changes likely to impact transit riders on the basis of income, race, and geography: siting of new transit stops, route changes, and fare increases.

The Department of Education has already taken some initial steps that could provide a foundation for a future racial impact assessment. These steps include the department's recent guidance documents on school discipline and educational resource disparities (U.S. Department of Education, 2014; U.S. Department of Justice & U.S. Department of Education, 2014). Together with a recently enhanced Civil Rights Data Collection (CRDC) system, the department is developing the capacity to better predict and monitor educational disparities both within and across school districts. The department directly acknowledged these links in its 2011 K–12 School Diversity Guidance: "Where schools lack a diverse student body or are racially isolated (i.e., are composed overwhelmingly of students of one race), they may fail to provide the full panoply of benefits that K–12 schools can offer. The academic achievement of students at racially isolated schools often lags behind that of their peers at more diverse schools. Racially isolated schools often have fewer effective teachers, higher teacher-turnover rates, less rigorous curricular resources (e.g., college preparatory courses), and inferior facilities and other educational resources" (U.S. Department of Justice and U.S. Department of Education 2011, p. 1).

An educational equity assessment analogous to the FTA Guidance could require prospective assessments by states and local school districts of major decisions such as changes in the state school funding formula, school construction spending, school closings and new school siting plans, major changes in class size, and school districting and boundary proposals—all of which can have significant impacts on patterns of racial and economic school segregation. In the context of both Title VI of the Civil Rights Act and Title I of the ESEA, any equity assessment conducted by state and local grantees of the department would have to address the impacts of these policy decisions on low-income children and children of color. Such questions to answer might include: (1) Will the new policy or action have a significant disparate impact based on race? (2) Will the action increase or decrease racial isolation? (3) How can the new policy or action be changed or modified to promote greater diversity or less harm?

A community-based equity analysis along these lines, which included school segregation impacts, was undertaken in 2013 by local advocates and researchers in Richmond, VA, in response to a proposed school closing and rezoning plan. Their policy memo projected the segregative impacts of the Richmond School Board's decision to close three elementary schools and rezone 14 others and set out a series of alternative proposals that would limit resegregation and promote diversity (Siegel-Hawley, Bridges, Shields, Moeser, & Hill, 2013). Similar efforts by nonprofits in Boston and New York demonstrate a range of methodologies that can be used without substantial burden on a district or state (McArdle, Osypuk, & Acevedo-Garcia, 2010; New York Appleseed, 2013).

CONCLUSION

The Department of Education has made great strides in its recent guidance documents on school discipline and resources disparities. The next step is to move from a complaint and enforcement model to a system that requires state and local grantees to consider the racial consequences of their actions *before* they are taken and to include an assessment of current and future patterns of segregation that largely drive racial disparities in resources and outcomes for low-income children.

NOTE

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