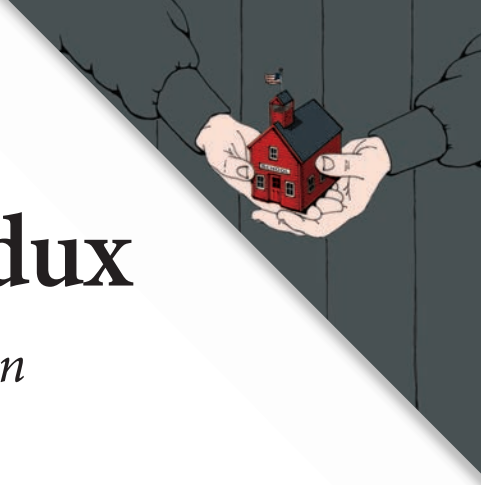

Desegregation Redux

Long dormant rulings rise again

by JOSHUA DUNN and MARTHA DERTHICK

In a series of decisions during the 1990s, the Supreme Court appeared to bring the era of desegregation to a sputtering close. But like an old, out-of-date suit collecting dust in the back of the closet, desegregation cases affecting hundreds of districts haven't been concluded. It becomes easy to file perfunctory annual reports with the court and let a case fall into dormancy without an official declaration of "unitary" status, the legal standard for removing judicial supervision. And some school districts, or factions within them, might enjoy the latitude provided by four-decade-old court orders to make race-based school assignments. Cases from North Carolina and Louisiana, however, show the political problems that can arise for school districts when old litigation is resurrected in new disputes.

School districts and courts should officially close cases that are decades old.

In eastern North Carolina under *Edwards v. Greenville City Board of Education*, the Pitt County District has officially been under court supervision since the 1960s. However, in 1972 the federal district court removed the case from its active docket, subject to being reopened should a motion be filed to warrant it. For the next 34 years, there was no such motion. But the case groaned back to life in 2006 when a group organized as the Greenville Parents Association filed a complaint with the Office for Civil Rights objecting to the district's use of race in student assignments. As part of their attack, the parents also asked the district court to declare the district unitary and dismiss the case.

In 2009, after court-mandated mediation, the parents and school board reached a settlement. The board agreed to consult with the parents on its future assignment plans and the parents agreed to withdraw their motion for unitary status. As well, the court ordered the school district to submit a report by 2012 detailing progress toward achieving unitary status so it could "relinquish jurisdiction" and "return full responsibility" over the district's schools to the school board.

In 2010, the school board, in consultation with the parents, adopted a new attendance policy that emphasized several factors but most importantly students' proximity to their school and student achievement. Instead of racial diversity, the goal was diversity of achievement. Nevertheless, one of the elementary schools it produced was largely minority and low-achieving, which angered another group of parents, the Pitt County Coalition for Educating Black Children. In 2011, this group asked the court to overturn the board's new attendance policy on the grounds that it moved the district further from unitary status.

The court denied the request, but on appeal a Fourth Circuit panel overturned the district court in 2012, arguing that under Supreme Court doctrine any racial disparities in the district are still presumptively caused by prior discrimination. The court remanded the case back to the district court.

Louisiana has presented a more ironic case. There, in 2012 a public school–choice policy prescribed by No Child Left Behind (NCLB) fell afoul of the inherited judicial law of desegregation. To comply with NCLB, the Richland Parish School Board notified parents that the Rayville Elementary School was failing, but on the advice of its legal counsel it prohibited Rayville's white students from transferring to certain other schools because of provisions "in the federal Richland Parish School desegregation case." This referred to a decision of the Fifth Circuit in 1968, in a consolidated case involving dozens of school districts, that purported to prevent white students from making transfers under freedom-of-choice plans if the result would be to create "all Negro" schools.

If the Richland Parish case haunted the choice provisions of NCLB, it is likely to haunt as well a new statewide voucher program that Louisiana has launched for low-income students who attend underperforming schools. Will white students in schools covered by the court order be able to take full advantage of the vouchers?

Even though we are far beyond the wrenching upheaval of forced busing during the 1970s, the antagonisms of desegregation linger. School districts and courts would be wise to take steps to officially close cases that are decades old but which frustrate the resolution of current disputes when their long-dormant wounds are reopened.

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