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Ezella McPherson¹

Abstract

The U.S. District of Columbia's Federal Circuit Court decision in *Hobson v. Hanson* (1967) case eliminated racial discriminatory tracking practices in the nation's capitol's public schools. The court ruled that D.C. Public Schools' tracking violated African American and low income students' rights to equal opportunities to education under the equal protection and due process clauses of the 14th Amendment. While D.C. Public Schools eradicated school tracking, it continued in other urban schools. This article examines the Federal Court's role in the perpetuation of school tracking practices and challenges minority students' access to equal educational opportunities in schools with tracked classrooms. It also addresses the need for equitable schools to provide all students with the opportunity to learn.

Keywords

urban education, minority students, schools

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Introduction

Historically, many African American¹ and Latino/a² students received sub-standard schooling in the U.S. as compared to their white counterparts in America. The U.S. Supreme Court case decision, *Plessy v. Ferguson* (1896) established that the schooling of Negro students in the U.S. was *separate but equal*. Over 50 years later, in the Federal Circuit Court of Appeals in the Southern District of California, *Westminster School District of Orange County v. Mendez* (1947) case plaintiffs challenged the purported *separate but equal* school facilities and teaching quality for Mexican students and students of Latin descent in California. Since the plaintiffs only provided evidence on Mexican students being segregated in schools, the court found that Westminster School District did not *segregate all* students of Latin descent and Mexicans.

Only seven years later, the U.S. Supreme Court case, *Brown v. the Board of Education* (Brown I) (1954) overturned the *Plessy v. Ferguson* (1896) decision that permitted separate but equal schools for Negro students. In the dual system of schooling, Negro schools were considered inferior when compared to white schools with better facilities and educational resources. Dr. Kenneth B. Clark and Mamie Clark's classic doll studies provided social science evidence that the dual system of schooling lowered Negro children's self-esteem (K. Clark & M. Clark, 1947). The compelling evidence on the impact of the dual system of schooling resulted in the U.S. Supreme Court holding that separate but equal schooling violated Negro students' rights to equal protection under the law as outlined in the Fourteenth Amendment in the U.S. Constitution. The U.S. Supreme Court ruled that racial segregation of children in public schools prohibited Negro students' access to equal educational opportunities.

Since the 1954 *Brown I* decision, U.S. public schools have struggled to provide equality in education for every student. Only two years later, in 1956, school tracking was initiated as a mechanism to desegregate Washington D.C. Public Schools by allowing students to have the opportunity to attend the same schools but with different course trajectories (Hobson v. Hansen, 1967). The U.S. District of Columbia Federal Circuit Court *Hobson v. Hanson* (1967) became the first case to challenge the use of school tracking in D.C. Public Schools from 1956 to 1966. A key plaintiff, Julius Hobson alleged that that D.C. Public Schools use of testing to track students in effect produced the *outcome* of discriminating against African American students and low income students based on performance on intelligence and achievement tests. The tracking system barred them from receiving access to the same advanced curriculum, quality teachers, and educational resources as affluent white students. The Federal

Circuit Court ruled that D.C. Public Schools' tracking practices violated African American and low income students' rights to equal opportunities to education under the equal protection and due process clauses of the 14th Amendment. This resulted in the court eliminating D.C. Public Schools' tracking program.

Some Federal Court cases and court rulings have led to a greater understanding of inequalities in schools and produced laws and practices designed to provide students with an equal education. Questions remain that need to be addressed. For example: How did subsequent Federal Court decisions encourage racial school tracking practices to continue in U.S. urban schools? What types of inequalities are produced from specific school tracking practices that impact minority³ students' education?

The purpose of this article is to provide a legal analysis of Federal Court cases to examine the Federal Court's role in the perpetuation of school tracking practices and the creation of subsequent racial disparities, due to school tracking practices after the 1967 *Hobson* decision. The article begins by outlining the construct of race through the lens of Critical Race Theory (CRT) to problematize the issue of equal opportunities for minority students to learn in schools with tracked classrooms; followed by an explanation of school tracking theory. Then it analyzes landmark school tracking court cases to problematize the Federal Courts' role in the perpetuation of school tracking in urban schools. The article utilizes the CRT perspective to challenge minority students' access to equal educational opportunities in schools with tracked classrooms. Finally, the article addresses the need for equitable schools to provide all students with the opportunity to learn.

Research Focus and Method

The journal articles and books that informed this analysis were located through library systems, internet databases, and bibliographical reference searches. A search of the library systems (e.g., University of Illinois) and internet databases (e.g., Education Research Information Center, Academic Search Complete EBSCOhost) were used to locate books and journal articles. The descriptors used included: ability grouping and minority students; urban schools and special education; special education and minority students; racism and education; school tracking system and minority students; labeling and special education; prejudice, discrimination and education; and bilingual education. The internet database, Lexus Nexus was utilized to locate legal cases and law journal articles by entering search terms such as: school desegregation, special education, bilingual programs, ability grouping or school tracking with racial indicators such as minority, Hispanic, Latino, Negro, and Black.

A bibliographical search of library texts, such as *Beyond tracking: Finding success in inclusive schools* edited by Herbison Pool and Jane A. Page in 1995 and Jeannie Oakes' 2005 text, *Keeping track: How schools structure inequality* were used to find texts and articles on school tracking with a particular focus on minority and low-income students. Critical race studies literature came from a review of the bibliographical references in the text, *Critical Race Theory in Education: All God's children got a Song*, edited by Adrienne Dixson and Celia Rousseau in 2006. A similar search was completed to locate other journal articles and texts cited in the article.

Theorizing Race and School Tracking

Critical Race Theory

In the mid-1990s, Critical Race Theory (CRT) emerged from critical legal studies; recognizing that the law does not always take race into consideration in court decisions (Harris, 2002). CRT employs multiple academic perspectives, including women studies, legal studies, sociology, and history to examine an individual's or groups' past and current experiences with race and racism. Critical race theorists give previously silenced voices of people of color the opportunity to be heard in the form of counterstories. CRT places race at the center of analysis when discussing societal issues (Bell, 1992) and confronts mainstream viewpoints about race in society, such as colorblindness, meritocracy, and equal opportunity (Harris, 1993). Finally, CRT is obligated to transformative social justice through the law.

In recent years, CRT has emerged into an arena for critical race theorists to explore race and racism in the educational practices (Ladson-Billings, 1998). These educational practices include: affirmative action programs in higher education, college access programs, school desegregation, and school tracking. Ladson-Billings and Tate (2006) explain that critical race theorists can examine the right to property (e.g., curriculum, courses) to understand the connection between inequities in education, such as students' access to advanced curriculum programs in schools with tracked classrooms.

School Tracking Theory

School tracking is intended to provide better educational opportunities for students in America (Hallinan, 1994). In 1956 Superintendent of D.C. Public Schools, Dr. Carl F. Hansen implemented the school tracking system in D.C. Public Schools to place students into course trajectories (e.g., general, regular,

special academic, and honors) based on ability, which was determined by I.Q. scores, academic achievement test scores, teacher recommendations (Hobson v. Hansen, 1967). The honors' students take advanced curriculum with other gifted students; regular students take college preparatory classes as seniors in high school, general students take classes on grade level, while the special academic students take remedial and slow paced courses in the lower track. The track system is intended provide flexibility for students to move from one course trajectory track to another after showing improvement in their remedial educational deficiencies as shown by the improvement in academic performance on tests.

School tracking also provides students in higher track courses with the best qualified teachers while students in the lower track courses have less qualified teachers, some of which are uncertified teachers (Oakes, 1995). This sorting process typically begins on the eighth day of kindergarten (Rist, 1973). Since there is little movement between tracks, many students remain in the same curricular track from kindergarten throughout high school.

Bilingual Programs

Bilingual programs can also be considered a part of the school tracking system, due to ability grouping. In 1967, under Title VII of the Elementary and Secondary Education Act of 1965, the Bilingual Education Programs created services for English language learners (ELLs)⁴ and trained instructors to teach students with similar English abilities in separate classrooms (Committee on Education and Labor, 1967). In the 1974 amendment to the Bilingual Education Act of 1968, bilingual programs allowed ELLs to enroll in a full-day program to preserve their culture and language while learning English (Committee on Education and Labor, 1974).

Legal Context of Race and School Tracking

This section of the article considers school tracking theory as a framework to examine legal cases, by looking in particular at who has access to enriched curricular programs in public schools. Although the *Hobson v. Hansen* (1967) Federal Circuit Court ruling, Judge Skelly Wright eliminated school tracking in D.C. Public Schools, subsequent court cases made it challenging for judges to rule in favor of eradicating racial discriminatory practices in other American schools. This difficulty occurred in the ruling of U.S. Supreme Court, *Keyes v. School District 1* (1973) (*Keyes*) case.

In the *Keyes* case, plaintiffs argued that the majority of African American children still attended segregated Denver Public Schools in the Park Hill District after the *Brown I* decision. While the plaintiffs provided evidence of the racial discriminatory practices that prohibited the desegregation of the Park Hill District, they lacked proof that the Park Hill District intentionally practiced a dual system of schooling. The *Keyes v. School District 1* (1973) decision resulted in individuals in subsequent court cases having to prove that schools intentionally segregated and discriminated against students based on race and ethnicity, in terms of programs, services or activities.

A year later, in a separate court case in the Denver, Colorado Federal Circuit Court, *Keyes v. School District 1* (1974) led to the desegregation of East High School and Manuel High School in District 1 to be in compliance with *Brown I*. Chicano plaintiffs fought to develop bilingual programs while simultaneously desegregating schools through busing and redrawing of attendance zones. In the bilingual programs, Mexican and Chicano students would learn mainstream curriculum (e.g., math, English) and be taught Chicano history, culture, and language. The plaintiff's plan for desegregation and creating bilingual programs was denied because of the extensive transportation of students from one school to another, which would make it nearly impossible to fully desegregate Denver Public Schools. The court ordered that Manuel High School and East High School merge into the East-Manual Complex as a way to desegregate these schools with a dual campus.

Less than 10 years later, in the Federal Circuit Court of Appeals for the Western District of Michigan, desegregation case, *Oliver v. Kalamazoo Board of Education* (1980) the plaintiffs sought to remedy the racial imbalance in Kalamazoo Public Schools. Prior to school desegregation, Latino/a students attended segregated public schools in Kalamazoo. After Latino/a students left the segregated schools with a majority Latino/a population, they had challenges with the curriculum in Kalamazoo Public schools. This resulted in the Kalamazoo Board of Education's implementation of bilingual programs to address the needs of Latino/a children.

Additionally, some Kalamazoo Public Schools labeled African American students as learning disabled, emotionally and mentally impaired. Kalamazoo Public Schools had disproportionately placed African American students into lower-tracked courses as early as third grade. Many of these students remained in the lower-tracked courses in their latter years of schooling in Kalamazoo. As a result, many African American and Latino/a students were denied access to college preparatory curriculum in Kalamazoo's public high schools taken by their white peers. The Federal Circuit Court ordered the Kalamazoo Board of Education to create a committee to develop instructional programs and

standardized curriculum (e.g., math, reading, language) with goals and objectives for students to learn beginning in kindergarten continuing throughout high school.

Similarly, 13 years later, a disproportionately low number of African American students enrolled in advanced placement classes within the Rockford School District (RSD), which sparked plaintiffs to file the Federal Court case, *People Who Care v. the Rockford Board of Education* (1993) in the Northern District of Illinois. Although some African American students scored high enough on standardized tests to be placed in advanced track classes, they were placed into regular and/or lower tracked classes in the RSD. Other African American students were placed into the lower classes because of disciplinary problems. On the other hand, many white students took advanced or honors classes, and few of them took the lower tracked courses.

In RSD, Latino/a students transferred to white schools for desegregation purposes, while the majority of white students remained at their neighborhood schools. While at the predominantly white schools, many Latino/a students failed the achievement tests. This resulted in them being labeled as mentally retarded because, due to their lack of familiarity with written English, they could not comprehend the English testing materials. They were placed in bilingual classrooms for half of the day and regular classes for the other part of the day. The need to further desegregate schools led to the movement of some bilingual programs (e.g., Barbour School) to implement full day bilingual programs which segregated Latino/a students from their white and African American peers. The Federal Court held that RSD *intentionally* conducted unlawful school tracking practices for African American students in the advanced and special education programs and Latino/a students in the bilingual programs. The Federal Court ordered both parties to submit a consent decree to protect the minority students' rights to an equal education with an equitable relief plan to rectify intentional acts of segregation and discrimination in the RSD.

Only 3 years later, in 1996 a group of parents within the Champaign Unit 4 Public School District filed a complaint with the Office for Civil Rights (OCR) stating that African American students were overrepresented in school suspensions for attendance and behavior and special education classes, but underrepresented in advanced placement/honors courses in Champaign Unit 4 Public Schools (*Johnson v. Board of Education Champaign Unit School District 4*, 2002). The OCR complaint resulted in the Champaign Unit 4 Public School District developing a consent decree to provide equitable schooling for African American students under the Controlled Choice Plan. The Controlled Choice Plan allowed parents to send children to the school of their choice to remedy past wrongs in Champaign Public Schools. The plan

also sought to increase the number of African American students in honors and advanced placement classes and reduce the numbers of African American students in special education classes.

In the County of San Francisco, Superior Court of the State of California, *Williams v. State of California* (2000) case, the plaintiffs fought for the State of California and California Board of Education to provide students with access to educational resources (e.g., textbooks, materials, courses, teacher materials), qualified teachers in English Language Learners and regular classrooms, safe and clean facilities, and the elimination overcrowding. These conditions are similar to the dual system of schooling as outlined in the 1954 *Brown I* decision. The court ordered the parties to negotiate to develop a settlement plan to remedy these conditions in California schools.

Racial discriminatory practices within the law permitted tracking to occur in urban schools after the 1967 *Hobson v. Hansen* 1967 decision. Neither the 1967 *Hobson* decision nor any of the subsequent Federal Court school tracking legal cases eradicated the use of testing to track students, which in turn played a part in perpetuating educational inequalities for African American and Latino/a students attending urban schools in America. The tracking system leaves minority students segregated inside the classroom in predominantly white or minority schools as they take separate classes in the lower trajectory (e.g., special education or remedial classes) while their white peers take honors or advanced placement courses. A Critical Race Theory perspective examines more closely and problematizes how the continuance of school tracking enables urban schools to continue producing educational inequalities by creating in-classroom segregation by race.

Social Science Literature and School Tracking: Educational Inequalities in Schools

Since Critical Race Theory challenges assumptions of equal opportunities that currently exist in U.S. society, this section places race at the center of analysis to explore minority students' unequal access to curricular resources, their learning in the classroom, teaching in special education classes, disproportionality in special education, and bilingual education.

Unequal Access to an Enriched Curriculum

Over 10 years after the 1967 *Hobson* decision, a D.C. suburb, Montgomery County opens up seven public magnet schools in Maryland (Henig, 1990). Unfortunately, some Montgomery County Public Schools' (MCPS') magnet

programs have historically accepted more white students than minority students (Henig, 1995). As a result, minority students became separated from the white students who enrolled in the advanced curricular programs. The longstanding rejection of minority students from MCPS' magnet programs are one factor that contributes to the continued underrepresentation of African American and Latino/a students in later MCPS' magnet programs offered in the late 1980s throughout the early 1990s (Eaton, 1994). While higher numbers of white students enrolled in advanced curricular programs, fewer African American and Latino/a students enrolled in honors and advanced placement classes in MCPS in 2001, and from 2003 to 2005 (MCPS', 2005). In the 2004–2005 academic year, MCPS' African American and Latino/a students also were disproportionately assigned to special education classes. This suggests that some minority students lacked access to enriched curricular programs in MCPS.

Some public schools in Illinois have also provided a separate schooling to African American students. For instance, two years after the *Johnson v. Board of Education Champaign Unit School District 4* (2002) case in 1998, Robert Peterkin and James Lucey completed an equity audit in Champaign Unit 4 Public Schools to see if students had access to the same curriculum. The 1998 Champaign Equity Audit uncovered that African American students were disproportionately assigned to special education classes and there was an underrepresentation of African Americans in honors and advanced placement courses (Peterkin & Lucey, 1998). At the same time, disproportionately more white students took advanced and honors programs in Champaign Unit 4 Public Schools. Like Champaign Unit 4 Public Schools, Urbana School Districts' 1998 Equity Audit found an overrepresentation of African American students in special education classes and an underrepresentation of African American and Latino/a students took the advanced and honors curriculum (Adams & Ternasky, 1998).

School tracking continues to provide an *unequal* education to African American and Latino/a students in many regions of the United States. For instance, white students comprise 87% of Berkeley High Schools' BHS' geometry honors classes, as many of these students transferred from private schools to take the honors and/or advanced curriculum (Noguera, 2003). With the exposure to BHS' advanced curriculum in the highest track, BHS' white students are in a better position to compete for admission to the University of California. Conversely, African American and Latino/a BHS students enrolled in the lowest pre-Algebra class offered by the school. By taking the lower tracked courses, most African American and Latino/a students are placed at a disadvantage when applying for college admissions at four-year universities like the University of California. Thus, the continued use of

tracking in American schools not only leads to a *separate and unequal* education for African American and Latino/a students in urban schools, but these tracking practices impact African American and Latino/a students' future opportunities in higher education.

Racially Segregated Classrooms

A number of social science research studies reveal, school tracking creates racially segregated classrooms in urban schools. Blanchett (2006) asserted that in special education classes, African American students were restricted from taking general education classes. As a result, special education programs created segregation "on the basis of race or ethnicity and disability" (Blanchett, Mumford, & Beachum, 2005, p. 73). Ferri and Connor (2005) recognized how special education programs have separated students based on race and ability. Special education programs create a legal division of students and provide justification of the separation of students on the basis of learning disabilities, including emotional, behavioral, and mental. Now, special education programs with learning disabled students have transformed from primarily serving white students to African Americans and Latino/as in urban schools (Fierros & Conroy, 2002). The identification and differentiation of learning disabilities has in effect resulted in the exclusion of African American and Latino/a students from classrooms with their peers in regular and advanced classrooms.

One problem with special education programs in urban schools is that learning disabled students are more likely to be placed in more restrictive classrooms than learning disabled students in suburban areas (Fierros & Conroy, 2002). In these schools, special education classes, students receive instruction from lower quality teachers, many of which have less than a master's degree (Harry & Klingner, 2006). Urban schools' historic and continued use of labeling African American and Latino/a students as disabled creates *separate and unequal* opportunities for them to learn in American public schools (Reid & Knight, 2006).

Mickelson (2003) finds that school tracking "results in racially discriminatory educational outcomes" (p. 1065), and schools' testing practices contribute significantly to this inequity. The use of testing to track students produces, in effect segregated class rooms by both race and socioeconomic status (Lucas, 1999, Mitchell & Mitchell, 2005). Based on test performance, African American and Latino/a students are placed into the lower tracks and thus taught in separate classrooms from their peers (Oakes, 2005; Welner, 2001). There are a higher number of minority students with lower test scores

and thereby being placed in lower tracks is made possible due to their earlier placement in lower-ability groups/tracks in elementary school. This continued placement in lower ability group programs stems from urban schools relying too heavily on testing to place students in different curriculum tracks.

Disproportionality in Special Education Classes

School tracking combined with racial discrimination produces disproportionality in urban schools. Disproportionality can be defined as the overrepresentation of one group of students in special education classes when compared to the school as a whole (Williams-Shealey & Scott Lue, 2006). In schools, disproportionality occurs in special education classes due to minority students' test scores and/or behavioral problems.

Testing

Harry and Klingner (2006) find that high stakes testing serve as mechanisms to label students as learning disabled. Students with low test scores are labeled as learning disabled and referred to special education services to help these students with reading, math, and writing. Patton (1998) notes that the roots of disproportionality begins with the testing, misdiagnosis, and improper evaluation, referral and assessment methods used to refer students to special education programs.

In the Federal Circuit Court of Appeals for the Northern District of California, *Larry P. v. Wilson Riles* (1972) case, California schools used I.Q. tests to assess students for educable mentally retarded (EMR) programs, which are the same as mild mental retardation (MMR) programs. The plaintiffs argued that one consequence of the use of I.Q. tests was an overrepresentation of African American students in special education classes because Californian schools diagnosed the students as being MMR. While the Federal Circuit Court did not eliminate the special education curricula, they wanted the California schools to place less emphasis on EMR programs and move towards curricula to fit the needs of individual students.

Similarly, the Federal Circuit Court of Appeals for the Southern District of Georgia, in *Georgia State Conference of Branches of NAACP v. State of Georgia* (1985) case, the plaintiffs reported an African American students overrepresentation in EMR programs in Georgia Public Schools. They argued that African Americans students' placement in EMR programs violated their rights to the Fourteenth Amendment to the U.S. Constitution, Title VI of the Civil Rights Act of 1964, and the Equal Educational Opportunities Act, and

section 504 of the Rehabilitation Act of 1973. The Federal Circuit Court found that Georgia schools did not discriminate based on race and I.Q. test scores when placing African American students in EMR courses. The court ordered Georgia Public schools to remedy this situation not covered within the Education of All Handicapped Children Act.

The results of these placements are that most special education students lack access to general curriculum courses and interactions with their *non-disabled* peers. As a result, the *segregated* special education programs exclude many African American and Latino/a students from obtaining an equitable education as well as segregating them from their white peers (Fierros & Conroy, 2002). These African American students “spend 60% or more of their school day in segregated special education placements” and 40% in general education classes (Blanchett, 2006, p. 26). Hence, special education programs produce in-school segregation based on structural racism because school tracking enables school districts to *segregate* students by race, class, and ability.

Behavioral Problems and Special Education

Low incidence disabilities (e.g., multiple disabilities, hearing impairment, orthopedic impairment, other health impairment, visually impairment, autistic, traumatic brain injury, deaf-blind, and developmental delay) have historically qualified students for placement into special education classes (Harry & Klingner, 2006). Beginning in the 19th century students with behavior problems were placed into separate special programs from other students without behavioral problems (Tropea, 1987). High incidence disabilities that resulted students being placed in special education classes are the following: mild mentally retardation, learning disabilities, emotional disturbances, speech and language impairments. Emotionally mentally retarded students are referred to special education classes due to: (1) legal and administrative requirements that establish a referral and evaluation of the child; (2) individual student characteristics (e.g., processing information, comprehension, reasoning, judgment, hyperactivity); (3) poor academic performance; (4) biases in the cognitive assessment process of students due to I.Q. test scores; and (5) lack of support from family (Heller, Holtzman, & Messick, 1982).

Minority Student Placement in Special Education Classes

Poverty in urban schools, percentage of nonwhite student enrollment, and per pupil expenditures are predictors of minority students' overrepresentation in

special education classes (Oswald, Coutinho, & Best, 2002). A fourth reason for the high number of minority students in lower tracks is that public schools have stricter guidelines when evaluating African American and Latino/a students who are thought to have learning disabilities based on behavior and achievement tests (Oakes, 1995). Harry and Klingner (2006) pointed out that discipline problems (e.g., hyperactivity, aggressive behavior, bad attitude) for behavior results in suspensions and referrals. Some teachers refer minority students with behavioral problems to special education classes for emotional behavior disorders. Other teachers' stereotypes of minority families (e.g., minimal support of children's academics) and students (e.g., lack of social skills, innate behavioral problems, being exposed to violence) leads them to refer minority students to special education classes.

African American Students' School Tracking Concerns in Schools

African American students with behavior problems have been placed into special education classes. Boykin (1983) notices that in the African American community supports beliefs, such as movement, verve, expressive individualism, spirituality, harmony, affect, communalism, orality, social time perspective. African American boys become overrepresented in special education because of their use of African American vernacular, verve, and defiance (Neal, McCray, Webb-Johnson & Bridgest, 2003; Patton, 1998). Since African American children's beliefs and behaviors are different from children of the white middle class, they are more susceptible to become disciplined in schools.

Skiba (2001) reported a disproportionate number of suspensions, referrals, and expulsions of African American students in 19 middle schools in the Midwest in the 1994–1995 school year. Similarly, one MCPS (2005) report found that African American and Latino/a students were disproportionately suspended in MCPS schools and thus 'at-risk' for being placed in to the special education programs in 2000 and between the years of 2003 and 2005.

Harry and Klingner (2006) noticed that three out of four of elementary school students with emotional handicaps remained in the special education classes in self-contained classrooms which separated them from the peers in the regular and advanced classrooms. Only one African American student returned to a regular classroom. This suggested that there was little movement of students from special education classes to regular classes. Similarly, recent reports have revealed that African American students were

disproportionately assigned to special education classes and underrepresented in honors and advanced placement classes (Office of Special Education Programs, 2004; Planty et al., 2007).

Latino/a Students' School Tracking Issues in American Schools

Issues of school tracking differ for low-income Latino/as students in urban areas given their immigrant background, learning the new language while keeping their native language of Spanish. Hakuta, Butler, and Witt (2000/2001) observe that it takes English Language Learners (ELLs) 3 to 5 years to become proficient in speaking English, and 4 to 7 years to master the academic writing and reading of the English language in two San Francisco, California school districts. In schools, Latino/a students' issues with school tracking in surround learning in bilingual programs and being placed in special education classes due to difficulties with English.

Bilingual Classrooms

School tracking provides separate learning opportunities for Latino/a students in bilingual classes that differs from learning offered in the regular and advanced classes in schools. Romo and Falbo (1996) found that bilingual programs focus on learning oral language, basic math, reading, and writing instead of content taught in social studies and science courses. Schools assessed ELLs for proficiency in English through a bilingual assessor who compiled a report of the ELL students with a "Brigance Inventory, written and oral narratives, a social-language inventory" and standardized tests (Harry and Klingner, 2006, p. 114). The bilingual assessor determined if the students' learning disability is attributed to language or not. There is a meeting with the ELLs' parents to decide if the child should be placed into the bilingual classroom. Lopez (1978) finds that ELLs are expected to master the English language in addition to other curriculum taught by teacher. Because of these pressures, some Latino/a students drop out of school.

Special Education Classes and English Language Learners

The U.S. Supreme Court case, *Lau v. Nichols* (1974) eliminated Chinese students' unequal access to Standard English curriculum in San Francisco Unified School District. The U.S. Supreme Court ordered the San Francisco

Unified School District to create bilingual programs to meet the needs of English language learners with limited English abilities. Over 10 years later, in the Federal Circuit Court for the Northern District of California, the ELL plaintiffs (e.g., majority Latino/a) in the *Teresa P. v. Berkeley Unified School District* (1989) posited that they were discriminated against by being excluded from participation in the Berkeley Unified School Districts courses due to their placement in the Limited English Proficient (LEP) courses. They argued that the bilingual programs violated their right to the Equal Education Opportunity Act and section 601 of Title VI of the Civil Rights Act of 1964. The use of tests in English placed these students at a disadvantage, because of their language barriers which made it harder for them to comprehend the tests. The Federal Circuit Court ruled that the plaintiffs did not provide sufficient evidence of racial discrimination to warrant the elimination of the remedial program for bilingual students. As a result, many ELLs were placed into the LEP and remedial courses separate from proficient English peers.

Noguera (1995) found that Latino/a students placed in lower tracked courses were due to parents being unable to serve as advocates for their children and low teacher expectations due to cultural stereotypes about Latino/as (e.g., challenges with English language; valuing work over school) in Lockwood Unified School District (LUSD) in bilingual courses in California. LEP teachers' fast teaching style in English made it hard for ELLs to comprehend some of the lessons in class. This resulted in these students guessing on the multiple choice exams taken in subjects such as History, Science, and Math. The tracking practices in LUSD led to many Latino/a students to drop out of school.

Artiles, Rueda, Salazar, and Higaed (2005) uncovered an overrepresentation of ELLs who were diagnosed as having learning, speech, and language disabilities, especially in the elementary grades in California. ELLs were more likely to be placed in special education classes than English proficient learners, because of their difficulties with learning the English language. They also came from low income families and diagnosed as having the high incidence learning disability known as mental retardation. Harry, Klingner, and Cramer (2007) observed that Latino/a students with behavioral problems were placed in special education self-contained classes after being diagnosed with emotional behavioral disorders through psychological assessments. In these classes, Latino/a students receive less instruction and feedback from teachers. Instead, the classroom focuses on correcting the behavior of these students.

Labeling, Prejudice, Stereotypes, and Self-Fulfilling Prophecies

School tracking practices leads to labeling and stereotypes of students based on their abilities (Brown, 1995). Labeling differentiates individuals based on their behaviors, like deviant or normal (Kugelmass, 1987). If a label of slow learner is associated with being African American or a child of the working class, then the label can produce negative stereotypes for members of these groups associated with ability, such as intellectual inferiority. Besides labeling, school tracking practices contributes to prejudice inside the classroom. Prejudice involves the process of putting people into categories based on prejudgment and even misconceptions, which leads to discriminatory acts against a person or members of a group (Allport, 1954). The practices of prejudice and stereotypes can lead to a self-fulfilling prophecy and lowered self-esteem (Crocker & Major, 1989). In institutions with school tracking, teacher perceptions can lead to self-fulfilling prophecies among students in terms of academic achievement, especially students in lower track classrooms (Rist, 2007).

Findings, Insights, and Speculations Towards Equitable Schooling

The *Hobson v. Hansen* (1967) decision has impacted minority students' opportunity to learn, because many minority students outside of the D.C. Public Schools have unequal access to curriculum by taking lower tracked courses. School tracking theory and research provides insights into the process by which school tracking practices have continued to produce in-classroom segregation based on race, class, and ability after the *Brown I* and *Hobson* decisions. While plaintiffs in subsequent Federal Circuit Court cases challenged school tracking practices, they have been unsuccessful in proving the schools' *intent* to discriminate against students based on race, programs, services, or activities after the precedence set by the 1973 *Keyes v. School District 1* decision. The Federal Circuit Courts may have ruled in favor of eradicating school tracking practices if the plaintiffs in the aforesaid court cases showed the negative *impact* school ability grouping *outcomes*, including lower self-esteem, lower academic achievement, limited teacher instruction, and limited resources for minority students in urban schools.

By utilizing a Critical Race Theory perspective, this article has challenged the notion of equal opportunities in schools, by explaining how school tracking practices result in a *separate and unequal* education for low-income and

minority students taking separate remedial and special education courses instead of enrolling in advanced classes like their affluent white peers. The system of school tracking leads to a cycle of teachers prejudging minority and low income students based on stereotypes and placing them into special education and lower tracked courses due to behavior and test scores.

Previous studies by Loveless (1999), and Wheelock (1992) suggest for schools to go through the process of detracking⁵ to provide students of color with the opportunity to learn in public schools. While detracking can be a powerful tool to provide students with access to equitable schooling, Welner (2001) acknowledges that schools with court orders to detrack classrooms may be less likely to do so, when the court stops being involved in the school district. Given that the current school tracking system produces a *separate* schooling for minority students, there is a need to create equitable schooling without using the legal system, by dismantling school tracking practices, which produce in-classroom segregation. School administrators, community members, researchers, teachers, and parents should collaborate at the local level with school board members and state legislatures to design a plan to provide *all students* with the opportunity to learn in public schools. To develop an equitable education, schools should move towards in-school desegregation to provide students with the opportunity to learn with students from all ability levels in the classroom. Public schools should also provide students with access to quality teachers, educational resources (e.g., texts, funding, materials), preparation for college or trade schools, mentoring, and be retained in schools. By doing so, students may have the option to choose to pursue college or the occupational trajectory upon graduation from high school. In-school desegregation has the potential to enhance the quality of learning in the classroom by providing all students with the opportunity to learn at their highest potential and having access to enriched curriculum, which will serve a purpose in preparing students for the college trajectory. Some additional outcomes could be raising minority students' self-esteem, increasing achievement test scores, enhancing students' quality of life, and well-being by providing them with an education and the skills needed to be more employable in the workforce in the 21st century.

Notes

1. The terms Negro, Black, and African American are used interchangeably to refer to African Americans in a particular historical time period.
2. The terms Mexican, Chicano, Latino/a are used to refer to Latino/as in a specific historical context as well.

3. In this article, minority refers to African American and Latino/a students, since these groups have constantly encountered challenges when trying to obtain access to educational opportunities in the U.S. public school system.
4. English Language Learners can be defined as individuals who had limited language skills in English as well as their native language (Artiles et al., 2005).
5. Detracking is process by which schools move from homogenous academic curricular tracks to homogeneous classes with students from different academic levels (Wheelock, 1992).

References

- Adams, J. Q., & Ternasky, L. (1998). *Educational equity audit and climate report for the Urbana School District*. Urbana: Illinois Staff and Curriculum Developers Association.
- Allport, G. (1954). *The nature of prejudice*. Cambridge, MA: Addison-Wesley Publishing Company.
- Artiles, A. J., Rueda, R., Salazar, J. J., & Higared, I. (2005). Within-group diversity in minority disproportionate representation: English language learners in urban school districts. *Exceptional Children, 71*, 283-300.
- Bell, D. (1992). *Faces at the bottom of the well: The permanence of racism*. New York, NY: Basic Books.
- Blanchett, W. J., Mumford, V., & Beachum, F. (2005). Urban school failure and disproportionality in a post-Brown era: Benign neglect of the constitutional rights of students of color. *Remedial and Special Education, 26*, 70-81.
- Blanchett, W. J. (2006). Disproportionate representation of African American students in special education: Acknowledging the role of White privilege and racism. *Educational Researcher, 35*, 24-28.
- Boykin, A. W. (1983). The academic performance of Afro-American children. In J. T. Spence (Ed.), *Achievement and achievement motives: Psychological and sociological approaches* (pp. 321-371). San Francisco, CA: W. H. Freeman and Company.
- Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).
- Brown, R. (1995). *Prejudice: It's social psychology*. Oxford: Blackwell Publishing.
- Clark, K. B., & Clark, M. P. (1947). Racial identification and preference in Negro children. In T. M. Newcomb, & E. L. Hartley, (Eds.), *Readings in Social Psychology* (pp. 169-178). New York, NY: Henry Holt and Company.
- Committee on Education and Labor. (1967). *Bilingual Education Programs*. Washington, DC: U.S. Government Printing Office.
- Committee on Education and Labor. (1974). *Bilingual Education Act*. Washington, DC: U.S. Government Printing Office.

- Crocker, J., & Major, B. (1989). Stigma and self-esteem: The protective properties of stigma. *Psychological Review*, *96*, 608-630.
- Eaton, S. (1994). *Slipping toward segregation: Local control and eroding desegregation in Montgomery County, Maryland*. Cambridge, MA: Harvard Civil Rights Project.
- Ferri, B. A., & Connor, D. J. (2005). Tools of exclusion: Race, disability, and (re) segregated education. *Teachers College Record*, *107*, 453-474.
- Fierros, E. G., & Conroy, J. W. (2002). Double jeopardy: An exploration of restrictiveness and race in special education. In D. J. Losen & G. Orfield (Eds.), *Racial inequity in special education* (pp. 39-70). Cambridge, MA: Harvard Education Press.
- Georgia State Conference of Branches of NAACP v. State of Georgia, 775 F. 2d 1403 (11th Cir.1985).
- Hakuta, K., Butler, Y. G., & Witt, D. (2000/2001). How long does it take English learners to attain proficiency. Santa Barbara: Linguistic Minority Research Institute, University of California.
- Hallinan, M. (1994). Tracking: From theory to practice. *Sociology of Education*, *67*, 79-84.
- Harris, C. (1993). Whiteness as property. *Harvard Law Review*, *106*, 1709-1791.
- Harris, C. (2002). Critical race studies: An introduction. *UCLA Law Review*, *49*, 1215-1240.
- Harry, B., & Klingner, J. (2006). *Why are so many minority students in special education? Understanding race and disability in schools*. New York, NY: Teachers College Record.
- Harry, B., Klingner, J., & Cramer, E. (2007). *Case studies of minority student placement in special education*. New York, NY: Teachers College Record.
- Heller, K. A., Holtzman, W. H., & Messick, S. (1982). Introduction: Disproportion in special education. In K. A. Heller, W. H. Holtzman, & S. Messick (Eds.), *Placing children in special education: A strategy for equity* (pp. 3-22). Washington, DC: National Academy Press.
- Henig, J. (1990). Choice in public schools: An analysis of transfer requests among magnet. *Social Science Quarterly*, *71*, 69-82.
- Henig, J. (1995). Race and choice in Montgomery County, Maryland, magnet schools. *Teachers College Record*, *96*, 729-734.
- Hobson v. Hansen, 269 F. Supp. 401 (D. D.C. 1967).
- Johnson v. Board of Education Champaign Unit School District 4, 188 F. Supp. 944 (C.D.Ill. 2002).
- Keyes v. School District 1, 413 U.S. 189 (1973).
- Keyes v. School District 1, 380 F. Supp. 673 (D. Colo., 1974).
- Kugelmass, J. W. (1987). *Behavior, bias, and handicaps: Labeling the emotionally disturbed child*. Oxford: Transaction Books.

- Ladson-Billings, G. (1998). Just what is critical race theory and what is it doing in a nice field like education? *Qualitative Studies in Education, 11*, 7-24.
- Ladson-Billings, G., & Tate, W. F. (2006). Toward a critical race theory of education. In A. Dixson & C. K. Rousseau (Eds.), *Critical race theory in education: All God's children got a song* (pp. 11-30). New York, NY: Routledge.
- Larry P. v. Wilson Riles, 343 F. Supp. 1306 (N.D. C.A., 1972).
- Lau v. Nichols, 414 U.S. 563 (1974).
- Lopez, M. (1978). Bilingual education and the Latino student. In L. A. Valverde (Ed.), *Bilingual education for Latinos* (pp. 1-16). Washington, DC: Association for Supervision and Curriculum Development.
- Loveless, T. (1999). *The tracking wars: State reform meets school policy*. Washington, DC: Brookings Institution Press.
- Lucas, S. R. (1999). *Tracking inequality: Stratification and mobility in American high schools*. New York, NY: Teachers College Press.
- Mickelson, R. (2003). When are racial disparities in education the result of racial discrimination?: A social science perspective. *Teachers College Record, 105* (6), 1052-1086.
- Mitchell, R. E., & Mitchell, D. E. (2005). Student segregation and tracking in year-round schools. *Teachers College Record, 107*, 529-562.
- Montgomery County Public Schools (MCPS). (2005). *Annual report on our call to action: Montgomery County Public Schools*. Rockville, IN: Department of Communications for the Department of Shared Accountability.
- Neal, L. I., McCray, A. D., Webb-Johnson, G., & Bridgest, S. T. (2003). The effects of African American movement styles on teachers' perceptions and reactions. *Journal of Special Education, 37*, 49-58.
- Noguera, P. (1995). Educational rights and Latinos: Tracking as a form of second generation discrimination. *Berkeley La Raza Law Journal, 8*, 25-41.
- Noguera, P. (2003). *City schools and the American dream: Reclaiming the promise of public education*. New York, NY: Teachers College Press.
- Oakes, J. (1995). More than meets the eye: Links between tracking and the culture of schools. In H. Pool & J. A. Page (Eds.), *Beyond tracking: Finding success in inclusive schools* (pp. 59-70). Bloomington, IN: Phi Delta Kappa Educational Foundation.
- Oakes, J. (2005). *Keeping on track: How schools structure inequality*. New Haven, CT: Yale University Press.
- Office of Special Education Programs. (2004). Twenty-sixth annual report to Congress on the implementation of the Individuals with Disabilities Education Act. Washington, DC: U.S. Department of Education.
- Oliver v. Kalamazoo Board of Education, 640 F.2d 782 (6th Cir. 1980).

- Oswald, D. P., Coutinho M. J., & Best, A. L. (2002). Community and school predictors of over representation of minority children in special education. In D. J. Losen & G. Orfield, (Eds.), *Racial inequity in special education* (pp. 1-13). Cambridge, MA: Cambridge Harvard Education Press.
- Patton, J. M. (1998). The disproportionate representation of African Americans in special education: Looking behind the curtain for understanding and solutions. *Journal of Special Education, 32*, 25-31.
- People Who Care v. Rockford Board of Education, 851 F. Supp. 905 (N.D. Ill.1993).
- Peterkin, R., & Lucey, J. (1998). *Educational equity audit: Findings and recommendations*. Champaign, IL: Champaign County Schools Unit #4.
- Planty, M., Provasnik, S., Hussar, W., Kena, G., Hampden-Thompson, G., Dinkes, R., & Kridl. (2007). *The condition of education 2007*. Washington, DC: National Center for Education Statistics, U.S. Department of Education.
- Plessy v. Ferguson, 163 U.S. 537 (1896).
- Reid, D. K., & Knight, M. G. (2006). Disability justifies exclusion of minority students: A critical history grounded in disability studies. *Educational Researcher, 35*, 18-23.
- Rist, R. (1973). *The urban school: A factory for failure*. Cambridge, MA: MIT Press.
- Rist, R. (2007). On understanding the process of schooling: The contributions of labeling theory. In A. R. Sadovnik (Ed.), *Sociology of Education: A critical reader* (pp. 71-82). New York, NY: Routledge.
- Romo, H. D., & Falbo, T. (1996). *Latino high school graduation: Defying the odds*. Austin: University of Texas.
- Skiba, R. (2001). When is disproportionality discrimination? The overrepresentation of Black students in school suspension. In W. Ayers, B. Dohrn, & R. Ayers (Eds.), *Zero tolerance: Resisting the drive for punishment in our schools*. New York: The New Press.
- Teresa P. v. Berkeley Unified School District, 724 F. Supp. 698 (N.D. Cal. 1989).
- Tropea, J. L. (1987). Bureaucratic order and special children: Urban schools, 1890s-1940s. *History of Education Quarterly, 27*, 29-53.
- Welner, K. G. (2001). *Legal rights, local wrongs: When community control collides with educational equity*. Albany: State University of New York Press.
- Westminster School Dist. of Orange County v. Mendez, 161 F.2d 774, 782 (9th Cir. 1947).
- Wheelock, A. (1992). *Crossing the tracks: How untracking can save America's schools*. New York, NY: W.W. Norton & Company.
- Williams v. State of California, Superior Court of California, San Francisco No. 312236 (2000).

Williams-Shealey, M., & Scott Lue, M. (2006). Why are all the Black kids still in special education? Revisiting the issue of disproportionate representation. *Multicultural Perspectives*, 8, 3-9.

Bio

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